BILL NO. 11-76

Introduced: April 6, 1976
Enacted: December 14, 1976
Executive: December 27, 1976
Effective: March 13, 1977

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

April Legislative Session 1976

Chapter 27

AN ACT to add a new Article IV, title "Employer-Employee Relations Act," to Chapter 33, title "Personnel" of the Montgomery County Code, 1972, as amended, to provide for the election and certification of employee organizations for the purposes of meeting with County officials concerning conditions of employment and the resolution of grievances; to provide for the designation of employee units from which such employee organizations are elected and which such organizations represent; to provide for the recognition of such employee organizations by the County; to provide for the preparation of position papers by the County and such employee organizations; to provide for procedures for the decertification of employee organizations; to define certain terms; to provide for the Chief Administrative Officer to finally resolve disputes arising under this Article; to specify responsibilities of the County and the employee organizations; to provide for the protection of those County employees who choose not to become members of an employee organization; and to provide for the retention of existing personnel laws and regulations and the option of any employee to pursue a grievance through procedures set forth therein.

Be It Enacted by the County Council for Montgomery County, Maryland, that

Sec. 1. Chapter 33, title "Personnel," of the Montgomery County Council is hereby amended to add a new Article IV, title "Employer-Employee Relations," to the Montgomery County Code 1972, as amended, after Article III thereof, and to read as follows:

ARTICLE IV

EMPLOYER-EMPLOYEE RELATIONS

33-62. Statement of Legislative Intent.

The County Council hereby finds that the trend in labor relations between government and its employees is becoming somewhat aligned with the practices of the private sector of representation of employee groups by designated and elected employee organizations. The Council believes that government should take the initiative in providing a vehicle whereby government employee representation can emerge and evolve in a fashion consistent with both the needs of the employee and those of government. The Council further believes that this can best be accomplished by enacting local legislation which provides for the voluntary representation of government employees by their duly designated and elected employee organizations. The Council also believes that the efficient administration of the County government is enhanced by providing employees an opportunity to participate in the formulation and implementation of policies and practices affecting the conditions of their employment. Because the Council believes it is desirable to minimize the proliferation of employee units, it has limited the number of such units to seven; however, the Council would consider changing that limitation at a future date upon the recommendation of the Chief Administrative Officer or an affected group of employees. The Council further states that the eligibility as to membership in an employee unit for purposes of this meet-and-confer type of employee representation would not necessarily be extended in the same manner if authority for collective bargaining were granted. Membership or non-membership in an employee organization shall in no way limit the ability of an employee to obtain government information to which he/she would normally have access. Nothing in this Article shall restrict the ability of any employee, whether member or non-member of an employee organization, to discuss matters concerning employees or employee groups to the extent that such discussion does not conflict with the duties and responsibilities of the employee.

33-63. Definitions.

As used herein, the following words and phrases shall be defined as follows:

a. "Certification" -- the procedure whereby employee organizations are elected and recognized to represent employee units.

b. "Decertification" -- the procedure by which the Chief Administrative

Officer withdraws County recognition of an employee organization, with or without an election by the employees of an employee unit.

c. "Employee" -- Any County merit system employee working on a continuous full-time, career or part-time, career basis, eligible to be included in a unit of recognition except for the following:

(1) Confidential aids to elected officials;

(2) All non-merit system employees;

(3) All heads of principal departments, offices, and agencies;

(4) Deputy or assistant department heads;

(5) Employees providing direct staff or administrative support to the director of the department, or deputy or assistant directors within the director's immediate office;

(6) Employees who report directly to or whose immediate supervisor is the County Executive, County Council, County Councilmembers or the Chief Administrative Officer and the principal aides to the foregoing:

(7) Employees of the Office of the County Attorney;

(8) Employees of the Office of Budget and Research;

(9) Employees of the Office of Employee Relations;

(10) Employees of the Personnel Office;

(11) Employees of the Personnel Board;

(12) Heads of the following constituent offices, divisions and sections in the Department of Transportation existing at the time of enactment of this bill and positions carrying a similar degree of personnel management responsibilties in other departments and offices as determined by the Chief Administrative Officer:

Director's Office, Office of the Right of Way Acquisition, Office of Administrative Services, Office of Transportation Planning, Division of Transportation Engineering, Subdivision Development Section, Design Section, Construction Section, Division of Traffic Engineering, Traffic Planning and Survey Section, Traffic Operations Section, Division of Operations, TESS Minibus, Highway Maintenance Section, Equipment Section, and Division of Parking Lot Districts.

d. "Employee organization" -- any lawful organization which represents employees in their employment relations with the County. The term "employee organization" does not include any organization which:

(1) discriminates with regard to terms and conditions of membership with regard to race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

(2) does not adhere to democratic procedures and practices with regard to election of officers, individual participation in organizational affairs, equal treatment under its bylaws, including dues processing, and disciplinary procedures; or

(3) does not maintain fiscal integrity in the conduct of the affairs of the organization, including accounting controls and regular financial reports to members.

e. "Employee unit" -- groupings of employees for purposes of representation in County/employee relations.

f. "Position paper" -- a non-binding written memorandum reflecting all items discussed by the County and an employee organization.

g. "Uniformed services" -- those activities engaged in the protection of life and property, law enforcement or correctional activities, and whose employees have as their primary duties and responsibilities the operational activities of such public safety activities.

33-64. Employee rights.

a. An employee shall have the right, freely and without fear of penalty or reprisal, to form, join or assist and be represented by an employee organization or to refrain from any such activity.

b. Each employee shall have the right to be represented by employee organizations, including the right to meet with representatives of the County concerning conditions of employment and the resolution of grievances.

c. Nothing in this Article shall preclude the rights of an employee to pursue an individual grievance through establsihed administrative procedures or through appeal to the Personnel Board, in that nothing in this Article shall circumvent or shall be deemed to supersede or annul the provisions of the Laws of the State of Maryland, the Montgomery County Charter, and the Laws and Ordinances of Montgomery County including the Personnel Regulations.

d. No employee, who is not a member of an employee organization shall ever be required to become a member of such an organization or to pay money to such an organization, except on a purely voluntary basis.

33-65. Determination of employee units.

a. The Chief Administrative Officer shall make the final determination as to the composition of employee units. In undisputed cases, the determination of appropriate units shall be made by the Chief Administrative Officer within thirty (30) calendar days after receipt of a request for certification under Section 33-66 of this Article.

b. Employee units may be established on the basis of groupings of employees who share a clear and identifiable community of interest. Such factors as those employees sharing common skills, working conditions, physical locations, organizational structures, and integrated work processes shall be considered. A unit shall not be established solely on the basis of the extent to which employees in a proposed unit have organized.

c. Determination of units shall be made so as to include the largest possible numbers of employees consistent with maintaining a community interest of employees to avoid proliferation and fragmentation of representative units. The provisions of this Section shall not preclude the establishment of one unit to represent all eligible employees. The number of units certified shall not be greater than seven.

d. Units for employees of the uniformed services shall be limited to employees in the ranks of Corporal or equivalent rank and below.

e. In cases where the matters of unit determination are questioned, the decision of the Chief Administrative Officer shall be final after opportunity is provided for those disputing the determination to be heard by the Chief Administration Officer.

33-66. Procedures for certification of employee organizations.

a. Initially or where there is no official representative employee organization, the Chief Administrative Officer, upon petition of an employee organization showing written evidence of interest by at least thirty percent (30%) of the employees of the employee unit, shall arrange for the conducting of a secret ballot

election to determine whether the employees desire such organization to act as their representative. Following such petition, the Chief Administrative Officer shall give an appropriate notice to the employees involved.

b. An employee organization seeking to represent an employee unit shall submit to the Personnel Office a roster of its officers and representatives, a copy of its constitution and bylaws, and a schedule of dues for its members.

c. Eligibility to vote in any election for choice of an official representative shall be limited to employees who are filling County positions as of the beginning of the pay period preceding the election date.

d. Elections will be conducted by the Personnel Office which may use the services of the Maryland State Division of Labor and Industry or any other third party having similar qualifications.

e. The ballot shall contain the name of any additional employee organization showing timely written evidence of interest by at least ten percent (10%) of the employees within the appropriate employee unit. In every instance, the ballot shall contain a provision for a marking of "no representation." Where more than one employee organization is on the ballot and no one of the organizations receives a majority vote of the employees voting, a runoff election shall be held. The runoff election shall contain the two choices which received the largest and second largest number of votes in the original election.

f. When an organization receives a majority of valid votes cast in the election and when at least sixty percent (60%) of the employees eligible to participate in the election cast valid ballots, the Chief Administrative Officer shall certify it as the official employee organization for the employee unit.

g. The County shall recognize as the official employee relations representative an employee organization which has been selected in accordance with procedures outlined in this Section 33-66.

h. Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional or other lawful associations with respect to matters or policies which involve individual members of the associations or are of particular applicability to it or its members.

i. No question concerning certification may be raised by an employee or an employee organization within one (1) year of the date of certification of an employee organization or the date that a majority of the employees voting voted for no representation.

j. The County may, after discussions with an employee organization and on the basis of written authorization from each employee, provide for deduction from the pay of such employee monies in payment of membership dues in a duly certified employee organization. Such monies shall be remitted to the employee organization.

33-67. Procedure for decertification of employee organizations.

a. An employee organization shall be subject to decertification when thirty percent (30%) of the employees in the employee unit petition for the employee organization to be decertified. The procedures for determining whether, in fact, an employee organization shall be decertified shall be the same as those prescribed in Section 33-66 for the certification of an employee organization, except as provided in subsection b of this Section 33-67.

b. If an employee organization fails to adhere to any of the provisions of Section 33-73 dealing with employee organization responsibilities, then:

(1) its certification may be revoked by the Chief Administrative Officer after notice and an opportunity to be heard, and

(2) it may be disqualified by the Chief Administrative Officer from participating in representation elections for a period of up to two (2) years after notice and an opportunity to be heard.

33-68. Costs of conducting elections.

Any cost of conducting a secret ballot election under this Article shall be borne 50% by the County and 50% borne equally by the employee organization(s) whose name(s) appear on the ballots.

33-69. County-employee organization meetings and discussions.

a. An employee organization which has been recognized by the County pursuant to Section 33-66 shall be entitled to meet at reasonable times with County representatives to discuss with such representatives personnel policies,

practices and matters affecting working conditions of the employee unit it represents, so far as discussions may be appropriate under existing laws or regulations. The County shall meet at least two times annually with each certified employee organization.

b. The requirement to meet shall not obligate either the County or an employee organization to agree to any proposal or to make any concession with respect to any matter discussed by the parties at such a meeting. Any decision made at any such meeting is in no way binding upon the parties.

c. The County and an employee organization may, if desired, and at the conclusion of their discussions, jointly or separately, prepare written position papers which reflect for future reference the respective positions of the parties on the issues discussed at such meetings. Such position papers shall in no way legally bind any party to the matters expressed therein and the County shall not be obligated to concur in a position paper addressing the inherent right to manage the County Government.

33-70. Employee organization representation of employee members.

a. An employee who is a member of an employee organization may request and shall be granted the right for a member or representative of such organization to be present in any discussions or counseling with County representatives concerning an individual grievance.

b. An employee organization may submit a grievance concerning any dispute involving a claim of violation, misinterpretation or misapplication of the Personnel Regulations or work practices of the County on the same basis as provided for individual grievances.

33-71. Disputes.

All decisions of the Chief Administrative Officer under the provisions of this Article shall be final, subject to appeal to the Montgomery County Personnel Board where provided by law.

33-72. County responsibilities.

It shall be the responsibility of the County not to:

a. Interfere with, restrain, or coerce an employee in the exercise

of the rights assured by this Article;

b. Encourage or discourage membership in an employee organization by discrimination in regard to hiring, tenure, promotion or other conditions of employment;

c. Sponsor, control or otherwise assist an employee organization, except that the County may furnish customary and routine services and facilities when consistent with the best interest of the County, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

d. Refuse to accord appropriate recognition to an employee organization qualified for such recognition; or

e. Refuse to consult, confer, or meet with an employee organization certified pursuant to this Article.

33-73. Employee organization responsibilities.

It shall be the responsibiiity of every employee organization not to:

a. Interfere with, restrain or coerce an employee in the exercise of the rights assured by this Article;

b. Attempt to induce the County to coerce an employee in the exercise of the rights under this Article;

c. Coerce, attempt to coerce, or discipline, fine, or take other economic sanction against an employee member of an employee organization as punishment or reprisal, or for the purpose of hindering or impeding work performance or the discharge of duties owed as an employee of the County;

d. Call or engage in a strike, work stoppage, or slowdown, picket the County in connection with a strike, work stoppage or slowdown in a County-employee dispute, or condone any such acitivity by failing to take affirmative action to prevent or stop it;

e. Discriminate against an employee with regard to the terms or conditions of membership because of race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

Sec. 2. Severability.

The provisions of this Act are severable and if any provision, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidty or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, section, word or part had not been included therein, and if the person or circumstances to which the Act or part thereof is inapplicable had been specifically exempted therefrom.

Sec. 3. Effective Date

This Act shall take effect on the 76th day following the date on which it becomes law.

APPROVED:

John L. Menke — Dec 17, 1976
President, Montgomery County Council — Date

James P. Johnson — Dec. 27, 1976
County Executive — Date

ATTEST:

Carl J. Steele — Dec. 27, 1976
Deputy Secretary of the Council — Date

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, December 14, 1976 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 10:15 A.M. on Tuesday, December 14, 1976.

PRESENT

John L. Menke, President
Elizabeth L. Scull, Vice President
Neal Potter, President Pro Tem
Esther P. Gelman
Jane Ann Moore
Norman L. Christeller
Dickran Y. Hovsepian

The President in the Chair.

Upon motion of Councilman Christeller, duly seconded and without objection, the Council amended the agenda to allow the Legislative Session to begin at 10:15 A.M., rather than at 10:30 A.M.

INTRODUCTION OF BILLS:

Re: Introduction of Bill No. 53-76, Amendment to Taxicab Regulations to Permit Charges Under Contract

The Council had before it for consideration Bill No. 53-76, an amendment to Taxicab Regulations to permit charges under contract.

Councilwoman Scull stated that the purpose of this bill is to allow taxicab drivers to charge a lower rate than specified by the fare for contract service, as long as the contract is filed with the Department of Transportation in advance. The taxicab drivers can contract for service with non-profit or low income groups, such as the tenants at Fenwick House. This bill was requested by the Taxicab Service Advisory Committee.

Councilman Christeller noted that the bill does not require the Department of Transportation to make a judgment as to whether or not the contracts filed with it are proper. He does not have enough information to assure him that this will be a satisfactory arrangement, and would like to hear discussion of the issue. He may want to offer an amendment that sets standards in this regard. However,

and Limousines." Montgomery County Code 1972, as amended, to provide that taxicabs may charge rates lower than those computed by the taximeter or as set forth in the schedule of fare rates under a contract filed with the Department of Transportation in advance.

President Menke indicated that he did not vote because he believes the bill is not ready for introduction at this time.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

Re: Enactment of Bill No. 11-76, Employer-Employee Relations

Bill No. 11-76, Employer-Employee Relations, was called for final reading.

Upon motion of Councilman Hovsepian, duly seconded and without objection, the Council approved the following amendments to Bill No. 11-76, as reflected in Draft No. 2 of Bill No. 11-76, dated November 29, 1976, by capital letters indicating additions to the bill as introduced, and strike-throughs indicating deletions from the bill as introduced:

Be It Enacted by the County Council for Montgomery County, Maryland that -

Sec. 1. Chapter ~~18A~~, 33, title "PERSONNEL," OF THE MONTGOMERY COUNTY COUNCIL IS HEREBY AMENDED TO ADD A NEW ARTICLE IV TITLE "Employer - Employee Relations," ~~is hereby added~~ to the Montgomery County Code 1972, as amended, ~~to follow immediately~~ after Chapter 18 ARTICLE III thereof, and to read as follows:

ARTICLE IV

EMPLOYER-EMPLOYEE RELATIONS

33-62. Statement of Legislative intent.

The County Council hereby finds that the trend in labor relations between government and its employees is becoming somewhat aligned with the practices of the private sector of representation of employee groups by designated and elected employee organizations.

The Council believes that government should take the initiative in providing a vehicle whereby government employee representation can emerge and evolve in a fashion consistent with both the needs of the employee and those of government. The Council further believes that this can best be accomplished by enacting local legislation which provides for the voluntary representation of government employees by their duly designated and elected employee organizations. The Council also believes that the efficient administration of the County government is enhanced by providing employees an opportunity to participate in the formulation and implementation of policies and practices affecting the conditions of their employment. BECAUSE THE COUNCIL BELIEVES IT IS DESIRABLE TO MINIMIZE THE PROLIFERATION OF EMPLOYEE UNITS, IT HAS LIMITED THE NUMBER OF SUCH UNITS TO SEVEN; HOWEVER, THE COUNCIL WOULD CONSIDER CHANGING THAT LIMITATION AT A FUTURE DATE UPON THE RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER OR A GROUP OF EMPLOYEES. THE COUNCIL FURTHER STATES THAT THE ELIGIBILITY AS TO MEMBERSHIP IN AN EMPLOYEE UNIT FOR PURPOSES OF MEET AND CONFER WILL NOT NECESSARILY BE EXTENDED IN THE SAME MANNER IF AUTHORITY FOR COLLECTIVE BARGAINING IS GRANTED.

33-63. Definitions.

As used herein, the following words and phrases shall be defined as follows:

a. "Certification" -- the procedure whereby employee organizations are elected and recognized to represent employee units.

~~b.--"Confidential employee"----an employee who in the course of his/her regular duties has access to or possesses information relating to matters which could be the subject of discussions between employee organizations and the County.~~

b. ~~c.~~ "Decertification" -- the procedure by which the Chief Administrative Officer withdraws County recognition of an employee organization, with or without an election by the employees of an employee unit.

~~d.--"Employee----a County merit system employee who is given a position with the anticipation that it will be necessary to maintain the existenc of such position indefinitely on a continuous full time, year round basis The term "employee does not include supervisory, confidential, and management level employees.~~

c. "EMPLOYEE" -- ANY COUNTY MERIT SYSTEM EMPLOYEE WORKING ON A CONTINUOUS FULL-TIME, CAREER OR PART-TIME, CAREER BASIS, ELIGIBLE TO BE INCLUDED IN A UNIT OF RECOGNITION EXCEPT FOR THE FOLLOWING:

(1) CONFIDENTIAL AIDES TO ELECTED OFFICIALS;

(2) ALL NON-MERIT SYSTEM EMPLOYEES;

(3) ALL HEADS OF PRINCIPAL DEPARTMENTS, OFFICES AND AGENCIES;

(4) DEPUTY OR ASSISTANT DEPARTMENT HEADS;

(5) EMPLOYEES PROVIDING DIRECT STAFF OR ADMINISTRATIVE SUPPORT TO THE DIRECTOR OF THE DEPARTMENT, OR DEPUTY OR ASSISTANT DIRECTORS WITHIN THE DIRECTOR'S IMMEDIATE OFFICE;

(6) EMPLOYEES WHO REPORT DIRECTLY TO OR WHOSE IMMEDIATE SUPERVISOR IS THE COUNTY EXECUTIVE, COUNTY COUNCIL, COUNTY COUNCILMEMBERS OR THE CHIEF ADMINSITRATIVE OFFICER AND THE PRINCIPAL AIDES TO THE FOREGOING;

(7) EMPLOYEES OF THE OFFICE OF THE COUNTY ATTORNEY;

(8) EMPLOYEES OF THE OFFICE OF BUDGET AND RESEARCH;

(9) EMPLOYEES OF THE OFFICE OF EMPLOYEE RELATIONS;

(10) EMPLOYEES OF THE PERSONNEL OFFICE;

(11) EMPLOYEES OF THE PERSONNEL BOARD;

(12) HEADS OF THE FOLLOWING CONSTITUENT OFFICES, DIVISIONS AND SECTIONS IN THE DEPARTMENT OF TRANSPORTATION EXISTING AT THE TIME OF ENACTMENT OF THIS BILL AND POSITIONS CARRYING A SIMILAR DEGREE OF PERSONNEL MANAGEMENT RESPONSIBILITIES IN OTHER DEPARTMENTS AND OFFICES AS DETERMINED BY THE CHIEF ADMINISTRATIVE OFFICER:

DIRECTOR'S OFFICE, OFFICE OF THE RIGHT OF WAY ACQUISITION, OFFICE OF ADMINISTRATIVE SERVICES, OFFICE OF TRANSPORTATION PLANNING, DIVISION OF TRANSPORTATION ENGINEERING, SUBDIVISION DEVELOPMENT SECTION, DESIGN SECTION, CONSTRUCTION SECTION, DIVISION OF TRAFFIC ENGINEERING, TRAFFIC PLANNING AND SURVEY SECTION, TRAFFIC OPERATIONS SECTION, DIVISION OF OPERATIONS, TESS MINIBUS, HIGHWAY MAINTENANCE SECTION, EQUIPMENT SECTION, AND DIVISION OF PARKING LOT DISTRICTS.

d. ~~e.~~ "Employee organization" -- any lawful organization which

represents employees in their employment relations with the County. The term "employee organization" does not include any organization which:

(1) discriminates with regard to terms and conditions of membership with regard to race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

(2) does not adhere to democratic procedures and practices with regard to election of officers, individual participation in organizational affairs, equal treatment under its by-laws, including dues processing, and disciplinary procedures; or

(3) does not maintain fiscal integrity in the conduct of the affairs of the organization, including accounting controls and regular financial reports to members.

e. ~~f.~~ "Employee unit" -- groupings of employees for purposes of representation in County/employee relations.

~~g.--"Management-level-employee"----any-employee-involved-directly in-the-determination-of-policy-or-who-responsibly-directs-the-implementation-thereof.~~

f. ~~h.~~ "Position paper" -- a non-binding written memorandum reflecting all items discussed by the County and an employee organization.

~~i.--"Professional-employee"----an-employee-engaged-in-work:~~

~~(1)--predominantly-intellectual-and-varied-in-character-as opposed-to-routine,-manual,-mechanical,-or-physical-work;~~

~~(2)--involving-the-consistent-exercise-of-discretion-and-judgment in-its-performance;~~

~~(3)--of-such-a-character-that-the-output-produced-or-the-result accomplished-cannot-be-standardized-in-relation-to-a-given-period of-time,-or~~

~~(4)--requiring-knowledge-of-an-advanced-type-in-a-field-of science-or-learing-customarily-acquired-by-a-prolonged-course of-specialized-study-in-an-institution-of-higher-learning.~~

~~j.--"Supervisor"----any-individual-having-the-authority-in-the-interest of-the-County-to:~~

~~(1)--hire,-transfer,-suspend,-recall,-layoff,-promote,-discharge assign-work,-reward-or-discipline-other-employees;~~

~~(2)--adjust-their-grievances;~~

~~(3)--responsibly-direct-them;-or-~~

~~(4)--effectively-recommend-the-aforementioned-action.~~

g. "UNIFORM SERVICES" --

THOSE ACTIVITIES ENGAGED IN THE PROTECTION OF LIFE AND PROPERTY, LAW ENFORCEMENT OR CORRECTIONAL ACTIVITIES, AND WHOSE EMPLOYEES HAVE AS THEIR PRIMARY DUTIES AND RESPONSIBILITIES THE OPERATIONAL ACTIVITIES OF SUCH PUBLIC SAFETY ACTIVITIES.

33-64. Employee rights.

a. An employee shall have the right, freely and without fear of penalty or reprisal, to form, join or assist and be represented by an employee organization or to refrain from any such activity.

b. Each employee shall have the right to be represented by employee organizations, including the right to meet with representatives of the County concerning conditions of employment and the resolution of grievances.

c. Nothing in this Article shall preclude the rights of an employee to pursue an individual grievance through established administrative procedures or through appeal to the Personnel Board, in that nothing in this Article shall circumvent or shall be deemed to supersede or annul the provisions of the Laws of the State of Maryland, the Montgomery County Charter, and the Laws and Ordinances of Montgomery County including the Personnel Regulations.

d. No employee, who is not a member of an employee organization shall ever be required to become a member of such an organization or to pay money to such an organization, except on a purely voluntary basis.

33-65. Determination of employee units.

a. The Chief Administrative Officer shall make the final determination as to the composition of employee units. In undisputed cases, the determination of appropriate units shall be made by the Chief Administrative Officer within thirty (30) calendar days after receipt of a request for certification under Section 33-66 of this Article.

b. Employee units may be established on the basis of groupings of employees who share a clear and identifiable community of interest. Such factors as those employees sharing common skills, working conditions, physical locations, organizational structures, and integrated work processes shall be considered. A unit shall not be established solely on the basis of the extent to which employees in a proposed unit have organized.

c. Determination of units shall be made so as to include the largest possible numbers of employees consistent with maintaining a community interest of employees to avoid proliferation and fragmentation of representative units. ~~No unit may include employees whose duties are management level, supervisory, or confidential in nature.~~ THE PROVISIONS OF THIS SECTION SHALL NOT PRECLUDE THE ESTABLISHMENT OF ONE UNIT TO REPRESENT ALL ELIGIBLE EMPLOYEES. THE NUMBER OF UNITS CERTIFIED SHALL NOT BE GREATER THAN SEVEN.

~~d. Professional employees shall not be included in a unit of non-professional employees unless a majority of such professional employees vote for inclusion therein.~~

d. ~~e.~~ Units for employees of the uniform services shall be limited to employees in the ranks of ~~sergeant~~ CORPORAL or equivalent rank and below.

e. ~~f.~~ In cases where the matters of unit determination are questioned, the decision of the Chief Administrative Officer shall be final. AFTER OPPORTUNITY IS PROVIDED FOR THOSE DISPUTING THE DETERMINATION TO BE HEARD BY THE CHIEF ADMINISTRATIVE OFFICER.

33-66. Procedures for certification of employee organizations.

a. Initially or where there is no official representative employee organization, the Chief Administrative Officer, upon the petition of an employee organization showing written evidence of interest by at least thirty percent (30%) of the employees of the employee unit, shall arrange for the conducting of a secret ballot election to determine whether the employees desire such organization to act as their representative. Following such petition, the Chief Administrative Officer shall give an appropriate notice to the employees involved.

b. An employee organization seeking to represent an employee unit shall submit to the Personnel Office a roster of its officers and representatives, a copy of its constitution and by-laws, and a schedule of dues for its members.

c. Eligibility to vote in any election for choice of an official representative shall be limited to employees who are filling County positions as of the beginning of the pay period preceding the election date.

d. Elections will be performed under the auspices and guidance of the Maryland State ~~Department of Labor and Industry, Division of Arbitration,~~ DIVISION OF MEDIATION AND CONCILIATION SERVICE which shall have the responsibilities and powers given to it under State law. ELECTIONS WILL BE CONDUCTED BY THE PERSONNEL OFFICE WHICH MAY USE THE SERVICES OF THE MARYLAND STATE ~~DEPARTMENT~~ DIVISION OF LABOR AND INDUSTRY OR ANY OTHER THIRD PARTY HAVING SIMILAR QUALIFICATIONS.

e. The ballot shall contain the name of any additional employee organization showing timely written evidence of interest by at least ten percent (10%) of the employees withint he appropriate employee unit. In every instance, the ballot shall contain a provision for a marking of "no representation." Where more than one employee organization is on the ballot and no one of the organizations receives a majority vote of the employees voting, a runoff election shall be held. The runoff election shall contain the two choices which received the largest and second largest number of votes in the original election.

f. When an organization receives a majority of valid votes cast in the election and when at least sixty percent (60%) of the employees eligible to participate in the election cast valid ballots, the Chief administrative Officer shall certify it as the official employee organization for the employee unit.

g. The County shall recognize as the official employee relations representative an employee organization which has been selected in accordance with procedures outlined in this Section 33-66.

h. Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional or other lawful associations with respect to matters or policies which involve individual members of the associations or are of particular applicability to it or its members.

i. No question concerning certification may be raised by an employee or an employee organization within one (1) year of the date of certification of an employee organization or the date that ~~no representative was selected by the majority of employees.~~ A MAJORITY OF THE EMPLOYEES VOTING VOTED FOR NO REPRESENTATION.

j. THE COUNTY MAY, AFTER DISCUSSIONS WITH AN EMPLOYEE ORGANIZATION AND ON THE BASIS OF A WRITTEN AUTHORIZATION FROM EACH EMPLOYEE,

PROVIDE FOR DEDUCTION FROM THE PAY OF SUCH EMPLOYEE MONIES IN PAYMENT OF MEMBERSHIP DUES IN A DULY CERTIFIED EMPLOYEE ORGANIZATION. SUCH MONIES SHALL BE REMITTED TO THE EMPLOYEE ORGANIZATION.

33-67. Procedure for decertification of employee organizations.

a. An employee organization shall be subject to decertification when thirty percent (30%) of the employees in the employee unit petition for the employee organization to be decertified. The procedures for determining whether, in fact, an employee organization shall be decertified shall be the same as those prescribed in Section 33-66 for the certification of an employee organization, except as provided in subsection b of this Section 33-67.

b. If an employee organization fails to adhere to any of the provisions of Section 33-73 dealing with employee organization responsibilities, then:

(1) its certification may be revoked by the Chief Administrative Officer after notice and an opportunity to be heard, and

(2) it may be disqualified by the Chief Administrative Officer from participating in representation elections for a period of up to two (2) years after notice and an opportunity to be heard.

33-68. Costs of conducting elections.

Any cost of conducting a secret ballot election under this Article shall be borne ~~equally~~ 50% by the County and 50% BORNE EQUALLY by the employee organization(s) whose name(s) appear on the ballots.

33-69. County-employee organization meetings and discussions.

a. An employee organization which has been recognized by the County pursuant to Section 33-66 shall be entitled to meet at reasonable times with County representatives to discuss with such representatives personnel policies, practices and matters affecting working conditions of the employee unit it represents, so far as discussions may be appropriate under existing laws or regulations. The County shall meet at least ~~once every two years~~ TWO TIMES ANNUALLY with each certified employee organization.

~~b. Such meetings and discussions shall not include matters with respect to the mission of the County government, its budget, its organization, the number of employees and the classifications and~~

~~grades of positions of employees assigned to an employee unit, work projects or tour of duty, the technology of performing County work, or other provisions that are inherent in the managerial process of determining the necessary steps to carry out the public service missions of the County. Furthermore, the County shall not be obligated to discuss matters which must necessarily be applicable to all employees on a uniform basis, such as the Employees' Retirement System and the Uniform Pay Schedule. However, the County may meet with employee organizations for the purpose of hearing their views on such matters,~~ or b. The requirement to meet shall not obligate either the County or an employee organization to agree to any proposal or to make any concession with respect to any matter discussed by the parties at such a meeting. Any decision made at any such meeting is in no way binding upon the parties.

~~d~~r c. The County and an employee organization may, if desired, and at the conclusion of their discussions prepare written position papers which reflect for future reference the respective positions of the parties on the issues discussed at such meetings. Such position papers shall in no way legally bind any party to the matters expressed therein.

33-70. Employee organization representation of employee members.

a. An employee who is a member of an employee organization may request and shall be granted the right for a member OR REPRESENTATIVE of such organization to be present in any discussions or counseling with County representatives concerning an individual grievance.

b. An employee organization may submit a grievance concerning any dispute involving a claim of violation, misinterpretation or misapplication of the Personnel Regulations or work practices of the County on the same basis as provided for indiivdual grievances.

33-71. Disputes.

All decisions of the Chief Administrative Officer under the provisions of this Article shall be final, subject to appeal to the Montgomery County Personnel Board where provided by law.

33-72. County responsibilities.

It shall be the responsibility of the County not to:

a. interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;

b. encourage or discourage membership in an employee organization by discrimination in regard to hiring, tenure, promotion or other conditions of employment;

c. sponsor, control or otherwise assist an employee organization, except that the County may furnish customary and routine services and facilities when consistent with the best interest of the County, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

d. refuse to accord appropriate recognition to an employee organization qualified for such recognition; or

e. refuse to consult, confer, or meet with an employee organization certified pursuant to this Article.

33-73. Employee organization responsibilities.

It shall be the responsibility of every employee organization not to:

a. interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;

b. attempt to induce the County to coerce an employee in the exercise of the rights under this Article;

c. coerce, attempt to coerce, or discipline, fine, or take other economic sanction against an employee member of an employee organization as punishment or reprisal, or for the purpose of hindering or impeding work performance or the discharge of duties owed as an employee of the County;

d. call or engage in a strike, work stoppage, or slowdown, picket the County IN CONNECTION WITH A STRIKE, WORK STOPPAGE OR SLOWDOWN in a County-employee dispute, or condone any such activity by failing to take affirmative action to prevent or stop it;

e. discriminate against an employee with regard to the terms or conditions of membership because of race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

Sec. 2. Severability.

The provisions of this Act are severable and if any provision,

clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, section word or part had not been included therein, and if the person or circumstances to which the Act or part thereof is inapplicable had been specifically exempted therefrom.

Sec. 3. Effective date.

This Act shall take effect on the 76th say following the date on which it becomes law.

At the suggestion of Councilman Christeller and without objection, the Council deleted the word [a] on line 26, page 2, and inserted in lieu thereof an affected; and on line 28, deleted [will] and inserted in lieu thereof: type of employee representation would; and on line 29, delete [is] and insert were.

Addressing a memorandum from James A. Mills, President, Montgomery County Government Employees Organization, dated December 13, 1976, concerning the membership eligibility restrictions, Councilman Christeller stated that there is a lot to be said in support of Mr. Mills' concerns, but the fact remains that one of the functions of an employee group under this bill will be participation by such employee groups in the grievance process. In those circumstances, he does not believe the employee groups should include senior supervisory personnel.

Councilman Hovsepian stated that the Council has to consider the possibility of enabling legislation for collective bargaining in the future, and has to be careful in setting precedents for membership in organizations. The Council discussed carefully the types of positions in terms of who would be involved in negotiations.

President Menke expressed the view that since employee groups will be involved in grievance procedures, section and division heads cannot be involved on both sides of the issue.

Councilman Potter expressed the view that the exclusions contained in Bill No. 11-76 are broad. He agreed with Mr. Mills' position that the group should be relatively broad to discuss the problems and concerns of all employees. It is desirable to avoid employee organizations that fragment employees and stir up issues. He suggested the need for further discussion of exclusions from employee organizations, stating that full exclusion of certain Executive management offices may be too broad.

Councilman Christeller expressed the view that employees of the Personnel Office and Personnel Board, which are directly involved in grievances and other problems being discussed by employee organizations, cannot be members of those organizations. The same is true of the Employee Relations Division and the Office of the County Attorney. The Assistant County Attorneys will be called upon to represent the County government in disputes between the government and the organizations. It would be difficult to draw a line between the attorneys

and the people assisting them; hence, the Council agreed that all employees of that office would be excluded. Employees of the Office of Budget and Research will make recommendations on budget impact matters to the County Executive; these employees cannot also be part of an employee organization.

Councilman Potter agreed that employees with the types of responsibilities outlined by Councilman Christeller should be excluded from employee organizations, but stated that many employees in those offices do not have such responsibilities.

Councilwoman Moore agreed with Councilman Potter, stating that the Council should not exclude those employees who are not involved in making high-level decisions from protecting their rights by joining an employee group.

Councilman Potter moved, duly seconded, that line 61, page 3, excluding employees of the Office of the County Attorney from joining employee organizations, be deleted from Bill No. 11-76.

Councilman Christeller stated that, if adopted, Councilman Potter's motion would exclude only the County Attorney and two Deputy County Attorneys and the administrative aides who work directly for them. The Assistant County Attorney who is assigned to advise the Personnel Board could be a member. However, from a professional standpoint, this attorney probably would not join the organization. The administrative aide to this attorney could join the organization. He expressed the view that it is difficult to make such a distinction within the staff of a relatively small office where two or three people would have to deal with matters under discussion with the employee organization and keep them secret from the other employees in that office.

Councilman Potter stated that, if adopted, he would offer substitute language for line 61, excluding, "Employees of the Office of the County Attorney who have administrative responsibilities and those who are assigned to deal with personnel matters."

Assistant County Attorney Levin stated that the language proposed by Councilman Potter would include everyone in the County Attorney's Office. All Assistant County Attorneys are assigned Personnel Board cases over and above their assignments to particular departments.

President Menke stated that if the employee organizations were not to be involved in grievances, he would agree with Councilman Potter's approach, however, given the involvement of the organization in the representation of employees, there would be a clear conflict for the supervisors to be in the organization.

Councilman Potter's motion failed, Councilmembers Potter and Moore voting in the affirmative and Councilmembers Hovsepian, Christeller, Menke, Scull and Gelman voting in the negative.

Councilman Potter moved, duly seconded, that the following language be added to the end of line 62: who have administrative responsibilities.

Councilman Christeller stated that when the employee organization recommends a change in the fringe benefit program, cost-of-living increase, or the compensation schedule, the County Executive and CAO will have to call upon the Office of Budget and Research for advice and recommendations concerning the budgetary implications of such a recommendation. The County Executive would expect to receive objective, professional advice. To allow employees of the Office of Budget and Research to be members of the employee organization that made the recommendations that are evaluated in that office would raise questions about the objectivity. It is not realistic to specify that the County Executive will have to rely solely on the Director and Deputy Director to do this work.

Councilman Potter's motion failed, Councilmembers Potter and Moore voting in the affirmative and Councilmembers Hovsepian, Christeller, Menke, Scull and Gelman voting in the negative.

Councilman Potter moved, duly seconded, that the following language be added to the end of line 64: who have administrative responsibilities, or who are responsible for rating or recommending employees or applicants, or for making disciplinary decisions.

Upon a suggestion that the term "administrative" is too broad, and without objection, Councilman Potter amended his motion to delete [administrative] and insert in lieu thereof supervisory. He further amended the motion to insert the words and classifying in lieu of the words [or recommending].

Director of the Office of Personnel Lloyd stated that employees in the clerical pool are no longer part of the Personnel Office and would not be excluded from joining an employee organization; the same is true of the Medical Section, which has been transferred to the Health Department. Earlier comments about direct staff support to the County Executive and CAO would apply equally to the Personnel Office. The staff will be involved in developing positions and policies on matters that would be of immediate concern to the employee organization.

Without objection, Councilman Potter withdrew his motion.

Councilman Hovsepian expressed the hope that the Executive will review the organization and structure of the Executive Branch and propose some reorganizational changes for consistency.

Without objection, the Council deleted the word [uniform] on lines 120 and 164, pages 5 and 6, and inserted in lieu thereof the word uniformed.

At the suggestion of Councilman Christeller and without objection, the Council deleted the language on lines 188 through the words "State law." on line 191, page 7.

With respect to the issue of dues check-off, Councilman Christeller moved, duly seconded, to delete the word [may] from line 223, and insert in lieu thereof the word shall.

Mr. Lloyd expressed the view that collection of dues should not be included in the bill, but should be left as a matter of discussion between the government and employee organization. Some Councilmembers wanted to include explicit language. The language that was developed is a compromise between those two positions.

President Menke noted that the Council agreed during worksessions on this bill that if the County Executive refuses to provide dues check-off, the Council can consider a legislative bill to require it.

Councilman Christeller's motion failed, Councilmembers Christeller and Menke voting in the affirmative and Councilmembers Hovsepian, Moore, Gelman, Potter and Scull voting in the negative.

Councilman Potter moved that the Council insert the words and agreement after the word "discussions" on line 223. His motion failed for lack of a second.

Addressing the County Executive's memorandum to the Council, dated December 10, 1976, in which he suggested additional language prohibiting position papers on matters of management rights, Councilman Christeller stated that he does not understand the intent of the suggestion. He stated that a position paper does not interfere with the rights of the County Executive to manage, but it does offer an opportunity for an employee group to be on record as to what it is recommending. He stated that the amendment proposed by the County Executive would be in violation of the First Amendment to the Constitution.

Mr. Lloyd stated that the suggested amendment is to specify that joint position papers will not result from discussions concerning inherent management rights.

Councilman Hovsepian stated that nothing in the bill implies that position papers are to be accepted; they are developed for the purposes of discussion.

Upon motion of Councilman Christeller, duly seconded and without objection, the Council inserted the words jointly or separately after the word "discussions" on line 277, page 9, and inserted the following language at the end of line 281: and the County shall not be obligated to concur in a position paper addressing the inherent right to manage the County government.

In response to a question from Councilwoman Moore as to how employee input would be obtained on matters such as withdrawal from Social Security once this bill is adopted, Mr. Lloyd stated that the position expressed by an organization would be considered along with all other positions. Of necessity, the Social Security question has to be addressed across-the-board for all employees. Technically, this issue would be a management right because it involves a contractual situation with the Social Security Administration; but, as a practical matter, no decisions affecting employees such as Social Security would be taken without input from a lot of employees.

Vice President Scull in the Chair.

President Menke moved, duly seconded, that the following language be added to the end of line 29, page 2: Membership or non-membership in an employee organization shall in no way limit the ability of an employee to obtain government information to which he/she would normally have access. Nothing in this Article shall restrict the ability of any employee, whether member or non-member of an employee organization, to discuss matters concerning employees or employee groups to the extent that such discussion does not conflict with the duties and responsibilities of the employee. Without objection, the motion was adopted.

President Menke in the Chair.

Upon motion of Councilman Hovsepian, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of

Bill No. 11-76. By a yea and nay vote, Councilmembers Gelman, Christeller, Scull, Hovsepian, Moore, Potter and Menke voting in the affirmative, Bill No. 11-76, Employer-Employee Relations, was enacted, as amended.

Councilman Christeller expressed the view that Bill No. 11-76 provides a good mechanism for recognizing employee organizations. He regrets that MCGEO believes the Council has gone too far in excluding supervisory personnel from joining such organizations, and expressed the hope that a broad cross-section of employees will join a single organization.

President Menke indicated that he would be willing to consider amendments to the law to expand the membership of employee organizations if answers to some of the questions raised during worksessions can be provided.

(The Council recessed at 11:45 A.M., and reconvened at 12:00 M.)

Vice President Scull in the Chair.

Re: Enactment of Bill No. 44-76, Automatic Termination for Members of Boards, Committees and Commissions

Bill No. 44-76, Automatic Termination for Members of Boards, Committees and Commissions, was called for final reading.

The Council had before it for consideration Draft No. 2 of Bill No. 44-76, dated December 10, 1976. Vice President Scull stated that this bill has been amended to reflect the decisions made by the Council at the worksessions. The objective of this bill is to deal with the problems raised by certain boards that have been troubled with absenteeism among their members. This causes problems with quorums and the distribution of workloads. It is neither sensible nor fair to allow non-functioning board members to continue to serve in view of the fact that each time a vacancy is advertised, there are many well-qualified applicants and not enough positions for them to fill.

President Menke in the Chair.

Upon motion of Councilwoman Scull, duly seconded and without objection, Councilwoman Gelman not voting, the Council adopted the following amendments to Bill No. 44-76, as reflected in Draft No. 2, with underlining indicating language added to present law, brackets indicating language deleted from present law, capital letters indicating language added to the bill as introduced, and strike-throughs indicating deletions from the bill as introduced:

MISCELLANEOUS BUSINESS:

Councilman Hovsepian requested that Mr. Tierney check the provisions of the recently-enacted Financial Disclosure Law to determine if the upcoming appointment to the Personnel Board must file a statement prior to appointment.

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 12:15 P.M., to reconvene at 1:30 P.M. on Tuesday, December 21, 1976, or at the call of the President.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, April 6, 1976 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 11:05 A.M. on Tuesday, April 6, 1976.

PRESENT

Norman L. Christeller, President
John L. Menke, Vice President
Elizabeth L. Scull, President Pro Tem
Esther P. Gelman
Jane Ann Moore
Neal Potter
Dickran Y. Hovsepian

The President in the Chair.

The Journals of March 16 and 23, 1976 were approved as presented.

INTRODUCTION OF BILLS:

Re: Introduction of Bill No. 11-76, Employer/Employee Relations

The Council had before it for consideration Bill No. 11-76, Employer/Employee Relations.

President Christeller stated that this bill was submitted to the Council by the County Executive during the first week of March. The bill was not scheduled for introduction immediately because he had not had an opportunity to read the bill, and the Council could not possibly schedule a public hearing until after the budget season in May or June. He has been urged by the County Executive and Chief Administrative Officer to introduce the bill as employee groups are quite concerned and need assurances that the proposal will be considered. President Christeller stated that this bill will authorize a "meet and confer" approach to employer/employee relations. It appears that the General Assembly will not enact legislation during this session to allow the more comprehensive collective bargaining approach. He stated that he has reviewed the bill and found that several amendments are needed. He met with a leader of an employee organization yesterday who came almost to the point of asking that the Council not introduce the bill at this point because

of its deficiencies. President Christeller distributed copies of a draft memorandum to the County Attorney requesting the preparation of several amendments to Bill No. 11-76, noting that many of these amendments are of the same nature that the employee organization is interested in. The employee organization has prepared a substitute bill, which he has not had an opportunity to review. However, there will be ample time for the introduction of amendments or an alternate bill prior to the scheduling of a public hearing. He reviewed his draft memorandum to the County Attorney, citing the reasons for his asking for a more precise definition of "management-level employees", a narrower definition of "supervisor", an amendment that would permit one or more separate employee units for all "supervisors" except management-level and confidential employees, explicit language that separate units of professional employees may be established, a provision that the County shall be obligated to discuss matters such as the retirement system and uniform pay schedule, a provision that the County Executive must include in his budget recommendations to the Council any matters on which an agreement has been reached that have budgetary implications, an amendment to require the County Executive to include in the budget presentation the details of the costs of the employee group requests if no agreement has been reached by February 1 of each year, a narrower definition of "confidential employee", assurance that meetings will occur more frequently than every two years if requested, and a provision for check-off of dues. In addition, several technical amendments are needed. President Christeller requested that other Councilmembers review the bill to determine whether there are other desirable amendments that should be drafted.

Upon motion of Councilman Hovsepian, duly seconded and without objection, the Council voted to waive the reading of the title and introduce Bill No. 11-76 by the Council President at the request of the County Executive: AN ACT to add a new Chapter 18A, title "Employer-Employee Relations Act," to the Montgomery County Code 1972, as amended, to follow immediately after Chapter 18 thereof, to provide for the election and certification of employee organizations for purposes of meeting with County officials concerning conditions of employment and the resolution of grievances, but excluding certain topics from being discussed at any such meetings; to provide for the designation of employee

units from which such employee organizations are elected and which such organizations represent; to provide for the recognition of such employee organizations by the County; to provide for the preparation of position papers by the County and such employee organizations; to provide for procedures for the decertification of employee organizations; to define certain terms; to provide for the Chief Administrative Officer to finally resolve disputes arising under this Article; to specify responsibilities of the County and the employee organizations; to provide for the protection of those County employees who choose not to become members of an employee organization; and to provide for the retention of existing personnel laws and regulations and the option of any employee to pursue a grievance through procedures set forth therein.

Re: Introduction of Bill No. 12-76, Reorganization of Executive Branch

The Council had before it for consideration Bill No. 12-76, Reorganization of Executive Branch.

Councilman Hovsepian stated that this bill was submitted by the County Executive in order to implement the reorganization of the Executive Branch that has been proposed in the Operating Budget for FY 1977. He noted, however, that the titles of various offices and sections still cannot be correllated with those in the budget office. In addition, he noted that the budget document and other papers have always referred to the "Office of Budget and Research," but existing law refers to the "Budget and Research section"; the same is true of the "Management information services section". He stated that the budget document should be consistent with the language of the law.

President Christeller requested that the Council and public be provided with an organization chart of the Executive Branch of County government. This will aid in understanding the proposal before the Council, and will point out the fact that some offices are not titled in a parallel fashion.

Chief Administrative Officer Hussmann distributed to the Council a partial organization chart for the CAO's office, Community and Government Relations, Employee Relations, Management and Public Policy, and State Affairs. He indicated that he is preparing a memorandum that discusses the rationale behind the proposals.

Councilman Hovsepian moved, duly seconded, that the Council waive the reading of the title of Bill No. 5-76 and proceed to its enactment.

Councilman Potter moved, duly seconded, that action on Bill No. 5-76 be postponed for one week to allow citizens an opportunity to communicate their views to the Council. His motion failed, Councilmembers Potter and Moore voting in the affirmative and Councilmembers Christeller, Hovsepian, Scull, Gelman and Menke voting in the negative.

Without objection, Councilman Hovsepian's motion was adopted.

By a yea and nay vote, Councilmembers Hovsepian, Gelman, Menke, Moore, Scull and Christeller voting in the affirmative and Councilman Potter not voting, Bill No. 5-76, Abolition of Cabin John Park Fire Board, was enacted.

At the suggestion of Councilman Menke and without objection, it was agreed that a letter of explanation on this bill would be sent to all citizens who have expressed concerns over this action.

MISCELLANEOUS BUSINESS:

Bill No. 1-76, Amendment to MPDU Law, was enrolled as Chapter 34; Bill No. 3-76, Amendment to MPDU Law, was enrolled as Chapter 35; and Bill No. 9-76, Bond Bill for Parks and Recreation, was enrolled as Chapter 36.

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 11:55 A.M., to reconvene at 1:30 P.M. on Tuesday, April 13, 1976, or at the call of the President.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

22764 11-16

#3

Office Of The County Executive

RECEIVED

MEMORANDUM

'76 MAR 5 AM 11:56

Date March 3, 1976

MONTGOMERY COUNTY COUNCIL OFFICE

To Norman L. Christeller, President, County Council

From James R. Gleason, County Executive

Subject Employer/Employee Relations Legislation

On June 4, 1975, I sent to you a proposed ~~bill~~ to provide formalized employer/employee relations for County Government employees.

I understand the Council deferred action on such legislation in anticipation that enabling legislation would be perhaps passed by the General Assembly, thus allowing the County to pass stronger legislation than the "meet and confer" model that I sent to you.

I am advised by our County and State Affairs staff that neither enabling legislation nor a state-wide employee relations bill will be passed this legislative year.

In view of these developments, I think it is important that we proceed with the establishment of some formalized communication mechanism for our County employees. My experience this past year has been, on the basis of several discussions with employee organizations, that there exists a real need to formalize our discussions between management and groups of employees. Therefore, I would urge you to take prompt action to introduce the legislation which I sent to you in June.

JPG:rjl

11-76
24406

#4

RECEIVED

'76 MAY 17 PM 2:10

MONTGOMERY COUNTY COUNCIL
COUNCIL OFFICE

M E M O R A N D U M

May 17, 1976

TO: Norman Christeller, President, Montgomery County Council

FROM: Daisy B. Fields, Chair, County Personnel Board Daisy B. Fields

SUBJECT: Proposed Employer/Employee Relations Legislation

The Personnel Board has reviewed the proposed Employer/Employee Relations Act submitted by the County Executive and find it to be both timely and appropriate.

In the absence of State legislation permitting formal recognition of employee groups or representatives, the Board endorses Mr. Gleason's proposed legislation and urges favorable action by the County Council. We believe this bill is essential to the maintenance of good employer/employee relations.

The Board would appreciate being kept informed of the progress of this legislation.

DBF/bse

CC: James P. Gleason
William H. Hussmann, Jr.

Bill 11-76 -

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, June 15, 1976 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 10:20 A.M. on Tuesday, June 15, 1976.

PRESENT

Norman L. Christeller, President
John L. Menke, Vice President
Elizabeth L. Scull, President Pro Tem
Esther P. Gelman
Neal Potter
Jane Ann Moore
Dickran Y. Hovsepian

The President in the Chair.

The Journal of June 8, 1976, was approved as amended.

INTRODUCTION OF BILLS:

Re: Introduction of Bill No. 23-76, Employer-Employee Relations

The Council had before it for consideration Bill No. 23-76, Employer-Employee Relations.

President Christeller read his memorandum to the Council, as follows:

The needs and problems addressed by Bills Nos. 11-76 and 23-76 are significant and compelling. The action taken by the Council will set the pattern for employer-employee relations for the indefinite future. Because these matters are complicated and far-reaching, I believe the Council must devote considerable time and care to the enactment of such legislation.

I am not fully satisfied that the two bills before us provide all of the options the Council should consider, but they are a good beginning. The several points on which the two bills differ provide the Council with a range of concepts within which it can act, such as the following:

1. Bill No. 11-76 seems to me to provide too broad a definition of "management level employees" and "supervisors", while Bill No. 23-76 provides too narrow a definition.

2. Bill No. 11-76 seems to me to exclude too many matters from the agenda of discussions between management and employee group representatives, but Bill No. 23-76 may need tightening up as to such agendas and/or the circumstances of such discussions.

3. Neither bill addresses the fundamental problem of providing a better presentation of salary and benefit recommendations to the Council, including a cost estimate of any employee group proposals.

Because other concepts may become evident as we study these matters and conduct the public hearing on these two bills, there is the possibility that we will find it desirable to introduce amendments or a third bill at a later time. In the interest of careful consideration of these complex issues, I will keep that possibility in mind for the Council calendar.

I am proposing the attached amendment for introduction at this time. It anticipates the need for providing a forum for those employees not permitted to be included in an organized group.

In response to an inquiry by Councilwoman Scull as to the emergency nature of the bill, President Christeller stated that the Council does not have to enact the bill as an emergency, but it was so requested by the Montgomery County Government Employees Organization. The MCGEO is thinking in terms of negotiations related to the preparation of the FY 1978 Operating Budget. He stated that the Council should not preclude the possibility of emergency legislation, but does not have to make a decision at this time.

Upon motion of Councilman Hovsepian, duly seconded and without objection, the Council voted to waive the reading of the title and introduce Bill No. 23-76 by the Council President at the request of the Employees Organization: AN ACT to add a new Chapter 36A, title "Public Employee Relations" to the Montgomery County Code 1972, as amended, to follow immediately after Chapter 36 thereof, to provide for the election and certification of employee organizations for purposes of meeting with County officials concerning conditions of employment, the resolution of grievances, and other matters involving relations between the County and its employees; to provide for the designation of employee units from which such employee organizations are elected and which such organizations represent; to provide for the recognition of such employee organizations by the County; to provide for the preparation of memoranda of understanding by the County and such employee organizations; to provide for procedures for the decertification of employee organizations; to define certain terms; to provide for the Chief Administrative Officer to resolve disputes arising under this Article, subject to review by the Personnel Board; to specify responsibilities of the County and the employee organizations; to provide for the protection of those County employees who choose not to become members of an employee organization; and to provide for the retention of existing personnel laws and regulations and the option of any employee to pursue a grievance through procedures set forth therein.

Re: Introduction of Amendment to Bill No. 11-76, Employer-Employee Relations

Upon motion of Councilman Hovsepian, duly seconded and without objection, the Council introduced the following amendment to Bill No. 11-76, Employer-Employee Relations, as suggested by President Christeller: Add the following language to the end of line 122: , provided, however, that nothing herein shall preclude such employees from meeting together and selecting representatives for conferences with the Chief Administrative Officer or the County Executive.

Re: Introduction of Bill No. 24-76, Road Code Amendments

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and introduce Bill No. 24-76 by Councilmembers Menke and Scull: AN ACT to amend Chapter 49, title "Streets and Roads", of the Montgomery County Code 1972, as amended, by repealing and re-enacting with amendments Section 49-43, subtitle "Waivers of requirements of article" to add a new subsection (d) to permit the County to waive road code standards and to make temporary road improvements to County public roads upon written order by the County Executive finding that such construction is necessary for safety on a County public road for which no additional right-of-way need be acquired, and to add a new subsection (e) to permit the County Executive to waive road code standards for certain moderate price developments and community development areas, and to amend generally to cure certain technical defects.

Upon motion of Councilman Menke, duly seconded and without objection, the Council introduced the following amendments to Bill No. 24-76:

Amendment No. 1, proposed by Councilman Menke: Add to Section 49-43 (d) (1) the following language: provided that, this requirement for inclusion in most recently approved six-year Capital Improvements Program may be waived by the County Executive upon a written finding that:

a. such a waiver is in the general public interest;

b. the road to be improved is less than one mile in length;

c. existing and projected traffic levels are appropriate to the construction standards proposed;

d. the road improvements are limited to surface treatments;

e. the improvement will reduce road maintenance expenses; and

Upon motion of Councilman Hovsepian, duly seconded and without objection, Councilwoman Moore not voting, the Council deleted the comma after the word "staff" on line 30 of the title of the bill, and inserted in lieu thereof a semicolon.

Upon motion of Councilman Hovsepian, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of Bill No. 4-76. By a yea and nay vote, Councilmembers Hovsepian, Gelman, Menke and Christeller voting in the affirmative, Councilmembers Moore and Scull voting in the negative and Councilman Potter being temporarily absent, Bill No. 4-76 was disapproved by virtue of the fact that five affirmative votes are required for emergency legislation.

Upon motion of Councilman Hovsepian, duly seconded and without objection, the Council voted to reconsider its action on Bill No. 4-76, Health Systems Agency. The Council agreed to consider the bill further when all members of the Council are present.

(The Legislative Session was recessed at 1:30 P.M., and reconvened at 5:30 P.M.)

MISCELLANEOUS BUSINESS:

Bill No. 42-75, Hearing Examiner's Duties and Responsibilities, was enrolled as Chapter 44.

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 5:35 P.M., to reconvene at 7:30 P.M. on Thursday, June 17, 1976, or at the call of the President.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

Bill [redacted]-76

#5

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

COUNCIL PRESIDENT

June 15, 1976

TO: County Council

FROM: Norman L. Christeller

SUBJECT: Employer-Employee Relations Bills

The needs and problems addressed by Bills 11-76 and 23-76 are significant and compelling. The action taken by the Council will set the pattern for employer-employee relations for the indefinite future. Because these matters are complicated and far-reaching, I believe the Council must devote considerable time and care to the enactment of such legislation.

I am not fully satisfied that the two bills before us provide all of the options the Council should consider, but they are a good beginning. The several points on which the two bills differ provide the Council with a range of concepts within which it can act, such as the following:

1. Bill 11-76 seems to me to provide too broad a definition of "management level employees" and "supervisors" while Bill 23-76 provides too narrow a definition.

2. Bill 11-76 seems to me to exclude too many matters from the agenda of discussions between management and employee group representatives, but Bill 23-76 may need tightening up as to such agendas and/or the circumstances of such discussions.

3. Neither bill addresses the fundamental problem of providing a better presentation of salary and benefit recommendations to the Council, including a cost estimate of any employee group proposals.

Because other concepts may become evident as we study these matters and conduct the public hearing on these two bills, there is the possibility that we will find it desirable to introduce amendments or a third bill at a later time. In the interest of careful consideration of these complex issues, I will keep that possibility in mind for the Council calendar.

I am proposing the attached amendment for introduction at this time. It anticipates the need for providing a forum for those employees not permitted to be included in an organized group.

NLC/sv

Attachment

Proposed by: Councilmember
Aristeller

#2

AMENDMENT
to
BILL 11-76

Add the following to the end of line 122:

Section 33-65, subsection c , ", provided, however, that nothing herein shall preclude such employees from meeting together and selecting representatives for conferences with the Chief Administrative Officer or the County Executive."

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ORIGINAL

11-76
23-76
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MONTGOMERY COUNTY, MARYLAND

Montgomery County Council

- - -

Public Hearing on

Legislative Bill Nos. 11-76 and 23-76

Employer - Employee Relation Bills

Council Hearing Room

County Office Building

100 Maryland Avenue

Rockville, Maryland

8:15 p.m.

Wednesday, July 14, 1976

COUNCIL MEMBERS PRESENT:

Norman Christeller, President
John Menke
Elizabeth L. Scull
Dickran Y. Hovsepian
Dr. Jane Ann Moore

ALSO PRESENT:

Pearl Schloo, **Research Coordinator**
Carolyn Rush, Council Secretary

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C O N T E N T S

WITNESSES	PAGE NO.
Robert Carty Assistant Chief Administrative Officer Montgomery County, Maryland	5
Allen Whitney Executive Vice-President International Brotherhood of Police Officers	15
James Mills 24425 Ridge Road Damascus, Maryland 20750	24
John M. Hardy Montgomery County Fire Fighters Association	35
Michael Goldman 11400 Rockbridge Road Silver Spring, Maryland 20902	38
Gordon Wilson 8312 McCullough Lane Apartment 102 Gaithersburg, Maryland 20760	43
Melvin Tull 7209 Millcrest Terrace Derwood, Maryland 20855	45
Charles L. Simpson 6909 Dartmouth Avenue College Park, Maryland 20740	49

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P R O C E E D I N G S

MR. CHRISTELLER: Would the Council convene, please?

This is a public hearing on Legislative Bill Number 11-76, an act to add new Chapter 18A, title, "Employer-Employee Relations Act," to the Montgomery County Code 1972, as amended, to follow immediately after Chapter 18 thereof, to provide for the election and certification of employee organizations for purposes of meeting with County officials concerning conditions of employment and resolution of grievances, but excluding certain topics from being discussed at any such meetings; to provide for the designation of employee units from which such employee organizations are elected and which such organizations represent; to provide for the preparation of position papers by the County and such employee organizations; to provide for procedures for the decertification of employee organizations; to define certain terms; to provide for the Chief Administrative Officer to finally resolve disputes arising under this Article; to specify responsibilities of the County and the employee organizations; to provide for the protection of those County employees who choose not to become members of an employee organization; and to provide for the retention of existing personnel laws and regulations and the option of any employee to pursue a grievance through the procedures

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set forth therein.

There are seven exhibits, including the certified copy of the Bill; amendment to the Bill proposed by the Council President; transmittal letter from the County Executive; letter of endorsement from the Personnel Board; memorandum from the County Council President to the County Council; copy of request for advertising and proof of advertising.

This is also a public hearing on Legislative Bill Number 23-76, an Act to add a new Chapter 36A, title, "Public Employee Relations," to the Montgomery County Code 1972, as amended, to follow immediately after Chapter 36 thereof, to provide for the election and certification of employee organizations for purposes of meeting with County officials concerning conditions of employment, the resolution of grievances, and other matters involving relations between the County and its employees; to provide for the designation of employee units from which such employee organizations are elected and which such organizations represent; to provide for the recognition of such employee organizations by the County; to provide for the preparation of memoranda of understanding by the County and such employee organizations; to provide for procedures for the decertification of employee organizations; to define certain terms; to provide for the Chief Administrative Officer to resolve disputes arising under this

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Article, subject to review by the Personnel Board; to specify responsibilities of the County and the employee organizations; to provide for the protection of those County employees who choose not to become members of an employee organization; and to provide for the retention of existing personnel laws and regulations and the option of any employee to pursue a grievance through the procedures set forth therein.

There are six exhibits: certified copy of the bill; request for advertising; proof of advertising; memorandum from the Legislative Counsel, Philip Tierney; a letter from Jessie H. Bakeman; and statements from Montgomery County Government Employee Organization members, supporting Bill 23-76, which is the bill that was proposed by that organization.

Seven speakers have signed up for this evening. If there are any others that wish to speak, it would help if you would give your name to the Council secretary, on the left.

We will begin with Robert Carty, speaking for the County Executive.

MR. CARTY: Mr. President and members of the County Council, my name is Robert Carty, Assistant Chief Administrative Officer. On behalf of the County Executive and the Chief Administrative Officer, I am pleased to offer comments on Bills 11-76 and 23-76.

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For the record, Bill Number 11-76 was forwarded to the Council by the County Executive on June 4th, 1975, and Bill 23-76 was introduced at the request of an employee organization on June 15,th, 1976.

While there are important differences in the two bills, it is striking that there are many similarities. These similarities suggest that the general frame of reference between management and the employees of the Montgomery County Government is a shared one and that the common goal is to improve channels of communication so that the citizens of the County can be better served.

I would now like to point out and comment on the major differences between the two bills.

The County Executive's Bill, 11-76, defines "confidential employee" and later on excludes such employees from an employee organizations.

Such an exclusion is common in most public sector labor relations legislation. The intent of such exclusion is to prevent divided loyalties between employees' membership in an employee organization and their supervisor.

Normally, such employees include administrative aides to elected officials and department heads, as well as other employees whose responsibilities in management -- such as in budget, personnel, finance and executive staff -- would be incompatible with membership in an employee organization.

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The definition of "employee" in the bills varies somewhat. The County Executive's bill defines "employee" as a Merit System employee working on a continuous full-time basis. This definition excludes supervisory, confidential and management-level employees.

Bill 23-76 includes both full-time and part-time employees whose classification is determined under the personnel regulations and that bill excludes only elected officials and management-level employees.

While it is common to exclude part-time employees from employee organizations, it is suggested that in the interest of clarify, the definition contained in Bill 11-76 include "part-time, career employees." This is consistent with the definition in the personnel regulations.

The definition of "management-level employee" in the bills also varies. Bill 11-76, the County Executive's bill, excludes those employees involved in policy-making or who responsibly direct the implementation of policy.

Bill Number 23-76 defines "management-level employee" as department or office heads or Merit System employees who report to the County Executive, the County Council, or the Chief Administrative Officer.

Bill 23-76 also defines a supervisor as a management-level employee with certain authority under the charter and the personnel regulations.

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The two definitions in Bill 23-76 would appear to permit the majority of County supervisors to join units with rank and file.

We believe that policy determination and implementation is a continuum, that is, a shared responsibility diminishing only in degree from the top down.

For purposes of deciding who should be involved in an employee organization, a line typically is drawn at the first level of supervision -- foreman, unit supervisor, or whatever.

It is important for such employees to be recognized as part of management. We realize that some effort must be made to properly identify these employees.

Bill 11-76 excludes supervisory employees and defines such employees much more broadly than does Bill Number 23-76.

The County Executive's Bill, again, 11-76, defines "professional employee" and provides that such employees shall not be included in a unit which includes nonprofessional employees unless a majority of the professional employees specifically request inclusion. Such distinction is normally made in the interest of ensuring a reasonable community of interest in employee units.

The sections on "determination of employee units" in both bills contain no substantive differences. However, we

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ah would like to point out that it is important to avoid the proliferation of employee organizational units.

In the neighboring county, there are about 25 units. Such proliferation disrupts any sense of unity among employees as a group and detracts from a productive, positive employer-employee working relationship.

We suggest that a sentence be added to line 22 of Bill Number 11-76, stating, "The number of such units shall not be greater than six in number."

Without specifying the units by name, they could include police, fire, service and maintenance employees, clerical employees, professional and technical employees, and one additional unit for any unforeseen circumstance.

County employees might prefer to have one large unit rather than a number of them. There are certain advantages to such a "conference board" -- which is a technical name for such an arrangement. It allows for employees to deal with management in the aggregate, rather than as splintered individual units, and it would also allow management to deal with broad issues, such as pay and benefits, which must of necessity be uniform for all employees.

Provision can be made in any unit election for employees to express their wishes as to whether or not they desire to affiliate with one unit on a countywide basis or with a more narrow one.

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Another difference in the matter of unit determination is in Bill 23-76 wherein it provides that a decision of the Chief Administrative Officer may be appealed to the County Personnel Board.

We believe that the matter of unit determination is critical to management and should not be made a matter of appeal to the Personnel Board. Furthermore, the authority of the Personnel Board is rather specific in the County Charter. Section 404 does not extend to matters of employer-employee relations.

The sections on "procedures for certification of employee organizations" do not vary between the two bills, except that Bill 23-76 provides provides that "elections shall be conducted by the Personnel Board which may ask the assistance of the Maryland State Department of Labor and Industry or any other agency."

We would suggest that Bill 11-76 is probably too restrictive and provision should be made for other third parties to assist in any election process.

Another difference involves the percentage of eligible employees necessary to validate an election. Bill 11-76 provides that at least 60 percent of the employees eligible to participate in an election are necessary to validate such election; whereas Bill 23-76 provides that only 50 percent of employees eligible may validate an election.

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We believe that 60 percent is not unreasonable, considering the importance of certifying employee organizations.

Bill 23-76 also provides for payroll dues collection at the request of the employee. We concur, providing the organization has been certified and represents a majority of the employees in the appropriate unit and providing that the deduction is not obligatory. We feel that this should be a matter of discussion between the employee organization and the County.

The sections pertaining to "costs of conducting elections" vary between the two bills. Bill 11-76 provides for sharing of such cost between the county and the employee organization, while bill 23-76 provides that the County shall bear all election costs. We believe this is a shared responsibility and that the costs should be shared.

The next area of some variation concerns the section on "County-employee organization meetings and discussions."

Bill 11-76 provides that these be held at least every two years. Bill 23-76 specifies meetings shall be held quarterly, and it further provides that such meetings may be with County representatives including the County Executive and the County Council.

We believe that quarterly meetings are too

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frequent, and although the two-year provision in the County Executive's bill was not intended to be limiting, a provision for at least an annual meeting would appear to be acceptable.

An important difference between the bills concerns matters to be discussed with employee organizations. There are certain areas that are commonly excluded from labor relations legislation.

Such matters are normally known collectively as management rights, and include areas which are typically inherent in the managerial and policy-making process.

Such items are specifically enumerated in Section 33-69(b) of Bill Number 11-76. Included are such things as the mission of the County Government, its budget, its organization, number of employees, positions classified, grades of employees, work projects, and the technology of County work.

We believe the aforementioned matters are within the prerogative of the legislative and executive branches and that they should not be the subject of discussion.

One of the criticisms of Bill Number 11-76 is that if all these things are excluded, what is there left to talk about? We suggest the answer is a great deal: work conditions, promotional policies, training programs, group insurance package, cost-of-living adjustments and the administration of

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the Merit System, to name a few. It is important, however, that these matters be identified which are and have to be the responsibility of those who are elected or appointed to carry out County programs.

We would point out that Bill 11-76 does provide for the County or its agent to meet with employee organizations for the purposes of hearing their views on the aforementioned managerial matters.

With respect to disputes, Bill 11-76 provides that the decision of the Chief Administrative Officer shall be final, subhect to an appeal to the County Personnel Board where provided by law.

Bill 23-76 would make such appeals to the County Personnel Board the subject of a mandatory hearing. The role of the Personnel Board as outlined in the charter is restrictive and limited to mandatory hearings only in cases of dismissal, demotion and suspension.

There is one difference between the bills in the sections concerning "employee organization responsibilities." 11-76 would prohibit an employee organization from picketing the County in any dispute or condoning such activity by failing to take action to prevent or stop it. We believe that any bill that is enacted should contain this provision.

In conclusion, we believe Bill 11-76, with minor modifications, represents needed improvements in formalizing

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relationships with County employees. We believe it is consistent with the traditions of our County and will go far toward improving what are already excellent relations between the County, as an employer, and County employees.

Thank you very much.

MR. CHRISTELLER: Thank you, Mr. Carty.

Are there questions from the Council?

(No response.)

MR. CHRISTELLER: Mr. Carty, one comment. When 11-76 was introduced, I noted that it seemed to me that the definition of "management-level employee" was extremely broad and uncertain as to just exactly where you're drawing the line.

Now you, in your testimony, have implied where you think it draws the line, but I'm not personally convinced that the language of the bill comes out necessarily the way you've described it, and I think it would be useful for you to give some thought to how that might be tightened up some.

I think Bill 23 probably goes too far in the other direction, and I'm looking for some language that falls somewhere in-between the two in terms of a clearer drawing of the line as to who may and who may not be in such organizations.

MR. CARTY: We will draft up something, and I'll

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send you a copy.

MR. CHRISTELLER: I think it would be useful if you would do that.

To some degree, I had the same problem with the definition of "supervisor," and that's another element that you might look at for that reason.

All right. Mr. Hovsepian?

MR. HOVSEPIAN: Mr. President, have you as yet set a date for a worksession, so that we might be able to --

MR. CHRISTELLER: Yes. August 9th; the first day Council is back from vacation; first order of business.

MR. HOVSEPIAN: Thank you.

MR. CHRISTELLER: So you might keep that in mind -- 1:30 in the afternoon on August 9th, which is a Monday.

All right. Thank you very much, Mr. Carty.

MR. CARTY: Thank you very much.

MR. CHRISTELLER: The next speaker is Allen Prettyman, for the International Brotherhood of Police Officers.

MR. WHITNEY: Mr. Chairman, I am not Allen Prettyman. In his place, I am Allen Whitney, Executive Vice-President of the International Brotherhood of Police Officers, and I am accompanied this evening by P.F.C. Tom Moore, who is President of Local 498 of the IBPO.

I would like to apologize for not having a

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prepared statement for the members of the Council this evening. However, I don't think that our presentation will take a good deal of time.

What I would like to do at the outset, Mr. Chairman and members of the Council, is to ask that note be taken of a letter which I submitted to each member of the County Council almost exactly one year ago, on July 8th of 1975.

At that time, I set forth in writing the position of the International Brotherhood of Police Officers with respect to the proposed legislation -- it had not, of course, at that time been introduced -- but the proposed legislation which had been developed by the County Executive staff people for the consideration of the County Council.

In that letter, as I say, I set forth the position of our organization. In the intervening period, as nearly as I can tell, the County's bill has not changed in any significant degree, and by the same token, the position of the IBPO with respect to that bill has not changed.

Our position is basically that the County Executive's proposal is rather something of a pale shadow of what we would typically conceive of in terms of collective bargaining legislation.

We have some very basic problems with that legislation. In comparison to the second bill which is before the body, 23-76, there is no question in our mind but what 23-76

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is far superior to the County Executive's bill.

The basic problem that we have with both pieces of legislation or proposed legislation is the fact that it does not provide for a structure within which representatives of employees may sit down with representatives of management or the County Government and work out and develop specific, written criteria relating to such things as base pay, fringe benefits, working conditions, personnel policy, and things of that nature.

And by the same token, of course, neither bill provides any meaningful procedure for resolution of any disputes which may arise between the parties in any of those enumerated areas.

11-76 speaks only in terms of minutes reflecting the positions taken by the parties at any of the meet and confer sessions that might occur, and I think it's a failing on the part of the proposed legislation that it does not encompass, as I said, any procedure by which any differences that might arise at such meetings may be resolved in an impartial and fair fashion.

If I could, I'd like to take just a few moments to deal with a few specific matters, specific points, in both pieces of legislation and offer our comments on them.

With respect to Bill 11-76, I would also agree with the reaction of the Chairman. I think that the definition of

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"management-level employee" is overly broad and lacks any real degree of definition. I think it would be very helpful to have a more specifically-defined statement as to what kinds of duties, what kinds of responsibilities should necessarily result in the definition of the designation of any given County employee as a management official.

With respect to -- and this touches on a point that I just spoke to -- on page 3 of 11-76, a position paper is defined as "a nonbinding written memorandum, reflecting all items discussed by the County and an employee organization." My comment applies to that, as well. There is little meaning for a written document which has no binding features to it whatsoever, but it simply reflects the positions that were taken by the employee organization and the County.

On page 5 of 11-76, the County proposes to define "bargaining units" by specifically citing the cut-off point at which people above that point would be designated as supervisors and managers, and all those below that level would be eligible for inclusion in the bargaining unit.

The County proposes that those officers in the ranks of sergeant or equivalent rank and below be included in the bargaining unit. We would suggest that that be amended to read, "all those in the ranks of corporal or below."

I think one of the most important differences

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between the two bills is the frequency at which meetings would be called between employee organizations and County officials.

I can't really believe that the County was all that serious in proposing that organizations elected to speak on behalf of employees would only be entitled to sit down with the County every other year to discuss whatever matters might be on the agenda.

In our experience, a typical kind of a frequency would be more on a monthly basis. I think quarterly would be acceptable, as would be called for in 23-76.

The other primary difference, which was touched on by the witness for the County Executive, relates to those matters which may or may not be discussed at these meetings, whether they are every two years or on a quarterly basis.

The primary difference between the two bills is that in the County's bill, it states that these subjects may not be discussed; in 23-76, it says that they may be discussed.

The position of our organization is that if this is the extent to which consultation and meeting and conferring is going to be granted, I don't think it does any harm for the County Government to be willing to sit down and at least discuss these matters.

If there is nothing of a binding nature, if there is

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no procedure imposed which requires agreements to be reached by the resolution of disputes, for the life of me, I can't see what valid reason the County can possibly have for simply adopting the ostrich-like position that we simply refuse to discuss these kinds of issues.

I think that it does a disservice to the rank and file members of the police department. I think they have a lot of good, responsive and responsible kinds of comments to make on these kinds of subjects, and I think it is at least incumbent upon the County to be willing to sit down and listen to their comments on those points.

In sum, Mr. Chairman, I would say that despite the weaknesses that we identify in the bill and despite the problems that we have with it, we would be willing to accept the basic provisions of 23-76, and we would urge that it be looked upon only as a starting point.

We would suggest that it would be helpful, in the first one or two years of experience under that legislation, to examine the experience to see what kinds of problems arise and perhaps look at some point down the road to adopting more substantive legislation which adopts more of the traditional elements of formal employee-employer relations, because there are people on this Council who I recall meeting with in a workshop session some two years ago, and at that workshop session, there were rather strong, firm statements

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made to the effect that we would see some kind of collective bargaining legislation before November of that year. It is now the summer of 1976, our Bicentennial year, we're still waiting, with a great deal of anticipation, and we hope that the County Council will move this legislation along as quickly as possible.

Thank you.

MR. CHRISTELLER: Thank you, Mr. Whitney. Do you want to add something, Mr. Moore?

MR. MOORE: No, sir.

MR. CHRISTELLER: All right. Let me just say, Mr. Whitney -- I, perhaps, was derelict in not mentioning it at the beginning of the hearing -- that this legislation had not been introduced by the Council when it was first forwarded to us by the Executive because we, acting on the basis of the County Attorney's opinion that we do not have authority for binding collective bargaining legislation, we supported the bill submitted by the employee organization to the Montgomery County delegation last year, requesting that the delegation grant to the County Council the authority to enact true collective bargaining legislation.

As you know, the delegation considered it at some length and carried that bill over and indicated to us that, in the meantime, they wondered why we didn't go ahead with the meet and confer provisions.

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They will, apparently, still be considering that bill, and as I understand it, there also is a statewide commission that's to be appointed to study the whole issue of collective bargaining at local government level.

So there is something moving in that direction at the same time that we're going to move forward to consider these two bills on the meet and confer.

But the comment you made that there can't be a binding agreement basically relates to that interpretation of the present legal situation, that we can't engage in collective bargaining which would result in a binding agreement.

MR. WHITNEY: I think, Mr. Chairman, one minor amendment to either of the pending bills that might at least take a little bit of the edge off that factor -- and I recognize its presence -- would be perhaps the inclusion of some form of statement of policy on the part of the County Council to the effect that memoranda of understanding which might be developed by the parties would at least be adhered to to the extent possible within the existing law, simply as a matter of County policy.

MR. CHRISTELLER: We can certainly consider something of that sort. I think the other point that you made, which was that the bill doesn't provide for any resolution of differences, is a direct outgrowth of the belief that we don't

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have the authority for true collective bargaining at this time, and therefore, where you are meeting and conferring, the fact that the bill does provide for the reduction to writing of the positions of the parties is about as far as one really can go if you don't have a true bargaining process in terms of a binding agreement resulting.

I think what it really means is that the collective bargaining process is basically going to be between -- or, the meet and confer process, at this stage; the collective bargaining at a later time -- would be between the employee organization representatives and the representatives of the County Executive.

And in the case of the meet and confer legislation, the fact the you might produce position papers where you haven't reached agreement means that if it's an issue that is something that ultimately the Council will be asked to resolve, at least the positions of both parties would then be known to the Council, so that's really what I think is behind that.

MR. WHITNEY: That's very well-taken. The kinds of procedures that I had in mind that fall somewhat short of full collective bargaining but which I think are also helpful are such processes as independent fact-finding, perhaps advisory arbitration, things of that nature.

MR. CHRISTELLER: Yes. That's a good point to

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consider. Are there other questions?

(No response.)

MR. CHRISTELLER: Apparently not. Thank you very much.

MR. WHITNEY: Thank you.

MR. CHRISTELLER: The next speaker is James Mills, representing the Montgomery County Government Employees Organization.

MR. MILLS: My name is James Mills, and I reside at 24425 Ridge Road, Damascus, Maryland. I am employed by the Montgomery County Department of Public Works of Transportation, as an engineer.

I am President of Montgomery County Government Employees Organization and am here tonight to speak in support of our Bill 23-76.

I would like to take this opportunity to express this organization's appreciation to Mr. Christeller for the introduction of this bill, in response to our request.

This bill, without reservation, must be recognized as being the single most important piece of legislation that jointly affects labor and management in the County's history.

It offers official recognition by management of labor, but more importantly, it opens up a vital channel of communication between these two parties.

Our bill presents credibility with dignity; a joint

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venture that is certain to bear fruit for management, labor and the general public.

It has always been my personal belief that open communication is the essential ingredient to produce lasting harmony and efficiency in production.

This bill allows discussion to occur when and where discussion should occur, during regular intervals at the conference table.

This concept is consistent with the desires of our current membership and was an ingrained objective at the inception of this organization.

Our membership overwhelmingly voted to establish the type of organization that must function with local management.

The voices heard during these discussions should be those of labor and management. The dialogue must be truly representative of both parties to maintain credibility.

Our request is just and, I might add, reasonable. Therefore, I am very optimistic that the basic points of our bill will be retained and approved by you, the Council.

Mr. Gleason, as you know, had a similar bill introduced some time ago, and I assume that you have had an opportunity to familiarize yourself with it. A major omission in Mr. Gleason's bill, from our viewpoint, was that no provision had been made for organization dues to be deducted by

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check -- a simple process to implement, we have been told -- and one which recent court decisions in similar circumstances have granted to public employees.

Many other aspects of our bill and Mr. Gleason's when compared are diametrically opposite one another. One sector that is certain to require thought by you, the Council, is just where do you draw the line that separates labor from management.

From the begininning, our organization's internal structure was constituted to accommodate both supervisory and staff personnel.

Membership composition, in fact, clearly dictated that this approach be taken. Supervisors and staff alike considered themselves an integral part of labor rather than management and voluntarily aligned themselves accordingly.

They constitute broad and vital segments of our organization and must remain as identifiable parts of our organization.

Any effort to exclude other than top management personnel from being members of this organization contrary to their voluntary choice, would not be in accordance with sound democratic principles.

Limitations on areas of discussion between labor and management, another important issue, would seriously cripple credibility.

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To justify our stand on this point, one need only compare both bills to realize that the wording provides no major binding action on the part of management.

Simply because an issue is not discussed, the forbidden issue is not removed from the thoughts of those concerned, nor is it any less an issue.

In fact, it invariably magnifies that issue to the point that the issue assumes a greater importance than it has any right to assume.

Had the issue been openly discussed in the beginning, there is a strong possibility that the issue could have been resolved in mutual accord.

The margin of safety reserved for management in either Mr. Gleason's bill or our own bill -- not a small point, I might add -- hopefully will allow adjustments of differences between the two bills to be weighted in the organization's favor.

Before concluding, I call your attention to a major omission in our own bill. This omission, quickly detected by Mr. Christeller, was the failure of our bill to require timely progress reports to the Council pertaining to our meetings with top management. This concept we firmly endorse and, in fact, would desire not to be without.

I appreciate this opportunity to testify here tonight and request from you, the Council, a favorable

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consideration and expeditious enactment of our Bill Number 23-76.

I would like to add one other thing. I notice that the worksession scheduled was on August the 9th. We have all of our -- from myself, our two vice-presidents, and on down the line, and most of our offices, are all on vacation at that time.

I would appreciate it, if possible, if you could move that up a couple weeks, if it would meet with your schedule.

MR. MENKE: Move it up or back? Which one?

MR. MILLS: Well, we would prefer up; sooner.

MR. MENKE: Then all of us will be on vacation.

MR. MILLS: We really would appreciate it.

MR. CHRISTELLER: Mr. Hovsepian?

MR. HOVSEPIAN: We've had long discussions on this; we've had several discussions with our employees. One of the things we must be concerned with -- and I'm sure we discussed this with Fran Abrams -- was what I might call a preconceived decision on a matter where the Council would have to hold a public hearing. Let's take a piece of legislation that might modify this bill, or the need for a piece of legislation to set forth -- or a change in personnel regulations. Those things are the subject of hearings.

The problem that we could encounter is an agreement

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in advance that we would not only introduce the bill, but we would vote for whatever it was that was discussed. Am I getting my point across?

MR. MILLS: No.

MR. HOVSEPIAN: That is, a public hearing would then become a charade, in the sense of no changes, no nothing, that's the way it's going to go all the way through, and we've decided we're going to vote for that anyhow.

That could be subject to litigation, by the way, I might point out. If an attitude like that develops in advance of introduction, a public hearing is nothing more than a show, and it could go to court very easily.

But it's something we have to watch in terms of saying, "Well, we'll introduce, or we'll request the Personnel Board to introduce, we'll hold our public hearing, and make our judgment afterwards."

We have to be very careful about that step. So I wish you'd give some thought to that for our worksession.

MR. MILLS: I had given some thought to that very subject.

MR. CHRISTELLER: Mr. Hovsepian, I'm not quite sure how that situation really can arise, if the meet and confer is between the Executive and the organization.

MR. HOVSEPIAN: That's true, but I feel some obligation when the Executive, for example, or both, agree that

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something should be done in terms of changes.

MR. CHRISTELLER: Yes.

MR. HOVSEPIAN: And I'm only saying that we have to be very careful that we don't say, "Absolutely," right from the bat. That's all I'm saying.

MR. CHRISTELLER: Well, the point is, they can't.

MR. MENKE: They don't have the authority.

MR. CHRISTELLER: Neither of them has the authority, so that all they can agree to do is to urge us to enact it.

MR. HOVSEPIAN: I'm only saying, Mr. President -- let me clarify. Both agree that something should be done, and then that would call for an action on the part of the Council, all right?

MR. CHRISTELLER: That's right.

MR. HOVSEPIAN: All I'm saying is that action must not be a preconceived and a pre-decision action.

MR. CHRISTELLER: All right.

MR. MILLS: I think the workshop will determine a lot of that.

MR. CHRISTELLER: On the schedule, Mr. Mills, I don't know quite what we can do. We have filled everything up through September, and I don't want to delay things that long.

Tell me, in terms of your officers, when will they be back?

MR. MILLS: Well, some should be back within a week

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of that period, but I'm sure that all of them, mostly, would be back within a two-week period.

MR. CHRISTELLER: All right. You think that they'll be back the week of the 30th?

MR. MILLS: Oh, yes, we'd certainly have enough then.

MR. CHRISTELLER: Okay. I might be able to work this in on Friday, September 3rd, then. The best I can do is to tell you, I'll be having an agenda conference next Wednesday, and we'll make a definite decision. Will you make a note of that for me, Pearl, and we'll make a definite decision then and then get word out to everyone who has testified tonight and let them know for sure when the work-session is.

MR. MILLS: Okay. Thank you very much.

MR. CHRISTELLER: I have one other question, one item I'd like you to think about, and that relates to this problem of where do we draw the line as to who can be members.

It seems clear to me that you can be fairly broad in the definition of where you draw the line, insofar as it is a case of meet and confer on questions concerning working conditions, pay, benefits and so forth.

But most of the proposals for this kind of a set-up for fostering employee organizations also get them involved in grievance problems, and it's where they get into grievance

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problems that you then start to run into the problem about do you have members of the organization about whom other members have a grievance, because they happen to be in a supervisory chain, and the grievance really is directed at someone else.

Who do you represent then? Do you represent the aggrieved or the middle-level supervisor against whom the complaint is registered?

MR. MILLS: Well, you've brought up a very good point. It's one even within our own organization we are, you know, still wrestling with that problem.

MR. CHRISTELLER: Every organization has that problem, too.

MR. MILLS: Right, right. I don't think there is any simple solution to it. I don't want to go off the point, but basically, I think the clearest way to stop something like that is for a lot more emphasis to be placed on avoiding grievances.

MR. CHRISTELLER: Yes.

MR. MILLS: I'm not trying to dodge the question, but I do think that a lot more emphasis could be placed on avoiding grievances rather than always treating grievances.

MR. CHRISTELLER: I would hope that that would be one of the results of this kind of legislation.

MR. MILLS: Well, that's what I hope for, too.

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Within our own organization so far, this has seemed to work, with the limited number of trials we've had with it.

MR. CHRISTELLER: Okay. Well, you might think about that. You might even look at a few examples of grievances that you are aware of, that the group has thought about, and be prepared to talk to us about those when we have the worksession.

MR. MILLS: All right.

MR. CHRISTELLER: John, do you have a question?

MR. MENKE: As I have read 23-76 at this point, at line 246, "An employee who is a member of an employee organization may request and shall be granted the right for a member of such organization to be present in any discussions," and so on -- that doesn't go as far as representation in a grievance, for example, like this.

MR. CHRISTELLER: No; that's right.

MR. MENKE: So it may well be that that's how you get around that problem, that you're representing the employees, for example, with respect to discussions on working conditions, and that's not a grievance issue between two employees. It's a question between all the employees, generally, and the County Government.

MR. CHRISTELLER: But read, starting at line 251.

MR. MENKE: (Complying.)

MR. CHRISTELLER: It says that the employee

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organization itself may submit a grievance. That's what I was getting at.

MR. MENKE: All right. So that also would be a problem, okay. But that's still a somewhat different situation from the direct representation of an employee.

So you may want to look at those in some detail.

MR. MILLS: I believe, really, under line 251, where it says, "An employee organization may submit a grievance concerning any dispute involving a claim of violation, misinterpretation or misapplication of the personnel regulations or work practices," would really be, even currently, an employee would have that option.

MR. CHRISTELLER: Oh, yes. That's right, that's right.

Mr. Hovsepian?

MR. HOVSEPIAN: Mr. President, I would point out, if I might, that subsequent to the presentation of both of these bills, reorganization has taken place at the County level, where we now have an Employee Relations Unit, immediately under the CAO.

That was in response, I believe, to a good deal of employee representation. So bear in mind, I would say, that what we might be discussing is inherently the function of the responsibility of that organization now; to look into a number of things.

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We had a meeting here with our minority group, advising us on personnel regulations, and we had a member -- I can't remember his name at the moment -- of the unit, which is now under the CAO, and it was apparent that a number of the things they were discussing might be useful for examination by that unit.

So this, I think, has been done subsequent to when both of these were drafted and might be a useful tool in this respect.

MR. MILLS: Right. It certainly would be one which I'm sure many of our members themselves may wish to use. In fact, I think they are using it; I'm sure they are.

MR. CHRISTELLER: All right. Are there other questions?

(No response.)

MR. CHRISTELLER: Apparently not. Thank you very much, Mr. Mills.

The next speaker is John M. Hardy, for the Montgomery County Fire Fighters.

MR. HARDY: Good evening, ladies and gentlemen. I am John Hardy. I represent the Montgomery County Fire Fighters Association.

So there is no misunderstanding, right off the bat, I'll tell you that we're very much against Bill 11-76, and we strongly support Bill 23-76.

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After Bill 11-76 was submitted in June, I submitted a multi-page letter, spelling out my objections, and I don't think it's necessary to take the time to reiterate each one of those here this evening.

I do want to address myself to several points between these two bills. As you know, my organization represents at the present time sergeants, lieutenants, captains, and even an assistant chief.

I think that by limiting the people that organizations can represent, you'll disenfranchise the fire fighters, because I would be unable to apply for recognition in my organization.

I think in Mr. Gleason's bill, too, he seems a bit afraid of what the employees will actually come up with. And given the result of a nonbinding type of an agreement -- or, perhaps, not even an agreement -- I don't see any reason for automatically eliminating certain subjects from being discussed.

In Mr. Gleason's bill, Mr. Gleason would have the final say-so in all matters, and as we see it, instead of meeting twice a year, it would save everybody's time if we just send down a memo.

There would be very little point in discussing the few things that are left to be discussed under Mr. Gleason's bill.

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The bill that has been more recently introduced, 23-76, would seem more realistic. I think that the employees can express themselves, and I think the County will find that they'll have more satisfaction among employees when the employees are given a chance to enter into some of the processes of the government.

This is not to say that the employees are asking for control of any of these processes, but at least we'll have a chance to express our either approval or disapproval of all these matters, and given the openness of Bill 23-76, I think this could be more readily accomplished.

As I say, my main point, I think, is that Mr. Gleason's bill would eliminate the top half of my group, and these people are affiliated with the Fire Fighters Association voluntarily. They felt that it was necessary to have a group such as mine represent them.

I don't feel that this is a conflict between management and labor. I feel that perhaps the division especially in the fire service has become a bit higher than perhaps another organization.

Thank you.

MR. CHRISTELLER: Thank you, Mr. Hardy. Are there questions?

MR. HOVSEPIAN: Yes. Isn't it a bit different, also, among our fire fighters? The fire fighters are responsible to

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the given department, is that not correct?

MR. HARDY: That's true, yes.

MR. HOVSEPIAN: They're not responsible administratively to the County, but they are responsible to --

MR. HARDY: Not yet.

MR. HOVSEPIAN: -- to the given board of the given fire department, is that not correct?

MR. HARDY: That's correct, yes.

MR. HOVSEPIAN: Promotions and everything are determined by the department, itself?

MR. HARDY: That's correct.

MR. CHRISTELLER: Good point.

MR. HARDY: Hopefully, that will change soon after the passage of the bill.

MR. CHRISTELLER: Thank you very much. Are there other questions?

(No response.)

MR. CHRISTELLER: Apparently not.

Michael Goldman?

MR. GOLDMAN: Mr. President, members of the Council, my name is Michael Goldman. I reside at 11400 Rockbridge Road, in Silver Spring.

I want to thank the Council for giving me the opportunity to express my views on this legislation now before this body.

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I come to you as a resident of Montgomery County and as the Assistant General Counsel of the National Treasury Employees Union. We represent approximately 90,000 Federal employees in the United States Treasury Department and in the Federal Energy Administration.

Presently, approximately 50 percent of all public employees nationwide are in exclusive units of representation. So in the deliberations of the legislation now before the Council, it seems that there is already a body of experience to draw upon.

It seems to me that the experience will demonstrate that when employees have an opportunity for a voice in their own destiny, they are more willing to accept and follow established work rules, and this, in turn, has a positive impact on employee morale, and also a positive impact on productivity among employees.

It seems to me there is another important aspect or impact of such meet and confer kind of legislation, and that is, we see in increasing numbers employees, public employees, engaging in job actions.

And I submit to the Council that in large part, this is the fault of the legislation or the inability of the employees to effectively express to management their views on personnel policies, practices and matters affecting general working conditions. So that they resort to

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job actions in order to make their point to the legislative or executive bodies.

Now, in order for legislation to have the salutory effect of improving morale and, hopefully, preventing job actions, the legislation must be meaningful and it must have credibility.

Now, in reviewing both bills before the Council, it seems to me that the only bill that has credibility and has the ability to gain the respect of the employees is the bill introduced on behalf of the employee organization.

In comparing the two, it seems obvious to me that the Council bill does not truly provide for meaningful meet and confer opportunities.

Meeting once every two years allows too much time for the build-up of frustration among employees. Meeting quarterly is much more realistic. The employees have a meaningful outlet for their problems; they don't have to wait every two years -- or, more often, at the option of the County Executive.

Secondly, not only does the County Executive want to limit the numbers of meetings that take place, but the substance of the discussions at these meetings.

It seems to me when we're talking about meet and confer legislation, which is really the lowest form of employee expression, it seems to me it's unwise to limit the scope of

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the discussions in the way the County Executive wishes to do it.

Now, in the federal sector, we do have these limitations, but we have these limitations under a collective bargaining approach. These are items we cannot bargain about. But yet, even on these items, we have the right to bargain on the impact and implementation of these items.

So limiting it in the context of meet and confer just seems to be very unrealistic. If employees want to express their views, it seems that the County Executive really should not have any qualms about giving the employees this right.

Thirdly, the County Executive, through the legislation, seems to be attempting to control the employee organization by retaining the right to determine what is an appropriate unit.

Now, it seems to me that we have two separate organizations; we have an employee organization and we have management. Traditionally, they sit on opposite sides of the table, and they express their views.

Now, we don't want the County Executive to come over to the employees' side and say, "We're going to tell you how to organize. We're going to tell you what your unit should be."

It seems that the employee organization bill is more realistic in providing third parties to make that final decision.

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Similarly, in grievances, the County Executive or the Administrative Officer should not have the final say. There should be some outside approach.

Mr. Whitney earlier suggested advisory arbitration. That seems to me an approach. I'm not sure under the context of the present legislation whether binding arbitration would be appropriate, but that is something that should be looked into.

In conclusion, I fully support the bill introduced on behalf of the employee organization. However, the Council should not consider this bill the final answer. It is only a step, and a very small step, in the proper direction.

The Council should continue its efforts to establish meaningful and full collective bargaining rights for County employees, and if statewide enabling legislation is needed, then this is what must be sought.

And if I could just make two further observations, one regarding the 60 percent rule. In the federal sector, this was the initial way that elections were held. There was a 60 percent rule.

However, this was eliminated in subsequent executive orders signed by the President. There really is no need for any 60 percent or 50 percent rule.

Employees should feel that an election is important enough to get out and vote, and if they don't vote, then they

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must live with the decision made. That's how the general electorate operates in a Presidential election or any other election.

And one final point, regarding the supervisors, which was brought up earlier, whether or not there is a conflict of interest, and I just want to make an observation how this is handled in the Federal Government.

Supervisors have the right to join a labor organization; anybody has the right to joint a labor organization. However, the labor organization only has the right to represent and to bargain for nonsupervisory employees.

That might be an approach here, whereby the employee organization would not have the right to represent supervisors in grievances, but the supervisors would have the right to join the organization but not necessarily be protected by the legislation passed by the Council.

Thank you.

MR. CHRISTELLER: All right. Are there questions?

(No response.)

MR. CHRISTELLER: Thank you, Mr. Goldman.

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Gordon Wilson?

MR. WILSON: Good evening. My name is Gordon Wilson, and I live at 8312 McCullough Lane, Apartment 102, Gaithersburg, Maryland.

I have worked for Montgomery County almost five

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years. I work in the Division of Solid Waste Management, Department of Environmental Protection.

In the past year, our division has probably gone through more turmoil than any other division within the County, at least I feel, and most of my coworkers.

We've had several lay-offs, and we feel that the way we've been treated, the situation has dictated a lot of it, but we really haven't been explained to or told just why.

We've had problems, you know, with people saying we've got a lay-off coming. We've been told by our supervisors that we will be informed when it's going to come, we will get our notices and everything.

But the story continually rides along. They say one thing, and two weeks later, it's changed; another month, it's changed; on down the line.

No one has really been that honest with us to say, "This is the situation, this is what's going to be, this is what's going to happen."

I think most of us are men enough to stand up and face the facts, but we would like to know the facts first.

We feel that we need an organization to represent us to try and -- at least, for us to go to someone and say, "We want to find out what's going to happen."

I strongly endorse Bill 23-76. I think Mr. Gleason's

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Bill 11-76 is a farce. As far as I'm concerned, we have more recognition right now for our employee organization than what we would be granted under his bill.

I urge you strongly to pass 23-76.

MR. CHRISTELLER: All right. Are there questions?

MR. HOVSEPIAN: Yes.

MR. CHRISTELLER: Mr. Hovsepian?

MR. HOVSEPIAN: Yes, Mr. President. I think it might be useful -- at these public hearings, various things do come out which the Council hears about. We hear from citizens through all kinds of letters, and then we transmit these letters to the County Executive for comment, so the President can write back.

It seems to me that we have an employee who has raised a good question, and it might be useful, Mr. President, if we refer this question to the County Executive.

MR. CHRISTELLER: All right. Thank you.

Thank you, Mr. Wilson.

Next, Melvin Tull.

MR. TULL: Good evening, Mr. Christeller, other members of the Council. My name is Melvin Tull. I regret that I did not come prepared --

MR. CHRISTELLER: Don't worry about it.

MR. TULL: In fact, I'm not all that clear on what I really want to say.

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I am speaking as an individual. I am also a vice-president of the employees organization chosen to represent the feelings of supervisory personnel.

So, with that, you may gather that I'd like to speak to the issue of excluding supervisory, management and confidential personnel, and to urge you not to do same.

These supervisory and management jobs take a variety of titles. I think, if you take away the title, and you leave only the pay and the work, the responsibilities or the various parts of the job and the control of the work of others, you'd find that most of the supervisors would be a tiny bit unhappy.

The title is part of the prestige, part of the self-image, most important especially to those who are under-classified in comparison to supervisors in the local job market.

But I think you'd also find that the self-image, which is so important, is conferred not only by a title but by an inner willingness to come to bat for the County, to work unpaid overtime.

And I think most of us have pictured ourselves as filling in in dirty but necessary jobs in times of emergency, if there were strikes or some unknown breakdown for some unknown reason -- even working in the landfill, or whatever -- just as we picture the same thing happening in private industry.

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Prestige is important to the self-image. Call any of these jobs by a title of lesser prestige, call any of these supervisors a garbage collector, or a Councilman, or whatever else; it would not matter a great deal, just a little bit.

But the important thing to bear in mind is that the supervisory employees approach their jobs with a dedication, and that this dedication, too, is important to their image, their self-image.

And I think that's what Bill 11-76 would do damge to. I think the problem is basically that the approach in 11-76 would be to differentiate supervisors from the rank and file by drawing some definitions, and even tightening the wording of these definitions may not help a great deal.

What seems to be lacking is a ready way of recognizing the supervisor as opposed to the rank and file. You may laugh at some of this, but we don't have in this County some of the things that exist in private industry, in the private sector.

We are constantly asked to look to the private sector as a source of good ideas, as a way of doing things better. And supervisors and management people continually find themselves looking to the private sector for new ideas.

One of the things they find -- and here's where you'll laugh -- is that the private sector has hunting lodges and that type of prerequisite for management people, and they

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have other types of little benefits. After a certain number of years, maybe you'd get a take-home car; there are price reductions on whatever the product of the industry is.

Our product here happens to be real estate taxes, and I don't know if we'll ever get reductions on that.

But I'm just saying, a lot of these things don't exist. There was, at one time, an association of Montgomery County Administrators, which is where you would expect to find a lot of the supervisory and management and confidential personnel.

That seems to be somewhat defunct at the present, and I think a large part of the reason it died is that it got very little support from -- not even monetary support, I'm talking about -- but just support from the attendance of the Executive and the Council.

In the same vein, there's a lack of management training opportunites, a specific program to rotate people through different divisions and provide a well-rounded background.

So what I'm talking about is not entirely take-home cars and hunting lodges and that sort of thing. But there is a total lack of anything other than maybe a 5 percent pay increase to differentiate a supervisor from the rank and file.

Because of this, I ask you to pass or adopt something along the lines of Bill 23-76, at least until someday when

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I hope some of the task forces that have been established in the last year result in a little better definition of the difference between the various classes.

Thank you.

MR. CHRISTELLER: Thank you, Mr. Tull. Are there questions?

(No response.)

MR. CHRISTELLER: Thank you very much.

Charles Simpson?

MR. SIMPSON: Mr. President and members of the Council, I am Charles L. Simpson, President of the Fraternal Order of Police, Lodge Number 35, of Montgomery County.

The statement I'm going to make is brief. Basically, the enactment of legislation to recognize employee representative groups is essential to the smooth, continuous operation of the County Government, the welfare of the County employees, as well as the citizens of Montgomery County.

In the early spring of this year, Montgomery County came extremely close to experiencing a job action by Montgomery County police officers, because there wasn't a vehicle by which police officers could collectively convey their needs to County officials.

At the peak of this emotionally-charged period, the police department suffered a double tragedy, with the

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death of two police officers. Subsequently, the attention of the department shifted its focus on this tragedy, with the prime concern being directed to this event.

We feel that if it were not for this untimely event, Montgomery County would have surely experienced a job action.

The Fraternal Order of Police Lodge Number 35 believes that Bill Number 23-76 is certainly a step in the right direction, but lacks essential elements, such as a collective bargaining with binding arbitration clause.

Bill 23-76, by providing an effective employee-employer relationship, may very well prevent a future job action by members of the police department, provided that both the County Government and County employees act in good faith.

The Fraternal Order of Police strongly urges passage of Bill 23-76 for the welfare of all concerned.

I've sat back there and listened to much discussion as to who should be included and who should not be included. We have a unique situation in the police department, in that we truly do have supervisors. Then we also have the rank and file officers.

It is our opinion that the line should be drawn at sergeant; that anyone above the rank of sergeant should not be included. But it could be anyone above the rank of sergeant

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could be a member of the organization but not necessarily represented by the organization.

I feel that this bill, this legislation that's being presented to the County, Number 23-76, is long overdue. I think we're behind, and I realize the circumstances as far as collective bargaining with binding arbitration in the County.

We either have to have a charter amendment or it has to be passed through state legislation. So I can understand, and that puts us between a rock and a hard spot.

But this is definitely a step in the right direction.

MR. CHRISTELLER: Thank you, Mr. Simpson. Are there questions?

(No response.)

MR. CHRISTELLER: Apparently not. Thank you.

Is there anyone else who wishes to testify on these bills?

(No response.)

MR. CHRISTELLER: If not, we'll conclude the hearing. We'll hold the hearing record open if anyone wishes to submit additional testimony.

We'll hold the record open until the close of business on July 30th, which is over two weeks.

(Whereupon, at 9:30 p.m., the hearing was closed.)

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CERTIFICATE OF REPORTER

I hereby certify, as the stenograhpic reporter, that the foregoing proceedings were taken stenographically by me and thereafter reduced to typewriting by me or under my direction; that this transcript is a true and accurate record to the best of my ability.

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MONTGOMERY COUNTY FIRE FIGHTERS ASS'N.

817 SILVER SPRING AVENUE
SUITE 300
SILVER SPRING, MARYLAND 20910
PHONE: 588-2161

LOCAL 1664

'76 MAY 24 PM 2:44

COUNCIL OFFICE

17 May 1976

Montgomery County Council
County Office Building
Rockville, Maryland

Dear Council Member,

Bill #11-76 as introduced on 6 April 1976 is totaly unacceptable to my Association. I am sure that after you review this bill you will agree that Mr. Gleason is offering very little, dues check-off and meetings, and in return is asking the employee groups to surrender a great deal.

In June 1975, I submitted a letter on a similar bill suggesting a number of amendments to bring the bill in line with 20th centruy labor relations thought. Again we find ourselves faced with a bill based on 18th centruy labor thought, so again I am offering a list of amendments to Bill 11-76. I must stress that the amendments will only make this bill acceptable, we need a good collective bargaining bill.

1. Line 6 - Place a period after "grievances" and omit line 7 and the word "meetings" on line 8. Since this is a meet

and confir bill, there should be no topics that can not be discussed. The meetings will not result in binding action so why not open discussions?

2. Line 15 - Omit the words "Chief Administrative Office" and replace them with an impartial committee apointed by the County Council. No discussions can be productive if one party has veto power.
3. After Line 23 and the following paragraph: It is the intent of this bill to be the first step in establishing a meaningfull collective bargaining relationship employees and Montgomery County.

33-63

4. Line 38 - Remove the words "The term 'employee' does not include," and remove all of line 39. I will offer justification later in this letter.
5. Line 58 - Place a period after the word "policy" and omit rest of line and all of line 59. This line would exclude almost all employees as all employees by nature of their employment implement County policy.
6. Line 63 to line 70 omit in its entirity. This is much too broad a definition.
7. Line 78 - Omit the words "assign work, reward or discipline." Omit lines 79, 80, and 81. This definition would include the lowest supervisory level employees. These people do not have a direct affect on policy and thus would be unrepresented under this definition. Let the employees decide if

they wish to be members of an employee group.

33-64

8. Line 99 - Place a period after the word "organization" and omit lines 100 and 101. Add the following; <u>All the employees in a specific classification represented by an employee group, but not members of that, shall be required to pay a monthly service fee to the employee group not to exceed 3/4 of the groups monthly dues. This service fee will be with-held by the County and paid to the employee group.</u>

33-65

9. Omit paragraph "A", lines 103 thru 108. The employees should decide the composition of their own groups.

10. Line 120 - Omit all beginning with the word "No" and the following line numbers 121 and 122. Let the employees decide if they need representation.

11. Line 127 - Omit the word "Sergeant" and replace it with the words <u>Chief Officer.</u> My group is already made up of many officers above Sergeant. These men feel that they need representation. Would you deny them what they need? As Chief Gratz has stated in his book "Fire Department Management: Scope and Method" it is not possible .. "to establish a management level catagory by simply relating to a rank title." We feel that the membership cut off should be at the level of those who make policy.

33-69

12. Omit paragraph "B", lines 221 thru 223. Why exclude any

topics? The resulting Position Paper would not be binding on the parties involved.

33-73

13. Omit paragraph "D", lines 277 thru 280. Since the bill offers no binding arbitration or other binding remidies in the event of disagreement, I feel that my Association can not surrender any of its options.

As you can see I have asked for substantial changes in this bill, but I feel that these changes are necessary to make this bill acceptable. We need a workable Labor Relations Bill. Please give us one we can live with.

Very truly yours,

Thomas E. Finnin,
First Vice President
By direction of
John M. Hardy,
President

JMH/cfz

Bill 11-76

Mr. Thomas E. Finnin
Montgomery County Fire Fighters Assn.
817 Silver Spring Avenue, Suite 300
Silver Spring, Maryland 20910

Dear Mr. Finnin:

We appreciate receiving your recent letter offering your Association's amendments to Bill 11-76, the County Executive's proposal authorizing a "meet and confer" approach to employer/employee relations.

When Bill 11-76 was introduced on April 6, 1976, I, too, expressed my concern about some of its provisions and suggested that amendments to the bill or an alternate bill be prepared. Subsequently, the Montgomery County Employees Association asked me to introduce a bill which they had prepared and I did so on June 15, 1976 (copy of Bill 23-76 enclosed for your information).

Although Bill 23-76 provides an alternative to 11-76, I believe that other amendments may be necessary. However, we are most interested in receiving employees' views on both proposals and have scheduled a public hearing on Bills 11 and 23-76 for Wednesday, July 14, 1976 at 8 p.m. If you or your association would like to be placed on the Speakers' List, please call the Council office at 279-1231. In the meantime, I have included your letter of May 17 in the public record of Bill 11-76.

Sincerely,

Norman L. Christeller
President

POS/cbr

Enclosure

#1

I HEREBY CERTIFY THAT 25 COPIES OF THIS BILL [illegible] TO THE PUBLIC [illegible] 4/6/76

Anna P. Spates

SECRETARY OF THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

BILL NO. 11-76

Introduced: April 6, 1976
Enacted:

COUNTY COUNCIL FOR
MONTGOMERY COUNTY, MARYLAND

April Legislative Session 1976

By: Council President at request of County Executive

AN ACT to add a new Chapter 18A, title "Employer - Employee Relations Act," to the Montgomery County Code 1972, as amended, to follow immediately after Chapter 18, thereof, to provide for the election and certification of employee organizations for purposes of meeting with County officials concerning conditions of employment and the resolution of grievances, but excluding certain topics from being discussed at any such meetings; to provide for the designation of employee units from which such employee organizations are elected and which such organizations represent; to provide for the recognition of such employee organizations by the County; to provide for the preparation of position papers by the County and such employee organizations; to provide for procedures for the decertification of employee organizations; to define certain terms; to provide for the Chief Administrative Officer to finally resolve disputes arising under this Article; to specify responsibilities of the County and the employee organizations; to provide for the protection of those County employees who choose not to become members of an employee organization; and to provide for the retention of existing personnel laws and regulations and the option of any employee to pursue a grievance through procedures set forth therein.

Be it enacted by the County Council for Montgomery County, Maryland that -

Sec. 1. Chapter 18A, title "Employer - Employee Relations," is hereby added to the Montgomery County Code 1972, as amended, to follow immediately after Chapter 18 thereof, and to read as follows:

ARTICLE IV
EMPLOYER-EMPLOYEE RELATIONS

33-62. Statement of legislative intent.

The County Council hereby finds that the trend in labor relations between government and its employees is becoming somewhat aligned with the practices of the private sector of representation of employee groups by designated and elected employee organizations. The Council believes that government should take the initiative in providing a vehicle whereby government employee representation can emerge and evolve in a fashion consistent with both the needs of the employee and those of government. The Council further believes that this can best be accomplished by enacting local legislation which provides for the voluntary representation of government employees by their duly designated and elected employee organizations. The Council also believes that the efficient administration of the County Government is enhanced by providing employees an opportunity to participate in the formulation and implementation of policies and practices affecting the conditions of their employment.

33-63. Definitions.

As used herein, the following words and phrases shall be defined as follows:

a. "Certification" - the procedure whereby employee organizations are elected and recognized to represent employee units.

b. "Confidential employee" - an employee who in the course of his/her regular duties has access to or possesses information relating to matters which could be the subject of discussions

between employee organizations and the County.

c. "Decertification" - the procedure by which the Chief Administrative Officer withdraws County recognition of an employee organization, with or without an election by the employees of an employee unit.

d. "Employee" - a County merit system employee who is given a position with the anticipation that it will be necessary to maintain the existence of such position indefinitely on a continuous full-time, year-round basis. The term "employee" does not include supervisory, confidential, and management-level employees .

e. "Employee organization" - any lawful organization which represents employees in their employment relations with the County. The term "employee organization" does not include any organization which:

(1) discriminates with regard to terms and conditions of membership with regard to race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

(2) does not adhere to democratic procedures and practices with regard to election of officers, individual participation in organizational affairs, equal treatment under its by-laws, including dues processing, and disciplinary procedures; or

(3) does not maintain fiscal integrity in the conduct of the affairs of the organization, including accounting controls and regular financial reports to members.

f. "Employee unit" - groupings of employees for purposes of representation in County/employee relations.

g. "Management-level employee" - any employee involved directly in the determination of policy or who responsibly directs the implementation thereof.

h. "Position paper" - a non-binding written memorandum reflecting all items discussed by the County and an employee organization.

i. "Professional employee" - an employee engaged in work:

(1) predominantly intellectual and varied in character as opposed to routine, manual, mechanical, or physical work;

(2) involving the consistent exercise of discretion and judgment in its performance;

(3) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; or

(4) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized study in an institution of higher learning.

j. "Supervisor" - any individual having the authority in the interest of the County to:

(1) hire, transfer, suspend, recall, layoff, promote, discharge, assign work, reward or discipline other employees

(2) adjust their grievances;

(3) responsibly direct them; or

(4) effectively recommend the aforementioned action.

33-64. Employee rights.

a. An employee shall have the right, freely and without fear of penalty or reprisal, to form, join or assist and be represented by an employee organization or to refrain from any such activity.

b. Each employee shall have the right to be represented by employee organizations, including the right to meet with representatives of the County concerning conditions of employment and the resolution of grievances.

c. Nothing in this Article shall preclude the rights of an employee to pursue an individual grievance through established administrative procedures or through appeal to the Personnel Board, in that nothing in this Article shall circumvent or shall be deemed to supersede or annul the provisions of the Laws of the

State of Maryland, the Montgomery County Charter, and the Laws and Ordinances of Montgomery County including the Personnel Regulations.

d. No employee, who is not a member of an employee organization, shall ever be required to become a member of such an organization or to pay money to such an organization, except on a purely voluntary basis.

33-65. Determination of employee units.

a. The Chief Administrative Officer shall make the final determination as to the composition of employee units. In undisputed cases, the determination of appropriate units shall be made by the Chief Administrative Officer within thirty (30) calendar days after receipt of a request for certification under Section 33-66 of this Article.

b. Employee units may be established on the basis of groupings of employees who share a clear and identifiable community of interest. Such factors as those employees sharing common skills, working conditions, physical locations, organizational structures, and integrated work processes shall be considered. A unit shall not be established solely on the basis of the extent to which employees in a proposed unit have organized.

c. Determination of units shall be made so as to include the largest possible numbers of employees consistent with maintaining a community of interest of employees to avoid proliferation and fragmentation of representative units. No unit may include employees whose duties are management-level, supervisory, or confidential in nature.

d. Professional employees shall not be included in a unit of non-professional employees unless a majority of such professional employees vote for inclusion therein.

e. Units for employees of the uniform services shall be limited to employees in the ranks of sergeant or equivalent rank and below.

f. In cases where the matters of unit determination are questione the decision of the Chief Administrative Officer shall be final.

33-66. Procedures for certification of employee organizations.

a. Initially or where there is no official representative employee organization, the Chief Administrative Officer, upon the petition of an employee organization showing written evidence of interest by at least thirty percent (30%) of the employees of the employee unit, shall arrange for the conducting of a secret ballot election to determine whether the employees desire such organization to act as their representative. Following such petition, the Chief Administrative Officer shall give an appropriate notice to the employees involved.

b. An employee organization seeking to represent an employee unit shall submit to the Personnel Office a roster of its officers and representatives, a copy of its constitution and by-laws, and a schedule of dues for its members.

c. Eligibility to vote in any election for choice of an official representative shall be limited to employees who are filling County positions as of the beginning of the pay period preceding the election date.

d. Elections will be performed under the auspices and guidance of the Maryland State Department of Labor and Industry, Division of Arbitration, which shall have the responsibilities and powers given to it under State law.

e. The ballot shall contain the name of any additional employee organization showing timely written evidence of interest by at least ten percent (10%) of the employees within the appropriate employee unit. In every instance, the ballot shall contain a provision for a marking of "no representation." Where more than one employee organization is on the ballot and no one of the organizations receives a majority vote of the employees voting, a runoff election shall be held. The runoff election shall contain the two choices which received the largest and second largest

number of votes in the original election.

f. When an organization receives a majority of valid votes cast in the election and when at least sixty percent (60%) of the employees eligible to participate in the election cast valid ballots, the Chief Administrative Officer shall certify it as the official employee organization for the employee unit.

g. The County shall recognize as the official employee relations representative an employee organization which has been selected in accordance with procedures outlined in this Section 33-66.

h. Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional or other lawful associations with respect to matters or policies which involve individual members of the associations or are of particular applicability to it or its members.

i. No question concerning certification may be raised by an employee or an employee organization within one (1) year of the date of certification of an employee organization or the date that no representative was selected by the majority of employees.

33-67. Procedure for decertification of employee organizations.

a. An employee organization shall be subject to decertification when thirty percent (30%) of the employees in the employee unit petition for the employee organization to be decertified. The procedures for determining whether, in fact, an employee organization shall be decertified shall be the same as those prescribed in Section 33-66 for the certification of an employee organization, except as provided in subsection b of this Section 33-67.

b. If an employee organization fails to adhere to any of the provisions of Section 33-73 dealing with employee organization responsibilities, then:

(1) its certification may be revoked by the Chief Administrative Officer after notice and an opportunity to be heard, and

(2) it may be disqualified by the Chief Administrative Officer from participating in representation elections for a period of up to two (2) years after notice and an opportunity to be heard.

33-68. Costs of conducting elections.

Any cost of conducting a secret ballot election under this Article shall be born equally by the County and by the employee organization(s) whose name(s) appear on the ballots.

33-69. County-employee organization meetings and discussions.

a. An employee organization which has been recognized by the County pursuant to Section 33-66 shall be entitled to meet at reasonable times with County representatives to discuss with such representatives personnel policies, practices and matters affecting working conditions of the employee unit it represents, so far as such discussions may be appropriate under existing laws or regulations. The County shall meet at least once every two years with each certified employee organization.

b. Such meetings and discussions shall not include matters with respect to the mission of the County Government, its budget, its organization, the number of employees and the classifications and grades of positions of employees assigned to an employee unit, work projects or tour of duty, the technology of performing County work, or other provisions that are inherent in the managerial process of determining the necessary steps to carry out the public service missions of the County. Furthermore, the County shall not be obligated to discuss matters which must necessarily be applicable to all employees on a uniform basis, such as the Employees' Retirement System and the Uniform Pay Schedule. However, the County may meet with employee organizations for the purpose of hearing their views on such matters.

c. The requirement to meet shall not obligate either the County or an employee organization to agree to any proposal or to make any

concession with respect to any matter discussed by the parties at such a meeting. Any decision made at any such meeting is in no way binding upon the parties.

d. The County and an employee organization may, if desired, and at the conclusion of their discussions prepare written position papers which reflect for future reference the respective positions of the parties on the issues discussed at such meetings. Such position papers shall in no way legally bind any party to the matters expressed therein.

33-70. Employee organization representation of employee members.

a. An employee who is a member of an employee organization may request and shall be granted the right for a member of such organization to be present in any discussions or counseling with County representatives concerning an individual grievance.

b. An employee organization may submit a grievance concerning any dispute involving a claim of violation, misinterpretation or misapplication of the Personnel Regulations or work practices of the County on the same basis as provided for individual grievances.

33-71. Disputes.

All decisions of the Chief Administrative Officer under the provisions of this Article shall be final, subject to appeal to the Montgomery County Personnel Board where provided by law.

33-72. County responsibilities.

It shall be the responsibility of the County not to:

a. interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;

b. encourage or discourage membership in an employee organization by discrimination in regard to hiring, tenure, promot or other conditions of employment;

c. sponsor, control or otherwise assist an employee organizatio except that the County may furnish customary and routine services and facilities when consistent with the best inter

of the County, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

d. refuse to accord appropriate recognition to an employee organization qualified for such recognition; or

e. refuse to consult, confer, or meet with an employee organization certified pursuant to this Article.

33-73. Employee organization responsibilities.

It shall be the responsibility of every employee organization not to:

a. interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;

b. attempt to induce the County to coerce an employee in the exercise of the rights under this Article;

c. coerce, attempt to coerce, or discipline, fine, or take other economic sanction against an employee member of an employee organization as punishment or reprisal, or for the purpose of hindering or impeding work performance or the discharge of duties owed as an employee of the County;

d. call or engage in a strike, work stoppage, or slowdown, picket the County in a County-employee dispute, or condone any such activity by failing to take affirmative action to prevent or stop it;

e. discriminate against an employee with regard to the terms or conditions of membership because of race, color, religion, creed, sex, age, national origin, ancestry, or marital status

f. refuse to consult or meet with the County as provided by this Article.

Sec. 2. Severability.

The provisions of this Act are severable if any provision, sentence, clause, section or part thereof is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstance,

such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the Act or their application to other persons and circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 3. Effective date.

This Act shall take effect on the 76th day following the date on which it becomes law.

I HEREBY CERTIFY THAT 25 COPIES OF THIS BILL ARE AVAILABLE TO THE PUBLIC AND PRESS AS OF 6/15/76

Anna P. Spates

SECRETARY OF THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

#1

Bill No. 23-76

Introduced: June 15, 1976

Enacted:

COUNTY COUNCIL FOR
MONTGOMERY COUNTY, MARYLAND

Legislative Session 1975

BY: Council President at the request of the Employees Organization

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AN ACT to add a new Chapter 36A, title "Public Employee Relations" to the Montgomery County Code 1972, as amended, to follow immediately after Chapter 36 thereof, to provide for the election and certification of employee organizations for purposes of meeting with County officials concerning conditions of employment, the resolution of grievances, and other matters involving relations between the County and its employees; to provide for the designation of employee units from which such employee organizations are elected and which such organizations represent; to provide for the recognition of such employee organizations by the County; to provide for the preparation of memoranda of understanding by the County and such employee organizations; to provide for procedures for the decertification of employee organizations; to define certain terms; to provide for the Chief Administrative Officer to resolve disputes arising under this Article; subject to review by the Personnel Board; to specify responsibilities of the County and the employee organizations; to provide for the protection of those County employees who choose not to become members of an employee organization; and to provide for the retention of existing personnel laws and regulations and the option of any employee to pursue a grievance through procedures set forth therein.

Be It Enacted by the County Council for Montgomery County, Maryland that -

Sec. 1. Chapter 36A, title "Public Employee Relations" is hereby added to the Montgomery County Code, 1972, as amended, to follow immediately after Chapter 36A thereof, and to read as follows:

PUBLIC EMPLOYEE RELATIONS
ARTICLE IV
EMPLOYER-EMPLOYEE RELATIONS

36A-1. Statement of legislative intent.

The County Council hereby finds and declares that the citizens of Montgomery County have a fundamental interest in the development of harmonious and cooperative relationships between the county government and its employees. The paramount concern of both public employees and the county is how to best serve the public interest and achieve excellence in public service. The continued effectiveness of such public service requires recognition by the county of the employment conditions under which its employees carry out their responsibilities. The council believes that government should take the initiative in providing a vehicle whereby government employee representations can emerge and evolve in a fashion consistent with both the needs of the employee and that of the government.

The County Council, therefor, declares that it is the public policy of this county to promote harmonious and co-operative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. The Council believes that this can best be accomplished by enacting local legislation which provides for the voluntary representation of government employees by their duly designated and elected employee organizations. The

Council also believes that the efficient administration of the county government is enhanced by providing employee an opportunity to participate in the formulation and implementation of policies and practices affecting the conditions of their employment.

36A-2 Definitions.

As used herein, the following words and phrases shall be defined as follows:

a. "Certification" - the procedure whereby employee organizations are elected and recognized to represent employee units.

b. "Decertification" - the procedure by which the Chief Administrative Officer withdraws County recognition of an employee organization, with or without an election by the employees of an employee unit.

c. "Employee" - Any person working full or part time whose classification and/or job description is determined in whole or in part by the chief administrative officer under the general classification plan of the personnel board, but shall not include elected officials nor management level employees as defined herein.

d. "Employee organization" - any lawful organization which represents employees in their employment relations with the County. The term "employee organization" does not include any organization which:

(1) discriminates with regard to terms and conditions of membership with regard to race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

(2) does not adhere to democratic procedures and practic with regard to election of officers, individual participation in organizational affairs, equal treatment under its by-laws, and disciplinary procedures; or

(3) does not maintain fiscal integrity in the conduct of the affairs of the organization, including accounting controls and regular financial reports to members.

e. "Employee unit" - groupings of employees for purposes of representation in County/employee relations.

f. "Management-level employee" - Those employees not in the merit system of Montgomery County under SEction 401 of the charter; department, office and agency heads who are appointed by the county executive and are subject to confirmation by the county council; and those merit systems employees at a policy making level who report directly to or whose immediate supervisor is the county executive, the county council or the chief administrative officer.

g. "Supevisor"- A management level employee as before defined with the authority to appoint or remove employees or to demote, layoff, promote or discipline employees as provided for under the charter and personnel regulations.

36A-3. Employee rights.

a. An employee shall have the right to form, join or assist and be represented by an employee organization free from interference restraint, coercion and without fear of reprisal, an employee shall also have the right to refrain from any and all such activity.

b. Each employee shall have the right to be represented by

employee organizations, including the right to meet with representatives of the County concerning conditions of employment and the resolution of grievances.

c. Nothing in this Article shall preclude the rights of an employee to pursue an individual grievance through established administrative procedures or through appeal to the Personnel Board. Nothing in this Article shall circumvent or shall be deemed to supersede or annul the provisions of the Laws of the State of Maryland, the Montgomery County Charter, and the Laws and Ordinances of Montgomery County including the Personnel Regulations.

d. No employee, who is not a member of an employee organization shall ever be required to become a member of such an organizatio or to pay money to such an organization, except on a purely voluntary basis, or as otherwise provided by law.

36A-4. Determination of employee units.

a. The Chief Administrative Officer shall make an initial determination as to the composition of employee units. In undisputed cases, the determination of appropriate units shall be made by the Chief Administrative Officer within thirty (30) calendar days after receipt of a request for certification under Section 36A-5 of this Article.

b. Employee units may be established on the basis of groupings of employees who share a clear and identifiable community of interest. Such factors as those employees sharing common skills, working conditions, physical locations, organizational structures, and integrated work processes shall be considered. The following factors shall also be considered: community of

interest, the history of collective bargaining, the desires of the employees, the effectiveness and efficiency of labor management relations affected by the unit, the effects of over-fragamentation and the effects on the efficiency of the government. A unit shall not be established solely on the basis of the extent to which employees in a proposed unit have organized. However, this Section shall not be deemed to preclude multi-unit bargaining.

c. Determination of units shall be made so as to include the largest possible numbers of employees consistent with maintaining a community of interest of employees to avoid proliferation and fragmentation of representative units. No unit may include employees whose duties are management-level or supervisory in nature.

d. In cases where the matters of unit determination are questioned the decision of the Chief Administrative Officer shall be subject to review by the Montgomery County Personnel Board.

36A-5. Procedures for certification of employee organizations.

a. Initially or where there is no official representative employee organization, the Chief Administrative Officer, upon the petition of an employee organization showing written evidence of interest by at least thirty percent (30%) of the employees of the employee unit, shall arrange for the prompt conducting of a secret ballot election to determine whether the employees of such unit desire such organization to act as their repre-

sentative. Following such petition, the Chief Administrative Officer shall give an appropriate notice of the time and place of said election to the employees involved at least 10 days prior thereto.

b. An employee organization seeking to represent an employee unit shall submit to the Personnel Office a roster of its officers and representatives, a copy of its constitution and by-laws, and a schedule of dues for its members.

c. Eligibility to vote in any election for choice of an official representative shall be limited to employees of the employee unit who are filling County positions as of the beginning of the pay period preceding the election date.

d. Representation elections shall be conducted by the Personnel Board which may ask the assistance of the Maryland State Department of Labor and Industry or any other impartial agency.

e. The ballot shall contain the name of any additional employee organization showing timely written evidence of interest by at least ten percent (10%) of the employees within the appropriate employee unit. In every instance, the ballot shall contain a provision for a marking of "no representation." Where more than one employee organization is on the ballot and no one of the organizations receives a majority vote of the employees voting, a runoff election shall be held. The runoff election shall contain the two choices which received the largest and second largest number of votes in the original election.

f. When an organization receives a majority of valid votes cast in the election and when at least fifty percent (50%)

of the employees eligible to participate in the election cast valid ballots, the Chief Administrative Officer shall certify it as the official employee organization for the employee unit.

g. The County shall recognize as the official employee relations representative an employee organization which has been selected in accordance with procedures outlined in this Section 36A-5.

h. Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional or other lawful associations with respect to matters or policies which involve individual members of the associations or are of particular applicability to it or its members.

i. No question concerning certification may be raised by an employee or an employee organization within one (1) year of the date of certification of an employee organization or the date that no representative was selected by the majority of employees.

j. The county shall, on receipt of written authorization of an employee, deduct from the pay of such employee money in payment of membership dues in an employee organization and shall remit such money to said employee organization.

36A-6. Procedure for decertification of employee organizations.

a. An employee organization shall be subject to decertification

when thirty percent (30%) of the employees in the employee unit petition for the employee organization to be decertified. The procedures for determining whether, in fact, an employee organization shall be decertified shall be the same as those prescribed in Section 36A-5 for the certification of an employee organization, except as provided in subsection b of this Section 36A-6.

b. If an employee organization fails to adhere to any of the provisions of Section 36A-12 dealing with employee organization responsibilities, then:

(1) its certification may be revoked by the Chief Administrative Officer after notice and an opportunity to be heard, and

(2) it may be disqualified by the Chief Administrative Officer from participating in representation elections for a period of up to two (2) years after notice and an opportunity to be heard.

36A-7. Costs of conducting elections.

Any cost of conducting a secret ballot election under this Article shall be born by the County.

36A-8. County-employee organization meetings and discussions.

a. An employee organization which has been recognized by the County pursuant to Section 36A-5 shall be entitled to meet at least quarterly in March, June, September and December of each year with County representatives including the County

Executive and County Council to discuss with such representatives personnel policies, practices and matters affecting working conditions of the employee unit it represents, so far as such discussions may be appropriate under existing laws or regulations.

b. Such meetings and discussions may also include matters with respect to the mission of the County Government, its budget, its organization, the number of employees and the classifications and grades of positions of employees assigned to an employee unit, work projects or tour of duty, its employees' retirement system and the Uniform pay schedule, the technology of performing County work, or other provisions that are inherent in the managerial process of determining the necessary steps to carry out the public service missions of the County.

c. The requirement to meet shall not obligate either the County or an employee organization to agree to any proposal or to make any concession with respect to any matter discussed by the parties at such a meeting. Any decision made at any such meeting is in no way binding upon the parties.

d. The county and an employee organization shall prepare written memoranda of understanding which reflects for future reference the respective positions of the parties on the issues discussed at such meetings. Such memoranda of understanding shall in no way legally bind any party to the matters expressed therein.

36A-9. Employee organization representation of employee members.

a. An employee who is a member of an employee organization may request and shall be granted the right for a member of such organization to be present in any discussions or counseling with County representatives concerning an individual grievance.

b. An employee organization may submit a grievance concerning any dispute involving a claim of violation, misinterpration or misapplication of the Personnel Regulations or work practices of the County on the same basis as provided for individual grievances.

36A-10. Disputes.

All decisions of the Chief Administrative Officer under the provisions of this Article shall be final, subject to appeal to the Montgomery County Personnel Board which shall hold a hearing.

36A-11. County responsibilities.

It shall be the responsibility of the County not to:

a. interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;

b. encourage or discourage membership in an employee organization by discrimination in regard to hiring, tenure, promotion or other conditions of employment;

c. sponsor, control or otherwise assist an employee organization, except that the County may furnish customary and routine services and facilities when consistent with the best interests of the County, its employees, and the organization

and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

d. refuse to accord appropriate recognition to an employee organization qualified for such recognition; or

e. refuse to consult, confer, or meet with an employee organization certified pursuant to this Article.

36A-12. Employee organization responsiblities.

It shall be the responsibility of every employee organizatio not to:

a. interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;

b. attempt to induce the county to coerce an employee in the exercise of the rights under this Article;

c. coerce, attempt to coerce, or discipline, fine, or take other economic sanction against an employee member of an employee organization as punishment or reprisal, or for the purpose of hindering or impeding work performance or the discharge of duties owed as an employee of the County;

d. call or engage in a strike, work stoppage, or slowdown, in a County-employee dispute;

e. discriminate against an employee with regard to the terms or conditions of membership because of race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

f. refuse to consult or meet with the County as provided by this Article.

Sec. 2. Severability.

The provisions to this Act are severable if any provision, sentence, clause, section or part thereof is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the Act or their application to other persons and circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 3. Effective date.

The Council hereby declares that an emergency exists and that this legislation is necessary for the immediate protection of public health and safety. Therefore, this act shall take effect on the day on which it becomes law.

M E M O R A N D U M

August 24, 1976

TO: County Council

FROM: Pearl O. Schloo, Legislative Research Coordinator POS

SUBJECT: Worksession on Bills 11 and 23-76, Employer/Employee Relations Legislation

A worksession on the subject legislation has been scheduled for Wednesday, August 25 at 8 P.M., in the Council Conference Room. All interested parties have been notified of this session.

Subsequent to the public hearing held July 14, 1976 the Council President received the following: memoranda from the Personnel Board and the Personnel Director recommending changes to Bill 11-76 (Attachments #3 and #5); and a letter from the State's Attorney requesting that his employees be exempted from this legislation (Assistant Chief Administrative Officer Carty has indicated to this office that employees of the State's Attorney's Office would not be covered by this legislation).

For the Council's consideration at the worksession, attached are the following:

(1) Summary of testimony presented at the public hearing;

(2) July 22 memorandum to the Council from Legislative Counsel Tierney;

(3) July 30 memorandum from the Personnel Board:

(4) Chart comparing provisions of Bills 11 and 23-76 and listing recommendations made at and subsequent to the public hearing;

(5) August 23 memorandum to the Council President from the Personnel Director (received after the chart had been prepared).

Since the major issues raised at the public hearing are reflected on the chart and in Mr. Lloyd's memorandum, it is suggested that we use both as a guide for our discussion.

Extra copies of Bills 11 and 23-76 will be available at the worksession.

POS:mbw

Attachments

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ATTACHMENT #1

SUMMARY OF TESTIMONY
ON
BILLS 11-76 and 23-76

Public Hearing Held July 14, 1976

1. Robert Carty, Assistant Chief Administrative Officer, speaking on behalf of the County Executive and the Chief Administrative Officer.

Commented on the major differences between the two bills:

- Bill 11-76 defines "confidential employees" (no such definition in 23-76) and excludes such employees from employee organizations. Points out that such an exclusion is common in most public sector labor relations legislation; that the intent of such exclusion is to prevent divided loyalties between employees' membership in an employee organization and their supervisors. Such employees would include administrative aides to elected officials and department heads as well as other employees whose responsibilities in management would be incompatible with membership in an employee organization.

- Whereas 11-76 defines employee as a merit system employee working on a continuous full-time basis, excluding supervisory, confidential and management level employees, Bill 23-76 includes both full-time and part-time employees whose classification is determined under personnel regulations, excluding only elected officials and management level employees. Suggests that the definition in 11-76 be amended to include "part-time career employees".

- Difference in the definition of "management-level employee". Whereas Bill 11-76 defines management-level employees as those involved in policy making or who direct the implementation of policy, Bill No. 23-76 defines those employees as non-merit department or office heads who report to the County Executive, the County Council or the Chief Administrative Officer. With regard to who should be involved in an employee organization, points out that a line is generally drawn at the first level of supervision -- foreman, unit supervisor, etc. Believes it is important for such employees to be recognized as part of management. (Commenting that in his opinion Bill 11-76 defines management-level employees too broadly while 23-76 provides too narrow a definition, Council President Christeller requested Mr. Carty to draft a new definition that would fall somewhere between the two in terms of a clearer drawing of the line as to who may and who may not be in employee organizations.)

- 11-76 defines "professional employee" and provides that such employees should not be included in a unit which includes non-professional employees unless a majority of the professional employees specifically request inclusion. Bill 23-76 does not define professional employees.

- With regard to determination of employee units, points out that there are no differences. However, believes it is important to avoid the proliferation of employee organizational units and suggests a sentence be added to line 122 of Bill 11-76 stating, "the number of such units shall not be greater than six." States that County employees might prefer to have one large unit rather than a number and suggests that provision can be made in any unit election for employees to express their wishes on this matter.

- In the matter of unit determination, Bill 11-76 provides that the decision of the Chief Administrative Officer is final, whereas in Bill 23-76 the decision of the Chief Administrative Officer may be appealed to the County Personnel Board. Believes that the matter of unit determination is critical to management and should not be made a matter of appeal to the Personnel Board. Further, the authority of the Personnel Board is rather specific in the Charter, with Section 404 not extending to matters of employer/employee relations.

- States that procedures for certification of employee organizations do not vary between the two bills, except that 23-76 provides that elections shall be conducted by the Personnel Board which may ask the assistance of the Maryland State Department of Labor and Industry or any other agency. Suggests that Bill 11-76 is probably too restrictive and that provisions should be made for other third parties to assist in any election process.

- Regarding the percentage of eligible employees necessary to validate an election, 11-76 provides that at least 60% of employees eligible may validate an election whereas 23-76 provides for only 50%. Believes that 60% is not unreasonable, considering the importance of certifying employee organizations.

- Concurs with recommendation in 23-76 which provides for payroll dues collection at the request of the employee, providing the organization has been certified and represents a majority of the employees in the appropriate unit and providing that the deduction is not obligatory.

- Bill 11-76 provides for the sharing of the costs of conducting elections between the County and the employee organization while Bill 23-76 provides that the County shall bear all election costs. Believes this is a shared responsibility and that the costs should be shared.

- Re the requirement for meetings, 11-76 provides meetings be held at least every two years while 23-76 specifies meetings shall be held quarterly, and further provides that such meetings may be with County representatives including the County Executive and the County Council. Believes that quarterly meetings are too frequent but that a provision for at least an annual meeting would be acceptable.

- Matters to be discussed with employee organizations. Points out that certain areas of discussion are commonly excluded from labor relations legislation and are enumerated in Section 33-69 (b) of Bill 11-76: the mission of the County government, its budget, its organization, number of employees, positions classified, grades of employees, work projects, and the technology of County work. Believes there is a great deal to discuss: work conditions, promotional policies, training programs, group insurance package, cost of living adjustments, and the administration of the merit system.

- With regard to disputes, Bill 11-76 provides that the decision of the Chief Administrative Officer shall be final, subject to the appeal of the County Personnel Board whereas Bill 23-76 would make such appeals to the County Personnel Board the subject of a mandatory hearing. Points out the role of the Personnel Board as outlined in the Charter is restrictive and limited to mandatory hearings only in cases of dismissal, demotion and suspension.

- Re "employee organization responsibilities", 11-76 would prohibit an employee organization from picketing the County in any dispute or condoning such activity by failing to take action to prevent or stop it. Believes that any bill enacted should contain this provision.

2. Alan Whitney, Executive Vice President of the International Brotherhood of Police Officers, accompanied by PFC Tom Moore, President of Local 498 of the IBPO.

Believes that Bill 23-76 is far superior to the County Executive's bill.

The basic problem IBPO has with both bills is that they do not provide for a structure within which representatives of employees may sit down with representatives of management or the County government to work out and develop specific, written criteria relating to such things as base pay, fringe benefits, working conditions, personnel policy, etc. Also, neither bill provides any meaningful procedure for resolution of any disputes which may arise.

Comments on Bill 11-76:

- Believes the definition of management-level employees is too broad; should include the kinds of duties and responsibilities required of such employee.

- With regard to a position paper, points out that there is little meaning for a written document which has no binding features.

- On page 5, it is proposed that officers in the ranks of sergeant or equivalent rank and below be included in the bargaining unit. Suggests that this be amended to read, "all those in the ranks of corporal or below".

- With regard to the frequency with which meetings will be called, believes quarterly meetings will be acceptable as called for in 23-76.

- With regard to matters which may or may not be discussed at meetings, points out that if there is nothing of a binding nature, does not see valid reason for excluding certain topics from discussion.

Accepts basic provisions of 23-76.

Suggests an amendment to either of the bills: a statement of policy on the

part of the County Council to the effect that memoranda of understanding which might be developed by the parties would be adhered to to the extent possible within existing law.

3. James Mills, President, Montgomery County Government Employees Organization.

Points out a major omission in 11-76: no provision made for organization dues by payroll deduction -- a simple process to implement and one which recent court decisions in similar circumstances have granted to public employees.

With regard to where one would draw the line separating labor and management, points out that his organization's internal structure was constituted to accommodate both supervisory and staff personnel. Believes that any effort to exclude other than top management personnel from being members of the organization contrary to their voluntary choice would not be in accordance with sound democratic principles.

Believes that limitations on areas of discussion between labor and management would seriously cripple credibility. Points out that neither bill provides for major binding action on the part of management.

Suggests an amendment to 23-76 to require timely progress reports to the Council pertaining to meetings with top management.

(Council President Christeller asked Mr. Mills to look at few examples of grievances of which his group is aware and be prepared to talk to the Council about them at its worksession on these bills.)

4. John Hardy, representing the Montgomery County Firefighters Association.

Strongly supports Bill 23-76; against Bill 11-76.

Points out that his organization represents at the present time sergeants, lieutenants, captains, and even an assistant chief. Points out that by limiting the people that organizations can represent, firefighters would be disenfranchised; that 11-76 would eliminate the top of his group, people affiliated with the Firefighters Association voluntarily.

Because there is no provision for any binding agreement, does not see any reason for automatically eliminating certain subjects from being discussed by employees' organizations, as proposed in 11-76. Believes 23-76 offers a more realistic approach.

5. Michael Goldman, Individual.

Points out he is Assistant General Counsel of the National Treasury Employees Union which represents 90,000 federal employees; approximately 50% of all public employees nationwide are in exclusive units of representation.

Supports Bill 23-76. Does not believe that Bill 11-76 provides for meaningful meet and confer opportunities. Cites the following:

- Meeting once every two years allows too much time for the build up of frustration among employees;
- Believes it unwise to limit the scope of the discussions in the way the County Executive wishes to do so. Points out that in the federal sector there are limitations but that they are under a collective bargaining approach. Believes limiting discussions in the context of meet and confer seems to be unrealistic;
- The County Executive seems to be attempting to control the employee organization by retaining the right to determine what is an appropriate unit. Believes that 23-76 is more realistic in providing for third parties to make that final decision.

With regard to grievances, believes the County Executive or the Chief Administrative Officer should not have the final say; there should be some outside approach.

Although fully supporting 23-76, believes the Council should continue its efforts to establish full collective bargaining rights for County employees.

Points out there is really no need for any 60% or 50% rule in elections. Although this was the initial way elections were held in the federal sector, points out this was eliminated in a subsequent executive order signed by the President.

With regard to supervisors having the right to join an organization, points out that in the Federal government supervisors have a right to join an organization; however, that organization only has the right to represent and to bargain for non-supervisory employees. Suggests this might be a useful approach.

6. Gordon Wilson, Individual.

Strongly endorses Bill 23-76.

Points to the problems in his division (Solid Waste Management, Department of Environmental Protection) over the past year. Believes an organization to represent employees is needed.

7. Melvin Tull, Individual.

Vice President of the Employees Organization, chosen to represent the feelings of supervisory personnel.

Urges Council not to exclude supervisory, management and confidential personnel from employee organizations. States that in 11-76 what seems to be lacking is a ready way of recognizing the supervisor as opposed to rank and file. Urges Council to adopt something along the lines of 23-76 until task forces established last year come up with a better definition of the differences between the various classes.

8. Charles A. Simpson, President of the Fraternal Order of Police, Lodge Number 35.

The Fraternal Order of Police, Lodge Number 35, believes that Bill 23-76 is a step in the right direction but lacks essential elements such as collective bargaining with a binding arbitration clause. Bill 23-76 by providing an effective employee/employer relationship may very well prevent a future job action by members of the Police Department.

With regard to who should be included in an employee organization, of the opinion that any one above the rank of sergeant should not be included. However believes that anyone above the rank of sergeant could be a member of the organization but not necessarily represented by that organization.

POS/cbr

ATTACHMENT 6

M E M O R A N D U M

July 22, 1976

TO: County Council

FROM: Philip J. Tierney, Legislative Counsel

SUBJECT: Employer/Employee Relations Bills 23-76 and 11-76

Both bills contain areas of legal concern. Section 404 of the Charter vests in an independent Personnel Board exclusive authority to adopt Personnel Regulations in certain specified areas. In my opinion, the Council may not legislate directly in these specified areas which are reserved for the Personnel Board to regulate. Nevertheless, the Council possesses authority to legislate on general merit system matters not expressly reserved by the Charter for Personnel Regulations.

Two areas of concern are found in both bills and appear to infringe upon Personnel Board matters:

1. Bill No. 23-76, p. 4 and 5, lines 82-90 grants employees the general right to meet with unidentified County representatives for the resolution of undefined grievances. The Personnel Regulations provide a detailed scheme for resolution of individual grievances. Bill No. 11-76 contains a similar provision (p. 4, line 87-89). These provisions should be amended to exclude those types of individual grievances which are processed under the Personnel Regulations.

2. Bill No. 23-76, p. 11, lines 244-260, provides for employee representation and appeal to the Personnel Board. These provisions appear to modify 33-24, Montgomery County Code, 1972, as amended, with respect to aggrieved party standing and the Board's discretionary appellate role. Under Section 401 of the Charter, the Council possesses authority to legislate on merit system matters generally. In my opinion, this power includes authority to define categories of employees with standing to prosecute grievances and to generally establish standards for Board hearings. However, since this matter does infringe on existing Regulations, it should be viewed with caution. I recommend that the County Attorney be requested to review the matter. Bill 11-76 contains similar provisions (p. 9, lines 235-247).

PJT/cbr

cc: R. McDonell
P. Schloo

6

ATTACHMENT # 3

MEMORANDUM

July 30, 1976

TO: Norman Christeller, President, Montgomery County Council

FROM: Daisy B. Fields, Chair, County Personnel Board Daisy B. Fields

SUBJECT: Employer/Employee Relations Legislation - Bills #11-76 and #23-76

One of the major factors to be considered in "meet and confer" legislation, such as the two bills presently being studied, is to assure a balance between management rights and employee needs. In the opinion of the Personnel Board, neither of the present bills provide such balance. However, we believe both contain features that, when combined, will provide acceptable legislation.

Our comments are addressed to Bill #11-76, incorporating portions of Bill #23-76, where preferable.

33-63 Definitions

Line Number	Recommendation
27-30	Amend to read as follows: Confidential Employee - An employee who assists and acts in a confidential capacity to County officials who formulate and implement policies in the area of employee relations and employees who are appointed by and serve at the pleasure of an elected official.
35-39	Delete and use definition from Bill #23-76 quoted below: "Employee' - Any person working full or part-time whose classification and/or job description is determined in whole or in part by the Chief Administrative Officer under the general classification plan of the Personnel Board, but shall not include elected officials nor management-level employees as defined herein."
74	Add: ". . . learning /. / , and often recognized in terms of special techniques, licensing and certification."

33-63 Definitions (continued)

Line Number	Recommendation
78	Delete word "other".
79	Delete word "their".
80	Delete word "them".

33-65 Determination of employee units

Line Number	Recommendation
108	Add: In cases where the matters of unit determination are questioned, the decision of the Chief Administrative Officer shall be subject to review by the Montgomery County Personnel Board.
127	Change word "sergeant" to "corporal".
128-129	Delete (see addition to line 108 above).

33-69 County-employee organization meetings and discussions

Line Number	Recommendation
209-210	Change to read: The County shall not be required to meet more than twice a year with each certified employee organization. If the number of certified employee organizations exceeds six, such organizations shall be required to form a Congress representing all certified organizations for the purpose of meeting with the County, and such meetings shall be limited to not more than three a year.

33-72 County responsibilities

Line Number	Recommendation
256-257	The Board proposes that this section be deleted because the County should not be obligated to provide any services or facilities to an employee organization. This could become very expensive depending on the number of organizations recognized.

Additional Comments

The Board questions the wisdom of the County sharing in the cost of elections. We believe that any organization desiring to represent employees should be required to absorb the expense of the election. Under such circumstances, an organization would request an election only when it believes it has sufficient support to gain certification.

The Board further questions providing dues check-off without recognizing the costs, such as:

1. Control of input and payroll deduction information
2. Periodic computer print-outs and reports
3. Transfer of funds
4. Record keeping
5. Other administrative costs

The matter of dues check-off should be an administrative decision based on cost and feasibility.

The Board would like to point out that due to the nature of local governments (i.e., services that are monopolistic or mandated by law and supported by tax revenue) there are those that say that neither side is at liberty to bargain freely. The attitudes of the public must be considered very carefully on all issues because of the possible effect on other programs and/or political retaliation at time of elections. These constraints could make implementation and administration of any labor-management relations legislation extremely difficult.

There is a basic concern that the Board is compelled to express concerning these two legislative proposals. This type of legislation could lead to collective bargaining which could be in conflict with existing merit system rules and regulations. It has been our experience that in municipalities where such a practice has been embraced, the role, function and responsibility of the merit system and/or personnel board has been eroded.

The Board hopes that its comments are of assistance to the Council in its deliberations on this important legislation.

DBF/lml

ATTACHMENT #4

COMPARISON OF PROVISIONS OF BILLS 11-76 and 23-76 -- SUGGESTED AMENDMENTS

	Bill 11-76	Bill 23-76	Suggested Amendments/ Comments	Council Decision
Definitions "Confidential Employee"	p. 2 - lines 27-30 "an employee who in the course of his/her regular duties has access to or possesses information relating to matters which could be the subject of discussions between employee organizations and the County."	not defined	Personnel Board recommendation: Amend to read as follows: "An employee who assists and acts in a confidential capacity to County officials who formulate and implement policies in the area of employee relations and employees who are appointed by and serve at the pleasure of an elected official".	
"Employee"	p. 3, lines 35-39 "a County merit system employee ... full-time, year round basis ... does not include supervisory, confidential and management level employees". (At the public hearing the C.E. representative suggested including "part-time, career employees")	p. 3, lines 44-49 "Any person working full or part-time ... but shall not include elected officials nor management level employees..."	Personnel Board recommends definition contained in 23-76	
"Management-level employee"	p. 3, lines 57-59 "any employee involved directly in the determination of policy or who responsibly directs the implementation thereof." (at the public hearing Mr. Carty was requested to prepare a new definition for the Council's consideration)	p. 4, lines 69-76 "those employees not in the merit system...; department, office and agency heads... appointed by the county executive ...confirmation by the county council; and those merit system employees at a policy making level who report directly to or whose immediate supervisor is the county executive, the county council or the Chief Administrative Officer."	Speaker #2: More specific definition needed; for example, kinds of duties such an employee would perform.	

COMPARISON OF BILLS 11-76 and 23-76

	Bill 11-76	Bill 23-76	Suggested Amendments/Comments	Council Decision
Definitions, cont'd "Professional employee"	p. 4, lines 62-74	Not defined	Personnel Board recommendation: Delete period at end of line 74 and add: ", and often recognized in terms of special techniques, licensing and certifications."	
"Supervisor"	p. 4, lines 75-81 "...any individual having the authority to: (1) hire, transfer suspend, recall, layoff, promote, discharge, assign work, reward or discipline other employees; (2) adjust their grievances; (3) responsibility direct them; or; (4) effectively recommend aforementioned action."	p. 4, lines 77-80 "A management level employee as before defined with the authority to appoint or remove employees or to demote, layoff, promote or discipline employees as provided for under the Charter and personnel regulations."	Personnel Board recommends deleting following in 11-76: "other" on line 78; "their" on line 79; "them" on line 80.	
"Determination of Employee Units"	p. 5 and 6 lines 103-104: CAO makes final determination as to composition of employee units lines 128-129: where matters of unit determination questioned, decision of CAO final (CE representative stated at the public hearing that unit determination should not be matter of appeal to Personnel Board; that Sec. 404 of Charter does not extend to matters of employer-employee relations)	p. 5 and 6 lines 104-105: CAO makes initial determination as to composition of employee units lines 130-132: where unit determination questioned, decision of CAO shall be subject to review by M.C. Personnel Board	Personnel Board: Add language re review by Personnel Board to line 108 of 11-76; Delete lines 128-129. Amendment #1 to 11-76 proposed by Council President	

COMPARISON OF BILLS 11-76 and 23-76

	Bill 11-76	Bill 23-76	Suggested Amendments/Comments	Council Decision
Determination of Employee Units, cont'd.	p. 5, lines 126-127: "(e) Units for employees of the uniform services shall be limited to employees in the ranks of sergeant or equivalent rank and below."	Not addressed	Personnel Board and International Brotherhood of Police Officers change "sergeant" to "corporal" M.C. Firefighters: because organization represents sergeants, lieutenants, captains & asst. chief, suggests exception in cut off for Firefighters	
Number of employee units	Not addressed	Not addressed	CE recommendation: To avoid proliferation of employee units, suggests adding to line 122 of 11-76: "The number of such units shall not be greater than six."	
Procedures for certification of employee organizations Elections	p. 6, lines 148-51: "...Elections...performed under ...guidance of Md. State Dept. of Labor and Industry, Division of Arbitration."	p. 7, lines 154-156: "...conducted by the Personnel Board which may ask the assistance of the Md. State Dept. of Labor and Industry or any other impartial agency."	C.E. representative stated that 11-76 is probably too restrictive and that provision should be made for other third parties to assist in the election process.	
Percentage of employees necessary to validate an election	p. 7, line 163: 60%	p. 7, line 168: 50%	Speaker #5: No need for any 60 or 50% rule; cites practice in federal sector	
Payroll deduction for dues	Not addressed. However, C.E. agrees to this provision provided that the organization has been certified and represents majority of employees in an appropriate unit and that deduction is not obligatory.	p. 8, lines 188-190 - Payroll deductions for dues to be remitted to employee organization.	Personnel Board: Questions dues check-off without recognizing costs such as control of input and payroll deduction information, computer print-outs and reports, transfer of funds, record keeping and other administrative costs. Dues check-off should be an administra-	

COMPARISON OF BILLS 11-76 and 23-76

	Bill 11-76	Bill 23-76	Suggested Amendments/Comments	Council Decision
Definitions cont'd costs of conducting elections	p. 8, lines 198-201: To be borne equally by County and employee organizations	p. 9, lines 211-212: Costs borne by County	Personnel Board recommendation: Organization desiring to represent employees should be required to absorb expense of election	
Number of meetings	p. 8, lines 209-210: "The County shall meet at least once every two years with each certified employee organization."	pp. 9 and 10, lines 215-223: "...employee organization... entitled to meet at least quarterly...with County representatives including the County Executive and County Council..."	--CE representative at the public hearing stated that quarterly meetings were too frequent but that an annual meeting would be acceptable --Personnel Board recommends changing language on lines 209-210 in 11-76 to read: "The County shall not be required to meet more than twice a year with each certified employee organization. If the number of certified employee organizations exceeds six, such organizations shall be required to form a Congress, representing all certified organizations for the purpose of meeting with the County, and such meetings shall be limited to not more than three a year."	

COMPARISON OF BILLS 11-76 and 23-76

	Bill 11-76	Bill 23-76	Suggested Amendments/Comments	Council Decision
Definitions cont'd Matters to be discussed with employee organizations	p. 8, lines 202-223: (a) "...personnel policies, practices and matters affecting working conditions of the employee unit it represents..." (b) excludes matters re mission of County government, its budget, its organization, number of employees assigned to employee unit, work projects or tours of duty, technology of performing County work or other provisions inherent in managerial process.	p. 10, lines 219-232: (a) same as 11-76 (b) matters excluded in 11-76 included in 23-76	Speakers #2,3,4,5: If discussions are to be non-binding, scope of such discussions should not be limited as proposed in 11-76.	
Disputes	p. 9, lines 244-245: decision of CAO final, subject to appeal to Personnel Board	p. 11, lines 256 - 260: decision of CAO final subject to appeal to Personnel Board which shall hold a hearing	C.E. representative stated at public hearing that role of the Personnel Board as outlined in Charter is restrictive and limited to mandatory hearings only in cases of dismissal, demotion & suspension	
County responsibilities	pp. 9 & 10 same provisions	pp. 11 and 12 same provisions	Personnel Board: Delete subsection (c) in 11-76 re County's providing services or facilities to an employee organization. Could be very expensive.	
Employee organization responsibilities	p. 10, lines 265-285: Only difference from 23-76 is additional language in (d) which would prohibit the condoning of certain activities (strikes, work stoppages, slowdown, picketing) by failing to take action to prevent or stop such activities	p. 12, lines 279-297		

Other Recommendations:

Montgomery County Government Employees Organization:

Include provision to require timely progress reports to the Council pertaining to meetings with top management.

Letters from Jessie H. Bakeman and Martha L. Cadle:

Organization membership should be broadened to include all currently employed and retired merit system employees of the Montgomery County government; should exclude elected officials, non-merit employees and merit system employees at a policy making level who report directly to or whose immediate supervisor is the County Council, the County Executive or the Chief Administrative Officer.

ATTACHMENT #5

M E M O R A N D U M

August 24, 1976

TO: Norman Christeller, President, County Council

FROM: Ronald G. Lloyd, Personnel Director

SUBJECT: Suggested Changes to Bill No. 11-76
Employer/Employee Relations Legislation

After review of the testimony presented at the public hearing held on July 14, 1976, the following suggested changes to Bill No. 11-76 are offered for your consideration.

Section 33-63. Definitions.

Line Number	Recommendation
	b. "Confidential employee"
30	Add: "...official /~~.~~/ OR AN EMPLOYEE WHO ASSISTS THOSE COUNTY OFFICIALS WHO FORMULATE AND IMPLEMENT POLICIES CONCERNING EMPLOYER/ EMPLOYEE RELATIONS."
	d. "Employee"
35-39	Substitute definition as follows: A COUNTY MERIT SYSTEM EMPLOYEE WORKING ON A CONTINUOUS FULL-TIME, CAREER OR PART-TIME, CAREER BASIS. THE TERM "EMPLOYEE", FOR PURPOSES OF THIS CHAPTER, DOES NOT INCLUDE SUPERVISORY, CONFIDENTIAL, MANAGEMENT-LEVEL, OR NON-MERIT EMPLOYEES.
	g. "Management-level Employee"
57-59	Substitute definition as follows: ANY MERIT OR NON-MERIT EMPLOYEE WHOSE PRIMARY DUTY CONSISTS OF WORK DIRECTLY RELATED TO THE DETERMINATION AND IMPLEMENTATION OF GOVERNMENTAL POLICIES OR GENERAL GOVERNMENTAL OPERATIONS AND WHO CUSTOMARILY AND REGULARLY EXERCISES DISCRETION AND INDEPENDENT JUDGMENT IN THE PERFORMANCE OF SUCH DUTIES.

Section 33-65. Determination of employee units.

Line Number	Recommendation
103	Substitute THE PERSONNEL DIRECTOR for /~~the Chief Administrative Officer~~/ and eliminate the word /~~final~~/.

Section 33-65. Determination of employee units. (continued)

Line Number	Recommendation
106	Substitute PERSONNEL DIRECTOR for /Chief Administrative Officer/.
108	Add the sentence: IN CASES WHERE THE MATTER OF UNIT DETERMINATION IS QUESTIONED, THE DECISION ~~OF THE CHIEF ADMINISTRATIVE OFFICER~~ MAY BE SUBJECT TO REVIEW BY THE COUNTY PERSONNEL BOARD, WHOSE DECISION WILL BE FINAL.
122	Add new language: THE PROVISIONS OF THIS SECTION SHALL NOT PRECLUDE THE ESTABLISHMENT OF ONE UNIT TO REPRESENT ALL ELIGIBLE EMPLOYEES. THE NUMBER OF UNITS CERTIFIED SHALL NOT BE GREATER THAN FIVE.
127	Substitute the word CORPORAL in lieu of /Sergeant/.
128	Delete.
129	Delete.

Section 33-66. Procedures for certification of employee organizations.

Line Number	Recommendation
148	d. New language: ELECTIONS WILL BE CONDUCTED BY THE PERSONNEL OFFICE WHICH MAY USE THE SERVICES OF THE MARYLAND STATE DEPARTMENT OF LABOR AND INDUSTRY OR ANY OTHER THIRD PARTY HAVING SIMILAR QUALIFICATIONS.
179	New Paragraph J. THE COUNTY MAY, AFTER DISCUSSIONS WITH AN EMPLOYEE ORGANIZATION AND ON RECEIPT OF WRITTEN AUTHORIZATION FROM EACH EMPLOYEE, PROVIDE FOR THE DEDUCTION FROM THE PAY OF SUCH EMPLOYEE MONIES IN PAYMENT OF MEMBERSHIP DUES IN A DULY CERTIFIED EMPLOYEE ORGANIZATION. SUCH DEDUCTION SHALL NOT BE OBLIGATORY.

Section 33-69. County-employee organization meetings and discussions.

Line Number	Recommendation
209	Strike /once every two years/ and substitute TWO TIMES ANNUALLY.

25587

M E M O R A N D U M

August 24, 1976

TO: Norman Christeller, President, County Council

FROM: Ronald G. Lloyd, Personnel Director

SUBJECT: Suggested Changes to Bill No. 11-76
Employer/Employee Relations Legislation

After review of the testimony presented at the public hearing held on July 14, 1976, the following suggested changes to Bill No. 11-76 are offered for your consideration.

Section 33-63. Definitions.

Line Number	Recommendation
	b. "Confidential employee"
30	Add: "...official /~.7 OR AN EMPLOYEE WHO ASSISTS THOSE COUNTY OFFICIALS WHO FORMULATE AND IMPLEMENT POLICIES CONCERNING EMPLOYER/ EMPLOYEE RELATIONS."
	d. "Employee"
35-39	Substitute definition as follows: A COUNTY MERIT SYSTEM EMPLOYEE WORKING ON A CONTINUOUS FULL-TIME, CAREER OR PART-TIME, CAREER BASIS. THE TERM "EMPLOYEE", FOR PURPOSES OF THIS CHAPTER, DOES NOT INCLUDE SUPERVISORY, CONFIDENTIAL, MANAGEMENT-LEVEL, OR NON-MERIT EMPLOYEES.
	g. "Management-level Employee"
57-59	Substitute definition as follows: ANY MERIT OR NON-MERIT EMPLOYEE WHOSE PRIMARY DUTY CONSISTS OF WORK DIRECTLY RELATED TO THE DETERMINATION AND IMPLEMENTATION OF GOVERNMENTAL POLICIES OR GENERAL GOVERNMENTAL OPERATIONS AND WHO CUSTOMARILY AND REGULARLY EXERCISES DISCRETION AND INDEPENDENT JUDGMENT IN THE PERFORMANCE OF SUCH DUTIES.

Section 33-65. Determination of employee units.

Line Number	Recommendation
103	Substitute THE PERSONNEL DIRECTOR for /~the Chief Administrative Officer/ and eliminate the word /final/.

Section 33-65. Determination of employee units. (continued)

Line Number	Recommendation
106	Substitute PERSONNEL DIRECTOR for /Chief Administrative Officer/.
108	Add the sentence: IN CASES WHERE THE MATTER OF UNIT DETERMINATION IS QUESTIONED, THE DECISION OF THE CHIEF ADMINISTRATIVE OFFICER MAY BE SUBJECT TO REVIEW BY THE COUNTY PERSONNEL BOARD, WHOSE DECISION WILL BE FINAL.
122	Add new language: THE PROVISIONS OF THIS SECTION SHALL NOT PRECLUDE THE ESTABLISHMENT OF ONE UNIT TO REPRESENT ALL ELIGIBLE EMPLOYEES. THE NUMBER OF UNITS CERTIFIED SHALL NOT BE GREATER THAN FIVE.
127	Substitute the word CORPORAL in lieu of /Sergeant/.
128	Delete.
129	Delete.

Section 33-66. Procedures for certification of employee organizations.

Line Number	Recommendation
148	d. New language: ELECTIONS WILL BE CONDUCTED BY THE PERSONNEL OFFICE WHICH MAY USE THE SERVICES OF THE MARYLAND STATE DEPARTMENT OF LABOR AND INDUSTRY OR ANY OTHER THIRD PARTY HAVING SIMILAR QUALIFICATIONS.
179	New Paragraph J. THE COUNTY MAY, AFTER DISCUSSIONS WITH AN EMPLOYEE ORGANIZATION AND ON RECEIPT OF WRITTEN AUTHORIZATION FROM EACH EMPLOYEE, PROVIDE FOR THE DEDUCTION FROM THE PAY OF SUCH EMPLOYEE MONIES IN PAYMENT OF MEMBERSHIP DUES IN A DULY CERTIFIED EMPLOYEE ORGANIZATION. SUCH DEDUCTION SHALL NOT BE OBLIGATORY.

Section 33-69. County-employee organization meetings and discussions.

Line Number	Recommendation
209	Strike /once every two years/ and substitute TWO TIMES ANNUALLY.

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Wednesday, August 25, 1976 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Conference Room, County Office Building, Rockville, Maryland, at 8:10 P.M. on Wednesday, August 25, 1976.

PRESENT

Norman L. Christeller, President	Neal Potter
John L. Menke, Vice President	Jane Ann Moore
Elizabeth L. Scull, President Pro Tem	Dickran Y. Hovsepian

ABSENT

Esther P. Gelman

The President in the Chair.

Re: Worksession on Bills Nos. 11-76 & 23-76, Employer/Employee Relations

The Council met in worksession on Legislative Bills Nos. 11-76 and 23-76, Employer/Employee Relations, with Director of the Department of Personnel Lloyd, Executive Secretary of the Personnel Board Moser, Assistant County Attorney Hutt, Council Staff Director McDonell, Legislative Research Coordinator Schloo, President of the Montgomery County Government Employees Organization Mills, and President of the International Brotherhood of Police Officers, #498, Moore.

President Christeller stated that he does not agree with the statement in the memorandum to the Council from Legislative Counsel Tierney, dated July 22, 1976, that "the Council may not legislate directly in these specified areas which are reserved for the Personnel Board to regulate." However, Mr. Tierney does not explain his opinion, and is not present tonight to discuss the matter.

Mr. Lloyd stated that he does not agree with Mr. Tierney's statement either. In drafting Bill No. 11-76, he specifically tried to avoid conflicts with the Charter and duties of the Personnel Board.

The Council addressed a chart prepared by Ms. Schloo comparing the provisions of Bills Nos. 11-76 and 23-76 and suggested amendments.

With respect to the definitions of "confidential employee" and "management-level employee" as employees to be excluded from a meet and confer

type of employee organization, it was noted that Bill No. 23-76, submitted by the Montgomery County Government Employees Organization (MCGEO), does not define "confidential employee".

President Christeller stated that the Executive Branch, which submitted Bill No. 11-76, believes that there are some employees who would not be considered to be management-level, but who, because of the confidential nature of their responsibilities, should be excluded.

Mr. Lloyd stated that the definition in Bill No. 11-76 is intended to be broad, and should not contain a specific listing of positions. There should be a mechanism whereby exclusion from the organization can be determined on a case-by-case basis.

Members of the Council expressed the view that the definition of "confidential employee" in Bill No. 11-76, and the revised definition in Mr. Lloyd's memorandum of August 24, 1976, are too broad, and that the definition proposed by the Personnel Board is too narrow.

In response to expression of views by some present that some management-level employees should be allowed to be included in the employees organization, others expressed the opinion that then these employees might be directly involved in the negotiation process. In response to a statement that these bills provide for a "meet and confer" type of organization and that no binding agreements are provided for and therefore no negotiations would be involved, President Christeller stated that the General Assembly will consider and may possibly enact enabling legislation to provide authority for collective bargaining for County employees. If the Council permitted management-level employees to join the meet and confer organization, and the enabling legislation were subsequently enacted, the Council would then be in the position of having to amend the law to exclude some employees who had not previously been excluded. Employees of the Office of Budget and Research, for example, would be advising the County Executive on a cost-of-living adjustment, and should not be permitted to be part of the employees organization.

Mr. Lloyd stated that there is not a definition that fits every situation. The ultimate position-by-position decisions will be based on discussions between management and the organization. The definition should provide reasonable guidelines for those discussions.

Mr. John Hardy, Montgomery County Firefighters Association, noted that the bills would exclude uniformed officers above the rank of corporal, and stated that the same standards of management-level employees should be applied to the Police and Fire Departments.

President Christeller suggested that the definitions be approached by identifying those positions or types of positions that should be excluded from joining the organization.

It was agreed that confidential aides to elected officials should be excluded.

Mr. Tull, Vice President, MCGEO, stated that when considering exclusions for confidential employees, the Council should keep in mind the trustworthiness of the confidential employees. The fact that they are members of the organization would not cause them to give up confidential information.

Mr. Lloyd stated that he recommends that employees down to the level of division or section head be excluded from the organization, but that there is no standard nomenclature among the departments for the various divisions and sections within the departments.

President Christeller expressed the view that Mr. Lloyd's recommendation would reach too low in the departments. However, one of the things that the employees organization will be involved in is the pursuit of grievances, and a lot of those grievances might be with regard to the actions of people who are well below the department head level.

Mr. Mills stated that if the exclusion reaches down to the assistant section heads, he would have to step down from his position as President of MCGEO. He believes that such an action by the Council would cause the organization to lose about one-third of its members.

President Christeller suggested that the bills define "employee" as persons who may be permitted to join the organization, and add "except the following" with a listing of positions and types of positions that would be excluded from joining.

At the suggestion of Councilman Hovsepian and without objection, the Council agreed that non-merit system employees should be excluded from joining the organization.

At the suggestion of President Christeller and without objection, the Council agreed that heads of departments, principal offices and agencies should be excluded from joining the organization.

At the suggestion of Councilman Hovsepian and without objection, the Council agreed that deputy or assistant department, principal office and agency heads should be excluded from joining the organization.

Without objection, the Council agreed that principal administrative aides to department heads and assistant or deputy directors should be excluded from joining the organization.

Without objection, the Council agreed to exclude from the organization those employees who report directly to or whose immediate supervisor is the County Executive, County Council, County Councilmembers, or the Chief Administrative Officer, and principal aides to the foregoing.

Mr. Whitney, Executive Vice President, International Brotherhood of Police Officers, stated that the exclusion process that the Council is going through is provided for elsewhere in the bills at the time a petition is served on the County requesting recognition of a particular employee organization. In one bill, the responsibility for this is given to the Personnel Board. He suggested that the Council simply define a category of employees to be excluded.

President Christeller stated that in order to determine whether the organization should be recognized, the County government must know who is eligible to vote within the organization. Regardless of the definitions that are developed, there will be questions as to whether certain positions are excluded and that will be subject to negotiation. The Council is attempting to provide a reasonably clear definition.

Mr. Lloyd stated that where the line of exclusion is drawn depends on how a particular department is organized, and they are all different in County government. The trend is to establish clusters of organizational resources for specific purposes. He would like to keep the level of organized employees at the lowest possible level.

Councilman Hovsepian expressed the view that division or section heads that report directly to the department heads are management-level employees and should be excluded. Below that level, the employees are operational in nature, but could exercise supervisory functions.

President Christeller stated that even though a section head may not report directly to the department head, that employee still has significant management responsibilities with respect to personnel matters subject to negotiation.

Councilman Menke pointed out that it will be hard to make a distinction between sections in departments with just a few people and sections in very large departments.

Mr. Wolfman, MCGEO, stated that it is the desire of MCGEO to extend the benefits of an employees organization to the maximum number of County employees in terms of support derived from being a member of a group and numbers to give them political power.

Mr. Tull inquired as to whether section heads and their assistants really have the authority to hire and fire employees and take disciplinary or budgetary actions. It is his impression that section or division heads can recommend the termination of an employee, but it is strictly a recommendation to the department head.

President Christeller stated that the question raised by Mr. Tull is partly a matter of management style on the part of each particular department head.

In response to a statement that department heads rely heavily on recommendations of division and section heads in making management decisions, Mr. Tull stated that in every process people rely on the next person down the line.

President Christeller inquired as to which elements of the meet and confer or collective bargaining process will be less constructive or impaired in any way if a division head in the Department of Transportation, for example, is permitted to be a member of the bargaining unit.

Mr. Lloyd replied that it is a matter of divided loyalty between management and employees. The CAO is responsible for administering public policy, but he does not do it alone. He depends on department heads, who depend heavily on division heads to carry out policy and generate program needs. Division heads do not act solely on direction from above.

Councilman Menke stated that the line has to be drawn somewhere. The very existence of the meet and confer organization and the identification of employee units is divisive. The Council must look at the issues to be before the bargaining unit. If one of the issues is the working conditions within the Department of Transportation, for example, the Director would have to rely on the advice of division or section heads about those conditions.

(The Council recessed at 10:00 P.M., and reconvened at 10:10 P.M.)

With respect to the status of firefighters within the employees organization, President Christeller stated that it is the present position of the County Executive, and he agreed, that firefighters are not County employees. They are employees of the individual fire departments, and therefore are not covered by the provisions of these bills. Until the litigation on this matter is completed, the Council cannot address the issue.

President Christeller suggested that the Council provide that the heads of the next principal constituent level within the departments be excluded from the organization. For example, the Department of Finance is divided into the Divisions of Auditing, Accounts, Revenue, and the Purchasing Office. In the Health Department, however, the next constituent level is divided into two bureaus; he expressed the view that the exclusion should reach farther down into the Health Department. He suggested that at the end of the listing of positions, the Council include a statement to the effect of "and in the Department of Transportation, the heads of offices and divisions as the Department is presently constituted, and in all other departments and offices, such positions as determined by the CAO to carry comparable personnel management responsibilities to those division and office heads in the Department of Transportation." President Christeller stated that the law should specify that the CAO's designations are an issue that is subject to negotiation with the organization.

Mr. Mills stated that President Christeller's suggestion would go too far into the departments. He would prefer that the exclusion be limited to the deputy or assistant department heads.

Mr. Tull suggested that there should be an appeal provision from the process suggested by President Christeller. He stated that, as the Council is having difficulty drawing the line, so will the CAO.

Councilwoman Scull suggested that specific position titles to be excluded from the organization could be put in a resolution of intent.

President Christeller stated that the Council must write the law in such a way that it can be interpreted by the courts, and a resolution of intent would have no weight. The language he suggested would be applicable in the future if the County government reorganizes, but a specific listing in a resolution of intent would not.

At the suggestion of Councilman Potter and without objection, the Council requested that Messrs Lloyd and Mills prepare a specific position listing of those employees who would be excluded from joining the organization, based on the Council's decisions tonight, so that everyone can see where the line would be drawn.

Without objection, the Council agreed to the following wording to follow the listing of types of positions to be excluded: Heads of the constituent offices and divisions in the Department of Transportation existing at the time of enactment of this bill and positions carrying a similar degree of personnel management responsibility in other departments and offices, as determined by the Chief Administrative Officer.

With respect to the question as to whether employees of the County Attorney's Office should be excluded, Councilman Hovsepian stated that Assistant County Attorneys represent specific departments, and may be in a position of advising a department head or the County Executive on a specific grievance in that department. Mr. Hutt added that the County Attorney's Office would also be in the position of defending the County in decisions it makes with respect to the meet and confer and collective bargaining units.

Without objection, the Council agreed that employees of the County Attorney's Office should be excluded from joining the employees organization.

Without objection, the Council tentatively agreed that employees of the Office of Budget and Research should be excluded from joining the organization. President Christeller indicated that he has a question as to whether the individual budget analysts should be excluded.

At the suggestion of Mr. Moser and without objection, the Council agreed to exclude the employees of the Office of Employee Relations and the Office of the Personnel Board.

Without objection, the Council agreed to exclude the employees of the Department of Personnel.

The meeting adjourned at 10:50 P.M.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

December 10, 1976

TO: County Council

FROM: Pearl O. Schloo, Legislative Research Coordinator POS

SUBJECT: Draft #2 of Bill 11-76, Employer/Employee Relations

Attached for the Council's consideration is Draft #2 of the subject legislation revised to reflect decisions made by the Council at recent worksessions. Bill 11-76 is scheduled for action on the Council's agenda of December 14.

Please note the following changes from Draft #1:

(1) p. 2, lines 21-29: additional language in the Statement of Legislative Intent;

(2) p. 3, lines 47-78: new definition of "employee" (previous definitions of certain categories of employees deleted). At its worksessions, the Council indicated that, with certain exceptions, all full-time and part-time employees of the County government would be eligible to be included in a unit of recognition. Per Mr. Lloyd's suggestion, we have modified that language as is reflected on lines 47-48;

(3) p. 5, lines 120-124: new definition of "Uniform Services" submitted to us by Mr Lloyd. As an alternative to this definition, Mr. Lloyd suggested modifying Section 33-65(e) lines 164-166 on p. 6 to read as follows:

Police	Fire & Rescue	Corrections	Sheriff
Private	Firefighter (PVT)	Correctional Officer I	Deputy Sheriff I
PFC	Fire Technician	Correctional Officer II	Deputy Sheriff II
Corporal	Rescue Technician	Correctional Officer III	
	Paramedic		

Council may wish to discuss this alternative;

(4) p. 6, lines 158-160: number of units limited to seven; however, as indicated in the Statement of Legislative Intent, the Council would consider changing that number at a future date upon the recommendation of the Chief Administrative Officer or a group of employees;

(5) p. 6, lines 164-164: units in "uniform services" limited to ranks of corporal, equivalent rank or below (see (3) above);

(6) p. 6, lines 167-169: opportunity for those disputing determination of units to be heard by the Chief Administrative Officer;

(7) p. 7, lines 191-194: elections to be conducted by the Personnel Office;

(8) p. 7 and 8, lines 223-227: County may provide for payroll deductions for dues. Please note that Amendment #2 provides for mandatory deductions. Council vote needed on this matter;

(9) p. 8, lines 248-249: costs of elections borne 50% by the County and 50% by organizations who appear on the ballot;

(10) p. 8, line 257: County to meet at least two times annually with each certified organization.

(11) p. 8 and 9, lines 259-261: Section (b) enumerating matters not to be discussed deleted in its entirety.

(12) p. 11, Effective date provision: Council may wish to consider changing to emergency legislation.

Draft #2

11/29/76

Bill No. 11-76

Introduced: April 6, 1976

Enacted:

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

April Legislative Session 1976

By: Council President at request of County Executive

AN ACT to add a new Article IV, title "Employer-Employee Relations Act," to Chapter 33, title "Personnel" of the Montgomery County Code, 1972, as amended, to provide for the election and certification of employee organizations for the purposes of meeting with County officials concerning conditions of employment and the resolution of grievances; to provide for the designation of employee units from which such employee organizations are elected and which such organizations represent; to provide for the recognition of such employee organizations by the County; to provide for the preparation of position papers by the County and such employee organizations; to provide for procedures for the decertification of employee organizations; to define certain terms; to provide for the Chief Administrative Officer to finally resolve disputes arising under this Article; to specify responsibilities of the County and the employee organizations; to provide for the protection of those County employees who choose not to become members of an employee organization; and to provide for the retention of existing personnel laws and regulations and the option of any employee to pursue a grievance through procedures set forth therein.

Be It Enacted by the County Council for Montgomery County, Maryland that -

Sec. 1. Chapter ~~18A;~~ 33, title "PERSONNEL," OF THE MONTGOMERY COUNTY COUNCIL IS HEREBY AMENDED TO ADD A NEW ARTICLE IV TITLE "Employer -- Employee Relations," ~~is hereby added~~ to the Montgomery County Code 1972, as amended, ~~to follow immediately after Chapter 18~~ ARTICLE III thereof, and to read as follows:

ARTICLE IV

EMPLOYER-EMPLOYEE RELATIONS

33-62. Statement of Legislative intent.

The County Council hereby finds that the trend in labor relations between government and its employees is becoming somewhat aligned with the practices of the private sector of representation of employee groups by designated and elected employee organizations. The Council believes that government should take the initiative in providing a vehicle whereby government employee representation can emerge and evolve in a fashion consistent with both the needs of the employee and those of government. The Council further believes that this can best be accomplished by enacting local legislation which provides for the voluntary representation of government employees by their duly designated and elected employee organizations. The Council also believes that the efficient administration of the County government is enhanced by providing employees an opportunity to participate in the formulation and implementation of policies and practices affecting the conditions of their employment. BECAUSE THE COUNCIL BELIEVES IT IS DESIRABLE TO MINIMIZE THE PROLIFERATION OF EMPLOYEE UNITS, IT HAS LIMITED THE NUMBER OF SUCH UNITS TO SEVEN; HOWEVER, THE COUNCIL WOULD CONSIDER CHANGING THAT LIMITATION AT A FUTURE DATE UPON THE RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER OR A GROUP OF EMPLOYEES. THE COUNCIL FURTHER STATES THAT THE ELIGIBILITY AS TO MEMBERSHIP IN AN EMPLOYEE UNIT FOR PURPOSES OF MEET AND CONFER WILL NOT NECESSARILY BE EXTENDED IN THE SAME MANNER IF AUTHORITY FOR COLLECTIVE BARGAINING IS GRANTED.

33-63. Definitions.

As used herein, the following words and phrases shall be defined as follows:

a. "Certification" -- the procedure whereby employee organizations are elected and recognized to represent employee units.

~~b.--"Confidential-employee"----an-employee-who-in-the-course-of his/her-regular-duties-has-access-to-or-possesses-information-relating to-matters-which-could-be-the-subject-of-discussions-between-employee organizations-and-the-County.~~

b. ~~c.~~ "Decertification" -- the procedure by which the Chief Administrative Officer withdraws County recognition of an employee organization, with or without an election by the employees of an employee unit.

~~d.--"Employee----a-County-merit-system-employee-who-is-given-a-position with-the-anticipation-that-it-will-be-necessary-to-maintain-the-existence of-such-position-indefinitely-on-a-continuous-full-time,-year-round-basis The-term-"employee-does-not-include-supervisory,-confidential,-and -management-level-employees.~~

c. "EMPLOYEE" -- ANY COUNTY MERIT SYSTEM EMPLOYEE WORKING ON A CONTINUOUS FULL-TIME, CAREER OR PART-TIME, CAREER BASIS, ELIGIBLE TO BE INCLUDED IN A UNIT OF RECOGNITION EXCEPT FOR THE FOLLOWING:

(1) CONFIDENTIAL AIDES TO ELECTED OFFICIALS;

(2) ALL NON-MERIT SYSTEM EMPLOYEES;

(3) ALL HEADS OF PRINCIPAL DEPARTMENTS, OFFICES AND AGENCIES;

(4) DEPUTY OR ASSISTANT DEPARTMENT HEADS;

(5) EMPLOYEES PROVIDING DIRECT STAFF OR ADMINISTRATIVE SUPPORT TO THE DIRECTOR OF THE DEPARTMENT, OR DEPUTY OR ASSISTANT DIRECTORS WITHIN THE DIRECTOR'S IMMEDIATE OFFICE;

(6) EMPLOYEES WHO REPORT DIRECTLY TO OR WHOSE IMMEDIATE SUPERVISOR IS THE COUNTY EXECUTIVE, COUNTY COUNCIL, COUNTY COUNCILMEMBERS OR THE CHIEF ADMINSITRATIVE OFFICER AND THE PRINCIPAL AIDES TO THE FOREGOING;

(7) EMPLOYEES OF THE OFFICE OF THE COUNTY ATTORNEY;

(8) EMPLOYEES OF THE OFFICE OF BUDGET AND RESEARCH;

(9) EMPLOYEES OF THE OFFICE OF EMPLOYEE RELATIONS;

(10) EMPLOYEES OF THE PERSONNEL OFFICE;

(11) EMPLOYEES OF THE PERSONNEL BOARD;

(12) HEADS OF THE FOLLOWING CONSTITUENT OFFICES, DIVISIONS AND SECTIONS IN THE DEPARTMENT OF TRANSPORTATION EXISTING AT THE TIME OF ENACTMENT OF THIS BILL AND POSITIONS CARRYING A SIMILAR DEGREE OF PERSONNEL MANAGEMENT RESPONSIBILITIES IN OTHER DEPARTMENTS AND OFFICES AS DETERMINED BY THE CHIEF ADMINISTRATIVE OFFICER:

DIRECTOR'S OFFICE, OFFICE OF THE RIGHT OF WAY ACQUISITION, OFFICE OF ADMINISTRATIVE SERVICES, OFFICE OF TRANSPORTATION PLANNING, DIVISION OF TRANSPORTATION ENGINEERING, SUBDIVISION DEVELOPMENT SECTION, DESIGN SECTION, CONSTRUCTION SECTION, DIVISION OF TRAFFIC ENGINEERING, TRAFFIC PLANNING AND SURVEY SECTION, TRAFFIC OPERATIONS SECTION, DIVISION OF OPERATIONS, TESS MINIBUS, HIGHWAY MAINTENANCE SECTION, EQUIPMENT SECTION, AND DIVISION OF PARKING LOT DISTRICTS.

d. ~~e.~~ "Employee organization" -- any lawful organization which

represents employees in their employment relations with the County. The term "employee organization" does not include any organization which:

(1) discriminates with regard to terms and conditions of membership with regard to race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

(2) does not adhere to democratic procedures and practices with regard to election of officers, individual participation in organizational affairs, equal treatment under its by-laws, including dues processing, and disciplinary procedures; or

(3) does not maintain fiscal integrity in the conduct of the affairs of the organization, including accounting controls and regular financial reports to members.

e. ~~f.~~ "Employee unit" -- groupings of employees for purposes of representation in County/employee relations.

~~g.--"Management-level-employee"----any-employee-involved-directly in-the-determination-of-policy-or-who-responsibly-directs-the-implementation-thereof.~~

f. ~~h.~~ "Position paper" -- a non-binding written memorandum reflecting all items discussed by the County and an employee organization.

~~i.--"Professional-employee"----an-employee-engaged-in-work:~~

~~(1)--predominantly-intellectual-and-varied-in-character-as opposed-to-routine,-manual,-mechanical,-or-physical-work;~~

~~(2)--involving-the-consistent-exercise-of-discretion-and-judgment in-its-performance;~~

~~(3)--of-such-a-character-that-the-output-produced-or-the-result accomplished-cannot-be-standardized-in-relation-to-a-given-period of-time;-or~~

~~(4)--requiring-knowledge-of-an-advanced-type-in-a-field-of science-or-learing-customarily-acquired-by-a-prolonged-course of-specialized-study-in-an-institution-of-higher-learning.~~

~~j.--"Supervisor"----any-individual-having-the-authority-in-the-interest of-the-County-to:~~

~~(1)--hire,-transfer,-suspend,-recall,-layoff,-promote,-discharge assign-work,-reward-or-discipline-other-employees;~~

~~(2)--adjust-their-grievances;~~

~~(3)--responsibly-direct-them;-or-~~

~~(4)--effectively-recommend-the-aforementioned-action.~~

g. "UNIFORM SERVICES" --

THOSE ACTIVITIES ENGAGED IN THE PROTECTION OF LIFE AND PROPERTY, LAW ENFORCEMENT OR CORRECTIONAL ACTIVITIES, AND WHOSE EMPLOYEES HAVE AS THEIR PRIMARY DUTIES AND RESPONSIBILITIES THE OPERATIONAL ACTIVITIES OF SUCH PUBLIC SAFETY ACTIVITIES.

33-64. Employee rights.

a. An employee shall have the right, freely and without fear of penalty or reprisal, to form, join or assist and be represented by an employee organization or to refrain from any such activity.

b. Each employee shall have the right to be represented by employee organizations, including the right to meet with representatives of the County concerning conditions of employment and the resolution of grievances.

c. Nothing in this Article shall preclude the rights of an employee to pursue an individual grievance through established administrative procedures or through appeal to the Personnel Board, in that nothing in this Article shall circumvent or shall be deemed to supersede or annul the provisions of the Laws of the State of Maryland, the Montgomery County Charter, and the Laws and Ordinances of Montgomery County including the Personnel Regulations.

d. No employee, who is not a member of an employee organization shall ever be required to become a member of such an organization or to pay money to such an organization, except on a purely voluntary basis.

33-65. Determination of employee units.

a. The Chief Administrative Officer shall make the final determination as to the composition of employee units. In undisputed cases, the determination of appropriate units shall be made by the Chief Administrative Officer within thirty (30) calendar days after receipt of a request for certification under Section 33-66 of this Article.

b. Employee units may be established on the basis of groupings of employees who share a clear and identifiable community of interest. Such factors as those employees sharing common skills, working conditions, physical locations, organizational structures, and integrated work processes shall be considered. A unit shall not be established solely on the basis of the extent to which employees in a proposed unit have organized.

c. Determination of units shall be made so as to include the largest possible numbers of employees consistent with maintaining a community interest of employees to avoid proliferation and fragmentation of representative units. ~~No unit may include employees whose duties are management level, supervisory, or confidential in nature.~~ THE PROVISIONS OF THIS SECTION SHALL NOT PRECLUDE THE ESTABLISHMENT OF ONE UNIT TO REPRESENT ALL ELIGIBLE EMPLOYEES. THE NUMBER OF UNITS CERTIFIED SHALL NOT BE GREATER THAN SEVEN.

~~d. Professional employees shall not be included in a unit of non-professional employees unless a majority of such professional employees vote for inclusion therein.~~

d. ~~e.~~ Units for employees of the uniform services shall be limited to employees in the ranks of ~~sergeant~~ CORPORAL or equivalent rank and below.

e. ~~f.~~ In cases where the matters of unit determination are questioned, the decision of the Chief Administrative Officer shall be final. AFTER OPPORTUNITY IS PROVIDED FOR THOSE DISPUTING THE DETERMINATION TO BE HEARD BY THE CHIEF ADMINISTRATIVE OFFICER.

33-66. Procedures for certification of employee organizations.

a. Initially or where there is no official representative employee organization, the Chief Administrative Officer, upon the petition of an employee organization showing written evidence of interest by at least thirty percent (30%) of the employees of the employee unit, shall arrange for the conducting of a secret ballot election to determine whether the employees desire such organization to act as their representative. Following such petition, the Chief Administrative Officer shall give an appropriate notice to the employees involved.

b. An employee organization seeking to represent an employee unit shall submit to the Personnel Office a roster of its officers and representatives, a copy of its constitution and by-laws, and a schedule of dues for its members.

c. Eligibility to vote in any election for choice of an official representative shall be limited to employees who are filling County positions as of the beginning of the pay period preceding the election date.

d. Elections will be performed under the auspices and guidance of the Maryland State ~~Department~~ DIVISION of Labor and Industry, ~~Division of Arbitration,~~ MEDIATION AND CONCILIATION SERVICE which shall have the responsibilities and powers given to it under State law. ELECTIONS WILL BE CONDUCTED BY THE PERSONNEL OFFICE WHICH MAY USE THE SERVICES OF THE MARYLAND STATE ~~DEPARTMENT~~ DIVISION OF LABOR AND INDUSTRY OR ANY OTHER THIRD PARTY HAVING SIMILAR QUALIFICATIONS.

e. The ballot shall contain the name of any additional employee organization showing timely written evidence of interest by at least ten percent (10%) of the employees withint he appropriate employee unit. In every instance, the ballot shall contain a provision for a marking of "no representation." Where more than one employee organization is on the ballot and no one of the organizations receives a majority vote of the employees voting, a runoff election shall be held. The runoff election shall contain the two choices which received the largest and second largest number of votes in the original election.

f. When an organization receives a majority of valid votes cast in the election and when at least sixty percent (60%) of the employees eligible to participate in the election cast valid ballots, the Chief administrative Officer shall certify it as the official employee organization for the employee unit.

g. The County shall recognize as the official employee relations representative an employee organization which has been selected in accordance with procedures outlined in this Section 33-66.

h. Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional or other lawful associations with respect to matters or policies which involve individual members of the associations or are of particular applicability to it or its members.

i. No question concerning certification may be raised by an employee or an employee organization within one (1) year of the date of certification of an employee organization or the date that ~~no representative was selected by the majority of employees.~~ A MAJORITY OF THE EMPLOYEES VOTING VOTED FOR NO REPRESENTATION.

j. THE COUNTY MAY, AFTER DISCUSSIONS WITH AN EMPLOYEE ORGANIZATION AND ON THE BASIS OF A WRITTEN AUTHORIZATION FROM EACH EMPLOYEE,

PROVIDE FOR DEDUCTION FROM THE PAY OF SUCH EMPLOYEE MONIES IN PAYMENT OF MEMBERSHIP DUES IN A DULY CERTIFIED EMPLOYEE ORGANIZATION. SUCH MONIES SHALL BE REMITTED TO THE EMPLOYEE ORGANIZATION.

33-67. Procedure for decertification of employee organizations.

a. An employee organization shall be subject to decertification when thirty percent (30%) of the employees in the employee unit petition for the employee organization to be decertified. The procedures for determining whether, in fact, an employee organization shall be decertified shall be the same as those prescribed in Section 33-66 for the certification of an employee organization, except as provided in subsection b of this Section 33-67.

b. If an employee organization fails to adhere to any of the provisions of Section 33-73 dealing with employee organization responsibilities, then:

(1) its certification may be revoked by the Chief Administrative Officer after notice and an opportunity to be heard, and

(2) it may be disqualified by the Chief Administrative Officer from participating in representation elections for a period of up to two (2) years after notice and an opportunity to be heard.

33-68. Costs of conducting elections.

Any cost of conducting a secret ballot election under this Article shall be borne ~~equally~~ 50% by the County and 50% BORNE EQUALLY by the employee organization(s) whose name(s) appear on the ballots.

33-69. County-employee organization meetings and discussions.

a. An employee organization which has been recognized by the County pursuant to Section 33-66 shall be entitled to meet at reasonable times with County representatives to discuss with such representatives personnel policies, practices and matters affecting working conditions of the employee unit it represents, so far as discussions may be appropriate under existing laws or regulations. The County shall meet at least ~~once every two years~~ TWO TIMES ANNUALLY with each certified employee organization.

~~b. Such meegings and discussions shall not include matters with respect to the mission of the County government, its budget, its organization, the number of employees and the classifications and~~

~~grades of positions of employees assigned to an employee unit, work projects or tour of duty, the technology of performing County work, or other provisions that are inherent in the managerial process of determining the necessary steps to carry out the public service missions of the County. Furthermore, the County shall not be obligated to discuss matters which must necessarily be applicable to all employees on a uniform basis, such as the Employees' Retirement System and the Uniform Pay Schedule. However, the County may meet with employee organizations for the purpose of hearing their views on such matters.~~

~~c.~~ b. The requirement to meet shall not obligate either the County or an employee organization to agree to any proposal or to make any concession with respect to any matter discussed by the parties at such a meeting. Any decision made at any such meeting is in no way binding upon the parties.

~~d.~~ c. The County and an employee organization may, if desired, and at the conclusion of their discussions prepare written position papers which reflect for future reference the respective positions of the parties on the issues discussed at such meetings. Such position papers shall in no way legally bind any party to the matters expressed therein.

33-70. Employee organization representation of employee members.

a. An employee who is a member of an employee organization may request and shall be granted the right for a member OR REPRESENTATIVE of such organization to be present in any discussions or counseling with County representatives concerning an individual grievance.

b. An employee organization may submit a grievance concerning any dispute involving a claim of violation, misinterpretation or misapplication of the Personnel Regulations or work practices of the County on the same basis as provided for indiivdual grievances.

33-71. Disputes.

All decisions of the Chief Administrative Officer under the provisions of this Article shall be final, subject to appeal to the Montgomery County Personnel Board where provided by law.

33-72. County responsibilities.

It shall be the responsibility of the County not to:

a. interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;

//

b. encourage or discourage membership in an employee organization by discrimination in regard to hiring, tenure, promotion or other conditions of employment;

c. sponsor, control or otherwise assist an employee organization, except that the County may furnish customary and routine services and facilities when consistent with the best interest of the County, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

d. refuse to accord appropriate recognition to an employee organization qualified for such recognition; or

e. refuse to consult, confer, or meet with an employee organization certified pursuant to this Article.

33-73. Employee organization responsibilities.

It shall be the responsibility of every employee organization not to:

a. interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;

b. attempt to induce the County to coerce an employee in the exercise of the rights under this Article;

c. coerce, attempt to coerce, or discipline, fine, or take other economic sanction against an employee member of an employee organization as punishment or reprisal, or for the purpose of hindering or impeding work performance or the discharge of duties owed as an employee of the County;

d. call or engage in a strike, work stoppage, or slowdown, picket the County IN CONNECTION WITH A STRIKE, WORK STOPPAGE OR SLOWDOWN in a County-employee dispute, or condone any such activity by failing to take affirmative action to prevent or stop it;

e. discriminate against an employee with regard to the terms or conditions of membership because of race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

Sec. 2. Severability.

The provisions of this Act are severable and if any provision,

clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, section word or part had not been included therein, and if the person or circumstances to which the Act or part thereof is inapplicable had been specifically exempted therefrom.

Sec. 3. Effective date.

This Act shall take effect on the 76th say following the date on which it becomes law.

Proposed by: Councilmem
Christelle

AMENDMENT NO. 1
to
Bill 11-76

Add the following to the end of line 122:

Section 33-65, subsection c, ", provided, however, that nothing herein shall preclude such employees from meeting together and selecting representatives for conferences with the Chief Administrativ Officer or the County Executive."

AMENDMENT #2
to
Bill 11-76

Insert a new paragraph "j" following line 179 on page 7:

"j. The County shall, on receipt of written authorization of an employee, deduct from the pay of such employee money in payment of membership dues in an employee organization and shall remit such money to said employee organization."

11-76 Copies to Council 12/14

26756

December 13, 1976

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'76 DEC 13 PM 5:08
MONTGOMERY COUNTY
COUNCIL OFFICE

Memorandum

To: Mr. John Menke, President, County Council

From: James A. Mills, President, M.C.G.E.O.

Subject: Bill #11-76, Draft #2

Having recently reviewed Draft #2, of the above, and the Memorandum dated 12/10/76, submitted to you by Mr. Gleason.. I make the following requests and observations.

Mr. Gleason's request to include a management rights clause is unacceptable in its entirety. The position he expounds, though worded differently is one which was thoroughly discussed and rejected during work sessions. If adopted, it would limit labor's right to present its position in written factual form to management. That could seriously hamper proper justification of labor's positions and make thoughtful indepth considerations required in problem solving extremely difficult. Also, the limits and specifics of what these management rights entail are not clearly defined.

Mr. Gleason also points out in his memorandum of 12/10/76, that enactment of Bill #11-76 under emergency legislative conditions will result in "immediate responses" from employee groups for recognition and that would require supplemental funds to implement. I can assure you that Bill #11-76, if passed in its present form, would not produce from this organization any "immediate responses" for recognition. I predicate this opinion on the mood evidenced by our Delegate Assembly at its last meeting.

No two aspects of this bill are of more importance to this organization (and management as well) than membership eligibility and dues check-off. The limits this bill imposes on membership eligibility are totally unacceptable. Not only would it eliminate our Vice-Presicent of Supervisors if enacted, but our organization would be effectively split as well (less than 600 members would remain). Some of the more important results of this split would be immediate fragmentation within the remaining membership, outside unions then would acquire an immediate favorable position because of our failure to secure a voice for all employees. Lack of visible results on this bill have already produced this effect to some degree as Mr. Lloyd is aware, and has made my task a much more difficult one. A large segment of county employees would also be deprived of formal recognition and all the rights that accompany formal recognition. Polarization of staff and supervisors would occur immediately and radical elements would be provided with the necessary "ammunition" to strengthen their causes and direct their actions toward the public arena rather than the conference table. Finally, fragmentation will produce successful demands for an increase in the number of "appropriate" units" (more organizations) if not under this council, then under the next council. This is a situation management as well as this organization would not like to witness and need not occur..

Therefore, I request that lines 47 through 78, in Draft #2 of Bill #11-76 be deleted in its entirety. That strong consideration be given by the County Council to replace the deleted material with the elgibility format contained in our original Bill #23-76 and favorably accepted (almost unanimously) by speakers testifying when the bills were introduced. Certainly lines 25 through 29 ("The Council further states that the eligibility as to membership in an employee unit for purposes of meet and confer will not necessarily be extended in the same manner if authority for collective bargaining is granted.") should eliminate any concern the council might have should they grant our request.

I remember well, my earlier testimony before the council when bills #11-76 and #23-76 were introduced. Councilman Hovsepian requested me not to adopt an inflexible position concerning grievances prior to worksession discussion. His suggestion was thoughtfully considered and later adhered to.

I now request the council not to become inflexible in their position on eligibility and hear our plea. We have an opportunity to establish a formal channel of communication between management and labor that will not be predicated upon the "adversary roll" we have so often heard mentioned. Exployees do not want to become adversaries of management but partners with management so as to effectively and economically carry out the will of the public whom we all serve.

As a parting comment, I would like to emphasize the fact that the employee/employer relations bill is no different than any other law and could be readily amended by this legislative body should it be deemed necessary. Therefore, I urge your most serious consideration and efforts to grant this organization its request. Place your trust in the employees you manage and that trust will bear dividends for management, labor, and the general public. Management can then negociate with an employee organization that represents all the employees and not various groups of outside unions that represent some of the employees. Once the main body of county employees are represented by various outside unions rather than an employee's organization, you will find it impossible to legally limit their participation in "appropriate units". This must be avoided <u>now</u>.

James A. Mills

James A. Mills, President
M.C.G.E.O.

cc: To all Council members.

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, October 14, 1976 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Conference Room, County Office Building, Rockville, Maryland, at 8:10 P.M. on Thursday, October 14, 1976.

PRESENT

Norman L. Christeller, President
John L. Menke, Vice President
Elizabeth L. Scull, President Pro Tem
Esther P. Gelman
Neal Potter
Dickran Y. Hovsepian

ABSENT

Jane Ann Moore

The President in the Chair.

Re: Worksession on Bills Nos. 11-76 & 23-76, Employee/Employer Relations

The Council met in worksession on Legislative Bills Nos. 11-76 and 23-76, Employee/Employer Relations, with Director of the Office of Personnel Lloyd; Assistant County Attorney Hutt; Mr. James Mills, President of the Montgomery County Government Employees Organization; Council Staff Director McDonell; and Legislative Research Coordinator Schloo.

President Christeller noted that during the last worksession on Bills No. 11-76 and 23-76, the Council requested that Messrs. Lloyd and Mills prepare a listing of those positions in the Department of Transportation which they believe should be included and excluded from joining a meet and confer employee organization under the Council's revised definition of exclusions. Mr. Lloyd's list is before the Council; Mr. Mills was unable to obtain the necessary information from the Personnel Office. He suggested that the Council review the list and raise any questions they have regarding specific positions. President Christeller noted that the criteria used by Mr. Lloyd is that contained in Bill No. 11-76, proposed by the County Executive, and does not conform to the decisions made by the Council at the last worksession.

In response to questions as to why Mr. Lloyd would exclude the Information & Research Assistant in the Director's office from joining the organization, he stated that this specific position is a confidential employee. This class of positions is not always confidential, however. There are many gray areas that are questionable.

President Christeller stated that the purpose of the list prepared by Mr. Lloyd was to give the Council an opportunity to see how its revised definition of employees to be excluded would be applied to one particular department. He noted that in Mr. Lloyd's listing, the Administrative Aide V would be excluded while the Administrative Aides I and IV would be permitted to be included in the organization. In a seven-member office, it is hard to handle confidential material that does not involve all the employees. The Administrative Aide IV is just as likely to be typing confidential papers as is the Administrative Aide V. The Director can learn to segregate the work, but that may be unwise. He expressed the view that all employees in the Director's Office should be excluded.

Mr. McDonell stated that he attempted to develop language to solve the nomenclature problem associated with "administrative aides" and "administrative assistants." In the new definition of "employees eligible to join an employee organization" he suggested that the Council delete the phrase [administrative aides to director of department, deputy or assistant directors] and insert in lieu thereof: employees providing direct staff or administrative support to the director of the department, or deputy or assistant directors within the director's immediate office.

After discussion and without objection, the Council agreed that all positions in a department head's immediate office should be excluded from joining an employees organization.

A discussion was held regarding the inclusions and exclusions of specific positions within the Office of Right-of-Way Acquisition, Office of Administrative Services and the Office of Transportation Planning within the Department of Transportation. Mr. Lloyd stated that he and CAO Hussmann agree that all supervisory personnel should be excluded from the organization. This would include positions such as Accountant III and Planner IV.

Mr. Mills expressed the opinion that the director and assistant director of departments and offices should be excluded, but that no other employees should be excluded.

Councilwoman Scull stated that since the Council's last worksession on these bills, she attended a seminar on the subject of public sector labor relations. She came away with a strong feeling that supervisors must be on

the management team. One speaker made the point that during meet and confer sessions, the employees will bring in proposals for discussion; management should also have its own proposals to offer. Good proposals cannot be developed without input from supervisors from all levels. The speaker also felt that an effective management team must include middle and first line supervisors.

Councilman Menke stated that if the employee organization evolves into a collective bargaining system the County government will have an adversary relationship between two major groups of employees. This, to him, would be an undesirable situation, regardless of how good morale is. However, a meet and confer organization does not necessarily have to evolve into collective bargaining. He has hopes that the organization could develop into something that will provide employees with a strong method of reaching management with their problems without triggering an adversary relationship. Exclusion of supervisors from the organization, especially first and middle line supervisors, would be more likely to cause an adversary relationship. Exclusion of supervisors is a polarizing element.

Mr. Lloyd stated that once the membership of an employee organization has been established it will be difficult to exclude certain members if it evolves into a collective bargaining system. If collective bargaining is permitted by State law, the fact that certain employees were permitted to join the first organization becomes strong precedent for continuing their membership in the new organization.

Councilman Menke agreed that supervisors cannot be permitted to join a collective bargaining unit; however, he is not convinced that collective bargaining is desirable, and believes that many real benefits can be achieved through a less adversary-style process. He inquired as to whether it is reasonable to set a different standard for membership in a meet and confer organization.

President Christeller noted that during the last worksession on these bills, the Council proceeded on the assumption that decisions as to membership would continue if a collective bargaining system is developed.

Mr. McDonell suggested that perhaps the Council could include a caveat in the law that recognizes that the membership will have to be changed if a collective bargaining system is instituted.

Councilman Menke inquired as to whether supervisors could make a legal claim that they have vested rights and should be permitted to join a collective bargaining unit.

Mr. Lloyd stated that courts have been very strongly influenced by "past practices", which would include membership of organizations, personnel policies and working conditions. He stated that loyalty is a key issue in this matter. A program should be developed to improve supervisors' attitudes towards their positions so that they feel they are a part of management.

Councilman Menke stated that if supervisors are excluded from joining the meet and confer organization, the County would be obligated to implement a program such as Mr. Lloyd suggested. However, this would be a polarizing element, and would build momentum towards collective bargaining.

Mr. Tull, MCGEO, urged the Council to experiment with a process that is not typical unionism to see whether, in fact, supervisors can participate in a meet and confer organization without conflict. He expressed the view that Mr. Lloyd's list of employees to be included and excluded is more strict than the usual industrial application of exclusions.

President Christeller stated that he would support Councilman Menke's approach of not excluding all supervisors from the meet and confer organization, with a caveat as suggested by Mr. McDonell to the effect that decisions as to inclusions and exclusions are being made with a conscious recognition of the fact that this is not a collective bargaining situation, and that the membership should not be construed in any way to establish a precedent with regard to County policy as to which positions to exclude from a collective bargaining unit.

Councilman Hovsepian suggested that the Council provide that employees excluded from the meet and confer organization may organize separately. Supervisors frequently have different sets of problems than the employees. President Christeller stated that this approach would be more desirable in a collective bargaining situation.

Councilman Menke stated that he would prefer to begin the process with a single organization; however, a separate organization for supervisors may be desirable in a collective bargaining situation.

Mr. McDonell stated that, in changing the basis for membership in a collective bargaining unit, the County may have to bargain away a lot of things. It is a matter of economics to the organization; a lot of dues-paying members would be excluded from the organization.

Mr. Mills stated that many people within MCGEO share Councilman Menke's viewpoint that it would be desirable to avoid a collective bargaining situation. It is hoped that the meet and confer organization will work effectively, but there has to be a meaningful effort on the part of management to see that it does. If the Council excludes first line supervisors from the meet and confer organization, he is almost certain that the employees would not want recognition under those conditions.

In response to questions, Mr. Lloyd stated that he would consider section heads to be middle management; Mr. Mills stated that he would not consider them as middle management.

Councilman Hovsepian stated that in the Department of Transportation there is one very large section with as many employees as a number of other departments. The size of a section or division is not a criterion for inclusion or exclusion from the organization; it is the level of responsibility that the section head has. He inquired as to whether section heads would be excluded from the organization.

Councilman Menke expressed the view that section heads would have to be excluded. They are an identifiable head of an office with a constant set of responsibilities. Perhaps in the case of a very large section, the assistant section head should be excluded. However, he would not exclude the positions of Work Force Leader II, as Mr. Lloyd has.

Councilman Hovsepian agreed that section heads should be excluded from joining the organization, but not assistant section heads.

Mr. Tull recommended that if section heads are excluded from the organization, the Council permit a separate unit for supervisory personnel.

Councilmembers Christeller and Hovsepian indicated that they cannot support two separate units because there are a lot of supervisory personnel who are not excluded from joining.

President Christeller recommended that the Council's definition of "employee eligible to join an employee organization" be amended in the final

phrase to add the words and sections following the words "heads of the constituent offices and divisions", deleting the word [and] between the words "offices" and "divisions". He suggested that the specific names of the offices, divisions and sections within the Department of Transportation be listed in the bill.

Mr. Mills urged the Council not to go below the division level in its exclusions.

Without objection, the Council agreed with President Christeller's suggestion.

(The Council recessed at 9:30 P.M., and reconvened at 9:40 P.M.)

With respect to the issue of whether or not "professional employees" should be included in the organization, Mr. Lloyd stated that Bill No. 11-76 provides that professional employees should not be in the same organization as other employees unless they so elect. Professional employees are unique in that they are not necessarily managers and neither are they "rank and file" employees. They are well-paid employees and typically identify with management, yet they are technicians doing specific tasks.

Councilman Hovsepian pointed out that a definition of "professional employee" is unnecessary with the Council's definition of "employees eligible to join an employees organization". He stated that no one has to join the organization if she or he does not want to.

President Christeller stated that it should be left to the discretion of professional employees as to whether or not they want to form a separate unit.

After discussion and without objection, the Council agreed to delete the definition of "professional employee", lines 62 through 74, page 4, Bill No. 11-76, and to delete paragraph d., lines 123 through 125, page 5.

In response to a question regarding the meaning of "employees of the uniform services", Mr. Lloyd stated that that would include police, firefighters, the Sheriff's Office and corrections officers.

President Christeller stated that since the fire departments are independent entities, the firefighters are not County employees and would not be covered by this bill. He stated that the term "uniform services" should be defined.

Mr. Whitney, Executive Vice President of the International Brotherhood of Police Officers, suggested that, within the Police Department, the membership be limited to corporals, privates first class and privates. He stated that he views the organizations permitted by these bills as the forerunners of collective bargaining. It is not workable, nor effective, to include supervisors in the same unit with employees; it results in a lot of conflicts. The entire Department was polled and the results were decisive. The police officers do not want a mix of supervisors and employees. He stated that his organization represents 350 police departments around the country, and he has seen systems that have included officers up to the position of assistant chief of police. This results in situations where employees file grievances against the people who are active members of the organization.

Mr. Lloyd stated that in the uniformed services channels of supervision are more clear than they are in other departments.

Without objection, the Council agreed to delete the word [sergeant] in line 127, Bill No. 11-76, and insert in lieu thereof corporal. The Council also agreed that the term "uniformed services" should be defined.

Mr. Lloyd noted that in the Sheriff's Office, the position of Deputy Sheriff III is the same rank as a corporal in the Police Department.

The Council did not agree with Mr. Lloyd's suggestion that the Council substitute the Personnel Director for the Chief Administrative Officer as the person who shall make the final determination as to the composition of employee units.

In response to a question as to why the Personnel Board recommended that it make the final determination as to the composition of the units, Mr. Lloyd stated that it is common practice to provide for an appeal to a third party. The Executive Branch wanted the procedure to remain within the County government.

Councilman Hovsepian stated that such action would put the Personnel Board in a conflicting situation, as it is the body that hears employee grievances. He noted that non-merit system employees will be excluded from the organization. The CAO is responsible for administration of the merit system and should have the final decision.

President Christeller expressed the view that the Personnel Board is not in a position to make a judgment on the issue of unit determination or composition. The CAO should perform this management function. He would not propose that the decision be appealable to the courts. He suggested that the following language be added to the end of line 129: provided that he has given full opportunity for persons disputing the determination to make their case. President Christeller stated that there should be a method whereby people can be sure that the CAO has personally heard their arguments for unit determination. He further suggested that the law provide that undisputed cases shall be determined within 30 days.

Mr. Hutt stated that regardless of language in the bill, there is an inherent right to appeal arbitrary and capricious decisions to the courts.

After discussion and without objection, the Council added the following language to the end of line 129, Bill No. 11-76: after opportunity is provided for those disputing the determination to be heard by the CAO.

In response to questions regarding Mr. Lloyd's suggested language that the number of employee units certified shall not be greater than five, Mr. Lloyd stated that he tried to anticipate what a normal breakdown of employee units might be. He believes that employees may organize into the following groups: police, service and maintenance, clerical, professional and technical, and one additional unit for unforeseen circumstances. He stated that it is important to avoid a proliferation of units.

President Christeller stated that the Council should not attempt to set a precise number, but should include a number in the law with the understanding that it is an attempt to discourage proliferation of units. If there is a valid reason for having an additional unit, the CAO would have to say to those employees that the Executive Branch will send the Council a bill to amend the law to permit one more unit, and that the employees should explain the need therefor to the Council. He recommended that the law specify no more than six employee units.

After discussion and without objection, the Council agreed to add to the statement of legislative intent a statement to the effect that the bill limits the number of employee units, but does so with the understanding that

the Council would always consider changing that limitation upon a recommendation of the Chief Administrative Officer or a group of employees. The Council agreed that the statement of legislative intent would be a part of the bill rather than a separate resolution.

After further discussion, the Council agreed to add the following language to the end of line 122: The provisions of this Section shall not preclude the establishment of one unit to represent all eligible employees. The number of units certified shall not be greater than seven.

At the suggestion of Mr. Lloyd and without objection, the Council deleted the language contained in lines 148 through 151, page 6, Bill No. 11-76, and inserted in lieu thereof: Elections will be conducted by the Personnel Office which may use the services of the Maryland State Department of Labor and Industry or any other third party having similar qualifications. Mr. Lloyd indicated that the Personnel Office would coordinate with employee groups before using a third party.

With respect to the percentage of employees necessary to validate an election, Mr. Lloyd stated that 60% of the employees eligible to participate in the election is commonly used elsewhere, but he does not know the historical reasons therefor. He would be reluctant to require a simple majority.

Mr. Whitney stated that a lot of time and money are put into the election process, and often 60% participation is not achieved. It would be undesirable to have to have another election because only 59% of the eligible employees voted.

Councilwoman Scull stated that she does not understand the requirement for 60% participation, noting that a very small percentage of the electorate participate in primary elections. She further noted that Presidential elections are not invalidated because less than 60% of the electorate participated.

In response to questions as to how the Personnel Office would conduct the elections, Mr. Lloyd stated that voting would be done at multiple work sites, and monitored by either the Personnel Office or a third party.

Councilman Hovsepian suggested that the Council agree to 60%, provided that the balloting takes place at places of employment and other convenient locations. He stated that if employees have to drive several miles to cast their vote, it will cut down on the number participating. He suggested that the

statement of legislative intent contain a statement that the procedures for elections and balloting shall be so designed to provide maximum participation and the elections should be held at convenient locations for employees.

President Christeller stated that if only two units are formed, it will be difficult to achieve 60% voter turn-out. There will be some people who do not want any representation or who do not want to become involved in the process. He stated that the bill does not have to provide that balloting shall be convenient to employees. It will be convenient, or there will have to be another election.

Mr. Lloyd added that 10% of the employees are absent at any one time. Mr. Whitney noted that Bill No. 11-76 does not provide for a second election.

In response to questions regarding the intent of lines 178 and 179, page 7, Mr. Lloyd stated that a majority of those voting could vote to have no representation.

At the suggestion of President Christeller and without objection, the Council deleted the language in line 179, page 7, and inserted in lieu thereof: a majority of employees voting voted for no representation.

With respect to the issue of payroll deductions for membership dues, Mr. Lloyd stated that the issue should not be determined at this time. It is normally an item of discussion between the employee unit and management, and should be worked out in that context. He noted that the County government will not be in a position to enforce the payment of dues.

Mr. Mills stated that the position that Mr. Lloyd has taken is totally unacceptable to MCGEO. The law should provide for mandatory collection of dues. Mr. Tull added that the Executive Branch feels no compulsion to negotiate this item.

Councilwoman Scull suggested that the Council agree to provide this service under the meet and confer situation, but indicate in the law that if a collective bargaining situation evolves, it would be an item for negotiation.

In response to a statement that the authority for dues collection exists without writing it into the law, Mr. Mills stated that there has been a total unwillingness on the part of County government to discuss the matter.

President Christeller expressed the view that the Legislative Branch should not grant things that should be bargained for.

Mr. Lloyd stated that if collection of dues is mandated, the Council should address the question of who will pay the cost of collection.

Councilman Hovsepian agreed with Councilwoman Scull's suggestion that payroll collection of dues should be provided for in a meet and confer situation, but that the law should state clearly that this does not set a precedent for collective bargaining situations. The law should also indicate that the expenses will be paid by the organization by agreement.

Mr. Tull noted that the paragraph beginning on line 229, Bill No. 11-76, specifies that no agreements shall be binding on any of the parties.

President Christeller suggested that the statement of legislative intent indicate that the Council recognizes the desirability of payroll collection of dues, but did not include provisions for it in the law because it should not set a precedent for collective bargaining situations that may evolve. The legislative intent should acknowledge that the County government has this authority, but the bill should not make it mandatory. He stated that he supports Mr. Lloyd's suggestion for the addition of a new paragraph j. in Section 33-66, page 7, to read as follows: j. The County may, after discussions with an employee organization and on the basis of a written authorization from each employee, provide for the deduction from the pay of such employee monies in payment of membership dues in a duly certified employee organization. Such deduction shall not be obligatory.

Mr. Tull suggested the addition of the following language to the end of the suggested new paragraph j.: Such monies shall be remitted to the employee organization.

In response to statements that the Executive Branch has been unwilling in the past to provide this service after saying it would, President Christeller stated that the County government has no established mechanism for recognizing employee organizations. Mr. Lloyd added that there are several employee organizations at the present time; some are based on sex and race.

Councilman Menke stated that if the County Executive refuses to provide this service, the Council could amend the law to mandate it.

President Christeller suggested that the final sentence of suggested new paragraph j. be deleted as it is negative.

Due to the absence of a quorum, the Council instructed that the bill be prepared with the suggested paragraph j., with the mandatory language referring to dues collection from Bill No. 23-76 shown as an amendment to the bill. The full Council will take a vote on the matter.

With respect to the issue of who shall bear the cost of conducting elections, Mr. Whitney stated that a recent election to choose a bargaining unit for 4,100 police officers, held at nine different locations, cost $4,000 to $5,000.

Mr. Mills stated that the method by which the election is conducted will affect its cost. A double envelope system would cost considerably less than having a third party conduct the election.

President Christeller stated that if the cost is borne solely by the County, there could be frivolous requests for elections.

Councilman Menke stated that even if the County split the cost with the organization, it would still be a big burden on the organization. He requested specific information as to the cost of an election.

President Christeller inquired as to who would pay the cost if it is to be split between the County and the organization if the organization loses the election. The organization may not be anything other than a group of people who collected enough signatures on a petition to get on the ballot. He suggested that perhaps the County could require a bond from the group submitting the petition. He further suggested that the cost be split, with 50% to be paid by the County, and the remainder to be borne equally by all organizations on the ballot.

Without objection, the Council agreed that the cost of elections would be borne 50% by the County and 50% between the employee organization(s) on the ballot.

Without objection, the Council agreed with Mr. Lloyd's suggestion to delete at least [once every two years] from line 209, page 8, and insert in lieu thereof: <u>two times annually</u>.

With respect to the issue of matters to be discussed with employee organizations, President Christeller expressed the view that Bill No. 11-76 contains too many exclusions.

Mr. Lloyd stated that, once again, he is concerned with setting precedents. The exclusions listed in the bill are typically excluded from collective bargaining agreements. They are items that are the prerogative of management.

Councilman Menke referred to the exclusion of discussions of "technology of performing County work", stating that he understands the Executive Branch does not want to get into discussions of whether a faster printing press should be used, for example. However, the issue of closing the incinerator was a matter of technology which affected many employees. The employee organization should have the right to question how management will take care of the affected employees and make suggestions for constructive changes.

After discussion and without objection, the Council agreed to delete paragraph b., lines 211 through 223, page 8 of Bill No. 11-76, stating that the law should not specify or prohibit items to be discussed. Paragraph a. covers in a broad fashion the types of items to be discussed.

At the suggestion of Mr. Whitney and without objection, the Council added the words or representative after the word "member" on line 237, page 9.

A discussion was held regarding the issue of the responsibilities of the employee organization. It was noted that Bill No. 11-76 prohibits the condoning of strikes, work stoppages or picketing by failing to take affirmative action to stop it. Bill No. 23-76 contains no such prohibition.

Mr. Tull stated that the subject provision was not included in Bill No. 23-76 because it is meaningless. The officers of the organization could say to the employees, "Go back to work," and would be complying with the law.

Councilman Menke referred back to the requirement that the County is required to meet with the employee organizations at least twice a year, and stated that the employee organization should have the same obligation. Councilman Hovsepian stated that if conditions are satisfactory and the employee organization does not have anything to discuss, there should not be a requirement for a meeting.

At the suggestion of President Christeller and without objection, the Council added the words upon request by the County after the word "County" in line 284, page 10.

Mr. Whitney noted that the prohibition in line 278, page 10, for picketing the County has been declared unconstitutional by the courts; it interferes with freedom of speech. However, picketing can be prohibited in connection with a strike or work stoppage. Picketing in itself can be in the nature of providing information.

Without objection, the Council agreed to add the words in connection with a strike, work stoppage or slowdown in lieu of the words [in a County-employee dispute] on line 278, page 10.

The meeting adjourned at midnight.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

11-76 2614.0

Office Of The County Executive

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MONTGOMERY COUNTY
COUNCIL OFFICE

MEMORANDUM

Date December 10, 1976

To John Menke, President, County Council

From James P. Gleason, County Executive

Subject Bill No. 11-76

I have briefly reviewed the draft of Bill No. 11-76 amended after several work sessions. I am particularly concerned about the absence of any clause clearly delineating the County's sole right to operate the County Government in all management rights inherent therein. Any employee relations bill without a management rights clause makes such legislation extremely defective in my view.

I am mindful of the County's thinking in terms of matters for discussion with employee groups. We have historically and will continue to discuss with employees and employee groups all matters of concern to them. Although such matters may be discussed, those concerning management rights should not proceed to the point of developing position papers any more than we would seek position papers on established employee rights.

Therefore, in keeping with the legislative intent, but also in order to avoid future problems with the absence of a management rights clause, the following language is suggested:

Section 33-69(d). NO POSITION PAPER SHALL INCLUDE THOSE MATTERS CONCERNING THE COUNTY'S SOLE RIGHT TO OPERATE THE COUNTY IN ALL MANAGEMENT RIGHTS INHERENT IN IT. THESE RIGHTS INCLUDE BUT ARE NOT LIMITED TO MATTERS WITH RESPECT TO THE MISSION OF THE COUNTY GOVERNMENT, ITS BUDGET, ITS ORGANIZATION, THE NUMBER OF EMPLOYEES AND THE CLASSIFICATIONS AND GRADES OF POSITIONS OF EMPLOYEES ASSIGNED TO AN EMPLOYEE UNIT, WORK PROJECTS OR TOUR OF DUTY, THE TECHNOLOGY OF PERFORMING COUNTY WORK, OR OTHER PROVISIONS THAT ARE INHERENT IN THE MANAGERIAL PROCESS OF DETERMINING THE NECESSARY STEPS TO CARRY OUT THE PUBLIC SERVICE MISSIONS OF THE COUNTY.

On the matter of the effective date of the bill, I notice that the draft proposes to make Bill No. 11-76 emergency legislation. Please be aware that the enactment of this bill will precipitate immediate responses from employee groups for recognition and will necessitate a supplemental appropriation in order to provide funds for such implementation.

BILL NO. 71-81

Introduced: November 3, 1981
Enacted: April 6, 1982
Executive: April 16, 1982
Effective: July 16, 1982

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

November Legislative Session 1981

Chapter 53

Laws of Montgomery County, 1982

AN ACT to amend Chapter 33, title "Personnel" of the Montgomery County Code, 1972, as amended, by amending Subsection 33-63(c) of Section 33-63, title "Definitions", of Article IV, title "Employer-Employee Relations" to provide that Police Department employees who are represented by a certified employee organization pursuant to Article V of this Chapter shall not be considered an employee under Article IV of this Chapter; by amending Section 33-74, title "Cost of Living Adjustment" to provide that this Section shall not apply to an employee of the Police Department who is represented by a certified employee organization pursuant to Article V of this Chapter; and by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to provide for a policy statement, definitions to be used in the Article, creation of a permanent umpire in order to administer and implement certain provisions of the Article, certain employee rights, the selection, certification, and decertification procedures, subjects which would be appropriate for collective bargaining, subjects which would not be appropriate for collective bargaining, impasse procedures, prohibited employer and employee practices, certain provisions concerning strikes and lockouts, expression of views and the effect of prior enactments.

Be It Enacted By The County Council for Montgomery County, Maryland, that -

Sec. 1. Subsection 33-63(c) of Section 33-63, title "Definitions" of Article IV, title "Employer-Employee Relations", of Chapter 33, title "Personnel", of the Montgomery County Code 1972, as amended, is hereby amended to read as follows:

33-63. Definitions.

* * *

(c) Employee. Any County Merit System employee working on a continuous full-time, career or part-time, career basis, eligible to be included in a unit of recognition except for the following:

(1) Confidential aides to elected officials;

(2) All non-Merit System employees;

(3) All heads of principal departments, offices and agencies;

(4) Deputy or assistant department heads;

(5) Employees providing direct staff or administrative support to the director of the department, or deputy or assistant directors within the director's immediate office;

(6) Employees who report directly to or whose immediate supervisor is the County Executive, County Council, County Council members or the Chief Administrative Officer and the principal aides to the foregoing;

(7) Employees of the Office of the County Attorney;

(8) Employees of the Office of Management and Budget;

(9) Employees of the Office of Employee Relations;

(10) Employees of the Personnel Office;

(11) Employees of the Merit System Protection Board;

(12) Heads of the following constituent offices, divisions and sections in the Department of Transportation existing at the time of enactment of this bill and positions carrying a similar degree of personnel management responsibilities in other departments and offices as determined by the Chief Administrative Officer:

Director's Office, Office of Right-of-Way Acquisition, Office of Administrative Services, Office of Transportation Planning, Division of Transportation Engineering, Subdivision Development Section, Design Section, Construction Section, Division of Traffic Engineering, Traffic Planning and Survey Section, Traffic Operations Section, Division of

Operations, TESS Minibus, Highway Maintenance Section, Equipment Section and Division of Parking Lot Districts.

(13) An employee of the Police Department, as defined in Section 33-76 of this Chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, title "Police Labor Relations" of this Chapter.

Sec. 2. Section 33-74, title "Cost of Living Adjustment", of Article IV, title "Employer-Employee Relations", of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended by adding a new Subsection (c) to read as follows:

33-74. Cost of Living Adjustment.

* * *

(c) The provisions of this Section shall not apply to an employee of the Police Department, as defined in Section 33-76 of this Chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, title "Police Labor Relations" of this Chapter.

Sec. 3. Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to read as follows:

ARTICLE V. POLICE LABOR RELATIONS.

33-75. Declaration of Policy.

It is the public policy of this County, pursuant to Charter Section 510, enacted as a result of citizen initiative, and purpose of this Article to promote a harmonious, peaceful, and cooperative relationship between the County government and its police employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the Police Department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment through a representative of their choice or to refrain therefrom; and that any collective bargaining between the County government and a representative of those police employees be done in

good faith with no interference with the orderly process of government and furthermore, that agreements reached through collective bargaining be implemented.

It is also recognized, however, that police employee organizations and the County government each possess substantial means by which they may initiate actions regarding the wages, hours, and working conditions of employees. Consequently, in order to preserve an appropriate balance between labor and management in the police service, the Council hereby declares that once a representative has been voluntarily selected, collective bargaining shall be utilized in place of, but not in addition to, existing means of initiating governmental action as to those subjects which are defined as appropriate for collective bargaining in this Article.

33-76. Definitions.

When used in this Article:

"Agency shop" means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

To "bargain collectively" means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this Article.

"Certified representative" means an employee organization selected in accordance with the procedures of this Chapter to represent the unit.

"Employee" means any police officer in the classification of Master Police Officer I, Master Police Officer II, Police Officer I, Police Officer II, Police Officer III, and Police Officer Candidate, or equivalent non-supervisory classifications, but not those in the classification of Police Sergeant or any equivalent or higher classification.

"Employer" means the County Executive and his designees.

"Employee organization" means any organization which admits to membership employees and which has as a primary purpose the representation of

such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization. Such organization shall not admit to membership any person other than law enforcement officers.

"Lockout" means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

"Mediation" means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

"Strike" means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition or authority of the employee or an employee organization.

"Unit" means all employees.

33-77. Permanent Umpire.

(a) There is hereby created the position of Permanent Umpire, so as to provide for the effective implementation and administration of Sections 33-79 and 33-82 of this Article concerning selection, certification and decertification procedures and prohibited practices. The Permanent Umpire shall exercise the following powers and perform the following duties and functions:

(1) Adopt, amend and rescind, from time to time, such rules, regulations and procedures for the implementation and administration of Sections 33-79 and 33-82 as are consistent with this Article;

(2) Request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the Permanent Umpire to properly carry out his functions;

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this Article and issue said certification or decertification;

(5) Investigate and attempt to resolve or settle, as provided in this Article, charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure, the Permanent Umpire must defer to that procedure for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this Article. Furthermore, the Permanent Umpire shall defer to State procedures in those matters which are governed by the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland;

(6) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and,

(7) Exercise any other powers and perform any other duties and functions as may be specified in Sections 33-79 and 33-82 of this Article.

(b) The Permanent Umpire shall be appointed by the County Executive, with the confirmation of the County Council, shall serve for a term of five (5) years and shall be eligible for reappointment; provided, however, that the Permanent Umpire shall not be reappointed if, during the period between 60 days and 30 days prior to the expiration of his term, the certified representative files a written objection to such reappointment with the County Executive. The Permanent Umpire shall be a person with experience as a neutral in the field of labor relations and shall not be a person who, on

account of vocation, employment or affiliation can be classed as a representative of the interests of the employer or any employee organization.

(c) The Permanent Umpire shall be paid a per diem fee as set forth by contract with the County and shall be reimbursed for necessary expenses.

33-78. Employee Rights.

(a) Employees shall have the right:

(1) To form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) To be fairly represented by their certified representative, if any.

(b) The employer shall have the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative shall serve as the bargaining agent for all employees and shall have the duty to represent fairly and without discrimination all employees without regard to whether the employees are or are not members of the employee organization or are paying dues or other contributions to it or participating in its affairs; provided, however, that it shall not be deemed a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of the certified representative to receive membership dues deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate such provisions has been suspended under Section 33-84. No collective bargaining agreement may include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision.

33-79. Selection, Certification and Decertification Procedures.

(a) The certification or decertification of an employee organization as the unit's representative for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) Any employee organization seeking certification as representative of the unit shall file a petition stating its name, address, and its desire to be certified with the Permanent Umpire, and shall transmit forthwith a copy of such, not including the names of the supporting employees, to the employer. Said petition must contain the uncoerced signatures of thirty percent (30%) of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) Where an employee organization has been certified, an employee within the unit may file a petition with the Permanent Umpire and shall transmit forthwith a copy of such to the employer and the certified representative, not including the names of the supporting employee for decertification of the certified representative. The petition must contain the uncoerced signatures of at least thirty percent (30%) of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) The employer may file a petition with the Permanent Umpire seeking an election for certification of an employee organization or, where an employee organization is so certified, to cause decertification of the representative where the employer has reason to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, and shall transmit a copy of such to the employee organization seeking to obtain or retain certification.

(4) Petitions may be filed between May 1, 1982, and June 30, 1982. Thereafter, petitions may be filed between September 1 and September 30 of any year, but no sooner than 22 months following an election held pursuant to this Section.

(5) If a lawful collective bargaining agreement is in effect, no petition shall be entertained unless filed during September of the final year of the agreement.

(6) If, during the period of May 1 to June 30, 1982, a petition is filed by the incumbent representative of unit employees certified under the Employer-Employee Relations Article of this Chapter, and no other employee organization files a valid petition, that incumbent certified representative

shall be certified without an election, provided it produces evidence, acceptable to the Permanent Umpire, of majority representation.

(b) If the Permanent Umpire determines that a petition is properly supported and timely filed, the Permanent Umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Permanent Umpire and shall be conducted by secret ballot at such time and place as the Permanent Umpire may direct. The Permanent Umpire may select and retain services of an agency of the State of Maryland, or similarily neutral body to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten (10) days before the election of at least ten percent (10%) representation of the employees within the unit, and a choice that the employee does not desire to be represented by any of the named employee organization(s).

(3) The employer and each party to the election may be represented by observers selected in accordance with such limitations and conditions as the Permanent Umpire may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenge or the Permanent Umpire's decision thereon, unless the number of challenges is not determinative, in which latter event the challenged ballot(s) shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Permanent Umpire in the presence of the observers.

(6) The Permanent Umpire immediately shall prepare and serve upon the employer and each of the parties a report certifying the results of the election. If, and only if, an employee organization has received the votes of a majority of the employees who voted, the Permanent Umpire shall

certify the employee organization so elected as the exclusive agent. If no employee organization has received the votes of a majority of the employees, the Permanent Umpire shall certify no representative, but if a majority of the employees do not vote for no representation, a run-off election shall be conducted. The run-off election shall contain the two choices which received the largest and second largest number of votes in the original election.

(c) The aforesaid certification of results shall be final unless, within seven (7) days after service of the report and certification, the employer or any other party serves on all parties and files with the Permanent Umpire objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds thereof. The Permanent Umpire shall investigate the objections and, if substantial factual issues exist, the Permanent Umpire shall hold a hearing thereon. Otherwise, the Permanent Umpire may determine the matter without hearing. The Permanent Umpire may invite, either by rule or by invitation, written or oral argument to assist in determination of the merits of the objections. If the Permanent Umpire finds that the election was conducted in substantial conformity with this Article, the Permanent Umpire shall confirm the certification initially issued. If the Permanent Umpire finds that the election was not held in substantial conformity with this Article, the Permanent Umpire shall cause another election to be held pursuant to the provisions of this Section.

(d) The cost of conducting an election shall be paid by the County.

(e) Voluntary recognition is prohibited under this Article, and no certification may be issued without an election except as provided for in subsection 33-79(a)(6).

33-80. Collective Bargaining.

(a) Upon certification of an employee organization, as provided in Section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;

(2) Pension and retirement benefits for active employees only;

(3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;

(4) Hours and working conditions, including the availability and use of personal patrol vehicles;

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;

(6) Matters affecting the health and safety of employees; and,

(7) The effect on employees of the employer's exercise of rights enumerated in subsection (b) hereof.

(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.

(c) 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.

(d) Collective bargaining shall commence no later than November 1 preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties.

(e) Any provision for automatic renewal or extension of a collective bargaining agreement shall be void. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end June 30.

(f) Any collective bargaining agreement shall become effective only after ratification of the agreement by the employer and the certified representative, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures.

(g) A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer and the employer shall make a good faith effort to have such term or condition implemented by Council action. On or before April 25, the County Council shall indicate by a majority vote its intention to appropriate or otherwise implement the agreement, or its intention not to do so, and shall state its reasons for any intent to reject any part or parts of the agreement. In the event the Council indicates its intention to reject, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible in an attempt to negotiate an

agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the Council on or before May 10. Any agreement shall provide either for automatic reduction or elimination of such conditional wage and/or benefits adjustments if the Council fails to take action necessary to implement the agreement, or if funds are not appropriated, or if a lesser amount is appropriated.

33-81. Impasse Procedure.

(a) Prior to November 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an Impasse Neutral either by agreement or through the processes of the American Arbitration Association. The Impasse Neutral shall be required to be available during the period from January 20 to February 1. Fees, costs and expenses of the Impasse Neutral shall be shared equally by the employer and the certified representative.

(b) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the Impasse Neutral. If the parties have not reached agreement by January 20, an impasse shall be deemed to exist.

(2) Whenever an impasse has been reached, the dispute shall be submitted to the Impasse Neutral. The Impasse Neutral shall attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

(3) If the Impasse Neutral, in the Impasse Neutral's sole discretion, finds that the parties are at a bona fide impasse, the Impasse Neutral shall require each party to submit a final offer which shall consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the Impasse Neutral shall choose. If only complete package proposals are required, the Impasse Neutral shall require the parties to submit jointly a memorandum of all items previously agreed upon.

(4) The Impasse Neutral may, in the Impasse Neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The Impasse Neutral may hold a hearing for this purpose at a time, date and place selected by the Impasse Neutral. Said hearing shall not be open to the public.

(5) On February 1 or prior thereto, the Impasse Neutral shall select, as a whole, the more reasonable, in the Impasse Neutral's judgment, of the final offers submitted by the parties. The Impasse Neutral may take into account only the following factors:

a. Past collective bargaining contracts between the parties, including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits and working conditions;

b. Comparison of wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington metropolitan area and in Maryland;

c. Comparison of wages, hours, benefits and conditions of employment of other Montgomery County personnel;

d. Wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County;

e. The interest and welfare of the public;

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

(6) The Impasse Neutral shall not compromise or alter the final offer that he selects. Selection of an offer shall be based on the contents of that offer. No consideration shall be given to, nor shall any evidence or argument be received concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the Impasse Neutral. However, the Impasse Neutral shall consider all previously agreed upon items integrated with the specific disputed items to determine the single most reasonable offer.

(7) The offer selected by the Impasse Neutral, integrated with the previous agreed upon items, shall be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and shall have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(g) above. The parties shall execute such agreement.

33-82. Prohibited Practices.

(a) The employer or its agents or representatives are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of any rights granted to them under the provisions of this Article;

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it, pursuant to contract or otherwise; provided that the employer and a certified representative may agree to and apply a membership dues deduction provision as provided herein and to reasonable use of County facilities for communicating with employees;

(3) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, wages, hours or conditions of employment, provided that nothing in this Article shall preclude an agreement from containing a provision for an agency shop;

(4) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this Article;

(5) Refusing to bargain collectively with a certified representative;

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached between the employer and the certified representative pursuant to this Article;

(9) Engaging in a lockout of employees.

(b) Employee organizations, and their agents, representatives and employees, are prohibited from:

(1) Interfering with, restraining or coercing the employer or employees in the exercise of any rights granted under this Article;

(2) Restraining, coercing or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) Refusing to bargain collectively with the employer if such employee organization is the certified representative;

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(5) Hindering or preventing, by threats of violence, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or egress from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance by any person, public or private;

(6) Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, supplies, equipment or services by the employer;

(7) Taking or retaining unauthorized possession of property of the employer or refusing to do work or use certain goods or materials as lawfully required by the employer;

(8) Forcing or requiring the employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification;

(9) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed or to be performed.

(c) A charge of prohibited practice may be filed by the employer, employee organization, or any individual employee. The charge or charges shall be filed with the Permanent Umpire, with copies to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the Permanent Umpire to investigate the charge. The Permanent Umpire may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The Permanent Umpire shall have authority to maintain such independent investigation as the Permanent Umpire determines necessary and to develop rules and regulations therefor. If, upon investigation, the Permanent

Umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the Permanent Umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the Permanent Umpire determines that the person charged has committed a prohibited practice, the Permanent Umpire shall make findings of fact and conclusions of law and shall be empowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this Article. Remedies of the Permanent Umpire may include, but shall not be limited to, reinstating employees with or without back pay, making employees whole for any loss relating to County employment suffered as a result of any prohibited practice, withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits. If the Permanent Umpire finds that the party or parties charged have not committed any prohibited practices, the Permanent Umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Permanent Umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than six (6) months prior to the filing of the charge.

33-83. Expression of Views.

The expression of any views, argument or opinion, or the dissemination thereof, whether orally, in writing or otherwise, shall not constitute or be evidence of a prohibited practice under any of the provisions of this law nor be grounds for invalidating any election conducted under this law if such expression or dissemination contains no threat of reprisal or promise of benefit.

33-84. Strikes and Lockouts.

(a) No employee or employee organization shall either directly or indirectly cause, instigate, encourage, condone or engage in any strike, nor the employer in any lockout. No employee or employee organization shall obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole or otherwise compensate any employee for or during the period when said employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during such strike.

(c) If an employee or employee organization shall violate the provisions of this Section, the employer, after adequate notice and a fair hearing before the Permanent Umpire who finds that the aforesaid violations have occurred and finds that any or all of the following actions are necessary in the public interest, may, subject to the Law Enforcement Officer's Bill of Rights, Article 27, Sections 727 et seq., Annotated Code of Maryland:

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in such conduct;

(2) Terminate or suspend employee organization's dues deduction privilege, if any;

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of two (2) years.

(d) Nothing contained herein shall prohibit an employer from seeking any remedy available in a court of competent jurisdiction.

33-85. Effect of Prior Enactments.

Nothing contained in this Article shall be construed to repeal any laws, executive orders, legislation, rules or regulations adopted by the County and any department or agency thereof not inconsistent with the provisions of this Article.

Sec. 4. Severability.

The provisions of this Act are severable and if any provision, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional

provision, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 5. Effective Date.

This Act shall take effect on the 91st day following the date on which it becomes law.

Approved:

Neal Potter — Apr. 9, 1982
President, Montgomery County Council — Date

Approved:

Charles W. Gilchrist — April 16, 1982
County Executive — Date

ATTEST:

Anna P. Spates — April 16 1982
Secretary of the County Council — Date

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intentionally blank.

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, April 6, 1982 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 11:25 A.M. on Tuesday, April 6, 1982.

PRESENT

Neal Potter, President
Scott Fosler
Ruth Spector
Michael L. Gudis, Vice President
David L. Scull
Rose Crenca
Esther P. Gelman

The President in the Chair.

The Journal of March 23, 1982, was approved as amended.

INTRODUCTION OF BILLS:

Re: Introduction of Bill No. 12-82, Nursing Homes

Upon motion of Councilwoman Gelman, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to introduction of Bill No. 12-82.

Bill No. 12-82 was introduced by the Council President at the request of the County Executive. The title of the bill is set forth below: AN EMERGENCY ACT to amend Chapter 25, title "Hospitals, Sanitariums, Nursing and Care Homes" of the Montgomery County Code 1972, as amended, by repealing and reenacting with amendments Section 25-10, title "Violations and Penalty", and Section 25-22, title "Revocation or Suspension Generally"; to provide for injunctive relief to enforce the Chapter and to correct violations, to provide for an increase in the fine, and to provide for a ban on admissions and related procedures.

Re: Introduction of Bill No. 13-82, Freeze on Salary Maxima of All Grades

Upon motion of Councilwoman Gelman, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to introduction of Bill No. 13-82.

Bill No. 13-82 was introduced by Councilman Scull. The title of the bill is set forth below: AN EMERGENCY ACT to amend Section 33-74, title "Cost of Living Adjustment" of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, to require that the salary maxima for all grades be maintained at the Fiscal Year 82 level, and to eliminate the need for certain findings by the Council in its budget resolution.

Councilwoman Spector inquired as to whether the Council will have time to address a revision of the pay plan prior to May 15, when the budget must be adopted by the Council. During discussion of the concept of the bill last week, Councilmembers indicated that there was a need to examine and compare individual classifications and to do a comprehensive revision of the pay plan if that is found to be necessary. She does not believe the Council has time to give the matter sufficient study.

Councilwoman Crenca agreed, and stated that she has asked Deputy Staff Director Spengler to address what she sees as an inconsistency. The data presented to the Council during the last budget season indicated that the salaries of County employees were below those of other area jurisdictions and large cities. However, Mr. Spengler's memorandum to the Council of March 24, 1982, concludes that "the County's maximum salaries for all grades in the pay plan exceed those of neighboring jurisdictions." She has asked Mr. Spengler to reconcile this data. If this reconciliation can be produced in the timeframe necessary, she would be willing to address the provisions of Bill No. 13-82. However, if the Council freezes the salaries of County employees, she believes that some way must be found to freeze Councilmembers' salaries. She requested that the Council obtain a legal opinion as to what can be done in this regard.

President Potter stated that an amendment to the State Constitution would be required to allow the Council to affect the salaries of elected officials during their term of office. If there is a desire to lower Councilmembers' salaries, a bill could be introduced to establish $10,000 as the salary of the next County Council.

Councilwoman Gelman pointed out that any Councilmember is free to not accept his or her salary and turn it back to the General Fund or give it to a charity. It can be handled very simply and personally. She expressed concern with the idea that perhaps the Council will not have time to address the bill. If the Council does not have time for a thorough review, the bill will not be enacted. However, that is not a reason to oppose introduction of the bill. She stated that the fact the bill was prepared so rapidly shows that there is some will to work on it. She noted that she had wanted the Council to address the entire pay plan in a comprehensive fashion.

President Potter expressed the view that the Council will find time to address the bill after May 15, although it would be most helpful to do it before May 15. He noted that weekends are available for additional Council meetings.

Councilwoman Crenca expressed the view that it would be more significant for the Council to review job classifications in relation to the pay scale than to simply freeze the maximum salary of each grade. She believes that certain positions are in the wrong classification. As soon as the budget deliberations are over, she would like the Council to set in motion a thorough examination of the salary scale in order to end debate over conflicting data.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

Re: Bill No. 57-81, Amendments to Electrical Code, Deferred

Bill No. 57-81, Amendments to Electrical Code, was called for final reading. The Council had before it for consideration Draft No. 6, dated April 1, 1982.

At the suggestion of President Potter and without objection, the Council deferred enactment of Bill No. 57-81. President Potter indicated that he would provide the Housing Committee with a memorandum detailing his concerns with the bill.

Re: Consideration of Bill No. 53-81, Smoking Prohibitions; Remanded to Environment & Energy Committee

Bill No. 53-81, Smoking Prohibitions, was called for final reading. The Council had before it for consideration Draft No. 4, dated March 31, 1982.

Councilwoman Gelman expressed appreciation to the Environment and Energy Committee for its work on this bill, noting that the effort to regulate smoking was begun many years ago by Councilwoman Scull. When Councilwoman Gelman was elected to the Council, she worked with Councilwoman Scull to enact Section 24-9, Smoking Prohibitions and Restrictions. Now the concept has gained broader support. However, the Committee seems to have excluded certain things that have been part of the existing law, such as the prohibition against smoking in hospital rooms. She related the circumstances under which the former Council added hospital rooms as places in which there shall be no smoking unless agreed to by all patients in the room.

Councilwoman Spector stated that the Environment and Energy Committee has amended the bill to provide that the entire hospital shall be a no smoking area. Specific smoking lounges will have to be designated.

Councilwoman Gelman stated that, if that is the case, she did not understand that the burden of the law has been reversed. She suggested that the following sentence on lines 18 through 20, page 2, is superfluous: A reasonable effort shall be made to assign patients to sleeping rooms according to the patient's individual nonsmoking or smoking preference. In addition, she believes that the sentence would force a hospital which normally permits no smoking at all to allow its patients to smoke in their rooms. If the sentence is not deleted, the phrase "Where hospitals rules permit," should precede the sentence.

Councilwoman Spector pointed out that the sentence is not substantially changed from existing law and has not been confusing to hospital administrators.

Upon motion of Councilwoman Gelman, duly seconded and without objection, the Council added the following phrase prior to the words "A reasonable effort" on line 18, page 2: Where smoking is permitted by the health care facility,.

In response to inquiries by Councilwoman Gelman, it was noted that the bill would require restaurants to designate no-smoking areas, but would not require walls or partitions to separate the smoking and no-smoking areas. The non-smoking areas could be so designated by means of a movable sign.

Councilwoman Gelman suggested that a restaurant that has a very strong filter and ventilation system should be exempted from the requirement to designate a no-smoking area. She further suggested that thought be given to having the requirement on restaurants commence with the establishment of new restaurants. She stated that it has become very fashionable for patrons to request no-smoking sections and many restaurants have accommodated them to the point that it has become a way of life. The places that do not accommodate non-smokers do not get that clientele. She believes that the present law has worked very well and perhaps this bill would impose a requirement that is not needed. She noted that restaurants are facing difficulties now because of the economy.

President Potter stated that the objection of most restauranteurs stems from the lack of flexibility inherent in designating a separate room a no-smoking area. The Committee has accommodated that concern by permitting such an area to be designated by means of a flexible sign and by not requiring walls to separate the area.

Councilwoman Gelman expressed the view that the language of the proposed bill is almost meaningless as it applies to restaurants. If a restaurant is filled with smokers and a non-smoker requests a table, the non-smoker would be seated at the first available table and that area would be designated a non-smoking area. She is not sure that anything positive will be accomplished.

Councilwoman Crenca stated that this bill attempts to do the impossible, i.e., make everyone happy and preserve everyone's rights. The Environment and Energy Committee's best effort is being presented to the Council. There are people who find smoke objectionable and they have requested a fighting chance to breathe reasonably clean air. The Committee received a lot of data concerning the detrimental effects of second-hand smoke. On the other hand, smokers feel

that they have certain rights based on tradition. Management of private businesses wants to be able to conduct business without a tremendous amount of governmental interference.

Councilwoman Crenca stated that Bill No. 53-81 is an attempt to legislate courtesy and good health. While the goal cannot be achieved 100%, it is an attempt that will raise the awareness on the part of people that non-smokers have rights and must speak up for those rights. If a person wants to smoke in a public place, he must ask the proprietor to let him do so in a way that is least injurious to the health and comfort of others. However, this must be done in a flexible manner and based on good will. She stated that she cannot think of another way to address this problem without the government spending a tremendous amount of money to enforce it and creating much ill will. She believes that flexibility and awareness will go a long way toward raising the consciousness of smokers to be receptive to the needs of other citizens.

Councilwoman Crenca stated that she has four amendments that have been suggested to her by persons who have read the bill. She would like to thank them and all of the other people who attended the Committee meetings and did a tremendous amount of research. She distributed the four amendments to the Council.

Councilman Scull stated that he did not attend the Committee meetings and would benefit from a brief summary of why the Committee felt it was necessary to weaken the bill. He believes that a strong case has been made that smoking is dangerous to the smoker and non-smoker. The government has the power to legislate changes in behaviour and, therefore, attitude. He referred to the enactment of civil rights legislation in the early 1960s and the resultant changes in people's experiences and attitudes. If the Council feels strongly that smoking is a danger, then it is worthwhile to legislate no smoking; however, the law must be made meaningful. Montgomery County has pioneered in this field, and it has been helpful to have the County set an example. Councilman Scull noted that the Committee has eliminated the criminal penalties for owners of private establishments; he is curious to know if there have been any problems which caused the Committee to eliminate that portion of the law. In the work place, where people spend most

of their days, the Committee has eliminated the requirement that there be no smoking except in private office areas. The Committee has made a step forward by requiring the employer to consider the needs of non-smokers; however, he inquired as to what was so compelling about the rights of smokers that caused the Committee to eliminate that restriction.

Councilwoman Crenca stated that the Committee considered the practical aspects of the proposal. Employers objected to being made "referees" where there is a feeling of ill will resulting from someone smoking. A certain amount of flexibility must be provided so that employers can address the problem when asked to do so by a non-smoker. Short of banning smoking completely, there must be a way to address the situation. The Committee did not feel it could go that far. Employers pointed out that employees are assigned work spaces according to the work flow; the flow would be disrupted if they had to be grouped according to smokers and non-smokers. In addition, a ban on smoking except in private offices could be discriminatory. Higher-ranking employees, who enjoy private offices, would be permitted to smoke in the work place while lower-ranking employees could not. The Committee decided to let management address the situation so that employees who do not want to breathe smoke can be accommodated by an individual assessment of their situation. Signs can be posted as to where smoking is permitted and not permitted. It could apply to one desk or a section of a room. Each work place is different; it would be difficult to establish standards that would cover all situations. Councilwoman Crenca stated that she toured a building where the situation is being addressed in this manner and found that it was working well. She pointed out, however, that it works best in work places that have good ventilation systems to begin with.

President Potter noted that that is not true of the Council Offices where a substantial problem exists. If the employer can find a solution, he would like to hear from him.

Councilman Fosler noted that the Council received a statement of economic impact of expanding the smoking prohibition in Montgomery County, prepared by James and Associates. He inquired as to the Committee's reaction to that analysis and the extent to which it affected the Committee's thinking.

President Potter stated that that was a special survey of restaurant owners conducted by a firm hired by the owners. The Committee considered the report and responded by not requiring restaurants to have separate, permanent non-smoking sections. Restaurant owners will have the flexibility to respond to the flow of business.

Councilwoman Spector added that the persons conducting the survey misunderstood the provisions of the bill and the economic impact was somewhat overstated. In addition, the Lung Association called attention to the economic impact to the individual of added health care costs as a result of smoking or second-hand smoke. This impacts as well on the health care delivery system and insurance premiums.

Councilwoman Gelman moved that the words "when requested" be added after the word "areas" in line 8d, page 5. Her motion failed for lack of a second. She expressed the view that it is not as important to keep restaurants smoke-free as it is the Council's Hearing Room. She believes that the burden should be on customers to request non-smoking areas, but that every effort should be made to accommodate that person in the most effective way possible.

Councilwoman Spector stated that the Committee wanted to avoid putting the burden on the non-smoker to request a no-smoking section. Some people are not willing, able or likely to speak up and ask for something which is viewed as an imposition by many. Without adequate signs, many people are not aware that there is a law on the books to back them up in their requests. She believes that the burden should be on restaurants and private establishments to provide non-smoking areas and to indicate the areas with signs.

In response to Councilman Scull's earlier inquiry concerning penalties, Legislative Counsel Frankel stated that the Committee heard from restaurant owners who strongly objected to having criminal penalties imposed on them for refusing to ask a customer to leave who smokes in the non-smoking section.

Councilwoman Gelman pointed out that enforcement of this law by the County government has been nil, and called attention to the great need to enforce it within the County Office Building.

Councilman Scull moved, duly seconded, that the Council restore the original language of the bill in subsection (g), lines 1 through 9, page 5, and in subsection (j)(1), line 26, page 5.

Councilwoman Gelman stated that she would like to have a report on the history of enforcing the existing law. Mr. Frankel pointed out that the Committee was briefed by Ms. Martin, Health Department, who indicated that she had had only one real problem with compliance.

Councilman Scull stated that the effect of his motion would be to apply the same criminal penalty to restaurant owners that hospital administrators and food store managers have been subject to for several years.

President Potter suggested that the weaker penalty section be retained and applied to restaurants only, and that the original language of the penalty section be restored as a separate section to apply to all other establishments. Councilmembers Gelman and Spector indicated agreement with this suggestion.

In response to an inquiry as to why restaurants are different from other types of establishments where people come together for periods of time, Councilman Gudis stated that people to go restaurants primarily for social or business occasions and not out of necessity. Therefore, a certain amount of flexibility should be provided. He believes that the bill as presented accomplishes that goal. Restaurant owners or managers do not want to be placed in an awkward position of having to ask people to stop smoking and take the chance of alienating their customers.

Councilman Scull expressed the view that the problems cited by restaurant owners are severely overstated. So many restaurants have no-smoking sections now and they seem to function smoothly. For 25 years, restaurants have been regarded as public accommodations under the law, just like airplanes and buses. There are times when people have to eat in restaurants out of necessity, such as when working late or travelling. He believes that Councilmembers' views on this bill depend on how strongly they feel about smoking. The case has now been made that it is a serious detriment to health and the health of people breathing second-hand smoke. The right to enjoy a smoke must give way to the right to be free of smoke for reasons of health and comfort. He does not believe it would be an unfair burden to place restaurant owners under the same obligations as owners of other types of establishments.

In response to an inquiry, Mr. Frankel discussed the difference between criminal and civil penalties.

Councilman Scull expressed the view that civil penalties are insufficient and that this bill must be backed up by a criminal penalty. He suggested that the Council defer consideration of this bill and develop language for two penalty structures as suggested by President Potter.

After discussion and without objection, the Council deferred enactment of Bill No. 53-81 and remanded it to the Environment and Energy Committee for further consideration, along with the four amendments distributed by Councilwoman Crenca. Committee members requested that interested Councilmembers who are not members of the Committee attend the meeting or at least make their concerns known to the Committee so that they can be addressed. Councilwoman Crenca, Chairwoman of the Committee, noted that it will be difficult to schedule another Committee meeting during the operating budget worksessions.

Councilman Fosler in the Chair.

Re: Enactment of Bill No. 71-81, Collective Bargaining for Police

Bill No. 71-81, Collective Bargaining for Police, was called for final reading. The Council had before it for consideration Draft No. 4, dated March 30, 1982.

Mr. Hilliard, Director, Office of Personnel, and Mr. Torgesen of his staff, appeared before the Council and responded to questions of Councilmembers concerning the provisions of and amendments to the bill.

Several Councilmembers indicated that their recollection of the Council's actions during worksessions is different than the amendments reflected in Draft No. 4. Another Councilmember who was not present for the worksessions indicated concerns also.

Upon motion of Councilwoman Gelman, duly seconded and without objection, the Council deferred consideration of Bill No. 71-81 until later in the day when Mr. Hillman, Special Counsel for Labor Relations, can be present to respond to questions.

President Potter in the Chair.

Re: Deferral of Bill No. 76-81, Open Meetings for Homeowners Associations

Bill No. 76-81, Open Meetings for Homeowners Associations, was called for final reading. The Council had before it for consideration Draft No. 4, dated March 30, 1982.

Due to lack of time, the Council postponed enactment of Bill No. 76-81, and requested that the Housing Committee meet with interested people to discuss the amendments proposed by the Office of Consumer Affairs.

(The Legislative Session was recessed at 1:10 P.M., and reconvened at 2:30 P.M.)

Re: Enactment of Bill No. 71-81, Collective Bargaining for Police

Bill No. 71-81, Collective Bargaining for Police, was called for final reading. Mr. Hillman, Special Counsel for Labor Relations, appeared before the Council to respond to inquiries.

Mr. Hillman stated that the confusion in the Council's earlier discussion resulted from the fact that Draft No. 4 does not reflect an amendment made by the Council at its last worksession on this bill. Subsection (1), page 20, through subsection (2), page 21, were deleted in their entirety and were included in Draft No. 4 by mistake.

Without objection, the Council agreed to delete all of the language in subsections (1) and (2), pages 20 and 21.

The Council reviewed the remainder of Bill No. 71-81 and raised questions as to the various provisions of the bill.

Councilman Fosler stated that he has had a difference of interpretation with the Executive Branch as to the meaning of the phrase "effect on employees" as used in Section 33-80(a)(7), page 18, as being an item that is subject to collective bargaining as a result of the exercise of an employer's right. Mr. Hilliard would draw a distinction between the decision itself (such as a decision to lay off employees), and the way in which the decision is implemented (which employees to lay off first). The former would be prohibited, but the latter would

be bargainable in Mr. Hilliard's interpretation. However, Councilman Fosler expressed the view that the employer's rights extend to the implementation of the decisions; the "effect" is the consequence of the implementation.

Mr. Hillman stated that he would agree with Councilman Fosler's interpretation. The effect is the consequence to the employees. In a common labor relations situation, an employer would not have to bargain over the decision to shut down a plant, nor the implementation of the shutdown. However, the employer does have a duty to bargain over the effects on employees, such as severence pay and seniority rights.

President Potter expressed the view that a more precise phrase would be "bargain over the amelioration of the effects on employees."

Mr. Hillman expressed the view that the phrase suggested by President Potter is unnecessary because the words that have been used already have well-established meanings.

At the suggestion of President Potter and without objection, the Council restored the word Any in line 4, page 22.

Mr. Hillman responded to questions of Councilmembers concerning provisions that have been deleted from the bill because they have been addressed in other contexts or locations in the bill.

Upon motion of Councilman Fosler, duly seconded and without objection, the Council restored the language of subsection (b)(2), page 19, as follows: (2) To maintain and improve the efficiency and effectiveness of operations;.

After discussion and without objection, the Council inserted the word only after "employees" on line 11, page 18, to clarify that collective bargaining is permitted concerning pension and retirement benefits for active employees only.

During the discussion of the addition of the word "only" on line 11, page 18, the Council considered adding the word to the body of Section 33-80 to clarify that the listing of bargainable items was exclusive. However, after consideration of the fact that some subjects may arise in the future that are not enumerated, the Council added the word "only" on line 11 to clarify that the pensions of already-retired employees are not bargainable.

At the suggestion of President Potter, upon motion of Councilman Gudis, duly seconded and without objection, the Council deleted the word [such] from line 18, page 23, and inserted the words necessary to implement the agreement after the word "action" in the same line.

At the suggestion of President Potter and without objection, the Council deleted the word [most] from line 5, page 25, and inserted in lieu thereof more. The Council also corrected the spelling of the word "empowered" on line 18, page 30.

President Potter requested that the record reflect the intent of the Council that deletion of the section concerning "Use of Official Time" from page 31 does not give employees the right to use official time for union business. Mr. Hillman indicated that this is an item that is left to the bargaining process.

At the suggestion of President Potter and without objection, the Council inserted a comma after the word "interest" on the sixth line of subsection (c), page 32.

(The Council recessed from 3:10 P.M. to 3:30 P.M. to allow Councilmembers an opportunity to read through Bill No. 71-81 in view of the error that had been made in Draft No. 4.)

At the suggestion of Mr. Hillman and without objection, the Council deleted [33-80(c)(2)] from line 30, page 9; line 7, page 10; and line 18, page 11; and deleted the phrase [disagreement over obligation to bargain collectively] from line 1, page 10.

At the suggestion of President Potter and without objection, the Council deleted the word [jointly] from line 23, page 24, and inserted the word jointly after the word "submit" on line 24, page 24.

Councilman Fosler stated that the legislative history of Bill No. 71-81 should be clear that the Council defines "effect" as used in Section 33-80(a)(7) in a restrictive sense. The word shall not be used as a way of initiating collective bargaining over any items that are employer rights. If the interpretation is expanded, the Council will have to consider amendments to the law.

Councilman Scull stated that he agrees with Councilman Fosler's views on the meaning of the word "effect;" however, he does not believe that subsection (7) of Section 33-80(a) is needed. He believes that the language of the subsection is vague and the examples given during the worksession as to problems that might arise were not great enough to justify leaving such vague wording in the law.

Mr. Hillman stated that an employer right is the ability to lay off employees. The union might want to bargain about how to achieve the lay off, such as whether it should be done on the basis of seniority, on the basis of job classification, or by department. Those are the kinds of effects on employees that unions traditionally bargain about, and are the kinds of effects intended by Section 33-80(a)(7). The decisions about whether to lay off and how many employees are to be affected are clearly employer's rights.

Councilman Scull moved, duly seconded, that the Council delete subsection (7) from Section 33-80(a), page 18.

Councilman Scull expressed the view that the language of subsection (7) is vague and will raise more problems than it will solve. The employer has certain rights to hire, transfer, assign and schedule employees, and cannot do anything that does not have an effect on employees. He pointed out that establishing a legislative history does not have the force and effect of law; it reflects only the views of Councilmembers. Every word used in labor relations laws is significant. He stated that he has not heard a strong argument for retaining the subsection.

In response to President Potter's suggestion that the phrase "bargain over the amelioration of the effects on employees" be inserted in subsection (7), Mr. Hillman stated that that is largely what the subsection means, but there may be times when the employer does not want to "ameliorate" the effects. An employer may want to bargain and make the effects on employees harsher.

Mr. Katz, representing the Fraternal Order of Police, noted that the Permanent Umpire will make the decision about which items are bargainable and which are not. If the Council does not like his decision, the Council can amend the law.

Councilman Scull's motion failed, Councilmembers Gelman and Scull voting in the affirmative, Councilmembers Potter, Fosler and Crenca voting in the negative, Councilman Gudis not voting and Councilwoman Spector being temporarily absent.

President Potter stated that he voted in the negative because he believes that there is a substantial area of concern. The language may be vague, but he believes that there is a basic advantage in leaving fairly broad what can be negotiated. It would be disadvantageous to both parties if too much is excluded.

Councilman Fosler expressed the view that there are legitimate concerns as to how subsection (7) will be interpreted. One of the key factors in determining whether it will work successfully is how reasonable both parties are and how good the Permanent Umpire is in making his determinations. It is a subject that bears watching to see what develops. It is an item that may require modification in the future.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council approved the following amendments as reflected in Draft No. 4 of Bill No. 71-81 (amendments approved by the Council during this Legislative Session are in addition; capital letters indicate language added after introduction and strike-throughs indicate language deleted after introduction of the bill):

Sec. 1. Subsection 33-63(c) of Section 33-63, title "Definitions" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel", of the Montgomery County Code 1972, as amended, is hereby amended, to read as follows:

Sec. 33-63. Definitions.

* * *

(c) Employee. Any county merit system employee working on a continuous full-time, career or part-time, career basis, eligible to be included in a unit of recognition except for the following:

(1) Confidential aides to elected officials;

(2) All non-merit system employees;

(3) All heads of principal departments, offices and agencies;

(4) Deputy or assistant department heads;

(5) Employees providing direct staff or administrative support to the director of the department, or deputy or assistant directors within the director's immediate office;

(6) Employees who report directly to or whose immediate supervisor is the county executive, county council, county council members or the chief administrative officer and the principal aides to the foregoing:

(7) Employees of the office of the county attorney;

(8) Employees of the office of budget and research;

(9) Employees of the office of employee relations;

(10) Employees of the personnel office;

(11) Employees of the personnel board;

(12) Heads of the following constituent offices, divisions and sections in the department of transportation existing at the time of

enactment of this bill and positions carrying a similar degree of personnel management responsibilities in other departments and offices as determined by the chief administrative officer:

Director's office, office of the right-of-way acquisition, office of administrative services, office of transportation planning, division of transportation engineering, subdivision development section, design section, construction section, division of traffic engineering, traffic planning and survey section, traffic operations section, division of operations, TESS Minibus, highway maintenance section, equipment section and division of parking lot districts.

(13) An employee of the police department, as defined in Section 33-76 of this Chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, title "Police Labor Relations" of this Chapter.

Sec. 2. Section 33-74, title "Cost of Living Adjustment", of Article IV, title "Employer - Employee Relations", of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended, by adding a new Subsection (c), to read as follows:

Sec. 33-74. Cost of living adjustment.

(a) The county executive shall provide as a part of the annual recommended operating budget for the county government sufficient funds to implement the cost of living adjustment required by this section. The council shall accord one of the highest priorities to the full funding of the cost of living

adjustment, shall fund fully the seventy-five percent of Consumer Price Index cost of living adjustment unless reasons are given for not doing so, and shall make a finding in the budget resolution as to the extent to which full funding is achieved. Unless otherwise provided in the approved budget resolution which includes a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to county government employees, the chief administrative officer shall adjust the uniform salary plan for all classified employees of the county government beginning the first pay period on or after July 1 of each year by an amount not less than seventy-five percent of the change in the Consumer Price Index for all urban consumers in the Washington, D.C. area, although pay grades one through four of the uniform salary plan to which minimum wage and certain seasonal employees are assigned will be adjusted by changes in the minimum wage rates and salary surveys to determine the competitiveness of such salaries. The percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

The chief administrative officer may adjust the uniform salary plan in excess of the base percentage of seventy-five percent, provided funds are available and approved by the county council for such purpose.

(b) Notwithstanding the provisions in (a) above, for FY-82 only the following salary controls shall apply:

1. Salary maxima of grades 5 through 31 will be adjusted by the full cost-of-living granted by the County Council.
2. The salary maximum for grade 40 shall be $70,000.00.

3. The salary maxima for grades 32 through 39 shall be adjusted by the Chief Administrative Officer so that the dollar difference between the salary maxima of grades 31 through 40 is the same.

4. The salary for each merit employee in grades 5-31 will be adjusted by the full cost-of-living granted by the County Council to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

5. The salaries for merit employees in grades 32 through 39 will be adjusted by the full cost-of-living granted by the County Council only to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

6. The cost-of-living adjustment to the salaries of non-merit employees shall be determined by the County Executive but shall not exceed the cost-of-living granted merit employees.

7. No employee's salary is to be reduced below its level as of June 30, 1981 as a result of implementation of the provisions contained in paragraphs 1- 6 above.

(c) The provisions of this section shall not apply to an employee of the police department, as defined in Section 33-76 of this chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, Title "Police Labor Relations" of this chapter.

Sec. 3. Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to read as follows:

ARTICLE V. POLICE LABOR RELATIONS.

Sec. 33-75. DECLARATION OF POLICY.

It is the public policy of this County, pursuant to Charter Section 510, enacted as a result of citizen initiative, and purpose of this Article to promote a harmonious, peaceful, and cooperative relationship between the County government and its police employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the police department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively OVER WAGES, HOURS, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT through a representative of their choice or to refrain therefrom; and that any collective bargaining between the County government and a representative of those police employees be done in good faith with no interference with the orderly process of government and furthermore, that ~~the results~~ of AGREEMENTS REACHED THROUGH collective bargaining be implemented.

It is also recognized however, that police employee organizations AND THE COUNTY GOVERNMENT EACH possess substantial means by which they may initiate ~~governmental~~ actions regarding the wages, hours, and working conditions of employees ~~they represent or seek to represent~~. Consequently, in order to preserve ~~the delicate~~ AN APPROPRIATE balance between labor and management in the police service, the Council hereby declares that ~~collective bargaining may~~ be ONCE A REPRESENTATIVE HAS BEEN voluntarily selected COLLECTIVE BARGAINING SHALL BE UTILIZED in place of, but not

in addition to existing means of initiating governmental action as to those subjects which are defined as appropriate for collective bargaining in this Article.

Sec. 33-76. DEFINITIONS.

When used in this Article:

"Agency Shop" means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

To "bargain collectively" means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this Article.

"CERTIFIED REPRESENTATIVE" MEANS AN EMPLOYEE ORGANIZATION SELECTED IN ACCORDANCE WITH THE PROCEDURES OF THIS CHAPTER TO REPRESENT THE UNIT.

"Employee" means any police officer in the classification of Master Police Officer I, Master Police Officer II, Police Officer I, Police Officer II, Police Officer III, and Police Officer Candidate, or equivalent non-supervisory classifications, but not those in the classification of Police Sergeant or any equivalent or higher classification.

"Employer" means the County Executive and his designees.

"Employee Organization" means any organization which admits to membership employees and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization. SUCH ORGANIZATION SHALL NOT ADMIT TO MEMBERSHIP ANY PERSON OTHER THAN LAW ENFORCEMENT OFFICERS.

"Lockout" means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

"Mediation" means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

"Strike" means ~~the~~ A CONCERTED failure to report for duty, ~~or the~~ absence, ~~from one's position, or the~~ stoppage of work, or ~~the~~ abstinence in whole or in part from the full AND faithful, ~~or proper~~ performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition or authority of the employee or an employee organization.

"UNIT" means all employees.

Sec. 33-77. PERMANENT UMPIRE.

(a) There is hereby created the position of Permanent Umpire, so as to provide for the effective implementation and administration of Sections 33-79, 33-80(c)(2) and 33-82 of this Article concerning Selection and Certification of Employee

,DISAGREEMENT OVER OBLIGATION TO BARGAIN COLLECTIVELY
Organization/and Prohibited Practices. The Permanent Umpire shall exercise the following powers and perform the following duties and functions:

(1) To adopt, amend, and rescind, from time to time, such rules, regulations and procedures for the implementation and administration of Sections 33-79 ,33-80(c)(2) /and 33-82 as are consistent with this Article;

(2) To request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the Permanent Umpire to properly carry out his functions;

(3) To hold hearings and make inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel by issuance of subpoenas the attendance of witnesses ~~, not including elected County officials~~, and the production of relevant documents;

(4) To hold and conduct elections for ~~unit~~ certification or decertification pursuant to the provisions of this Article and to issue said certification or decertification;

(5) To investigate and attempt to resolve or settle, as provided in this Article charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure the Permanent Umpire must defer to that procedure

for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this Article. Furthermore, the Permanent Umpire shall defer to state procedures in those matters which are governed by the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland;

(6) To obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and

(7) To exercise any other powers and perform any other duties and functions as may be specified in Sections 33-79, 33-80(c)(2) and 33-82 of this Article.

(b) The Permanent Umpire shall be appointed by the County Executive, with the confirmation of the County Council, shall serve for a term of five (5) years and shall be eligible for reappointment PROVIDED HOWEVER THAT THE PERMANENT UMPIRE SHALL NOT BE REAPPOINTED IF DURING THE PERIOD BETWEEN 60 DAYS AND 30 DAYS PRIOR TO THE EXPIRATION OF HIS TERM THE CERTIFIED REPRESENTATIVE FILES A WRITTEN OBJECTION TO SUCH RE-APPOINTMENT WITH THE COUNTY EXECUTIVE. The Permanent Umpire shall be a person with experience as a neutral in the field of labor relations and shall not be a person who, on account of vocation, employment or affiliation can be classed as a representative of the interests of the employer or any employee organization.

(c) The Permanent Umpire shall be paid a per diem fee as set forth by contract with the County and shall be reimbursed for necessary expenses.

Sec. 33-78. EMPLOYEE RIGHTS.

(a) Employees shall have the right:

(1) To form, join, support. contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) To be fairly represented by their certified representative, if any.

(b) The Employer shall have the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative shall serve as the bargaining agent for all employees and shall have the duty to represent fairly and without discrimination all ~~unit~~ employees without regard to whether the employees are or are not members of the employee organization or are paying dues or other contributions to it or participating in its affairs, provided, however, that it shall not be deemed a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of the certified representative to receive membership dues deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate such provisions has been suspended

under Section 33-84. No collective bargaining agreement may include a provision requiring membership in, participation in the affairs of or contributions to an employee organization other than an agency shop provision.

Sec. 33-79. SELECTION, CERTIFICATION AND DECERTIFICATION PROCEDURES.

(a) ~~Procedures for determining the certified or recognized representative for the unit may be initiated in accordance with this subsection as follows:~~ THE CERTIFICATION OR DECERTIFICATION OF AN EMPLOYEE ORGANIZATION AS THE UNIT'S REPRESENTATIVE FOR THE PURPOSE OF COLLECTIVE BARGAINING SHALL BE INITIATED IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

(1) Any employee organization seeking certification as representative of the unit ~~may~~ SHALL file a petition stating its name, address, and its desire to be certified with the Permanent Umpire, and shall transmit forthwith a copy of such, not including the names of the supporting employees, to the employer. Said petition must contain the uncoerced signatures of thirty percent (30%) of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) Where an employee organization has been certified, an employee within the unit may file a petition with the Permanent Umpire and shall transmit forthwith a copy of such to the employer and the certified representative, not including the names of the supporting employee for decertification of the certified representative. The petition must contain the uncoerced signatures of at least thirty percent (30%) of the employees within the unit alleging that the employee organization

presently certified is no longer the choice of the majority of the employees in the unit.

(3) The employer may file a petition with the Permanent Umpire seeking an election for certification of an employee organization or, where an employee organization is so certified, to cause decertification of the representative where the employer has reason to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, and shall transmit a copy of such to the employee organization seeking to obtain or retain certification.

(4) Petitions may be filed between May 1, 1982, and June 30, 1982. Thereafter, petitions may be filed between September 1 and September 30, of any year, but no sooner than 22 months following an election held pursuant to this section.

(5) If a lawful collective bargaining agreement of no longer than three (3) years' duration is in effect, no petition shall be entertained unless filed during September of the final year of ~~said~~ THE agreement.

(6) If, during the period of May 1, to June 30, 1982, a petition is filed by the incumbent representative of unit employees certified under the Employer/Employee Relations Article of this Chapter, and no other employee organization files a valid petition, that incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the Permanent Umpire, of majority representation.

(b) If the Permanent Umpire determines that a petition is properly supported and timely filed, the Permanent Umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Permanent Umpire and shall be conducted by secret ballot at such time and place as the Permanent Umpire may direct. The Permanent Umpire may select and retain services of an agency of the State of Maryland, or similarily neutral body to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten (10) days before the election of at least ten percent (10%) representation of the

employees within the unit, and a choice that the employee does not desire to be represented by any of the named employee organization(s).

(3) The employer and each party to the election may be represented by observers selected in accordance with such limitations and conditions as the Permanent Umpire may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenge or the Permanent Umpire's decision thereon, unless the number of challenges is not determinative, in which latter event the/CHALLENGED ballot(s) shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Permanent Umpire in the presence of the observers.

(6) The Permanent Umpire immediately shall prepare and serve upon the employer and each of the parties a report certifying the results of the election. If, and only if, an employee organization has received the votes of a majority of the employees who voted, the Permanent Umpire shall certify the employee organization so elected as the exclusive agent. If no employee organization has received the votes of a majority of the employees, the Permanent Umpire shall certify no representative, ~~No run-off election shall be conducted.~~ BUT IF A MAJORITY

OF THE EMPLOYEES DO NOT VOTE FOR NO REPRESENTATION, A RUN-OFF ELECTION SHALL BE CONDUCTED. THE RUN-OFF ELECTION SHALL CONTAIN THE TWO CHOICES WHICH RECEIVED THE LARGEST AND SECOND LARGEST NUMBER OF VOTES IN THE ORIGINAL ELECTION.

(c) The aforesaid certification of results shall be final unless, within seven (7) days after service of the report and certification, the employer or any other party serves on all parties and files with the Permanent Umpire objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds thereof. The Permanent Umpire shall investigate the objections and, if substantial factual issues exist, the Permanent Umpire shall hold a hearing thereon. Otherwise, the Permanent Umpire may determine the matter without hearing. The Permanent Umpire may invite, either by rule or by ~~ad hoc~~ invitation, written or oral argument to assist in determination of the merits of the objections. If the Permanent Umpire finds that the election was conducted in substantial conformity with this Article, the Permanent Umpire shall CONFIRM THE ~~make final that~~ certification initially issued. If the Permanent Umpire finds that the election was not held in substantial conformity with this Article, the Permanent Umpire shall cause another election to be held pursuant to the provisions of this section.

(d) The cost of conducting an election shall be paid by the County.

(e) Voluntary recognition is prohibited under this Article, and no certification may be issued without an election except as provided for in subsection 33-79(a)(6).

Sec. 33-80. COLLECTIVE BARGAINING.

(a) Upon certification of an employee organization, as provided in Section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided however that salaries and wages shall be uniform for all employees in the same classification.

(2) Pension and retirement benefits for active employees.

(3) Employee benefits such as, but not limited to, insurance, leave, holidays, AND vacation AND PERSONAL PATROL VEHICLES.

(4) Hours and working conditions, INCLUDING THE AVAILABILITY AND USE OF PERSONAL PATROL VEHICLES.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration, AND PROVISIONS FOR EXCLUSIVITY OF FORUM. THE GRIEVANCE PROVISIONS OF ANY COLLECTIVE BARGAINING AGREEMENT, NOTWITHSTANDING THE PROVISIONS OF SECTION 33-12(b) OF THIS CHAPTER, SHALL BE THE EXCLUSIVE MEANS OF PROCESSING GRIEVANCES CONCERNING ANY SUBJECT MATTER ENUMERATED IN SECTION 33-80(a) OR ANY MATTER ENUMERATED IN SECTION 33-80(b) AND (c), ABOUT WHICH THE PARTIES HAVE VOLUNTARILY BARGAINED DURING THE BARGAINING IMMEDIATELY PRIOR TO THE CURRENT CONTRACT.

(6) MATTERS AFFECTING THE HEALTH AND SAFETY OF EMPLOYEES.

(7) THE EFFECT ON EMPLOYEES OF THE EMPLOYER'S EXERCISE OF RIGHTS ENUMERATED IN SUB-SECTION (b) HEREOF.

(b) The following subjects shall not be the subject of collective bargaining:

(1) Pensions OR or any other matter related to ~~retired~~ persons WHO HAVE RETIRED;

(2) Recruitment, selection, appointment, testing, promotion, AND position classification~~, or any other rule or action of the employer based on merit principles~~.

(3) Any matter which WOULD BE IN CONFLICT WITH OR PREEMPTED BY ~~is the subject of~~ state law including, but not limited to, the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland

(4) Any matter which ~~would impair~~ the rights of the employer as set forth BELOW ~~in subsection 33-80(c)~~.

(b) ~~(c)~~ 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 of operations;

(2) ~~(3)~~ To determine the services to be rendered AND the operations to be performed and the technology to be utilized;

(3) ~~(4)~~ To determine the overall ORGANIZATIONAL STRUCTURE, methods, processes, means, job classifications or personnel by which operations are to be conducted and to prescribe and restrict the utilization of uniforms, vehicles, and equipment OTHER THAN PERSONAL PATROL VEHICLES AND THE LOCATION OF FACILITIES.

(4) ~~(5)~~ To direct or supervise employees;

(5) ~~(6)~~ TO HIRE, SELECT AND ESTABLISH THE STANDARDS GOVERNING PROMOTION OF EMPLOYEES AND TO CLASSIFY POSITIONS; ~~to suspend, discipline or discharge employees SUBJECT TO APPLICABLE LAW;~~

~~(7) To transfer, assign, schedule, retain, layoff, or recall employees;~~

(6) ~~(8)~~ 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;

(7) ~~(9)~~ To make and enforce rules and regulations not inconsistent with THIS LAW OR a collective bargaining agreement ~~and applicable law~~;

~~(10) To take whatever other actions may be necessary to carry out the wishes of the public not otherwise specified herein or limited by a collective bargaining agreement; or~~

(8) ~~(11)~~ To take actions to carry out the mission of government in situations of emergency.

(9) TO TRANSFER, ASSIGN AND SCHEDULE EMPLOYEES.

(c) 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 SUB-SECTION 33-80(b) ABOVE, BUT SUCH MATTERS SHALL NOT BE SUBJECT TO BARGAINING.

~~(a) Nothing contained in this Article shall be construed to limit the discretion of the employer voluntarily to confer with any or all of its employees in the process of developing policies to effectuate or implement any of the enumerated rights set forth in subsection 33-80(c), above~~

(1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS LAW, THE EMPLOYER MAY VOLUNTARILY BARGAIN ABOUT ANY MATTER ENUMERATED IN SECTION 33-80(b) ~~AND/~~OR THE EFFECTS UPON EMPLOYEES OF THE EMPLOYER'S EXERCISE OF ANY RIGHTS LISTED IN SECTION 33-80(c), OR BOTH. IN THE EVENT THE EMPLOYER DOES AGREE TO BARGAIN ABOUT ANY OF THE ABOVE MATTERS OR EFFECTS, AND AN AGREEMENT IS REACHED, THAT AGREEMENT SHALL

BE INCORPORATED IN THE COLLECTIVE BARGAINING AGREEMENT. THE EMPLOYER'S ELECTION TO BARGAIN ABOUT A MATTER OR EFFECT SHALL NOT CONSTITUTE A WAIVER OF THE EMPLOYER'S RIGHT NOT TO BARGAIN ABOUT THE ~~EFFECT~~ MATTER OR EFFECT UPON EXPIRATION OF ANY AGREEMENT REACHED. NOTWITHSTANDING THE EMPLOYER'S ELECTION TO BARGAIN, ABSENT AN AGREEMENT ON THE MATTER OR EFFECT, THE MATTER OR EFFECT ~~A PROPOSAL AS SET FORTH ABOVE, SUCH PROPOSAL~~ SHALL NOT BE INCLUDED IN EITHER PARTY'S SUBMISSION OF A FINAL OFFER TO THE IMPASSE NEUTRAL.

(2) IN THE EVENT THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE DISAGREE OVER WHETHER EITHER IS OBLIGATED TO BARGAIN OVER ONE OR MORE CONTRACT PROPOSALS UNDER THIS LAW, THAT DISAGREEMENT SHALL BE SUBMITTED UPON THE PETITION OF EITHER PARTY TO THE PERMANENT UMPIRE WHO SHALL RESOLVE THE DISPUTE AS PROMPTLY AS POSSIBLE AND AFTER SUCH EXPEDITIOUS PROCEEDINGS AS THE PERMANENT UMPIRE DEEMS APPROPRIATE IN THE CIRCUMSTANCES. THE PETITION SHALL STATE THE ISSUE OR ISSUES TO BE RESOLVED AND SHALL BE ACCOMPANIED BY A WRITTEN STATEMENT OF THE REASONS WHY THE PETITIONING PARTY BELIEVES THE ~~MATTER~~ PROPOSAL IS OR IS NOT BARGAINABLE. THE DECISION OF THE PERMANENT UMPIRE SHALL BE BINDING UPON THE PARTIES. FAILURE TO SUBMIT A PETITION PURSUANT TO THIS SUBSECTION SHALL NOT PRECLUDE A PARTY FROM FILING AN UNFAIR LABOR PRACTICE CHARGE PURSUANT TO SECTION 33-82.

~~(c)~~ (d) Collective bargaining shall commence no later than November 1, preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. The resolution of an impasse in collective bargaining shall be

completed by February 1. These time limits may be waived only by prior written consent of the parties.

(e)
/~~(f) Any collective bargaining agreement which contains~~ OF A COLLECTIVE BARGAINING AGREEMENT ~~a~~ provision for automatic renewal or extension shall be void ~~in its entirety unless such renewal or extension requires~~ the consent of both parties. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end on June 30.

(f)
/~~(g)~~ Any collective bargaining agreement shall become effective only after ratification of the agreement by the public employer and the CERTIFIED REPRESENTATIVE ~~employees in the bargaining unit~~, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures. / ~~but such rules shall be consistent with the certified representative's duty of fair representation. Any terms of a collective bargaining agreement which purport to restrict the rights of management and of the public as contained in subsection 33-80(c) of this Article or which concern those subjects set forth in subsection 33-80(b) shall be null and void and wholly unenforceable.~~

(g)
/~~(h)~~ A ratified agreement shall be binding on the employer and the certified representative, AND SHALL BE REDUCED TO WRITING AND EXECUTED BY BOTH PARTIES. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer and the employer shall make a good faith effort to have such term or condition implemented by Council action. ~~but the~~

ON OR BEFORE APRIL 25, THE COUNTY COUNCIL SHALL INDICATE BY A MAJORITY OF FOUR (4) VOTES, ITS INTENTION TO APPROPRIATE OR OTHERWISE IMPLEMENT THE AGREEMENT, OR ITS INTENTION NOT TO DO SO, AND SHALL STATE ITS REASONS FOR ANY INTENT TO REJECT ANY PART OR PARTS OF THE AGREEMENT. IN THE EVENT THE COUNCIL INDICATES ITS INTENTION TO REJECT, IT SHALL DESIGNATE A REPRESENTATIVE TO MEET WITH THE PARTIES AND PRESENT THE COUNCIL'S VIEWS IN THEIR FURTHER NEGOTIATIONS. THIS REPRESENTATIVE SHALL ALSO PARTICIPATE FULLY IN STATING THE COUNCIL'S POSITION IN ANY ENSUING IMPASSE PROCEDURE. THE PARTIES SHALL THEREAFTER MEET AS PROMPTLY AS POSSIBLE IN AN ATTEMPT TO NEGOTIATE AN AGREEMENT ACCEPTABLE TO THE COUNCIL. EITHER OF THE PARTIES MAY INITIATE THE IMPASSE PROCEDURE SET FORTH IN SECTION 33-81. THE RESULTS OF THE NEGOTIATION OR IMPASSE PROCEDURE SHALL BE SUBMITTED TO THE COUNCIL ON OR BEFORE MAY 10. ANY agreement shall provide either for automatic reduction or elimination of such conditional WAGE AND/OR benefits ADJUSTMENTS if the Council fails to take such action or if funds are not appropriated or if a lesser amount is appropriated.

Sec. 33-81. IMPASSE PROCEDURE.

(a) Prior to November 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an Impasse Neutral either by agreement or through the processes of the American Arbitration Association. The Impasse Neutral shall be required to be available during the period from January 20 to February 1. Fees and expenses COSTS OF THE IMPASSE NEUTRAL shall be shared equally by the employer and the certified representative.

(b) (1) During the course of collective bargaining either party may declare an impasse and request the services of the Impasse Neutral. If the parties have not reached agreement by January 20, an impasse shall be deemed to exist.

(2) Whenever an impasse has been reached, the dispute shall be submitted to the Impasse Neutral. The Impasse Neutral shall attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

(3) If the Impasse Neutral, in the Impasse Neutral's sole discretion, finds that the parties are at a bona fide impasse, the Impasse Neutral shall require each party to submit a final offer which shall consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the Impasse Neutral shall choose. If only complete package proposals are required the Impasse Neutral shall require the parties to jointly submit a memorandum of all items previously agreed upon.

(4) The Impasse Neutral may, in the Impasse Neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The Impasse Neutral may hold a hearing for this purpose at a time,

date, and place selected by the Impasse Neutral. Said hearing shall not be open to the public.

(5) On February 1 or prior thereto, the Impasse Neutral shall select, as a whole, the most reasonable, in the Impasse Neutral's judgment, of the final offers submitted by the parties. The Impasse Neutral may take into account only the following factors:

a. Past collective bargaining contracts between the parties including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

b. Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers IN THE WASHINGTON METROPOLITAN AREA AND in Maryland.

c. Comparison of wages, hours, benefits, and conditions of employment of other employees of Montgomery County. PERSONNEL

d. Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

e. The interest and welfare of the public.

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

(6) The Impasse Neutral shall not compromise or alter the final offer that he selects. Selection of an offer shall be based on the contents of that offer. No consideration shall be given to, nor shall any evidence or argument be received concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the Impasse Neutral. However, the Impasse Neutral shall consider all previously agreed upon items integrated with the specific disputed items to determine the single most reasonable offer.

(7) The offer selected by the Impasse Neutral, integrated with the previous agreed upon items, shall be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and shall have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(h). above. The parties shall execute such agreement.

Sec. 33-82. PROHIBITED PRACTICES.

(a) The employer or its agents or representatives are prohibited from:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under the provisions of this Article~~, provided that the discussion of any matter, argument, or opinion, or the dissemination thereof, whether orally, in writing or otherwise~~

~~shall not constitute or be evidence of prohibited practice under any of the provisions of this Article nor be grounds for invalidating any election conducted under this Article, if such discussion or dissemination contains no threat of reprisal or promise of benefit;~~

(2) Dominating or interfering with the formation or administration of any employee organization, or contributing financial or other support to it, pursuant to contract or otherwise; provided that the employer and a certified representative may agree to and apply a membership dues deduction provision AS PROVIDED HEREIN AND TO REASONABLE USE OF COUNTY FACILITIES FOR COMMUNICATING WITH EMPLOYEES;

(3) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other wages, hours or conditions of employment, PROVIDED THAT NOTHING IN THIS ARTICLE SHALL PRECLUDE AN AGREEMENT FROM CONTAINING A PROVISION FOR AN AGENCY SHOP;

(4) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this Article;

(5) Refusing to bargain collectively with a certified representative;

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

(8) DIRECTLY OR INDIRECTLY OPPOSING THE APPROPRIATION OF FUNDS OR THE ENACTMENT OF ~~LAWFUL~~ LEGISLATION BY THE COUNTY COUNCIL TO IMPLEMENT AN AGREEMENT REACHED BETWEEN THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE PURSUANT TO THIS ARTICLE.

(9) ENGAGING IN A LOCKOUT OF EMPLOYEES.

(b) Employee organizations, their agents, AND ~~or representatives~~ and employees, are prohibited from:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this Article;

(2) Restraining, coercing, or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) Refusing to bargain collectively with the employer if such employee organization is the certified representative;

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(5) Hindering or preventing, by threats OF VIOLENCE, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment by any person, public or private, or obstructing or OTHERWISE UNLAWFULLY interfering with the entrance to or egress from any place of employment, or obstructing or UNLAWFULLY interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other

ways of travel or conveyance by any person, public or private;

(6) Hindering or preventing by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment or services by the employer;

(7) Taking or retaining unauthorized possession of property of the employer~~,-public-or-private,-or engaging-in-any-effort-to-interfere-with production,-functions,-or-services-of-an employer,-public-or-private,~~ or refusing to do work or use certain goods or materials as lawfully required by the employer;

(8) Forcing or requiring ~~any~~ THE employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification;

(9) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed OR to be performed ~~or which are-not-productive-or-not-desired-to-be performed-by-the-employer~~.

(c) A charge of prohibited practice may be filed by ~~any~~ THE employer, employee organization, or any individual employee. THE CHARGE OR CHARGES SHALL BE FILED WITH THE PERMANENT UMPIRE, WITH COPIES TO THE PARTY ALLEGED TO HAVE COMMITTED A PROHIBITED PRACTICE. All charges shall CONTAIN A STATEMENT OF FACTS SUFFICIENT TO ENABLE THE PERMANENT UMPIRE TO INVESTIGATE THE CHARGE ~~be-supported-by-the-charging-party~~. The Permanent Umpire may request

withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing~~, however~~. The Permanent Umpire shall have authority to maintain such independent investigation as the Permanent Umpire determines necessary and to develop rules and regulations therefore. If, UPON INVESTIGATION, the Permanent Umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the Permanent Umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the PARTY OR parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the Permanent Umpire determines that the person charged has committed a prohibited practice, the Permanent Umpire shall make findings of fact and conclusions of law and shall be impowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this Article. Remedies of the Permanent Umpire may include, but shall not be limited to, REINSTATING EMPLOYEES WITH OR WITHOUT BACK PAY, MAKING EMPLOYEES WHOLE FOR ANY LOSS RELATING TO COUNTY EMPLOYMENT SUFFERED AS A RESULT OF ANY PROHIBITED PRACTICE, ~~orders withdrawing certification,~~ withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits~~, withdrawing, suspending, or reinstating with or without back pay the employment or tenure of individual employees~~. If the Permanent Umpire finds that the party or

parties charged have not committed any prohibited practices, the Permanent Umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Permanent Umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than ~~four (4)~~ SIX (6) months prior to the filing of the ~~charge~~.

Sec. 33-83. ~~USE OF OFFICIAL TIME.~~

~~Solicitation of membership or dues payments, or other internal business of employee organizations shall be conducted during the non-duty hours of the employee involved. Employees who represent, or act on behalf of a certified representative, shall not be on paid working time when bargaining collectively with the public employer or when adjusting grievances.~~

EXPRESSION OF VIEWS.

THE EXPRESSION OF ANY VIEWS, ARGUMENT, OR OPINION, OR THE DISSEMINATION THEREOF, WHETHER ORALLY, IN WRITING OR OTHERWISE SHALL NOT CONSTITUTE OR BE EVIDENCE OF A PROHIBITED PRACTICE UNDER ANY OF THE PROVISIONS OF THIS LAW NOR BE GROUNDS FOR INVALIDATING ANY ELECTION CONDUCTED UNDER THIS LAW, IF SUCH EXPRESSION OR DISSEMINATION CONTAINS NO THREAT OF REPRISAL OR PROMISE OF BENEFIT.

Sec. 33-84. STRIKES AND LOCKOUTS.

(a) No employee or employee organization shall either directly or indirectly cause, instigate, encourage, condone or engage in any strike, nor the employer in any lockout. No employee or employee organization shall obstruct, impede, or restrict either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when said employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during such strike.

(c) If an employee or employee organization shall violate the provisions of this section, the employer, AFTER ADEQUATE NOTICE AND A FAIR HEARING BEFORE THE PERMANENT UMPIRE WHO FINDS THAT THE AFORESAID VIOLATIONS HAVE OCCURRED AND FINDS THAT ~~may take~~ any ~~and~~ OR all of the following actions ~~it deems~~ ARE necessary in the public interest MAY, SUBJECT TO THE LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS, ARTICLE 27, SECTIONS 727, et seq., ANNOTATED CODE OF MARYLAND: (1) IMPOSE ~~Imposition of~~ disciplinary action, including DISMISSAL FROM ~~termination of~~ employment of employees engaged in such conduct;

(2) ~~Termination of~~ TERMINATE OR SUSPEND employee organization's dues deduction privilege, if any;

(3) ~~Revocation of~~ REVOKE THE certification OF and ~~disqualification~~ DISQUALIFY ~~IT~~ THE EMPLOYEE ORGANIZATION from participation in representation elections for a period up to a maximum of two (2) years.

(d) Nothing contained herein shall prohibit an employer from seeking any remedy available in a court of competent jurisdiction.

Sec. 33-85. EFFECT OF PRIOR ENACTMENTS.

Nothing contained in this Article shall be construed to repeal any law, executive orders, legislation, rules or regulations adopted by the County and any department or

agency thereof not inconsistent with the provisions of this Article.

Sec. 4. Severability.

The provisions of this Act are severable, and if any provision, sentence, clause, section, word or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 5. Effective Date.

This Act shall take effect on the 91st day following the date on which it becomes law.

The foregoing motion included any technical amendments that may be necessary.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a yea and nay vote, Councilmembers Spector, Crenca, Scull, Gelman, Fosler, Gudis and Potter voting in the affirmative, Bill No. 71-81, Collective Bargaining for Police, was enacted, as amended.

MISCELLANEOUS BUSINESS:

There being no further official business to come before the Council in Legislative Session, the meeting adjourned at 4:15 P.M., to reconvene at 1:30 P.M. on Tuesday, April 13, 1982, or at the call of the President.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

OFFICE OF
THE COUNTY ATTORNEY
MONTGOMERY COUNTY, MARYLAND

No. 74.140

Date September 13, 1974

TO: Ronald G. Lloyd, Personnel Director

FROM: Richard S. McKernon, County Attorney

OPINION: The County presently has the legislative authority to "meet and confer" with representatives of County employees, but does not have the authority to enter into binding collective bargaining agreements. The Council has authority to legislate in the field of labor relations, subject to limitations.

You have requested the opinion of this office as to whether or not the County can promulgate an administrative policy of procedure setting forth on a formalized basis policies dealing with employee labor relations. Additionally, you have inquired as to whether the County, through its legislative processes, can pass legislation in the area of employee labor relations. You have indicated that a first step in this process might be the establishment of a "meet and confer" relationship with employee group representatives; as you envision it, the specifics of such a policy would be:

1. Provision for procedures of determining exclusive meet and confer groups;

2. Provision for meeting and conferring in good faith on specific issues not in conflict with existing State and County legislation;

3. Provision for dues collection and the procedures under which such collection will be provided;

4. Provision for good faith bargaining culminating in a memorandum of understanding;

5. Provision for third party resolution of impasses; and

6. Provision for legal recourse in the event of unfair labor practices by either party.

It is the opinion of this office that the County, under its current legislative authority, can establish a "meet and confer" arrangement with representatives of County employees. However, due to the absence of State-enabling legislation, the County is prohibited from entering into binding collective bargaining agreements with such representatives.

There now exist several pieces of legislation which deal with the County's authority in the areas of employee/personnel regulations and rights. Section 5(Q) of Article 25A of the Annotated Code of Maryland (1973 Repl. Vol.) provides the general enabling legislation for the County to establish a merit system. Section 5(Q) states, inter alia, as follows:

> "To provide for the appointment and removal of all county officers except those whose appointment or election is provided for by the Constitution or public general law, and to establish a merit system, if deemed desirable, in connection with the appointment of all county officials and employees not elected or appointed under the Constitution and the public general laws . . . "

The Charter of Montgomery County, Maryland (1968), has three sections which are relevant to this opinion. Section 401 directs the County Council to prescribe by law a merit system for all officers and employees of the County government except certain appointed officials. Section 401 expressly states that "[s]alaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan." Section 402 indicates that the Chief Administrative Officer, under the direction of the County Executive, has the responsibility for the administration of the County's merit system. Section 404 authorizes the County Personnel Board to adopt regulations, subject to the approval of the County Council, covering all positions of the merit system and, specifically, establishing minimum qualifications for such positions, methods of determining such qualifications, methods of selection for such positions, probationary periods, promotions, transfers, causes for removal and methods of removal, including demotions, furloughs, and reduction of staff,

annual, sick and other leave, prohibitions against political activity, maintenance of personnel records, and "similar personnel matters." Section 404 also authorizes the Personnel Board to prepare and recommend to the Council a system of retirement pay.

Section 33-5(1) of the Montgomery County Code 1972, as amended, sets forth the general purposes and definition of the County's merit system. Section 33-5(1) states, in part, as follows:

> "The general purpose of this chapter is to establish regulations not in conflict with the Charter of Montgomery County to implement a system of personnel administration that meets the social, economic, and program needs of the people of Montgomery County based upon merit principles and facilitates the organizational and program objectives of the county government. These regulations provide for the appointment, advancement and retention of employees on the basis of merit and fitness to be ascertained in most cases by competitive examination without regard to sex, marital status, race, religion, national origin, or political affiliation."

Article 25A of the State Code, the County Charter, and Chapter 33 of the County Code constitute the complete set of legislative enactments vesting discretionary authority in various officials of Montgomery County in the areas of personnel and employee matters. These enactments give the County's full discretionary authority over employee issues to the County Executive, the County Council or the Personnel Board of Montgomery County, in their distinct, but complementary, roles. The leading case in Maryland on the issue of a municipal corporation's right to enter into collective bargaining agreements with its employees is Mugford v. City of Baltimore, 185 Md. 266 (1945). In the Mugford case, the City of Baltimore had entered into a collective bargaining agreement with a local union representing Department of Public Works' employees. Taxpayers of the City of Baltimore sued the City, alleging that the agreement was null and void and beyond the authority of the City to execute. The lower court had declared that the

agreement was null and void because it gave preferential advantages to some employees over other public employees of the City. The lower court also held that the collection of union dues through the City's payroll system could be accomplished if done on a purely voluntary basis, terminable at any time at the discretion of the employee. Neither the union nor the City appealed the part of the lower court's decision which declared the collective bargaining agreement ultra vires, and the only issue before the Court of Appeals of Maryland was the lower court's decision regarding the union dues checkoff. However, the Court of Appeals indicated that it would have agreed with the lower court had the issue of the validity of the collective bargaining agreement been before it. The Court of Appeals stated the following, at pages 270 and 271:

> "To the extent that they [hours, wages and working conditions of employees] are left to the discretion of any City department or agency, the City authorities cannot delegate or abdicate their continuing discretion. Any exercise of such discretion by the establishment of hours, wages or working conditions is at all times subject to change or revocation in the exercise of the same discretion . . .
>
> * * *
>
> The City has no right under the law to delegate its governing power to any agency. The power of the City is prescribed in its charter, and the City Charter constitutes the measure of power that is possessed by any of its officials. To delegate such power to an independent agency would be a serious violation of the law."

In a recent opinion dated July 23, 1974, (The Daily Record, August 6, 1974, Page 4), the Attorney General of Maryland reviewed the legal status of the Memorandum of Understanding entered into between the Baltimore City Police Commissioner and the local union group representing certain police officers. After a discussion of the Mugford case, the Attorney General concludes that "[a]ccordingly, we are compelled to conclude that the Memorandum of Understanding cannot be considered a binding commitment insofar as it touches any power or authority vested in the Police Commissioner by the Omnibus Act . . .

The Police Commissioner may delegate supervisory duties but cannot irrevocably divest himself or be divested of any management function or prerogative. To the extent that the Memorandum of Understanding purports to bind the Police Commissioner, it must be considered ineffective as an abridgement of his statutory powers." In the last paragraph of his opinion, the Attorney General appears to take the position that the only way such binding collective bargaining authority could be vested in any municipality or municipal official would be through State enabling legislation from the Maryland General Assembly, which the Attorney General notes has only been given with respect to representation of public school employees under Chapter 14 1/2 of Article 77 of the Annotated Code of Maryland.

Although the Mugford decision, the above-cited Attorney General Opinion and the lack of enabling legislation from the General Assembly would at this time preclude the County from entering into binding collective bargaining agreements with County employee representatives, it is the opinion of this office that non-binding "meet and confer" discussions with employee representatives would be permissable under the current status of the law. This "meet and confer" authority is recognized in both the Mugford decision and the Attorney General's Opinion, conditioned upon the fact that no binding agreement would be entered into between the parties. The Court of Appeals in Mugford, supra, stated that although the City authorities could not delegate or abdicate their continuing discretionary functions, "it by no means follows that employees may not designate a representative or spokesman to present grievances." 185 Md. at 270. In the same vein, the Attorney General indicated that "[c]oupled with our advice that the Police Commissioner was not empowered to enter into a collective bargaining agreement with a labor union, we said that he was authorized to discuss terms and conditions of employment with a union representing members of the Police Department provided that he did not enter into a binding agreement."

It is the opinion of this office that the County currently has the authority to promulgate an administrative policy or procedure setting forth on a formalized basis policies dealing with labor relations, provided that they conform to the principles set forth in the Mugford case and the Attorney General's

Opinion cited above. If it is determined that the County would prefer to establish such policies and procedure through the format of legislation rather than administrative policy or procedure, then it is the opinion of this office that the County does have the authority to enact a local law to this effect. Although Section 5(Q) of Article 25A of the Annotated Code of Maryland speaks only of the establishment of a merit system, it is our opinion that the County's broad police powers, recited in Section 5(S) of Article 25A and reaffirmed in the recent Court of Appeals' case of County Council v. Investors Funding, 270 Md. 403 (1973), gives the County this authority as enactment of a law "deemed expedient in maintaining the . . . good government . . . of the county." It is our view that such an enactment should be placed as a new chapter in the Montgomery County Code because the scope of Chapter 33, title "Personnel," of the Code is limited to provisions dealing with the County's merit system and individual employee rights and grievances, as opposed to employee group concerns and rights. Needless to say, any such legislation would necessarily have to conform to the principles set forth in the Mugford decision and the above-referenced Attorney General's Opinion.

In the beginning of this opinion, we recited six specifics which you indicated might constitute the "meet and confer" arrangement envisioned as an initial step to a County labor relations program. The first of these specifics is provision for procedures for determining exclusive meet and confer groups. Since the opinion of this office is that the County cannot now enter into binding collective bargaining agreements, it would appear that the need to establish and recognize exclusive bargaining groups is not pressing at this time. If the County were obligated to negotiate and agree with representatives of County employees, then the importance of negotiating a limited number of contracts with a limited number of groups would be apparent. However, this is not the case in a meet and confer group program. It is also the opinion of this office that the impetus for establishing exclusive bargaining units should come from the employees, rather than the management of the County, if the private business sector is to be looked to for examples of this process.

The second specific which you relate is the provision for meeting and conferring in good faith on specific issues not in conflict with existing State and County legislation. This office has several problems with this item. The first is that

the provision for bargaining in "good faith" creates a presumption that the County would bargain otherwise. In addition, if either side failed to bargain in "good faith", there would be no sanctions to force correction of such behavior in a meet and confer arrangement, so that the inclusion of the "good faith" language would serve no purpose. However, if the designation of specific issues is desired, then it should be clearly stated that the issues specified could be enlarged or curtailed at the discretion of the County and that any discussions surrounding such issues would be purely for the purpose of non-binding deliberations.

The third specific related by you would be the provision for dues collection and the procedures under which such collection would be provided. It appears from Mugford, supra, that such dues checkoff provisions would not be inconsistent with the principles of merit system government and the discretionary powers of County officials. However, the Mugford Court conditioned use of this procedure on its permissibility under the general regulations applicable to the City of Baltimore's payroll system and on the voluntary request of the employee for this deduction. In addition, the Court indicated that the withdrawal of employee permission for dues deduction would have to be completely discretionary with the individual employee. See also Rockville v. Randolph, 267 Md. 56, 62-63 (1972).

The fourth, fifth, and sixth specifics mentioned in your memorandum to us concern the provision of good faith bargaining culminating in a memorandum of understanding, provision for third party resolution of impasses, and provision for legal recourse in the event of unfair labor practices by either party. It is the opinion of this office that all three of these items are outside the scope of the "meet and confer" system proposed at this time, as well as being in derogation of the principles established by the Mugford case. It is our understanding that, unlike the collective bargaining process, the meet and confer system contemplates non-binding discussions between parties unequal in bargaining power. A memorandum of understanding agreed to through the process of non-binding discussions would be permissible under the meet and confer system, however, so long as the memorandum of understanding did not purport to be a binding commitment on the County in areas (such as hours, wages, or working conditions) which are by law discretionary with County officials. However, the third party resolution of impasses and provision for legal recourse in the event of unfair

labor practices are two specifics which could not be provided for in a meet and confer system memorandum of understanding in that they would constitute a unlawful delegation of authority under the Mugford decision, since the only purpose of such provisions would be if they were binding in nature on the parties.

MH RCP
HUTT:PARK:lw
AC

Transcript of Proceedings

MONTGOMERY COUNTY, MARYLAND
CHARTER REVIEW COMMISSION

In the Matter of:

QUESTION F: TO ESTABLISH COLLECTIVE BARGAINING WITH BINDING ARBITRATION FOR POLICE AND TO PROHIBIT STRIKES

QUESTION E: TO PROHIBIT SLUDGE TRENCHING IN RESIDENTIAL AREAS

Rockville, Maryland

September 30, 1980

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MONTGOMERY COUNTY, MARYLAND
CHARTER REVIEW COMMISSION

- -

In the Matter of:

Question F - To Establish Collective Bargaining with Binding Arbitration for Police and To Prohibit Strikes

Question E - To Prohibit Sludge Trenching in Residential Areas

- -

100 Maryland Avenue
Rockville, Maryland

Tuesday,
September 30, 1980

The above-entitled matter came on for hearing, pursuant to notice, at 7:45 p.m.

BEFORE: BRUCE ADAMS, CHAIRMAN
JOHN J. SEXTON, VICE CHAIRMAN
MARY BOERGERS, COMMISSIONER
CHARLES G. DALRYMPLE, COMMISSIONER
LOIS STONER, COMMISSIONER
RONALD E. RESH, COMMISSIONER
JOHN P. BANKSON, COMMISSIONER
PATRICIA BILLINGS, COMMISSIONER
WILLIAM J. CHEN, COMMISSIONER
JULIE K. DAVIS, COMMISSIONER
C. LAURENCE WISER, COMMISSIONER

C O N T E N T S

Statement of Richard Svertesky	5
Statement of Allan Katz	10
Statement of Clinton Hilliard	35
Statement of Jim Knight	58
Statement of Fred Ryland	61
Statement of Delegate Robin Ficker	66
Statement of Don Maxey	95
Statement of Alexander Greene	99
Statement of Sally Kanchuger	102
Statement of Paul McGukian	103

P R O C E E D I N G S

CHAIRMAN ADAMS: Ladies and gentlemen, I think we will begin. This is a public forum sponsored by the Montgomery County Charter Review Commission about Questions E and F that willbe before the voters in NOvember.

My name is Bruce Adams. I am the Chairman of the Commission.

The purpose of the forum is to begin and try to add to a public dialogue on these questions that were petitioned to the ballot through the State constitutional provision of citizen initiative. We have tried to -- We have invited the sponsors of the two proposed charter amendments and we have also invited representatives of the County Government who are knowledgeable about these issues to participate in this forum.

In addition, several people have signed up to testify after our invited guests and they will be given that opportunity. If anyone else is in the room who would like to sign up I suggest they talk to Justina Ferber on my far left who is our administrative assistant.

I have received a call or so from people who can't be here tonight who would like to submit something for the record and, of course, we will keep the record open for several days to do that.

The Charter Review Commission was established in

June of 1979 pursuant to a Charter Amendment that was approv several years ago. Our main function is to study charter issues and recommend ballot questions to the County Council. We held public hearings and had considerable deliberations and proposed four charter amendments in a report that we issued to the Council in May of this year. Those four amendments have been approved by the Council and will be on the ballot as Questions A through D, hence, the lettering, E through F, of these two amendments.

On my far left, next to Justina, is Ron Resh, Chuck Dalrymple, Lois Stoner, Mary Boergers. On my far right, Larry Wiser, Pat Billing, Bill Chen, Julie Davis and John Bankson.

We will begin tonight with Question F which is a proposal to establish collective bargaining with binding arbitration for the police and to prohibit police strikes. So, I would like to call on two witnesses from the Fraternal Order of Police to take about ten minutes or so, if they would, to summarize their proposal and make known to us their reasons for making the proposals. Then we will proceed to questions after that.

If you could just state your name for the record and your association with the F.O.P., please.

MR. KATZ: I am Allen Katz. I am an attorney in Gaithersburg and I represent the Fraternal Order of Police along with Richard Svertesky. I am associated with the group

that is interesteded in Question F. I think the official name of that group is Citizens for Effective Law Enforcement. They have registered with the Supervisor of Elections.

MR. SVERTESKY: My name is Richard Svertesky. I am a police officer assigned to the Bethesda District. For the past three years I have been chairman of the committee which represents police officer and meets with the county under the Meet and Confer legislation.

Montgomery County Police Officers are sponsoring Question F in the November election. Question F, if passed, will mandate the Montgomery County Council to enact legislation to allow for an orderly process of negotiations with the police on issues which affect each officer's safety, welfare and career.

In addition to authorizing negotations, Question F prohibits police officers from engaging in a strike or any type of work stoppage.

Montgomery County is the only large county in the state which does not authorize collective bargaining for police officers. We believe the time has come for our elected officials to recognize the individual and collective rights of the public sector employees and establish a formal mechanism for employee representation and negotiation on issues affecting working conditions, benefits and salaries.

Nothing short of collective bargaining is sufficient

in providing and opportunity for meaningful discussions between employer and employee in the absence of formal labor relations procedures, fraternalism or beneign neglect results, both of which are resented by professional police officers.

The Meet and Confer type procedure which was enacted in 1978, has proven to an unworkable process. Instead of facilitating employee organizations in organzing and representing county workers, the Meet and Confer Employee Relations Act has erected barriers which prevent representation. Further, Meet and Confer provides no impartial review plan regardless of the facts and merits of the issue. The individual making the rules also enforces them. When a dispute arises that usually leads to polarization where there is no commitment or compulsion to get things resolved. Meet and Confer is not negotiations, rather it is simply a meeting to discuss problems and issues which employees or management may raise.

This type of arrangement fails. After the issues are raised there is no process for resolving them. The result is that Meet and Confer goes no further than allowing for problems to be identified and articulated.

The unwillingness on the part of our elected officials to go further than this initial step adds frustration and alienation to an already existing problem.

Meet and Confer type labor relations is nothing more than an employee suggestion box with the anonymity removed.

A genuine interest in commitment to good labor relations starts with the idea an employee is a valuable resource who can help decision makers and elected officials operate the government more effectively. Who better knows the problems in providing services than those who actually provide them.

This commitment can only be carried out by providing a formal structure to establish meaningful dialogues between employer and employee with both sides compelled to discuss and negotiate problems in good faith and willingness to seek resolution. We envision this formal structure to include procedures to authorize officers to organize and be represented by the organization of their choice and to negotiate with the employer working conditions, benefits such as disability leave and hospitalization and the results of these negotiations to be reduced to writing and held binding on both parties.

Further, unfair labor practices should be defined for both management and the employee organization. And, most importantly, a procedure must be devised to handle disputes and impasses quickly, fairly and impartially. Nearly all experts in labor relations point to the necessity

of having a formal and impartial procedure for settling disputes as being the key to successful management/labor relations.

If government fails to provide an impartial equitable method of resolving disputes the employees are left with two alternatives. First, they could give in and accept management's view which is very unlikely since impasses usually occur over issues being critical by employees. Second, employees could engage in a strike until management is willing to resume negotiations. In both situations the public suffers, either through lower performance by disgruntled, frustrated employees or by the temporary cessation of the essential public services. These situations can and must be avoided.

As professionals, we, more than most, realize how critical police protection and service really are for the citizens of this county.

We propose the following procedure for the resolution of impasses. First, strike and work stoppages by police officers should be explicitly prohibited and this ban be strictly enforced. Second, all disputes arising out of the employees right to organize or involving a dually elected organization's right to represent employees for bargaining purposes or dispute involving recognition as the bargaining agent or involving the implementation or interpretation of any of the provisions of an agreement be resolved through the

use of a neutral arbitrator selected jointly by county officials and the employee representative with the power to make a final binding decision on the dispute.

Third, impasses reached as a result of an interest dispute such as salaries, cost of living adjustments, et cetera, should be resolved by a neutral fact finder, who, after reviewing the merits of the case, will make recommendations to both parties for voluntary consideration and acceptance. The recommendations may also be a matter of public record.

What we have outlined above is a contemporary framework for management/labor relations in the public sector. The foundation of this framework is the consideration of characteristics distinctive to public sector employment; namely, the strike ban, the reliance on impartial third parties to peacefully settle disputes and consideration of the proper role of public opinion in politics.

The desire of employees to have a voice in discussing working conditions which affect our whole lives is a desire which will only become stronger in the future years. Question F represents an opportunity for county voters and elected officials to say yes, we recognize the need of police officers to have a meaningful dialogue with management officials and we also recognize the need for the formal procedures to insure the dialogue does not break down.

Question F mandate is not a equality of actual bargaining power but procedural equality through impartiality. Question F will enable us here in Montgomery County to become a progressive jurisdiction in the field of public employee relations by establishing a realistic and viable balance between the public interest and the interest of public employees.

Thank you, Mr. Chairman.

CHAIRMAN ADAMS: Thank you very much.

Mr. Katz, do you want to add anything to that?

MR. KATZ: No. Only that we have read -- perhaps two of the very few -- who have read the suggestions and recommendations of the Charter Review Commission had in its pamphlet and in its report and I might point out that none of them have been implemented. In fact, none of them are being discussed that we know of. Of course, your recommendations were to bolster essentially Meet and Confer and then at some point get a dialogue going as to whether collective bargaining should come along down the road somewhere.

I think it is fair to say that by the actionsof the county at least that this is certainly a back burner issue and no movement has been made toward it. Unfortunately, in a way, the only way that the police or any employee group has of getting this sort of question, that being collective bargaining, to move along faster is to go on the public

referendum. And, there isn't the time for the type of detail and thorough discussions in public at any rate that you have had on the first four of the charter suggestions or the propositions.

Our group or the group of the current police are people that would be involved with this. I know when we spoke previously and when this idea I believe came up that the Charter Review Commission at least talk to us and others and begin what you call the dialogue, the real question that I believe was bothering me, Mr. Chairman, if not others, was this question of binding arbitration. While it is true that the language of the charter change would involve some binding arbitration, our group is certainly interested in going on record now, and I believe we can speak for the police, when we say binding arbitration would not be on issues such as salaries, cost of living adjustments and things of that sort but the fact finding would be our suggestion with regard to that who would review the merits, and as Rich Svertesky said, make recommendations to both parties for voluntary consideration and acceptance.

These, of course, would be a matter of public record which is not what we have now in any sense under Meet and Confer.

The other major point I think is important to discuss is that under collective bargaining an agreement

would result instead of the non-binding position papers that currently result. While it is a nice idea to say that Meet and Confer process should be beefed up, no matter what you do to it, in order to make it remain a Meet and Confer process you are not going to come up with a binding agreement because once you do that you are in another area. You are in the collective bargaining area whether you wish to call it that or not.

The other things is that unfortunately in this area of Meet and Confer or union rights or employee rights there are catch phrases that apparently both people a great deal. The Fraternal Order of Police, for example, is not a union, but it is an employee organization and wishes to remain the same and nationally has rules against strikes and work stoppages. The police, I think more than most, realize that it is just not the best way to go about obtaining proper employee benefits. However, as a trade off to the traditional strike or work stoppage, we have drafted this legislation in order to resolve any impasse that might develop.

For those reasons Question F has been petitioned to the referendum.

CHAIRMAN ADAMS: I appreciate that and I appreciate your statements.

Let me try to get your views on this binding arbitration question which, I think, many feel is the most

significant aspect of the proposal. The proposal reads in part: "Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County Police Officers." How is it that you square that language with the notion that it doesn't mean binding arbitration for salaries and cost of living and the like? How can the County Council read that and understand that it means collective bargaining as far as you say it means here tonight? It seems rather clear just on the face of it and I am a bit perplexed by it.

MR. SVERTESKY: I think somewhere between the initial drafting and the fact that we had to go back about three or four weeks into the process, based on a County Attorney's opinion, to redraft the entire petition and start from zero again in terms of signatures, somewhere along the line I think the distinction between our intent or recommending binding arbitration on non-interest dispute issues was lost. We have, on the public record, communicated our intent that we do not advocate binding any interest arbitration. We will do so, assuming it passes in November, to the Council in subsequent work sessions on creation of this entire mechanism to carry out the referendum issue.

MR. KATZ: And are happy to go about it now. We will certainly go on record for the Council and the County

Executive now that that is exactly what we are asking.

The language squares also because there will be binding arbitration on certain disputes, but on interest disputes certainly fact finding would be sufficient.

CHAIRMAN ADAMS: I think the problem is, of course, the amendment as drawn doesn't make the distinction between interest disputes and others. And, under your approach that, gee, this doesn't mean binding arbitration on everything, one could say, well, the County Council passed a collective bargaining law with binding arbitration on lunch hours and that would meet sort of the test it is up to the County Council.

I guess the concern I have is, as someone who is trying to look at the charter not this November 5th, but through time, is that I think that the position -- personally I think that the position you all are taking is a reasonable one but it is not at all clear that you all will be the officers or the leading spokespeople for the group or even that the FOP will be the agent as things work out through the authorized representative, as things work out through time. So, the county is left with the dilemma of having this language which states very clearly "collective bargaining with binding arbitration" and some future group could come in and say, to sue the County Council or something, because the binding arbitration didn't include the interest.

MR. KATZ: I think in any kind of court action the judge has to go back to the intent of the drafters. When you have public statement on top of public statement that says what we recommend and what we meant to say in our position was not binding interest arbitration, you know, I think the suit would be frivilous.

CHAIRMAN ADAMS: I apprecaite that but unfortunately there is a legal document and if the language is clear you don't look at the intent. It is not absolutely clear what will happen.

Are there others that --

MR. SVERTESKY: I don't know that it is crystal clear that it must be binding arbitration on all possible issues. I would say quite the opposite.

CHAIRMAN ADAMS: Are there others?

MR. BANKSON: You would concede this is unclear?

MR. SVERTESKY: I would say it is ambiguous, yes.

MR. BANKSON: I would like to understand how this happened. You had an initial draft which made it clear the distinction between fact finding and binding arbitration and that fell out somewhere along the line? What was the County Attorney's opinion?

MR. KATZ: The original drafters of the petition were given to understand it was their purpose to summarize via the petition what was to go on the ballot and the actual

language, the actual meaning of the language would be drafted by the County Council. Actually, what happens is exactly the opposite and because of this foul up that was the reason we went before the County Council later and asked them to place on the ballot a collective bargaining question without recommending or hopefully without recommending against it.

But, in any event, they weren't of a mind to do that. There was a very short time to act and the language that was drafted is what you see but, by the same token, the language is such that it has to have a reasonable interpretation. And, we submit that a reasonable interpretation is just that, binding arbitration on non-interest disputes.

MR. BANKSON: I understood Officer Svertesky's testimony to be that it had been drafted with this in it at some point and there was a change which was brought about by the County Attorney's Office.

MR. KATZ: The original drafting was such that it would be fair to call it a summary of what was attempting to be done.

MR. BANKSON: And it wasn't in charter provision language?

MR. KATZ: That is correct.

MR. BANKSON: But it did mention fact finding for interest type issues?

MR. KATZ: No, it didn't. I think under the

original language it is certainly much easier to see this sort of thing. It wouldn't have been binding arbitration across the board as some people have interpreted what we have before us now.

MR. BANKSON: I don't think we are talking about what it could be. I think we are taking about what it could be based on this clear language and the legal doctrine that if the language is explicit you don't look at the legislative history or intent of the drafters because that would not be anything the voters would look at in adopting the amendment.

CHAIRMAN ADAMS: Are there any others? Bill Chen.

MR. CHEN: Allen, did you get an opinion from the County Attorney that said that the language here is adequate for guiding the County Council in preparing legislation to comply with the proposed charter amendment?

MR. KATZ: I didn't get an official opinion, no. I am not aware of an official opinion from the County Attorney's office.

MR. CHEN: Well, how does the County Council -- Suppose you had a situation with a police officer who said, okay, we now have got this charter that has been adopted by the voters of Montgomery County and we want a collective bargaining statute with binding arbitration and you prepare something and you have a Council member introduce it and then the library workers decide to have one and the Council

says we are going to give to the police officers but not the library workers. Do you think that is possible under this charter amendment?

MR. KATZ: Yes, it is. It says police specifically.

MR. CHEN: No. It says to prohibit strikes or work stoppages by police officers. That is what it says. Are you saying this is adequate to say that it only applies to police officers?

MR. KATZ: Yes.

MR. CHEN: What happens when every other county employee of a different department who decides that now the police officers have got their collective bargaining why can't we have it or we have got rights that because we are public workers that are just as important as police officers and we work on snow days and have many of the same problems that police officers have and the county has an obligation to treat us the same way as they treat the police officers. Don't you think the same arguments that justify this type of a charter amendment for police officers are also applicable to other county employees?

MR. SVERTESKY: Certainly.

MR. KATZ: And that is the Council's decision and if that is what they would like, otherwise, if somewhere down the road if they don't want to do that then the other employees can petition for the same sort of referendum.

MR. BANKSON: What happens to the situation that may then obtain where the cases say, and I have heard of cases, that you have got to have a charter amendment and the charter amendment -- or state legislation -- and the charter amendment of Montgomery County permits it as to police officers but does not permit it as to other local public employees in Montgomery County? What happens in that situation?

MR. SVERTESKY: Well, you have got a situation now in the Meet and Confer, for example, for the last three years the Police Department has been the only employee group represented in Meet and Confer. The rest of the employees are not represented. Now, if they want to be represented they have to comply with the Meet and Confer Employee/ Employer Relations Act which is the process for representation and certification.

MR. DALRYMPLE: The mechanisms are there for them if they chose to do it?

MR. SVERTESKY: That is right.

MR. KATZ: Are you saying is there a due process question? Is that what you are trying to get at?

MR. CHEN: I think you are saying it is discriminatory as written, aren't you?

MR. DALRYMPLE: I think there is a lot of problems with that.

CHAIRMAN ADAMS: I don't know that there is a legal discrimination. There is a public policy question of whether the voters of Montgomery County want to pass an amendment that simply sets it up for police or not. One might argue it might be better if this were generic kind of proposal but it is not.

Mr. Dalrymple?

MR. DALRYMPLE: As written there is no maximum or minimum as to what can be included in collective bargaining as written, isn't that right?

MR. SVERTESKY: Maximum or mininum --

MR. DALRYMPLE: Of any event, of any function of the department. You said it wasn't your intention to include interest disputes but you don't get that out of reading this. What is to stop -- Suppose this went through and was approved. What is to stop the County Council from passing a law that provides for collective bargaining, to reach the absurbed, to determine whether the day after Christmas or the day after Thanksgiving was going to be a holiday, and that is the only thing that allowed collective bargaining --

MR. SVERTESKY: That is an unreasonable interpretation of the intent here.

MR. DALRYMPLE: Well, I think it gets back to what several people have said, that this is clear, they shall pass a law for collective bargaining. But it doesn't say for

what or not for what.

MR. KATZ: Now there is no question that all of the issues that came up would be under the purview of collective bargaining. In other words, bargaining towards an agreement, the two sides that bargain. As we know it now it is a public sector and, of course, it is not under the NLRA. However, I think the problem people are talking about is this question of binding arbitration. At what point does that have to be employed. If you try to oversimplify, obviously, the thing becomes so unreasonable that we have one of those clear cases where everybody could say it is arbitrary.

It is our position that if the Council then adopts reasonable language, certainly the type of language we are proposing here, then there would be no challenge by our group and our group represents not only members of the Fraternal Order of Police, the largest police organization, but also members of other police organizations.

MR. DALRYMPLE: But anyone who is inclined to vote for this with the assurance the collective bargaining would not be applicable to the interest issues --

MR. KATZ: Binding arbitration only.

MR. DALRYMPLE: I understand, okay.

MR. SVERTESKY: Collective bargaining would be applicable to all issues.

MR. DALRYMPLE: All right. The arbitration would not

be. Anyone who wanted that assurance would not have that assurance on this amendment any more than you have the assurance that they may only make one silly little issue subject to binding arbitration.

MR. SVERTESKY: I would think that arbitration issues would be taken as class type provisions, not specific issues.

MR. DALRYMPLE: Well, don't you have to define that in the enabling legislation? I think that is the whole point here.

MR. SVERTESKY: Obviously you have a County Attorney When this language was revised felt that this language here was adequate even assuming we are talking about binding arbitration across the board.

MR. DALRYMPLE: He would have to, I think.

MR. SVERTESKY: I think if you have collective bargaining and there are certain types of disputes subject to binding arbitration, then you enacted a law that is consistent with this referendum question.

CHAIRMAN ADAMS: Let me ask Mr. Dalrymple's question in a slightly different way. Are you saying that this does not authorize binding arbitration on interest issues?

MR. SVERTESKY: No. I am saying it could be interpreted that way. It could be interpreted as collective bargaining with binding -- And that is where the ambiguity

exists.

CHAIRMAN ADAMS: Let me state my understanding of this and see if you all agree. This authorizes collective bargaining with binding arbitration for every imaginable issue. You are saying that if the County Council were to enact an ordnance that had collective bargaining with binding arbitration for certain class of issues but did not include binding arbitration for salaries, cost of living and what you call interest issues, that that would be an acceptable ordnance. Or if they were to pass collective bargaining with binding arbitration for everything that would also be acceptable.

MR. SVERTESKY: Let me say this. In addition to the former being acceptable, that would be exactly our intent.

CHAIRMAN ADAMS: That would be what you would want.

MR. SVERTESKY: That would be our intent.

CHAIRMAN ADAMS: It would also be a reasonable interpretation that they are now authorized to have collective bargaining with binding arbitration on the interest issues.

MR. KATZ: That is just the point. This doesn't give all the specifics in any event. It is up to the Council to write this and the Council, if, in its wisdom, decides to go with binding arbitration across the board, then that is what they are going to do and I don't think we can challenge that. However, if they wish to have it so

that -- apparently there is a great amount of unrest with regard to binding arbitration on interest disputes -- We are saying it certainly would be reasonable to have binding arbitration on the non-interest disputes.

MR. DALRYMPLE: What if it said may provide instead of shall provide? Then your legislation -- I don't think you really get the nitty gritty in the charter but you get it in the legislation.

CHAIRMAN ADAMS: The problem is I think they want shall provide collective bargaining.

MR. SVERTESKY: And shall provide binding arbitration on the following issues.

MR. DALRYMPLE: When you do this --

MR. SVERTESKY: Collective bargaining in itself we didn't feel is sufficient enough because there again -- You know, the key to any kind of labor relations is how do you resolve disputes. We believe that the fairest way in certain issues to through arbitration. That is why we inserted that. "It shall be collective bargaining with binding arbitration on certain disputes."

MR. DALRYMPLE: I don't necessarily disagree with that. I guess my point is I am not sure this --

CHAIRMAN ADAMS: If you had the opportunity obviously you would write a few extra words in there.

MR. SVERTESKY: What we would put there would be

collective bargaining with binding arbitration on the following types of disputes with a representative of County police officers. I think that would be --

MS. BOERGERS: My question may have been touched on partially by both of you but I would like you to clarify it for everybody else. According to our report, we recommended that the Meet and Confer process be improved and that a mediation and fact finding process be added in order to have a mechanism for impasse resolution that is not evident in the current Meet and Confer legislation. Can you just explain why that is not sufficient going beyond the fact that you are not seeing any movement and you are not seeing any of that happening. If that could happen, what would be the problem with that?

MR. SVERTESKY: That is like putting Corinthian leather seats in an old VW, you know. You have got two -- It is two distinct systems, two distinct processes in labor relations, Meet and Confer, and then you go into collective bargaining. You can't kind of beef up Meet and Confer because when you do beef it up in the key areas where it needs to be beefed up it is no longer Meet and Confer. It is a totally different process. And, you can add on mediation, you can add on arbitration, you know, various permeatations of arbitration/conciliation/mediation and you are still left with the fact that you are not negotiating to begin with.

What will inevitably happen under Meet and Confer is that you will sit there and you will have two monologues and at the end of the monologues you would go to mediation and that is where the real negotiations will be conducted as opposed to sitting down and negotiating at the table and when those issues -- If there is a dispute after negotiations, then you go to mediation. But, with Meet and Confer you have nothing. You might as well simply go to Meet and Confer from the beginning.

MR. KATZ: The end product of Meet and Confer are position papers and under the current Montgomery County law they are non-binding position papers and they say that in each of the position papers. There can be separate position papers where you disagree on some points or they can be joint position papers where you agree and you both sign off together. In any event, even in the joint position papers -- it has been written in the two that has been developed between the Fraternal Order of Police and the County that they are non-binding, period, and they spell out why or where they are non-binding and we cite the law that makes them non-binding.

If you go to some other system whereby there is an agreement, which is what, of course, the police want, -- Call it what you will. It is not Meet and Confer. It really is collective bargaining and collective bargaining is just not that much of -- That is the idea of collective bargaining,

two groups that sit down and negotiate and come out eventually with an agreement.

CHAIRMAN ADAMS: The problem I have with this is it seems to me that the proposal that we made, while obviously not saying we are for collective bargaining, but by talking about a mediation process and an impasse process and calling for a neutral fact finder is very close to what it is you are describing. I can tell you if I were the personnel director and I knew at the end of the process there was an independent fact finder was going to come in and look at all of this and issue a report, I would negotiate very seriously.

MR. SVERTESKY: You wouldn't negotiate because you couldn't negotiate. All you could so was meet and confer.

CHAIRMAN ADAMS: To me that sound symantical.

MR. SVERTESKY: It is not symantical and I think that you would have to sit, as we did for the last three years in these sessions, to really get a feel of what is going on and I think it is very difficult to sit and say to you that there is a very clear distinction between meeting and conferring and negotiations. You know, a lot of it is done with, you know, power whether it is actual perceived leverage from both sides, give and take on propositions, things like that. You have none of that in Meet and Confer. You have simply two individuals who are sitting down and hoping to develop a dialogue and where they agree, fine, and where they

don't, all right, end of process.

MS. BOERGERS: Except that the mediation and fact finding is part of the play then you can go to that extra route.

MR. SVERTESKY: As I said earlier, you know, when you go into Meet and Confer knowing what it is, you are not going to get anything developed substantively until you go to mediation. You are just going to be sitting there preparing for mediation.

MS. BOERGERS: Well, is that necessarily a bad thing?

MR. SVERTESKY: Well, it is because any time you have to -- You know, the parties should sit down and bilatera agree upon conditions of employment or whatever the issue happens to be. That is the --

MS. BOERGERS: That is kind of the ideal world.

MR. SVERTESKY: That is the goal of it. You have to come back and face these people every year.

CHAIRMAN ADAMS: But if I am the County Executive or his or her representative, I just don't want to get into a situation where a fact finder comes in and says, you were terrible in this process or you didn't pay any attention --

MR. SVERTESKY: They are not going to say that.

CHAIRMAN ADAMS: Well, if they don't negotiate, if they don't come to some agreements and concede some points

it seems to me that the fact finder ought to --

MR. KATZ: Say they do that. Say they come in and say, this is horrible, you haven't done anything. These people are entitled to thus and so and the County Executive says he is right, I am going to make other arrangements and then he comes up with a non-binding position paper. What is to prevent him from changing his mind in three months.

You know, now that I think about it again, I was right before. I think I will just leave the conditions the way they were before. This is a non-binding paper. It says so right there. It is not legally binding. So there is no agreement and that is what Meet and Confer is about.

CHAIRMAN ADAMS: I guess my sense is that you underestimate the power that you would have, say, to use a report by this independent fact finder. I would think that the press and opinion leaders in the county would take something like that very seriously. Maybe you all don't agree.

MR. SVERTESKY: No. I don't necessarily agree that there is going to be a public outcry over a fact finder's independent judgment on a particular issue.

MS. BOERGERS: Can I argue the other side of that question for a minute? I guess we could look at some of the court opinions in regard to Larry Hogan's negotiations with the county employees to see how far they got with a court of law saying that he violated collective bargaining processes

and where the county employees got in that court of law versus an independent fact finder. They didn't get very far with that. Perhaps, you know, maybe they are right, that while it might add something it wouldn't add sufficiently.

MR. SVERTESKY: And plus the whole key here in November is that nothing is binding to begin with.

CHAIRMAN ADAMS: I recognize that point. Are there other questions.

I would like to ask in this system you have other charter provisions, existing charter provisions, that provide for merit system for all county employees and then you have this system which says the police may collectively bargain with binding arbitration. Isn't that a little bit like havin, belt and suspenders. I mean what would you be willing to -- Do you really feel you need both systems. Do you really want to negotiate from a series of guarantees that you already have? What of those guarantees might you be willing to bargain away to get other kinds of benefits?

MR. KATZ: Do you want us to state that in public?

CHAIRMAN ADAMS: Just give us an example.

MR. SVERTESKY: I think there are merit principles and there is the civil service system. And, I think a lot of people get confused between a merit principle and a civil service system and it comes out as kind of a merit system. You know, there are merit principles and they are

well defined in the scope of bargaining in every collective bargaining agreement and legislation that we see in the country and there is probably as many as 40 states that permit public safety employees to bargain collectively.

But, those type of things where you have certain merit principles, they are totally beyond the scope of bargaining. They are outside the scope of bargaining. And, that has to do with hiring and firing and discipline and promotional processes and things like that. Where you get involved in some of the other grey areas is what has traditionally come under the civil service system such as the number of holidays and things. That is not a merit principle.

MR. KATZ: We understand you when you talk about merit principle to talk in terms of, I guess, historically Jackson's time, the reason that a merit system came about in any event. The mere fact that another party gets in won't sweep out all the current civil servants which I have been told happened a long time ago.

CHAIRMAN ADAMS: I guess what I am wondering though is if you get in a situation where you have a series of non-negotiable merit principles, hiring and firing, you are then asking for a system to bargain on top of those benefits and that sort of gives you a double protection that I would worry about also. Wouldn't you have to rewrite the

merit system clause and regulations to attempt to marry them with the existence of collective bargaining or are you saying you basically want both?

MR. SVERTESKY: I think there is no doubt that if you were to bring a full fledged collective bargaining system into this county, there would have to be some fairly significant revisions to the personnel regulations; whether you want to talk about superimposing them or you want to talk about rethinking the role of the personnel board and the provisions of the powers of the CAO and other things, it would be for the Council's consideration. But, I think that at this point you can install this collective bargaining system into the county regulations with some minor changes to the personnel regulations.

MS. BOERGERS: The part of the merit system I am concerned with is the part that is written into the charter. Assuming Question A passes some of the detail of the merit system will be taken out of the charter. We can't automatically assume that. Question A could fail and Question F could pass and we would be bound with some pretty detailed descriptions of what the merit system will cover. Even if Question A passes and some of those details are taken out, we will still have as part of our charter the Uniform Salary Plan and I am very concerned about the fact that while you are talking about collective bargaining for the police officers,

once you negotiate a particular salary plan that then must be turned over to the whole of the county employees.

MR. SVERTESKY: That is probably a real central problem when you start talking about collective bargaining and it was probably one of the most frustrating things for us to sit in Meet and Confer and discuss salaries when we are representing 650 police officers knowing that the county's retort was, wait a minute, you know that half of percent means X number of millions of dollars because we have to give it to everybody. It was a very frustrating experience needless to say because we suddenly took on the task of representing 6000 Montgomery County employees.

What could be an interpretation of a uniform pay plan to be kind of an umbrella effect as opposed to a list of Grade One through Grade 40 that would be totally consistent and would marry collective bargaining with that concept of a uniform -- In other words, a uniform plan, but it is not one plan where you have to plug everybody in regardless of the diversity of their task or jobs with the county with some grade letter. I think you can have --

CHAIRMAN ADAMS: Let me ask you this though. If what you got your collective bargaining was a 10% pay increase -

MR. KATZ: Are you talking about cost of living increase?

CHAIRMAN ADAMS: Well, let's say cost of living is

eight or something and you negotiated a 10% increase, wouldn't that affect every employee under the Uniform Salary Plan?

MR. SVERTESKY: The way the Uniform Salary Plan is interpreted now it would have to go across the board.

CHAIRMAN ADAMS: That is the point. The notion of a different grade --

MR. KATZ: However, let me submit, if the cost of living raise was merely, for example, $2500 per person that would also be uniform. That may weigh more heavily for the median policeman as opposed to a median librarian. That would be unform. The Uniform Pay Plan as such it is just a matrix. If you are a Grade 14 you might be between this area and this area. You are paid at Grade 14 level only because that is the amount of money you are making.

CHAIRMAN ADAMS: Are there further questions.

MR. CHEN: I apologize but I have had a little bit of experience with charters. You used the term "public safety employees". What kind of employees are they? How would you like to define that?

MR. KATZ: For purposes of this referendum question --

MR. CHEN: No.

MR. KATZ: We are talking about police.

MR. CHEN: No, no. You have used the term "public safety employees". I am asking who you mean by that, only

police officers?

MR. SVERTESKY: In the traditional sense, if you look at that terms as it applies to other juridictions, we are talking about police officers and fire fighters. Here we are talking about police officers.

CHAIRMAN ADAMS: Other further questions?

(No response.)

CHAIRMAN ADAMS: Thank you very much.

We will now ask some representatives of the County government -- Mr. Hilliard. Thank you for coming out. If you could just state your names and positions that would be of help. And take 10 minutes or whatever to speak to this question.

MR. HILLIARD: Yes. My name is Clinton Hilliard. I am Personnel Director for Montgomery County Government.

MR. TORGESEN: Jim Torgesen. I am the Assistant to the Personnel Director for Labor Relations.

CHAIRMAN ADAMS: Thank you for coming.

MR. HILLIARD: Mr. Chairman and members of the Commission, I would like to begin by simply reading a statement on Ballot Question F which was prepared by the County Executive.

After reviewing proposed Ballot Question F which would provide for collective bargaining with binding arbitration for the County Police I oppose the amendment. The

principal reason for this position is my consistent opposition to compulsive arbitration of fiscal issues. In my view, elected officials must be accountable for such issues as part of the budget process. Compulsory arbitration interfers with the responsibility of those officials to the electorate by transferring fiscal decisions to outside parties.

The Charter Review Commission ha s studies collective bargaining issues including the operation of the current Meet and Confer process, the problems of impasse resolution and the effect on collective bargaining of other charter provisions such as the requirement for a Uniform Salary Plan. I believe these issues require further discussions as the Charter Review Commission has recommended.

I felt it was important to read that to the Commission so that the position of the County Executive on this particular proposition or this issue rather would be clearly understood.

CHAIRMAN ADAMS: Thanks.

Would you all have further comments or do you just want us to proceed to questions.

MR. HILLIARD: If there are any questions we would be happy to answer them.

MR. TORGESEN: No, I don't have any thing.

CHAIRMAN ADAMS: I guess the first question would have to be that you state that the County Executive is

opposed to this amendment because it provides for binding arbitration on fiscal issues and yet we have heard the representative of the FOP say that it does not. Could you speak a little to how you read the language and why you come to that view when they apparently read it in a different way?

MR. HILLIARD: Well, the language I think that has been expressed is open to a variety of interpretations. It does not exclude what would normally be termed interest arbitration. It is not excluded. And, therefore, the range of interpretation that could be considered reasonable is quite broad.

CHAIRMAN ADAMS: My understanding is that what these folks are proposing is by no means unique. I mean a number of state and local government employees operate under essentially this kind of provision. I don't know the number of states that have laws like this, but this is not unusual. Mr. Hilliard, particulary I know have been in other jurisdictions. Could you all speak to a little bit to any experiences you are aware of about collective bargaining with binding arbitration for police in other jurisdictions and how that worked? I understand the County Executive's general feeling that he is not providing arbitration on fiscal matters, but could you give us a little of the reasoning as to why that position make sense in your mind from experience you have seen in other places?

MR. HILLIARD: Well, I have not personally operated under a public sector collective bargaining machinery that involved interest arbitration so I couldn't speak directly experientially to that. I think the basic concerns, the concern expressed in the County Executive's statement, and I really can't elaborate very much on that. I think the basic reason for the position is fairly clear. I have personally no experience with a system which involves interest arbitration.

CHAIRMAN ADAMS: Let me try this another way. If the amendment clearly read in the way that FOP explain they mean it to read; that is not binding arbitration on interest issues, fiscal issues, would the County Executive have a different viewpoint? Is the County Executive opposed to collective bargaining or is he opposed to collective bargaining with binding arbitration on non-fiscal matters. Do you know that or do you have personal feelings that you would like share on --

MR. HILLIARD: No, I really don't know that. I really couldn't speak for the Executive on the issues that have been discussed. So it would really be inappropriate for me to attempt to speak on behalf of the Executive on that.

CHAIRMAN ADAMS: Let me try this. As I understand it, the police are saying, look, we are safety, public safety employees. We don't want to have the right to strike. We

shouldn't have the right to strike. Our national organization says we won't have anything to do with that. And, yet, we have a system in the county, the Meet and Confer Law, that really doesn't give us the chance to properly, strongly negotiate for what we believe in. So, if we are willing to give us the right to strike, we have got to have some kind of stick, if you will, or something that will give us an ability to have our views heard and the only alternative to a right to strike is to give them a legitimate negotiating position would be binding arbitration. What is flawed in that rationale and also if you could speak a little bit about the experience in the county with Meet and Confer so we would have a better sense of the limitations or positive aspects of that.

MR. HILLIARD: I think you have to make certain assumptions and one of the assumptions you have to make is the right to strike as a presumption. I think that is a tremendous leap. I think generally it is considered that public employees, except to the degree that there is a specific provision to the contrary, generally do not have the right to strike.

As far as the experience with Meet and Confer, the -- It is a system designed to have issues presented, discussions on issues, to resolve issues where there are differences, and to jointly develop what is called a position

paper that clarifies what the issues are that are being recommended for implementation.

To my knowledge, the provisions of the position papers have, in fact, been honored. That there has been no instance that I am aware of in Montgomery County government where provisions that are set forth in a position paper have been ignored by the government. That is my understanding of the experience.

So, I think to the degree that the Meet and Confer process was designed to give an orderly forum for exchange of ideas, a forum where results of discussions could be put in written form with some specificity and would serve as a basis for actions and procedures and implementation of various processes in the county government; that that, in fact, has happened.

CHAIRMAN ADAMS: If I might just break in for a moment, unfortunately we failed to get on the record the police's specific views of the Meet and Confer process but rather heard general statements. But I thought I remembered hearing from them in our previous discussions that at one time or another the whole system kind of broke down and there wasn't even a position paper written. I don't have any details.

MS. BOERGERS: That was last year if I recall --

MR. TORGESEN: That was two years ago.

MS. BOERGERS: The first year was -- Mr. Gilchrist was the County Executive, as I recall.

MR. TORGESEN: The first year was under Mr. Gleason and the last two years have been under Mr. Gilchrist.

MS. BOERGERS: The first time the process broke down and the position papers were not written, as I understand it, and everybody just kind of went home was two years ago.

CHAIRMAN ADAMS: What happened there?

MR. TORGESEN: During those particular sessions, one of the primary issues of discussion dealt with the retirement issue and was felt by the County that it was not a sufficient data base in order for us to make reasonable proposals to the FOP. And, through agreement, informal agreement, it was never put in writing. It was agreed that the County would engage the services of Aetna, who was responsible at that time for administrating the retirement system and providing acturial services, to do a major update and cost analysis on a variety of 20-year retirement proposals and resulted in a significant cost to generate those proposals. So, it was not something that was taken lightly but it was felt it was necessary to provide a reasonable data base so that decisions could be made. That data base could not be provided within the time frame of our discussions. On that basis, because that was a primary issue of discussion, the parties agreed not to fall through with a formal position

paper.

MS. BOERGERS: Has that report been completed do you know?

MR. TORGESEN: That report has been completed. Upon its completion we had some additional problems. At that time we discovered some problems with the way that our credited service was being calculated which had a significant impact on the acturial evaluation that was being done on a yearly basis. For that reason there were revisions that had to be made in those acturial assumptions. As a result of the revising of the credited service and making sure that was brought up to accuracy, as a result of that we found that the cost for the proposals that we were considering under the 20-year retirement were significant. And, that has resulted now in the County's rethinking the whole area for 20-year retirement in the context of -- Even if we begin to engage in more serious discussions and even lay out a proposal to the FOP it is going to result in a significant cost to the County and one which right now is not a commitment we are prepared to make.

MR. HILLIARD: Mr. Chairman, I might add also that one of the things we are doing in addition to that -- and this came out of the so-called Coleman Committee Report which was looking at various salary issues in the County government was a recommendation of a very careful scrunity of some of

the assumptions involved in the evaluation of our pension program and we have gone out to get a second opinion. We have obtained another actuary to come in and look at the system and to give us a report. And, that actuary is collecting the data and we will have that report out in the late fall so there is active analysis of that problem.

The key point is that the retirement issues is, in terms of relationship between cost and retirement benefits, a significant issue. It is not an insignificant current or perspective or future financial, potential financial obligation on the part of the County and it is something that we want to look at very carefully before we commit ourselves to any change in the existing benefit structure.

CHAIRMAN ADAMS: Thank you.

In our report of May that I think you referred to, we suggested that the Meet and Confer Law could be strengthened, propose some mediation and ultimately the possibility of an outside fact finder. Our proposal was not that the fact finder's findings would be binding but rather that they would be public and apart of the process.

The representatives of the FOP indicated to us, as you have just heard, that they didn't think that process would carry much weight and, in fact, again their discussion by saying it was an indication of how or what a back burner issue all of this was to the County government, that our

recommendations have not been looked at. Could you talk a little bit about our recommendations, the possibility of improving the Meet and Confer Law, and speak to the question of whether this could be something the County government would be willing to look at seriously in the near term?

MR. HILLIARD: Well, I think it should be put in the context of what has been occurring since, I guess, late winter or early spring. I think there are two important occurrences. One is that we do have -- The only recognized, formally recognized, organization in the County government is the FOP. So the issue is not applicable to the other organizations since they are not formally recognized.

But, the issue of mediation, there is a mediation provision that is in existence right now in our relationship with the FOP. So there is provision for mediation. And, it is a very traditional kind of mediation provision. I can't speak to its effectiveness in this context because the mechanism has never been used nor has it been requested.

But, the second, I think, important occurrence is that effective last January the voting requirements for designation of a recognized organization were changed by amendment. That was effective, I believe, somewhere around the middle of January 1980. And, as a result there has been a significant increase in potential organizational activity. Right now we have a number of petitions and intervening

petitions that have been filed and we will be having -- The Chief Administrative Officer has provided for, under the Employee/Employer Relations Law, will be meeting, in fact, next week to have discussions with each of the organizations concerning the units they have petitioned for.

So we are going through that process with a number of organization. And, I think it would be a untimely point at this point in time to begin introducing major changes in the law. The present Meet and Confer law, you look at its provisions, has really never been fully implemented and the process of recognition, which can be a fairly lengthy process, has really not reached any point of maturation in the County.

So, I think it is not that the County government is not interested in considering the observations and recommendations of the Commission, but we are sort of right in the midst of one of the very fundamental and major provisions of the law, namely, the establishment of representation rights. And, it would not be the best time to begin a dialogue of significant changes in the law right on the eve of potential representation elections.

MS. BOERGERS: Can I mention one point? My understanding of the current mediation provision is that it can only be implemented and put into effect if both sides agree to go to mediation. To me there is a very significant

lack in --

MR. HILLIARD: I would like to respond to that.

MS. BOERGERS: Obviously you wouldn't go to mediation about the things you wouldn't want anybody to hear anything about, you know, such as from the police's point of view, 20-year retirement. Our proposal, I think, is really substantially different. While the names are the same and the same mediation and fact finding, it is either party can chose.

MR. HILLIARD: I would like to respond to that. The basic concept of mediation involves mutual consent and I think that in terms of traditional definition of the concept of mediation it is very difficult to have an effective mediation process between two parties if one of the parties does not want to be involved in the mediation process.

MS. BOERGERS: Take the example of fact finding.

MR. HILLIARD: That is a different process altogether.

MS. BOERGERS: But the process we are recommending is mediation if either party wants to go to it and if that breaks down then you go to fact finding. It is kind of an automatic step assuming either party wants to go to fact finding.

MR. HILLIARD: Well, without getting into the

specific merits of the provision, I think the key thing is that -- The provision does exist. There is no history of denial by either party of a request to go to mediation because there is no history of request for mediation by either party. So, in the context of the County's experience, I don't think that the voluntary mediation apparatus can be judged on the basis of any statistical profile or utilization analysis. The mechanism is there. It simply has not been used.

MR. BANKSON: Would it be a fair expression of your opinion that you think Meet and Confer has not had time enough to work and there hasn't been enough experience with it yet and should be left the way it is for now?

MR. HILLIARD: Well, that really is kind of a basic policy decision that I have not discussed with the Executive. This is an area where the Executive has a great deal of concern and I think there is some sensitivity. I would be reluctant to say that -- Well, I think it is a factual situation. In terms of the entire County government obviously with only one formal recognized organization, it is hard to talk about the needs and experience of all of the County employees, that that picture will not emerge. I don't know what the County Executive's position, for example, would be on the issue of collective bargaining without interest arbitration or some changes to the Meet and

Confer approach.

I do think that the issue of timing is kind of important. I think we are in rather an unusual circumstance where we have one organization that has gone through the formal recognition procedures, has gone through the Meet and Confer process. And, then we have a group of organizations that are just petitioning for recognition under the same basic law and it makes it a little difficult to both talk about from experiential point what is the best approach. It also makes it difficult to involve those organizations in a discussion of changes in the law since we don't have an established pattern of formal recognition in existence at this point.

I expect that once we get down stream and the issue of representation by the other employee organizations is resolved, obviously at that point in time the environment and the forum for discussion will be very significantly changed. But, I really can't in all fairness, you know, represent the County Executive's position on specific policy issues of whether we ought to make certain specific amendments in the existing law at this point.

CHAIRMAN ADAMS: Bill Chen.

MR. CHEN: Mr. Hilliard, I am not going to ask any questions about the mechanics of the system. Did you hear the definition of the FOP representative of public safety

employees of the county? Did you hear that testimony?

MR. HILLIARD: Yes.

MR. CHEN: Would you agree with that testimony?

MR. HILLIARD: Which part of it?

MR. CHEN: The definition of public safety employees?

MR. HILLIARD: I think he used the term police officers.

MR. CHEN: Yes, that is right, and fire fighters.

MR. HILLIARD: My recollection is he used the term police officers.

MR. CHEN: That is right. They also used the term of fire fighters. Do you agree with that?

CHAIRMAN ADAMS: In the amendment they used the term police officers.

MR. CHEN: I am not talking about the amendment. I asked for their meaning of the terminology when the term public safety employees was used.

MR. HILLIARD: Oh, the generic term public safety. Generally that usually is -- Well, would be an umbrella term to cover police, fire, sheriff, and corrections employees.

MR. CHEN: Is that terminology that is pretty well accepted in your profession?

MR. HILLIARD: I think so, yes.

MR. CHEN: Would it include -- I think the County places security guards for public buildings in Montgomery

County Court House and this building, would it include those types of employees also?

MR. HILLIARD: Well, generally it -- That varies. Generally, if they are security officers in the context which the County is a security officer, they are really border line. They can be either not in or outside of that. Typically for people involved in security functions, the issue is whether or not they have certain police powers. If they have those police powers they generally fall within the definition. There are a number of employees who serve essentially as security officers or guards who do not have specific police powers or are not charged with the responsibility, for example, of arrest or search and seizure and they very often fall outside the definition of public safety employees.

CHAIRMAN ADAMS: Mary Boergers?

MS. BOERGERS: I am not sure exactly what my question is but during the year we have been discussing collective bargaining as a subcommittee, one of the major frustrations of employees, both police and the other employee organizations that are not officially recognized under Meet and Confer is the length of time it has taken whereby little or no action has taken place. I am referring to the fact that 1968 was when teachers first got collective bargaining. We now have last year collective bargaining for Montgomery College employees. They started trying to get collective

bargaining statewide through a state law back in 1970 and it has been bouncing around now for 10 years. Do you have any answer to the employees? Like you say wait and they say how long do we have to wait.

MR. HILLIARD: I am not saying wait. I am saying that the employees right now are involved in a recognition process and that process is occurring under an existing body of law which has specific procedures and provisions for recognition. I just think it would be inappropriate to begin talking about major changes in the system at the time that very fundamental process is occurring.

I am not saying wait, you know. We are talking about a schedule which anticipates, if our expectations are correct, that sometime in November, you know, within two months from now we will be having representation elections assuming that the, you know, required minimum signatures are verified and all those procedural requirements are met. So we are talking about having a pretty clear pattern of formal recognition and representation before the end of this year. I am not saying wait.

I can't address the issue of why -- There are so many institutional variations when we talk about public employee organization and employer/employee relations provisions. If you look at the number of varied state and local provisions, they are all over the map. I have

operated under, when I was in the State of California, under two separate public sector laws, one for state and local -- one for local government, excuse me, not state government, local government and one for schools which were just completely different systems. And, one started off with the label of Meet and Confer and it evolved essentially into something very close to collective bargaining in a number of situations in that we had comprehensive agreements and there have been several tests of -- even though the law says they are essentially non-binding, functionally they are treated almost the same as collective bargaining.

The other extreme was in public education until a few years ago there was another piece of legislation that had variations in it that first of all didn't have any provision for exclusive representation, had representation patterns based on -- for academic faculty people and K through 12 community college system which provided for what they called kind of a portional coalition negotiating, maybe based upon estimates, proportional work force represented by the various organizations. So, you know, people only have a nine-member people, one organization would have three seats, another one one seat, another one two seats. And, it was just a very diverse kind of function. That has changed very rapidly.

The variations among the states and localities in

terms of employee/employer relations almost defy any standard or normal kind of description. They are tremendously varied. Why certain patterns have evolved in the State of Maryland and Montgomery County I really can't answer those questions. But, I think it is a major public policy issue. It is a major public administration issue in terms of how you manage the systems that are agreed and I do think it is a system of some importance. I don't know of any particular standard that exists nationally in this area. There are some basic elements in terms of right to join organizations, basic representation rights, that seem to be common. But, when you go beyond that as to the on-going relationship between the employer and employee organizations it is a constellation of varied systems.

CHAIRMAN ADAMS: Personally my own view would be that I recognize the point that you make that it is not timely to deal with changes in the system as you are having these representation elections, but I would hope that you would at a minimum sort of hear the message that the police and us that there might down the road not too far be a serious look at whether the existing Meet and Confer structure is adequate or whether there might be a move in some of the directions we suggested to strengthening the process.

MR. HILLIARD: I appreciate that. Let me just very briefly summarize. I hope nothing I have said suggests

that the County government doesn't consider this a very important issue and is not mindful of the Commission's studies and recommendations.

I suspect that all these items are going to get very careful and serious consideration. I just think -- There are a number of issues I simply have not had an opportunity to discuss with the Executive and it would be inappropriate for me to speak on his behalf when, in fact, he has no idea of what I am saying.

CHAIRMAN ADAMS: I understand. Let me just ask one final question. The representatives of the FOP suggested that there were certain merit principles that were well defined in the hiring and firing aspects that were beyond the scope of bargaining. The concern that I would have is if we leave the existing merit system principles and then you add collective bargaining to that, that the government is not in a very strong position. It is sort of like, okay, you have got all of this and now we start to bargain. Is it correct in your view that there are these merit principles that are beyond the scope of bargaining and the notion of hiring or firing or would -- and do you agree with them that the merits between the existing merit system law and provisions and a collective bargaining system would require only minor changes or would it require more major changes to marry those two decisions?

MR. HILLIARD: My own personal and professional experience has been that it has to be done very carefully. There are, in fact, a number of issues. Some of this is done by the merit system law itself. For example, in the area basically of compensation, the merit system law removed that from the jurisdiction of the Personnel Board and in my judgment appropriately. That is an executive reponsibility.

There are some major areas that have to be looked at carefully to determine what is an appropriate arena for the merit system which really speaks to some basic public policy issues, the manner in which employees -- First of all, how people become employees and then what happens to them in terms of promotions, appointments, and a number of other actions which are clearly merit system issues.

But, historically, perhaps simply because of the lack of a more appropriate place to or more appropriate arena to have those issues resolved, a variety of working conditions and compensation issues have been put into the "merit or civil service system" which historically was not the initial purpose of those systems. When you look at the basic purpose of having open access to government employment, ensuring that people are treated fairly, assuring that people are competent to perform their jobs, that at the point of selection and consistently throughout their employment, that promotions and other employment decisions internally are done on the

basis that is in compliance with public policy generally concerning non-discrimination and also meet certain, again, requirements of demonstrated job-related fitness for performing the duties.

Those issues and the protection that surrounds that part of the merit system is what I refer to as the core of the merit system. Really the historic foundation purposes of the initial structuring of the institutions that we now call civil service and merit system in the United States.

The other issues, a variety of issues, involving leave, vacation, sick leave, benefits, salary and other operating conditions of employment are more removed from that core. And, a number of those, I think, appropriate are essentially appropriate for the scope of representation within formalized employer/employee relationship system. And, the provisions in the Federal Government, for example, clearly acknowledge that while a number of economic items are not under the negotiation process, a number of working condition items clearly are and that they are really separate and apart from the core objectives and domains so to speak of the formalized Civil Service system.

So, I think there will have to be adaptation. Some of them, I think, have already occurred in the compensation area which will make at least that part of the system a lot easier to deal with. But, it will have to be done carefully.

CHAIRMAN ADAMS: Thank you very much.

I think there are no further questions. We appreciate your coming tonight.

I would like to move to Question E, the proposal to -- Proposed charter amendment to prohibit the sludge trenching in residential areas. We have invited two representatives of the Citizens for Responsible Disposal and Delegate Robin Ficker. If the three of you would join us. I gather we are going to have a slide show here. Before the slide show introduce yourselves and perhaps explain to us what Citizens for Responsible Disposal for the record is and the role that the three of you played in designing and putting Question E on the ballot.

MR. KNIGHT: Delegate Ficker has graciously agreed to have us precede him and perhaps I can set some context. I am Jim Knight. I am here representing relatively a new group known as Citizens for Responsible Disposal. With me is Mr. Fred Ryland, one of the attorneys who has been assisting us in our efforts. CRD was formed back in the spring as a citizens response to a proposal to take some 1100 to 1200 acres in the upper county for the purposes of sledge entrenchment. The effort that was mounted I suppose could be called multi-faceted. We presented our case to the County Council in public hearing and simultaneously I think it can fairly describe as the inspiration of Delegate Ficker.

We mounted a campaign to bring this question before the publi and gained the necessary signatures to put it on the ballot.

If I may ask you to turn your attention for a moment to the screen behind you. I think I could put this perhaps in context. It is difficult sometimes to get people to focus on something as aesthetically undesirable as sewage disposal.

What you see there is described as a passable scene. It is a site in upper county known as Site 30 before sludge was entrenched. The process is one of digging six foot deep two foot wide trenches all over this area and putting raw sewage sludge mixed with lime in it. If we look at it a little bit later this is the same area. What you see is known as leachate. It is a liquid carrying some of the products of the material that has been buried there to the surface driven by the gases that are generated. I might add that in a somewhat optimistic view of the County and others including the Environmental Protection Administration who had in some way or other espoused sludge entrenchment as a method of sewage disposal. This wasn't supposed to happen or it could be prevented by good engineering. I might add for the record I am an engineer with responsiiblities in fields of geology and I know whereof I speak.

The two problems we have here is the peculiar, in terms of the national picture, a situation in the County

with the soil we have and the highly fractured rock underlying those soils. It is quite typical of the County. It is one good reason why they shouldn't engage in this type of a process.

If we continue on just a bit you will see -- These are taken spread over the area that you saw in the first slide. There are two problems here. This material could get into surface water and perhaps more importantly into the ground water. And, if you have been following the recent work that Representative Moffett has been starting on to help prohibit the further contamination of ground water either by chemical, toxic chemicals, or other materials, I think we see a chance here for the County to be in the lead.

That scene you see thickening as it is is caused primarily by methane gas bubbling up at the top of the picture and driving materials, liquid materials, out.

This is the final slide. I just want to point out to you in large measure this is what it is all about, not only preservation of the land but protection of our underground water supply. That is one of the most precious resources that we have and one which has been abused to a terrible extent.

There are no more slides. I think I can say in a very quick summary that it is an abominable process. There is no place for use as a sewage disposal method particularly

in this County. It has -- As I said, in addition to the obvious asethetic damage, there is a very real problem associated with contamination of ground water and contamination of surface water.

I think Mr. Ryland could speak to other matters concerning the question.

MR. RYLAND: My name is Fred Ryland. I am an attorney. I practice in the District of Columbia but I also practice in Maryland. My practice is predominately legislative but I do not pretend to be -- Like Sam Irvin, claimed that he was a country lawyer and then proceeded to slice up people with constitution language. I am not Sam Irvin of municipal law and I don't pretend to have any specific expertise in that area. So I come as a lay attorney to discuss some of the concerns that people have raised about this charter amendment and the way the Citizens for Responsible Disposal feel about this.

We did not draft the Charter Amendment E but when it was proposed to us it was hardily endorsed. It was endorsed as a resonable exercise of citizen initiative to restrict spending and licensing powers for the County government for inappropriate activities.

There are predominately three legal type issues that have been raised, brought to my attention, regarding the propriety of this charter amendment. I would say they

of the case. In the Cheeks case they had to decide whether the Baltimore City initiative which established the Rent Control Commission violated the Constitution of the State of Maryland and by a nearly unanimous decision except for one judge the court decided, in really a case of first impression and taking logic, that it had never been used before, that what the citizens of Baltimore had done was in violation of the Maryland Constitution because the development of a Rent Control Commission was not "charter material" and was a legislative act which was granted only to the City Council of Baltimore and could not be assumed by the citizenry of Baltimore.

Thus, the Court developed some type of protective sphere of legislative activity which not being coached by citizen initiative. The case, I think, surprised a lot of people when it came out. It is so recent that we don't know whether this case will be restricted in its holding to just the precise issue that was before it. It clearly is a troubling question as far as our initiative is concerned.

However, the sludge disposal question is one which is a far more restrictive intervention into activities of the county than would be a Rent Control Commission proposed in Baltimore City. The restriction drafted by Delegate Ficker does not restrict private entrenchment. It does not restrict public entrenchment. It just restricts entrenchment

on residential property. It is a very limited restriction felt necessary to protect citizens of the county against what is perceived by our people as a serious threat to our land, water and future generations.

So to answer the question, Cheeks seriously will be looked at if this charter amendment ever goes before a court for interpretation of whether it is constitutional or not. It is our view that Cheeks clearly would not fairly preclude this charter amendment although we recognize that there is a serious question there.

Now, the third question, is whether the WSSC as opposed to Montgomery County should have been listed as the party to be restricted by this charter amendment. Well, number one, I don't think that WSSC by a Montgomery County charter amendment could be put in there because WSSC is a strange animal. Every case that comes up -- Every year a new cases comes up about WSSC -- says something different. It is clearly not a County organization, a municipal organization. It appears as a state agency for purposes of retaining sovereign immunity but what WSSC is has not been flushed out and I doubt will ever be flushed out totally.

Basically though the citizens felt we had to start some place and the first place to start is the county. Now, clearly a case could be made that WSSC could do some of the things which we have tried to restrict Montgomery County from

doing. But that baits the question. It baits the question because if our county officials are told in strong terms that sludge entrenchment will not take place on residential property any more, to violate that through indirect means, we feel, would be politically extremely unwise and as an attorney I think it would be difficult not to find some type of county involvement somewhere along the process.

So, to my feeling, this criticism of the amendment is not nearly as severe a critcism as the Cheeks versus --

That concludes my presentation.

CHAIRMAN ADAMS: Thank you.

Delegate Ficker, do you have --

DELEGATE FICKER: Thank you very much.

You asked about the Citizens for Responsible Disposal. They were very helpful certainly in getting this question on the ballot in that they were riled up, they had a vested interest. There were many people there who were willing to go out and work and collect signatures. However, the signatures were collected by people from all over the county. We had close to 200 people who collected signatures from all sections of the county if you go and look at the names and addresses of the collectors. I collected about 1000 signature. I live in west Bethesda. We had people in Silver Spring, Wheaton and so on who feel that we should put an obnoxious use of our land like trenching sewage sludge

in a residential zone. It is just that simple. Why have a residential zone if you are going to have that type of neighbor such as a sewage trenching sight.

And, you really need to go out and walk some of these neighborhoods right next to the site to get the true feeling of it, to see what type of problem it might present, to see the little children there, see the dogs running around and realizing that sooner or later the dogs are going to get in the trenching site and they are going to walk home with the stuff on their feet and the kids are going to get sick and you are going to wonder really was it the trenching site that made them sick. And, when you drive behind some of these cement mixers you know that there is always somethin, dripping out of a cement mixer, always. And, instead of water it is going to be sewage sludge because that is what they use to haul the sewage sludge. I just don't think this is the type of use that is compatible with homes and schools. And, from seeing the site that were proposed they were going to be very near schools.

In the past various citizenry have gotten all rile up and I have attended some of the meetings. They had this site over in Ednor and Silver Spring and the had the people up in Poolesville and they had various other people, some in Potomac were concerned that they were going to trench Avenal Farm eventually and they got upset and they

ended up with the sewage sludge. I thought, well, now is the time to do something a little more drastic about it. And, something that needed to be done was to educate the people of Montgomery County about sewage sludge and what better way to do that than to put a question on the ballot, what better way to get a lot of people involved in a question.

Now, besides that I knew that Montgomery County very seldom terminates any program and they never abruptly halt a program even though it is called an interim program as this was which has been going on for five years. Yet, what we needed was an abrupt halt to a program and the political process, the normal political process, just wouldn't allow an abrupt halt to this sort of a program.

I saw the position of some of our elected officials change quite a bit once we announced the petition and started getting the signatures because they knew this question was going to be on the ballot. They knew it. And, after they thought about that they started changing their position a little bit.

The sewage sludge question is not moot in Montgomery County. It is not moot in Montgomery County dispite what certain people would have you believe. The Calverton question has been up to the Supreme Court once on a technical question. There are five different cases, three in Montgomery County Circuit Court, one in the P.G. Circuit Court, one in

U.S. Court of Appeals, all affecting that Calverton site. Dickerson is going to be going to court also. I know. I have some people on the lawyer's committee talk to me about that. And, it is certainly conceivable to put it mildly that that site, that composting site, would not be on line January 1st when the question of whether or not Montgomery Country trenching turn should come again comes up. So we are going to be faced with trenching.

What we have -- It amounts to a political shoving ground in Montgomery County. They are saying trenching is no good but other people are saying that composting is no good.

So the County in the past has taken the path of least political resistence in questions like this and they have, in effect, well, the health and welfare of a few persons isn't that important as long as we can keep most of the people happy or at least keep most of the people from being upset.

And, this type of amendment is very important to protect minorities, to protect groups of people who are very important individually but may not number in the large numbers that impress politicians.

So, the question of sewage sludge is going to be upon us very, very soon. It is now. They are trenching in Germantown now. It is going to be with us for a long time to

to come until we end up with some satisfactory solution to sludge disposal in Montgomery County. And, to my mind, the only satisfactory solution is the Metropolitan Life solution where they get rid of the sludge very near where it ends up through the natural processes of gravity. They have the sewage treatment plant at Blue Plains because gravity pulls it down there. They don't have it up at the top of Sugar Loaf Mountain because gravity doesn't pull it up there. It pulls it the other way. That is why it happens to end up in Blue Plains. It is not that we want it to end up at Blue Plains, gravity pulls it down the hill.

The citizens I know feel very strongly about this. The question is going to be on the ballot and believe it this question is going to pass. There is no doubt about it. This question is going to pass. If you look at the result of Question F in the last election to ban a landfill system of refuge disposal in residential zones. That is 70% of the vote. It won in every single precinct in Montgomery County. This question -- I don't think people think that sewage sludge is any less obnoxious than garbage in a residential zone. This question is going to pass. The Republican Party voted to supported it. It is going to be marked yes on Republican ballots. The Legislative Committee of the Montgomery County Civics Federation has voted to support it. So, I think you are going to see a lot of support. I can't

see really a large constituency opposing this question except maybe some teamsters who would be driving the sludge trucks. The alternative, I suppose, to opposing it is to find some legal technicality and challenge it that way. But, I don't think it would be wise for you folks to set yourselves up as the Maryland Court of Appeals and say that there is something wrong with this question legally without having a court test or just having some decisions that may or may not be relevant or may not be entirely relevant. I think you have to look at the realities of the situation. The sludging is unacceptable. If I lived next to a sludge site, and thank goodness I don't because I have two little kids, there wouldn't be anything that I wouldn't do if I couldn't move -- If I didn't have the financial wherewithall to move, there would be absolutely nothing that I wouldn't do to halt that process next door to me, absolutely nothing. Believe me, I would be camping out here in the County Office Building day and night until the process was changed because it is a filthy business and it is not healthy.

It is a good political issue. There isn't a constituency really in favor of putting the sludge in a residential zone. It is getting county-wide attention now simply because we put it on the ballot. It is no longer little old Germantown versus everyone else. It is a county-wide issue. And, people all over the county in citizens

groups are thinking is this the kind of land use I want in a residential zone. They are going to answer a resounding no just as they did in Question F.

If you have any other questions I will be glad to answer them. I know that sludge trenching has been very expensive in the past. There was an article June 12, 1980 in one of the downtown papers which talks about $45.00 a ton entrenching process. That doesn't include the cost of the land which is very, very expensive in Montgomery County to trench.

That is about all I have to say. It is going to be very difficult, I think, to mount a campaign to defeat this question because citizens are opposed to sludge trenching in residential zones and that is what the question does. It is a plebicite really beyond the legal technicalities of it. It is a plebicite as to whether or not this sort of horrendous process should go on. Now, should it be in the charter? There is a lot in the charter that nobody every reads and even if you have read them all, even if you have read them at least once you have probably forgotten them. I looked through the charter the other day and I was amazed at some of the things in the charter. You say, well, this is going to clutter up the charter. Look at all the other things in the charter that --

MR. DALRYMPLE: You put some of them in.

DELEGATE FICKER: I put -- I wish there were a lot more of them in there that I could have put in. You look at some of these other sections in here and some people might say, gee, why are you wasting printer's ink and paper printing this. This is a gut issue. This is a politically sexy issue that attracts a lot of people and this is just the sort of thing that -- Believe me, if it is in charter they are going to read.

CHAIRMAN ADAMS: Thank you all for that.

I have several questions, some technical. Let me start with one more general. It seems to me that you all deserve enormous credit in terms of forcing the county government to look at some alternatives that it was not otherwise looking at. I don't claim to be an expert on what we just saw but I certainly just as a citizen, not in my present capacity, would be concerned with the kind of issues that you talk about, about what might end up in our ground water.

But, Delegate Ficker talked about the political shoving match that is about to occur, that is occurring. I might describe it in another way. What concerns me here is if we look at the waste disposal question as sort of a checkers game and I come up and look up at the checkers game and say, go ahead, I want to stop the game, you all can move anything you want, but this one checker, don't move that. I

am going to put my thumb on that and then you come up and put your thumb on another and somebody else puts a thumb on another and all of a sudden it is all thumbs and all moves. I don't know what is to stop people that don't like composting next to them or people who don't like something else next to them. And, I would worry about whether we get into this political shoving match and the end result, as I say, is sort of all thumbs and no moves and the county is in a very bad situation if the charter ends being full of specific remedies to take care of specific things that clearly upset specific groups of people. If you could speak a little more to that I would appreciate it.

MR. KNIGHT: Okay. I guess I would have to maybe very attack your analogy. Each of the pieces on the checker board are of equal weight. I don't believe this is the case here at all. This is a disposal process which would have to argue, and I think could do so successfully in any forum, that, first of all, is not desirable in its space. Secondly, is not technically feasible in this county.

As far as, shall we say, placing the county in the position where they can't move at all, we are just so far from that that I really would have difficulty addressing it. There are a number of very viable options open. They each have their difficulties, there is no question about it. But, that after all is what the county and the technical arm that

is available to them, to the Executive, are here for. That is why we support them with our tax dollars.

You mentioned, for example, composting. There are some who would argue with composting. Perhaps true. I think you will find an order of magnitude of greater support, greater support for composting than sludge entrenchment. It is definitely a more desirable approach. I think you will find even those who are decidedly against a given location for composting would not debate the desirability of a process over sludge entrenchment. They might argue about the details of a particular process being used at a site. They might very reasonably say why are we doing it 40 or 50 miles away from the inevitable source of the material as Delegate Ficker described.

To me there is such a difference in the weight that one would have to give to each of these arguments starting with the whole concept of sludge entrenchment in a residential zone to composting in a residential zone to composting in an industrial zone to composting at the plant. And, beyond that there are other -- Let's call them political avenues that we do have after all here. We do have a very severe political problem between the two counties, Prince George's and Montgomery, as reflected in the Calverton fiasco. I think I can call it that safely. We have a question with a child of the Federal Government and with the District of Columbia.

And each of these things are amenable, I would believe, and I think anyone could argue logically to attack on several fronts. If these local governments all got together, for instance, and make a concerted effort with the Federal Government, I think there may be solutions that could develop.

To argue, gee, if we put this on the charter, you know, we are going to restrict the county and I won't be able to do anything and, gee, after all, I have got to do something with it because we are going to keep on making day after day. I really think -- I think the number of avenues and approaches and options that are open are far too broad to try to circumscribe the problem.

CHAIRMAN ADAMS: I was suggesting the people near the composte to say, gee, I don't want the composte near me so they go out and get their positions and whatever the alternative to that is, the people near that site go out and you have a charter that has a whole series of thy shall not do this and the other.

MR. KNIGHT: That presumes that each of these would pass, that you could gain the support from the citizenry, that you could get the signatures, that you could make the arguments and they would pass. I guess I would argue that if it really became capricious I would like to think, and I feel personally, if it really became campricious it wouldn't work.

CHAIRMAN ADAMS: That doesn't mean the first one ir is okay because the third or fourth times the public would say, oh, my God, we really have to stop this. I am not saying you don't have the first case.

DELEGATE FICKER: Also, look where else in the country this process is used. I don't know of anywhere else where they are trenching. Maybe there are a lot of locations around the country where they are trenching. If it is such a nice process why don't they use it somewhere else?

CHAIRMAN ADAMS: Mr. Knight, can you speak to that? Have you all looked into that question?

MR. KNIGHT: There are so many little municipalities. As I said, there is nowhere else. Somebody could probably find the exception. It is rarely used if at all.

CHAIRMAN ADAMS: Okay.

MR. DALRYMPLE: Let me ask a question while we are on that. I am confused by what you are trying to accomplish in this amendment. It talks about spending, it talks about permits. It limits it to the county and it limits it to residential zones and yet all we are hearing here that the process is a very undesirable process. I don't have any doubt that it is an undesirable process. All you have got to do is look at the few pictures you have got as I have here and see it in action. But, what this does is amend the charter in a way that I don't think is going to have any

meaning. How is it going to have any meaning if they have got 2000 acres they intend to trench the sludge and it is residential? What happens if they rezone it to industrial?

DELEGATE FICKER: Well, there are --

MR. DALRYMPLE: Don't give me the poltiically unpopular bit. I know that. I know it is politically unpopular to do it, to avoid this, but doesn't, in fact, that have real possibilities. They are under a court order to get rid of sludge. They can't say, oh, the charter prevents it. The charter says you can't do it in residential so rezone it to industrial and do it.

DELEGATE FICKER: There is no question but this is an obnoxious type of industrial use of land. There is no doubt about that. As for rezoning, you either have to have a comprehensive rezoning which takes times with public hearings and so on.

MR. DALYRMPLE: It doesn't take long when they want to do it.

MR. CHEN: During court proceedings, Robin.

DELEGATE FICKER: Pardon?

MR. CHEN: During court proceedings they can do it.

DELEGATE FICKER: Well, they can but whether or not they would --

MR. CHEN: They have done it.

MR. DALRYMPLE: Well, they have used the comprehensive

process to get rid of usage in areas that are politically unpopular. They did it over in Kemp Mill and Four Corners. They just did it in Potomac. You supported that. I was here the night that you came in and supported down zoning. That was political popular to down zone but they used the process to get rid of something.

But, I don't see where what you are proposing here is necessarily effective and probably is very easily defeated by the same body you are attempting to restrict the use of doing it. They are the ones that do the zoning and they very easily can take-- If they want 1000 acres to trench, they take an area of 1000 acres and another 1000 acres around it and say, all right, let's have a comprehensive plan and everything in the middle is industrial where we are going to trench and everything else is buffer and they comprehensively rezone it. And, there has not been a comprehensive zoning upset by the court in Maryland in history. So how is this effective?

DELEGATE FICKER: All I can tell you is that generally there may be an exception with the court involved I suppose -- Where the court is involved in comprehensive rezoning and it is done immediately or a matter of weeks. Generally it takes a long time. And, we are going to be in a time crunch situation focusing on that January 1st date. There is going to be pressure here in Montgomery County,

either the composters or trench.

MR. DALRYMPLE: I agree with that but I am suggesting to you that it only takes -- There is a minimum amount of time that it takes except by statute for advertising an action. If they want to preserve the farm land they did it in record time and they just -- Del Swope came in and down zoned the living daylights out of thousands of acres to do it and they wanted to do it. I am only suggesting to you that if it becomes essential for them to do that here and rezone the sludge trenching site to industrial they have done it. They have completely defeated, I think, what your goal is here and we have got an amendment in the charter that has not meaning.

CHAIRMAN ADAMS: If I might say for the record there is a perspective that says it is good they have provided -- That they have used the term "residential zone" because in effect that makes it less rigid than if they hadn't provided that.

So perhaps one argument is that that was an example where the authors were attempting to provide some flexibility for --

MR. DALRYMPLE: And, I suspect that was why it was done so you can't say it was just an exclusionary act here, where we are not for all times cut off somebody's right to do something and we bound them in a manner that you are not

allowed to bind the government. But, I am still saying that if the goal of this amendment is to bring a rapid halt to trenching this doesn't do it. Why would be gum up the charter for something that is ineffective.

CHAIRMAN ADAMS: Bill Chen.

MR. CHEN: Aside from the zoning aspect of it, there is even cases in Maryland --Talking about a state agency, they are not going to be bound by those zoning regulations. I will give you -- Where the state DOT went to court on it Robin. It is one thing if you said you can't do it on residentially zoned land that was classified in that district as of June 30, 1980. I don't know how legal that would be but that is tying it down. If you are trying -- We don't sit as a court of appeals and I don't think any of try to be, but I think our role in part is to try to help in focusing on ways the charter can be amended properly and addressed properly. I think the concern I have with this is that I don't question the problem. But how to deal with it in the context of a charter amendment, I don't think this does it to be very honest with you.

CHAIRMAN ADAMS: Could I ask Delegate Ficker a question whose interest in amending the charter is more long standing than the Citizens for Responsible Disposal. If the State Constitution authorized or allowed citizens at a local government level to initiate ordnances as opposed

to charter amendments, which I understand is in some dispute but probably not allowed now, would you, in 1978 and now, use that initiative route? In other words, to initiate an ordnance as opposed to initiating a charter amendment? In other words, do you use the charter amendment approach and have you suggested it to these folks because there is no ability to initiate an ordnance?

DELEGATE FICKER: Well, if we initiated an ordnance it very likely would require a much larger number of signatures. Are you thinking of a state-wide question?

CHAIRMAN ADAMS: No, no. If the State Constitution said, for instance, that in a local government -- I think it would be less signatures rather than more signatures than is required to amend the charter. You would be able to initiate a local ordnance.

In other words, let's say the State Constitution said, rather than take 10,000 signatures to amend the County Charter, with 5000 signatures you could put a proposed ordnance on the ballot to be voted on and then would be part of the laws, part of the code of Montgomery County as opposed to the charter. Would you use that route rather than the charter amendment?

DELEGATE FICKER: Well, that is a hypothetical question. I don't think we are ever going to have that alternative. I sit on the Constitutional and Law Administrative

Committee through which those proposals have to pass and I think out of 22 votes such a bill in the past has gotten maybe three votes or four votes. And, unless there is some dramatic change in the make up of the assembly in their thinking, which I don't see despite the popularity of such local initiatives, I don't see such an alternative presenting itself. And, if it did, I suppose that we would evaluate the situation at the time, evaluate the number of signatures, talk to some attorneys to see which is more likely to succeed in the long run and make a choice. Right now we don't have that choice. We are just dealing with what we have and trying to fight this process every step of the way in a reasonable fashion. This is what we came up with. Maybe there is a way that we could have drafted this question better to make it more effective. But, we haven't done it and we don't have the signatures. It takes an awful lot of work to get these signatures and this is what we have now. This is the question that is going before the voters. Now, maybe someone wants to take the trouble to collect a lot of signatures and amend this question and in the next election they can go ahead and do it, but I don't think there are many groups that have the perseverence to get the signatures and go through all the checks you have to go through to amend the question. There have been very few attempts really to amend the County Charte If you look over the history of the County Charter, there

have been very few attempts and I think only one citizen initiative has been successful in winning approval of the voters.

So you can start out with a lot of different ideas and attacks on those ideas and look what filters through. Since we have had this charter there has been one that slipped through and that is not very much considering all that has been done in this county.

MR. RYLAND: Mr. Adams, if I could have a couple of comments briefly. Number one, on your assumption -- your hypothetical of the initiative by county voters. First, to make it all analogous to charter amendment, you would have to make it reputable only at the option of the county voters. If you just passed a provision that allowed county voters to pass a local ordnance, I would assume the County Council could vote out that local ordnance at any option unless you provide some mechanism for locking it in.

Number Two, just from the perspective of a public interest lawyer fighting one of the battles using as many tools as you can have, I, for one, would rather have a charter amendment in there that county officials might try to figure a way to get around than to not have that charter amendment in there depicted as it possibly could be.

CHAIRMAN ADAMS: That is informative to me because my own feeling is -- My thought was that perhaps some of

technical amendments that the court is called in to question perhaps should be ordnances and perhaps some people feel, gee whiz, we don't have any way to express our opinion through an advisory question or an initiative for an ordnance so we have to amend the charter.

I certainly understand your point that if it were only an ordnance it could be repealed as an ordnance unless there was a special provision. But I simply wanted to know if you sort of felt that strongly about the question or whether this was the only vehicle the citizens have to vent their concerns.

DELEGATE FICKER: Well, you know, look at all the sludge battles that have taken place in the county before. The citizens always lost. This the first time the citizens have won and I think this petition had a lot to do with it.

CHAIRMAN ADAMS: I think Bill Chen had a question.

MR. CHEN: I was just goint to say, Robin, when Dalrymple and I talked about it, we are not trying to demean the effort. It is a heck of an effort but I am sure you have experienced yourself, sometimes you get these types of provisions where they are so easy to circumvent and I think that is where he and I are coming from when we see something like this. I think you are right. I think it is going to pass. I think there is no doubt. I think you are right when you talk about how sexy this issue is. Certainly

we don't have any control over something that appears on the ballot or anything like that. I don't think we have -- But when you see something like that coming down the road and you know the effort behind it and you see how it can be circumvented, then you start to get discouraged yourself. No one has questioned the motives or the goal for what you are going to do.

DELEGATE FICKER: Well, I realize that there are a lot of bright people in the county, a lot of good attorneys who could circumvent one thing or another, but I do know that we have gotten futher now than we have gotten in the past. In 1976, I got sued six different times in attempts to keep three questions off the ballot in the first place. Apparently the county decided against that, decided they don't have a leg to stand on to try to prevent it from being on the ballot in the first place. If someone wants to try to circumvent it, we are going to be right back trying to take care of that problem when the time comes. But, we are going to be that much further down the road and it is going to be a couple of years later and during that time we are going to have a lot of kids and a lot of families that won't be exposed to this process more than likely. It will take a long time to circumvent and that is what we are trying to do here in a sense. It is not the only thing we are trying to do but in a sense we are buying time and I think we are doing it pretty

effectively with this petition. Maybe it can be circumvented by some federal judge who wants to set himself up as the supreme being and say all you citizens, 70% of the citiens, who don't want this in a residential zone, you are all worng, you can all go you know where. I am going to put it there and maybe he is going to set himself up like that. Maybe he won't. If he does we will just have to start all over again and not cry about our loss. We have gambled what we had. We will just start over and use whatever clever ideas we can think of to prevail in the end. Maybe we will loss a battle but end up losing the war eventally. If some federal judge or some county officials want to put down this mandate, this plebecite, this view point of the citizens, that is up to them. Maybe somebody will run against them and defeat them.

MR. KNIGHT: I might add just as one of the people who went through seven shades of hell when we first started this exercise will take any tool and will take any forum that we can get. That was one of our biggest single problems, was finding an adequate forum into which we could bring our case and to tell our story. Quite fortunately, and with all due regard to the County Council, after some persistence, we were able to get a forum that was adequate. It wasn't ideal but it was adequate.

So, as I said, I may be out there throwing rocks

at the truck if that was the only tool I had. But, I am happy for one, that fits my natural, civilized instincts a little bitter. I will take any one we can have.

MS. DAVIS: I think we would all agree that trenching sludge is both obnoxious and probably technologically an obsolete means of sewage disposal. And, I am beginning to see what your political goals are certainly in this effort and I suspect you have already been successful and be even more successful should this pass.

But I think there are some concerns in terms of misleading voters and residents in the county of what this is going to accomplish. I agree with Mr. Dalrymple and Mr. Chen that if we -- You know, we talked about how the county can circumvent this by a rezoning effort, but I would like to go back to something that Mr. Ryland was talking about. It sort of slid by a little too fast for my purposes. I wonder if the county even has to be the group that does circumvent it because it stands out in some people's minds the extent to which the county is even effective.

Now, you have allowed as how reasonably sure there could be some county involvement found and so forth. But, I was wondering if you could just for a minute address what you all see as the differences between the role the county plays in this whole trenching process and that of the WSSC and how this amendment is going to affect whatever the WSSC

role or involvement in this whole trenching issue is.

MR. RYLAND: Okay. Number one, more than one attorney has been involved in this effort and the attorney principally has researched how the county has handled these sludge and sewage permit problems and the payment, the authorization of money, expenditures and appropriation of those expenditures advises me it has been done in a variety of means. Sometimes the county has gone after the permits and sometimes WSSC has gone after them. Sometimes it is state money, sometimes it has been local money. I believe that the law-suit, the Federal suit, involves the county. That is one reason it was constantly thrown up in our face. Well, we are under Federal court order that we have got to get rid of the sludge somehow and, you know, it is our responsibility. Well, it is Montgomery County's responsibility and they are the ones that are acting. I wouldn't might having the handle of this charter amendment as being one means of going after and trying to find our whether they legally can or cannot participate de facto if not de jure in this sludge disposal process.

But, no, I cannot give you a detail answer to the best of my satisfaction.

CHAIRMAN ADAMS: So you don't have a specific example of something that the county does that is covered by this amendment?

MS. DAVIS: Other than reviewing WSSC's budget or being a main party --

MR. RYLAND: Clearly under some of the WSSC cases that have reached the Maryland Court of Appeals and statutes in the State of Maryland regarding WSSC, yes, you have reviewed money, expenditures. I believe you also have the county in some instances have gone to the permit themselves, some the state.

MR. DALRYMPLE: They don't have to get the permit. If they wanted to circumvent this, they could tell WSSC to get the permit, tell WSSC to float the loans.

DELEGATE FICKER: Talk about misrepresenting, it seems to me that the county has been holding all the hearings on the sludge and they certainly have been representing to the citizens of Montgomery County it is their baby, they are running the show. The citizens haven't been coming to a hearing held by the WSSC Commissioners on the various sites, on the whole process. The County Council has been receiving eagerly very technical arguments on whether or not trenching should be done, where it should be done, how it should be done over a period of years and so on. If anybody is misrepresenting, it seems to me that the county government is doing the misrepresenting. The county is involved with land acquisition, it is involved with monitoring. Sure, they can play a little shell game and say, well, the WSSC is doing this

and we are not even though we are calling them up on the phone and telling them what to do. They can play that little game.

But, I think it is made of very thin fabric and I think the county and WSSC are working hand in glove and have been in the past and we can get all kinds of subponeas and information as to what the county's involvement has been in the past, what it will be in the future. I think this whole sort of process is riddled through and through with county involvement. Maybe it is written into their job description, maybe it isn't. But the impression given to the people through the public hearing process certainly is that is the county's ball game and this is where the misrepresentation has been. We never dreamed that the WSSC actions could be covered by an amendment to the County Charter. We knew that it couldn't. We knew also that there is a lot of county involvement.

MR. DALRYMPLE: Far be it from me to sit here and try to defend the County Council. I am usually sitting down there where you are attacking them. But, I believe the State health laws require the WSSC be the permit receiving agency and the operating agency. There isn't any question that the county has to be involved in it. I think it has to be in their 10-year plan as a matter of fact before they can go at it. But that doesn't get -- Again, the amendment doesn't stop it.

Let me just ask Mr. Ryland a question concerning the Cheeks case and the applicability of this proposed amendment to the doctrine laid down in there. Can you distinguish between what is proposed here, which I think you have concluded is not prohibited by Cheeks. Am I paraphrasing what you said right?

MR. RYLAND: No. There is a very strong question there and I think the question is personally ambiguous which --

MR. DALRYMPLE: Suppose this proposed amendment said the same thing it says except instead of talking about trench and sludge it was hospitals in residential zones. Would you say the same about the Cheeks case or is that affected at all that way?

Do you see where I am heading? If the trenching of sludge is not under Cheeks then hospitals may or may not be and don't you eventually get down to nursing homes and gas stations and everything else and then you get to a point where basically you are writing the zoning ordnance in the charter and then clearly you get under the Cheeks doctrine, don't you?

MR. RYLAND: There I think you are making a significant distinction between hospital use.

MR. DALRYMPLE: I am not making it. I am asking you to make it.

MR. RYLAND: Well, I think part of the problem of

the Cheeks case is that it is a very muddy case. It is muddi written. It doesn't provide any clear criteria for determining what is "charter material" and what is not charter material. It rests upon one out of state court precedent which was revised by the state legislature the following year.

I just have some serious questions as to how far the Court of Appeals is going to want to extent that decision. I think it would be grossly premature to evaluate this amendment by virtue of that one holdingof that case.

MR. DALRYMPLE: I think I could agree with that. When you see what it is that was put into the charter. God, it was page after page with the details of it. I think there is clearly the major distinction between that and what is proposed here. I can see enough of a single area there too, that charter is really a general provision and we don't get into the specifics of the local law. Otherwise, you are taking your charter provision or your amendment to your charter provision and granting yourself an initiative of the legislation.

MR. RYLAND: Number one, I want to add that I greatly appreciate those of you on the Commission that are addressing these kinds of issues because it is going to help interest people in the future to help plan these things in a way that will be less subject to these kinds of criticisms. I think the citizens should be alerted to

whatever possible ways people may try to get around the prohibition that the county citizens may very well implement in November.

MR. DALYRUMPLE: Believe me, it is a lot easier to criticize the way somebody wrote it than to write it. I know I have sat on the other side of that too. Anything you write, somebody can take a shot at it.

MR. RYLAND: Well, I know you and Mr. Chairman have had far more experience dealing with this kind of question. But, again, I have to go back to the point that if you put in the County Charter, that you are one leg up from not having it in there even if there are possibly ways of getting around it.

DELEGATE FICKER: You can also say how can you have a detailed, overly detailed, County Charter when you only have one or two details. There is such a filtering process involved with getting the signatures and then getting the question passed, going through the campaign and getting it passed, that you are going to end up with very, very few questions at the end of all this as to whether or not it is a detail or whether or not it isn't a detail.

MR. DALRYMPLE: I don't think detail necessarily means it depends on the number of words in there. I think it depends on the generality of application of what it is you are talking about. We could debate that all night.

CHAIRMAN ADAMS: Yes, and we have some people in the back.

MR. MAXEY: Mr. Chairman, I am Don Maxey. I am on the agenda to speak later but I do have a response within the context of two or three questions just asked that I would like to give you now.

First of all, the question with regard to the financial involvement in the county in trenching and whether or not this would, in fact, serve any purpose. I was concerned about this so I called Mr. Galt's office and spoke to a gentleman there by the name of Ed Raleigh. He went to some trouble to check into this and called me back the next day and informed me that the funding of WSSC projects comes about through general obligation bonds that are backed by the full faith and credit of both counties and the taxing authority of this county. I think most courts would consider that a direct involvement.

If WSSC should ever default, that full debt falls back upon the counties to pay.

The other point is on the direct tie in to the county with the permit, it is absolutely essential and required by law that the county, as just mentioned here, amend the 10-year water and sewage plan prior to any work by WSSC. This amendment has to be approved by a state agency. They have 90 days to respond to it, otherwise it is

automatically assumed to be okay. But, it is, in effect, a state permit. It goes to the Department of Health and Mental Hygiene.

So, it would be pretty tough really for the county -- and I don't think they would really would want to, but I think most members of the County Council fully intend to get away from this trenching just as quick as they can.

Now, the other point that was raised just now concerned whether or not simply requiring a zoning change is going to help us that much. I speak to you -- I am not a member of this particular group. The conservation group that I represent has been in operation for about 10 years in conservation hassles. We lost our trenching hassle several years ago. The slides you see up there were taken right up the head of Ten Mile Creek. We are still very bitter about it. We think the whole county should be very bitter about it.

That well you see pumping out 100 gallons a minute in that picture there has been permanently compromised for all practical purposes. That well would have provided survival water for every man, woman and child in Montgomery County in the event of some kind of natural or, God forbid, man-made emergency. Water sheltered from fallout, from toxic spills. It is 140,000 gallons per day, a court for every man, woman and child in this county. And, we don't have such

a source really to fall back on. The driller that drilled that was from Baltimore County. He said had that test well #3 been discovered there, the county would have sent people out there to immediately mark it off and permanently mark it as a protected resource.

We cooperated somewhat with the county in trenching there after we realized we were losing hoping we could keep them out of the major fractures going to some of these wells. Unfortunately, they chose not to keep out of those fractures and to convince us that it was okay to trench in the fractures where the deepest dirt happened to be when they got up there and found out how much rock there was. They set up a meeting with Dr. Kenneth Weaver, with the citizens of the Ten Mile Creek group and the Clarksburg and Boyds area. Dr. Kenneth Weaver, who heads the Maryland Geological Survey, Arnold Shifner, from the Department of Natural Resources, and a Dr. Attman from the U.S. Geological Survey. They all informed us it didn't really matter whether they trenched in the fractures or not, that that well, the 100-gallon a minute well, would be compromised for several generations based on their previous experience. That the nitrates alone from the sludge -- We are talking about trenching sludge four feet thick. It is not a topical application like you might do in some oriental countries. It is an injection, a kind of a mainlining injection.

Now, what does this do for us? A zoning change guarantees a site specific public hearing. Do you realize we are not guaranteed that now? The County Council, out of the goodness of their heart, may give us a public hearing but the people in Clarksburg found out about five years ago from a decision from Judge Calhoun they only have to hold a public hearing under the county law for the general topic of a location of a public facility. They do not have to list any site specific. And, we thought that was true.

MR. DALRYMPLE: How about the 10-year plan? They have to show it in that.

MR. MAXEY: In the 10-year plan they would have to show it but I am not even sure what all the requirements are for that in regard to public hearings.

MR. DALRYMPLE: There is a public hearing requirement for that.

MR. MAXEY: The site specific though, I would be very surprised if Judge Calhoun would not tell you even that doesn't require site specific.

Our lawyer could not believe it so he appealed it to the state and we found out about $2000 later that Judge Calhoun was right and he explained to us. I wrote this, he said. I was in on writing the County Charter and the other rules and regulations associated with it and he said, it requires a hearing on the general topic, not on site specific,

and that needs to be looked into. At least changing the zoning would require site specific. You have got to post it on the property and all that.

CHAIRMAN ADAMS: Well, thank you.

We have very patient Alex Greene in the back and we would like to get him in if we could.

Thank you all very much.

Mr. Greene, we are sorry for all this time. We appreciate your patience.

MR. GREENE: For the record, I am Alexander Greene from the Office of the County Executive and this statement represents the views of the Executive.

While this may be a very popular issue, considering the general if not unanimous opposition to further entrenchment of sludge, it is not an appropriate, necessary or effective charter issue.

The Charter of Montgomery County sets forth the basic framework for the structure and orderly processes of our government. The Charter already provides a legislative and executive powers necessary to make responsible decisions to protect the health and safety of our citizens and to provide for proper land use. Narrow or transient limitations such as is proposed under Question E, if effective, would limit the ability of our duly elected representatives to act in the best interests of the people of the county; but

more likely would relegate to the courts the decision making process which should be the province of our elected representatives.

The proposed Charter amendment would have limited effect and perhaps would be counterproductive to the best interests of the County. Since funds for construction and operation of sludge entrenchment are provided by the WSSC rather than the County and since WSSC or its agents are the permittees for entrenchment sites, it is not likely that this amendment will serve an purpose. In fact, it may be interpreted as precluding the county from expending funds otherside required to do the inspecting and monitoring needed to protect the public health from the entrenchment which has or is taking place.

The Executive and the Council have, as a matter of policy, decided that sludge composting is a more desirable method of disposal. To that end there has been a consistent effort to have a facility constructed at Site 2. Until that site is in operation, ad ecision has been made to proceed with an interim facility at Dickerson, to be ready by January 1 to receive the County's allotted share of sludge expected by that time. Further sludge entrenchment would be possible only if now unforeseen events preclude us from meeting our scheduled date. But were that necessary, there is grave doubt that this amendment would be effective mainly

for the reasons already stated reinforced by the fact that our receipt of sludge which is mandated by Federal Court Order would have to be placed in a site already permitted by the State.

CHAIRMAN ADAMS: There is a site that has been approved and --

MR. GREENE: That is right. We have appeared before the County Council to request the amendment to the 10-year water and sewer plan, solid waste plan. We pointed out to them that while Dickerson, by every effort on our part and by the Maryland Environmental Service, and the WSSC, we hoped would be ready by January 1 if something happened. We do have to get it permitted by the state. If something were to happen that precluded that a back up would be necessary and the only back up that would be necessary would be cross trenching at Site 216 which has already been approved and which has a permit.

CHAIRMAN ADAMS: Which one is that?

MR. GREENE: At Norbeck.

So that was a warning literally that we felt it was our responsibility to advise the Council of and it is one we hope we don't have to pursue. Composting, by policy and every other reason, a much more desirable method of disposal.

CHAIRMAN ADAMS: Mr. McGukian and Ms. Kanchuger,

do you have further thoughts or should we just start asking question? However you would like to proceed.

MS. KANCHUGER: Well, because there has been some questions to how the Charter amendment would be interpreted, I don't think that is the problem. I don't think we are going to have facing us right off court challenges. I think we are going to have facing us right off the tons of sludge that has to be disposed of.

What the amendment says is no expenditure of county funds shall be made or authorized for the construction or operation of a system for bearing or trenching sludge. And, that is not now -- Those are not functions performed by the county. Construction and operation of sludge trenching is the responsibility of the Washington Suburban Sanitary Commission which is implementing county policy as expressed in the 10-year water and sewer plan which is amended annually and required by state law.

The operation, the day-to-day operation, of the sludge trenching site is contracted by WSSC to the Maryland Environmental Service which is a part of the Department of Natural Resources of the State of Maryland.

The county may also not purchase or contract for the service of burying or trenching sludge.

The county has not purchased any of the sludge trenching sites. The county has held the hearings that were

talked about by the gentlemen who were sitting here before. WSSC has been the purchasing agent and the relationship between the county and WSSC is not a contractual one so there is prohibition of a contract for providing that service and is not one that would affect what is going on now.

Also the county did not seek Federal or state permits for burying or trenching.

If, as the gentlemen said, getting approval of the State Department of Health for any amendment to the 10-year water and sewer plan is a permit, perhaps the county would be prohibited from doing that, but I think that trying to pick out how much of an expenditure of county funds has gone into action on the 10-year water and sewer plan is certainly a minor part of the cost of sludge trenching.

So, as the general manager and general counsel at WSSC said to me when I presented this wording to them and said what effect will this have on sludge trenching on Montgomery County, they said none.

MR. MC GUKIAN: I was going to say that I think Delegate Ficker gave the best reason for our not supporting this amendment which is that if there are successful legal challenges to the only two alternatives that are presently possible within the time limits we have, that is Dickerson and Site #2, there is no other place to put the sludge. And we are under a Federal Court Order to take our share of the

sludge. There is no alternative because you cannot turn the spigots off. It is there. Montgomery County has to recognize that --which it has recognized -- that it must perform its obligation in the region.

CHAIRMAN ADAMS: I don't know whether to get to the substance or the more technical questions.

I sort of have the same response that Delegate Ficker has, that the county is all over this and some way there must be a connection. I am watching the Congress. They look for the most obsecure possible connections. I think they passed an amendment to say that the President may not transmit the census to the Congress because they are worried about the counting of illegal aliens. Well, I -- Somewhere someone will have to spend two dollars to transmit that thing so they cut it off with that little connection. The President doesn't prepare the census reports or anything.

So, I am wondering if the matter you sloughed off a little bit about the permit isn't the little touch of county involvement they might have. I wish you would explain that.

MS. KANCHUGER: You are absolutely right. There is a great deal of county involvement. WSSC was created by state law and is, if you are technical, a state agency. But over the years, since the founding in 1918, actually very recently, there have been a number of amendments to the law

giving the counties a great deal of control over the way in which WSSC operates and making the counties the policy-making bodies.

We do not make up how we are going to do either water supply or sewage treatment or sludge disposal in the county. It is county policy that we implement.

However, it is WSSC funds.

CHAIRMAN ADAMS: Well, my mind is clearly not made up. So I am trying to ask these questions for the record and or my own ability to get a hold of this question.

What then do you think of the expenditures that the county makes, admittedly a bit of an obsecure handle, but the expenditures that the county makes in reviewing and approving sites and authorizing or approving your budget? Don't some of those constitute an expenditure of some money that is related and necessary to the authorization?

MS. KANCHUGER: Right. But I don't think anybody, even the sponsors of this amendment, would want those processes to stop. This is where the responsible planning goes on and if you look at what the county has done recently, they have, as Alex said, declared trenching will no longer be permitted in Montgomery County. I think the citizens near the trenching site have been very successful in convincing the county officials that that is not a policy that the county should adopt. The county is proceeding full speed ahead with com-

posting and the action taken by the county government in purchasing the Dickerson site is unique in that no other sludge disposal site has been purchased by the county. Site #2, the Calverton site, was purchased by the WSSC but the county was very insistent that they make it clear that composting is their priority by going ahead and purchasing that land to get the Dickerson site moving.

CHAIRMAN ADAMS: Could you all explain briefly the County Council's or the county government's approval of the WSSC budget? What is that process?

MS. KANCHUGER: That is an involved process in which the budget is reviewed by the County Executive. The County Executive makes his recommendations to the County Council for realignment of priorities in the WSSC budget or making cuts or adding to it and the Council does as thorough a job in reviewing the WSSC budget as it does in any of the others not because it is county tax money that is involved but because it is county citizens whose rates will be increased if the WSSC budget gets larger. So, it is a --

CHAIRMAN ADAMS: The money, as I understand it, is from user fees?

MS. KANCHUGER: The money is from user fees in the case of the operating funds. There is an ad valorem tax, a small one in Montgomery County, larger in Prince George's County, to handle storm drainage. And, there is bond money

used for capital expenditures.

CHAIRMAN ADAMS: So you point is that this amendment reads no expenditure of county funds shall be made or authorized? In other words, the County Council authorizes, in effect, by approving your budget that these activities go on, but they are not authorizing expenditure of county funds.

MS. KANCHUGER: Right.

MR. DALRYMPLE: They approve the CIP but the approval of the CIP doesn't --

MS. KANCHUGER: Once we know the size of the CIP we have to go float bonds on the open market to finance the amount approved.

MR. DALRYMPLE: And, what they are doing now with the CR charges over there, I don't even know whether they are taking away the full faith and credit of the county would have any impact on the county to go float bonds. Now you have so much damned money --

MS. KANCHUGER: Well, the way the WSSC interprets the full faith and credit clause is that we do have to include it on a bond. It is a wording, a phrasing, that is in our bonds. But we have never called upon the county to actually back up those bonds.

CHAIRMAN ADAMS: So there is an arguable point that that is a link?

MS. KANCHUGER: Oh, yes. I am not denying there

links. We are just saying that the day-to-day operation of a sludge site is not done with county funds.

MR. MC GUKIAN: I don't think that any court could reasonably say that backing up WSSC bond funds constitutes county money.

MS. KANCHUGER: It is your money and mine if you are buying wash tubs.

MR. DALRYMPLE: Didn't Judge Smith in the Calverton thing tell the WSSC I told you to --

MS. KANCHUGER: Yes, that is the overriding, yes. Delegate Ficker is wrong. None of those lawsuits are now pending. All of those suits have been dismissed and Judge Smith has said, get out of my court and don't come back here. Just take care of your sludge.

MR. DALRYMPLE: I think Delegate Ficker said they are pending in Appellate Court so some of them are.

MS. KANCHUGER: We are under construction on Site #2.

CHAIRMAN ADAMS: Could you explain again under the 10-year plan that you have to go to the state and Health Department for a permit. What is that again?

MS. KANCHUGER: The 10-year water and sewer plan law was enacted by the State legislature a few years back saying that each county in the State of Maryland is responsible for planning ahead to meet their water and sewer

needs and -- so there is an annual review just as there is with the budget and of the CIP and annually the 10-year water and sewer plan and also the solid waste plan are submitted to the state saying this is what we state to be county policy in these areas for the coming year.

MR. GREENE: I might point out that is under state law too. It clouds the question as to whether the funds used in that process are funds which are totally under control of the county.

CHAIRMAN ADAMS: There is an argument that some money is spent in the design of that but your counter argument is, hey, the state makes us do that.

MR. GREENE: This discussion is fraught with how legal questions and how much the courts would have to be concerned with one's interpretation of --

MR. DALRYMPLE: As I understand it, the 10-year plan is basically a planning document and it is no more of a permit than a master plan would be. It is a plan, not a permit.

CHAIRMAN ADAMS: Okay. When you said you had to go to the State Health Department to get, what, a permit under that plan --

MS. KANCHUGER: No, no, no. The plan is approved at the state level by the State Department of Health.

CHAIRMAN ADAMS: We also have to get --

MS. KANCHUGER: Various of the permits that are applied for also to the State Department of Health.

CHAIRMAN ADAMS: Who gets the permit?

MS. KANCHUGER: WSSC.

MR. GREENE: The permit will only issue if what they apply for conforms to the 10-year plan.

I might say in the case of the Dickerson facility it will be the Maryland Environmental Service that is the applicant for the permit. They will operate that site under lease from the county.

CHAIRMAN ADAMS: The county takes the 10-year plan. The Health Department gets the plan approved. The WSSC goes to get sites specific.

MS. KANCHUGER: In implementing the county's 10-year plan. We implement both the Montgomery County and the Prince George's County plans. Then we proceed and say, because this activity is requested in the county's 10-year plan, we are going to go ahead and we need a permit to do such and such.

MR. BANKSON: There is no relationship between Dickerson and WSSC?

MR. GREENE: The relationship there is by contract. The county owns the land and it leases it to the Maryland Environmental Service. The Maryland Environmental Service has a contract with the Sanitary Commission to provide the

composting for materials delivered to it.

MS. KANCHUGER: Now, since we must account for the quantity of sludge that we are acquired to take by law, we are required to handle the county's share of the sludge produced at the Blue Plains --

MS. DAVIS: So the Dickerson site proposal really would be an outright, unique, but outright county involvement because the county does own that land and --

MR. GREENE: Absolutely, but that it not trenching.

MS. KANCHUGER: That is the effort to get away from trenching.

MS. DAVIS: What are the chances, if any, that the Dickerson site could be used for trenching if the composting operation doesn't get under way on schedule?

MR. GREENE: I know it can't be because the sub-surface conditions there really don't permit it. I think there have been tests on it and in addition to the fact that there is a commitment not to. But, it is not available for it. It is not -- conditions are not appropriate for trenching there. In fact, I think it was examined at one time or that general area was.

MS. DAVIS: But, leaving that aside, this proposed charter amendment would at least in theory preclude the county from doing that. I guess what I am trying to get at is this charter amendment will have no effect on sludge trenching

because all sludge trenching is a WSSC situation so there is at least one possible situation where this amendment could have some effect.

MR. GREENE: No. The reason for that is simply a matter of time. It is not generic. We have exercised our option on the Dickerson site. The Council has approved the supplementary funds and so on. We have exercised and acquired the Dickerson site so we now own the site. And, the lease arrangements with the Maryland Environmental Service are going through. We would not be expending further funds. In fact, we are in a position now of receiving pay back from the Maryland Environmental Service which is going to pay us rental for the use of the site and which will construct the facilities out of its own finances and be repaid by payments from the Sanitary Commission.

So our investment will amount to the kinds of things I mentioned in the statement which are the counterproductive problems.

What we are going to spend money on at the Dickerson site is in monitoring to make sure that the operation and maintenance are safe in the best interest of the residents of the county. We are going to monitor the wells. We are going to monitor the air. We are going to see to ti that the terms and conditions of the regulations which govern the permit for that site are maintained. And, it is that regulatory

process is the kind of money we will be spending. Now, to broadly define that as part of the operation of the site which may be stretching the point, that may be where we would be --

CHAIRMAN ADAMS: It seemed to me to be a little unfair to suggest that this amendment was going to prohibit that kind of monitoring.

MR. GREENE: That is right. In other words, I am not saying --

CHAIRMAN ADAMS: If you are operating and you are monitoring, I don't see how your monitoring can be part of their operation.

MS. KANCHUGER: Actually the monitoring has been turned over by DEP by WSSC in the case of on-going sites. So, very often they find it in their best interest to turn it over to us.

MR. GREENE: It can be defined as part of the operational -- The O&M Manual, the Operations and Maintenance Manual, which is set up for the operation of a facility, includes monitoring to see to it that there are not violations of the requirements.

MR. CHEN: Is the county paying WSSC for the monitoring activities?

MR. GREENE: I think probably not.

MS. KANCHUGER: No. We pay for them when we do them.

We have laboratory to do the test.

MR. CHEN: But you just said that DEP is turning over the monitoring.

MS. KANCHUGER: DEP is giving up that function itself and requesting WSSC to do it.

MR. BANKSON: But the monitoring function is required by some other law, State Health Department or Federal or --

MS. KANCHUGER: No. The monitoring is required by the conscience of the county government.

CHAIRMAN ADAMS: Well, what is the likelihood that -- I am not sure my thumb is on the checkerboard. What is the likelihood that the composting is going to be stopped? As a casual observer and newspaper -- It seems there is a law-suit under way, is that correct?

MR. MC GUKIAN: There is a lawsuit at Site #2. The litigation continues there. There is no litigation at this point on Dickerson and we are not aware of any.

CHAIRMAN ADAMS: Is there any contemplated?

MR. MC GUKIAN: Delegate Ficker raised the issue tonight and he says he has talked to some lawyers that are thinking about doing it. That is more than we know.

MR. DALRYMPLE: But you are not enjoined in Calverton?

MR. MC GUKIAN: No, no, we are not enjoined.

MS. KANCHUGER: Prince George's County tried and Judge Smith said you can't enjoin in this. It has to proceed. The General Manager of WSSC is required to proceed in this.

MR. DALRYMPLE: Well, yes. But that wouldn't necessarily be true at Dickerson, would it?

MS. KANCHUGER: No.

MR. DALRYMPLE: But, I think conceivably somebody could go in and try to enjoin the construction of Dickerson while the suit was pending but in order to do that it seems to me they would have to put one very large bond.

CHAIRMAN ADAMS: Are there further questions?

(No response.)

CHAIRMAN ADAMS: Thank you all. We appreciate your patience and expertise.

MR. MC GUKIAN: May I say one thing on the FOP presentation. As the County Attorney I just want to make it known that I did not approve that amendment, the language of it. We didn't give any opinion on it that I am aware of, at least any official opinion, and it seemed to me that their counsel at one point was saying that in effect what he was told by the County Attorney's Office or someone in it was that it shouldn't be a long and complicated amendment but rather concise, not that that language they wound up with was approved by our office which it was not.

CHAIRMAN ADAMS: I appreciate that because I think the record wasn't clear. At one point I think the attorney said, okay, we are going to get an opinion, and then I think one or the other said, oh, yes, we heard from the County Attorney. So, I appreciate clarifying that.

If there is no further testimony, we will adjourn for the night. We will keep the record open. I believe me may get a written comment or two from other people for about ten days.

Thank you very much.

(Whereupon, at 11:20 o'clock p.m., the hearing was adjourned.)

REPORTER'S CERTIFICATE

DOCKET NUMBER:

CASE TITLE: Charter Review Commission: Question F and Question E

HEARING DATE: September 30, 1980

LOCATION: Rockville, Maryland

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before MONTGOMERY COUNTY, CHARTER REVIEW COMMISSION and that this is a true and correct transcript of the same.

Date: September 30, 1980

Official Reporter
Acme Reporting Company, Inc.
1411 K Street, N.W.
Washington, D.C. 20005

MONTGOMERY COUNTY, MARYLAND
MONTGOMERY COUNTY COUNCIL

- X
:
In the Matter of: :
:
Continuation of a Public Hearing on :
Legislative Bill No. 71-81, :
Collective Bargaining for Police :
Officers. :
:
- X

100 Maryland Avenue
Rockville, Maryland

Monday,
January 25, 1982

The above-entitled matter came on for hearing, pursuant to notice, at 9:00 p.m.

BEFORE: MICHAEL L. GUDIS, President

RUTH SPECTOR

ESTHER P. GELMAN

SCOTT FOSLER

ELIZABETH SCULL

I N D E X

STATEMENTS OF:	PAGE:
Edward Rovner	3
Robert Hillman	5
Kathleen A. Dolan	20
Allen Katz	22
George Driesen, Esq.	22
Philip Nichols	40

P R O C E E D I N G S

9:00 p.m.

MR. GUDIS: Good evening Ladies and Gentlemen.

This is the continuation of the public hearing held on January 14, 1982, on Legislative Bill No. 71-81, Collective Bargaining for Police Officers. The bill provides the framework for conducting collective bargaining between County government and police officers in specified classifications and includes establishment of a permanent umpire to implement certain provisions of law; certification procedures for employee organizations; subjects appropriate and inappropriate for bargaining; impasse procedures; prohibited practices; provisions prohibiting strikes and lockouts; use of official working time of employees; and the effect of prior enactments. This legislation amends Chapter 33 of the Montgomery County Code, 1972, as amended.

A worksession on this legislation has been scheduled for Thursday, February 4, 1982, at 3:00 p.m.

The public hearing record will remain open until the close of business on Friday, January 29, 1982.

The first witness to appear before us tonight is Edward Rovner for the County Executive.

MR. ROVNER: Thank you for the opportunity to be here tonight to describe the legislation and summarize the legislation which is before you.

After passage of the amendments last year, or 1980 I should say, negotiations opened between the County and the Fraternal Order of Police and extensive discussions regarding the content of the proposed laws to affectuate the change that was made in the charter regarding collective bargaining.

Mr. Hillman has retained a special counsel to work with the County government in this effort. After some months, as you know, a proposed law was finally prepared and submitted to you.

You have before you what is a series of amendments to that original proposal. Let me describe what the procedure has been which I think will set the framework for where we are at the moment.

Following the submission of the proposed law to the Council the committee working for the executive branch continued to meet with the lawyers and the officers of the Fraternal Order of Police to review that draft proposal originally submitted to you. A number of changes were made in the original recommendation and they have now been incorporated in a single document which constitutes a series of amendments to the original draft and that has been submitted to you. It represents the agreement between the Fraternal Order of Police and the Executive Branch on most issues.

On several issues there was just no agreement between us and the draft represents the judgement of the

executives as to what ought to be in the ordinance, and that is before you tonight.

The Fraternal Order of Police will be here to expound on where the areas of agreement are and disagreement are between us.

Mr. Hillman, who is special counsel, is here, and can summarize what is in the bill and answer any specific questions you may have as to the contents of it.

The remnants before you represent the best judgement of the executives on what would be in the ordinance which when adopted by the Council will set the framework for the collective bargaining between the County and the union which represents the police.

If there are no questions as to the history of negotiations, I'd like to ask Mr. Hillman if he would describe what is in the bill before you.

MR. GUDIS: Thank you. Before Mr. Hillman starts, I would like to tell the audience that the amendments Mr. Rovner is talking about are in the memorandum dated today. Unfortunately our print shop did not, they were not able to make copies available, but we can certainly make copies available tomorrow or no later than Wednesday.

MR. ROVNER: The Fraternal Order of Police do have copies.

MR. GUDIS: I was told that, but I was also told

that we usually would have copies in the back and the print shop was not able to do that tonight.

MR. HILLMAN: My name is Robert Hillman. I'm a partner in the law firm of Wolf, Pokempner & Hillman. What I'd like to do is give you a brief summary of the law and to highlight for you some of its aspects including what I consider the two most substantive of the amendments that we have proposed.

First, the law repeals certain existing laws for employees who are represented by a collective bargaining organization, the meet and confer law and the present law which automatically give 75 percent of cost of living wage adjustment each year.

The law begins after those repealing provisions with a declaration of policy. That declaration of policy basically says between the County and an organization representing its police officers, matters of wages, hours and certain conditions of employment will be decided by collective bargaining and that the parties other than presenting the results of the collective bargaining to the County Council for its approval will not come to the Council at other times asking for those collective bargaining agreements either to be added to or undone by legislation. And in the trade we call that no end runs.

Constitutionally we can't prohibit end runs, but we

hope this declaration of policy will serve all parties as a warning that the County's policy is against such end runs.

We go on to define certain terms. I think the most important for thispiece of legislation is the term employee. Employee includes uniformed police officers below the rank of Sergeant. Now there is some discussion as to why we cut off at Sergeant. Basically for two reasons. One, we have a history under the meet and confer law of negotiating a meeting and conferring for those employees below the rank of Sergeant. And nothing in the amendment to the County charter suggested that should be changed.

Secondly, and probably more important, we feel, the County Executive feels strongly that Sergeants are an essential part of the management of the police force in Montgomery County. In fact, we have some statistics that show that certain hours of the day or really certain hours of the night throughout the county, Sergeants are in charge of the various districts. They are the ranking officers.

The legislation is designed first to provide employee free choice. Employees are free to either bargain collectively or not bargain collectively, and to bargain collectively if they wish through a representative of their own choosing. To ensure that free choice and to ensure fair dealing, we have set up the office of permanent umpire. Now the permanent umpire we have set up is not a large addition

to the County bureaucracy. We've set up an office of someone who is a known neutral in the field and who will serve and be paid only when he is needed. It is not a permanent office. He is called on much like arbitrators are called on, only when he is needed. We hope that will be very seldom and will not add additional expense to the County's budget.

The election procedures that we've set up are very similar to those which are standard under the National Labor Relations Act and many other State and subdivision Employee Relations Acts.

The timing of the first election and elections thereafter is carefully set out so that timing will not interfere with orderly collective bargaining which we have set up so it will be coordinated and finished in a timely fashion before the Council's budget deliberations.

The collective bargaining, should there be a representative elected, is of two types. We have two types of subjects for collective bargaining and this is one of the major amendments. That is in the packet of amendments that you got today.

Before we had those subjects which were mandatory and the subjects which were prohibited. After discussions with the FOP we have proposed that we now have two types of subjects. Those which are mandatory which we must bargain about and those which are permissive, which the parties can

bargain about if they both agree to bargain about those subjects.

Permissive subjects may not be taken to impasse. If there is any question as to whether a subject is permissive or mandatory, that is decided by the permanent umpire.

Basically the bargaining procedure which we have set up calls for the parties to begin bargaining November 1st of any year, or any fiscal year in which a contract will expire. Contracts must run from July 1st to June 30th. We allow for multi-year contracts.

Bargaining starts November 1st. Bargaining must end by January 20th. If the parties are still at an impasse they then begin an impasse procedure which calls for binding arbitration. The person who conducts that impasse procedure is someone we call the impasse neutral for want of a better name. He's chosen by the two parties and he is chosen back in November shortly after the bargaining begins. So if we are stuck at January 20th, this person is on hand, he has the time set aside and he can do the impasse procedure in a very orderly and timely fashion.

The impasse and the report of the impasse neutral must be completed by February 1st. That report is binding upon the collective bargaining representative and the County Executive. The County Executive is bound to include the results of either collective bargaining or the impasse

procedure in the budget he presents to the Council, and if there is any other legislation called for he is bound to present that to the Council and to attempt to use his best offices to have the Council enact such legislation.

That, of course, is then submitted on March 1st to the Council when it gets the budget.

The second of the major amendments in this legislation now comes into play. Originally after the matter goes to the Council we had provided that the Council then would either approve and include in its budget and include in future legislation what was needed to implement the agreement. What we were concerned about is that we would not really have the guidance of the Council if it was with a contract or a result of impasse was presented to them on really a take it or leave it basis. So what we have provided for in the amendment is to allow for some expression of the Council's position as of April 25th, part way through the Council's budget deliberations. And we have provided that if the Council expresses its disapproval of the contract the parties would get back together and try to negotiate a new agreement with the help of the impasse neutral if necessary and resubmit this new agreement along the lines of the Council's guidance by May 10th so it might be included in the final budget on May 15th.

This, we hope, provides us with some guidance with the Council's wisdom and does not present the Council with a

take it or leave it package.

The legislation goes on to provide for certain prohibited practices, fairly standard unfair labor practices, with the enforcement by the permanent umpire if necessary.

By the way, I might add that my experience in collective bargaining and various subidivions in Maryland is that the prohibited practices or unfair labor practices are very seldom happening and are very seldom called upon to have hearings and use the permanent umpire on those matters.

And finally the legislation provides for a no strike, no lock-out provision which allows for sanctions for a strike after a hearing. That, I think, fairly well summarizes the legislation and I am certainly willing to answer any questions.

MR. GUDIS: Thank you.

MR. SCULL: The provisions for reply by the Council by April 25th, page 23, cites, "Council shall indicate by a majority of four votes its intention to do or not do." Is there a precedent elsewhere for this procedure? How does it work?

MR. HILLMAN: There are various procedures in various states and various subdivisions. We felt strongly here that under the charter, particularly section 305, that we could not have collective bargaining or binding arbitration that bound the Council, and this was our way of saying, knowing we

need the approval of the Council, we would like to hear about it so that we had a second shot to negotiate if needed.

I am not sure that this exact formula is in use at the present time. Connecticut has a formula somewhat like this. How has it worked other places? Well, not ever having experienced this exact formula, I can't tell you. But I can tell you a great deal of what goes on in public sector collective bargaining is, if not unique, has very little experience behind it because we've only been doing public sector collective bargaining for about ten years.

MR. SCULL: What do you see as the legal effect if the Council were to not act on or before April 25th? What happens in the budget process? Do you contemplate that this vote is the same as an appropriation?

MR. HILLMAN: The vote on the 25th?

MR. SCULL: Yes.

MR. HILLMAN: No. I think it's clear that what we're saying the Council state its current intention and it is not obviously binding on the Council in stating their intention.

MR. SCULL: If they fail to do it, could it create an infirmity in their final budget action, if they fail to take an intermediate step? I don't know what other, there are some deadlines in the charter and the laws for action in sending things to Prince Georges and what not. This seems a little different.

MR. HILLMAN: The purpose of this concept is really to provide for an orderly way of dealing with employee representatives rather than saying to them, okay, you have bargained for two months, you've gone perhaps to an impasse procedure, and now we don't like what you do, so tough luck.

Well we're saying the same things perhaps to the Executive. This is a chance we feel for the council to say we like A, B, and C. We don't like D. We like E and we don't like F. So go back and put together another collective bargaining agreement which will be within those parameters because those are the parameters we intend to inact. And it is, as I say, an expression of intention.

MR. FOSLER: Mr. Hillman, I wonder if you could clarify a little more exactly how the process is going to work. There is an agreement between the Executive and the bargaining agent. That agreement then is submitted to the Council?

MR. HILLMAN: That's correct.

MR. FOSLER: The Council then reacts to it on or before April 25th. If the Council, this of course is before there has been any kind of an impasse resolution.

MR. HILLMAN: No, this is after an impasse resolution if there need be, because the impasse resolution --

MR. FOSLER: The Council would be reacting to the arbitrator's decision?

MR. HILLMAN: Either the agreement of the parties or the arbitrator's decision.

MR. FOSLER: And if the Council rejected the arbitrator's decision, it would go back to the parties for further negotiation and for possible further impasse resolution?

MR HILLMAN: That's correct.

MR. FOSLER: What happens the second time if the arbitrator comes up with the same decision?

MR. HILLMAN: Any agreement and an arbitrator's decision which has the force and effect of agreement is finally subject to automatic reduction or elimination of conditions which the Council does not approve.

MR. FOSLER: Say that again.

MR. HiLLMAN: What we are providing for is a final decision by the Council. Since the Council under the charter, under Section 305 of the charter has the power to enact the budget. So what we are saying, let us take an example, the parties agree to a contract which costs a million dollars. The Council looks at thatcontract and sends it back to the parties and says, "We're not going to approve a million dollars. You'd better come up with a contract that costs about $800,000."

The parties go back and they can't agree on anything that costs $800,000. And they come back with something that still costs a million dollars. The Council then has every

right to pass a budget for $800,000 in it and the parties live with $800,000.

MR. FOSLER: I wonder if you could indicate again the distinction between interest arbitration and grievance arbitration in the Executive's view on what the charter amendment says and what the legislation would propose.

MR. HILLMAN: The interest arbitration provides for a neutral, the parties, well, if they cannot agree the interest arbitration provides for the neutral to decide between the positions of the party. We have provided here for last best offer. That is the parties will each present a package and the neutral would choose between those packages and that package then becomes the agreement of the parties which is submitted to the Council.

Grievance arbitration on the other hand is arbitration over the implementation of provisions of an already executed contract. How does a provision of a contract apply to a certain set of facts basically.

There was some disagreement as to the exact effect, the exact intention, as to the referendum, the charter amendment. The County Executive however feels it was clear, at least to him, what was proposed was interest arbitration and not grievance arbitration. And that is what is proposed in this legislation.

MR. FOSLER: Another one of the amendments that the

Executive is proposing would modify the prohibited subjects of bargaining. As I understand it it makes some of them permissive as opposed to prohibitive. Could you be more specific as to what now under the amended version of the Executive's bill would be the mandatory subjects of bargaining and which would be the permissive subjects and which would be the prohibitive subjects?

MR HILLMAN: The mandatory subject --

MR. FOSLER: And could you give us the Executive's reason or thinking behind it?

MR. HILLMAN: The mandatory subjects are set out on page 18 section 33-80(A). Salary and wages; pension; retirement; employee benefits such as insurance, leave, holidays, vacation, personal patrol vehicles, hours and working conditions, and provisions for the processing of grievances. B and C of that section set out those matters which are permissive. There is a long list of them. Certain things such as pensions of persons who have already retired; recruitment selection; appointment; testing; promotion; position classification. Everything listed in B and C now are permissive subjects of bargaining.

The County does not have to bargain about any of these things if it says it does not wish to bargain. And the thinking behind changing these from prohibitive to permissive is that the parties may wish to talk about some of these

things. We felt that by prohibiting discussion of these subjects we were doing a disservice to the county.

Employee organization, for instance, down to technology to be utilized. The employee organization may have some ideas about the technology to be utilized that are good ideas. We did not want to prohibit discussion of those ideas and we did not want to prohibit giving the parties the flexibility to embody good ideas in the collective bargaining agreement. So we made them permissive. The County can discuss if it wishes to. If the County doesn't wish to discuss them they cannot be taken to impasse.

MR. FOSLER: B and C had been a prohibited subjects?

MR. HILLMAN: That's correct.

MR. FOSLER: And the amendment would make them permissive.

MR. HILLMAN: That's correct.

MR. FOSLER: Are there still some that are prohibited?

MR. HILLMAN: No.

MR. FOSLER: There are no subjects that are prohibited from bargaining?

MR. HILLMAN: That's correct.

Those things in C really are management rights, and what we would be discussing there are the effects. For instance, the effects of transfer assignment scheduling. We would talk about the effects of those actions.

MR. GUDIS: You're saying both parties have to agree?

MR. HILLMAN: That's right. They have to agree to discuss them.

MR. GUDIS: I just want to make one comment. I think we're going to have to look very carefully at the April 25th date because we don't normally start working on the operating budget until right after the 15th of April, so I think we're going to have to look at that date and perhaps we may have to suggest some changes, but we will certainly take that up at the work session.

MR. ROVNER: The objective was to provide a date far enough in advance of the adoption of the final budget that if the Council had problems, signal as early as possible to the parties that you're having problems so we can go back and try to resolve it, but close enough to the final date so you'd have a chance to work through a good many of the budget problems and be able to see this contract in some kind of context of the balance of County government.

MR. GUDIS: I understand. I think the question that I'm raising is that since that is so early in the budget process, when we actually start working on the operating budget, that sometimes we aren't always in a position to make a determination. Like the COL, we don't normally determine that until we go through the whole budget process.

If we try to do this too early then the question comes up as to whether we can make this decision without having an effect on other county programs. I'm not saying we can't or that we can. I'm sure we'll try to do our best to try to do it as early as possible to give all parties a chance to participate. I just wanted to alert you to that.

MR. GUDIS: The next speaker will be Kathleen Dolan.

MR. FOSLER: Mr. Rovner, I have a question for you. Mr. Hillman, under B, it says, "The following subjects shall not be the subject of collective bargaining" under the copies that we thought included the amendments.

MR. HILLMAN: The only thing I can say is that it is a typographical error because there is a D, which says "Notwithstanding any provision of this law" and it goes on to say that they can bargain about any matter.

MR. GUDIS: It may be the subject of --

MR. HILLMAN: The bottom of 20 is the permissive language.

MR. FOSLER: LEt me be clear.

MR HILLMAN: I think you could leave that "shall not be" because the "notwithstanding" provision down at the bottom of page 20, allows for the permissive --

MS. SPECTOR: That's not a good way to write it.

MR. HILLMAN: I agree with you.

MR. GUDIS: I think before we get the final bill

we'll work that out.

MR. GUDIS: Ms. Dolan?

MS. DOLAN: I'm Kathy Dolan. I reside at 4505 Bennion Road in Wheaton, and I am here to testify on behalf of the Employee Organizations Task Force concerning bill 71-81 "Collective Bargaining for Police Officers."

This bill is a response to the will of the voters expresses in 1980 to support collective bargaining for police officers. We feel that the voters also support collective bargaining for all county employees and we are here to ask that this bill be expanded to cover all Montgomery County employees.

This is not the first time collective bargaining has been discussed in Montgomery County. In 1976, the Special Committee to Review Compensation and Personnel Practices, in their final report to the Council (August 1976) stated, "In the Committee's view there are advantages to the County through increased collective bargaining which outweigh the potential dangers." They went on to state, "Furthermore, it is time to make a positive affirmation of collective bargaining as a right of recognized employee groups." We concur with this advice of six years ago.

Second, the County has had Meet and Confer legislation on the books since 1978 and it has not been successful. Several strong and organized groups were informed by the

County that they could not be recognized under this legislation and other groups have not been able to have a successful election. This is in large part due to the restrictions and limitations inherent in the law.

Third, only the Fraternal Order of Police has organized successfully under Meet and Confer and their reaction to the experience was to go to the voters in 1980 to get a charter amendment for real collective bargaining.

Two years ago the Charter Review Commission Personnel Committee stated that, "Many County employees view the "meet and confer' process as a meaningless exercise. They feel this way because any 'position paper' that is written as a result of 'meet and confer' merely details the topics discussed and the views of both sides. It has no legal standing. In addition there is no mandate that both sides come to an agreement and the CAO remains the final authority for most disputes. This situation cuases many employees to believe that there is too little incentive for the County to really consider their point of view. It is simply too easy to put off negotiation of the tough issues to a later date. there does not seem to be anything that can be done to address these problems short of implementing collective bargaining."

Fourth, County employees are reasonable and decent people. We are taxpayers also. We ask only justice and fairness. We do not ask for impossible wages, unreasonable hours

or unmeetable working conditions. And we would not ask for these under collective bargaining. We do want the right to ask for what is equitable.

In looking at the specifics of this legislation we have some problems in several areas. First, the definition of strike in section 33-76 is somewhat unusual. There are several model laws that have better definitions.

We also are concerned with the section on the Permanent Umpire. This looks like the bargain basement version of a Public Employee Relations Board and as such has some real flaws. In addition, several provisions under section 33-77 Permanent Umpire especially (2) and (3) will hamper the Umpire in necessary information gathering.

Another area of concern is in terms of time limits on petitions and provisions for decertification. The provisions for petitions seem unnecessarily restrictive and the prohibition of runoff elections is quite questionable.

We have other problems with the bill and will be glad to discuss it further with the Council.

MR. GUDIS: Thank you. Are there any questions?

If not, the next speaker is Mr. Allen Katz representing Lodge 35, Fraternal Order of Police.

MR. KATZ: I'd like to introduce George Driesen who is our special counsel who has helped the Fraternal Order of Police, Lodge 35, during the drafting process. And it will be

his comments that I believe you have a copy of now.

MR. DRIESEN: Let me tell you first of all how utterly delighted I am to be here. I'm delighted on two counts.

First of all, I'm a foreigner. I come from several other jurisdictions and I imigrated to this county about 20 years ago. And one of the first things that struck me when I arrived was the entirely different impression of a police force here that I got very early on, I was given a speeding ticket, from the impression that I had in other jurisdictions where I had resided.

As I am sure all of you know, the police in this county are extremely courteous, extremely efficient, and extremely professional and I think anybody who lives here knows that.

So I'm very proud indeed to be representing them. And I think it is that sense of them and not as one of the speakers last time suggested, the idea that the voters in this county didn't know what they were doing that led the voters to enact section 510 of the Montgomery County Code to enable the police officers of this jurisdiction to have collective bargaining with mandatory arbitration. And I'm going to come to that section in a moment.

The second reason I'm delighted to be here is that I have taught the subject of collective bargaining in three

of America's major law schools as what they call a guest or adjunct professor. And I've always wondered if I could do a better job than the prior scribblers in drafting a collective bargaining bill. I haven't had the pleasure of drafting this bill, but I must say the FOB and its representatives appreciate the fact that the County Executive has listened carefully to our comments. Alas, we disagree on the fundamentals. But nonetheless we have been listened to with respect to the document which you have before you, and some of our ideas do appear in the document and we had a fair hearing.

But we believe the document before you does not comply with the mandate of the voters when they adopted Section 510 of the Montgomery County Charter.

Collective bargaining with mandatory arbitration if adopted in this county, and we hope that it will be, would bring Montgomery County into line with most of the forward looking jurisdictions in this country that employ police officers. It would substitute collective bargaining in the fixing of terms and conditions of employment of police officers in this jurisdiction. But the voters mandated binding arbitration and the County Executive, and we agree with this on that, takes the position when they're referring to interest arbitration, and what the voters meant and what many many jurisdictions in the United States that have bargaining for police and other uniformed services have is just that, binding

arbitration. That is to say the parties negotiate and if no agreement is reached the matter is placed before a neutral who decides the issues.

Now you, ladies and gentlemen, are our employers and when the voters said mandatory arbitration, it is our position that they meant it. And it is our view that good public sector labor relations require that there be a place where we can go with you to get a final adjudication. And therefore, we believe that the document before you is inadequate, both as a matter of law in this county and as a matter of policy. Because you don't have to go to interest arbitration.

Now there are many jurisdictions in which public sector bargaining is provided for by statutes and other employees, if an impasse is reached, have to rely on the good grace of the legislature. It either votes their collective bargaining agreement up or down. But in these same jurisdictions, and I'm going to name them, where that is the procedure for other employees, it is not the procedure for police and other uniformed services. And the reason for that is simple.

The police and other uniformed services are too darned important. We just can't have unresolved impasses and collective bargaining between this county and its police officers.

Among the jurisdictions which do not provide mandatory arbitration for other representative employees but do

provide such arbitration for police, are Massachusetts, New York, Pennsylvania, New Jersey, Oregon, Washington, Wisconsin, Wyoming, Minnesota, assuming as we do that police are essential employees, and Alaska. And we urge this county do joing that honorable list of jurisdictions which provide for mandatory arbitration of police bargaining impasses. That, we think, is the basic imperfection and failing in this document.

We have provided suggested language in Exhibit 3 which would integrate with the present ordinance. And I think for that reason it is somewhat clumsy as a statute, but we have provided language in our exhibit, I think it's Exhibit 1, I misspoke, which would indeed make possible mandatory arbitration if in the unlikely event there really was an impasse between this council and the police in negotiations.

I might say as I read this ordinance, and we will have some suggestions in the work sessions to clarify it, as I read it you do not get the collective bargaining agreement to pass upon. You only get those which is in my view proper and not at all unusual, you only get those portions which require either the appropriation of funds or the enactment of legislation. Everything else is between the County Executive and the collective bargaining departments.

But that is our basic problem with this document. And there is nothing new in our proposal for mandatory arbitration. Students of collective bargaining are familiar with

the practice of mandating arbitration as a substitute for the strike in labor relations statutes governing uniformed employees. That's how impasses are settled in the private sector. We have to have a means of settling impasses with you.

It is widely recognized that there must be a fair and equitable method of resolving once and for all disagreements over the contents of collective bargaining agreements when one of the bargaining parties represents the uniformed services. Otherwise uniformed employees may strike even though a strike is unlawful because they have no other means of obtaining a settlement that is perceived to be fair.

That is the lesson of the PATCO tragedy, as the New York Times pointed out shortly after the PATCO strike occurred. And it is the explanation for the 11 year history of essentially strike free labor relations in the postal service. Only one postal union, one small union, has ever gone to arbitration in the postal service. But because it's there there have always been agreements. And the postal service, I don't want it misunderstood. The FOP is opposed to strikes by police officers. The Fraternal Order of Police, the parent organization, expressly forbids strikes, and that rule binds Lodge 35. But there is no assurance that the FOP will perpetually be representative of the County police, and that's one of the reasons why there is sufficient frustration

no matter what the rules are on strikes. We think there ought to be mandatory interest arbitration of the basic issues of collective bargaining with the Council.

Now the next serious deficiency and it's fundamental, is the very narrow range of subjects which this ordinance permits to be bargained about. What could be more frustrating to represented employees than a law which promises them collective bargaining on the one hand but then so narrowly restricts the scope of what may be negotiated that it keeps the word of promise to the ear and breaks it to the hope, and that is precisely what this ordinance does. It has a very short list of five subjects that can be bargained about and it has 15 items that can't be bargained about unless the County agrees. And I might say if you have to have the employer's agreement about what he's going to talk about, what happens in negotiations is you spend half your time talking about what you're going to talk about. And that's the fear we have for an ordinance that is as narrowly conceived as this one is, and that so significantly contracts the scope of collective bargaining.

Indeed, this document prohibits bargaining about some of the very matters that led to the police officers' insistence, or I shouldn't say prohibits, from our standpoint it doesn't require let's put it that way, collective bargaining about some of the matters that led to the police officers'

insistence that there be collective bargaining in the county.

For example, schedules are not bargainable. The department's insistence upon a five day instead of a four day week has been a serious bone of contention between the police department and police officers in the very recent past and it still is.

#3 The police do not insist that they have their own way, at least not all the time. But a statute that does not even authorize them to bargain about a subject as important as scheduling carries with it the seeds of difficulty for the future. Similarly, the statute would prohibit bargaining about transfers. This too is a matter of great importance to the police. Where one works is obviously a term and condition of employment and the procedures that will be followed and the matters that will be considered when a transfer becomes necessary are matters that traditionally labor organizations negotiate with employers about.

The narrow scope of bargaining in this ordinance reflects an extended list of management rights which the employer need not bargain about. Statutes with such provisions in them are a frequent source of irritation. And I've heard testimony to that effect in my class by some of the leading practitioners in public sector bargaining. And they provoke litigation. I agree with Mr. Hillman that it would be delightful and desireable if we didn't have any litigation under this

ordinance, just bargaining. But this is the kind of thing that leads to litigation and litigation frustrates the collective bargaining process.

For example, we're not allowed to bargain about technology. No one knows what that term means. Does it mean for example that the police have no right to bargain with their employer about matters which vitally affect their safety such as the weapons they use or the protections built into their patrol vehicles? Similarly, what is more important than the procedures and factors that will be considered when an employee seeks promotion? That is not a bargainable subject under this ordinance.

Again, it is a management right to maintain and improve the efficiency of operations. If management asserts that a particular proposal would reduce the efficiency of operations, is the proposal not bargainable and shall the parties argue about that rather than seek to achieve a compromise or suitable arrangement which preserves the interests of both sides?

I fear that under this ordinance the answer is the employer wraps himself in that phrase, efficiency of operations, and we go into some kind of a proceeding to determine whether he is right and we never get to the merits and that's not good policy. No one denies the legitimacy of the objectives which are listed in the enumerated rights of management, but the

purpose of collective bargaining is to provide a means of exchanging ideas that will accomodate management's objectives and employees' needs. That's what it's all about.

This statute virtually makes that exchange impossible because of the very narrow scope of bargaining that is left after all the management rights and other prohibitions in the ordinance are taken into consideration.

Exhibit 2 to this testimony is a revised definition of collective bargaining. We took it whole from the New York State statute which applies to police in that jurisdiction, and I might say that it's used elsewhere too. There is no reason why Montgomery County should adopt such a narrow approach to the subjects which we can bargain about under the ordinance.

The remaining concerns that we have listed in the statement and reflected on our exhibit are narrow in scope. Much narrower than the fundamental ones that I've been discussing, but very important to us.

Mr. Hillman passed lightly over the unfair labor practice provisions. There is a laundry list of unfair labor practice provisions in this ordinance which are unprecedented in my view and my experience in labor relations. They go to things like sabotage, violent action to prevent people from entering a place of employment, taking possession of property of the employer and the like. These are criminal violations.

They have no place in a labor relations ordinance, and since the ordinance is hardly venturesome when it comes to affording rights to employees, we see no excuse whatsoever for the laundry list of horribles that is contained in subsection five of subparagraph B of the prohibited practice section of the ordinance. They should be deleted. No one knows what they mean. They obviously have no place in the labor relations statute.

I had wanted to address, but I think our concern has been met by change in provision that would give the entire jurisdiction over the labor organization's internal ratification procedures. Fortunately that appears to have been deleted so I won't take the time except to say that we are pleased about that and would be very upset if it were reinstated. We have a constitution, the state has laws which provide, we have a constitutional provision for ratification of collective bargaining agreements and that is subject to the State Courts if there is some imperfection or ignored, and we think that is the proper place for ratification procedures if at all should be litigated.

Exhibit 3 also contains, and here we are stepping into the shoes of management, it contains a proposed deletion of one of the provisions of the ordinance dealing with strikes and lock-outs. It prohibits the County Executive from compensating any employee for a period when he is directly or

indirectly engaged in a strike.

Now as I said before, the FOB opposes strikes and we have no problem with disciplining an employee who goes on strike in violation of applicable law. But a strike by police officers can create a serious emergency and we think it is unwise and imprudent to tie the hands of a future County Executive by absolutely prohibiting him from taking steps he deems essential. There may be circumstances that we cannot foresee when the County Executive may conclude that some employees who were "indirectly", whatever that means, engaged in a strike must out of necessity or in fairness receive some compensation. For that decision the County Executive would be answerable to the voters as he should be. But he is equally answerable if he fails adequately to deal with an emergency of such gravity.

For this Council to decide in advance what a future County Executive should do when faced with circumstances it cannot now foresee, seems to us the height of folly. Again, we don't want to be misunderstood. We anticipate there will be no strikes under this legislation. And as I said, our charter outlaws them, and I'm not referring to the County Council's charter. I'm referring to the FOP's own charter. And this is a disciplined, professional police force that is not going to be a problem. But obviously the draftsman of this legislation wanted to be sure there were controls in the event

that occurred. We think he has gone too far in this important respect.

We believe the bill before you does not comply with the voters' mandate. It does not provide for binding arbitration. It's narrow scope of bargaining could make a mockery of the process of collective bargaining. In some respects we believe the ordinance goes too far. For example, in enumerating a series of criminal acts which are to be the subject of prohibited practice provisions of the ordinance without the protections of criminal law and provisions which are unprecedented.

We think the bill represents a step forward. With the changes we have proposed we think the ordinance will provide a useful mechanism for resolving problems and establishing wages and working conditions that are fair to the police and the citizens they serve. With the changes we have proposed adoption of the ordinance, we are confident, will lead to an era of mutual harmony between the police and the County. So amended the bill should be enacted.

Thank you.

MR. GUDIS: Thank you.

MS. SPECTOR: I haven't read through the attachments yet, the Exhibits 1 and 2 and we'll probably get to this in our work session, but in essence are you saying that the process as outlined in the bill is acceptable but it doesn't go far

enough if the Council doesn't accept what has gone through the process? That we then need to go to arbitration?

MR. DRIESEN: Yes.

MS. SPECTOR: You don't have a problem with the process up to that point, with the way it starts in November and goes through --

MR. DRIESEN: No, we do not have a problem with that although if you come to the policy position that we have taken it might be possible to simplify the legislation and make the process somewhat less cumbersome.

MR. FOSLER: With respect to the question of the legislative authority of the council and what it ought to be, the FOPs position is that there ought to be some kind of resolution beyond the council's decision. Is there some other legislation? Is there some other collective bargaining or elsewhere that addresses that point?

MR. DRIESEN: There are 11 jurisdictions, as I indicated in my testimony, in which the police have the right to go to binding arbitration with the legislative body, whatever body has the responsibility for appropriating funds.

MR. FOSLER: We really ought to take a look at the specifics of how those laws work, but in those instances, does it work pretty much the same way up until the point as is proposed here, up until the point that it goes to the legislative body, the agreement that is reached by the Executive, be

it the governor and the bargaining agent or the decision of the arbitrator, goes to the legislative body if the legislative body rejects it there is then provision for the arbitration of the decision after that?

MR. DRIESEN: We'd have to look at each one at retail, but typically there is no impasse resolution machinery before it gets to the body that has the power to appropriate the funds because that is not necessary. You don't have an agreement unless you have an agreement through collective bargaining. If the legislative body doesn't appropriate the funds or rejects the portion of the agreement which it has to act upon, then the matter has to go to an arbitrator for resolution. But to have an impasse, or to have arbitration before that point is premature unless there has been agreement.

Most of the statutes are not very detailed in terms of how the legislature acts. That's been done sort of behind the scenes. The statute simply provides in the event of an impasse it goes to arbitration.

MR. FOSLER: I think that's something we ought to take a look at. I think it would be very helpful if the Executive Board could get some information on that. Both the laws, any kind of interpretation we have on the basis of Court decisions, and also the practical way that it works. The law is general in that regard. How has the process actually been worked out?

The Executive has taken the position that the charter amendment indicates the binding arbitration or first interest arbitration, the FOP's position, when you propose the amendment was, it did not relate to interest arbitration but only to non-interest items. Isn't that correct?

MR. DRIESEN: There was some unclarity in it at one stage before we actually took the matter to the voters.

MR. FOSLER: But the FOPs position was quite clear. You stated before the Charter Review Commission you believed the amendment you were proposing did not address interest arbitration as a part of the binding arbitration. That is correct, isn't it?

MR. KATZ: Mr. Fosler, when it was proposed, as you know, there wa s a problem with a petition that actually was presented to the Council. As you'll recall, we came before the Council and said in light of the problems that we had with the petition drive, that we asked the Council to propose language, and of course we were denied that, and within a four week period we obtained over 10,000 signatures and that's how this got on the ballot.

Then there was some question as you say before the Charter Review Commission of exactly what we were asking for. But it was the County Executive that suggested the language that we had proposed would mandate the binding arbitration on interest issues and subsequent to that we met with Mr.

Gilchrist and told him whatever problems or whatever questions before, so there would be no misunderstanding, we were asking for interest arbitration. And subsequent to that time the literature that we put out indicated we were asking for interest arbitration.

I know what you're talking about. there was a period when we talked to the Charter Commission that we were in effect, or that we waivered on that, but following --

MR. FOSLER: It was very clear. If you look at the language in the record you stated five or six times quite specifically that it was not interest arbitration that you were referring to.

MR. KATZ: I know what you're talking about and I remember that testimony.

MR. FOSLER: Was there some reason why there was a change in interpretation?

MR. KATZ: As I said the Executive suggested the language that we had proposed, or very well could mandate the interest arbitration and upon reflection, and that's why I went through the business of the fact that the petition was done very quickly, and we went over it very quickly. But we considered the issue and before it was voted on and frankly before literature was put out, the Fraternal Order of Police and the group that was really behind it, the Citizens for Effective Law Enforcement, met with Mr. Gilchrist and said we

are adopting your position in effect. His position. And that is, this is going to mandate binding arbitration on interest issues, and put out literature to that effect.

MR. DRIESEN: I might say, I came to this matter cold. I read it and I said well it's got to be interest arbitration for a very simple reason, right alongisde the prohibition of the right to strike. The interest arbitration is as I said in my testimony, the substitute for the strike as the impasse resolution mechanism. I'm not an expert in local government, I confess, but it certainly seems to me, it may take a charter amendment to permit interest arbitration because of its implication. I doubt if it takes a charter amendment to provide for resolution of grievances through some form of third party instrumentation.

In any event the parallelism seems to be persuasive as to what the charter amendment meant.

MR. FOSLER: The other item that you raise is the one that is addressed in one of the amendments that the Executive has proposed which has to do with the perusive items. And I think there again, in gathering information for the work sessions, it would be extremely useful for us to take a look at the specific language and what the practice has been in those jurisdictions which do already have collective bargaining with their police departments. So if we could see if we could come up to some kind of a resolution on that as well.

MR. GUDIS: Mr. Driesen, do you have readily available information on any other jurisdictions that you named in here as to what they provide? I don't mean right this minute. I guess my question is, would it be much of a problem for you to put together a chart which in effect compares the various or summarizes by jurisdiction this information so we would be able to see at a glance as to what they provide?

MR. DRIESEN: It may be a little bit too detailed to look at ina glance, but I do have that material and I'd be happy to make it available.

MS. SPECTOR: My question was related to the other jurisdiction. You namedthe states. Are they all state laws or are local jurisdictions involved also?

MR. DRIESEN: Local jurisdictions are covered in these instances by state statutes. As I see the situation give the charter and its mandate, you are in the same situation as those state legislatures were when they set out to adopt a collective bargaining rule in effect, or laws.

MR. GUDIS: Any other questions?

MR. KATZ: I might take a moment to introduce Philip Nichols who is the legal council for the State Fraternal Order of Police Lodge, and we ask that he be allowed a few minutes to address the Council on our behalf.

MR. NICHOLS: Thank you. i'll be extremely brief.

I appreciate the opportunity to speak before you. I

understand and I'm embarrassed that our National President made it and we flew him in and made a big to-do over it, and we were a little short on audience on the Council side, but in any event, we want you to know this is a very serious matter at the National level, the State level and certainly the local level. I understand our National President gave a run-down of the national experience in collective bargaining and found it to be favorable. Our State President has asked me to come to you tonight and tell you that the members of the State Lodge stand behind Lodge 35.

We believe, quite honestly, it's a matter of great social justice that the police employees of Montgomery County have the right to be heard on those matters that affect them most. The destiny of the police department in Montgomery County is in your hands. I can only ask as respectfully as I can on behalf of the other 8,000 police officers in Maryland, that you give as much favorable consideration as you ethically and properly can to the concerns of the FOP.

I don't have to remind you that in every jurisdiction that has considered this matter by election or otherwise, that they have ruled favorably and I believe you should be guided by the voters in this particular case and afford the FOP as great a voice in their own internal work place as any other employee in the private sector which has been the rule for decades.

I haven't had a chance to read through the amendments but there was a stir in the audience when the Sergeants weren't included in the unit and several people out there asked that that be a great concern to you in your work session. That's not the case in other areas of Maryland and I'm sure that you are aware now, and you'll have the benefit of their experience in considering it.

I thank you for allowing me to have this opportunity and the State President also thanks you for allowing us to be heard tonight.

MR. GUDIS: The meeting is adjourned.

(Whereupon, at 10:10 p.m. the Public Hearing was adjourned.)

REPORTER'S CERTIFICATE

DOCKET NUMBER:

CASE TITLE: Legislative Bill No. 71-81 Collective Bargaining

HEARING DATE: January 25, 1982

LOCATION: Rockville, Maryland

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before Montgomery County Council and that this is a true and correct transcript of the same.

Date: February 1, 1982

Official Reporter
Acme Reporting Company, Inc.
1411 K Street N.W.
Washington, D.C. 20005

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MONTGOMERY COUNTY, MARYLAND

MONTGOMERY COUNTY COUNCIL

In the Matter of:

Bill 71-81, Collective Bargaining, Police Officers

Council Hearing Room
100 Maryland Avenue
Rockville, Maryland 20850

Thursday,
January 14, 1982

The above-entitled matter came on for hearing, pursuant to notice, at 8:10 p.m.

BEFORE: NEAL POTTER, President

MICHAEL L. GUDIS, Vice President

SCOTT FOSLER

ESTHER GELMAN

DAVID SCULL

RUTH SPECTOR

ROSE CRENCA

I N D E X

STATEMENT BY:	PAGE
J. David Eberly, President Montgomery County Education Association	5
Jim Goeden Bethesda-Chevy Chase Chamber of Commerce	13
Tom Israel An Individual	16
Leo Marchetti, National President Fraternal Order of Police	20
Allen Katz and George Driesen Lodge 35, Fraternal Order of Police	25
John P. Fiscella Consultant, Labor Relations	26
Vincent Foo, President Montgomery County Council of Supporting Services Employees/Local 500	35

P R O C E E D I N G S

PRESIDENT POTTER: Good evening ladies and gentlemen. This is a public hearing on Legislative Bill No. 71-81, C llective Bargaining for Police Officers. The bill provides the framework for conducting collective bargaining between the county government and police officers in specified classifications and includes establishment of a permanent umpire to implement certain provisions of law; certification procedures for employee organizations; subjects which are appropriate and inappropriate for bargaining; impasse procedures; prohibited practices; provisions prohibiting strikes and lockouts; use of official working time of employees; and the effect of prior enactments. This legislation amends Chapter 33 of the Montgomery County Code, 1972, as amended.

Because of the snow emergency and resulting difficulties and uncertainties about the holding of the hearing this evening, the Council has arranged a continuation of this hearing on Monday, January 25, starting at 9 p.m. The late hour is because we have had to continue another hearing from last night to that night also. They will proceed from 7:30 until 9. So we will continue this hearing at 9 p.m. on Monday, January 25, and we will hear additional speakers who have signed up, but who do not appear tonight.

Additional Council members should be in attendance at that time. Those Council members who are absent tonight

will read the record being transcribed for the use of the staff.

The County Executive witnesses who were to lead off the hearing this evening have called in to say that because one of them has to come from Baltimore, they feel their presentation should be made on the 25th. So we will hear them at that time rather than tonight.

A work session on this legislation has been scheduled for Thursday, February 4, 1982, at 3 p.m. Now because of the continuation of the hearing we may find it necessary to postpone work session. We may not have all the necessary papers ready in time for the work session. So those who want to come for that work session, please call into the Council office to check whether it is proceeding as scheduled.

The record on this hearing will remain open until the close of business on Thursday, January 28th, in case people want to submit additional written comments for our use.

The first of the speakers whom I have listed tonight for appearance on this list is J. David Eberly, speaking for the Montgomery County Education Association. In case Mr. Eberly doesn't run long enough to show the time limiting machine, I want to explain it to you. This gray box here shows the amber light when the speaker has 30 seconds left to go. When the 30 seconds are up, the red light appears,

that means your time is up. I know Mr. Eberly is familiar with it because he has appeared before us many times before.

STATEMENT OF J. DAVID EBERLY, PRESIDENT,

MONTGOMERY COUNTY EDUCATION ASSOCIATION

MR. EBERLY: Good evening, Mr. Potter, I am David Eberly, President of the Montgomery County Education Association. Our organization represents all nonsupervisory professional employees of the Montgomery County Public School system in collective bargaining and related matters.

I appear this evening in support of the police labor relations bill providing for collective bargaining for Montgomery County police officers. Formalized negotiations for Maryland teachers began in 1968 as a result of legislation sought by our members. We believe that it is a right, not only of teachers, but of all public employees, to share with our colleagues in the private sector the ability to exercise an equal voice in the determination of those factors affecting their employment.

Private sector bargaining, though taken for granted in many areas of our nation evolved slowly through years of struggle, strife and experimentation. Among the lessons that public management has or should have learned is that employees, both professional and nonprofessional, take as an essential ingredient of their employment the rights outlined for workers by the United States Congress in 1935,

namely, that they may organize a union of their choice and bargain collectively.

Unfortunately the nuances of such union organizing have escaped the understanding and acceptance in some areas of the nation, and therefore the urgency to organize and bargain is often accepted only reluctantly or not at all by government.

I genuinely hope that local government in Montgomery County continues to grow in its acceptance of these principles and establishes, not only for the police, but for all public employees procedures to implement these efforts.

Consequently I wish to support the positions taken by our sisters and brothers in the Montgomery County Police Department as they through the Fraternal Order of Police have successfully sought and overwhelmingly won our public's understanding and support for bargaining efforts. We endorse the Fraternal Order of Police position and their statement and urge your approval of the legislation before you with the amendments supported by the FOP.

Specifically I would like to speak to three issues addressed by the legislation. Number one, agency shop. Among those illustrations of union security that are most sought after and misunderstood is the issue of agency shop. This legislation provides the ability of the designated exclusive bargaining agent to negotiate an agency shop agreement. As

defined by the bill, agency shop will provide the bargaining agent the financial security to be able to operate outside the realm of competitive activities usually present where two or more unions vie for representation. It is not only good for the union in that it assures a full income of financial support, it is good for management as well. Unions which must continually show their bargaining strength by aggressive acts of confrontation and militancy are often in a position of needing to take actions for internal political purposes rather than for adversarial strategies and bargaining. In plain language, the presence of agency shop brings a period of labor peace and enables management and labor to be about the all-absorbing job of bargaining and administering a contract.

Two, ratification and funding. The experience of teacher bargaining in our county presents a model that should be avoided entirely. In order for legitimate good faith bargaining to proceed, there needs to be an ability for a union to bargain directly with the party who can commit itself to a contract. In our situation, we bargained with a team who must answer to the Superintendent of Schools, who must refer to the Board of Education for ratification, who must defer to the County Executive for review, who must submit to the County Council for final fisacl funding. This is an absurd relationship.

At any point in our bargaining process our

constituents could be successful and yet be defeated by a higher reviewing agent. Such a process creates a time bomb calculated to harass and intimidate workers and their bargaining agent rather than provide a mechanism for reasonable resolution of negotiations demands.

I urge you to provide the ability to bargain and ratify at one level. Simplify the process now when you have the opportunity rather than risk a crisis by dividing authority as was done in our situation.

Scope of bargaining. It is my firm belief that nothing should be restricted from the scope of negotiations. The result of bargaining as it has evolved transfers to a joint contractual relationship those powers and decisions formerly held exclusively by management. It is natural for management to want to retain as much power as it can. If we accept the fact that it is good and healthy for bargaining to exist, then we should also accept that the framework of the bargaining should be based on the skills and exigencies of the process at any given time and not by law.

I have about three sentences yet if you permit me to finish. Employees have a right to bargain and discuss anything that is of concern to them, and they should be able to reach agreement and reduce to writing all matters that are mutually acceptable. Neither management nor labor should be able to hide behind a statute that restricts their ability

to bargain. Neither can any legislative function anticipate for all time what restrictions will effectively guide the process. Today's laws may bind the hands of tomorrow's negotiators to the end that labor stability and harmony are disrupted rather than affirmed.

I thank you, Mr. President, for your consideration, and urge your attention to these points as you adopt this legislation for police labor relations in Montgomery County.

PRESIDENT POTTER: Thank you, Mr. Eberly.

(Applause)

PRESIDENT POTTER: You certainly raise some important fundamental points that we will certainly be considering in our work sessions and in the passage of the bill.

Let me ask you one question. I see the point of most of them, but you raised the question about buckpassing in effect, or higher agent as you call it, in the bargaining with the School Board. Now I don't think the Executive or Council have ever undertaken to change the bargained contract between the School Board and the MCEA, have they? I think Mr. Gleason on one or two occasions said we could take out $5 million or whatever it was by just not funding. I don't think the School Board ever consented to that, nor did he have authority to order that.

MR. EBERLY: There was one experience which occurred before I became president. I think it was perhaps five,

six, seven years ago, where in my recollection I believe in a subsequent year of a multiple year contract a salary increase of something on the order of 10 percent would have resulted in deferring to the cost of living index. Either the County Executive recommended about funding of a half of that, or the County Council at that time funded only about half of it, I am not aware of where that initiative came from. My recollection is that the ultimate increase for that year was approximately half, however, of what the negotiated contract would have called for.

PRESIDENT POTTER: Did the contract provide for that contingency, that if it were not all funded that the negotiated increase would be reduced, or was it renegotiated? I don't quite understand you.

MR. EBERLY: That I don't know because I was not active in the leadership of our union at that time. My guess is that it would have provided for the opportunity at renegotiation if funding by the Council was not forthcoming. I have no recollection of what ultimately came about.

PRESIDENT POTTER: My understanding is that the contract is binding, although like any contract I guess it can be renegotiated, and that if the Board of Education has undertaken a certain salary scale that that is their contract, subject only to mutual consent to be negotiated in view of unforeseen circumstances or something, such as a smaller

funding than expected with consequent impacts on the employment program or the salary scales.

I realize that the school personnel may argue from what the Council may appropriate. Unless the contract itself is made contingent on that, that is only an argument.

MR. EBERLY: I think there are a couple of points that in our situation at least that would affect this. Number one, for all practical purposes, if the total number of dollars appropriated by the Council for professional salaries would not cover the salary scale for the people that are involved, then the Board of Education has a choice as to whether or not it will cut back in the number of employees in our unit or else unilaterally seek to cut the salary or enter into renegotiations.

The only point I am trying to make is that it weakens almost to the point of foolishness the whole bargaining process if management which bargains with labor bargains any part of the contract and doesn't have the ultimate authority to follow through or to fund that.

Now the situation which we face in this bill is a little bit different from ours because we are subject yet to another level of government, the Board of Education. But the only point I am trying to make is I think a rather simple one, and that is that we believe that public employees need to bargain with whatever organ of management or government

has the authority to deliver on what they promise.

PRESIDENT POTTER: It seems to me that a natural analogy could be the kind of situation in which United Auto Workers now find themselves. They have contracts with Ford, General Motors and Chrysler and American Motors. But if the market doesn't supply the money, something has to be done about it. UAW and General Motors I think are sitting down together and trying to decide what they are going to do about it. General Motors I think recognizes that they have a contract and there is a basis for looking at the changes in the Consumer Price Index and all the rest to negotiate with the union, but also to recognize that there are other impacts that they don't have control over.

MR. EBERLY: Well, that is true, but certainly when you look at the private sector initially when that contract was bargained it was ratified by the union and then ratified by management. Management initially was able in the private sector to deliver without any question at all what the salary increases provided for because management in the private sector did not then need to rely on any kind of ratification by the stockholders. This is kind of an extraordinary situation I think that they are in now.

PRESIDENT POTTER: The market problems of recession and high interest rates and competition can hit them any time.

MR. EBERLY: I understand.

PRESIDENT POTTER: I am just saying that similarly I think the School Board has to recognize there are other forces in it, although the Council and they feel that it is a valid contract, we have to look at the consequences.

MR. EBERLY: Well, I am delighted to put in my plug for our own problem here, although that is not initially why I came.

PRESIDENT POTTER: I think all bargaining, as I am trying to indicate, is under some shadow and the ultimate power to deliver is not something that human institutions, public or private, can guarantee. To its best effort.

MR. EBERLY: Well, to the extent that I believe the structure can provide that, I urge the Council to provide for bargaining on the most fundamental level.

PRESIDENT POTTER: Thank you.

MR. EBERLY: Thank you.

PRESIDENT POTTER: Our next witness is Kathleen Dolan speaking for the Employees Organization Task Force. Is she here? Kathleen Dolan? I don't see her.

All right, then we will go on to Jim Goeden from the Bethesda-Chevy Chase Chamber of Commerce.

STATEMENT OF JIM GOEDEN, BETHESDA-

CHEVY CHASE CHAMBER OF COMMERCE

MR. GOEDEN: President Potter, my name is Jim

Goeden. I am speaking this evening for the Bethesday-Chevy Chamber of Commerce.

The Chamber is most supportive of the excellent job done by the Montgomery County Police Department. We realize that their jobs often call for actions that put their safety in jeopardy and that they are often called upon to work long hours to protect the lives and property of our citizens and our businesses. We further believe that because of the nature of their work, the county government should go the extra mile to assure that our police officers are adequately compensated.

The Chamber, however, is concerned about the issue before you. The Chamber was opposed to the Charter amendment that was the source of this proposal because of that portion of the Charter amendment that provided for binding arbitration. We are not in any opposed to collective bargaining, but we are opposed to binding arbitration.

We sincerely believe that because of the ethically questionable campaign to present this issue as a no-strike amendment before the last election, many of our voters were deceived. We also believe that if the question of binding arbitration were put to the voters of the county as a separate issue, it would be rejected overwhelmingly.

We do not feel that the Council is under a mandate to pass legislation implementing the Charter amendment because

of the recent Court of Appeals decision requireing charter amendments to be limited to the structure of government.

Another avenue the Council may wish to consider is to separate the binding arbitration question from the remainder of the amendment and place it on the ballot for the next election. We believe that elected officials and only elected officials should be responsible for the spending level of our county government. We feel that binding arbitration can, in some cases, turn this responsibility over to an expert from out of town with a black briefcase.

We are also concerned about two additional probabilities. First, that the wage settlement for police officers will set standards for the remainder of the county government employees, and second, that passage of this bill will encourage other government employees to seek a Charter amendment of their own.

The pressure on local government to reduce spending in the next few years will be intense. It is essential during that period for elected officials to be in complete control and responsible for their actions.

Thank you.

PRESIDENT POTTER: Thank you, Mr. Goeden. You certainly raise important legal points and questions which the Council will consider.

The next witness is Tom Israel, speaking as an

individual.

STATEMENT OF THOMAS S. ISRAEL, AN INDIVIDUAL

MR. ISRAEL: Mr. Potter, I am Tom Israel. I reside at 3211 Wake Drive in Kensington.

Both as a concerned private citizen and as a former member of the Board of Education with eight years of experience in collective bargaining issues, I welcome the chance to comment on Bill 71-81. I will confine my comments to Section 33-81, Impasse Procedure, which provides for binding interest arbitration by an impasse neutral if the parties fail to reach agreement on a new contract. However, I want to first place my comments in context by stating that I do not object to collective bargaining by public employees, and strongly believe that binding arbitration of grievances arising from administration of the contract is a fair and valuable approach to resolution of such disputes.

Having said that, I do strongly object to third party binding arbitration of bargaining impasses for the following reasons.

First, binding interest arbitration tends to destroy the collective bargaining process because there is little incentive for an employee group to settle short of an impasse knowing there is a very good chance that an arbitrator will decide in its favor on economic issues.

Second, binding interest arbitration would have the effect of placing substantial control of the county's fiscal affairs in the hands of a nonelected person who probably would not even be a resident of the state, much less the county. With all of the financial grief that arbitrators have caused local governments in this area because of their decisions on Metro contracts, I cannot imagine that this Council would let that happen to Montgomery County in this instance.

Third, it is highly likely that economic settlements imposed by the arbitrator under Section 33-81 of this bill would quickly become the minimum negotiating positions of all other county employees. Why should any employee association bargain seriously until they see what the police get?

Fourth, I call your attention to paragraph (b)(7) of this section which is on page 22. It is totally unclear whether the Council retains the right to reduce the arbitrator's decision as it does in the case of an agreement reached voluntarily. Even if paragraph (b)(7) is clarified to make it crystal clear that the Council retains final authority via its legislative and appropriation powers, I would oppose binding interest arbitration because the process tends to bring extra pressure on the Executive and Council to settle at a higher level than is fiscally prudent.

Finally, I oppose the binding interest arbitration

provision because it is quite evident that the public did not know what it was buying when it voted on the Charter amendment a year ago. Every lay citizen I have talked to has been unaware of this provision and is outraged when the potential implications are explained. Frankly, they think they have been had on this matter, and I would have to agree based on the paucity of efforts to explain this issue to them during the last election season.

Fortunately, I think there is a reasonable solution to this matter to which few could object. I suggest that the Council sever Section 33-81 from this bill and submit binding interest arbitration to the voters in the November election. You can proceed to approve and implement the remainder of the bill and collective bargaining with the police could commence on November 1st as scheduled. The electorate will settle the binding interest arbitration issue in early November, and if they approve the Council will have time to pass necessary implementing legislation before the first impasse could occur in late January.

Taking the step I have just suggested would have the great virtue of highlighting the issue for voters, and I guarantee there will be more information for them to base a decision on this time. If the electorate approves binding interest arbitration, then at least they could not in fairness blame you for the consequences.

As a last thought, three years ago I co-chaired a coalition of organizations which barely defeated the proposed Trim Charter amendment by a margin of about 5000 votes out of more than 200,000 cast. The Trim concept would have been bad public policy and would have hit hard at public employees. Among other things, it would have made collective bargaining largely irrelevant.

I oppose binding interest arbitration because it too would be bad public policy, and because its adoption could well be the catalyst which produces another Trim amendment. I urge you to let the voters decide this important public policy issue in November.

Thank you.

PRESIDENT POTTER: Could I ask the audience to please be still. This is a hearing and not a rap session. I know how many of you feel. I know what you want. The Council has to consider the issues in terms of public policy, and we all owe courtesy and order to the public agents who are trying to carry on the public's business.

Mr. Israel, I think you raise the important and very difficult questions. We will try to find our way through them. Surely there are severe conflicts between some of the policy issues you raise and the legislation indicated by the Charter amendment. I appreciate your highlighting those in simple language.

You have an attachment to your testimony from the National School Board Association. We will enter that in the public record.

MR. ISRAEL: Thank you, Mr. Potter.

PRESIDENT POTTER: The next witness is Jean Marie Elkins. Is she here? Jean Marie Elkins. Absent. Perhaps we will hear her on the 25th.

Next is Leo Marchetti for the National Fraternal Order of Police.

(Applause)

STATEMENT OF LEO MARCHETTI, NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE

MR. MARCHETTI: Mr. Chairman, I am Leo Marchetti. I am the National President of the Fraternal Order of Police, and I am here to give some type of expert input into what binding arbitration does. Being from the Commonwealth of Pennsylvania and having worked in the arbitrations legislation in 1967 and 1968, I think I can speak with some authority.

I am sure that no matter where we speak of binding arbitration for municipal employees, there is a fear that someone is going to come in and give away the store. But if you look at the history in the states that do have binding arbitration, you will find that that is not happening. Specifically in the state of Pennsylvania where I am from

the City of Philadelphia, a first class city, with binding arbitration, makes the lowest police wages of any city in that classification. In the City of Pittsburgh, which is ranked in population 21st, we have just completed an arbitration, and we, incomewise we rated 29th in the nation.

So the bugaboo that by giving our public servants the opportunity to go into a binding arbitration for wages has not caused the financial blight to the community that many people would want us to believe. I have listened to two individuals make speeches here of threats of what could happen in Montgomery County if this law were to pass. I personally don't believe that the people of your county are that naive that they didn't know exactly what they were voting for when they were voting.

(Applause)

MR. MARCHETTI: In the referendum election of 1967 and 1968 in Pennsylvania, we were able to get better than 85 percent of the electorate to vote in favor of giving binding arbitration to their police and firemen. It has been held in good stead. We have had total labor peace in the Commonwealth of Pennsylvania. There is a good rapport between policemen, firemen, and their communities since the inception. This year, 1981, arbitration season has just ended with the lowest amount of arbitrations ever in the Commonwealth, and basically the answer is that management and the police officers

have learned to respect each other. They go into a bargaining session. It is not like it used to be, hat in hand. You go in and you deal for the bargainable issues that you feel as a police officer you have a right to have. Most policemen don't ask for that much out of life. They certainly don't come on the police department to become wealthy. They come on because they have a dire need of giving service to their community. And they live that life. And in the majority of cases they give much more than they receive.

I can say if I gave a copy of the Arbitration Act of 1968 and I left enough for your total Council when they are all present. It is a very simple act.

PRESIDENT POTTER: We will distribute it and enter it into the record.

MR. MARCHETTI: Thank you. It is not a complicated piece of paper, and after 13 years there has not been a change. If I as a police officer were asked what changes I want to make in that piece of paper, that document after 13 years of proven testing, I would say, number one, I think that we should get a specific definition for the word "policeman" simply because, as I see in your text, you are speaking of just patrolmen. In Pennsylvania we deal for all policemen, the Fraternal Order of Police deals for all police officers. And the only police officers who are not covered are the administration. The superintendents aren't involved, the

assistant superintendents aren't involved, but everybody under Civil Service is under that arbitration act. And we have found no problems with that.

The only other decision that has ever been handed down is a decision that was made by the Pennsylvania Labor Board in small departments which you people here do not have, but in small departments of 10 or less men the chiefs are included in the arbitrations. If you have over 10 men, the chief is classified administration.

I would like to have had your total Council here so that I could have answered many of your questions. I am sure that you probably have many. But I say to you in the absence of the rest, thank you for coming. It was a terrible night, but at least somebody has showed up because of the interest in this legislation. And I thank you for appearing. I thank the people in the audience that feel that this is a worthwhile endeavor, and I would hope the Council of Montgomery County sees fit to award police officers what the taxpayers, the voters of Montgomery County have asked us to do.

Thank you.

(Applause)

PRESIDENT POTTER: Thank you, Mr. Marchetti. I appreciate, as does the audience, your being here despite the difficulties of the night and the distance and your

presenting this act and your experience under it.

I must say that neither I, nor I think anyone else in this county government or I suppose the FOP seeks the result that you mentioned in Philadelphia. We hope we can always keep a good salary and a good force which we have had in recent years.

I wanted to say that a lot of our questions are reserved for the work session. You heard my announcement on the work session. I don't know whether you will be able to be here at such occasion, but we do have a more informal exchange after giving everybody a chance to speak and raise issues, go back and forth on these things, and to check out different views of different issues and different experiences. Can you be there?

MR. MARCHETTI: When will that be, sir?

PRESIDENT POTTER: It is scheduled for February 4. As I said earlier, February 4, Thursday, at 3 p.m. As I said, because of the need to continue this hearing on January 25, we may not have all the preliminary staff work done for that meeting. We are expecting to go forward with it as of now. It would be well if you can be here, we would call you as to the time, if any change occurs in that schedule.

MR. MARCHETTI: I will certainly try to schedule myself so that I can be present.

PRESIDENT POTTER: I appreciate that. We will

try to insure that you can be here.

MR. MARCHETTI: Thank you, sir.

PRESIDENT POTTER: The next speaker is Phillip Nichols of the State Office of the FOP. Phillip Nichols? Not here. Perhaps he will be here on the 25th.

Next is Allen Katz from Lodge 35, FOP.

STATEMENT OF ALLEN KATZ, AND GEORGE DRIESEN, LODGE 35, FRATERNAL ORDER OF POLICE

MR. DRIESEN: Mr. President, my name is George Driesen. I am appearing with Mr. Katz on behalf of the FOP. If we may, Mr. President, we would like to reserve our time for the 25th for the reason that there are two very important things that are missing tonight. The first is the bill, as amended, which we have very carefully prepared to address. And the second, if I may say so, is the County Council which we have very thoroughly tried to prepare to address.

I hope, Mr. President, that you will convey to the rest of the members of the Council the intensity of the feeling of the police of this county that the voters have spoken and the police expect that there will be a satisfactory law as a result of what has occurred, and the testimony of the men and women who have come out tonight in this inclement weather to be sure that their message was heard, I hope will be eloquently conveyed to the Council. We would like to reserve our time, however, for the 25th.

PRESIDENT POTTER: Thank you, Mr. Driesen. Would you spell it for the reporter?

MR. DRIESEN: Surely. D-r-i-e-s-e-n.

PRESIDENT POTTER: So that you expect to have 15 minutes plus eight, a total of 23 minutes. Is that right?

MR. DRIESEN: That is right.

PRESIDENT POTTER: Surely, that is all right. Let me say that the absence of the Council members is principally because they expected very few people to be here. Well, last time it did blow up entirely, and the weather forecast was pretty bad for tonight. Although it turns out not to be so. Being an old farmer in Minnesota, it doesn't bother me that much. But I appreciate your being here, and your desire to be on on the 25th, of course we will put you on at that time.

MR. DRIESEN: Thank you very much.

PRESIDENT POTTER: That brings us down to John Fiscella.

STATEMENT OF JOHN P. FISCELLA,

CONSULTANT, LABOR RELATIONS

MR. FISCELLA: Mr. Potter. I am John Fiscella, a private consultant on problems in public sector labor relations. For the past 18 years I have been actively involved as a management and union consultant, lecturer, trainer and practitioner of public sector labor relations. For the past

three years I have been a consultant to the United States Department of Labor's Labor Management Services Agency, Division of Public Employee Labor Relations.

After reviewing the recommendations of the County Executive, I felt that I must comment briefly on at least three sections of Bill 71-81. They are Section 33-78, Employee Rights, Section 33-80, Collective Bargaining, and Section 33-81, Impasse Procedure.

Let me start with Section 33-80, Collective Bargaining, Articles (a)and (b) which speak to the subject of the scope of bargaining to be permitted to the parties.

There is an old expression used by both private and public labor relations personnel that states, "Anything, Not Everything, Is Negotiable". Anything that impacts upon the employee's ability to perform the assigned tasks and carry out his or her responsibilities is negotiable. But not everything involved in the management of an enterprise is negotiable. The only exclusions to the scope should be those topics over which management has no control or ability to change or which do not impact on the employees' job.

I call your attention to 33-80, Article (c), numbers 6, 7 and 8. In the areas of suspension, discipline, discharge, transfer, assignment, scheduling, retention, layoff and recall, which have been declared outside the scope, the unit members usually have a strongly felt interest.

In order to analyze the scope of bargaining, one must look at both the number of issues included in the negotiations as well as the degree of employee organization influence on particular issues. Frequently, the parties implicitly reach agreement on a tradeoff between the breadth of negotiations and the depth or degree of influence on particular issues. Some evidence exists that the public sector manager presently opts for breadth rather than depth. In fact, I am quoting from Paul Gerhart: "Management appears willing to place no limit on the number of negotiable issues so long as the actual power of the employee organization is severely limited."

The scope of bargaining is an extremely important aspect of the bargaining relationship. A very narrow scope reduces the significance of collective bargaining. Effective collective bargaining requires a reasonably wide range of negotiable issues.

The common practice in the public sector is to include the issues listed in 33-80(c)6, 7 and 8 within the scope by joint agreement on the procedures to be utilized by management prior to final determination by management. In this way the issues are ventilated and the breadth of the agreement is widened, but the depth is minimized. The princples of just cause and due process are incorporated in a set of equitable procedural rquirements prior to decisions

by management that in some way might have a negative impact on the unit members.

Next allow me to comment on Article 33-78, Section (b). This confers on the recognized organization the exclusive right to represent the employees for the purpose of collective bargaining. When read together with Article 33-80, Section (d), there appears to be some confusion. Article 33-80(d) indicates that if the narrow scope proposed is approved then management can engage in an end-run around the exclusive representative on some of the most vital day to day job related issues.

Historically, when this type of limited exclusivity is given to the bargaining agent all types of special interest groups vie for favor with the political and management power structures seeking input. The harmonious labor relations that this bill purports to establish is thereby destroyed.

Public managers and policy makers are best served when they can tell any unit member or group of unit members that are seeking special consideration of an issue to take it to the table next year. This creates for the exclusive representative the real responsibility to adhere to the doctrine of fair representation. The limited exclusivity proposed will do nothing but continue the present climate of lobbying the power structured of change as well as create internal problems for the limited exclusive representative.

In closing, let me address Section 33-81, the Impasse Procedures. I have attached to my remarks a recent study published by Dr. Arvid Anderson, Chairman, Office of Collective Bargaining, City of New York.

I hope the conclusions reached by Dr. Anderson will reduce some of the misunderstanding that most public bodies express when binding interest arbitration is the terminal step in a collective bargaining procedure. My only concern is that the award, when taken in context with Section 33-80(h) is somewhat less than binding.

I would suggest that in the event that the Council fails to fully fund a mutually agreed to contract or an award made by an arbitrator that the parties be required to renegotiate rather than eliminate certain meaningful issues.

Thank you for your kind attention.

(Applause)

PRESIDENT POTTER: Mr. Fiscella, I appreciate your bringing this for us, and the edition that you are submitting for the record. Did you give a copy of your testimony to the secretary?

MR. FISCELLA: Yes, sir.

PRESIDENT POTTER: Then we can Xerox them and pass them around tomorrow. I appreciate that too.

I appreciate many of your points but I have a little difficulty discussing them because I don't have the copy

before me, and you were going through some fairly intricate provisions as well as explaining their results. Do you think you could be at the work session and give us some more help there where more questions could be --

MR. FISCELLA: If it is to be held on the fourth of February, I am serving as an advocate on a triparte binding arbitration panel.

PRESIDENT POTTER: So at that time you could not be present.

MR. FISCELLA: No.

PRESIDENT POTTER: But if we have additional work sessions, or if we change the work session we can get in touch with you?

MR. FISCELLA: Yes, sir.

PRESIDENT POTTER: Is there a telephone number on your testimony?

MR. FISCELLA: Yes.

PRESIDENT POTTER: Very good.

MR. FISCELLA: If I might just highlight Dr. Arvid Anderson's study for you, which dealt with this review of binding arbitration in the public sector.

PRESIDENT POTTER: If you would like to hit some of the major points in that, we will it a minute or two and it will be in the record for others to read.

MR. FISCELLA: There are 20 states right now that

have binding arbitration, and primarily for police, fire and other public health and safety type employees. I would say that his study has revealed that, number one, the utilization of the binding arbitration has been less than anticipated, ranging from a high at the time his study was done of 26 percent of the possible cases going to arbitration in Pennsylvania, to a low of less than five percent in Iowa. He attributes this high utilization of 26 percent, for instance, in Pennsylvania to the fact there is no fact-finding intermediary step between declaration of impasse, a quick attempt at mediation, and then the ultimate step of arbitration. Whereas in Iowa, the fact-finding procedure normally tends to round off the rough edges of the disagreements and articulates an agreement.

The cost factor that was alluded to by two of the prior speakers is also of interest because his research finds that the settlements awarded have been less than those in the same areas, in the same geographical, same occupational areas, have been less than those agreed to voluntarily in the mutually agreed to contracts. So the awards made by arbitrators in New York, Wisconsin, Pennsylvania, Iowa, Oregon and so forth have tended to be slightly less, if not greatly less than the awards made, or the agreements reached mutually.

The other thing is, the narcotic effect. A lot

of people tend to think that there will be a narcotic effect if the parties have as the ultimate step binding arbitration. Therefore, no true bargaining will occur in the interim, they will all wait for this expert with the black bag, as was referred to by one speaker, who arrives in town and then take their best shot.

The narcotic effect has proven not to be so, and this is demonstrated by the low utilization of it in those states in which it is not only possible but has been in existence for more than four to five years. People do not tend to wait for the man with the black bag. They tend to try to resolve it mutually. People tend to like to live under their own contracts rather than to have someone superimpose an agreement on them.

There are other issues rather than economic that are involved. The economic issue might be highlighted for a week or two weeks, but there are other job rules and regulations and requirements that he will set down that people are going to have to live with for the next 365 or possibly longer. So consequently people want to negotiate their own agreement.

The other thing is the legality of the delegation of powers. Every place that has authorized the utilization of arbitration, every state, there has been a challenge and the courts have ruled right down the line that there is no

illegal delegation of responsibility or public power to an arbitrator. Because in most places, and in your legislation also, it sets in some sort of criteria that must be adhered to in making the award. Consequently he cannot with reckless abandon come in and merely flip a coin and say, "I'll take Package A or Package B", without any awareness of the consequences to the tax structure and/or the other needs of the public managers to operate the entreprise.

PRESIDENT POTTER: It fits in the usual criteria of delegating legislative power to administrators if you provide sufficient guidelines, it is not illegal.

MR. FISCELLA: Right.

PRESIDENT POTTER: That sounds like a fairly extensive paper, and I trust it is. I certainly appreciate that. If that highlights it, then we have something to work from. We hope you can be at least at one of the work sessions where we can discuss it.

MR. FISCELLA: Thank you for the invitation.

PRESIDENT POTTER: Thank you very much.

(Applause)

PRESIDENT POTTER: Our next speaker is Vincent Foo, speaking for Montgomery Countil Council of Supporting Services Employees.

STATEMENT OF VINCENT FOO, PRESIDENT,
MONTGOMERY COUNTY COUNCIL OF SUPPORTING
SERVICES EMPLOYEES/LOCAL 500

MR. FOO: Good evening, Mr. Potter. My name is Vincent Foo. I am President of the Montgomery County Council of Supporting Services Employees/Local 500, a union representing approximately 5,000 supporting service employees of the Montgomery County Public Schools.

I am not here tonight to speak to the issues. I believe that Mr. Driesen and Mr. Katz have worked with the County Executive and have come up with a bill, with the amendments that satisfy them and will take care of the collective bargaining process for police officers.

I am here tonight to support the organized police officers of Montgomery County in their efforts to achieve true collective bargaining with the county.

Our organization, MCCSSE, asks that the legislation before you, the Police Labor Relations Act, be acted upon favorably by the Council. The citizens of this county approved the referendum giving police officers the right to collective bargaining. We believe it has taken much too long to carry out the wishes of the voters. We urge you to approve this legislation.

Thank you.

(Applause)

PRESIDENT POTTER: Thank you, Mr. Foo. I think the Council feels too that it has taken quite a while, and we would like to shorten. We hope we can act expeditiously on it.

Let me say that as to the issues and the revisions in the bill which we received just today I think, we look forward to the next session to have those changes brought before us, explained and discussed so that we will deal with on the 25th more extensively.

I appreciate your being here to support the basic principle. We enjoyed working with you for a long time even though we are not the bargaining agent.

MR. FOO: I feel there is a lot of discussion on the agency shop issue. As you know, we have had agency shop since 1978. I would be glad to speak to that at the work session if you would like.

PRESIDENT POTTER: If doubts come up about that, or that is one of the issues, we would appreciate your being there to mention it and explain the experience you have had. Thank you very much.

Are there any other of the listed speakers here this evening?

(No response)

PRESIDENT POTTER: If not, we will hear the Executive and the consultant, Mr. Hillman, and the Local

Lodge 35 FOP presentation on the 25th, together with I think it is two other speakers. So until 9 p.m., Monday, January 25, good night, and I will see you then.

(Whereupon, at 9:05 p.m., the hearing was adjourned, to reconvene at 9:00 p.m., Monday, January 25, 1982.)

* * * * *

REPORTER'S CERTIFICATE

DOCKET NUMBER:

CASE TITLE: Bill 71-81, Collective Bargaining, Police Officers

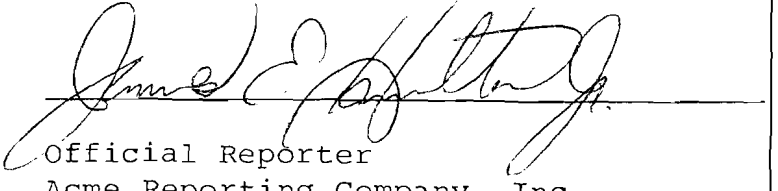
HEARING DATE: January 14, 1982

LOCATION: Rockville, Maryland

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before Montgomery County Council

and that this is a true and correct transcript of the same.

Date: January 11, 1982



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APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Monday, March 8, 1982 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, County Office Building, Rockville, Maryland at 1:30 P.M. on Monday, March 8, 1982.

PRESENT

Neal Potter, President
Scott Fosler
Ruth Spector
Michael L. Gudis, Vice President
David Scull
Rose Crenca

ABSENT

Esther P. Gelman

The President in the Chair.

Re: Worksession on Bill 71-81 - Collective Bargaining/Police Officers

The Council met in worksession on Bill 71-81, Collective Bargaining/ Police Officers, with Allen J. Katz and George B. Driesen, Attorneys for the Fraternal Order of Police; Robert S. Hillman, Special Counsel to Montgomery County; Edmund Rovner, staff of the County Executive; Clinton Hilliard, Director of Personnel; Council Staff Director McDonell and Deputy Council Staff Director Spengler.

Mr. Hillman reviewed the following new draft language for Section 33-80 which was prepared in an effort to work out language more acceptable to all parties:

~~Sec. 33-80. COLLECTIVE BARGAINING.~~

Sec. 33-80. COLLECTIVE BARGAINING.

(a) Upon certification of an employee organization, as provided in Section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided however that salaries and wages shall be uniform for all employees in the same classification.

(2) Pension and retirement benefits for active employees.

(3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation.

(4) Hours and working conditions, including the availability and use of personal patrol vehicles.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum.

(6) Matters affecting the health and safety of employees.

(7) The effect on employees of the employer's exercise of rights enumerated in sub-section (b) hereof.

(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 determine the services to be rendered, and the operations to be performed;

(3) 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;

(4) To direct or supervise employees;

(5) To hire, select and appoint and establish the standards governing promotion of employees and to classify positions;

(6) 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;

(7) To make and enforce rules and regulations not inconsistent with this ordinance or a collective bargaining agreement;

(8) To take actions to carry out the mission of government in situations of emergency; or

(9) To transfer, assign and schedule employees.

(c) 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 sub-section 33-80(b) above, but such matters shall not be subject to bargaining.

(d) Collective bargaining shall commence no later than November 1, preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties.

(e) Any collective bargaining agreement which contains a provision for automatic renewal or extension shall be void in its entirety unless such renewal or extension requires the consent of both parties. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end on June 30.

(f) Any collective bargaining agreement shall become effective only after ratification of the agreement by the public employer and the certified representative, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures.

(g) A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer and the employer shall make a good faith effort to have such term or condition implemented by Council action. On or before April 25, the County Council shall indicate by a majority, consisting of four (4) of the Council members, its intention to appropriate or otherwise implement the agreement, or its intention not to do so, and shall state its reasons for any intent to reject any part or parts of the agreement. In the event the Council indicates its intention to reject, it shall designate a representative to meet with the parties and present the Council's views

in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible in an attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the council on or before May 10. Any agreement shall provide either for automatic reduction or elimination of such conditional wage and/or benefits adjustments if the Council fails to take such action or if funds are not appropriated or if a lesser amount is appropriated.

(End of new draft language)

Mr. Hillman said that he understands that this language is acceptable to the Fraternal Order of Police (FOP) with the exception of (b) Employer Rights (9), to transfer, assign and schedule employees; however, Chief Crooke takes the position that this is essential to the operation of the Police Departmnet. Chief Crooke must have the power to run the Department in order to give proper police protection at all times and to assign officers that can best respond to certain duties at certain places and times. Subsection (c) provides for discussing any matter of employer's rights that are not the subject of bargaining.

In response to Councilman Scull's question about how to distinguish the effect on employees of the employer's exercise of rights, Mr. Driesen stated that, for example, a change in assignment to respond to a domestic relations squabble is not negotiable because it goes to the mission of the Department, but the effect is that it will impose additional strain on the officer & he may need access to a psychiatrist to deal with the effects of this additional strain. The proposal under (a)(7) is the response to the management decision, not negotiable, providing for the right to negotiate about the effects of the employer's exercise of his rights.

Mr. Hilliard added that there is no question about management's right to layoff employees from the Department, but the employee organization might negotiate how the layoff will be accomplished. Mr. Rovner indicated that this language is in the federal statute enacted in 1978.

In answer to Councilman Scull's question about Sec. 33-81, Impasse Procedure and the use of an Impasse Neutral, to be chosen by agreement or through the American Arbitration Association, Mr. Driesen stated that this provision is designed to assure that trade-offs will occur by requiring the Impasse Neutral to choose between the two final offers of the negotiating parties.

In response to Councilman Scull's request for how Mr. Katz justified his change of position from one of saying that the Police had no desire to arbitrate interest issues to the opposite position, Mr. Katz explained that the sponsor of the petition, CELE, was made up of members from the FOP, but not the entire membership. There was confusion on the part of the sponsors of the bill and a second petition drive was required. When the matter came before the Council at the end of September 1980, the leadership of CELE felt it was speaking for the Police in taking a position for binding arbitration on financial matters and not on interest issues. Six days later, on October 6, 1980, at a meeting of the FOP, the members took up this issue and the minutes of that meeting clearly reflect that the FOP was in favor of including interest arbitration; CELE sponsors of the bill went along with the FOP position and it was thereafter reflected that way. For the record, the FOP officials met with the Executive prior to the election to make clear to him that the Police were asking for interest arbitration also.

Mr. Driesen noted that this matter is no longer relevant as this bill does not provide for interest arbitration. The FOP has acquiesced that the provisions of this bill are probably workable; it simply provides for arbitration that binds the Executive in his recommendations to the Council which retains its freedom as to what it has control over. The bill does not represent binding arbitration in the classic sense.

Councilman Scull addressed the vagueness which he believes is embodied in the term "effect" in (a)(7) of the bill, saying that this may cause difficulties in working out disputes and that he believes that precision and specificity is desirable relative to what can be carried to arbitration.

Mr. Driesen responded that there is in this bill a specific forum and procedure for resolving controversies over what is subject to arbitration & what is not. FOP acquiesced in the management rights enumerated, but the effects of those

rights becomes negotiable. He is opposed to listing all the things that the Police cannot bargain about, Mr. Drisesn said, in response to a suggestion from Mr. Scull.

Councilman Fosler commended the Executive for the changes in the subject bill, since the last worksession, from virtually everything being subject to bargaining, either as a mandatory requirement or permitted to be, to a clear line being drawn between what is, and is not, subject to bargaining. He also commended the FOP for agreeing with these changes. Mr. Fosler believes it is good to have this framework provided for in the legislation to eliminate ambiguities and protect the rights of both the police employees and management. Working conditions are difficult to define, especially the effect on employees of the employer's exercise of rights; however, he believes this is a legitimate concept. He asked for an explanation of how this provision, (a)(7), would work, noting that there may be disagreement as to what the effects are.

Mr. Hillman responded with an example from the private sector. Management has the right to close a plant, but it has an obligation to discuss the effects of the plant closing with the employees; i.e., will the employees be given a chance to transfer? will they recieve severance pay? and so forth. The plant may be closed even though it takes a longer time to negotiate the effects.

Mr. Fosler observed that, in addition to this provision, he would encourage more discussion outside the bargaining process, as addressed in paragraph (c), since he said employees know a great deal about the practical problems involved in running the Department. He commented that there needs to be a distinction between the collective bargaining process and the general process of managing the Police Department, for which the police officers should also be consulted. He cautioned about the potential danger of establishing an adversary relationship during the bargaining process which might carry over as a general attitude that pervades the Department. Mr. Fosler said he believes the way the legislation is written will go a long way to set the proper tone in a department where everyone has a common interest in having the department run effectively.

Mr. Katz responded to Mr. Fosler's question about FOP's concern regarding inclusion of transfer, assignment and scheduling of employees as an employer right, saying that the Police bill of rights speaks to transfers

and that scheduling has been a major sticking point over the past years. He noted that, at the Wheaton Station, actions were taken agains management in this regard and that the Police feel that scheduling is a very important item to bring to the bargaining table.

Councilwoman Crenca suggested that Councilmembers read the minutes when the matter was before the Council at the time the amendment for binding arbitration was being prepared for the ballot. The intent at that time was grievance arbitration, but then there was a "slip twixt cup and lip." What happened was unfortunate, but Mr. Katz acted honorably. Ms. Crenca said a tape of that meeting would be helpful to her.

Ms. Crenca said that the Police tried to make a point and no one wanted to listen so the Council must address the results. She asked whether the state of the art includes specific expressions regarding matters affecting health & safety of employees and the effect on employees of the employer's exercise of rights; or is language being used in the bill that will lead to an impasse during negotiations.

Mr. Hillman responded that there is a body of law which has elaborated on what was meant by management rights and effects on employees, such as the effects on employees of closing a plant, mentioned earlier. There is a means of a neutral person deciding these questions, should they arise. He observed that there will always be ambiguities regarding the effects on employees of the exercise of management rights, but there is a way to resolve them.

Councilman Scull stated that it appears to him that the changes that have come from the Executive are at the request of the Police and represent some weakening of the County's positions. The employer has rights regarding promotions which are vital; in the first draft this was not subject to bargaining, now the right is to set standards.

Mr. Hillman said he tried to sharpen what was meant with respect to eligibility for promotion, etc. One of the things that might be discussed with the employees is how much time will be allotted before an examination. It is essential to reserve standards to management, but employees may want to discuss the amount of notice before a test to allow for study time. Favoritism in selection, if alleged, is something that would be taken to the Merit System Protection Board through the grievance procedure. Mr. Driesen added that through the discussion process, fruitful results are hoped for,

even though bargaining is not permissible. The FOP acquiesced, reluctantly, with respect to bargaining about transfers, assignments and schedules which are clearly working conditions and the Executive has listened to many of its concrete ideas and there has been cooperation; professionals have tried to reach compromises on the provisions of the legislation that all parties can live under. The new language for Section 33-80 is the Executive's response to these discussions. Other changes from the last draft include combination of provisions to eliminate redundencies. Under (c) the voluntary discussions will not lead to these matters being placed in a bargaining context; this provision must be read in context with the section on employer rights.

Mr. Rovner said that Chief Crooke wants to be able to discuss matters with the FOP, as a sounding board, but cannot be restricted by a binding agreement in the exercise of his duties as heat of the Police Department; scheduling clearly must be left out of the contract.

Councilwoman Spector suggested that the Council address a main area of concern which is the relationship of the recommendation of the Executive to the process the Council enters into. His recommendation is binding on the Executive, but not on the Council.

Mr. Hillman indicated that paragraph (g) in the new language submitted addresses the Council's intention to appropriate for the agreement reached, or not to do so. There was concern that the Executive and the certified representative of the FOP would reach an agreement either through collective bargaining, or the impasse procedure, and that that agreement for financial, or other, reasons would not be acceptable to the Council. Because it was unsatisfactory to have the Council vote not to implement the agreement, or not to provide the funds in the budget, and have the Police be without a contract for the ensuing fiscal year, there has been a provision written into the legislation that the Council will be asked, prior to April 25th, to look at the agreement with respect to its being funded in the budget and give the negotiating parties some idea of whether the contract negotiated is something the Council can accept, or will reject, and its reasons, so the negotiating parties can go back and address any concerns the Council may have. The Council can address each item in the contract, if it so desires, but in the final analysis, it is the funding which must be acted upon. This takes place after the arbitration process has been completed; the agreement is conditioned upon the Council's action.

To Ms. Spector's comment that this procedure places the Council in a situatio where it has to address the matter late in its budget deliberations, after not having been a party to the negotiations and after the negotiations have already taken place, Mr. Hillman indicated that the Council will get the same amount of time as for the remainder of the budget. The negotiations must be finished on February 1 and on April 25th the Council must say whether the parties must go back to the negotiating table. Ms. Spector responded that this is different in that there is not a contract with other employees, except for the MCPS employees,and that is somewhat different.

Ms. Spector observed that the Council might need to set up a separate procedure to give the subject contract some priority in its budget deliberations.

Some of the points made in the detailed discussion of the bill were that it is a 3-year agreement for which the Council may not want to commit for the last two years; the parties to the negotiation can respond to that; the agreement is conditioned upon the Council's appropriating funds; the Council can only appropriateby the year, except in certain CIP items; the Council could send a letter to the negotiating parties,but discussion with a Councilmember or member of its staff would be more helpful; the bill provides no means of binding the Council which gives the FOP pause as it may give up certain things to gain a 3-year agreement; the negotiating parties could come to the Council earlier than the 15 days specified; it would be unwise to have the Council meet with the parties in the bargaining process; if the Council maintains an attitude of cooperation, the process will work, and this is something the Council, educated in labor relations, is likely to do; a Council representative could spend more time finding out about problems than the Council body could devote to the matter; the difference should be delineated between bargaining and expressing views to provide guidance since the Council is involved in implementing what is bargained; and generally reviewed the provisions of the bill as written.

Mr. Potter called attention to Section 305 of the Charter which provides that 5 affirmative votes are required for approval of the aggregate operating budget excluding the WSSC, the bi-County portion of the N-NCPPC and the WSTC which exceeds the budget for the preceding year by a percentage increase greater than that of the CPI for all urban consumers for the Washington metropolitan area

for the preceding calendar year. This is for the entire budget, but it gives the minority important leverage.

Ms. Spector added that the Executive's veto of line items might also affect this process, should he veto something else in order to fund the negotiated agreement with the Police.

President Potter indicated that the Council should consider both of these possibilities.

Councilman Scull asked where the matter stands legally if these procedures do not work out. Is there assurance that the Police will not go to court to overturn the whole procedure? Is there a commitment on the part of the Police to live with these procedures?

Mr. Driesen responded that the FOP is an organization, he and Mr. Katz are its attorneys. He could not make that commitment for the organization. After the recess in the worksession, Mr. Driesen said he had discussed the FOP position with the president of that organization. The FOP still feels strongly about the exclusion of sergeants. He is not in a position to say that the FOP will not litigate that position. He is representing a democratic organization which has a constitutional right to litigate.

Mr. Potter noted that this Council cannot commit for future Councils either.

Mr. Scull asked how this bill relates to the present grievance procedures.

Mr. Driesen responded that grievance procedures are negotiated in this contract; outside the contract, grievances relating to promotions would be heard before the Merit System Protection Board.

Mr. Katz indicated that there is a law enforcement bill of rights and there is a separate procedure for disciplinary matters to be heard by a trial board of 3 police officers convened by the department, pursuant to Article 27 of the Annotated Code of Maryland.

It was the consensus of the Council to indicate in the middle of page three that the Council majority generally consist of 4 Councilmembers; this will be clearer in view of the move to increase the Council to 9 members.

The Council concluded its discussion of Section 33-80 of the bill and turned to discussion of Sec. 33-81, impasse procedure. Mr. Hillman explained this provision to choose someone whom everyone trusts early and have him committed to the time constranits. After mediation, if agreement

still cannot be reached, the impasse neutral will choose the last best offer of the employer or union. The impasse neutral has limited freedom with factors set forth on which he can base his decision. The permanent umpire has a five-year appointment. Both will be paid on a fee basis under contract.

Councilmembers expressed no problems with the subject procedure.

President Potter told Councilmembers that he is assuming agreement if Councilmembers do not raise objections.

President Potter summed up, saing that consesnus had been reached on the collective bargaining procedures and impasse procedures. An editorial change was made regarding "Council majority" with respect to collective bargaining, to omit defining Council majority on page 3,by striking "consisting of 4 of the Councilmembers."

The Council then reviewed Section 33-82, prohibited practices. Mr. Hillman observed that he thought there was disapproval of inserting the word "lawful" on page 28, line 2, which he feels creates a loophole.

Upon motion of Councilman Gudis, duly seconded and without objection, the Council voted to omit the word "unlawful" on page 28, line 2.

Mr. Driesen confirmed for Mr. Fosler that if the Executive is ruled against by the impasse neutral or umpire, he is bound not to oppose the agreement. He said that the union cannot be deprived of its first amendment rights, but the likelihood of its coming to the Council and trying to overturn an agreement is slim.

Councilman Fosler noted as a possible problem the possibility of the Council's receiving requests for legislation, from either side, to do by legislation what it cannot do by agreement.

Mr. Potter pointed to the wisdom of Councilmembers not commiting themselves on matters under negotiation until they know the contents of the entire package to prevent unnecessary misunderstandings, as have occurred with MCEA.

Without objection, on page 28, line 6, the "or" was deleted.

Mr. Driesen stated that (b) (5) through (9) are criminal matters and there is no place for them in labor relations law; they are totally unwarranted in this context, in his opinion.

Mr. Rovner noted that there is no guarantee that the FOP will be here forever and these are alternative means of redress.

President Potter asked that Mr. Hillman provide the Council with additional information as to where (b) (5) through (9) appear in law and then the Council will examine the matter carefully.

Mr. Hillman explained, that lines 8-14, page 31, of the bill were struck because the Executive was reminded that after the initial draft of the "meet and confer" law, the use of official time for these activities is allowed. This language has been taken out, but use of official time can be addressed in negotiations.

Without objection, on page 27, line 18, the words "or other" were deleted.

Mr. Hillman explained that, on page 31, lines 15-22, expression of views, that language was taken from the National Labor Relations Act; it is in almost every State and local law with which he is familiar.

Mr. Driesen offered, in connection with discussion of paragraph (3) on page 27, encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, wages, hours or conditions of employment, to submit language that could appear as a proviso under Section 23.

Mr. Potter indicated that Council would await receipt of that language for its consideration.

With respect to Section 33-84, prohibition of strikes, Mr. Hillman said the normal way to enforce "no strike" is to get an injunction and then the court would normally impose criminal contempt penalties which would take care of this problem.

Mr. Driesen said there is not going to be a stike from the standpoint of the employer, He would not want another enforcement provision in this law; if a strike occurs, there should be a centralized response to it.

Mr. Potter noted that the permanent umpire would impose penalties for any violations, after the fact.

Without objection, the Council did not strike "paid by the County" and insert "borne 50% by the County and 50% by the employee organizations," as suggested.

Mr. Potter indicated, that after the Council has received the material requested during this worksession, he will schedule a short worksession or time for a short worksession at the time the bill is placed on the agenda for final reading.

With respect to Sec. 33-80 (a)(4), hours and working conditions, including the availability and use of personal patrol vehicles, Councilman Fosler said he thought personal patrol vehicles were not to be included as an item for negotiation. He feels this is different from other items included in that list and asked why it should be included; this item has never been negotiated in the past. He sees the use of patrol vehicles as a way of attempting to increase the police presence & to be able to respond more quickly to calls for service for which, in turn, the police would get the use of the vehicles; this use was not begun as a police benefit.

Mr. Hillman noted that Councilwoman Gelman's earlier objection was only that this item be listed as a working condition, rather than as a benefit.

President Potter added that the police vehicles are not only included under working conditions, but are a benefit to the community. The Council's conclusion was that the use of the vehicles is a bonus for the public and, in a sense, a substitute for some wages for the Police; the visibility benefit to the public cannot be eliminated.

Mr. Rovner stated that the Executive has taken the position that the vehicles should be within the scope of bargaining. It was included because, when there was a conflict between the general and the specific, the specific controlled. Those vehicles are a precise means by which the police accomplish their work. In addition, the police have arranged facets of their personal life around the use of these vehicles and, because it is such a major item in their lives, the Executive has decided that when their use is called into question, there should be collective bargaining. The moment the existing equation shifts, before the vehicles are taken away, the Executive believes there should be negotiation, since they also constitute a major benefit to the policemen.

Mr. Fosler asked that it be made clear that the expectation is that these personal patrol vehicles are of equal value to the officers and the public; if this comes into question, bargaining follows.

President Potter asked that the requested material be furnished the Council in a week or so. Upon its receipt he will schedule this legislation for final reading.

3/8/82

Re: SB-935 - A Bill Entitled Community Action Agencies

Mr. Andrew Mansinne, Director of the Office of Legislative Oversight, presented the following memorandum for the Council's consideration:

At the request of Councilmember Spector and Mr. McDonell, I have reviewed Senate Bill 935 and have discussed its contents and implications with Harvey McConnell, Department of Family Resources and Jim Farmer of our own Community Action Agency. In my opinion, Council should support this Bill.

For several years, the Montgomery County Community Action Agency (CAA) has received grants directly from the Federal Community Services Administration. Within the state, there are currently 12 CAA's; Montgomery County and Baltimore City are public Community Action Agencies, the remaining ten are private CAA's. Last year when the Community Services Administration was abolished, Congress stipulated that funds in the form of Federal Community Services Block Grants would be distributed directly to the states from a new Office of Community Services, within the Department of Health and Human Services. For FY 82, 90% of these funds distributed to the State must be used to fund the Community Action Agencies (i.e. the twelve currently organized in the State). The remaining 10% of the funds are for administration and discretionary projects. However, beginning in FY 83, the State can distribute the Federal Community Services Block Grant to any limited purpose agency with the result that the current CAA's could receive no funds.

Senate Bill 935 would guarantee the continued distribution of at least 90% of the Federal Community Services Block Grant Funds to the Community Action Agencies (see Bill lines 189-203).

Upon motion of Councilman Gudis, duly seconded and adopted without objection, the Council authorized Mr. Potter to sign and send the following letter to the Chaiman of the Senate Budget and Taxation Committee:

Members of the Montgomery County Council join with the County Executive, Charles W. Gilchrist, in support of Senate Bill 935, A Bill Entitled Community Action Agencies.

We believe that community action agencies serve a tremendous service to local governments whether they are public or private. The low-income citizens of our great State rely on these agencies to act as liaison between themselves and their governments, to assist them in identifying needs, accessing available services, and assisting them to become self-sufficient and independent.

Please recommend Senate Bill 935 to the full Senate for approval.

The meeting adjourned at 6:45 P.M.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

71-81

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Friday, June 26, 1981 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Conference Room, County Office Building, Rockville, Maryland, at 9:45 A.M. on Friday, June 26, 1981.

PRESENT

Ruth Spector, President
Neal Potter
Rose Crenca
Esther P. Gelman
Scott Fosler
Michael L. Gudis
David L. Scull

The President in the Chair.

Re: Executive Session on Personnel Matter

The Council conducted an executive session on a personnel matter beginning at 9:10 A.M.

Re: Briefing on Public Sector Labor Relations

The Council met with Robert Hillman, Special Counsel for Labor Relations; Council Staff Director McDonell; Mr. Hilliard, Director of Personnel; Mr. Torgesen, Assistant to Personnel Director for Labor Relations; Assistant County Attorney Sorrell; and Legislative Counsel Frankel, to discuss public sector labor relations.

Mr. McDonell stated that the staff was requested to arrange a meeting for the Council to review the principles that have evolved in public sector collective bargaining, and to discuss in detail in executive session some of the implications and approaches that might be taken by the County government in implementing Section 510, Collective Bargaining, of the County Charter.

In introducing the Special Counsel, Mr. Hilliard stated that Mr. Hillman has a background in labor law and an extensive background in public sector collective bargaining. He has a combination of training, skill and understanding of the public sector that uniquely qualifies him to advise the County government in this regard.

Mr. Hillman stated that, from 1940 to 1980, the percentage of public sector employees in the civilian labor force increased from 6.5% to 20%. Accompanying that growth was a tremendous rate of growth in unions and collective bargaining in the public sector, to the extent that it has a tremendous impact on local governments and economies. In the private sector, collective bargaining has a 45-year history; in the public sector, it has only a 15-year history. As someone who has practiced extensively in the private sector, Mr. Hillman stated that there is still much to learn after a 45-year history. In the public sector, problems are compounded by the extensive variety in local governments.

Mr. Hillman stated that one of the underlying reasons for the increase in public sector unions has been the great increase in growth in the urban and suburban areas that has been experienced since World War II. As these areas have grown, there has been a tremendous expansion in the role of local government. As a result of greater social consciousness, new areas of governmental activities have emerged, along with new ways of thinking about government workers. Local government is no longer a small organization. The rise of public sector employment caused local governments to become competitive in labor markets, and many employees during the 1960s and 1970s began to feel that their government jobs were very secure. Unions offered additional security and benefits. In 1961, President Kennedy signed an Executive Order that had a great impact on public sector unions. Although it only authorized collective bargaining for federal government employees, it had a tremendous filtering-down effect. The unions saw that the state and local government employees could be organized if federal employees could be organized, and organized labor unions began to funnel organizing funds into those areas.

Mr. Hillman stated that the mid-1960s to the 1970s was a time when private sector labor unions were declining. As the economy evolves into a more service-oriented economy, the private sector labor force will decline in terms of numbers of organized employees. As a result, unions looked for new members, and with the increase in the number of public sector employees, organizing efforts were very successful. Mr. Hillman stated that slightly under 50% of the total American

work force is organized. During the last ten years, this figure has remained constant due to the growth of public sector unions while private sector unions have declined. About 50% of the public sector employees are unionized.

Mr. Hillman reviewed the history of organized labor in the educational field.

Mr. Hillman stated that one reason for the increase in unions in the public sector is that, as inflationary pressures hit local governments, pay increases for government employees have been a very low priority. As employees are also impacted by inflation, this has given them an impetus to organize.

In response to an inquiry as to whether there is a correlation between groups that unionize and the benefits they have, Mr. Hillman stated that there are differences of opinion. It is his opinion that once a government provides a minimum level of benefits, unionization depends on how the government administers those benefits and how it communicates those benefits to the employees. Day-to-day dealings with employees are also important. If a government has a record of no pay increases or very small increases, after a period of time the employees will organize to do something about it. With respect to one of the reasons that the percentage of public sector unions is increasing while private sector unions are decreasing, Mr. Hillman stated that private employers have learned to combat union organizing activities. He described various ways some companies have successfully kept unions out of their businesses, including extensive communications programs and internal grievance procedures. He indicated that he would be happy to provide Councilmembers with a copy of a book concerning union avoidance theories. The inexperience of government management in dealing with unionizing efforts has been one of the biggest factors in the increase of public sector unions. Mr. Hillman stated that a reapportionment decision of the U.S. Supreme Court also had an effect on the increase of public sector labor unions. Many states had legislatures that were traditionally controlled by rural interests who are opposed to unions of state and local employees. However, due to reapportionment, many state legislatures are now controlled by urban interests, and many states have enacted collective bargaining legislation. Once collective bargaining is authorized,

an election is held in which the union generally wins representation. There have been very few cases in which a union has lost a public sector election. In the private sector, they lose 50% of such elections.

It was noted that private sector unionization has declined because of the shift from a production-oriented economy to a service-oriented economy, yet many public sector employees are service-oriented. Mr. Hillman stated that private sector service employees are more difficult to organize because they are not all in one place, such as in a large factory. It is very difficult to organize a shop of 100 employees, for instance, when 75 of them are out on trucks during the day cleaning carpets. In addition, white collar workers have a certain image of themselves and the feeling that unions are for factory workers. Private industry has fostered that image. Most local governments do not have someone assigned to combat union organizing activities and to talk with employees about their jobs and concerns. Once a collective bargaining bill is enacted and unions begin organizing employees, they give employees 25 good reasons why they should belong to the union, and no one on the employer's side gives any reasons why they should not join the union. The private sector employer works very hard in this regard. In union representation elections in the private sector, there is virtually 100% participation among employees. The employer makes sure that everyone particiaptes; he does not want a minority or one group of employees to decide the issue. In the public sector, however, election participation is less than 50% because no one on the side of management campaigns against the union and encourages people to vote.

With respect to differences in collective bargaining between the public and private sectors, Mr. Hillman stated that the most obvious difference is economic. The private sector employer has a different set of economic forces at work. He is in a competitive situation, and employees recognize that he must remain competitive in order to stay in business. Private sector negotiations are bilateral; they involve the employer and the union. In the public sector, negotiations are trilateral; they involve the employer, the union and the public which must pay the bill. The public is the true employer, but most citizens do not see themselves in that way, nor realize that negotiations affect their tax dollar. In general,

the public wants public sector employees to have very good benefits. Citizens feel that their teachers, police officers and firefighters should have more benefits, but they do not want bigger tax bills. In this regard, certain public sector employees have done a good job of public relations, as evidenced by bumper stickers concerning the important role played by teachers in society. Mr. Hillman stated that public pressures in collective bargaining are very real for elected officials and are intensified by the media which often produce stories about a potential strike when everyone knows that a contract will be signed before the deadline. In the private sector, the employer can come to the bargaining table and make a deal with the union for a certain wage increase. This is not the case in the public sector because of the doctrine of separation of powers. In most cases, the executive branch of government negotiates the agreement; however, this agreement merely serves as the executive's budget recommendation to the legislature. There is a second round of approval, and the negotiators must think in terms of what the executive wants and also what the legislative body will approve. In the private sector, the employer and union can negotiate any subject and come to any agreement that is satisfactory to both sides. In the public sector, there are constraints as to what can be subject to negotiation.

Councilman Gudis pointed out that the separation of powers enables an executive to reach an agreement with a union knowing that the legislative body will not approve it, resulting in politicization of the process.

With respect to the basic structure of a public sector labor law, Mr. Hillman stated that it must address representation rights. In many cases there are already recognized representatives; a basic decision must be made as to whether the law should recognize those representatives or require new elections. The law must address protections for both employees and employer and who shall administer those protections. The issue of protection of rights has not been as important in the public sector as it has in the private sector because most problems occur during the representation process and there have not been sharp contests for representation in the public sector.

Mr. Hillman stated that a basic public sector labor law must address the bargaining process which includes questions such as: Who will represent the

County? How much authority does the representative have? What procedures are built in for approval of the negotiated agreement? What is the scope of the bargaining? What can the negotiator give away? What is the procedure for resolving an impasse? Mr. Hillman stated that the timeframe of the bargaining process must coincide with the County's budget process. He reviewed the various forms of mediation, including binding arbitration. He reviewed the states that have binding arbitration, stating that several states are now backing away from binding arbitration. It was noted that strikes are a method of resolving impasses. Every jurisdiction that has had a police strike has had a law prohibiting it. Some laws allow selective strikes as long as vital public services are not affected. Mr. Hillman stated that he is a member of a professional organization of labor relations specialists. There is a strong feeling in that organization that governments can survive any strike; however, there are strong reservations about strikes by police officers and firefighters.

Councilman Fosler agreed, stating that there is a school of thought that says that public sector strikes need not be as damaging as people think of them as being and that the government may be better off not prohibiting them. Instead, it should attempt to deal with strikes more effectively.

Mr. Hillman pointed out that the AFL-CIO in Maryland has not been strongly supportive of strikes by public employees.

(The Council recessed at 11:05 A.M., and reconvened at 11:25 A.M.)

Re: Executive Session on Potentially Litigable Issues

The County Council conducted an executive session on potentially litigable issues.

The meeting adjourned at 12:40 P.M.

ATTEST:

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

C O N F I D E N T I A L

MEMORANDUM

August 31, 1981

TO: Councilmembers Fosler and Scull

FROM: David Jay Frankel, Legislative Counsel

SUBJECT: Collective Bargaining Legislation

One aspect of the proposed collective bargaining law for police officers which specifically concerns me is whether the Council has authority to enact this kind of legislation. As you know, the recently approved Charter provision provides that the County shall enact a law to provide for collective bargaining and binding arbitration with a representative of police officers. This, to me, does something other than simply authorize the County to enact such a law. It actually mandates its enactment.

The reason for my concern arises from the recent decision by Judge Fairbanks in the "Ficker" amendment case. In that case, Judge Fairbanks cited Cheeks v. Cedlair Corp., 287 Md. 595, (1980), where the Court of Appeals stated:

> "A charter amendment, therefore, differs in its fundamental character from a simple legislative enactment. Its content cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation." (emphasis supplied)

In his opinion, Judge Fairbanks went on to say that "the citizens of Montgomery County are not empowered directly or indirectly to exercise any of the police or general welfare powers exclusively granted to the County Council. Nor can they seek to accomplish by Charter initiative what they have no power to accomplish by referendum or otherwise."

It appears that the Cheeks case may be applicable to the Collective Bargaining Charter Amendment, since the thrust of the Amendment is to compel (as opposed to authorize) the Council to enact specific legislation. If, in fact, the purpose of the Amendment is to compel the enactment of specific legislation, it would seem to follow that proponents of the Amendment will accomplish by Charter initiative what they clearly have no power to accomplish by referendum or otherwise.

I would suggest that we meet to discuss this issue and its ramifications and that Bob McDonell be included in the discussions. Please let me know whether you wish to proceed in this manner.

DJF/nn

cc: Council Staff Dir. McDonell

11-81





11/3/81

RECEIVED COUNCIL

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Montgomery County Government

ROCKVILLE, MARYLAND 20850

908981

MEMORANDUM

October 22, 1981

TO: Ruth Spector, President, Montgomery County Council

FROM: Charles W. Gilchrist, County Executive

SUBJECT: Police Collective Bargaining Law

As you know, in November, 1980, the voters of Montgomery County approved a Charter Amendment providing for the establishment of a collective bargaining law for police officers. Consistent with this requirement, special counsel was retained to assist in the drafting of a police collective bargaining law. During the period in which the draft legislation was developed, meetings were held with Council members, the Fraternal Order of Police, and my staff to determine the appropriate framework for the legislation.

I believe that the attached legislation represents a fair and responsible approach to the conduct of police collective bargaining in the County government and I am pleased to present it to you for your consideration. At some point in your work on this bill, I will have further comment on possible amendments.

In compliance with your rules of procedure the following submissions are made.

1. Description - This legislation provides the framework for the conduct of collective bargaining between the County government and police officers in specified classifications. Specifically, the legislation includes the establishment of a permanent umpire to implement certain provisions of the law; certification procedures for employee organizations; subjects appropriate and inappropriate for bargaining; impasse procedures; prohibited practices; provisions prohibiting strikes and lockouts; use of official working time of employees and the effect of prior enactments.

(27)

October 22, 1981

2. Problem: Section 510 of the County Charter requires the County Council to enact legislation to implement collective bargaining for police officers.

3. Goals & Objectives - The proposed legislation is intended to promote a harmonious, peaceful, and cooperative relationship between the County government and police officers. This will be accomplished by providing for timely negotiations on subjects appropriate for bargaining and the resolution of negotiation impasses through procedures established by law.

4. Coordination - Employees covered by the proposed legislation will be excluded from coverage under Chapter 33, Article IV, title Employer/ Employee Relations, the County's Meet and Confer Law. Employees covered by this legislation will also be excluded from coverage under Section 33-74, title Cost of Living Adjustment; so that salaries and other economic items are determined by the collective bargaining process.

5. Fiscal Impact - The adoption of this legislation will have a direct impact on the FY83 operating budget because it will require funding for a Permanent Umpire, an Impasse Neutral and costs related to their duties as required by the law. More specifically, these costs are estimated as follows:

Permanent Umpire	$5,000
Impasse Neutral	$4,000
	$9,000

These monies are to be appropriated in the FY83 Personnel Office Operating Budget, and funded from the County general fund.

6. Economic Impact - No specific economic impact is predicted.

7. Evaluation

   a. The effectiveness of the law will be evaluated by reviewing the procedural components of the law which are designed to facilitate negotiation of an agreement in a timely and cooperative manner. The procedural components evaluated in this process will include; the certification procedures, time frame for negotiations, impasse procedures, and employer/employee prohibitions.

October 22, 1981

b. The Personnel Office will be responsible for the evaluation with comment from the affected employee organization.

c. The evaluation will take place after the first full cycle of negotiations.

8. Experience Elsewhere - A review of collective bargaining laws in existence for police employees in other jurisdictions has been made. Many of the definitions and concepts included in this proposed law are taken from an established legislative history in both the private and public sector.

No two bargaining laws in the public sector are identical. This law incorporates those bargaining concepts which have proven successful in other jurisdictions and are conducive to the unique bargaining environment of Montgomery County Government.

9. Source of Information - The following individuals are available as resource persons regarding any questions you may have about this legislation:

Robert Hillman, Special Counsel
Clinton Hilliard, Personnel Director
Paul McGuckian, County Attorney

CWW:jey

I HEREBY CERTIFY THAT 25 COPIES OF THIS BILL ARE AVAILABLE TO THE PUBLIC AND FILED AS OF 11/3/81

Anna P Spates

SECRETARY OF THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Bill no. 71-81, "Collective Bargaining for Police Officers"
Draft no. & Date: 1-10/22/81

Introduced: Nov. 3, 1981

Expiration Date: May 3, 1983

Enacted: _____

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

November Legislative Session 1981

By: Council President at the request of the County Executive

AN ACT to amend Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, by amending Subsection 33-63(c) of Section 33-63, title "Definitions", of Article IV, title "Employer - Employee Relations" to provide that police department employees who are represented by a certified employee organization pursuant to Article V of this Chapter shall not be considered an employee under Article IV of this Chapter; by amending Section 33-74, title "Cost of Living Adjustment" to provide that this section shall not apply to an employee of the police department who is represented by a certified employee organization pursuant to Article V of this Chapter; and by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to provide for a policy statement, definitions to be used in the Article, creation of a permanent umpire in order to administer and implement certain provisions of the Article, certain employee rights, the selection, certification, and decertification procedures, subjects

which would be appropriate for collective bargaining, subjects which would not be appropriate for collective bargaining, impasse procedures, prohibited employer and employee practices, certain provisions concerning strikes and lockouts, use of official time of employees, and the effect of prior enactments.

Be It Enacted by the County Council for Montgomery County, Maryland that -

Sec. 1. Subsection 33-63(c) of Section 33-63, title "Definitions" of Article IV, title "Fmployer-Employee Relations" of Chapter 33, title "Personnel", of the Montgomery County Code 1972, as amended, is hereby amended, to read as follows:

Sec. 33-63. Definitions.

* * *

(c) Employee. Any county merit system employee working on a continuous full-time, career or part-time, career basis, eligible to be included in a unit of recognition except for the following:

(1) Confidential aides to elected officials;

(2) All non-merit system employees;

(3) All heads of principal departments, offices and agencies;

(4) Deputy or assistant department heads;

(5) Employees providing direct staff or administrative support to the director of the department, or deputy or assistant directors within the director's immediate office;

(6) Employees who report directly to or whose immediate supervisor is the county executive, county council, county council members or the chief administrative officer and the principal aides to the foregoing:

(7) Employees of the office of the county attorney;

(8) Employees of the office of budget and research;

(9) Employees of the office of employee relations;

(10) Employees of the personnel office;

(11) Employees of the personnel board;

(12) Heads of the following constituent offices, divisions and sections in the department of transportation existing at the time of enactment of this bill and positions carrying a similar degree of personnel management responsibilities in other departments and offices as determined by the chief administrative officer:

Director's office, office of the right-of-way acquisition, office of administrative services, office of transportation planning, division of transportation engineering, subdivision development section, design section, construction section, division of traffic engineering, traffic planning and survey section, traffic operations section, division of operations, TESS Minibus, highway maintenance section, equipment section and division of parking lot districts.

(13) An employee of the police department, as defined in Section 33-76 of this Chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, title "Police Labor Relations" of this Chapter.

Sec. 2. Section 33-74, title "Cost of Living Adjustment", of Article IV, title "Employer - Employee Relations", of Chapter 33, title "Personnel" of the Montgomery County Code 1972,

as amended, is hereby amended, by adding a new Subsection (c), to read as follows:

Sec. 33-74. Cost-of-living adjustment.

(a) The county executive shall provide as a part of the annual recommended operating budget for the county government sufficient funds to implement the cost of living adjustment required by this section. The council shall accord one of the highest priorities to the full funding of the cost-of-living adjustment, shall fund fully the seventy-five percent of Consumer Price Index cost-of-living adjustment unless reasons are given for not doing so, and shall make a finding in the budget resolution as to the extent to which full funding is achieved. Unless otherwise provided in the approved budget resolution which includes a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to county government employees, the chief administrative officer shall adjust the uniform salary plan for all classified employees of the county government beginning the first pay period on or after July 1 of each year by an amount not less than seventy-five percent of the change in the Consumer Price Index for all urban consumers in the Washington, D.C. area, although pay grades one through four of the uniform salary plan to which minimum wage and certain seasonal employees are assigned will be adjusted by changes in the minimum wage rates and salary surveys to determine the competitiveness of such salaries. The percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

The chief administrative officer may adjust the uniform salary plan in excess of the base percentage of seventy-five percent, provided funds are available and approved by the county council for such purpose.

(b) Notwithstanding the provisions in (a) above, for FY-82 only the following salary controls shall apply:

1. Salary maxima of grades 5 through 31 will be adjusted by the full cost-of-living granted by the County Council.
2. The salary maximum for grade 40 shall be $70,000.00.
3. The salary maxima for grades 32 through 39 shall be adjusted by the Chief Administrative Officer so that the dollar difference between the salary maxima of grades 31 through 40 is the same.
4. The salary for each merit employee in grades 5-31 will be adjusted by the full cost-of-living granted by the County Council to the extent that such salary adjustment does not exceed the maximum of the employee's grade.
5. The salaries for merit employees in grades 32 through 39 will be adjusted by the full cost-of-living granted by the County Council only to the extent that such salary adjustment does not exceed the maximum of the employee's grade.
6. The cost-of-living adjustment to the salaries of non-merit employees shall be determined by the County Executive but shall not exceed the cost-of-living granted merit employees.
7. No employee's salary is to be reduced below its level as of June 30, 1981 as a result of implementation of the provisions contained in paragraphs 1- 6 above.

(c) The provisions of this section shall not apply to an employee of the police department, as defined in Section 33-76 of this Chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, title "Police Labor Relations" of this Chapter.

Sec. 3. Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to read as follows:

ARTICLE V. POLICE LABOR RELATIONS.

Sec. 33-75. DECLARATION OF POLICY.

It is the public policy of this County, pursuant to Charter Section 510, enacted as a result of citizen initiative, and purpose of this Article to promote a harmonious, peaceful, and cooperative relationship between the County government and its police employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the police department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively through a representative of their choice or to refrain therefrom; and that any collective bargaining between the County government and a representative of those police employees be done in good faith with no interference with the orderly process of government and furthermore, that the results of collective bargaining be implemented.

It is also recognized however, that police employee organizations possess substantial means by which they may initiate governmental actions regarding the wages, hours, and

working conditions of employees they represent or seek to represent. Consequently, in order to preserve the delicate balance between labor and management in the police service, the Council hereby declares that collective bargaining may be voluntarily selected in place of, but not in addition to existing means of initiating governmental action as to those subjects which are defined as appropriate for collective bargaining in this Article.

Sec. 33-76. DEFINITIONS.

When used in this Article:

"Agency Shop" means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

To "bargain collectively" means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this Article.

"Employee" means any police officer in the classification of Master Police Officer I, Master Police Officer II, Police Officer I, Police Officer II, Police Officer III, and Police Officer Candidate, or equivalent non-supervisory classifications, but not those in the classification of Police Sergeant or any equivalent or higher classification.

"Employer" means the County Executive and his designees.

"Employee Organization" means any organization which admits to membership employees and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization.

"Lockout" means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

"Mediation" means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

"Strike" means the failure to report for duty, or the absence from one's position, or the stoppage of work, or the abstinence in whole or in part from the full, faithful, or proper performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition or authority of the employee or an employee organization.

Sec. 33-77. PERMANENT UMPIRE.

(a) There is hereby created the position of Permanent Umpire, so as to provide for the effective implementation and

administration of Sections 33-79 and 33-82 of this Article concerning Selection and Certification of Employee Organization and Prohibited Practices. The Permanent Umpire shall exercise the following powers and perform the following duties and functions:

(1) To adopt, amend, and rescind, from time to time, such rules, regulations and procedures for the implementation and administration of Sections 33-79 and 33-82 as are consistent with this Article;

(2) To request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the Permanent Umpire to properly carry out his functions;

(3) To hold hearings and make inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel by issuance of subpoenas the attendance of witnesses, not including elected County officials, and the production of relevant documents;

(4) To hold and conduct elections for unit certification or decertification pursuant to the provisions of this Article and to issue said certification or decertification;

(5) To investigate and attempt to resolve or settle, as provided in this Article charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure the Permanent Umpire must defer to that procedure

for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this Article. Furthermore, the Permanent Umpire shall defer to state procedures in those matters which are governed by the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland;

(6) To obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and

(7) To exercise any other powers and perform any other duties and functions as may be specified in Sections 33-79 and 33-82 of this Article.

(b) The Permanent Umpire shall be appointed by the County Executive, with the confirmation of the County Council, shall serve for a term of five (5) years and shall be eligible for reappointment. The Permanent Umpire shall be a person with experience as a neutral in the field of labor relations and shall not be a person who, on account of vocation, employment or affiliation can be classed as a representative of the interests of the employer or any employee organization.

(c) The Permanent Umpire shall be paid a per diem fee as set forth by contract with the County and shall be reimbursed for necessary expenses.

Sec. 33-78. EMPLOYEE RIGHTS.

(a) Employees shall have the right:

(1) To form, join, support. contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) To be fairly represented by their certified representative, if any.

(b) The Employer shall have the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative shall serve as the bargaining agent for all employees and shall have the duty to represent fairly and without discrimination all unit employees without regard to whether the employees are or are not members of the employee organization or are paying dues or other contributions to it or participating in its affairs, provided, however, that it shall not be deemed a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of the certified representative to receive membership dues deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate such provisions has been suspended under Section 33-84. No collective bargaining agreement may include a provision requiring membership in, participation in the affairs of or contributions to an employee organization other than an agency shop provision.

Sec. 33-79. SELECTION, CERTIFICATION AND DECERTIFICATION PROCEDURES.

(a) Procedures for determining the certified representative for the unit may be initiated in accordance with this subsection as follows:

(1) Any employee organization seeking certification as representative of the unit may file a petition stating its name, address, and its desire to be certified with the Permanent Umpire, and shall transmit forthwith a copy of such, not including the names of the supporting employees, to the employer. Said petition must contain the uncoerced signatures of thirty percent (30%) of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) Where an employee organization has been certified, an employee within the unit may file a petition with the Permanent Umpire and shall transmit forthwith a copy of such to the employer and the certified representative, not including the names of the supporting employee for decertification of the certified representative. The petition must contain the uncoerced signatures of at least thirty percent (30%) of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) The employer may file a petition with the Permanent Umpire seeking an election for certification of an employee organization or, where an employee organization is so certified,

to cause decertification of the representative where the employer has reason to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, and shall transmit a copy of such to the employee organization seeking to obtain or retain certification.

(4) Petitions may be filed between May 1, 1982, and June 30, 1982. Thereafter, petitions may be filed between September 1 and September 30, of any year, but no sooner than 22 months following an election held pursuant to this section.

(5) If a lawful collective bargaining agreement of no longer than three (3) years' duration is in effect, no petition shall be entertained unless filed during September of the final year of said agreement.

(6) If, during the period of May 1, to June 30, 1982, a petition is filed by the incumbent representative of unit employees certified under the Employer/Employee Relations Article of this Chapter, and no other employee organization files a valid petition, that incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the Permanent Umpire, of majority representation.

(b) If the Permanent Umpire determines that a petition is properly supported and timely filed, the Permanent Umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year,

to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Permanent Umpire and shall be conducted by secret ballot at such time and place as the Permanent Umpire may direct. The Permanent Umpire may select and retain services of an agency of the State of Maryland, or similarly neutral body to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten (10) days before the election of at least ten percent (10%) representation of the employees within the unit, and a choice that the employee does not desire to be represented by any of the named employee organization(s).

(3) The employer and each party to the election may be represented by observers selected in accordance with such limitations and conditions as the Permanent Umpire may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenge or the Permanent Umpire's decision thereon, unless the number of challenges is not determinative, in which latter event the ballot(s) shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Permanent Umpire in the presence of the observers.

(6) The Permanent Umpire immediately shall prepare and serve upon the employer and each of the parties a report certifying the results of the election. If, and only if, an employee organization has received the votes of a majority of the employees who voted, the Permanent Umpire shall certify the employee organization so elected as the exclusive agent. If no employee organization has received the votes of a majority of the employees, the Permanent Umpire shall certify no representative. No run-off election shall be conducted.

(c) The aforesaid certification of results shall be final unless, within seven (7) days after service of the report and certification, the employer or any other party serves on all parties and files with the Permanent Umpire objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds thereof. The Permanent Umpire shall investigate the objections and, if substantial factual issues exist, the Permanent Umpire shall hold a hearing thereon. Otherwise, the Permanent Umpire may determine the matter without hearing. The Permanent Umpire may invite, either by rule or by ad hoc invitation, written or oral argument to assist in determination of the merits of the objections. If the Permanent Umpire finds that the election was conducted in substantial conformity with this Article, the Permanent Umpire shall make final that certification initially issued. If the Permanent Umpire finds that the

election was not held in substantial conformity with this Article, the Permanent Umpire shall cause another election to be held pursuant to the provisions of this section.

(d) The cost of conducting an election shall be paid by the County.

(e) Voluntary recognition is prohibited under this Article, and no certification may be issued without an election except as provided for in subsection 33-79(a)(6).

Sec. 33-80. COLLECTIVE BARGAINING.

(a) Upon certification of an employee organization, as provided in Section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided however that salaries and wages shall be uniform for all employees in the same classification.

(2) Pension and retirement benefits for active employees.

(3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation.

(4) Hours and working conditions.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration.

(b) The following subjects shall not be the subject of collective bargaining:

(1) Pensions or any other matter related to retired persons.

(2) Recruitment, selection, appointment, testing, promotion, position classification, or any other rule or action of the employer based on merit principles.

(3) Any matter which is the subject of state law including, but not limited to, the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland.

(4) Any matter which would impair the rights of the employer as set forth in subsection 33-80(c).

(c) Employer Rights.

This Article and any agreement pursuant hereto shall not impair the right and responsibility of the employer:

(1) To determine the overall mission of the employer and any agency of County government;

(2) To maintain and improve the efficiency of operations;

(3) To determine the services to be rendered, the operations to be performed and the technology to be utilized;

(4) To determine the overall methods, processes, means, job classifications or personnel by which operations are to be conducted and to prescribe and restrict the utilization of uniforms, vehicles, and equipment.

(5) To direct or supervise employees;

(6) To suspend, discipline or discharge employees;

(7) To transfer, assign, schedule, retain, layoff, or recall employees;

(8) 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;

(9) To make and enforce rules and regulations not inconsistent with a collective bargaining agreement;

(10) To take whatever other actions may be necessary to carry out the wishes of the public not otherwise specified herein or limited by a collective bargaining agreement; or

(11) To take actions to carry out the mission of government in situations of emergency.

(d) Nothing contained in this Article shall be construed to limit the discretion of the employer voluntarily to confer with any or all of its employees in the process of developing policies to effectuate or implement any of the enumerated rights set forth in subsection 33-80(c). above.

(e) Collective bargaining shall commence no later than November 1, preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties.

(f) Any collective bargaining agreement which contains a provision for automatic renewal or extension shall be void in its entirety unless such renewal or extension requires the consent of both parties. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end on June 30.

(g) Any collective bargaining agreement shall become effective only after ratification of the agreement by the public employer and the employees in the bargaining unit, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures, but such rules shall be consistent with the certified representative's duty of fair representation. Any terms of a collective bargaining agreement which purport to restrict the rights of management and of the public as contained in subsection 33-80(c) of this Article or which concern those subjects set forth in subsection 33-80(b) shall be null and void and wholly unenforceable.

(h) A ratified agreement shall be binding on the employer and the certified representative. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer and the employer shall make a good faith effort to have such term or condition implemented by Council action, but the agreement shall provide either for automatic reduction or elimination of such conditional benefits if the Council fails to take such action or if funds are not appropriated or if a lesser amount is appropriated.

Sec. 33-81. IMPASSE PROCEDURE.

(a) Prior to November 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an Impasse Neutral either by agreement or through the processes of the American Arbitration Association. The Impasse Neutral shall be required to be available during the period from January 20 to February 1. Fees and expenses shall be shared equally by the employer and the certified representative.

(b) (1) During the course of collective bargaining either party may declare an impasse and request the services of the Impasse Neutral. If the parties have not reached agreement by January 20, an impasse shall be deemed to exist.

(2) Whenever an impasse has been reached, the dispute shall be submitted to the Impasse Neutral. The Impasse Neutral shall attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

(3) If the Impasse Neutral, in the Impasse Neutral's sole discretion, finds that the parties are at a bona fide impasse, the Impasse Neutral shall require each party to submit a final offer which shall consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the Impasse Neutral shall choose. If only complete package proposals are required the Impasse Neutral shall require the parties to jointly submit a memorandum of all items previously agreed upon.

(4) The Impasse Neutral may, in the Impasse Neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The Impasse Neutral may hold a hearing for this purpose at a time,

date, and place selected by the Impasse Neutral. Said hearing shall not be open to the public.

(5) On February 1 or prior thereto, the Impasse Neutral shall select, as a whole, the most reasonable, in the Impasse Neutral's judgment, of the final offers submitted by the parties. The Impasse Neutral may take into account only the following factors:

a. Past collective bargaining contracts between the parties including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

b. Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in Maryland.

c. Comparison of wages, hours, benefits, and conditions of employment of other employees of Montgomery County.

d. Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

e. The interest and welfare of the public.

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

(6) The Impasse Neutral shall not compromise or alter the final offer that he selects. Selection of an offer shall be based on the contents of that offer. No consideration shall be given to, nor shall any evidence or argument be received concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the Impasse Neutral. However, the Impasse Neutral shall consider all previously agreed upon items integrated with the specific disputed items to determine the single most reasonable offer.

(7) The offer selected by the Impasse Neutral, integrated with the previous agreed upon items, shall be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and shall have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(h). above. The parties shall execute such agreement.

Sec. 33-82. PROHIBITED PRACTICES.

(a) The employer or its agents or representatives are prohibited from:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under the provisions of this Article, provided that the discussion of any matter, argument, or opinion, or the dissemination thereof, whether orally, in writing or otherwise

shall not constitute or be evidence of prohibited practice under any of the provisions of this Article nor be grounds for invalidating any election conducted under this Article, if such discussion or dissemination contains no threat of reprisal or promise of benefit;

(2) Dominating or interfering with the formation or administration of any employee organization, or contributing financial or other support to it, pursuant to contract or otherwise; provided that the employer and a certified representative may agree to and apply a membership dues deduction provision;

(3) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other wages, hours or conditions of employment;

(4) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this Article;

(5) Refusing to bargain collectively with a certified representative;

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

(b) Employee organizations, their agents or representatives, and employees are prohibited from:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this Article;

(2) Restraining, coercing, or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) Refusing to bargain collectively with the employer if such employee organization is the certified representative;

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(5) Hindering or preventing, by threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment by any person, public or private, or obstructing or interfering with the entrance to or egress from any place of employment, or obstructing or interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance by any person, public or private;

(6) Hindering or preventing by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment or services by the employer;

(7) Taking or retaining unauthorized possession of property of the employer, public or private, or

engaging in any effort to interfere with production, functions, or services of an employer, public or private, or refusing to do work or use certain goods or materials as lawfully required by the employer;

(8) Forcing or requiring any employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification;

(9) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed, to be performed or which are not productive or not desired to be performed by the employer.

(c) A charge of prohibited practice may be filed by any employer, employee organization, or any individual employee. All charges shall be supported by the charging party. The Permanent Umpire may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing; however, the Permanent Umpire shall have authority to maintain such independent investigation as the Permanent Umpire determines necessary and to develop rules and regulations therefor. If the Permanent Umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the Permanent Umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the parties charged shall have the

right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the Permanent Umpire determines that the person charged has committed a prohibited practice, the Permanent Umpire shall make findings of fact and conclusions of law and shall be empowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this Article. Remedies of the Permanent Umpire may include, but shall not be limited to, orders withdrawing certification, withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits, withdrawing, suspending, or reinstating with or without back pay the employment or tenure of individual employees. If the Permanent Umpire finds that the party or parties charged have not committed any prohibited practices, the Permanent Umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Permanent Umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than four (4) months prior to the filing of the charge.

Sec. 33-83. USE OF OFFICIAL TIME.

Solicitation of membership or dues payments, or other internal business of employee organizations shall be conducted during the non-duty hours of the employee involved. Employees who represent, or act on behalf of a certified representative, shall not be on paid working time when bargaining collectively with the public employer or when adjusting grievances.

Sec. 33-84. STRIKES AND LOCKOUTS.

(a) No employee or employee organization shall either directly or indirectly cause, instigate, encourage, condone or engage in any strike, nor the employer in any lockout. No employee or employee organization shall obstruct, impede, or restrict either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when said employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during such strike.

(c) If an employee or employee organization shall violate the provisions of this section, the employer may take any and all of the following actions it deems necessary in the public interest:

(1) Imposition of disciplinary action, including termination of employment of employees engaged in such conduct;

(2) Termination of employee organization's dues deduction privilege, if any;

(3) Revocation of certification and disqualification from participation in representation elections for a period up to a maximum of two (2) years.

(d) Nothing contained herein shall prohibit an employer from seeking any remedy available in a court of competent jurisdiction.

Sec. 33-85. EFFECT OF PRIOR ENACTMENTS.

Nothing contained in this Article shall be construed to repeal any law, executive orders, legislation, rules or regulations adopted by the County and any department or agency thereof not inconsistent with the provisions of this Article.

Sec. 4. Severability.

The provisions of this Act are severable, and if any provision, sentence, clause, section, word or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 5. Effective Date.

This Act shall take effect on the 91st day following the date on which it becomes law.

Bill no. 71-81

Draft no. & Date: 2 - 1/25/82

Introduced: 11/3/81

Expiration Date: 5/3/83

Enacted:

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

Nov. Legislative Session 1981

By: Council President at the request of the County Executive

AN ACT to amend Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, by amending Subsection 33-63(c) of Section 33-63, title "Definitions", of Article IV, title "Employer - Employee Relations" to provide that police department employees who are represented by a certified employee organization pursuant to Article V of this Chapter shall not be considered an employee under Article IV of this Chapter; by amending Section 33-74, title "Cost of Living Adjustment" to provide that this section shall not apply to an employee of the police department who is represented by a certified employee organization pursuant to Article V of this Chapter; and by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to provide for a policy statement, definitions to be used in the Article, creation of a permanent umpire in order to administer and implement certain provisions of the Article, certain employee rights, the selection, certification, and decertification procedures, subjects

which would be appropriate for collective bargaining, subjects which would not be appropriate for collective bargaining, impasse procedures, prohibited employer and employee practices, certain provisions concerning strikes and lockouts, use of official time of employees, and the effect of prior enactments.

Be It Enacted by the County Council for Montgomery County, Maryland that -

Sec. 1. Subsection 33-63(c) of Section 33-63, title "Definitions" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel", of the Montgomery County Code 1972, as amended, is hereby amended, to read as follows:

Sec. 33-63. Definitions.

* * *

(c) Employee. Any county merit system employee working on a continuous full-time, career or part-time, career basis, eligible to be included in a unit of recognition except for the following:

(1) Confidential aides to elected officials;

(2) All non-merit system employees;

(3) All heads of principal departments, offices and agencies;

(4) Deputy or assistant department heads;

(5) Employees providing direct staff or administrative support to the director of the department, or deputy or assistant directors within the director's immediate office;

(6) Employees who report directly to or whose immediate supervisor is the county executive, county council, county council members or the chief administrative officer and the principal aides to the foregoing:

(7) Employees of the office of the county attorney;

(8) Employees of the office of budget and research;

(9) Employees of the office of employee relations;

(10) Employees of the personnel office;

(11) Employees of the personnel board;

(12) Heads of the following constituent offices, divisions and sections in the department of transportation existing at the time of

enactment of this bill and positions carrying a similar degree of personnel management responsibilities in other departments and offices as determined by the chief administrative officer:

Director's office, office of the right-of-way acquisition, office of administrative services, office of transportation planning, division of transportation engineering, subdivision development section, design section, construction section, division of traffic engineering, traffic planning and survey section, traffic operations section, division of operations, TESS Minibus, highway maintenance section, equipment section and division of parking lot districts.

(13) An employee of the police department, as defined in Section 33-76 of this Chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, title "Police Labor Relations" of this Chapter.

Sec. 2. Section 33-74, title "Cost of Living Adjustment", of Article IV, title "Employer - Employee Relations", of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended, by adding a new Subsection (c), to read as follows:

Sec. 33-74. Cost of living adjustment.

(a) The county executive shall provide as a part of the annual recommended operating budget for the county government sufficient funds to implement the cost of living adjustment required by this section. The council shall accord one of the highest priorities to the full funding of the cost of living

adjustment, shall fund fully the seventy-five percent of Consumer Price Index cost of living adjustment unless reasons are given for not doing so, and shall make a finding in the budget resolution as to the extent to which full funding is achieved. Unless otherwise provided in the approved budget resolution which includes a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to county government employees, the chief administrative officer shall adjust the uniform salary plan for all classified employees of the county government beginning the first pay period on or after July 1 of each year by an amount not less than seventy-five percent of the change in the Consumer Price Index for all urban consumers in the Washington, D.C. area, although pay grades one through four of the uniform salary plan to which minimum wage and certain seasonal employees are assigned will be adjusted by changes in the minimum wage rates and salary surveys to determine the competitiveness of such salaries. The percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

The chief administrative officer may adjust the uniform salary plan in excess of the base percentage of seventy-five percent, provided funds are available and approved by the county council for such purpose.

(b) Notwithstanding the provisions in (a) above, for FY-82 only the following salary controls shall apply:

1. Salary maxima of grades 5 through 31 will be adjusted by the full cost-of-living granted by the County Council.
2. The salary maximum for grade 40 shall be $70,000.00.

3. The salary maxima for grades 32 through 39 shall be adjusted by the Chief Administrative Officer so that the dollar difference between the salary maxima of grades 31 through 40 is the same.

4. The salary for each merit employee in grades 5-31 will be adjusted by the full cost-of-living granted by the County Council to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

5. The salaries for merit employees in grades 32 through 39 will be adjusted by the full cost-of-living granted by the County Council only to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

6. The cost-of-living adjustment to the salaries of non-merit employees shall be determined by the County Executive but shall not exceed the cost-of-living granted merit employees.

7. No employee's salary is to be reduced below its level as of June 30, 1981 as a result of implementation of the provisions contained in paragraphs 1- 6 above.

(c) The provisions of this section shall not apply to an employee of the police department, as defined in Section 33-76 of this chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, Title "Police Labor Relations" of this chapter.

Sec. 3. Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to read as follows:

ARTICLE V. POLICE LABOR RELATIONS.

Sec. 33-75. DECLARATION OF POLICY.

It is the public policy of this County, pursuant to Charter Section 510, enacted as a result of citizen initiative, and purpose of this Article to promote a harmonious, peaceful, and cooperative relationship between the County government and its police employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the police department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively OVER WAGES, HOURS, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT through a representative of their choice or to refrain therefrom; and that any collective bargaining between the County government and a representative of those police employees be done in good faith with no interference with the orderly process of government and furthermore, that ~~the results of~~ AGREEMENTS REACHED THROUGH collective bargaining be implemented.

It is also recognized however, that police employee organizations AND THE COUNTY GOVERNMENT EACH possess substantial means by which they may initiate ~~governmental~~ actions regarding the wages, hours, and working conditions of employees ~~they represent or seek to represent~~. Consequently, in order to preserve ~~the delicate~~ AN APPROPRIATE balance between labor and management in the police service, the Council hereby declares that ~~collective bargaining may be~~ ONCE A REPRESENTATIVE HAS BEEN voluntarily selected COLLECTIVE BARGAINING SHALL BE UTILIZED in place of, but not

in addition to existing means of initiating governmental action as to those subjects which are defined as appropriate for collective bargaining in this Article.

Sec. 33-76. DEFINITIONS.

When used in this Article:

"Agency Shop" means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

To "bargain collectively" means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this Article.

"Employee" means any police officer in the classification of Master Police Officer I, Master Police Officer II, Police Officer I, Police Officer II, Police Officer III, and Police Officer Candidate, or equivalent non-supervisory classifications, but not those in the classification of Police Sergeant or any equivalent or higher classification.

"Employer" means the County Executive and his designees.

"Employee Organization" means any organization which admits to membership employees and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization. SUCH ORGANIZATION SHALL NOT ADMIT TO MEMBERSHIP ANY PERSON OTHER THAN LAW ENFORCEMENT OFFICERS.

"Lockout" means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinguishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

"Mediation" means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

"Strike" means ~~the~~ A CONCERTED failure to report for duty, ~~or the~~ absence, ~~from one's position, or the~~ stoppage of work, or ~~the~~ abstinence in whole or in part from the full AND faithful, ~~or proper~~ performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition or authority of the employee or an employee organization.

Sec. 33-77. PERMANENT UMPIRE.

(a) There is hereby created the position of Permanent Umpire, so as to provide for the effective implementation and administration of Sections 33-79 and 33-82 of this Article concerning Selection and Certification of Employee

Organization and Prohibited Practices. The Permanent Umpire shall exercise the following powers and perform the following duties and functions:

(1) To adopt, amend, and rescind, from time to time, such rules, regulations and procedures for the implementation and administration of Sections 33-79 and 33-82 as are consistent with this Article;

(2) To request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the Permanent Umpire to properly carry out his functions;

(3) To hold hearings and make inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel by issuance of subpoenas the attendance of witnesses ~~, not including elected County officials,~~ and the production of relevant documents;

(4) To hold and conduct elections for unit certification or decertification pursuant to the provisions of this Article and to issue said certification or decertification;

(5) To investigate and attempt to resolve or settle, as provided in this Article charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure the Permanent Umpire must defer to that procedure

for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this Article. Furthermore, the Permanent Umpire shall defer to state procedures in those matters which are governed by the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland;

(6) To obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and

(7) To exercise any other powers and perform any other duties and functions as may be specified in Sections 33-79 and 33-82 of this Article.

(b) The Permanent Umpire shall be appointed by the County Executive, with the confirmation of the County Council, shall serve for a term of five (5) years and shall be eligible for reappointment PROVIDED HOWEVER THAT THE PERMANENT UMPIRE SHALL NOT BE REAPPOINTED IF DURING THE PERIOD BETWEEN 60 DAYS AND 30 DAYS PRIOR TO THE EXPIRATION OF HIS TERM THE CERTIFIED REPRESENTATIVE FILES A WRITTEN OBJECTION TO SUCH RE-APPOINTMENT WITH THE COUNTY EXECUTIVE. The Permanent Umpire shall be a person with experience as a neutral in the field of labor relations and shall not be a person who, on account of vocation, employment or affiliation can be classed as a representative of the interests of the employer or any employee organization.

(c) The Permanent Umpire shall be paid a per diem fee as set forth by contract with the County and shall be reimbursed for necessary expenses.

Sec. 33-78. EMPLOYEE RIGHTS.

(a) Employees shall have the right:

(1) To form, join, support. contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) To be fairly represented by their certified representative, if any.

(b) The Employer shall have the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative shall serve as the bargaining agent for all employees and shall have the duty to represent fairly and without discrimination all unit employees without regard to whether the employees are or are not members of the employee organization or are paying dues or other contributions to it or participating in its affairs, provided, however, that it shall not be deemed a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of the certified representative to receive membership dues deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate such provisions has been suspended

under Section 33-84. No collective bargaining agreement may include a provision requiring membership in, participation in the affairs of or contributions to an employee organization other than an agency shop provision.

Sec. 33-79. SELECTION, CERTIFICATION AND DECERTIFICATION PROCEDURES.

(a) Procedures for determining the certified representative for the unit may be initiated in accordance with this subsection as follows:

(1) Any employee organization seeking certification as representative of the unit may file a petition stating its name, address, and its desire to be certified with the Permanent Umpire, and shall transmit forthwith a copy of such, not including the names of the supporting employees, to the employer. Said petition must contain the uncoerced signatures of thirty percent (30%) of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) Where an employee organization has been certified, an employee within the unit may file a petition with the Permanent Umpire and shall transmit forthwith a copy of such to the employer and the certified representative, not including the names of the supporting employee for decertification of the certified representative. The petition must contain the uncoerced signatures of at least thirty percent (30%) of the employees within the unit alleging that the employee organization

presently certified is no longer the choice of the majority of the employees in the unit.

(3) The employer may file a petition with the Permanent Umpire seeking an election for certification of an employee organization or, where an employee organization is so certified, to cause decertification of the representative where the employer has reason to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, and shall transmit a copy of such to the employee organization seeking to obtain or retain certification.

(4) Petitions may be filed between May 1, 1982, and June 30, 1982. Thereafter, petitions may be filed between September 1 and September 30, of any year, but no sooner than 22 months following an election held pursuant to this section.

(5) If a lawful collective bargaining agreement of no longer than three (3) year's duration is in effect, no petition shall be entertained unless filed during September of the final year of said agreement. A PROVISION FOR AUTOMATIC RENEWAL SHALL NOT PREVENT AN AGREEMENT FROM BARRING A PETITION, BUT NO SUCH AUTOMATIC RENEWAL SHALL BAR A PETITION IF THE RENEWAL OCCURS DURING THE THIRD YEAR OF AN AGREEMENT (INCLUDING YEARS ADDED AS A RESULT OF SUCH RENEWALS.)

(6) If, during the period of May 1, to June 30, 1982, a petition is filed by the incumbent representative of unit employees certified under the Employer/Employee Relations Article of this Chapter, and no other employee organization files a valid petition, that incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the Permanent Umpire, of majority representation.

(b) If the Permanent Umpire determines that a petition is properly supported and timely filed, the Permanent Umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Permanent Umpire and shall be conducted by secret ballot at such time and place as the Permanent Umpire may direct. The Permanent Umpire may select and retain services of an agency of the State of Maryland, or similarily neutral body to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten (10) days before the election of at least ten percent (10%) representation of the

employees within the unit, and a choice that the employee does not desire to be represented by any of the named employee organization(s).

(3) The employer and each party to the election may be represented by observers selected in accordance with such limitations and conditions as the Permanent Umpire may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenge or the Permanent Umpire's decision thereon, unless the number of challenges is not determinative, in which latter event the ballot(s) shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Permanent Umpire in the presence of the observers.

(6) The Permanent Umpire immediately shall prepare and serve upon the employer and each of the parties a report certifying the results of the election. If, and only if, an employee organization has received the votes of a majority of the employees who voted, the Permanent Umpire shall certify the employee organization so elected as the exclusive agent. If no employee organization has received the votes of a majority of the employees, the Permanent Umpire shall certify no representative, ~~No run-off election shall be conducted.~~ BUT IF A MAJORITY

OF THE EMPLOYEES DO NOT VOTE FOR NO REPRESENTATION, A RUN-OFF ELECTION SHALL BE CONDUCTED. THE RUN-OFF ELECTION SHALL CONTAIN THE TWO CHOICES WHICH RECEIVED THE LARGEST AND SECOND LARGEST NUMBER OF VOTES IN THE ORIGINAL ELECTION.

(c) The aforesaid certification of results shall be final unless, within seven (7) days after service of the report and certification, the employer or any other party serves on all parties and files with the Permanent Umpire objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds thereof. The Permanent Umpire shall investigate the objections and, if substantial factual issues exist, the Permanent Umpire shall hold a hearing thereon. Otherwise, the Permanent Umpire may determine the matter without hearing. The Permanent Umpire may invite, either by rule or by ad hoc invitation, written or oral argument to assist in determination of the merits of the objections. If the Permanent Umpire finds that the election was conducted in substantial conformity with this Article, the Permanent Umpire shall make final that certification initially issued. If the Permanent Umpire finds that the election was not held in substantial conformity with this Article, the Permanent Umpire shall cause another election to be held pursuant to the provisions of this section.

(d) The cost of conducting an election shall be paid by the County.

(e) Voluntary recognition is prohibited under this Article, and no certification may be issued without an election except as provided for in subsection 33-79(a)(6).

Sec. 33-80. COLLECTIVE BARGAINING.

(a) Upon certification of an employee organization, as provided in Section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided however that salaries and wages shall be uniform for all employees in the same classification.

(2) Pension and retirement benefits for active employees.

(3) Employee benefits such as, but not limited to, insurance, leave, holidays, ~~and~~ vacation AND PERSONAL PATROL VEHICLES.

(4) Hours and working conditions.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration. THE GRIEVANCE PROVISIONS OF ANY COLLECTIVE BARGAINING AGREEMENT, NOTWITHSTANDING THE PROVISIONS OF SECTION 33-12(b) OF THIS CHAPTER, SHALL BE THE EXCLUSIVE MEANS OF PROCESSING GRIEVANCES CONCERNING ANY SUBJECT MATTER ENUMERATED IN SECTION 33-80(a) OR ANY MATTER ENUMERATED IN SECTION 33-80(b) AND (c), ABOUT WHICH THE PARTIES HAVE VOLUNTARILY BARGAINED DURING THE BARGAINING IMMEDIATELY PRIOR TO THE CURRENT CONTRACT.

(b) The following subjects shall not be the subject of collective bargaining:

(1) Pensions OF or any other matter related to ~~retired~~ persons WHO HAVE RETIRED.

(2) Recruitment, selection, appointment, testing, promotion, AND position classification~~, or any other rule or action of the employer based on merit principles~~.

(3) Any matter which is the subject of state law including, but not limited to, the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland.

(4) Any matter which would impair the rights of the employer as set forth in subsection 33-80(c).

(c) Employer Rights.

This Article and any agreement pursuant hereto shall not impair the right and responsibility of the employer:

(1) To determine the overall mission of the employer and any agency of County government;

(2) To maintain and improve the efficiency of operations;

(3) To determine the services to be rendered, the operations to be performed and the technology to be utilized;

(4) To determine the overall methods, processes, means, job classifications or personnel by which operations are to be conducted and to prescribe and restrict the utilization of uniforms, vehicles, and equipment OTHER THAN PERSONAL PATROL VEHICLES.

(5) To direct or supervise employees;

(6) To suspend, discipline or discharge employees SUBJECT TO APPLICABLE LAW;

(7) To transfer, assign, schedule, retain, layoff, or recall employees;

(8) 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;

(9) To make and enforce rules and regulations not inconsistent with a collective bargaining agreement AND APPLICABLE LAW;

(10) To take whatever other actions may be necessary to carry out the wishes of the public not otherwise specified herein or limited by a collective bargaining agreement; or

(11) To take actions to carry out the mission of government in situations of emergency.

(d) ~~Nothing contained in this Article shall be construed to limit the discretion of the employer voluntarily to confer with any or all of its employees in the process of developing policies to effectuate or implement any of the enumerated rights set forth in subsection 33-80(c), above.~~

(1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS LAW, THE EMPLOYER MAY VOLUNTARILY BARGAIN ABOUT ANY MATTER ENUMERATED IN SECTION 33-80(b) AND/OR THE EFFECTS UPON EMPLOYEES OF THE EMPLOYER'S EXERCISE OF ANY RIGHTS LISTED IN SECTION 33-80(c). IN THE EVENT THE EMPLOYER DOES AGREE TO BARGAIN ABOUT ANY OF THE ABOVE MATTERS, AND AN AGREEMENT IS REACHED, THAT AGREEMENT SHALL

BE INCORPORATED IN THE COLLECTIVE BARGAINING AGREEMENT. THE EMPLOYER'S ELECTION TO BARGAIN ABOUT A PROPOSAL SHALL NOT CONSTITUTE A WAIVER OF THE EMPLOYER'S RIGHT NOT TO BARGAIN ABOUT THE SUBJECT MATTER THEREOF UPON EXPIRATION OF ANY AGREEMENT REACHED. NOTWITHSTANDING THE EMPLOYER'S ELECTION TO BARGAIN, ABSENT A PROPOSAL AS SET FORTH ABOVE, SUCH PROPOSAL SHALL NOT BE INCLUDED IN EITHER PARTY'S SUBMISSION OF A FINAL OFFER TO THE IMPASSE NEUTRAL.

(2) IN THE EVENT THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE DISAGREE OVER WHETHER EITHER IS OBLIGATED TO BARGAIN OVER ONE OR MORE CONTRACT PROPOSALS UNDER THIS LAW, THAT DISAGREEMENT SHALL BE SUBMITTED UPON THE PETITION OF EITHER PARTY TO THE PERMANENT UMPIRE WHO SHALL RESOLVE THE DISPUTE AS PROMPTLY AS POSSIBLE AND AFTER SUCH EXPEDITIOUS PROCEEDINGS AS THE PERMANENT UMPIRE DEEMS APPROPRIATE IN THE CIRCUMSTANCES. THE PETITION SHALL STATE THE ISSUE OR ISSUES TO BE RESOLVED AND SHALL BE ACCOMPANIED BY A WRITTEN STATEMENT OF THE REASONS WHY THE PETITIONING PARTY BELIEVES THE MATTER IS OR IS NOT BARGAINABLE. THE DECISION OF THE PERMANENT UMPIRE SHALL BE BINDING UPON THE PARTIES. FAILURE TO SUBMIT A PETITION PURSUANT TO THIS SUBSECTION SHALL NOT PRECLUDE A PARTY FROM FILING AN UNFAIR LABOR PRACTICE CHARGE PURSUANT TO SECTION 33-82.

(e) Collective bargaining shall commence no later than November 1, preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. The resolution of an impasse in collective bargaining shall be

completed by February 1. These time limits may be waived only by prior written consent of the parties.

(f) Any collective bargaining agreement which contains a provision for automatic renewal or extension shall be void in its entirety unless such renewal or extension requires the consent of both parties. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end on June 30.

(g) Any collective bargaining agreement shall become effective only after ratification of the agreement by the public employer and the CERTIFIED REPRESENTATIVE ~~employees in the bargaining unit~~, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures ~~, but such rules shall be consistent with the certified representative's duty of fair representation~~. Any terms of a collective bargaining agreement which purport to restrict the rights of management and of the public as contained in subsection 33-80(c) of this Article or which concern those subjects set forth in subsection 33-80(b) shall be null and void and wholly unenforceable.

(h) A ratified agreement shall be binding on the employer and the certified representative, AND SHALL BE REDUCED TO WRITING AND EXECUTED BY BOTH PARTIES. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer and the employer shall make a good faith effort to have such term or condition implemented by Council action. ~~but the~~

ON OR BEFORE APRIL 25, THE COUNTY COUNCIL SHALL INDICATE BY A MAJORITY OF FOUR (4) VOTES, ITS INTENTION TO APPROPRIATE OR OTHERWISE IMPLEMENT THE AGREEMENT, OR ITS INTENTION NOT TO DO SO, AND SHALL STATE ITS REASONS FOR ANY INTENT TO REJECT ANY PART OR PARTS OF THE AGREEMENT. IN THE EVENT THE COUNCIL INDICATES ITS INTENTION TO REJECT, IT SHALL DESIGNATE A REPRESENTATIVE TO MEET WITH THE PARTIES AND PRESENT THE COUNCIL'S VIEWS IN THEIR FURTHER NEGOTIATIONS. THIS REPRESENTATIVE SHALL ALSO PARTICIPATE FULLY IN STATING THE COUNCIL'S POSITION IN ANY ENSUING IMPASSE PROCEDURE. THE PARTIES SHALL THEREAFTER MEET AS PROMPTLY AS POSSIBLE IN AN ATTEMPT TO NEGOTIATE AN AGREEMENT ACCEPTABLE TO THE COUNCIL. EITHER OF THE PARTIES MAY INITIATE THE IMPASSE PROCEDURE SET FORTH IN SECTION 33-81. THE RESULTS OF THE NEGOTIATION OR IMPASSE PROCEDURE SHALL BE SUBMITTED TO THE COUNCIL ON OR BEFORE MAY 10. ANY agreement shall provide either for automatic reduction or elimination of such conditional WAGE AND/OR benefits ADJUSTMENTS if the Council fails to take such action or if funds are not appropriated or if a lesser amount is appropriated.

Sec. 33-81. IMPASSE PROCEDURE.

(a) Prior to November 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an Impasse Neutral either by agreement or through the processes of the American Arbitration Association. The Impasse Neutral shall be required to be available during the period from January 20 to February 1. Fees and expenses shall be shared equally by the employer and the certified representative.

(b) (1) During the course of collective bargaining either party may declare an impasse and request the services of the Impasse Neutral. If the parties have not reached agreement by January 20, an impasse shall be deemed to exist.

(2) Whenever an impasse has been reached, the dispute shall be submitted to the Impasse Neutral. The Impasse Neutral shall attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

(3) If the Impasse Neutral, in the Impasse Neutral's sole discretion, finds that the parties are at a bona fide impasse, the Impasse Neutral shall require each party to submit a final offer which shall consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the Impasse Neutral shall choose. If only complete package proposals are required the Impasse Neutral shall require the parties to jointly submit a memorandum of all items previously agreed upon.

(4) The Impasse Neutral may, in the Impasse Neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The Impasse Neutral may hold a hearing for this purpose at a time,

date, and place selected by the Impasse Neutral. Said hearing shall not be open to the public.

(5) On February 1 or prior thereto, the Impasse Neutral shall select, as a whole, the most reasonable, in the Impasse Neutral's judgment, of the final offers submitted by the parties. The Impasse Neutral may take into account only the following factors:

a. Past collective bargaining contracts between the parties including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

b. Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers IN THE WASHINGTON METROPOLITAN AREA AND in Maryland.

c. Comparison of wages, hours, benefits, and conditions of employment of other employees of Montgomery County.

d. Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

e. The interest and welfare of the public.

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

(6) The Impasse Neutral shall not compromise or alter the final offer that he selects. Selection of an offer shall be based on the contents of that offer. No consideration shall be given to, nor shall any evidence or argument be received concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the Impasse Neutral. However, the Impasse Neutral shall consider all previously agreed upon items integrated with the specific disputed items to determine the single most reasonable offer.

(7) The offer selected by the Impasse Neutral, integrated with the previous agreed upon items, shall be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and shall have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(h). above. The parties shall execute such agreement.

Sec. 33-82. PROHIBITED PRACTICES.

(a) The employer or its agents or representatives are prohibited from:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under the provisions of this Article~~, provided that the discussion of any matter, argument, or opinion, or the dissemination thereof, whether orally, in writing or otherwise~~

~~shall not constitute or be evidence of prohibited practice under any of the provisions of this Article nor be grounds for invalidating any election conducted under this Article, if such discussion or dissemination contains no threat of reprisal or promise of benefit;~~

(2) Dominating or interfering with the formation or administration of any employee organization, or contributing financial or other support to it, pursuant to contract or otherwise; provided that the employer and a certified representative may agree to and apply a membership dues deduction provision AS PROVIDED HEREIN AND TO REASONABLE USE OF COUNTY FACILITIES FOR COMMUNICATING WITH EMPLOYEES;

(3) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other wages, hours or conditions of employment;

(4) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this Article;

(5) Refusing to bargain collectively with a certified representative;

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

(8) DIRECTLY OR INDIRECTLY OPPOSING THE APPROPRIATION OF FUNDS OR THE ENACTMENT OF LEGISLATION BY THE COUNTY COUNCIL TO IMPLEMENT AN AGREEMENT REACHED BETWEEN THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE PURSUANT TO THIS ARTICLE.

(9) ENGAGING IN A LOCKOUT OF EMPLOYEES.

(b) Employee organizations, their agents, or ~~representatives~~, and employees are prohibited from:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this Article;

(2) Restraining, coercing, or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) Refusing to bargain collectively with the employer if such employee organization is the certified representative;

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(5) Hindering or preventing, by threats OF VIOLENCE, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment by any person, public or private, or obstructing or OTHERWISE UNLAWFULLY interfering with the entrance to or egress from any place of employment, or obstructing or UNLAWFULLY interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other

ways of travel or conveyance by any person, public or private;

(6) Hindering or preventing by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment or services by the employer;

(7) Taking or retaining unauthorized possession of property of the employer~~, public or private, or engaging in any effort to interfere with production, functions, or services of an employer, public or private,~~ or refusing to do work or use certain goods or materials as lawfully required by the employer;

(8) Forcing or requiring ~~any~~ THE employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification;

(9) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed OR to be performed ~~or which are not productive or not desired to be performed by the employer~~.

(c) A charge of prohibited practice may be filed by ~~any~~ THE employer, employee organization, or any individual employee. All charges shall CONTAIN A STATEMENT OF FACTS SUFFICIENT TO ENABLE THE PERMANENT UMPIRE TO INVESTIGATE THE CHARGE ~~be supported by the charging party~~. The Permanent Umpire may request

withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing~~, however~~. The Permanent Umpire shall have authority to maintain such independent investigation as the Permanent Umpire determines necessary and to develop rules and regulations therefore. If, UPON INVESTIGATION, the Permanent Umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the Permanent Umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the PARTY OR parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the Permanent Umpire determines that the person charged has committed a prohibited practice, the Permanent Umpire shall make findings of fact and conclusions of law and shall be impowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this Article. Remedies of the Permanent Umpire may include, but shall not be limited to, REINSTATING EMPLOYEES WITH OR WITHOUT BACK PAY, MAKING EMPLOYEES WHOLE FOR ANY LOSS RELATING TO COUNTY EMPLOYMENT SUFFERED AS A RESULT OF ANY PROHIBITED PRACTICE, ~~orders withdrawing certification,~~ withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits~~, withdrawing, suspending, or reinstating with or without back pay the employment or tenure of individual employees~~. If the Permanent Umpire finds that the party or

parties charged have not committed any prohibited practices, the Permanent Umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Permanent Umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than ~~four (4)~~ SIX (6) months prior to the filing of the ~~charge~~.

Sec. 33-83. ~~USE OF OFFICIAL TIME.~~

~~Solicitation of membership or dues payments, or other internal business of employee organizations shall be conducted during the non-duty hours of the employee involved. Employees who represent, or act on behalf of a certified representative, shall not be on paid working time when bargaining collectively with the public employer or when adjusting grievances.~~

EXPRESSION OF VIEWS.

THE EXPRESSION OF ANY VIEWS, ARGUMENT, OR OPINION, OR THE DISSEMINATION THEREOF, WHETHER ORALLY, IN WRITING OR OTHERWISE SHALL NOT CONSTITUTE OR BE EVIDENCE OF A PROHIBITED PRACTICE UNDER ANY OF THE PROVISIONS OF THIS LAW NOR BE GROUNDS FOR INVALIDATING ANY ELECTION CONDUCTED UNDER THIS LAW, IF SUCH EXPRESSION OR DISSEMINATION CONTAINS NO THREAT OF REPRISAL OR PROMISE OF BENEFIT.

Sec. 33-84. STRIKES AND LOCKOUTS.

(a) No employee or employee organization shall either directly or indirectly cause, instigate, encourage, condone or engage in any strike, nor the employer in any lockout. No employee or employee organization shall obstruct, impede, or restrict either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when said employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during such strike.

(c) If an employee or employee organization shall violate the provisions of this section, the employer, AFTER ADEQUATE NOTICE AND A FAIR HEARING BEFORE THE PERMANENT UMPIRE WHO FINDS THAT THE AFORESAID VIOLATIONS HAVE OCCURRED AND FINDS THAT ~~may take~~ any ~~and~~ OR all of the following actions ~~it deems~~ ARE necessary in the public interest MAY:

(1) IMPOSE ~~Imposition of~~ disciplinary action, including DISMISSAL FROM ~~termination of~~ employment of employees engaged in such conduct;

(2) ~~Termination of~~ TERMINATE OR SUSPEND employee organization's dues deduction privilege, if any;

(3) ~~Revocation of~~ REVOKE THE certification OF and ~~disqualification~~ DISQUALIFY IT from participation in representation elections for a period up to a maximum of two (2) years.

(d) Nothing contained herein shall prohibit an employer from seeking any remedy available in a court of competent jurisdiction.

Sec. 33-85. EFFECT OF PRIOR ENACTMENTS.

Nothing contained in this Article shall be construed to repeal any law, executive orders, legislation, rules or regulations adopted by the County and any department or

agency thereof not inconsistent with the provisions of this Article.

Sec. 4. Severability.

The provisions of this Act are severable, and if any provision, sentence, clause, section, word or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 5. Effective Date.

This Act shall take effect on the 91st day following the date on which it becomes law.

APPROVED:

_____

PRESIDENT, COUNTY COUNCIL DATE

_____

COUNTY EXECUTIVE DATE

ATTEST:

_____

SECRETARY FOR COUNTY COUNCIL DATE

LC copy
w/changes to Bill

March 5, 1982

TO: County Council

FROM: David Jay Frankel, Legislative Counsel

SUBJECT: Bill 71-81, "Collective Bargaining/Police Officers

A second worksession on Bill 71-81 has been scheduled for Monday, March 8, 1982 at 1:00 p.m.

Attached is draft 3 of Bill 71-81 which incorporates, as technical amendments, those amendments presented at the last worksession which are agreeable to the Executive staff. A list of these technical amendments is also attached.

In addition to Council's consideration of issues presented in the February 3, 1982 worksession packet, the following substantive amendments are presented for your consideration:

1. Page 17, line 26, strike "paid by the County" and insert in lieu thereof "borne 50% by the County and 50% borne equally by the employee organization(s) whose name(s) appear on the ballots".

   Purpose: This conforms with a similar provision under the County's Meet and Confer Law found at Section 33-68 of the County Code.

2. Page 23, line 1, replace "shall" with "may";
   line 1, strike "by a majority of four (4) votes";
   line 4, replace "shall" with "may".

   Purpose: To make it discretionary, rather than mandatory for the Council to indicate its intentions with respect to a proposed collective bargaining agreement. A future Council cannot be bound by a previous Council. Elimination of the requirement for a 4-vote majority would accommodate situations where fewer than 7 Councilmembers are present.

3. Page 31, line 18, strike "or the evidence of".

   Purpose: While the constitutional right of freedom of speech should be protected, there is no reason to prohibit the introduction of expressions as evidence of prohibited practices.

Councilmembers are asked to bring their packets, dated February 3, 1981, from the previous worksession.

DJF/sgh

① Incorporate changes to §33-50
② P. 25, line 22 correct spelling of personnel
③ P. 28, line 2 strike lawful
④ P. 28, line 6
⑤ P. 27, line 8
⑥ P. 27 - new language

P. 27 l 18

P. 14 / 23

Bill no. 71-81

Draft no. & Date: 3 - 3/5/82

Introduced: 11/3/81

Expiration Date: 5/3/83

Enacted: _____

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

Nov. Legislative Session 1981

By: Council President at the request of the County Executive

AN ACT to amend Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, by amending Subsection 33-63(c) of Section 33-63, title "Definitions", of Article IV, title "Employer - Employee Relations" to provide that police department employees who are represented by a certified employee organization pursuant to Article V of this Chapter shall not be considered an employee under Article IV of this Chapter; by amending Section 33-74, title "Cost of Living Adjustment" to provide that this section shall not apply to an employee of the police department who is represented by a certified employee organization pursuant to Article V of this Chapter; and by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to provide for a policy statement, definitions to be used in the Article, creation of a permanent umpire in order to administer and implement certain provisions of the Article, certain employee rights, the selection, certification, and decertification procedures, subjects

which would be appropriate for collective bargaining, subjects which would not be appropriate for collective bargaining~~ UNLESS AGREED TO~~, impasse procedures, prohibited employer and employee practices, certain provisions concerning strikes and lockouts, use of official time of employees, and the effect of prior enactments.

Be It Enacted by the County Council for Montgomery County, Maryland that -

Sec. 1. Subsection 33-63(c) of Section 33-63, title "Definitions" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel", of the Montgomery County Code 1972, as amended, is hereby amended, to read as follows:

Sec. 33-63. Definitions.

* * *

(c) Employee. Any county merit system employee working on a continuous full-time, career or part-time, career basis, eligible to be included in a unit of recognition except for the following:

(1) Confidential aides to elected officials;

(2) All non-merit system employees;

(3) All heads of principal departments, offices and agencies;

(4) Deputy or assistant department heads;

(5) Employees providing direct staff or administrative support to the director of the department, or deputy or assistant directors within the director's immediate office;

(6) Employees who report directly to or whose immediate supervisor is the county executive, county council, county council members or the chief administrative officer and the principal aides to the foregoing:

(7) Employees of the office of the county attorney;

(8) Employees of the office of budget and research;

(9) Employees of the office of employee relations;

(10) Employees of the personnel office;

(11) Employees of the personnel board;

(12) Heads of the following constituent offices, divisions and sections in the department of transportation existing at the time of

enactment of this bill and positions carrying a similar degree of personnel management responsibilities in other departments and offices as determined by the chief administrative officer:

Director's office, office of the right-of-way acquisition, office of administrative services, office of transportation planning, division of transportation engineering, subdivision development section, design section, construction section, division of traffic engineering, traffic planning and survey section, traffic operations section, division of operations, TESS Minibus, highway maintenance section, equipment section and division of parking lot districts.

(13) An employee of the police department, as defined in Section 33-76 of this Chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, title "Police Labor Relations" of this Chapter.

Sec. 2. Section 33-74, title "Cost of Living Adjustment", of Article IV, title "Employer - Employee Relations", of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended, by adding a new Subsection (c), to read as follows:

Sec. 33-74. Cost of living adjustment.

(a) The county executive shall provide as a part of the annual recommended operating budget for the county government sufficient funds to implement the cost of living adjustment required by this section. The council shall accord one of the highest priorities to the full funding of the cost of living

adjustment, shall fund fully the seventy-five percent of Consumer Price Index cost of living adjustment unless reasons are given for not doing so, and shall make a finding in the budget resolution as to the extent to which full funding is achieved. Unless otherwise provided in the approved budget resolution which includes a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to county government employees, the chief administrative officer shall adjust the uniform salary plan for all classified employees of the county government beginning the first pay period on or after July 1 of each year by an amount not less than seventy-five percent of the change in the Consumer Price Index for all urban consumers in the Washington, D.C. area, although pay grades one through four of the uniform salary plan to which minimum wage and certain seasonal employees are assigned will be adjusted by changes in the minimum wage rates and salary surveys to determine the competitiveness of such salaries. The percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

The chief administrative officer may adjust the uniform salary plan in excess of the base percentage of seventy-five percent, provided funds are available and approved by the county council for such purpose.

(b) Notwithstanding the provisions in (a) above, for FY-82 only the following salary controls shall apply:

1. Salary maxima of grades 5 through 31 will be adjusted by the full cost-of-living granted by the County Council.
2. The salary maximum for grade 40 shall be $70,000.00.

15

3. The salary maxima for grades 32 through 39 shall be adjusted by the Chief Administrative Officer so that the dollar difference between the salary maxima of grades 31 through 40 is the same.

4. The salary for each merit employee in grades 5-31 will be adjusted by the full cost-of-living granted by the County Council to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

5. The salaries for merit employees in grades 32 through 39 will be adjusted by the full cost-of-living granted by the County Council only to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

6. The cost-of-living adjustment to the salaries of non-merit employees shall be determined by the County Executive but shall not exceed the cost-of-living granted merit employees.

7. No employee's salary is to be reduced below its level as of June 30, 1981 as a result of implementation of the provisions contained in paragraphs 1- 6 above.

(c) The provisions of this section shall not apply to an employee of the police department, as defined in Section 33-76 of this chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, Title "Police Labor Relations" of this chapter.

Sec. 3. Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to read as follows:

ARTICLE V. POLICE LABOR RELATIONS.

Sec. 33-75. DECLARATION OF POLICY.

It is the public policy of this County, pursuant to Charter Section 510, enacted as a result of citizen initiative, and purpose of this Article to promote a harmonious, peaceful, and cooperative relationship between the County government and its police employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the police department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively OVER WAGES, HOURS, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT through a representative of their choice or to refrain therefrom; and that any collective bargaining between the County government and a representative of those police employees be done in good faith with no interference with the orderly process of government and furthermore, that ~~the results of~~ AGREEMENTS REACHED THROUGH collective bargaining be implemented.

It is also recognized however, that police employee organizations AND THE COUNTY GOVERNMENT EACH possess substantial means by which they may initiate ~~governmental~~ actions regarding the wages, hours, and working conditions of employees ~~they represent or seek to represent~~. Consequently, in order to preserve ~~the delicate~~ AN APPROPRIATE balance between labor and management in the police service, the Council hereby declares that ~~collective bargaining may~~ ~~be~~ ONCE A REPRESENTATIVE HAS BEEN voluntarily selected COLLECTIVE BARGAINING SHALL BE UTILIZED in place of, but not



in addition to existing means of initiating governmental action as to those subjects which are defined as appropriate for collective bargaining in this Article.

Sec. 33-76. DEFINITIONS.

When used in this Article:

"Agency Shop" means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

To "bargain collectively" means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this Article.

"CERTIFIED REPRESENTATIVE" MEANS AN EMPLOYEE ORGANIZATION SELECTED IN ACCORDANCE WITH THE PROCEDURES OF THIS CHAPTER TO REPRESENT THE UNIT.

"Employee" means any police officer in the classification of Master Police Officer I, Master Police Officer II, Police Officer I, Police Officer II, Police Officer III, and Police Officer Candidate, or equivalent non-supervisory classifications, but not those in the classification of Police Sergeant or any equivalent or higher classification.

"Employer" means the County Executive and his designees.

"Employee Organization" means any organization which admits to membership employees and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization. SUCH ORGANIZATION SHALL NOT ADMIT TO MEMBERSHIP ANY PERSON OTHER THAN LAW ENFORCEMENT OFFICERS.

(21)

"Lockout" means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

"Mediation" means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

"Strike" means ~~the~~ A CONCERTED failure to report for duty, ~~or the~~ absence, ~~from one's position, or the~~ stoppage of work, or ~~the~~ abstinence in whole or in part from the full AND faithful, ~~or proper~~ performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition or authority of the employee or an employee organization.

"UNIT" means all employees.

Sec. 33-77. PERMANENT UMPIRE.

(a) There is hereby created the position of Permanent Umpire, so as to provide for the effective implementation and administration of Sections 33-79, 33-80(c)(2) and 33-82 of this Article concerning Selection and Certification of Employee

2/2

,DISAGREEMENT OVER OBLIGATION TO BARGAIN COLLECTIVELY

Organization/and Prohibited Practices. The Permanent Umpire shall exercise the following powers and perform the following duties and functions:

(1) To adopt, amend, and rescind, from time to time, such rules, regulations and procedures for the implementation and administration of Sections 33-79 ,33-80(c)(2) /and 33-82 as are consistent with this Article;

(2) To request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the Permanent Umpire to properly carry out his functions;

(3) To hold hearings and make inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel by issuance of subpoenas the attendance of witnesses ~~,--not including-elected-County-officials~~, and the production of relevant documents;

(4) To hold and conduct elections for ~~unit~~ certification or decertification pursuant to the provisions of this Article and to issue said certification or decertification;

(5) To investigate and attempt to resolve or settle, as provided in this Article charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure the Permanent Umpire must defer to that procedure

for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this Article. Furthermore, the Permanent Umpire shall defer to state procedures in those matters which are governed by the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland;

(6) To obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and

(7) To exercise any other powers and perform any other duties and functions as may be specified in Sections 33-79, 33-80(c)(2) and 33-82 of this Article.

(b) The Permanent Umpire shall be appointed by the County Executive, with the confirmation of the County Council, shall serve for a term of five (5) years and shall be eligible for reappointment PROVIDED HOWEVER THAT THE PERMANENT UMPIRE SHALL NOT BE REAPPOINTED IF DURING THE PERIOD BETWEEN 60 DAYS AND 30 DAYS PRIOR TO THE EXPIRATION OF HIS TERM THE CERTIFIED REPRESENTATIVE FILES A WRITTEN OBJECTION TO SUCH RE-APPOINTMENT WITH THE COUNTY EXECUTIVE. The Permanent Umpire shall be a person with experience as a neutral in the field of labor relations and shall not be a person who, on account of vocation, employment or affiliation can be classed as a representative of the interests of the employer or any employee organization.

2/4

(c) The Permanent Umpire shall be paid a per diem fee as set forth by contract with the County and shall be reimbursed for necessary expenses.

Sec. 33-78. EMPLOYEE RIGHTS.

(a) Employees shall have the right:

(1) To form, join, support. contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) To be fairly represented by their certified representative, if any.

(b) The Employer shall have the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative shall serve as the bargaining agent for all employees and shall have the duty to represent fairly and without discrimination all ~~unit~~ employees without regard to whether the employees are or are not members of the employee organization or are paying dues or other contributions to it or participating in its affairs, provided, however, that it shall not be deemed a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of the certified representative to receive membership dues deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate such provisions has been suspended

under Section 33-84. No collective bargaining agreement may include a provision requiring membership in, participation in the affairs of or contributions to an employee organization other than an agency shop provision.

Sec. 33-79. SELECTION, CERTIFICATION AND DECERTIFICATION PROCEDURES.

(a) ~~Procedures for determining the certified representative for the unit may be initiated in accordance with this subsection as follows~~ THE CERTIFICATION OR DECERTIFICATION OF AN EMPLOYEE ORGANIZATION AS THE UNIT'S REPRESENTATIVE FOR THE PURPOSE OF COLLECTIVE BARGAINING SHALL BE INITIATED IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

(1) Any employee organization seeking certification as representative of the unit ~~may~~ SHALL file a petition stating its name, address, and its desire to be certified with the Permanent Umpire, and shall transmit forthwith a copy of such, not including the names of the supporting employees, to the employer. Said petition must contain the uncoerced signatures of thirty percent (30%) of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) Where an employee organization has been certified, an employee within the unit may file a petition with the Permanent Umpire and shall transmit forthwith a copy of such to the employer and the certified representative, not including the names of the supporting employee for decertification of the certified representative. The petition must contain the uncoerced signatures of at least thirty percent (30%) of the employees within the unit alleging that the employee organization



presently certified is no longer the choice of the majority of the employees in the unit.

(3) The employer may file a petition with the Permanent Umpire seeking an election for certification of an employee organization or, where an employee organization is so certified, to cause decertification of the representative where the employer has reason to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, and shall transmit a copy of such to the employee organization seeking to obtain or retain certification.

(4) Petitions may be filed between May 1, 1982, and June 30, 1982. Thereafter, petitions may be filed between September 1 and September 30, of any year, but no sooner than 22 months following an election held pursuant to this section.

(5) If a lawful collective bargaining agreement ~~of no longer than three (3) year's duration~~ is in effect, no petition shall be entertained unless filed during September of the final year of ~~said~~ agreement. ~~A PROVISION FOR AUTOMATIC RENEWAL SHALL NOT PREVENT AN AGREEMENT FROM BARRING A PETITION, BUT NO SUCH AUTOMATIC RENEWAL SHALL BAR A PETITION IF THE RENEWAL OCCURS DURING THE THIRD YEAR OF AN AGREEMENT (INCLUDING YEARS ADDED AS A RESULT OF SUCH RENEWALS.)~~

George Dreisen
202-338-5754

(6) If, during the period of May 1, to June 30, 1982, a petition is filed by the incumbent representative of unit employees certified under the Employer/Employee Relations Article of this Chapter, and no other employee organization files a valid petition, that incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the Permanent Umpire, of majority representation.

(b) If the Permanent Umpire determines that a petition is properly supported and timely filed, the Permanent Umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Permanent Umpire and shall be conducted by secret ballot at such time and place as the Permanent Umpire may direct. The Permanent Umpire may select and retain services of an agency of the State of Maryland, or similarily neutral body to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten (10) days before the election of at least ten percent (10%) representation of the

employees within the unit, and a choice that the employee does not desire to be represented by any of the named employee organization(s).

(3) The employer and each party to the election may be represented by observers selected in accordance with such limitations and conditions as the Permanent Umpire may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenge or the Permanent Umpire's decision thereon, unless the number of challenges is not determinative, in which latter event the CHALLENGED ballot(s) shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Permanent Umpire in the presence of the observers.

(6) The Permanent Umpire immediately shall prepare and serve upon the employer and each of the parties a report certifying the results of the election. If, and only if, an employee organization has received the votes of a majority of the employees who voted, the Permanent Umpire shall certify the employee organization so elected as the exclusive agent. If no employee organization has received the votes of a majority of the employees, the Permanent Umpire shall certify no representative, ~~No run-off election shall be conducted.~~ BUT IF A MAJORITY

29

OF THE EMPLOYEES DO NOT VOTE FOR NO REPRESENTATION, A RUN-OFF ELECTION SHALL BE CONDUCTED. THE RUN-OFF ELECTION SHALL CONTAIN THE TWO CHOICES WHICH RECEIVED THE LARGEST AND SECOND LARGEST NUMBER OF VOTES IN THE ORIGINAL ELECTION.

(c) The aforesaid certification of results shall be final unless, within seven (7) days after service of the report and certification, the employer or any other party serves on all parties and files with the Permanent Umpire objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds thereof. The Permanent Umpire shall investigate the objections and, if substantial factual issues exist, the Permanent Umpire shall hold a hearing thereon. Otherwise, the Permanent Umpire may determine the matter without hearing. The Permanent Umpire may invite, either by rule or by ~~ad hoc~~ invitation, written or oral argument to assist in determination of the merits of the objections. If the Permanent Umpire finds that the election was conducted in substantial conformity with this Article, the Permanent Umpire shall CONFIRM THE ~~make final that~~ certification initially issued. If the Permanent Umpire finds that the election was not held in substantial conformity with this Article, the Permanent Umpire shall cause another election to be held pursuant to the provisions of this section.

(d) The cost of conducting an election shall be paid by the County.

(e) Voluntary recognition is prohibited under this Article, and no certification may be issued without an election except as provided for in subsection 33-79(a)(6).

Sec. 33-80. COLLECTIVE BARGAINING.

(a) Upon certification of an employee organization, as provided in Section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided however that salaries and wages shall be uniform for all employees in the same classification.

(2) Pension and retirement benefits for active employees.

(3) Employee benefits such as, but not limited to, insurance, leave, holidays, and AND vacation ~~AND PERSONAL PATROL VEHICLES~~.

(4) Hours and working conditions, INCLUDING THE AVAILABILITY AND USE OF PERSONAL PATROL VEHICLES

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration, AND PROVISIONS FOR EXCLUSIVITY OF FORUM ~~THE GRIEVANCE PROVISIONS OF ANY COLLECTIVE BARGAINING AGREEMENT, NOTWITHSTANDING THE PROVISIONS OF SECTION 33-12(b) OF THIS CHAPTER, SHALL BE THE EXCLUSIVE MEANS OF PROCESSING GRIEVANCES CONCERNING ANY SUBJECT MATTER ENUMERATED IN SECTION 33-80(a) OR ANY MATTER ENUMERATED IN SECTION 33-80(b) AND (c), ABOUT WHICH THE PARTIES HAVE VOLUNTARILY BARGAINED DURING THE BARGAINING IMMEDIATELY PRIOR TO THE CURRENT CONTRACT.~~

(6) Matters affecting the health and safety of employees.

(7) The effect on employees of the employer's exercise of rights enumerated in sub-section (b) hereof.

type in caps

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~~(b) The following subjects shall not be the subject of collective bargaining:~~

~~(1) Pensions or any other matter related to retired persons WHO HAVE RETIRED.~~

~~(2) Recruitment, selection, appointment, testing, promotion, AND position classification; or any other rule or action of the employer based on merit principles.~~

~~(3) Any matter which is the subject of state law~~ WOULD BE IN CONFLICT WITH OR PREEMPTED BY ~~including, but not limited to, the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland.~~

~~(4) Any matter which would impair the rights of the employer as set forth~~ BELOW ~~in subsection 33-90(c).~~

~~(c)~~ (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 of operations;~~

~~(3)~~ (2) To determine the services to be rendered, AND the operations to be performed ~~and the technology to be utilized~~;

~~(4)~~ (3) To determine the overall ORGANIZATIONAL STRUCTURE, methods, processes, means, job classifications or personnel by which operations are to be conducted, ~~and to prescribe and restrict the utilization of uniforms, vehicles, and equipment OTHER THAN PERSONAL PATROL VEHICLES~~, AND THE LOCATION OF FACILITIES

32

(5) To hire, select and appoint and establish the standards governi promotion of employees and to classify positions;

~~(5)~~ (4) To direct or supervise employees;

~~(6) To suspend, discipline or discharge employees SUBJECT TO APPLICABLE LAW;~~ (5)

~~(7) To transfer, assign, schedule, retain, layoff, or recall employees;~~

~~(8)~~ (6) 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;

~~(9)~~ (7) To make and enforce rules and regulations not inconsistent with THIS LAW OR a collective bargaining agreement ~~AND APPLICABLE LAW~~;

~~(10) To take whatever other actions may be necessary to carry out the wishes of the public not otherwise specified herein or limited by a collective bargaining agreement; or~~

~~(11)~~ (8) To take actions to carry out the mission of government in situations of emergency.

(9) TO TRANSFER, ASSIGN AND SCHEDULE EMPLOYEES.

(d) ~~Nothing contained in this Article shall be construed to limit the discretion of the employer voluntarily to confer with any or all of its employees in the process of developing policies to effectuate or implement any of the enumerated rights set forth in subsection 33-80(c) above~~

(1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS LAW, THE EMPLOYER MAY VOLUNTARILY BARGAIN ABOUT ANY MATTER ENUMERATED IN SECTION 33-80(b) ~~AND/~~OR THE EFFECTS UPON EMPLOYEES OF THE EMPLOYER'S EXERCISE OF ANY RIGHTS LISTED IN SECTION 33-80(c). OR BOTH

IN THE EVENT THE EMPLOYER DOES AGREE TO BARGAIN ABOUT ANY OF THE ABOVE MATTERS OR EFFECTS, AND AN AGREEMENT IS REACHED, THAT AGREEMENT SHALL

(c) 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 sub-section 33-80(b) above, but such matters shall not be subject to bargaining.

BE INCORPORATED IN THE COLLECTIVE BARGAINING AGREEMENT. THE EMPLOYER'S ELECTION TO BARGAIN ABOUT A ~~PROPOSAL~~ MATTER OR EFFECT SHALL NOT CONSTITUTE A WAIVER OF THE EMPLOYER'S RIGHT NOT TO BARGAIN ABOUT THE ~~SUBJECT~~ MATTER ~~THEREOF~~ OR EFFECT UPON EXPIRATION OF ANY AGREEMENT REACHED. NOTWITHSTANDING THE EMPLOYER'S ELECTION TO BARGAIN, ABSENT ~~A PROPOSAL AS SET FORTH ABOVE, SUCH PROPOSAL~~ AN AGREEMENT ON THE MATTER OR EFFECT, THE MATTER OR EFFECT SHALL NOT BE INCLUDED IN EITHER PARTY'S SUBMISSION OF A FINAL OFFER TO THE IMPASSE NEUTRAL.

(2) IN THE EVENT THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE DISAGREE OVER WHETHER EITHER IS OBLIGATED TO BARGAIN OVER ONE OR MORE CONTRACT PROPOSALS UNDER THIS LAW, THAT DISAGREEMENT SHALL BE SUBMITTED UPON THE PETITION OF EITHER PARTY TO THE PERMANENT UMPIRE WHO SHALL RESOLVE THE DISPUTE AS PROMPTLY AS POSSIBLE AND AFTER SUCH EXPEDITIOUS PROCEEDINGS AS THE PERMANENT UMPIRE DEEMS APPROPRIATE IN THE CIRCUMSTANCES. THE PETITION SHALL STATE THE ISSUE OR ISSUES TO BE RESOLVED AND SHALL BE ACCOMPANIED BY A WRITTEN STATEMENT OF THE REASONS WHY THE PETITIONING PARTY BELIEVES THE ~~MATTER~~ PROPOSAL IS OR IS NOT BARGAINABLE. THE DECISION OF THE PERMANENT UMPIRE SHALL BE BINDING UPON THE PARTIES. FAILURE TO SUBMIT A PETITION PURSUANT TO THIS SUBSECTION SHALL NOT PRECLUDE A PARTY FROM FILING AN UNFAIR LABOR PRACTICE CHARGE PURSUANT TO SECTION 33-82.

~~(c)~~ (D) Collective bargaining shall commence no later than November 1, preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. The resolution of an impasse in collective bargaining shall be

343

completed by February 1. These time limits may be waived only by prior written consent of the parties.

~~(f)~~ (E) Any ~~collective bargaining agreement which contains~~ OF A COLLECTIVE BARGAINING AGREEMENT ~~a~~ provision for automatic renewal or extension shall be void. ~~in its entirety, unless such renewal or extension requires the consent of both parties.~~ No agreement shall be valid if it extends for less than one year or for more than three years ~~(EXCEPT BY RENEWAL)~~. All agreements shall become effective July 1 and end on June 30.

Per Bob Hillman

~~(g)~~ (F) Any collective bargaining agreement shall become effective only after ratification of the agreement by the ~~public~~ employer and the CERTIFIED REPRESENTATIVE ~~employees in the bargaining unit~~, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures ~~, but such rules shall be consistent with the certified representative's duty of fair representation. Any terms of a collective bargaining agreement which purport to restrict the rights of management and of the public as contained in subsection 33-80(c) of this Article or which concern those subjects set forth in subsection 33-80(b) shall be null and void and wholly unenforceable.~~

~~(h)~~ (G) A ratified agreement shall be binding on the employer and the certified representative, AND SHALL BE REDUCED TO WRITING AND EXECUTED BY BOTH PARTIES. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer and the employer shall make a good faith effort to have such term or condition implemented by Council action. ~~but the~~

ON OR BEFORE APRIL 25, THE COUNTY COUNCIL SHALL INDICATE BY A MAJORITY ~~OF FOUR (4) VOTES~~, ITS INTENTION TO APPROPRIATE OR OTHERWISE IMPLEMENT THE AGREEMENT, OR ITS INTENTION NOT TO DO SO, AND SHALL STATE ITS REASONS FOR ANY INTENT TO REJECT ANY PART OR PARTS OF THE AGREEMENT. IN THE EVENT THE COUNCIL INDICATES ITS INTENTION TO REJECT, IT SHALL DESIGNATE A REPRESENTATIVE TO MEET WITH THE PARTIES AND PRESENT THE COUNCIL'S VIEWS IN THEIR FURTHER NEGOTIATIONS. THIS REPRESENTATIVE SHALL ALSO PARTICIPATE FULLY IN STATING THE COUNCIL'S POSITION IN ANY ENSUING IMPASSE PROCEDURE. THE PARTIES SHALL THEREAFTER MEET AS PROMPTLY AS POSSIBLE IN AN ATTEMPT TO NEGOTIATE AN AGREEMENT ACCEPTABLE TO THE COUNCIL. EITHER OF THE PARTIES MAY INITIATE THE IMPASSE PROCEDURE SET FORTH IN SECTION 33-81. THE RESULTS OF THE NEGOTIATION OR IMPASSE PROCEDURE SHALL BE SUBMITTED TO THE COUNCIL ON OR BEFORE MAY 10. ANY agreement shall provide either for automatic reduction or elimination of such conditional WAGE AND/OR benefits ADJUSTMENTS if the Council fails to take such action or if funds are not appropriated or if a lesser amount is appropriated.

Sec. 33-81. IMPASSE PROCEDURE.

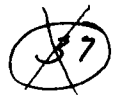
(a) Prior to November 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an Impasse Neutral either by agreement or through the processes of the American Arbitration Association. The Impasse Neutral shall be required to be available during the period from January 20 to February 1. Fees and expenses COSTS OF THE IMPASSE NEUTRAL shall be shared equally by the employer and the certified representative.

(b) (1) During the course of collective bargaining either party may declare an impasse and request the services of the Impasse Neutral. If the parties have not reached agreement by January 20, an impasse shall be deemed to exist.

(2) Whenever an impasse has been reached, the dispute shall be submitted to the Impasse Neutral. The Impasse Neutral shall attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

(3) If the Impasse Neutral, in the Impasse Neutral's sole discretion, finds that the parties are at a bona fide impasse, the Impasse Neutral shall require each party to submit a final offer which shall consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the Impasse Neutral shall choose. If only complete package proposals are required the Impasse Neutral shall require the parties to jointly submit a memorandum of all items previously agreed upon.

(4) The Impasse Neutral may, in the Impasse Neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The Impasse Neutral may hold a hearing for this purpose at a time,



date, and place selected by the Impasse Neutral. Said hearing shall not be open to the public.

(5) On February 1 or prior thereto, the Impasse Neutral shall select, as a whole, the most reasonable, in the Impasse Neutral's judgment, of the final offers submitted by the parties. The Impasse Neutral may take into account only the following factors:

a. Past collective bargaining contracts between the parties including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

b. Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers IN THE WASHINGTON METROPOLITAN AREA AND in Maryland.

c. Comparison of wages, hours, benefits, and conditions of employment of other ~~employees of~~ PERSONNEL Montgomery County.

d. Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

e. The interest and welfare of the public.

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

38

(6) The Impasse Neutral shall not compromise or alter the final offer that he selects. Selection of an offer shall be based on the contents of that offer. No consideration shall be given to, nor shall any evidence or argument be received concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the Impasse Neutral. However, the Impasse Neutral shall consider all previously agreed upon items integrated with the specific disputed items to determine the single most reasonable offer.

(7) The offer selected by the Impasse Neutral, integrated with the previous agreed upon items, shall be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and shall have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(b). above. The parties shall execute such agreement.

Sec. 33-82. PROHIBITED PRACTICES.

(a) The employer or its agents or representatives are prohibited from:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under the provisions of this Article~~, provided that the discussion of any matter, argument, or opinion, or the dissemination thereof, whether orally, in writing or otherwise~~

~~shall not constitute or be evidence of prohibited practice under any of the provisions of this Article nor be grounds for invalidating any election conducted under this Article, if such discussion or dissemination contains no threat of reprisal or promise of benefit;~~

(2) Dominating or interfering with the formation or administration of any employee organization, or contributing financial or other support to it, pursuant to contract or otherwise; provided that the employer and a certified representative may agree to and apply a membership dues deduction provision AS PROVIDED HEREIN AND TO REASONABLE USE OF COUNTY FACILITIES FOR COMMUNICATING WITH EMPLOYEES;

(3) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, ~~or other~~ wages, hours or conditions of employment; PROVIDED, THAT

(4) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this Article;

(5) Refusing to bargain collectively with a certified representative;

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

Need "proviso language" requested by Division →

NOTHING IN THIS ARTICLE SHALL PRECLUDE AN AGREEMENT FROM CONTAINING A PROVISION FOR AN AGENCY SHOP.

~~EXCEPTION~~

40

(8) DIRECTLY OR INDIRECTLY OPPOSING THE APPROPRIATION OF FUNDS OR THE ENACTMENT OF ~~LAWFUL~~ LEGISLATION BY THE COUNTY COUNCIL TO IMPLEMENT AN AGREEMENT REACHED BETWEEN THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE PURSUANT TO THIS ARTICLE.

(9) ENGAGING IN A LOCKOUT OF EMPLOYEES.

(b) Employee organizations, AND their agents, ~~or representatives~~ and employees are prohibited from:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this Article;

(2) Restraining, coercing, or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) Refusing to bargain collectively with the employer if such employee organization is the certified representative;

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(5) Hindering or preventing, by threats OF VIOLENCE, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment by any person, public or private, or obstructing or OTHERWISE UNLAWFULLY interfering with the entrance to or egress from any place of employment, or obstructing or UNLAWFULLY interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other

41

ways of travel or conveyance by any person, public or private;

(6) Hindering or preventing by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment or services by the employer;

(7) Taking or retaining unauthorized possession of property of the employer~~, public or private, or engaging in any effort to interfere with production, functions, or services of an employer, public or private,~~ or refusing to do work or use certain goods or materials as lawfully required by the employer;

(8) Forcing or requiring ~~any~~ THE employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification;

(9) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed OR to be performed ~~or which are not productive or not desired to be performed by the employer~~.

(c) A charge of prohibited practice may be filed by ~~any~~ THE employer, employee organization, or any individual employee. THE CHARGE OR CHARGES SHALL BE FILED WITH THE PERMANENT UMPIRE, WITH COPIES TO THE PARTY ALLEGED TO HAVE COMMITTED A PROHIBITED PRACTICE. All charges shall CONTAIN A STATEMENT OF FACTS SUFFICIENT TO ENABLE THE PERMANENT UMPIRE TO INVESTIGATE THE CHARGE ~~be supported by the charging party~~. The Permanent Umpire may request

withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing~~, however~~. The Permanent Umpire shall have authority to maintain such independent investigation as the Permanent Umpire determines necessary and to develop rules and regulations therefore. If, UPON INVESTIGATION, the Permanent Umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the Permanent Umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the PARTY OR parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the Permanent Umpire determines that the person charged has committed a prohibited practice, the Permanent Umpire shall make findings of fact and conclusions of law and shall be impowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this Article. Remedies of the Permanent Umpire may include, but shall not be limited to, REINSTATING EMPLOYEES WITH OR WITHOUT BACK PAY, MAKING EMPLOYEES WHOLE FOR ANY LOSS RELATING TO COUNTY EMPLOYMENT SUFFERED AS A RESULT OF ANY PROHIPITED PRACTICE, ~~orders withdrawing certification,~~ withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits~~, withdrawing, suspending, or reinstating with or without back pay the employment or tenure of individual employees~~. If the Permanent Umpire finds that the party or

parties charged have not committed any prohibited practices, the Permanent Umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Permanent Umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than ~~four (4)~~ SIX (6) months prior to the filing of the charge.

Sec. 33-83. ~~USE OF OFFICIAL TIME. Solicitation of membership or dues payments, or other internal business of employee organizations shall be conducted during the non-duty hours of the employee involved. Employees who represent, or act on behalf of a certified representative, shall not be on paid working time when bargaining collectively with the public employer or when adjusting grievances.~~

EXPRESSION OF VIEWS.

THE EXPRESSION OF ANY VIEWS, ARGUMENT, OR OPINION, OR THE DISSEMINATION THEREOF, WHETHER ORALLY, IN WRITING OR OTHERWISE SHALL NOT CONSTITUTE OR BE EVIDENCE OF A PROHIBITED PRACTICE UNDER ANY OF THE PROVISIONS OF THIS LAW NOR BE GROUNDS FOR INVALIDATING ANY ELECTION CONDUCTED UNDER THIS LAW, IF SUCH EXPRESSION OR DISSEMINATION CONTAINS NO THREAT OF REPRISAL OR PROMISE OF BENEFIT.

Sec. 33-84. STRIKES AND LOCKOUTS.

(a) No employee or employee organization shall either directly or indirectly cause, instigate, encourage, condone or engage in any strike, nor the employer in any lockout. No employee or employee organization shall obstruct, impede, or restrict either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when said employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate any employee who struck for wages or benefits lost during such strike.

(c) If an employee or employee organization shall violate the provisions of this section, the employer, AFTER ADEQUATE NOTICE AND A FAIR HEARING BEFORE THE PERMANENT EMPLOYEE WHO FINDS THAT THE AFORESAID VIOLATIONS HAVE OCCURRED AND FINDS THAT ~~may take~~ any ~~and~~ OR all of the following actions ~~it deems~~ ARE necessary in the public interest MAY, SUBJECT TO THE LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS, ARTICLE 27, SECTIONS 727, et seq., ANNOTATED CODE OF MARYLAND: (1) IMPOSE ~~Imposition of~~ disciplinary action, including DISMISSAL FROM ~~termination of~~ employment of employees engaged in such conduct;

(2) ~~Termination of~~ TERMINATE OR SUSPEND employee organization's dues deduction privilege, if any;

(3 ~~Revocation of~~ REVOKE THE certification OF and ~~disqualification~~ DISQUALIFY IT THE EMPLOYEE ORGANIZATION from participation in representation elections for a period up to a maximum of two (2) years.

(d) Nothing contained herein shall prohibit an employer from seeking any remedy available in a court of competent jurisdiction.

Sec. 33-85. EFFECT OF PRIOR ENACTMENTS.

Nothing contained in this Article shall be construed to repeal any law, executive orders, legislation, rules or regulations adopted by the County and any department or

45

agency thereof not inconsistent with the provisions of this Article.

Sec. 4. Severability.

The provisions of this Act are severable, and if any provision, sentence, clause, section, word or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 5. Effective Date.

This Act shall take effect on the 91st day following the date on which it becomes law.

APPROVED:

_____

PRESIDENT, COUNTY COUNCIL DATE

_____

COUNTY EXECUTIVE DATE

ATTEST:

_____

SECRETARY FOR COUNTY COUNCIL DATE

TECHNICAL AMENDMENTS TO BILL 71-81

Recommended by Legislative Counsel

The following amendments have been incorporated into draft No. 3 of the bill for the convenience of Council.

1. At the second page of the title, third line, after "bargaining" insert "unless agreed to".

2. Page 8, after line 18 insert "'Certified representative' means an employee organization selected in accordance with the procedures of this chapter to represent the unit."

3. Page 9, after line 26, insert"'Unit' means all employees".

4. Page 9, after line 30, after "subsections 33-79", insert ",33-80 (c)(2),".

5. Page 10, line 1, after "Organization", insert ",Disagreement Over Obligation to Bargain Collectively".

6. Page 10, line 7, after "Sections 33-79", insert "33-80(c)(2)".

7. Page 10, line 22, strike "unit".

8. Page 11, line 18, after "Sections 33-79", insert ",33-80(c)(2)".

9. Page 12, line 20, strike "unit".

10. Page 13, strike lines 6, 7 and 8 in their entirety and insert in lieu thereof "The certification or decertification of an employee organization as the Unit's representative for the purpose of collective bargaining shall be initiated in accordance with the following procedures:".

11. Page 13, line 10, strike "may" and insert in lieu thereof "shall".

12. Page 14, line 23, strike "said" and insert in lieu thereof "a collective bargaining".

13. Page 16, line 15, before "ballot(s)" insert "challenged".

14. Page 17, line 17, strike "ad hoc".

15. Page 17, line 21, strike "make final that" and insert in lieu thereof "confirm the".

16. Page 19, line 9, strike "is the subject of" and insert in lieu thereof "would be in conflict with or be pre-empted by".

17. Page 19, line 15, strike "in subsection 33-80(c)" and insert in lieu thereof "below".

18. Page 20, line 26, after "Section 33-80)b)" strike "and/";

19. Page 20, line 27, after "Section 33-80(c)", insert "or both".

20. Page 20, line 29, after "matters" insert "or effects".

21. Page 21, line 2, strike "proposal" and insert in lieu thereof "matter or effect".

22. Page 21, line 4, strike "subject "; strike "thereof" and insert in lieu thereof "or effect".

23. Page 21, line 6, strike "a proposal as set forth above, such proposal" and insert in lieu thereof the following: "an agreement on the matter or effect, the matter or effect".

24. Page 21, line 19, strike "matter" and insert in lieu thereof "proposal".

25. Page 22, line 12, strike "public".

26. Page 23, line 26, after "Fees", insert ",Costs"; after "expenses", insert "of the impasse neutral".

27. Page 25, line 22, strike "employees of"; after "County", insert "personnel".

28. Page 28, line 2, after "the enactment of" insert "lawful".

29. Page 29, after line 27, insert "The charge or charges shall be filed with the permanent umpire, with copies to the party alleged to have committed a prohibited practice."

30. Page 31, line 21, correct the spelling of "threat".

31. Page 32, line 12, after "public interest may" insert ",subject to the Law Enforcement Officer's Bill of Rights, Article 27, Sections 727 et seq., Annotated Code of Maryland".

32. Page 32, line 20, after "disqualify" strike "it" and insert in lieu thereof "the employee organization".

LC Copy w/ 1 changes approved by Council at enactment

Agenda Item No. 6

MEMORANDUM

April 2, 1982

TO: County Council

FROM: David Jay Frankel, Legislative Counsel

SUBJECT: Bill 71-81, Collective Bargaining/Police Officers

Action on Bill 71-81 has been scheduled for Tuesday, April 6, 1982. Attached is draft no. 4 of Bill 71-81, which incorporates those amendments agreed to by the Council at its March 8, 1982 worksession.

Two additional amendments have been proposed and have been incorporated into draft 4 of the Bill, for your convenience. They are as follows:

1. a. Page 14, line 20, strike "of no longer than three (3) year's duration".

b. Page 14, line 23, replace "a collective bargaining" with with "the".

c. Page 14, line 23, strike the sentence beginning with "A provision for automatic" in its entirety.

d. Page 22, line 3, strike "collective bargaining agreement which contains a".

e. Page 22, line 4, after "extension", insert "of a collective bargaining agreement".

f. Page 22, line 5, strike "in its entirety" through the end of the sentence.

PURPOSE: To provide that collective bargaining agreements may not contain automatic renewal provisions. Automatic renewal provisions are rarely found in collective bargaining agreements, and would be incompatible, as a practical matter, with the procedure to petition for certification of a new certified representative. That procedure calls for a petition to be filed during the month of September. The petition drive, therefore, would have to be conducted over the previous summer. The term of a collective bargaining agreement runs from July 1 through June 30 for up to three years, It would be unfair to foreclose a successful petition drive merely by exercising a renewal option after a petition has been filed. The renewal option, if permitted, would have to be exercised prior to the petition drive. This would call for the exercise of a renewal option shortly after the effective date of the collective bargaining agreement, a practice which does not serve a rational purpose.

2. Page 27, line 19, after "employment", insert "provided, that nothing in this article shall preclude an agreement from containing a provision for an agency shop."

PURPOSE: To alleviate a concern expressed by the FOP during the last worksession.

DJF/sgh
Attachment: Draft No. 4

Bill no. 71-81

Draft no. & Date: 4 - 3/30/82

Introduced: 11/3/81

Expiration Date: 5/3/83

Enacted:

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

Nov. Legislative Session 1981

By: Council President at the request of the County Executive

AN ACT to amend Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, by amending Subsection 33-63(c) of Section 33-63, title "Definitions", of Article IV, title "Employer - Employee Relations" to provide that police department employees who are represented by a certified employee organization pursuant to Article V of this Chapter shall not be considered an employee under Article IV of this Chapter; by amending Section 33-74, title "Cost of Living Adjustment" to provide that this section shall not apply to an employee of the police department who is represented by a certified employee organization pursuant to Article V of this Chapter; and by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to provide for a policy statement, definitions to be used in the Article, creation of a permanent umpire in order to administer and implement certain provisions of the Article, certain employee rights, the selection, certification, and decertification procedures, subjects

(4)

which would be appropriate for collective bargaining, subjects which would not be appropriate for collective bargaining/ ~~UNLESS AGREED TO~~ impasse procedures, prohibited employer and employee practices, certain provisions concerning strikes and lockouts, use of official time of employees, and the effect of prior enactments.

Be It Enacted by the County Council for Montgomery County, Maryland that -

Sec. 1. Subsection 33-63(c) of Section 33-63, title "Definitions" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel", of the Montgomery County Code 1972, as amended, is hereby amended, to read as follows:

Sec. 33-63. Definitions.

* * *

(c) Employee. Any county merit system employee working on a continuous full-time, career or part-time, career basis, eligible to be included in a unit of recognition except for the following:

(1) Confidential aides to elected officials;

(2) All non-merit system employees;

(3) All heads of principal departments, offices and agencies;

(4) Deputy or assistant department heads;

(5) Employees providing direct staff or administrative support to the director of the department, or deputy or assistant directors within the director's immediate office;

(6) Employees who report directly to or whose immediate supervisor is the county executive, county council, county council members or the chief administrative officer and the principal aides to the foregoing:

(7) Employees of the office of the county attorney;

(8) Employees of the office of budget and research;

(9) Employees of the office of employee relations;

(10) Employees of the personnel office;

(11) Employees of the personnel board;

(12) Heads of the following constituent offices, divisions and sections in the department of transportation existing at the time of

enactment of this bill and positions carrying a similar degree of personnel management responsibilities in other departments and offices as determined by the chief administrative officer:

Director's office, office of the right-of-way acquisition, office of administrative services, office of transportation planning, division of transportation engineering, subdivision development section, design section, construction section, division of traffic engineering, traffic planning and survey section, traffic operations section, division of operations, TESS Minibus, highway maintenance section, equipment section and division of parking lot districts.

(13) An employee of the police department, as defined in Section 33-76 of this Chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, title "Police Labor Relations" of this Chapter.

Sec. 2. Section 33-74, title "Cost of Living Adjustment", of Article IV, title "Employer - Employee Relations", of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended, by adding a new Subsection (c), to read as follows:

Sec. 33-74. Cost of living adjustment.

(a) The county executive shall provide as a part of the annual recommended operating budget for the county government sufficient funds to implement the cost of living adjustment required by this section. The council shall accord one of the highest priorities to the full funding of the cost of living

adjustment, shall fund fully the seventy-five percent of Consumer Price Index cost of living adjustment unless reasons are given for not doing so, and shall make a finding in the budget resolution as to the extent to which full funding is achieved. Unless otherwise provided in the approved budget resolution which includes a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to county government employees, the chief administrative officer shall adjust the uniform salary plan for all classified employees of the county government beginning the first pay period on or after July 1 of each year by an amount not less than seventy-five percent of the change in the Consumer Price Index for all urban consumers in the Washington, D.C. area, although pay grades one through four of the uniform salary plan to which minimum wage and certain seasonal employees are assigned will be adjusted by changes in the minimum wage rates and salary surveys to determine the competitiveness of such salaries. The percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

The chief administrative officer may adjust the uniform salary plan in excess of the base percentage of seventy-five percent, provided funds are available and approved by the county council for such purpose.

(b) Notwithstanding the provisions in (a) above, for FY-82 only the following salary controls shall apply:

1. Salary maxima of grades 5 through 31 will be adjusted by the full cost-of-living granted by the County Council.
2. The salary maximum for grade 40 shall be $70,000.00.

16

3. The salary maxima for grades 32 through 39 shall be adjusted by the Chief Administrative Officer so that the dollar difference between the salary maxima of grades 31 through 40 is the same.

4. The salary for each merit employee in grades 5-31 will be adjusted by the full cost-of-living granted by the County Council to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

5. The salaries for merit employees in grades 32 through 39 will be adjusted by the full cost-of-living granted by the County Council only to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

6. The cost-of-living adjustment to the salaries of non-merit employees shall be determined by the County Executive but shall not exceed the cost-of-living granted merit employees.

7. No employee's salary is to be reduced below its level as of June 30, 1981 as a result of implementation of the provisions contained in paragraphs 1- 6 above.

(c) The provisions of this section shall not apply to an employee of the police department, as defined in Section 33-76 of this chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, Title "Police Labor Relations" of this chapter.

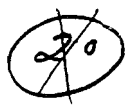
Sec. 3. Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to read as follows:

ARTICLE V. POLICE LABOR RELATIONS.

Sec. 33-75. DECLARATION OF POLICY.

It is the public policy of this County, pursuant to Charter Section 510, enacted as a result of citizen initiative, and purpose of this Article to promote a harmonious, peaceful, and cooperative relationship between the County government and its police employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the police department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively OVER WAGES, HOURS, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT through a representative of their choice or to refrain therefrom; and that any collective bargaining between the County government and a representative of those police employees be done in good faith with no interference with the orderly process of government and furthermore, that ~~the results of~~ AGREEMENTS REACHED THROUGH collective bargaining be implemented.

It is also recognized however, that police employee organizations AND THE COUNTY GOVERNMENT EACH possess substantial means by which they may initiate ~~governmental~~ actions regarding the wages, hours, and working conditions of employees ~~they represent or seek to represent~~. Consequently, in order to preserve ~~the delicate~~ AN APPROPRIATE balance between labor and management in the police service, the Council hereby declares that ~~collective bargaining may be~~ ONCE A REPRESENTATIVE HAS BEEN voluntarily selected COLLECTIVE BARGAINING SHALL BE UTILIZED in place of, but not



in addition to existing means of initiating governmental action as to those subjects which are defined as appropriate for collective bargaining in this Article.

Sec. 33-76. DEFINITIONS.

When used in this Article:

"Agency Shop" means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

To "bargain collectively" means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this Article.

"CERTIFIED REPRESENTATIVE" MEANS AN EMPLOYEE ORGANIZATION SELECTED IN ACCORDANCE WITH THE PROCEDURES OF THIS CHAPTER TO REPRESENT THE UNIT.

"Employee" means any police officer in the classification of Master Police Officer I, Master Police Officer II, Police Officer I, Police Officer II, Police Officer III, and Police Officer Candidate, or equivalent non-supervisory classifications, but not those in the classification of Police Sergeant or any equivalent or higher classification.

"Employer" means the County Executive and his designees.

"Employee Organization" means any organization which admits to membership employees and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization. SUCH ORGANIZATION SHALL NOT ADMIT TO MEMBERSHIP ANY PERSON OTHER THAN LAW ENFORCEMENT OFFICERS.

"Lockout" means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

"Mediation" means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

"Strike" means ~~the~~ A CONCERTED failure to report for duty, ~~or the~~ absence, ~~from one's position, or the~~ stoppage of work, or ~~the~~ abstinence in whole or in part from the full AND faithful, ~~or proper~~ performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition or authority of the employee or an employee organization.

"UNIT" means all employees.

Sec. 33-77. PERMANENT UMPIRE.

(a) There is hereby created the position of Permanent Umpire, so as to provide for the effective implementation and administration of Sections 33-79~~, 33-80(c)(2)~~ and 33-82 of this Article concerning Selection and Certification of Employee

22

~~, DISAGREEMENT OVER OBLIGATION TO BARGAIN COLLECTIVELY~~

Organization and Prohibited Practices. The Permanent Umpire shall exercise the following powers and perform the following duties and functions:

(1) To adopt, amend, and rescind, from time to time, such rules, regulations and procedures for the implementation and administration of Sections 33-79 ~~, 33-80(c)(2)~~ and 33-82 as are consistent with this Article;

(2) To request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the Permanent Umpire to properly carry out his functions;

(3) To hold hearings and make inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel by issuance of subpoenas the attendance of witnesses ~~, not including elected County officials,~~ and the production of relevant documents;

(4) To hold and conduct elections for ~~unit~~ certification or decertification pursuant to the provisions of this Article and to issue said certification or decertification;

(5) To investigate and attempt to resolve or settle, as provided in this Article charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure the Permanent Umpire must defer to that procedure

2/3

for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this Article. Furthermore, the Permanent Umpire shall defer to state procedures in those matters which are governed by the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland;

(6) To obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and

(7) To exercise any other powers and perform any other duties and functions as may be specified in ~~, 33-80(c)(2)~~ Sections 33-79 and 33-82 of this Article.

(b) The Permanent Umpire shall be appointed by the County Executive, with the confirmation of the County Council, shall serve for a term of five (5) years and shall be eligible for reappointment PROVIDED HOWEVER THAT THE PERMANENT UMPIRE SHALL NOT BE REAPPOINTED IF DURING THE PERIOD BETWEEN 60 DAYS AND 30 DAYS PRIOR TO THE EXPIRATION OF HIS TERM THE CERTIFIED REPRESENTATIVE FILES A WRITTEN OBJECTION TO SUCH RE-APPOINTMENT WITH THE COUNTY EXECUTIVE. The Permanent Umpire shall be a person with experience as a neutral in the field of labor relations and shall not be a person who, on account of vocation, employment or affiliation can be classed as a representative of the interests of the employer or any employee organization.

2/4

(c) The Permanent Umpire shall be paid a per diem fee as set forth by contract with the County and shall be reimbursed for necessary expenses.

Sec. 33-78. EMPLOYEE RIGHTS.

(a) Employees shall have the right:

(1) To form, join, support. contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) To be fairly represented by their certified representative, if any.

(b) The Employer shall have the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative shall serve as the bargaining agent for all employees and shall have the duty to represent fairly and without discrimination all ~~unit~~ employees without regard to whether the employees are or are not members of the employee organization or are paying dues or other contributions to it or participating in its affairs, provided, however, that it shall not be deemed a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of the certified representative to receive membership dues deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate such provisions has been suspended

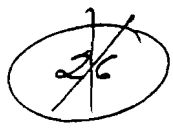
under Section 33-84. No collective bargaining agreement may include a provision requiring membership in, participation in the affairs of or contributions to an employee organization other than an agency shop provision.

Sec. 33-79. SELECTION, CERTIFICATION AND DECERTIFICATION PROCEDURES.

(a) /~~Procedures for determining the certified representative for the unit may be initiated in accordance with this subsection as follows~~: THE CERTIFICATION OR DECERTIFICATION OF AN EMPLOYEE ORGANIZATION AS THE UNIT'S REPRESENTATIVE FOR THE PURPOSE OF COLLECTIVE BARGAINING SHALL BE INITIATED IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

(1) Any employee organization seeking certification as representative of the unit ~~may~~/SHALL file a petition stating its name, address, and its desire to be certified with the Permanent Umpire, and shall transmit forthwith a copy of such, not including the names of the supporting employees, to the employer. Said petition must contain the uncoerced signatures of thirty percent (30%) of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) Where an employee organization has been certified, an employee within the unit may file a petition with the Permanent Umpire and shall transmit forthwith a copy of such to the employer and the certified representative, not including the names of the supporting employee for decertification of the certified representative. The petition must contain the uncoerced signatures of at least thirty percent (30%) of the employees within the unit alleging that the employee organization



presently certified is no longer the choice of the majority of the employees in the unit.

(3) The employer may file a petition with the Permanent Umpire seeking an election for certification of an employee organization or, where an employee organization is so certified, to cause decertification of the representative where the employer has reason to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, and shall transmit a copy of such to the employee organization seeking to obtain or retain certification.

(4) Petitions may be filed between May 1, 1982, and June 30, 1982. Thereafter, petitions may be filed between September 1 and September 30, of any year, but no sooner than 22 months following an election held pursuant to this section.

(5) If a lawful collective bargaining agreement ~~of no longer than three (3) year's duration~~ is in effect, no petition shall be entertained unless filed during September of the final year of ~~said~~ THE ~~A COLLECTIVE BARGAINING~~ agreement. ~~A PROVISION FOR AUTOMATIC RENEWAL SHALL NOT PREVENT AN AGREEMENT FROM BARRING A PETITION, BUT NO SUCH AUTOMATIC RENEWAL SHALL BAR A PETITION IF THE RENEWAL OCCURS DURING THE THIRD YEAR OF AN AGREEMENT (INCLUDING YEARS ADDED AS A RESULT OF SUCH RENEWALS).~~

(6) If, during the period of May 1, to June 30, 1982, a petition is filed by the incumbent representative of unit employees certified under the Employer/Employee Relations Article of this Chapter, and no other employee organization files a valid petition, that incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the Permanent Umpire, of majority representation.

(b) If the Permanent Umpire determines that a petition is properly supported and timely filed, the Permanent Umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Permanent Umpire and shall be conducted by secret ballot at such time and place as the Permanent Umpire may direct. The Permanent Umpire may select and retain services of an agency of the State of Maryland, or similarily neutral body to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten (10) days before the election of at least ten percent (10%) representation of the

employees within the unit, and a choice that the employee does not desire to be represented by any of the named employee organization(s).

(3) The employer and each party to the election may be represented by observers selected in accordance with such limitations and conditions as the Permanent Umpire may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenge or the Permanent Umpire's decision thereon, unless the number of challenges is not determinative, in which latter event the CHALLENGED ballot(s) shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Permanent Umpire in the presence of the observers.

(6) The Permanent Umpire immediately shall prepare and serve upon the employer and each of the parties a report certifying the results of the election. If, and only if, an employee organization has received the votes of a majority of the employees who voted, the Permanent Umpire shall certify the employee organization so elected as the exclusive agent. If no employee organization has received the votes of a majority of the employees, the Permanent Umpire shall certify no representative, ~~No run-off election shall be conducted.~~ BUT IF A MAJORITY

OF THE EMPLOYEES DO NOT VOTE FOR NO REPRESENTATION, A RUN-OFF ELECTION SHALL BE CONDUCTED. THE RUN-OFF ELECTION SHALL CONTAIN THE TWO CHOICES WHICH RECEIVED THE LARGEST AND SECOND LARGEST NUMBER OF VOTES IN THE ORIGINAL ELECTION.

(c) The aforesaid certification of results shall be final unless, within seven (7) days after service of the report and certification, the employer or any other party serves on all parties and files with the Permanent Umpire objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds thereof. The Permanent Umpire shall investigate the objections and, if substantial factual issues exist, the Permanent Umpire shall hold a hearing thereon. Otherwise, the Permanent Umpire may determine the matter without hearing. The Permanent Umpire may invite, either by rule or by ~~ad hoc~~ invitation, written or oral argument to assist in determination of the merits of the objections. If the Permanent Umpire finds that the election was conducted in substantial conformity with this Article, the Permanent Umpire shall CONFIRM THE ~~make final that~~ certification initially issued. If the Permanent Umpire finds that the election was not held in substantial conformity with this Article, the Permanent Umpire shall cause another election to be held pursuant to the provisions of this section.

(d) The cost of conducting an election shall be paid by the County.

(e) Voluntary recognition is prohibited under this Article, and no certification may be issued without an election except as provided for in subsection 33-79(a)(6).

30

Sec. 33-80. COLLECTIVE BARGAINING.

(a) Upon certification of an employee organization, as provided in Section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided however that salaries and wages shall be uniform for all employees in the same classification.

(2) Pension and retirement benefits for active employees ONLY.

(3) Employee benefits such as, but not limited to, insurance, leave, holidays, AND vacation ~~AND PERSONAL PATROL VEHICLES~~.



(4) Hours and working conditions, INCLUDING THE AVAILABILITY AND USE OF PERSONAL PATROL VEHICLES.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration, AND PROVISIONS FOR EXCLUSIVITY OF FORUM. ~~THE GRIEVANCE PROVISIONS OF ANY COLLECTIVE BARGAINING AGREEMENT, NOTWITHSTANDING THE PROVISIONS OF SECTION 33-12(b) OF THIS CHAPTER, SHALL BE THE EXCLUSIVE MEANS OF PROCESSING GRIEVANCES CONCERNING ANY SUBJECT MATTER ENUMERATED IN SECTION 33-80(a) OR ANY MATTER ENUMERATED IN SECTION 33-80(b) AND (c), ABOUT WHICH THE PARTIES HAVE VOLUNTARILY BARGAINED DURING THE BARGAINING IMMEDIATELY PRIOR TO THE CURRENT CONTRACT.~~

(6) MATTERS AFFECTING THE HEALTH AND SAFETY OF EMPLOYEES.

(7) THE EFFECT ON EMPLOYEES OF THE EMPLOYER'S EXERCISE OF RIGHTS ENUMERATED IN SUB-SECTION (b) HEREOF.

~~(b) The following subjects shall not be the subject of collective bargaining:~~

~~(1) Pensions OF or any other matter related to retired persons WHO HAVE RETIRED;~~

~~(2) Recruitment, selection, appointment, testing, promotion, AND position classification; or any other rule or action of the employer based on merit principles.~~

~~(3) Any matter which is the subject of~~ WOULD BE IN CONFLICT WITH OR PREEMPTED BY state law ~~including, but not limited to, the Law Enforcement Officers Bill of Rights, Article 27, Sections 727, et seq., Annotated Code of Maryland.~~

~~(4) Any matter which would impair the rights of the employer as set forth~~ BELOW ~~in subsection 33-80(c).~~

(b) ~~(c)~~ 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;

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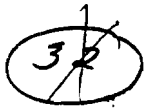
(2) ~~(2) To maintain and improve the efficiency of operations;~~ AND EFFECTIVENESS

(3) ~~(3)~~ To determine the services to be rendered, the operations to be performed ~~and the technology to be utilized~~;

(4) ~~(4)~~ To determine the overall ORGANIZATIONAL STRUCTURE, methods, processes, means, job classifications or personnel by which operations are to be conducted ~~and to prescribe and restrict the utilization of uniforms, vehicles, and equipment OTHER THAN PERSONAL PATROL VEHICLES.~~ AND THE LOCATION OF FACILITIES.





(5) (4) ~~(5)~~ To direct or supervise employees;

(6) (5) TO HIRE, SELECT AND ESTABLISH THE STANDARDS GOVERNING PROMOTION OF EMPLOYEES AND TO CLASSIFY POSITIONS; ~~(6) To suspend, discipline or discharge employees SUBJECT TO APPLICABLE LAW;~~

~~(7) To transfer, assign, schedule, retain, layoff, or recall employees;~~

(7) (6) ~~(8)~~ 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) (7) ~~(9)~~ To make and enforce rules and regulations not inconsistent with THIS LAW OR a collective bargaining agreement ~~AND APPLICABLE LAW~~;

~~(10) To take whatever other actions may be necessary to carry out the wishes of the public not otherwise specified herein or limited by a collective bargaining agreement; or~~

(9) (8) ~~(11)~~ To take actions to carry out the mission of government in situations of emergency.

(10) (9) TO TRANSFER, ASSIGN AND SCHEDULE EMPLOYEES.

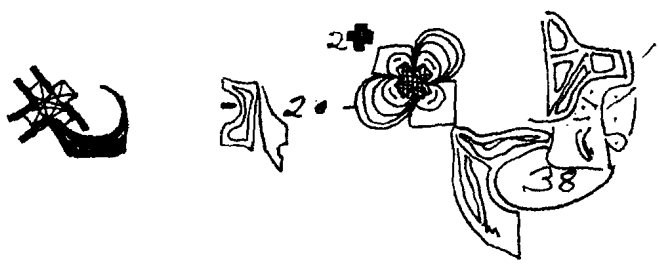
(c) NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT THE DISCRETION OF THE EMPLOYER VOLUNTARILY TO DISCUSS WITH THE REPRESENTATIVES OF ITS EMPLOYEES ANY MATTER CONCERNING THE EMPLOYER'S EXERCISE OF ANY OF THE ENUMERATED RIGHTS SET FORTH IN SUB-SECTION 33-80(b) ABOVE, BUT SUCH MATTERS SHALL NOT BE SUBJECT TO BARGAINING.

~~(d) Nothing contained in this Article shall be construed to limit the discretion of the employer voluntarily to confer with any or all of its employees in the process of developing policies to effectuate or implement any of the enumerated rights set forth in subsection 33-80(c), above~~

CONFLICT

~~(1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS LAW, THE EMPLOYER MAY VOLUNTARILY BARGAIN ABOUT ANY MATTER ENUMERATED IN SECTION 33-80(b) AND/OR THE EFFECTS UPON EMPLOYEES OF THE EMPLOYER'S EXERCISE OF ANY RIGHTS LISTED IN SECTION 33-80(c).~~ OR BOTH

~~IN THE EVENT THE EMPLOYER DOES AGREE TO BARGAIN ABOUT ANY OF THE ABOVE MATTERS, AND AN AGREEMENT IS REACHED, THAT AGREEMENT SHALL~~ OR EFFECTS



BE INCORPORATED IN THE COLLECTIVE BARGAINING AGREEMENT. THE EMPLOYER'S ELECTION TO BARGAIN ABOUT A MATTER OR EFFECT PROPOSAL SHALL NOT CONSTITUTE A WAIVER OF THE EMPLOYER'S RIGHT NOT TO BARGAIN ABOUT THE SUBJECT MATTER OR EFFECT THEREOF UPON EXPIRATION OF ANY AGREEMENT REACHED. NOTWITHSTANDING THE EMPLOYER'S ELECTION TO BARGAIN, ABSENT AN AGREEMENT ON THE MATTER OR EFFECT, THE MATTER OR EFFECT A PROPOSAL AS SET FORTH ABOVE, SUCH PROPOSAL SHALL NOT BE INCLUDED IN EITHER PARTY'S SUBMISSION OF A FINAL OFFER TO THE IMPASSE NEUTRAL.

(2) IN THE EVENT THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE DISAGREE OVER WHETHER EITHER IS OBLIGATED TO BARGAIN OVER ONE OR MORE CONTRACT PROPOSALS UNDER THIS LAW, THAT DISAGREEMENT SHALL BE SUBMITTED UPON THE PETITION OF EITHER PARTY TO THE PERMANENT UMPIRE WHO SHALL RESOLVE THE DISPUTE AS PROMPTLY AS POSSIBLE AND AFTER SUCH EXPEDITIOUS PROCEEDINGS AS THE PERMANENT UMPIRE DEEMS APPROPRIATE IN THE CIRCUMSTANCES. THE PETITION SHALL STATE THE ISSUE OR ISSUES TO BE RESOLVED AND SHALL BE ACCOMPANIED BY A WRITTEN STATEMENT OF THE REASONS WHY THE PETITIONING PARTY BELIEVES THE PROPOSAL MATTER IS OR IS NOT BARGAINABLE. THE DECISION OF THE PERMANENT UMPIRE SHALL BE BINDING UPON THE PARTIES. FAILURE TO SUBMIT A PETITION PURSUANT TO THIS SUBSECTION SHALL NOT PRECLUDE A PARTY FROM FILING AN UNFAIR LABOR PRACTICE CHARGE PURSUANT TO SECTION 33-82.

(d) (c) Collective bargaining shall commence no later than November 1, preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. The resolution of an impasse in collective bargaining shall be

343

completed by February 1. These time limits may be waived only by prior written consent of the parties.

(e)
/~~(f) Any collective bargaining agreement which contains~~ ANY OF A COLLECTIVE BARGAINING AGREEMENT ~~a~~ provision for automatic renewal or extension shall be void. ~~in its entirety unless such renewal or extension requires the consent of both parties.~~ No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end on June 30.

(f)
~~//(g)~~ Any collective bargaining agreement shall become effective only after ratification of the agreement by the ~~public~~ employer and the CERTIFIED REPRESENTATIVE ~~employees in the bargaining unit~~, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures. / ~~but such rules shall be consistent with the certified representative's duty of fair representation. Any terms of a collective bargaining agreement which purport to restrict the rights of management and of the public as contained in subsection 33-80(c) of this Article or which concern those subjects set forth in subsection 33-80(b) shall be null and void and wholly unenforceable.~~

(g)
/~~(h)~~ A ratified agreement shall be binding on the employer and the certified representative, AND SHALL BE REDUCED TO WRITING AND EXECUTED BY BOTH PARTIES. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer and the employer shall make a good faith effort to have such term or condition implemented by Council action. ~~but the~~

ON OR BEFORE APRIL 25, THE COUNTY COUNCIL SHALL INDICATE, BY A MAJORITY ~~OF FOUR (4) VOTES~~, ITS INTENTION TO APPROPRIATE OR OTHERWISE IMPLEMENT THE AGREEMENT, OR ITS INTENTION NOT TO DO SO, AND SHALL STATE ITS REASONS FOR ANY INTENT TO REJECT ANY PART OR PARTS OF THE AGREEMENT. IN THE EVENT THE COUNCIL INDICATES ITS INTENTION TO REJECT, IT SHALL DESIGNATE A REPRESENTATIVE TO MEET WITH THE PARTIES AND PRESENT THE COUNCIL'S VIEWS IN THEIR FURTHER NEGOTIATIONS. THIS REPRESENTATIVE SHALL ALSO PARTICIPATE FULLY IN STATING THE COUNCIL'S POSITION IN ANY ENSUING IMPASSE PROCEDURE. THE PARTIES SHALL THEREAFTER MEET AS PROMPTLY AS POSSIBLE IN AN ATTEMPT TO NEGOTIATE AN AGREEMENT ACCEPTABLE TO THE COUNCIL. EITHER OF THE PARTIES MAY INITIATE THE IMPASSE PROCEDURE SET FORTH IN SECTION 33-81. THE RESULTS OF THE NEGOTIATION OR IMPASSE PROCEDURE SHALL BE SUBMITTED TO THE COUNCIL ON OR BEFORE MAY 10. ANY agreement shall provide either for automatic reduction or elimination of such conditional WAGE AND/OR benefits ADJUSTMENTS if the Council fails to take ~~such~~ action NECESSARY TO IMPLEMENT THE AGREEMENT or if funds are not appropriated or if a lesser amount ~~is~~ appropriated.

Sec. 33-81. IMPASSE PROCEDURE.

(a) Prior to November 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an Impasse Neutral either by agreement or through the processes of the American Arbitration Association. The Impasse Neutral shall be required to be available during the period from January 20 to February 1. Fees and expenses COSTS OF THE IMPASSE NEUTRAL shall be shared equally by the employer and the certified representative.

(b) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the Impasse Neutral. If the parties have not reached agreement by January 20, an impasse shall be deemed to exist.

(2) Whenever an impasse has been reached, the dispute shall be submitted to the Impasse Neutral. The Impasse Neutral shall attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

(3) If the Impasse Neutral, in the Impasse Neutral's sole discretion, finds that the parties are at a bona fide impasse, the Impasse Neutral shall require each party to submit a final offer which shall consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the Impasse Neutral shall choose. If only complete package proposals are required the Impasse Neutral shall require the parties to ~~jointly~~ submit jointly a memorandum of all items previously agreed upon.

(4) The Impasse Neutral may, in the Impasse Neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The Impasse Neutral may hold a hearing for this purpose at a time,

date, and place selected by the Impasse Neutral. Said hearing shall not be open to the public.

(5) On February 1 or prior thereto, the Impasse Neutral shall select, as a whole, the ~~most~~ MORE reasonable, in the Impasse Neutral's judgment, of the final offers submitted by the parties. The Impasse Neutral may take into account only the following factors:

a. Past collective bargaining contracts between the parties including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

b. Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers IN THE WASHINGTON METROPOLITAN AREA AND in Maryland.

c. Comparison of wages, hours, benefits, and conditions of employment of other ~~employees of~~ PERSONNEL Montgomery County.

d. Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

e. The interest and welfare of the public.

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

38

(6) The Impasse Neutral shall not compromise or alter the final offer that he selects. Selection of an offer shall be based on the contents of that offer. No consideration shall be given to, nor shall any evidence or argument be received concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the Impasse Neutral. However, the Impasse Neutral shall consider all previously agreed upon items integrated with the specific disputed items to determine the single most reasonable offer.

(7) The offer selected by the Impasse Neutral, integrated with the previous agreed upon items, shall be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and shall have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(h). above. The parties shall execute such agreement.

Sec. 33-82. PROHIBITED PRACTICES.

(a) The employer or its agents or representatives are prohibited from:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under the provisions of this Article~~, provided that the discussion of any matter, argument, or opinion, or the dissemination thereof, whether orally, in writing or otherwise~~

~~shall not constitute or be evidence of prohibited practice under any of the provisions of this Article nor be grounds for invalidating any election conducted under this Article, if such discussion or dissemination contains no threat of reprisal or promise of benefit;~~

(2) Dominating or interfering with the formation or administration of any employee organization, or contributing financial or other support to it, pursuant to contract or otherwise; provided that the employer and a certified representative may agree to and apply a membership dues deduction provision AS PROVIDED HEREIN AND TO REASONABLE USE OF COUNTY FACILITIES FOR COMMUNICATING WITH EMPLOYEES;

(3) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, ~~or other~~ wages, hours or conditions of employment; PROVIDED THAT NOTHING IN THIS ARTICLE SHALL PRECLUDE AN AGREEMENT FROM CONTAINING A PROVISION FOR AN AGENCY SHOP;

(4) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this Article;

(5) Refusing to bargain collectively with a certified representative;

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

90

(8) DIRECTLY OR INDIRECTLY OPPOSING THE APPROPRIATION OF FUNDS OR THE ENACTMENT OF ~~LAWFUL~~ LEGISLATION BY THE COUNTY COUNCIL TO IMPLEMENT AN AGREEMENT REACHED BETWEEN THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE PURSUANT TO THIS ARTICLE.

(9) ENGAGING IN A LOCKOUT OF EMPLOYEES.

AND

(b) Employee organizations, their agents, ~~or representatives~~ and employees, are prohibited from:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this Article;

(2) Restraining, coercing, or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) Refusing to bargain collectively with the employer if such employee organization is the certified representative;

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(5) Hindering or preventing, by threats OF VIOLENCE, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment by any person, public or private, or obstructing or OTHERWISE UNLAWFULLY interfering with the entrance to or egress from any place of employment, or obstructing or UNLAWFULLY interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other

41

ways of travel or conveyance by any person, public or private;

(6) Hindering or preventing by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment or services by the employer;

(7) Taking or retaining unauthorized possession of property of the employer~~, public or private, or engaging in any effort to interfere with production, functions, or services of an employer, public or private,~~ or refusing to do work or use certain goods or materials as lawfully required by the employer;

(8) Forcing or requiring ~~any~~ THE employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification;

(9) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed OR to be performed ~~or which are not productive or not desired to be performed by the employer~~.

(c) A charge of prohibited practice may be filed by ~~any~~ THE employer, employee organization, or any individual employee. THE CHARGE OR CHARGES SHALL BE FILED WITH THE PERMANENT UMPIRE, WITH COPIES TO THE PARTY ALLEGED TO HAVE COMMITTED A PROHIBITED PRACTICE. All charges shall CONTAIN A STATEMENT OF FACTS SUFFICIENT TO ENABLE THE PERMANENT UMPIRE TO INVESTIGATE THE CHARGE ~~be supported by the charging party~~. The Permanent Umpire may request

withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing~~, however~~. The Permanent Umpire shall have authority to maintain such independent investigation as the Permanent Umpire determines necessary and to develop rules and regulations therefore. If, UPON INVESTIGATION, the Permanent Umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the Permanent Umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the PARTY OR parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the Permanent Umpire determines that the person charged has committed a prohibited practice, the Permanent Umpire shall make findings of fact and conclusions of law and shall be empowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this Article. Remedies of the Permanent Umpire may include, but shall not be limited to, REINSTATING EMPLOYEES WITH OR WITHOUT BACK PAY, MAKING EMPLOYEES WHOLE FOR ANY LOSS RELATING TO COUNTY EMPLOYMENT SUFFERED AS A RESULT OF ANY PROHIBITED PRACTICE, ~~orders withdrawing certification,~~ withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits~~, withdrawing, suspending, or reinstating with or without back pay the employment or tenure of individual employees~~. If the Permanent Umpire finds that the party or

parties charged have not committed any prohibited practices, the Permanent Umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Permanent Umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than ~~four (4)~~ SIX (6) months prior to the filing of the ~~charge~~.

Sec. 33-83. ~~USE OF OFFICIAL TIME.~~

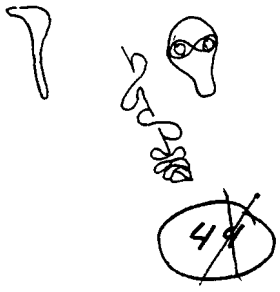
~~Solicitation of membership or dues payments, or other internal business of employee organizations shall be conducted during the non-duty hours of the employee involved. Employees who represent, or act on behalf of a certified representative, shall not be on paid working time when bargaining collectively with the public employer or when adjusting grievances.~~

EXPRESSION OF VIEWS.

THE EXPRESSION OF ANY VIEWS, ARGUMENT, OR OPINION, OR THE DISSEMINATION THEREOF, WHETHER ORALLY, IN WRITING OR OTHERWISE SHALL NOT CONSTITUTE OR BE EVIDENCE OF A PROHIBITED PRACTICE UNDER ANY OF THE PROVISIONS OF THIS LAW NOR BE GROUNDS FOR INVALIDATING ANY ELECTION CONDUCTED UNDER THIS LAW, IF SUCH EXPRESSION OR DISSEMINATION CONTAINS NO THREAT OF REPRISAL OR PROMISE OF BENEFIT.

Sec. 33-84. STRIKES AND LOCKOUTS.

(a) No employee or employee organization shall either directly or indirectly cause, instigate, encourage, condone or engage in any strike, nor the employer in any lockout. No employee or employee organization shall obstruct, impede, or restrict either directly or indirectly, any attempt to terminate a strike.



(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when said employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during such strike.

(c) If an employee or employee organization shall violate the provisions of this section, the employer, AFTER ADEQUATE NOTICE AND A FAIR HEARING BEFORE THE PERMANENT UMPIRE WHO FINDS THAT THE AFORESAID VIOLATIONS HAVE OCCURRED AND FINDS THAT ~~may take~~ any ~~and~~ OR all of the following actions ~~it deems~~ ARE necessary in the public interest, MAY, SUBJECT TO THE LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS, ARTICLE 27, SECTIONS 727, et seq., ANNOTATED CODE OF MARYLAND: (1) IMPOSE ~~Imposition of~~ disciplinary action, including DISMISSAL FROM ~~termination of~~ employment of employees engaged in such conduct;

(2) ~~Termination of~~ TERMINATE OR SUSPEND employee organization's dues deduction privilege, if any;

(3) ~~Revocation of~~ REVOKE THE certification OF and ~~disqualification~~ DISQUALIFY THE EMPLOYEE ORGANIZATION ~~it~~ from participation in representation elections for a period up to a maximum of two (2) years.

(d) Nothing contained herein shall prohibit an employer from seeking any remedy available in a court of competent jurisdiction.

Sec. 33-85. EFFECT OF PRIOR ENACTMENTS.

Nothing contained in this Article shall be construed to repeal any law, executive orders, legislation, rules or regulations adopted by the County and any department or

agency thereof not inconsistent with the provisions of this Article.

Sec. 4. Severability.

The provisions of this Act are severable, and if any provision, sentence, clause, section, word or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 5. Effective Date.

This Act shall take effect on the 91st day following the date on which it becomes law.

APPROVED:

_____

PRESIDENT, COUNTY COUNCIL DATE

_____

COUNTY EXECUTIVE DATE

ATTEST:

_____

SECRETARY FOR COUNTY COUNCIL DATE

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, February 4, 1982 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, County Office Building, Rockville, Maryland, at 3:00 P.M. on Thursday, February 4, 1982.

PRESENT

Neal Potter, President
Ruth Spector
Scott Fosler
Michael L. Gudis, Vice President
Rose Crenca
David L. Scull
Esther P. Gelman

The President in the Chair.

Re: Worksession - Legislative Bill No. 71-81, Collective Bargaining, Police Officers

The County Council met in worksession to discuss Legislative Bill No. 71-81, Collective Bargaining/Police Officers, with Fraternal Order of Police (FOP) Counsels Alan Katz and George Driesen; Assistant County Attorney Suzanne Levin; Executive Branch staff member Edward Rovner and Executive Branch Special Counsel Robert Hillman; Council Legislative Counsel David Frankel; Council Staff Director Robert McDonell; County Personnel Director Clinton Hillard; and others.

The Council reviewed Draft #2 of the bill, dated January 25, 1982, as amended by the County Executive. The Council made no objection to amendment of paragraph (13) on page 4, lines 17 through 31, amending the bill as follows: An employee of the police department, as defined in Section 33-76 of this Chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, title "Police Labor Relations" of this Chapter.

Referring to page 6 of the subject bill, Mr. Frankel recommended that paragraph (c), lines 24 through 28, be deleted, as follows: (c) The provisions of this Section shall not apply to an employee of the police department, as defined in Section 33-76 of this chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, Title "Police Labor Relations" of this chapter.

Mr. Rovner advised the Council that the Executive's position is that employees represented by collective bargaining representatives will be negotiating wages and should not be covered by an automatic cost-of-living (COL) increase that is applied to merit system employees. There should be no ceiling or floor regarding wages when negotiations begin. Police officers may get more, or less, but should not be limited by the wages of other employees.

Mr. Frankel expressed the opinion that the proposed amendment exempting police officers from an automatic COL anticipates that this provision may, or may not, appear in a collective bargaining agreement. If an agreement is negotiated that provides for a different COL increase, that would be the appropriate time to change the existing law, in his opinion.

Mr. Katz advised the Council that he discussed the subject issue with the County Executive who is concerned that police employees be assured of receiving a COL increase. He said that the provisions for an automatic increase would not apply to employees who are represented by a certified employee organization. If there is no such organization, the 75% of CPI COL increase would apply to police officers.

Without objection, the Council did not delete paragraph (c), lines 24 through 28 on page 6 of Bill No, 71-81, which would assure police officers a COL increase when not represented by a certified employee organization.

The Council considered an amendment proposed by the County Executive on page 7 of the bill, lines 15 and 16, adding collective bargaining over wages, hours, and other items and conditions of employment which were not in the original bill.

Without objection, the Council accepted the County Executive's proposed amendment on page 7 of the bill, lines 15 and 16, as follows: To that end, it is in the public interest that police employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment through a representative of their choice or to refrain therefrom;

Mr. Frankel recommended that on page 7, line 20, after "government," the rest of the sentence be deleted inasmuch as it implies that the Council will appropriate all funds and enact any legislation required by a collective bargaining agreement.

Mr. Hillman advised the Council that the Executive recommends that the phrase on page 7, line 20, "and furthermore, that agreements reached through collective bargaining be implemented" be retained in the bill. He said the bill proposes that the Council indicate to the bargaining representatives any problems it has in order to arrive at a contract everyone agrees will be implemented.

It does not bind the Council, but provides that the contract will be implemented if agreement is reached. He explained procedures whereby the Executive would negotiate with bargaining representatives and submit to the Council, as part of the budget, what is needed to implement the contract. The contract is not binding on the Council; however, the Council would appropriate funds and enact legilsation to implement the contract or it could declare its intent and refer the contract back to the Executive, with its reasons, and ask that portions of the contract be renegotiated for further consideration of the Council.

Councilwoman Gelman commented that the proposed collective bargaining agreement is different from other Executive programs funded by the Council because it is a contract and the Executive must spend the funds as provided in the contract.

Mr. Rovner stated that on page 23 of the subject bill, line 15, it is provided that any agreement shall provide either for automatic reduction or elimination of such conditional wage and/or benefit adjustments if the Council fails to take action, funds are not appropriated, or a lesser amount is appropriated. He stated that any collective bargaining agreement would not be final until the Council takes action.

In response to Councilwoman Gelman's inquiry, Mr. Hillman stated that the collective bargaining agreement would be made public after it is signed by the Executive and ratified by the FOP, which would be before it goes to the Council as part of the Executive's budget submission.

President Potter reviewed page 23 of the subject bill and said he believes it meets the Council's intent in that the contract is not final until action is taken by the Council to fund the contract. Lines 15 through 19 represent a contingency clause in case the Council does not take action that would eliminate conditional wage and/or benefit adjustments and that the FOP could not sue for implementation of a contract which the Council did not write.

Mr. Scull requested clarification of "other terms and conditions," on page 7, line 15. Mr. Hillman referred to pages 18 and 19 of the bill wherein the issues that <u>will be</u> subjects of collective bargaining are listed and indicated that those listed on page 19 <u>may be</u> subjects of bargaining. He noted that the first line on page 19 is in error and should be amended to insert, <u>may be</u> for [shall not] after "subjects." In addition, he said that on line 24 of page 20, paragraph (1), [Notwithstanding any other provision of this law,] should be deleted. This will allow those issues listed on page 19 to be collectively bargained for if all parties agree.

Mr. Driesen referred to paragraph (c), Employer's Rights, beginning at line 16 on page 19 of the subject bill, and said there should be full arbitration rights on these issues. He referred to similar legislation in other states that does not provide for consideration of items that cannot be arbitrated. He believes uniforms, vehicles and equipment should be a part of arbitration, as they are in other states.

During a discussion regarding police officer assignments, hours and supervision, and police officer equipment, Mr. Hillman pointed out that the County must be free to direct, supervise and discipline or discharge its employees according to applicable law in order to carry out its responsibility for the health and safety of County citizens. The County has delegated authority to the Chief of Police to make these decisions. Mr. Hillman noted that employee promotions are handled in accordance with the County's Personnel Regulations which must be approved by the Council. In order to make any changes in the personnel regulations, the Council would have to enact legislation. In the event personnel changes are proposed under the bargaining agreement, the County Executive would have to prepare legislation in accordance with the contract to be submitted to the Council for approval.

Councilwoman Crenca expressed concern regarding the rights of other employees whose salaries are funded by the Council, and who will probably seek collective bargaining, and her responsibility to be sure that an across-the-board comparison is made of wages and benefits in the light of fair play.

Mr. Driesen stated that there was a Charter amendment mandating collective bargaining for police officers; therefore, it is the obligation of the Council to pass a workable collective bargaining law. He noted that in many other jurisdictions there are separate collective bargaining agreements covering police and other uniformed services. He believes it is appropriate to focus on how bargaining is going to work efficiently for police officers.

Councilwoman Crenca said that the term "workable" causes her concern. She is concerned as to whether the County has enough experience in this field to know what is likely to work. She feels sure that all Councilmembers are interested in providing a "workable" agreement and suggested that the Council may need better guidelines to make decisions.

Councilman Fosler referred to page 7 of the subject bill, line 15, and expressed concern regarding the phrase "and other terms and conditions of employment"; this is very complicated and could undermine the whole process. He asked whether there is any experience with respect to the inclusion of items that will not be subject to bargaining in the agreement. Mr. Hillman responded that he

believes experience has shown it is not practical to have an arbitrator make decisions regarding assignments for police officers. This issue is listed in the agreement under discussion as a permissive subject. The agreement is proposing that police officers may be able to discuss their problems regarding assignments and hours with possible positive results for everyone. Under the Executive's proposal, the Executive could refuse bargaining on this issue and his decision could not be appealed. Mr. Hillman said there will undoubtedly be some question about whether a subject is mandatory or permissible for bargaining. This issue is covered on page 21, paragraph (2), indicating that a petition from either party shall be submitted to the permanent umpire who shall resolve the dispute as soon as possible. The decision of the umpire shall be binding on all parties.

In response to Councilman Fosler's inquiry regarding which issues the FOP believes should be negotiated, Mr. Driesen said he feels it is important that the Executve be able to bargain about any issue. He feels strongly also that all of the issues listed for permissible arbitration are invitations to litigation, as has been proven elsewhere in the country. He commented that he gave Councilman Gudis information regarding ten states where there are no restrictions in collective bargaining contracts. He believes that if all parties are willing to sit down and negotiate, usually there is mutual agreement. If not, the issue should go to arbitration. He believes it is a serious mistake to restrict the issues that can be negotiated by the Executive.

Mr. Rovner said that the Executive's proposal is an economic approach is some respects. The Executive has taken this approach because he believes that there are certain matters with regard to police that should not be decided by a neutral person.

During a discussion of police officers' personal patrol vehicles (PPVs) which officers are allowed to take home, and are listed as an issue for collective bargaining, Councilwoman Gelman said she does not understand why PPVs were removed from police equipment and listed as a separate negotiable item. These cars were provided to police officers in order to create more presence in neighborhoods and act as a deterrent to crime. She said PPVs should not be considered in the same category as vacations and should be considered as part of a police officer's equipment. She believes that the County's PPV program has been of great benefit.

Mr. Rovner pointed out that, if the County Executive decided to change the PPV policy, under the proposed legislation he would negotiate on this item.

Mr. Driesen expressed the opinion that PPVs apply, technically, as affecting working conditions and should be a bargaining issue.

Referring to discussions regarding PPVs over the last several years, President Potter stated that it is both a public and an employee benefit and he does not feel it should be negotiable.

Councilman Gudis pointed out that, although PPV's are shown in the proposed legislation in the same group as fringe benefits, they are not a fringe benefit. The County sees PPV's as a tool that will help the Police be more effective.

President Potter directed the Council's attention to page 7 of the subject bill, Sec. 33-75, Declaration of Policy. After discussion, the Council made no change in the amended language proposed by the County Executive.

The Council reviewed Sec. 33-72, Definitions, on pages 8 and 9 of the proposed bill. Mr. Hillman acknowledged amendments proposed by Mr. Frankel and said he believes that another worksession will be required in view of the fact that the issue of which items should be negotiable, and which should not, needs more study.

With respect to the amendment proposed by Mr. Frankel, on page 8 of the subject bill, after line 18, that the definition of a certified representative be included, Mr. Hillman said he has no objection to the amendment although it is explained elsewhere in the subject bill.

Mr. Frankel recommended an amendment on page 8, line 26, to include the definition of "unit," meaning all employees, for clarification purposes.

Without objection, the Council agreed that the Definition Section be amended to include the definition of "certified representative" and "unit", as set forth above.

Without objection, the Council deferred discussion of Mr. Frankel's amendments for pages 9 and 10, inasmuch as they are related to the issue regarding the scope of bargaining issues, which will be discussed at a later time.

The Council discussed with Mr. Frankel his amendment to add on page 11, line 29, after "affiliation," other than political. Mr. Frankel said he is concerned that there may be some speculation if the umpire is of the

same party as the Council. Mr. Hillman pointed out that the umpire would be appointed by the Executive and confirmed by the Council. Councilwoman Gelman commented that she does not feel the umpire's political affiliation would be relevant, unless the person is particularly active in politics.

Without objection, the Council amended proposed Bill No. 71-81 on page 11, line 29, to insert other than political after "affiliation."

Mr. Frankel proposed an amendment on page 12 of the subject bill and recommended that lines 16 and 17 be deleted entirely because the language implies the employer is giving the certified representative the exclusive right to represent an employee in a grievance. There may be a situation when an employee would prefer private counsel.

Mr. Hillman objected strongly to the proposed deletion and said he does not believe a person outside the contractual agreement should be allowed to handle grievances. He noted that the subject legislation pertains to grievances under the collective bargaining agreement only.

Mr. Driesen agreed with Mr. Hillman that the process for handling grievances under the contract agreement must be exclusive unless it is an issue outside the scope of the agreement. Allowing a private counsel to handle contract grievances could weaken the process.

The Council took no action to approve the amendment to delete lines 16 and 17 on page 12 of the subject bill.

Mr. Frankel suggested that the word "employees" be deleted on line 15 and that the word "unit" be inserted therefor.

Without objection, the Council amended line 15 of page 12 to delete [employees] and insert therefor, unit.

The Council considered an amendment to delete "A certified representative" on page 12, line 18, of the subject bill and to insert therefor, "Where certified, an employee organization...." Mr. Frankel said that this technical clarification is needed in paragraph (c) to take into consideration that there may not be a certified representative, or, that an employee may decide to have no representative.

The Council took no action to approve the amendment proposed for line 18 on page 12 of the subject bill, as outlined above.

Without objection, the Council amended the subject bill on page 12, line 20, to delete [unit] after "all," to eliminate a redundancy.

Without objection, the Council amended page 13 of the subject bill, to delete lines 6, 7, and 8, (paragraph (a), entirely and to insert therefor, The certification or decertification of an employee organization as the unit's representative for purposes of collective bargaining shall be initiated in accordance with the following procedures:," for purposes of clarification.

Without objection, the Council amended page 15 of the subject bill on line 10, to delete [may] after "unit," and insert therefor, shall for technical clarification.

The Council took no action to amend lines 2 and 10 on page 14 of the subject bill to delete the phrase, "the majority of the," as recommended by Mr. Frankel.

Mr. Frankel recommended a technical amendment to line 15, on page 14, to delete [Therefore] and to insert therefor, "Except as provided for below," to clarify the text of the bill with respect to petitions and to link paragraphs (4) and (5) together.

Mr. Hillman recommended that line 15 on page 14 not be amended, and explained the reasons for the dates shown in the proposed bill, in relation to elections and the periods when a petition may be barred.

The Council took no action to amend line 15 on page 14 of the subject legislation.

As recommended by Mr. Frankel, the Council agreed that lines 19 through 29, paragraph (c), on page 14 of the subject bill, are not clear and deferred further discussion. Mr. Frankel will try to develop clearer language and report back to the Council at a later time.

Without objection, the Council amended page 15 on line 13 to delete [of] after "election," and to insert therefor, by, for clarification.

After discussion, the Council did not approve the recommended deletion of [eligible] after "all," on line 13 of page 15.

Without objection, the Council amended page 16 on line 15, to insert after "the," challenge, for clarification, as recommended by Mr. Frankel.

The Council considered an amendment to line 2 of page 17, with respect to run-off elections, to insert after "conducted," in the same manner as the original election, for technical clarification.

Mr. Hillman opposed the amendment suggested on line 2 of page 17 of the subject legislation, providing that the umpire has full discretion regarding election procedures.

The Council took no action to amend line 2 of page 17 of the proposed bill.

Councilman Fosler suggested that the Executive staff meet with Mr. Frankel and FOP representatives to prepare amendments of a technical nature, and that the Council discuss any amendments of a substantive nature at the next meeting.

The Council agreed with Mr. Fosler's recommendation and so instructed the staff.

The Council scheduled another worksession on Legislative Bill No. 71-81, Collective Bargaining/Police Officers, for Monday, March 8, 1982, at 1:00 P.M.

The meeting adjourned at 6:00 P.M.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

Statement of George B. Driesen on Behalf of the Fraternal Order of Police, Montgomery County Lodge 35 Before the Montgomery County Council, January 14, 1982

The voters' adoption of Section 510 of the Montgomery County Charter at the last election brings Montgomery County into line with most other forward looking governments that employ police officers in the United States by providing that terms and conditions of those officers' employment may be fixed through collective bargaining, rather than by administrative fiat. Like the law in most of those jurisdictions, the Charter now prohibits strikes or work stoppages by police officers but provides that unresolved disputes over the content of a collective bargaining agreement shall be settled by binding arbitration. That too, as I shall explain more fully later on, brings this County into line with most jurisdictions that have legislated about the matter around the country.

The bill before you presents, in our view, a good faith effort by the County Executive to propose an ordinance that, in many respects, would comply with the voters' mandate. The police of this County appreciate the opportunity which the County Executive afforded them to be heard with respect to the provisions that are included in that bill. We agree with many of them. But it is our position that the proposed ordinance falls short of compliance with the mandate of the voters and, if enacted without the changes we propose, could prove unworkable and generate extreme frustration instead of assuring the harmonious relationship that a well crafted public sector bargaining law is designed to secure.

As I said at the outset, the voters mandated "collective bargaining with binding arbitration." The ordinance before you does not provide for binding arbitration. Instead, it provides that in the event the County Council fails to appropriate funds or enact legislation required to implement an agreement, there will be a fact finding proceeding with recommendations for resolution of the still unresolved dispute. That is not binding arbitration. It is also not in accordance with the law elsewhere.

Many jurisdictions have now adopted laws providing for collective bargaining for public employees generally. Some of these statutes permit strikes as the final arbiter of collective bargaining impasses; others mandate arbitration as the final step. Other statutes prohibit strikes, do not require arbitration and leave the ultimate decision on contract law terms to the legislature. But in most of those jurisdictions, special statutes or provisions of generally applicable public sector bargaining laws do require binding arbitration of bargaining impasses involving the uniformed services - of course, including police. Among the jurisdictions which do not provide mandatory arbitration for other represented employees but do provide such arbitration for police, are Massachussetts, New York, Pennsylvania, New Jersey, Oregon, Washington, Wisconsin, Wyoming, Minnesota (assuming as we do that police are essential employees), and Alaska. We urge the County Council to follow that pattern -- as the voters have decreed.

There is nothing new in our proposal for mandatory arbitration to make sure that an agreement is always reached between the County

and the certified representative of the police. Students of collective bargaining are familiar with the practice of mandating arbitration as a substitute for the strike in labor relations statutes governing uniformed employees. It is widely recognized that there must be a fair and equitable method of resolving once and for all disagreements over the contents of a collective bargaining agreement when one of the bargaining parties represents the uniformed services. Otherwise, uniformed employees may strike, even though a strike is unlawful, because they have no other means of obtaining a settlement that is -- and is perceived to be -- fair. That, indeed, is the lesson of the PATCO tragedy, as the New York Times pointed out in a thoughtful piece shortly after PATCO employees walked out. And it is the explanation for the eleven year history of essentially strike-free labor relations in the postal service. That is the reason why in so many jurisdictions statutes authorizing police to bargain and providing for mandatory arbitration antedate laws authorizing collective bargaining for other public employees.

Let me not be misunderstood. The FOP is opposed to strikes by police officers. The Fraternal Order of Police has expressly forbidden strikes by its locals and that rule binds Lodge 35. But experience shows, that though very rare, such strikes have occurred despite the efforts of union leaders. And there is no assurance that the FOP will perpetually be the representative of County police officers. It makes good sense, therefore, to provide for mandatory arbitration in the event the parties are unable to agree upon a collective agreement. And make no mistake about it, the Council is a party to the collective bargaining process since it must decide whether to fund agreements reached through bargaining.

We have provided as an exhibit to this statement suggested language that would implement our insistence that the ordinance provide for binding arbitration. We believe that without that provision, or one like it, the proposed ordinance would not comply with the mandate of the voters. They have ordained that there be collective bargaining for police, that strikes be prohibited, and that "binding arbitration" be provided as a substitute for the strike as the final mechanism for resolving disputes over contract terms. The proposed ordinance ignores that requirement.

The next serious deficiency in the bill before you is the very narrow range of subjects that may be bargained about. What could be more frustrating to represented employees than a law which promised them collective bargaining on the one hand but then so narrowly restricts the scope of what may be negotiated that keeps the word of promise to the ear and breaks it to the hope. That is what this ordinance does.

By its terms, it prohibits bargaining about some of the very matters that led to the police officers' insistence that there be collective bargaining with the County. For example, schedules are not bargainable. The Department's insistence upon a five day instead of a four day week has been a serious bone of contention between the Police Department and police officers in the very recent past. It still is. The police do not insist that they have their own way; but a statute that does not even authorize them to bargain about a subject as important as scheduling carries with it the seeds of difficulty for the future. Similarly, the statute would prohibit bargaining about transfers. This, too, is a matter of very great

importance to the police. Where one works is obviously a term and condition of employment and the procedures that will be followed and the matters that will be considered when a transfer becomes necessary are matters that traditionally labor organizations negotiate about with employers. Under the proposed ordinance, such negotiations are not required. That borders on being fatuous.

The narrow scope of bargaining in this ordinance reflects an extended list of "management rights" which the employer need not bargain about. Statutes with such provisions in them are a frequent source of irritation. Often, the parties are reduced to bargaining about what they will bargain about and much litigation is provoked where, as here, the statute gives with one hand the right to bargain and then takes it away with the other by a broad, amorphous, series of rights given to management. That is the case here. For example, one of the matters that is not bargainable is "technology". No one knows what that term means. Does it mean, for example, that the police have no right to bargain with their employer about matters which vitally affect their safety, such as the weapons that they may use or the protections built into their patrol vehicles? Similarly, what is more important than the procedures and the factors that will be considered when an employee seeks promotion? Nevertheless, under this ordinance, those matters are not fit subjects for the bargaining table. Again, the restrictive approach taken in this statute is likely to produce frustration and litigation. And so is the kind of language that gives management the right to "maintain and improve the efficiency of operation." If management asserts that a particular proposal

would reduce the "efficiency of operations" is the proposal not bargainable and shall the parties argue about that rather than seek to achieve a compromise or suitable arrangement which preserves the interests of both sides?

No one denies the legitimacy of the objectives which are listed in the enumerated rights of management. But the purpose of collective bargaining is to provide a means of exchanging ideas that will accomodate management's objectives and employees' needs. That is what collective bargaining is all about. This statute virtually makes that exchange impossible because of the very narrow scope of bargaining that is left after all the management rights and other prohibitions in the ordinance are taken into consideration.

For that reason, we have provided an Exhibit II to this statement. It contains a revised definition of collective bargaining and what is to be a fit subject for it. That definition, in force in many states, is taken literally from the New York State statute which governs bargaining between municipalities there and police officers, as well as other employees. There is no reason why Montgomery County should adopt a more niggardly approach to the collective bargaining process or to its police officers than other jurisdictions. We urge the Council to substitute the language we have proposed for the narrow scope of bargaining provided in the statute.

The remaining concerns we have are narrow in scope but very important to us. Among those are a series of prohibited practices

we think do not belong in a labor relations ordinance. They go to things like sabotage, violent action to prevent people from entering a place of employment, taking possession of property of the employer and the like. All of these actions seem to us likely to be criminal violations. Yet they are made subject to the procedures of the ordinance, procedures that are totally unsuited to the adjudication of what obviously are crimes. Furthermore, we have never seen a list of such law violations in a labor relations statute. Since the ordinance is hardly adventurous when it comes to affording rights to employees, we see no excuse whatsoever for the laundry list of horribles that is contained in subsections 5 through 8 of sub-paragraph B of the prohibited practice sections of the ordinance. They should be deleted. No one knows what they mean and they obviously have no place in a labor relations statute.

The ordinance, which we have indicated is hardly venturesome in affording rights to police, went further in a prior draft than any other law we have seen by attempting to regulate the contract ratification procedures that the certified organization must follow. We regarded this as an improper intrusion in the internal affairs of the FOP or any successor certified representative. Every labor organization has a constitution and by-laws which govern these matters. Under State law, they are subject to the control of the courts. We saw no reason why they should be the subject of litigation between the County Executive and a labor organization. Indeed, given the informality of unfair labor practice proceedings and the ease of access that any person may have to them, we were concerned that the FOP's enemies could have used this procedure as a way of preventing a contract from becoming final. We are pleased that the draft before you no longer contains the offending provision and now provides only that there be ratification. The FOP's internal rules require membership ratification, so that should ordinarily pose no problem.

Exhibit III to this statement contains a suggested change in language with respect to decertification proceedings which we understand is entirely in accord with what the County Executive sought to accomplish but which we think requires a technical change in the ordinance as proposed.

Exhibit III also contains a proposed deletion of one of the provisions of the ordinance dealing with strikes and lockouts. It prohibits the County Executive from compensating any employee for a period when he is directly or indirectly engaged in a strike.

As we have stated, we oppose strikes and we ourselves submitted the Charter Amendment outlawing them. We believe that police strikes will not occur in this County. Of course, we have no objection to a County Executive disciplining an employee who strikes pursuant to existing law. And we agree that employees who break the law by striking should ordinarily not be compensated for periods when they were on strike.

But a strike by police officers can readily create a serious emergency. We think it is unwise and imprudent to tie the hands of a future County Executive by absolutely prohibiting him from taking steps he deems essential. There may be circumstances that we cannot now foresee when a County Executive may conclude that some police who were "indirectly" (whatever that means) engaged in a strike must out of necessity or in fairness should receive some

compensation. For that decision the County Executive would be answerable to the voters, as he should be. But he is equally answerable if he fails adequately to deal with an emergency of such gravity. For this Council to decide in advance what a future County Executive should do when faced with circumstances it cannot now foresee seems to us the height of folly.

Again, we do not wish to be misunderstood. We support the view that police strikes should be illegal. And we have no problem with vigorous enforcement of that prohibition in the highly unlikely event it is violated. But the manner and means that a responsible County official chooses to discharge his duty under the law and to the citizens must, in our view, be left to him. The provision should be deleted.

To summarize our position, we believe that the bill before you does not comply with the voters' mandate. It does not provide for binding arbitration. Its narrow scope of bargaining makes a mockery of the process of collective bargaining. In some respects, we believe that the ordinance goes too far -- for example, in enumerating a series of criminal acts which are to be subject to the prohibited practices provisions of the ordinance, provisions which I might add are unprecedented in my experience.

Despite these objections, we think that the bill represents a salutary step forward. With the changes we have proposed, we think the ordinance will provide a useful mechanism for resolving problems

and establishing wages and working conditions that are fair both to the police and the citizens they serve. With the changes we have proposed, adoption of the ordaince, we are confident, will lead to an era of mutual harmony between the police and the County. So amended, the bill should be enacted.

Thank you.

EXHIBIT I

Section 33-81 COUNCIL ACTION AND ARBITRATION

A. On or before March 31, 1981, the County Council shall by a majority of four votes indicate and notify the parties of its intent to appropriate funds or otherwise enact legislation to implement an agreement referred to in sub-section VII-H hereof, or its intent not to do so. The Council's failure to act with respect to an agreement as aforesaid shall constitute a commitment to appropriate the funds and enact legislation required to implement the agreement.

B. If the Council indicates its intent not to appropriate funds or not to enact legislation to implement an agreement in whole or in part, it shall forthwith state its reasons and designate an arbitrator to serve on the arbitration panel provided for below. The certified representative shall also select an arbitrator to serve on that panel.

C. The two arbitrators appointed as provided in sub-section B hereof shall immediately appoint a third impartial member who shall serve as chairman of the arbitration panel. If the first two arbitrators are unable to agree upon a third arbitrator, either arbitrator may request

the Federal Mediation and Conciliation Service, or, in the event its services are not available, the American Arbitration Association, to provide a list of five persons willing and able to arbitrate the dispute. Upon receipt of the list, the two arbitrators designated by the parties shall select an arbitrator by alternately striking names from the list. The arbitrator so selected shall serve as chairman of the panel, or, if the parties agree, as sole arbitrator.

D. The single arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within 10 days after the date of appointment of its chairman, at a place within Montgomery County, where feasible. The chairman shall give at least seven days notice in writing to each of the other arbitrators. The chairman or single arbitrator shall give like notice to the County Council and to the employee organization of the time and place of such hearing.
The single arbitrator or chairman shall preside over the hearing and shall take testimony. The proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant by the arbitration panel or single arbitrator may be received into evidence. The arbitrators shall have the power to

administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative to or pertinent to the issues presented to them for determination. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the arbitration panel or single arbitrator may, or the County attorney, if requested, shall invoke the aid of the District Court which shall issue an appropriate order.

A record of the proceedings shall be kept, and the chairman or single arbitrator shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not be necessary for an award by the panel or single arbitrator. The hearing may be continued at the discretion of the panel or single arbitrator and shall be concluded not later than April 2oth. At the conclusion of the hearing, each party may submit a written statement containing its last and best offer for each of the issues in dispute and of its contentions to the panel or single arbitrator, who shall take said statements under advisement. Within 10 days after the conclusion of the hearing, a majority of the panel, or the single arbitrator, shall give

written notice of his or its award resolving all issues in dispute. The panel or single arbitrator may and, upon request of either party, shall, provide a written statement of reasons for his or its award. In making an award, the panel or single arbitrator shall afford weight to the matters set out in Article VIII, sub-section 5 hereof, to stipulations of the parties, and to such other factors as are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in the public service and private employment. The award shall be final and binding upon the Council, the Employer, and the employee organization and, if supported by evidence, shall be enforcible against either party in accordance with law. The fees of the impartial arbitrator and all costs except the fees and expenses of the arbitrator designated by the employee organization shall be borne by the County.

[Re-number succeeding Sections.]

EXHIBIT II

Section 33-80 COLLECTIVE BARGAINING

(a) Upon certification of an employee organization, as provided in Section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively.

(b) For the purpose of this article, to bargain collectively is the performance of the mutual obligation of the employer and a certified employee organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

[Re-designate sub-sections "(e)" and "(f)" as sub-sections "(c)" and "(d)", and omit present sub-sections (b)-(g) inclusive. Re-designate "H." as sub-section "(e)" and include all down to the sentence beginning "On or before April 25," etc., except for the word "ratified" on line 23. For substitution of the omitted portion of sub-section (h), see our Exhibit I].

EXHIBIT III

Amend Section 33-79(b) by substituting for the first paragraph thereof the following:

B. If the Permanent Umpire determines that a petition is properly supported and timely filed, and in the case of a decertification petition filed pursuant to sub-section A. 3. hereof, that the employer has reasonable cause to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, the Permanent Umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year, to determine if and by whom the employees wish to be represented, as follows:

Amend Section 33-84 by deleting sub-section (b) thereof.

Bill No.: 19-86
Concerning: County Employee Collective Bargaining
Draft No. & Date: 4 - 6/24/86
Introduced: March 25, 1986
Enacted: June 24, 1986
Executive: June 30, 1986
Effective: September 29, 1986
Sunset Date: None
Ch. 70, Laws of Mont. Co., FY 86

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Personnel Committee

AN ACT TO:

(1) establish a framework for public employer-employee labor relations;

(2) provide the method for designating an employee organization as the exclusive representative of public employees in the appropriate unit;

(3) provide procedures for collective bargaining of wages, hours, and other terms and conditions of employment;

(4) provide for the appointment of a labor relations administrator;

(5) define the rights of employees, employee organizations, and the public employer;

(6) prohibit certain conduct;

(7) provide procedures for resolving differences between the public employer and employees;

(8) generally assure uninterrupted operation of government services; and

(9) generally provide for the establishment of County employee collective bargaining.

By amending
Chapter 33, Personnel
Section 33-11(b) and Article IV of the Montgomery County Code

By adding
Chapter 33, Personnel
~~Sections 33-63A, and 33-74(d),~~ and Article VII of the
Montgomery County Code

EXPLANATION:
- **Boldface** indicates matter that is a heading or a defined term.
- Underlining indicates matter added to existing law.
- [[Double Brackets]] indicate matter repealed from existing law.
- CAPITALS indicate matter quoted from existing law which is added to the bill by amendment.
- UNDERLINED CAPITALS indicate matter added to existing law by amendment to the bill.
- ~~Strikes~~ indicate matter deleted from the bill by amendment.
- * * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 33-11(b) is amended to read as follows:

33-11. Classification; salary and wage plans.

* * *

(b) **Uniform salary plan.** [[There is hereby established for all classes of positions in the merit system a uniform salary plan entitled the "general salary schedule" which shall contain grades, salary rates and ranges for each grade. All classes of positions shall be assigned an appropriate grade under the general salary schedule by the chief administrative officer. All positions involving comparable duties, experience, responsibilities and authority shall be paid comparable salaries in accordance with the relative value of the services performed. In establishing salary rates, consideration shall be given to experience, prevailing salary rates for comparable services in both the public and private sectors, living costs, and fringe and other benefits received by the employee under the merit system. The chief administrative officer shall, subject to the approval of the county council, promulgate and from time to time amend the general salary schedule, compensation policies for overtime, pay differential and other appropriate salary and wage benefits.]]

(1) Subject to approval by the County Council, the Chief Administrative Officer must issue and periodically amend a uniform salary plan known as the "general salary schedule" for all classes of positions in the merit system.

(2) The general salary schedule must contain grades, salary rates, and salary ranges for each grade.

(3) The Chief Administrative Officer must assign an appropriate grade under the general salary schedule to all classes of positions.

(4) All positions involving comparable duties, experience, responsibilities, and authority must be paid comparable salaries in accordance with the relative value of the services performed.

(5) In setting salary rates, the Chief Administrative Officer must consider experience, prevailing salary rates for comparable services in both the public and private sectors, living costs, and fringe and other benefits received by the employee under the merit system.

(6) Subject to approval by the County Council, the Chief Administrative Officer must also issue and periodically amend compensation policies for overtime, pay differentials, and other appropriate salary and wage benefits.

(7) Any plan, policy, or schedule issued by the Chief Administrative Officer under this subsection is subject to the limitations in Articles V and VII of this chapter regarding County police department and government employees who are represented by a certified employee organization.

Sec. 2. Article IV of Chapter 33 is amended to read as follows:

ARTICLE IV. EMPLOYER-EMPLOYEE RELATIONS

33-62. STATEMENT OF LEGISLATIVE INTENT.

THE/COUNTY/COUNCIL/HEREBY/FINDS/THAT/THE/TREND/IN/LABOR/RELATIONS BETWEEN/GOVERNMENT/AND/ITS/EMPLOYEES/IS/BECOMING/SOMEWHAT/ALIGNED/WITH/THE PRACTICES/OF/THE/PRIVATE/SECTOR/OF/REPRESENTATION/OF/EMPLOYEE/GROUPS/BY DESIGNATED/ELECTED/EMPLOYEE/ORGANIZATIONS;//THE/COUNCIL/BELIEVES/THAT GOVERNMENT/SHOULD/TAKE/THE/INITIATIVE/IN/PROVIDING/A/VEHICLE/WHEREBY GOVERNMENT/EMPLOYEE/REPRESENTATION/CAN/EMERGE/AND/EVOLVE/IN/A/FASHION/

CONSISTENT WITH BOTH THE NEEDS OF THE EMPLOYEE AND THOSE OF GOVERNMENT. THE COUNCIL FURTHER BELIEVES THAT THIS CAN BEST BE ACCOMPLISHED BY ENACTING LOCAL LEGISLATION WHICH PROVIDES FOR THE VOLUNTARY REPRESENTATION OF GOVERNMENT EMPLOYEES BY THEIR DULY DESIGNATED AND ELECTED EMPLOYEE ORGANIZATIONS. THE COUNCIL ALSO BELIEVES THAT THE EFFICIENT ADMINISTRATION OF THE COUNTY GOVERNMENT IS ENHANCED BY PROVIDING EMPLOYEES AN OPPORTUNITY TO PARTICIPATE IN THE FORMULATION AND IMPLEMENTATION OF POLICIES AND PRACTICES AFFECTING THE CONDITIONS OF THEIR EMPLOYMENT. BECAUSE THE COUNCIL BELIEVES IT IS DESIRABLE TO MINIMIZE THE PROLIFERATION OF EMPLOYEE UNITS, IT HAS LIMITED THE NUMBER OF SUCH UNITS TO SEVEN (7). HOWEVER, THE COUNCIL WOULD CONSIDER CHANGING THAT LIMITATION AT A FUTURE DATE UPON THE RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER OR AN AFFECTED GROUP OF EMPLOYEES. THE COUNCIL FURTHER STATES THAT THE ELIGIBILITY AS TO MEMBERSHIP IN AN EMPLOYEE UNIT FOR PURPOSES OF THIS MEET AND CONFER TYPE OF EMPLOYEE REPRESENTATION WOULD NOT NECESSARILY BE EXTENDED IN THE SAME MANNER IF AUTHORITY FOR COLLECTIVE BARGAINING WERE GRANTED. MEMBERSHIP OR NONMEMBERSHIP IN AN EMPLOYEE ORGANIZATION SHALL IN NO WAY LIMIT THE ABILITY OF AN EMPLOYEE TO OBTAIN GOVERNMENT INFORMATION TO WHICH HE/SHE WOULD NORMALLY HAVE ACCESS. NOTHING IN THIS ARTICLE SHALL RESTRICT THE ABILITY OF ANY EMPLOYEE, WHETHER MEMBER OR NONMEMBER OF AN EMPLOYEE ORGANIZATION, TO DISCUSS MATTERS CONCERNING EMPLOYEES OR EMPLOYEE GROUPS TO THE EXTENT THAT SUCH DISCUSSION DOES NOT CONFLICT WITH THE DUTIES AND RESPONSIBILITIES OF THE EMPLOYEE.

IN ENACTING ARTICLE VII OF THIS CHAPTER, WHICH PROVIDES THE OPPORTUNITY AND ESTABLISHES PROCEDURES FOR COLLECTIVE BARGAINING FOR MOST COUNTY MERIT SYSTEM EMPLOYEES, THE COUNTY COUNCIL CONCLUDED:

(1) THAT IT WOULD BE INAPPROPRIATE TO INCLUDE STATE-COUNTY MERIT SYSTEM

EMPLOYEES SUCH AS THOSE IN THE DEPARTMENT OF SOCIAL SERVICES AMONG THE EMPLOYEES ENTITLED TO BE REPRESENTED FOR PURPOSES OF COLLECTIVE BARGAINING UNDER ARTICLE VII; AND

(2) THAT STATE-COUNTY MERIT SYSTEM EMPLOYEES SHOULD CONTINUE TO BE ENTITLED TO MEET AND CONFER REPRESENTATION TO THE EXTENT THEIR SALARIES AND WORKING CONDITIONS ARE SUBJECT TO OR AFFECTED BY COUNTY POLICIES. THE COUNCIL HAS THEREFORE REVISED ARTICLE IV OF THIS CHAPTER TO ACHIEVE THIS INTENT.

33-63. DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING WORDS AND PHRASES ~~SHALL~~ HAVE THE MEANINGS ~~RESPECTIVELY ASCRIBED TO THEM BY THIS SECTION~~ INDICATED:

~~(a) CERTIFICATION. THE PROCEDURE WHEREBY EMPLOYEE ORGANIZATIONS ARE ELECTED AND RECOGNIZED TO REPRESENT EMPLOYEE UNITS.~~

(1) "CERTIFICATION". THE PROCEDURE BY WHICH AN EMPLOYEE ORGANIZATION IS SELECTED AND RECOGNIZED TO REPRESENT THE EMPLOYEE UNIT.

~~(b) DECERTIFICATION.~~

(2) "DECERTIFICATION". THE PROCEDURE BY WHICH THE CHIEF ADMINISTRATIVE OFFICER WITHDRAWS ~~COUNTY~~ COUNTY RECOGNITION OF ~~AN~~ THE EMPLOYEE ORGANIZATION WITH OR WITHOUT AN ELECTION BY THE EMPLOYEES OF ~~AN~~ THE ~~EMPLOYEE~~ UNIT.

~~(c) EMPLOYEE. ANY COUNTY MERIT SYSTEM EMPLOYEE WORKING ON A CONTINUOUS, FULL-TIME, CAREER OR PART-TIME, CAREER BASIS, ELIGIBLE TO BE INCLUDED IN A UNIT OF RECOGNITION EXCEPT FOR THE FOLLOWING:~~

~~(1) CONFIDENTIAL AIDES TO ELECTED OFFICIALS;~~

~~(2) ALL NON-MERIT SYSTEM EMPLOYEES;~~

~~(3) ALL HEADS OF PRINCIPAL DEPARTMENTS, OFFICES AND AGENCIES;~~

~~(4) DEPUTY OR ASSISTANT DEPARTMENT HEADS;~~

(5) EMPLOYEES PROVIDING DIRECT STAFF OR ADMINISTRATIVE SUPPORT TO THE DIRECTOR OF THE DEPARTMENT, OR DEPUTY OR ASSISTANT DIRECTORS WITHIN THE DIRECTOR'S IMMEDIATE OFFICE;

(6) EMPLOYEES WHO REPORT DIRECTLY TO OR WHOSE IMMEDIATE SUPERVISOR IS THE COUNTY EXECUTIVE, COUNTY COUNCIL, COUNTY COUNCIL MEMBERS OR THE CHIEF ADMINISTRATIVE OFFICER AND THE PRINCIPAL AIDES TO THE FOREGOING;

(7) EMPLOYEES OF THE OFFICE OF THE COUNTY ATTORNEY;

(8) EMPLOYEES OF THE OFFICE OF MANAGEMENT AND BUDGET;

(9) EMPLOYEES OF THE OFFICE OF EMPLOYEE RELATIONS;

(10) EMPLOYEES OF THE PERSONNEL OFFICE;

(11) EMPLOYEES OF THE MERIT SYSTEM PROTECTION BOARD;

(12) HEADS OF THE FOLLOWING CONSTITUENT OFFICES, DIVISIONS AND SECTIONS IN THE DEPARTMENT OF TRANSPORTATION EXISTING AT THE TIME OF ENACTMENT OF THIS BILL AND POSITIONS CARRYING A SIMILAR DEGREE OF PERSONNEL MANAGEMENT RESPONSIBILITIES IN OTHER DEPARTMENTS AND OFFICES AS DETERMINED BY THE CHIEF ADMINISTRATIVE OFFICER: DIRECTOR'S OFFICE; OFFICE OF RIGHT-OF-WAY ACQUISITION; OFFICE OF ADMINISTRATIVE SERVICES; OFFICE OF TRANSPORTATION PLANNING; DIVISION OF TRANSPORTATION ENGINEERING; SUBDIVISION DEVELOPMENT SECTION; DESIGN SECTION; CONSTRUCTION SECTION; DIVISION OF TRAFFIC ENGINEERING; TRAFFIC PLANNING AND SURVEY SECTION; TRAFFIC OPERATIONS SECTION; DIVISION OF OPERATIONS; TESS MINIBUS; HIGHWAY MAINTENANCE SECTION; EQUIPMENT SECTION AND DIVISION OF PARKING LOT DISTRICTS;

(13) AN EMPLOYEE OF THE POLICE DEPARTMENT, AS DEFINED IN SECTION 33-76 OF THIS CHAPTER, WHO IS REPRESENTED BY A CERTIFIED EMPLOYEE ORGANIZATION PURSUANT TO THE PROVISIONS OF ARTICLE V, TITLE 7 POLICE LABOR RELATIONS OF THIS CHAPTER.

(3) "EMPLOYEE". ANY STATE-COUNTY MERIT SYSTEM EMPLOYEE EXCEPT PERSONS

DESCRIBED IN SUBPARAGRAPHS 33-102(4)(A), (C), (D), (E), (M), (N), (R), AND (S) OF ARTICLE VII OF THIS CHAPTER.

~~(d) EMPLOYEE/ORGANIZATION.// ANY LAWFUL ORGANIZATION WHICH REPRESENTS EMPLOYEES IN THEIR EMPLOYMENT RELATIONS WITH THE COUNTY.// THE TERM 'EMPLOYEE ORGANIZATION' DOES NOT INCLUDE ANY ORGANIZATION WHICH:~~

~~(1) DISCRIMINATES WITH REGARD TO TERMS AND CONDITIONS OF MEMBERSHIP WITH REGARD TO RACE,// COLOR,// RELIGION,// CREED,// SEX,// AGE,// NATIONAL ORIGIN, ANCESTRY OR MARITAL STATUS;~~

~~(2) DOES NOT ADHERE TO DEMOCRATIC PROCEDURES AND PRACTICES WITH REGARD TO ELECTION OF OFFICERS,// INDIVIDUAL PARTICIPATION IN ORGANIZATIONAL AFFAIRS, EQUAL TREATMENT UNDER ITS BYLAWS,// INCLUDING DUES PROCESSING,// AND DISCIPLINARY PROCEDURES,// OR~~

~~(3) DOES NOT MAINTAIN FISCAL INTEGRITY IN THE CONDUCT OF THE AFFAIRS OF THE ORGANIZATION,// INCLUDING ACCOUNTING CONTROLS AND REGULAR FINANCIAL REPORTS TO MEMBERS;~~

(4) "EMPLOYEE ORGANIZATION". ANY ORGANIZATION THAT ADMITS EMPLOYEES TO MEMBERSHIP AND THAT HAS AS A PRIMARY PURPOSE THE REPRESENTATION OF EMPLOYEES IN COLLECTIVE BARGAINING OR MEET AND CONFER REPRESENTATION OR BOTH.

~~(e) EMPLOYEE UNIT.// GROUPINGS OF EMPLOYEES FOR PURPOSES OF REPRESENTATION IN COUNTY EMPLOYEE RELATIONS;~~

(5) "EMPLOYEE UNIT" OR "UNIT". ALL EMPLOYEES AS DEFINED IN SUBSECTION 33-63(3) OF THIS CHAPTER.

~~(f) POSITION PAPER;~~

(6) "POSITION PAPER". A NONBINDING WRITTEN MEMORANDUM REFLECTING ALL ITEMS DISCUSSED BY THE ~~COUNTY~~ COUNTY AND ~~AN~~ THE EMPLOYEE ORGANIZATION.

(7) "STATE-COUNTY MERIT SYSTEM EMPLOYEE". A STATE MERIT SYSTEM EMPLOYEE WHOSE SALARY IS SUPPLEMENTED BY THE COUNTY.

~~(g) UNIFORMED SERVICES: THOSE ACTIVITIES ENGAGED IN THE PROTECTION OF LIFE AND PROPERTY, LAW ENFORCEMENT OR CORRECTIONAL ACTIVITIES, AND WHOSE EMPLOYEES HAVE AS THEIR PRIMARY DUTIES AND RESPONSIBILITIES THE OPERATIONAL ACTIVITIES OF SUCH PUBLIC SAFETY ACTIVITIES.~~

33-64. EMPLOYEE RIGHTS.

* * *

(b) ~~EACH EMPLOYEE SHALL~~ THE EMPLOYEES HAVE THE RIGHT TO BE REPRESENTED BY AN EMPLOYEE ~~ORGANIZATIONS~~ ORGANIZATION, INCLUDING THE RIGHT TO MEET WITH REPRESENTATIVES OF THE ~~COUNTY~~ COUNTY CONCERNING CONDITIONS OF EMPLOYMENT AND THE RESOLUTION OF GRIEVANCES.

(c) NOTHING IN THIS ARTICLE SHALL PRECLUDE THE RIGHTS OF AN EMPLOYEE TO PURSUE AN INDIVIDUAL GRIEVANCE THROUGH ESTABLISHED ADMINISTRATIVE PROCEDURES OR THROUGH APPEAL TO THE PERSONNEL BOARD, IN THAT NOTHING IN THIS ARTICLE SHALL CIRCUMVENT OR SHALL BE DEEMED TO SUPERSEDE OR ANNUL THE PROVISIONS OF THE LAWS OF THE ~~STATE~~ STATE, THE ~~COUNTY CHARTER~~ COUNTY CHARTER, ~~AND~~ OR THE LAWS AND ORDINANCES OF THE ~~COUNTY~~ COUNTY, INCLUDING THE PERSONNEL REGULATIONS.

(d) ~~NO EMPLOYEE, WHO IS NOT A MEMBER OF AN EMPLOYEE ORGANIZATION SHALL EVER BE REQUIRED TO BECOME A MEMBER OF SUCH AN ORGANIZATION OR TO PAY MONEY TO SUCH AN ORGANIZATION, EXCEPT ON A PURELY VOLUNTARY BASIS.~~ AN EMPLOYEE WHO IS NOT A MEMBER OF AN EMPLOYEE ORGANIZATION MUST NEVER BE REQUIRED TO BECOME A MEMBER OF AN EMPLOYEE ORGANIZATION OR TO PAY MONEY TO AN EMPLOYEE ORGANIZATION EXCEPT ON A PURELY VOLUNTARY BASIS.

~~33-65.///DETERMINATION/OF/EMPLOYEE/UNITS.~~

~~(a) THE/CHIEF/ADMINISTRATIVE/OFFICER/SHALL/MAKE/THE/FINAL/DETERMINATION AS/TO/THE/COMPOSITION/OF/EMPLOYEE/UNITS.///IN/UNDISPUTED/CASES,//THE DETERMINATION/OF/APPROPRIATE/UNITS/SHALL/BE/MADE/BY/THE/CHIEF/ADMINISTRATIVE OFFICER/WITHIN/THIRTY/(30)/CALENDAR/DAYS/AFTER/RECEIPT/OF/A/REQUEST/FOR CERTIFICATION/UNDER/SECTION/33-66/OF/THIS/ARTICLE.~~

~~(b) EMPLOYEE/UNITS/MAY/BE/ESTABLISHED/ON/THE/BASIS/OF/GROUPINGS/OF EMPLOYEES/WHO/SHARE/A/CLEAR/AND/IDENTIFIABLE/COMMUNITY/OF/INTEREST.///SUCH FACTORS/AS/THOSE/EMPLOYEES/SHARING/COMMON/SKILLS,//WORKING/CONDITIONS, PHYSICAL/LOCATIONS,//ORGANIZATIONAL/STRUCTURES/AND/INTEGRATED/WORK/PROCESSES SHALL/BE/CONSIDERED.///A/UNIT/SHALL/NOT/BE/ESTABLISHED/SOLELY/ON/THE/BASIS/OF THE/EXTENT/TO/WHICH/EMPLOYEES/IN/A/PROPOSED/UNIT/HAVE/ORGANIZED.~~

~~(c) DETERMINATION/OF/UNITS/SHALL/BE/MADE/SO/AS/TO/INCLUDE/THE/LARGEST POSSIBLE/NUMBERS/OF/EMPLOYEES/TO/AVOID/PROLIFERATION/AND/FRAGMENTATION/OF REPRESENTATIVE/UNITS.///THE/PROVISIONS/OF/THIS/SECTION/SHALL/NOT/PRECLUDE/THE ESTABLISHMENT/OF/ONE/UNIT/TO/REPRESENT/ALL/ELIGIBLE/EMPLOYEES.///THE/NUMBER OF/UNITS/CERTIFIED/SHALL/NOT/BE/GREATER/THAN/SEVEN/(7).~~

~~(d) UNITS/FOR/EMPLOYEES/OF/THE/UNIFORMED/SERVICES/SHALL/BE/LIMITED/TO EMPLOYEES/IN/THE/RANKS/OF/CORPORAL/OR/EQUIVALENT/RANK/AND/BELOW.~~

~~(e) IN/CASES/WHERE/THE/MATTERS/OF/UNIT/DETERMINATION/ARE/QUESTIONED, THE/DECISION/OF/THE/CHIEF/ADMINISTRATIVE/OFFICER/SHALL/BE/FINAL/AFTER OPPORTUNITY/IS/PROVIDED/FOR/THOSE/DISPUTING/THE/DETERMINATION/TO/BE/HEARD/BY THE/CHIEF/ADMINISTRATION/OFFICER.~~

~~33-66.///PROCEDURES/FOR/CERTIFICATION/OF/EMPLOYEE/ORGANIZATIONS.~~

33-65. PROCEDURES FOR CERTIFICATION OF AN EMPLOYEE ORGANIZATION.

(a) ~~INITIALLY/OR/WHERE/THERE/IS/NO/OFFICIAL/REPRESENTATIVE/EMPLOYEE ORGANIZATION,//THE/CHIEF/ADMINISTRATIVE/OFFICER,~~ THE CHIEF ADMINISTRATIVE

OFFICER, UPON PETITION OF AN EMPLOYEE ORGANIZATION SHOWING WRITTEN EVIDENCE OF INTEREST BY AT LEAST ~~THIRTY/(30)~~ 30 PERCENT OF THE EMPLOYEES OF THE ~~EMPLOYEE~~ UNIT, SHALL ARRANGE FOR THE CONDUCTING OF A SECRET BALLOT ELECTION TO DETERMINE WHETHER THE EMPLOYEES DESIRE SUCH ORGANIZATION TO ACT AS THEIR REPRESENTATIVE. FOLLOWING SUCH PETITION, THE ~~CHIEF/ADMINISTRATIVE OFFICER~~ CHIEF ADMINISTRATIVE OFFICER SHALL GIVE AN APPROPRIATE NOTICE TO THE EMPLOYEES ~~INVOLVED~~.

(b) AN EMPLOYEE ORGANIZATION SEEKING TO REPRESENT ~~AN/EMPLOYEE~~ THE UNIT SHALL SUBMIT TO THE PERSONNEL OFFICE A ROSTER OF ITS OFFICERS AND REPRESENTATIVES, A COPY OF ITS CONSTITUTION AND BYLAWS, AND A SCHEDULE OF DUES FOR ITS MEMBERS.

(c) ELIGIBILITY TO VOTE IN ANY ELECTION FOR CHOICE OF AN OFFICIAL REPRESENTATIVE SHALL BE LIMITED TO PERSONS WHO ARE EMPLOYEES ~~WHO/ARE/FILLING COUNTY/POSITIONS~~ AS OF THE BEGINNING OF THE PAY PERIOD PRECEDING THE ELECTION DATE.

(d) ELECTIONS WILL BE CONDUCTED BY THE PERSONNEL OFFICE, WHICH MAY USE THE SERVICES OF THE ~~STATE/DIVISION/OF/LABOR/AND/INDUSTRY~~ STATE DIVISION OF LABOR AND INDUSTRY OR ANY OTHER THIRD PARTY HAVING SIMILAR QUALIFICATIONS.

(e) THE BALLOT SHALL CONTAIN THE NAME OF ANY ADDITIONAL EMPLOYEE ORGANIZATION SHOWING TIMELY WRITTEN EVIDENCE OF INTEREST BY AT LEAST ~~TEN/(10)~~ 10 PERCENT OF THE EMPLOYEES WITHIN THE ~~APPROPRIATE/EMPLOYEE~~ UNIT. IN EVERY INSTANCE, THE BALLOT SHALL CONTAIN A PROVISION FOR A MARKING OF "NO REPRESENTATION." WHERE MORE THAN ONE ~~(1)~~ EMPLOYEE ORGANIZATION IS ON THE BALLOT AND NO ONE ~~(1)~~ OF THE ORGANIZATIONS RECEIVES A MAJORITY VOTE OF THE EMPLOYEES VOTING, A RUNOFF ELECTION SHALL BE HELD. THE RUNOFF ELECTION SHALL CONTAIN THE ~~TWO/(2)~~ 2 CHOICES WHICH RECEIVED THE LARGEST AND SECOND LARGEST NUMBER OF VOTES IN THE ORIGINAL ELECTION.

(f) WHEN AN ORGANIZATION RECEIVES AT LEAST ~~FIFTY/(50)~~ 50 PERCENT OF VALID VOTES CAST IN THE ELECTION, THE ~~CHIEF/ADMINISTRATIVE/OFFICER~~ CHIEF ADMINISTRATIVE OFFICER SHALL CERTIFY IT AS THE OFFICIAL EMPLOYEE ORGANIZATION FOR THE ~~EMPLOYEE~~ UNIT. IF THE MAJORITY VOTE IS FOR "NO REPRESENTATION," THE CHIEF ADMINISTRATIVE OFFICER SHALL SO CERTIFY.

(g) IF, DURING THE 30 DAYS FOLLOWING THE EFFECTIVE DATE OF THIS REVISED ARTICLE, A PETITION IS FILED BY THE INCUMBENT MEET AND CONFER REPRESENTATIVE OF UNIT EMPLOYEES CERTIFIED UNDER THE PRIOR ARTICLE IV OF THIS CHAPTER, AND NO OTHER EMPLOYEE ORGANIZATION FILES A VALID PETITION, AND NO PETITION CALLING FOR AN ELECTION SIGNED BY 20 PERCENT OF UNIT EMPLOYEES HAS BEEN FILED WITH THE CHIEF ADMINISTRATIVE OFFICER, THE INCUMBENT CERTIFIED REPRESENTATIVE SHALL BE CERTIFIED WITHOUT AN ELECTION, PROVIDED IT PRODUCES EVIDENCE, ACCEPTABLE TO THE CHIEF ADMINISTRATIVE OFFICER AND DATED AFTER THE ENACTMENT OF THIS REVISED ARTICLE, THAT A MAJORITY OF THE EMPLOYEES IN THE UNIT DESIRE TO BE REPRESENTED BY THE INCUMBENT REPRESENTATIVE FOR THE PURPOSES OF MEET AND CONFER REPRESENTATION UNDER THE PROVISIONS OF THIS REVISED ARTICLE.

~~(g)~~ (h) THE ~~COUNTY~~ COUNTY SHALL RECOGNIZE AS THE OFFICIAL EMPLOYEE RELATIONS REPRESENTATIVE AN EMPLOYEE ORGANIZATION ~~WHICH~~ THAT HAS BEEN SELECTED IN ACCORDANCE WITH PROCEDURES OUTLINED IN THIS SECTION.

~~(h)~~ (i) RECOGNIZING AN EMPLOYEE ORGANIZATION DOES NOT PRECLUDE THE ~~COUNTY~~ COUNTY FROM DEALING WITH RELIGIOUS, SOCIAL, FRATERNAL, PROFESSIONAL, OR OTHER LAWFUL ASSOCIATIONS WITH RESPECT TO MATTERS OR POLICIES ~~WHICH~~ THAT INVOLVE INDIVIDUAL MEMBERS OF THE ASSOCIATIONS OR ARE OF PARTICULAR APPLICABILITY TO IT OR ITS MEMBERS.

~~(i)~~ (j) NO QUESTION CONCERNING CERTIFICATION MAY BE RAISED BY AN EMPLOYEE OR AN EMPLOYEE ORGANIZATION WITHIN ONE ~~(1)~~ YEAR OF THE DATE OF CERTIFICATION OF AN EMPLOYEE ORGANIZATION OR THE DATE THAT A MAJORITY OF THE

EMPLOYEES VOTING VOTED FOR NO REPRESENTATION.

~~(d)~~ (k) THE ~~COUNTY~~ COUNTY MAY, AFTER DISCUSSIONS WITH AN EMPLOYEE ORGANIZATION AND ON THE BASIS OF WRITTEN AUTHORIZATION FROM EACH EMPLOYEE, PROVIDE FOR DEDUCTION FROM THE PAY OF SUCH EMPLOYEE MONIES IN PAYMENT OF MEMBERSHIP DUES IN A DULY CERTIFIED EMPLOYEE ORGANIZATION. SUCH MONIES SHALL BE REMITTED TO THE EMPLOYEE ORGANIZATION.

~~33-67. PROCEDURE FOR DECERTIFICATION OF EMPLOYEE ORGANIZATIONS.~~

33-66. PROCEDURE FOR DECERTIFICATION OF AN EMPLOYEE ORGANIZATION.

(a) AN EMPLOYEE ORGANIZATION SHALL BE SUBJECT TO DECERTIFICATION WHEN ~~THIRTY (30)~~ 30 PERCENT OF THE EMPLOYEES IN THE ~~EMPLOYEE~~ UNIT PETITION FOR THE EMPLOYEE ORGANIZATION TO BE DECERTIFIED. THE PROCEDURES FOR DETERMINING WHETHER, IN FACT, AN EMPLOYEE ORGANIZATION SHALL BE DECERTIFIED SHALL BE THE SAME AS THOSE PRESCRIBED IN SECTION ~~33-66~~ 33-65 FOR THE CERTIFICATION OF AN EMPLOYEE ORGANIZATION, EXCEPT AS PROVIDED IN SUBSECTION (b) OF THIS SECTION.

(b) IF AN EMPLOYEE ORGANIZATION FAILS TO ADHERE TO ANY OF THE PROVISIONS OF SECTION ~~33-73~~ 33-72 DEALING WITH EMPLOYEE ORGANIZATION RESPONSIBILITIES, THEN:

(1) ITS CERTIFICATION MAY BE REVOKED BY THE ~~CHIEF ADMINISTRATIVE OFFICER~~ CHIEF ADMINISTRATIVE OFFICER AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD~~.~~; AND

(2) IT MAY BE DISQUALIFIED BY THE ~~CHIEF ADMINISTRATIVE OFFICER~~ CHIEF ADMINISTRATIVE OFFICER FROM PARTICIPATING IN REPRESENTATION ELECTIONS FOR A PERIOD OF UP TO ~~TWO (2)~~ 2 YEARS AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD.

~~33-68.~~ 33-67. COSTS OF CONDUCTING ELECTIONS.

ANY COST OF CONDUCTING A SECRET BALLOT ELECTION UNDER THIS ARTICLE SHALL

BE BORNE ~~FIFTY/(50)~~ 50 PERCENT BY THE ~~COUNTY~~ COUNTY AND ~~FIFTY/(50)~~ 50 PERCENT BORNE EQUALLY BY THE EMPLOYEE ORGANIZATION(S) WHOSE NAME(S) APPEAR ON THE BALLOTS.

~~33-69/~~ 33-68. COUNTY-EMPLOYEE ORGANIZATION MEETINGS AND DISCUSSIONS.

(a) AN EMPLOYEE ORGANIZATION ~~WHICH~~ THAT HAS BEEN RECOGNIZED BY THE ~~COUNTY~~ COUNTY ~~PURSUANT/TO~~ UNDER SECTION ~~33-66~~ 33-65 OF THIS ARTICLE SHALL BE ENTITLED TO MEET AT REASONABLE TIMES WITH ~~COUNTY~~ COUNTY REPRESENTATIVES TO DISCUSS WITH SUCH REPRESENTATIVES PERSONNEL POLICIES, PRACTICES, AND MATTERS AFFECTING WORKING CONDITIONS OF THE EMPLOYEE UNIT IT REPRESENTS, SO FAR AS DISCUSSIONS MAY BE APPROPRIATE UNDER EXISTING LAWS OR REGULATIONS. THE ~~COUNTY~~ COUNTY SHALL MEET A LEAST ~~TWO/(2)~~ 2 TIMES ANNUALLY WITH ~~EACH~~ THE CERTIFIED EMPLOYEE ORGANIZATION.

(b) THE REQUIREMENT TO MEET SHALL NOT OBLIGATE EITHER THE ~~COUNTY~~ COUNTY OR ~~AN~~ THE EMPLOYEE ORGANIZATION TO AGREE TO ANY PROPOSAL OR TO MAKE ANY CONCESSION WITH RESPECT TO ANY MATTER DISCUSSED BY THE PARTIES AT SUCH A MEETING. ANY DECISION MADE AT ANY SUCH MEETING IS IN NO WAY BINDING UPON THE PARTIES.

(c) THE ~~COUNTY~~ COUNTY AND ~~AN~~ THE EMPLOYEE ORGANIZATION MAY, IF DESIRED, AND AT THE CONCLUSION OF THEIR DISCUSSIONS, JOINTLY OR SEPARATELY, PREPARE WRITTEN POSITION PAPERS ~~WHICH~~ THAT REFLECT FOR FUTURE REFERENCE THE RESPECTIVE POSITIONS OF THE PARTIES ON THE ISSUES DISCUSSED AT SUCH MEETINGS. SUCH POSITION PAPERS SHALL IN NO WAY LEGALLY BIND ANY PARTY TO THE MATTERS EXPRESSED ~~THEREIN/~~ IN THEM, AND THE ~~COUNTY~~ COUNTY SHALL NOT BE OBLIGATED TO CONCUR IN A POSITION PAPER ADDRESSING THE INHERENT RIGHT TO MANAGE THE ~~COUNTY~~ COUNTY GOVERNMENT.

~~33-70/~~ 33-69. EMPLOYEE ORGANIZATION REPRESENTATION OF EMPLOYEE MEMBERS.

(a) AN EMPLOYEE WHO IS A MEMBER OF ~~AN~~ THE EMPLOYEE ORGANIZATION MAY

REQUEST AND SHALL BE GRANTED THE RIGHT FOR A MEMBER OR REPRESENTATIVE OF SUCH ORGANIZATION TO BE PRESENT IN ANY DISCUSSIONS OR COUNSELING WITH ~~COUNTY~~ COUNTY REPRESENTATIVES CONCERNING AN INDIVIDUAL GRIEVANCE.

(b) ~~AN~~ THE EMPLOYEE ORGANIZATION MAY SUBMIT A GRIEVANCE CONCERNING ANY DISPUTE INVOLVING A CLAIM OF VIOLATION, MISINTERPRETATION, OR MISAPPLICATION OF THE PERSONNEL REGULATIONS OR WORK PRACTICES OF THE ~~COUNTY~~ COUNTY ON THE SAME BASIS AS PROVIDED FOR INDIVIDUAL GRIEVANCES.

~~33-71.~~ 33-70. DISPUTES.

ALL DECISIONS OF THE ~~CHIEF ADMINISTRATIVE OFFICER~~ CHIEF ADMINISTRATIVE OFFICER UNDER THE PROVISIONS OF THIS ARTICLE SHALL BE FINAL, SUBJECT TO APPEAL TO THE ~~MERIT SYSTEM PROTECTION BOARD~~ MERIT SYSTEM PROTECTION BOARD WHERE PROVIDED BY LAW.

~~33-72.~~ 33-71. COUNTY RESPONSIBILITIES.

IT SHALL BE THE RESPONSIBILITY OF THE ~~COUNTY~~ COUNTY NOT TO:

(a) INTERFERE WITH, RESTRAIN, OR COERCE AN EMPLOYEE IN THE EXERCISE OF THE RIGHTS ASSURED BY THIS ARTICLE;

(b) ENCOURAGE OR DISCOURAGE MEMBERSHIP IN AN EMPLOYEE ORGANIZATION BY DISCRIMINATION IN REGARD TO HIRING, TENURE, PROMOTION, OR OTHER CONDITIONS OF EMPLOYMENT;

(c) SPONSOR, CONTROL, OR OTHERWISE ASSIST ~~AN~~ THE EMPLOYEE ORGANIZATION; EXCEPT~~,~~ THAT THE ~~COUNTY~~ COUNTY MAY FURNISH CUSTOMARY AND ROUTINE SERVICES AND FACILITIES WHEN CONSISTENT WITH THE BEST INTEREST OF THE ~~COUNTY~~, COUNTY, ITS EMPLOYEES, AND THE ORGANIZATION, AND WHEN THE SERVICES AND FACILITIES ARE FURNISHED, IF REQUESTED, ON AN IMPARTIAL BASIS TO ORGANIZATIONS HAVING EQUIVALENT STATUS;

(d) REFUSE TO ACCORD APPROPRIATE RECOGNITION TO ~~AN~~ THE EMPLOYEE ORGANIZATION QUALIFIED FOR SUCH RECOGNITION; OR

(e) REFUSE TO CONSULT, CONFER, OR MEET WITH ~~AN~~ THE EMPLOYEE ORGANIZATION CERTIFIED ~~PURSUANT TO~~ UNDER THIS ARTICLE.

~~33-73.~~ 33-72. EMPLOYEE ORGANIZATION RESPONSIBILITIES.

* * *

(b) ATTEMPT TO INDUCE THE ~~COUNTY~~ COUNTY TO COERCE AN EMPLOYEE IN THE EXERCISE OF THE RIGHTS UNDER THIS ARTICLE;

(c) COERCE, ATTEMPT TO COERCE, OR DISCIPLINE, FINE, OR TAKE OTHER ECONOMIC SANCTION AGAINST AN EMPLOYEE MEMBER OF AN EMPLOYEE ORGANIZATION AS PUNISHMENT OR REPRISAL, OR FOR THE PURPOSE OF HINDERING OR IMPEDING WORK PERFORMANCE OR THE DISCHARGE OF DUTIES OWED AS AN EMPLOYEE OF THE ~~COUNTY~~ COUNTY;

(d) CALL OR ENGAGE IN A STRIKE, WORK STOPPAGE, OR SLOWDOWN, PICKET THE ~~COUNTY~~ COUNTY IN CONNECTION WITH A STRIKE, WORK STOPPAGE, OR SLOWDOWN IN A ~~COUNTY-EMPLOYEE~~ COUNTY-EMPLOYEE DISPUTE, OR CONDONE ANY SUCH ACTIVITY BY FAILING TO TAKE AFFIRMATIVE ACTION TO PREVENT OR STOP IT;

(e) DISCRIMINATE AGAINST AN EMPLOYEE WITH REGARD TO THE TERMS OR CONDITIONS OF MEMBERSHIP BECAUSE OF RACE, COLOR, RELIGION, CREED, SEX, AGE, NATIONAL ORIGIN, ANCESTRY, OR MARITAL STATUS.

33-73. RESERVED.

33-74. COST-OF-LIVING ADJUSTMENT.

* * *

(d) THIS SECTION IS AUTOMATICALLY REPEALED UPON CERTIFICATION THAT THE COUNTY MERIT SYSTEM EMPLOYEES IN THE UNITS ESTABLISHED UNDER ARTICLE VII ARE REPRESENTED FOR THE PURPOSE OF COLLECTIVE BARGAINING UNDER ARTICLE VII OF THIS CHAPTER.

Sec. 2 3. ~~Sections 33-63A and 33-74(d) and~~ Article VII of Chapter 33 ~~are~~ is added as follows:

~~33-63A. Applicability.~~

~~Upon certification that the employees in the units are represented for collective bargaining, this article shall not apply to any person.~~

~~33-74. Cost of living adjustment.~~

~~(d) This section is automatically repealed upon certification that the employees in the units are represented for the purpose of collective bargaining under Article VII of this chapter.~~

Article VII. County Collective Bargaining.

33-101. Declaration of policy.

It is the public policy of Montgomery County to promote a harmonious, peaceful, and cooperative relationship between the County government and its employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of County government and services. Since unresolved disputes in public service are harmful to the public and to employees, adequate means should be available for preventing disputes and for resolving them when they occur. To that end, it is in the public interest that employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, as authorized by Charter Section 511, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of County employees bargain collectively in good faith without interference with the orderly process of government and that they implement any agreements reached through collective bargaining.

The County Council also recognizes that employee organizations and the County government each possess substantial means for initiating actions on

wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the public service, the County Council states that once the employees voluntarily select a representative, collective bargaining shall be used in place of, and not in addition to, existing means for initiating governmental action on subjects that are defined as appropriate for LIKE collective bargaining in this article.

33-102. Definitions.

The following terms have the meaning indicated when used in this article:

(1) "Agency shop" means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require an employee to pay initiation fees, assessments, fines, or any other LIKE collections or their equivalent as a condition of continued employment. A collective bargaining agreement shall not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the COLLECTIVE BARGAINING agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, WITH PROVISION FOR DISPUTE RESOLUTION IF THERE IS NOT AGREEMENT, and to give to the employer and the certified representative written proof of this payment. THE CERTIFIED REPRESENTATIVE SHALL ADHERE AT ALL TIMES TO ALL FEDERAL ~~CONSTITUTIONAL~~ CONSTITUTIONAL REQUIREMENTS IN ITS ADMINISTRATION OF

ANY AGENCY SHOP SYSTEM MAINTAINED BY IT.

(2) "Certified representative" means an employee organization chosen to represent EMPLOYEES AS THEIR EXCLUSIVE BARGAINING AGENT IN one or both units AS DEFINED IN SECTION 33-105 in accordance with the procedures of this article.

(3) "Collective bargaining" means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this article. This article shall not be interpreted to compel either party to agree to a proposal or make a concession.

(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 for the following:

(A) Confidential aides to elected officials.

(B) All persons who are not covered by the County government merit system.

(C) Heads of principal departments, offices, and agencies.

(D) Deputies and assistants to heads of principal departments, offices, and agencies.

(E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

(F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

(G) Persons who work for the office of the County Executive and the office of the Chief Administrative Officer.

(H) Persons who work for the County Council.

(I) Persons who work for the office of the County Attorney.

(J) Persons who work for the Office of Management and Budget.

(K) Persons who work for the Personnel Office.

(L) Persons who work for the Merit System Protection Board.

(M) Persons who work on a temporary, seasonal, or substitute basis.

(N) Newly hired persons on probationary status.

(O) Persons who work for the police department who are represented by a certified employee organization under Article V of this chapter.

(P) Officers in the uniformed services (corrections, fire and rescue, police, office of the sheriff) in the rank of sergeant and above. Subject to any limitations in State law, deputy sheriffs below the rank of sergeant are employees.

(Q) Persons who are members of the State merit system.

(R) Supervisors, which means persons having authority to do any of the following:

(i) Hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively to recommend any one of these actions.

(ii) Direct the activity of three or more employees.

(iii) Adjust or recommend adjustment of grievances.

~~(iii) Adjust or recommend adjustment of grievances.~~

(S) Persons in grade 27 or above, whether or not they are supervisors.

(5) "Employee organization" means any organization that admits employees to membership and that has as a primary purpose the

representation of employees in collective bargaining.

(6) "Employer" means the County Executive and his or her designees.

(7) "Lockout" means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) "Mediation" means an effort by the mediator/fact-finder chosen under this article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) "Strike" means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) "Unit" means either of the units defined in section 33-105.

(11) When either the female or the male pronoun appears herein, it is to be read to include both genders.

33-103. Labor Relations Administrator.

(a) There is established the position of Labor Relations Administrator, to provide for the effective implementation and administration of this article concerning 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:

(1) Periodically adopt, amend, and rescind, under method (1) of section 2A-15 of this Code, regulations and procedures for the implementation and administration of the duties of the Labor Relations Administrator under this article.

(2) Request from the employer or an employee organization, and the employer or such organization may at its discretion provide, any relevant assistance, service, and data that will enable her properly to carry out her duties under this article.

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents.

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue the certification or decertification.

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure, the Labor Relations Administrator shall defer to that procedure for the resolution

of disputes properly submissible to the procedure absent a showing that the deferral results in the application of principles repugnant to this article. Furthermore, the Labor Relations Administrator shall defer to State procedures in those matters which are governed by the Law-Enforcement Officers' Bill of Rights, Article 27, Sections 727-734D, Annotated Code of Maryland.

(6) Determine unresolved issues of a person's inclusion in or exclusion from the units.

(7) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County.

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

(b) (1) The Labor Relations Administrator must be a person with experience as a neutral in the field of labor relations and must not be a person who, on account of vocation, employment, or affiliation, can be classed as a representative of the interest of the employer or any employee organization.

(2) The first Labor Relations Administrator is appointed by the County Executive, with the confirmation of the County Council, serves for a term of 4 years, and is eligible for reappointment.

(3) After the initial term of office of the Labor Relations Administrator provided in subsection (b)(2), the County Executive shall thereafter appoint the Labor Relations Administrator for a term of 5 years from a list of 5 nominees agreed upon by any certified ~~employee~~ representative(s) and

the Chief Administrative Officer, which list may include the incumbent Labor Relations Administrator. Such appointment must be confirmed by the County Council. If the County Council does not confirm the appointment, the new appointment shall be from a new agreed list of 5 nominees. Should there be no certified representative, the Labor Relations Administrator shall be appointed under the procedure and for the term set forth in subsection (b)(2).

(c) The Labor Relations Administrator will be paid a daily fee as set forth by contract with the County, and will be reimbursed for necessary expenses.

33-104. Employee rights.

(a) Employees have the right to:

(1) form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) be represented fairly by their certified representative, if any.

(b) The employer has the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties in accordance with this article.

(c) A certified representative serves as the EXCLUSIVE bargaining agent for all employees in the unit for which it is certified and has the duty to represent fairly and without discrimination all employees in the unit without regard to whether the employees are members of the

employee organization, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of a certified representative to receive voluntary dues or service fee deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this article. A collective bargaining agreement may not include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision.

33-105. **Units for collective bargaining.**

(a) There are two units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, excluding the categories listed as exceptions to the definition of employee in section 33-102(4) of this article. The employees are divided into 2 units in accordance with the following descriptions:

(1) **Service, labor, and trades (SLT) unit.** This unit is composed of all eligible classes that are associated with service/ maintenance and skilled crafts. This means job classes in which workers perform duties that result in or contribute to the comfort and convenience of the general public or that contribute to the upkeep and care of buildings, facilities, or grounds of public property. Workers in this group may operate specialized machinery or heavy equipment. These job classes may also

require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work that is acquired through on the job training and experience or through apprenticeship or other formal training programs.

(2) **Office, professional, and technical (OPT) unit.** This unit is composed of all eligible classes associated with office, professional, paraprofessional, and technical functions.

(A) **Office.** Job classes in which workers are responsbile for internal and external communication, recording and retrieval of data and/or information, and other paperwork required in an office.

(B) **Professional.** Job classes that require special and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge.

(C) **Paraprofessional.** Job classes in which workers perform, in a supportive role, some of the duties of a professional or technician. These duties usually require less formal training and/or experience than is normally required for professional or technical status.

(D) **Technical.** Job classes that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post secondary school education or through equivalent on the job training.

(b) Specific job classes included in these units of representation, and not otherwise excluded under section 33-102(4), shall be based on the designations made by the Chief Administrative Officer under the prior

meet and confer process. In the event a new classification is created by the County, or an existing classification's duties and responsibilities are substantially changed, the County Personnel Director must place the classification in one of the units or state that the classification falls within one of the exceptions to the definition of employee under this article within 60 days of the creation or substantial alteration of the class and must publish the decision in the Montgomery County Register. Any individual or certified representative disagreeing with the decision of the Personnel Director may, within 10 days of publication, file objections to the decision with the Labor Relations Administrator, with notice to the Personnel Director.

The Labor Relations Administrator shall promptly decide the question on the basis of the duties and responsibilities of the job classification, the unit definition, and the community of interests between and among employees in the job classification and collective bargaining unit.

33-106. Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) Any employee organization seeking certification as representative of a unit shall file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The employee organization shall also send a copy of the petition, not including ~~the/names~~ A COPY OF THE SIGNATURES of the supporting employees ON THE

PETITION, to the employer. The petition shall contain the uncoerced signatures of 30 percent of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) If an employee organization has been certified, an employee within the unit may file a petition with the Labor Relations Administrator for decertification of this certified representative. The employee shall also send a copy of the petition to the employer and the certified representative, not including the names of the supporting employees. The petition shall contain the uncoerced signatures of 30 percent of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) Petitions may be filed within 30 days following the date on which this article becomes effective. Thereafter, if a lawful collective bargaining agreement is not in effect, petitions may be filed between September 1 and September 30 of any year, but not sooner than 22 months after an election held under this section.

(4) If a lawful collective bargaining agreement is in effect, a petition filed under this section shall not be entertained unless it is filed during September of the final year of the agreement.

(b) If the Labor Relations Administrator determines that a petition is properly supported and timely filed, she shall cause an election of all eligible employees to be held within a reasonable time, but no

later than October 20 of any year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Labor Relations Administrator and shall be conducted by secret ballot at the time and place that she directs. The Labor Relations Administrator may select and retain the services of an agency of the State of Maryland RESPONSIBLE FOR CONDUCTING LABOR ELECTIONS, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least 10 days before the election of at least 10 percent representation of the employees within the unit IN THE SAME MANNER AS DESCRIBED IN PARAGRAPH (a)(1) OF THIS SECTION, and a choice that the employee does not desire to be represented by any of the named employee organizations.

(3) The employer and each party to the election may be represented by observers selected in accordance with limitations and conditions that the Labor Relations Administrator may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of the challenge or the Labor Relations Administrator's decision as to the validity of the challenge, unless the number of challenges is not determinative, in which case the challenged

ballots shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Labor Relations Administrator in the presence of the observers.

(6) The Labor Relations Administrator shall immediately prepare and serve upon the employer and each of the parties a report certifying the results of the election. If an employee organization receives the votes of a majority of the employees who voted, the Labor Relations Administrator shall certify the employee organization so elected as the exclusive agent.

(7) If no employee organization receives the votes of a majority of the employees who voted, the Labor Relations Administrator shall not certify a representative. Unless a majority of the employees who vote choose "no representative", a runoff election shall be conducted. The runoff election shall contain the 2 choices that received the largest and second largest number of votes in the original election.

(c) The Labor Relations Administrator's certification of results is final unless within 7 days after service of the report and the certification, any party serves on all other parties and files with the Labor Relations Administrator objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds for the objections. The Labor Relations Administrator shall investigate the objections and, if substantial factual issues exist, shall hold a hearing. Otherwise, she may determine the matter without a hearing. The Labor Relations Administrator may invite, either by rule or by invitation, written or

oral argument to assist her in determining the merits of the objections. If the Labor Relations Administrator finds that the election was conducted in substantial conformity with this article, she shall confirm the certification initially issued. If the Labor Relations Administrator finds that the election was not held in substantial conformity with this article, then she shall hold another election under this section.

(d) The cost of conducting an election shall be paid by the County.

(e) If, during the 30 days following the effective date of this article, a petition is filed by the incumbent representative of unit employees certified under Article IV of this chapter, and no other employee organization files a valid petition, and no petition calling for an election signed by ~~10~~ 20 percent of unit employees has been filed with the Labor Relations Administrator, the incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the Labor Relations Administrator and dated after the enactment of this article, that a majority of the employees in the unit desire to be represented by the incumbent representative for the purposes of collective bargaining under the provisions of this article.

33-107. Collective bargaining.

(a) Duty to bargain; matters subject to bargaining.

Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects:

(1) 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, provided that salaries and wages shall be uniform for all employees in the same classification.

(2) ~~With respect to pension and retirement benefits, only defined contribution plans for new employees or current employees who choose to transfer from a defined benefit plan, provided that bargaining rights regarding such plans will not accrue unless and until the County has enacted a law establishing such plans.~~ PENSION AND OTHER RETIREMENT BENEFITS SHALL BE NEGOTIABLE, FOR ACTIVE EMPLOYEES ONLY, ONE YEAR AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

(3) Employee benefits such as insurance, leave, holidays, and vacations. ~~, but not including pension and retirement benefits except to the extent stated in subsection (d)(2).~~

(4) Hours and working conditions.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include:

(A) binding third party arbitration, provided that the arbitrator shall have no authority to amend, add to, or subtract from the provisions of the collective bargaining agreement; and

(B) provisions for exclusivity of forum.

(6) Matters affecting the health and safety of employees.

(7) Amelioration of the effect on employees when the exercise of employer rights listed in subsection (b) causes a loss of existing jobs in the unit.

(b) **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 90 days prior to signing the contract, OR SUCH OTHER DATE OF NOTICE AS AGREED BY THE 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 law, Federal or State law, or the terms of the collective bargaining agreement.

(c) 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.

(d) 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.

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

(a) Collective bargaining shall begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative (EXCEPT THAT IN 1986, COLLECTIVE BARGAINING MAY BEGIN AS LATE AS DECEMBER 1) and shall be finished on or before January 15. The resolution of a bargaining impasse or fact-finding shall be finished by February 1.

(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 year or for more than 3 years. All agreements become effective July 1 and end June 30.

(c) A collective bargaining agreement becomes effective only after ratification by the employer and by the certified representative. The certified representative may provide its own rules for ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator shall appoint a mediator/fact-finder, who may be a person recommended to her by both parties. The mediator/fact-finder shall be available during the period from January 2 to February 1. Fees and expenses of the mediator/fact-finder shall be shared equally by the employer and the certified representative.

(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/fact-finder, or the parties may jointly request his services before declaration of an impasse. If the parties do not reach an agreement by January 15, an impasse exists.

(2) The dispute shall be submitted to the mediator/fact-finder whenever an impasse has been reached, or before that as provided in subsection (e)(1). The mediator/fact-finder shall engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will tend to bring about the settlement of the dispute.

(3) If and when the mediator/fact-finder finds in his sole discretion that the parties are at a bona fide impasse, he shall implement the following fact-finding process:

(A) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.

(B) He may require the parties to submit evidence or make oral or written argument in support of their proposals. He may hold a hearing for this purpose at a time, date, and place selected by him. This hearing shall not be open to the public.

(C) On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not

be made public at this time.

(D) In making findings of fact and recommendations, the mediator/fact-finder may take into account only the following factors:

(i) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

(ii) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland.

(iii) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

(iv) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

(v) The interest and welfare of the public.

(vi) The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services provided by the employer.

(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party

does not accept, in whole or in part, the recommendations of the mediator/fact-finder, the report of the mediator/fact-finder, WITH RECOMMENDATIONS ON AGREED ITEMS DELETED, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.

(g) The budget that the employer submits to the Council shall include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed OR DISPUTED term or condition submitted to the Council that requires an appropriation of funds, or the enactment, repeal, or modification of any County law or regulation, OR WHICH HAS OR MAY HAVE A PRESENT OR FUTURE FISCAL IMPACT, MAY BE ACCEPTED OR REJECTED IN WHOLE OR IN PART BY THE COUNCIL. SUCH TERMS OR CONDITIONS shall be identified to the Council by ~~the/employer~~ EITHER OR BOTH PARTIES. The employer shall make a good faith effort to have THE COUNCIL TAKE ACTION TO IMPLEMENT any term or condition ~~that/has/been~~ TO WHICH THE PARTIES HAVE agreed ~~to/implemented/by/Council/action~~.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement and the recommendations for resolving bargaining disputes.

(i) On or before April 15, the Council shall indicate by a majority vote its intention to appropriate or otherwise implement the items that have been agreed to, or its intention not to do so, and shall state its reasons for any intent to reject any part of the items, OF THE

KIND SPECIFIED IN SUBSECTION (g), that have been agreed to. The Council shall also indicate by a majority vote its position on disputed matters WHICH COULD REQUIRE AN APPROPRIATION OF FUNDS OR ENACTMENT, REPEAL, OR MODIFICATION OF ANY COUNTY LAW OR REGULATION, OR WHICH HAVE PRESENT OR FUTURE FISCAL IMPACT.

(j) Then the Council shall designate a representative to meet with the parties and present the Council's views in the parties' further ~~negotiations~~ NEGOTIATION on disputed matters and/or agreed matters that the Council has indicated its intention to reject. The results of the negotiation, whether a complete or a partial agreement, shall be submitted to the Council on or before May 1. The Council may extend this deadline for no more than one week. Any agreement shall provide for automatic reduction or elimination of wage and/or benefits adjustments if:

(1) the Council does not take action necessary to implement the agreement, or a part of it;

(2) funds are not appropriated; or

(3) lesser amounts than those stated in the agreement are appropriated.

(k) The Council shall take whatever actions it considers required by the public interest with respect to matters still in dispute between the parties. However, those actions shall not be part of the agreement between the parties unless the parties specifically incorporate them in the agreement.

33-109. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from any of the following:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under this article.

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it, under an agreement or otherwise. However, the employer and a certified representative may agree to and apply an agency shop provision under this article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of County facilities for communicating with employees.

(3) Encouraging or discouraging membership in any employee organization by discriminating in hiring, tenure, wages, hours, or conditions of employment. However, nothing in this article precludes an agreement from containing a provision for an agency shop.

(4) Discharging or discriminating against a public employee because she or he files charges, gives testimony, or otherwise lawfully aids in the administration of this article.

(5) Refusing to bargain collectively with the certified representative.

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement that has been agreed to in all respects.

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement.

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached between the employer and the certified

representative under this article.

(9) Engaging in a lockout of employees.

(b) Employee organizations, their agents, representatives, and persons who work for them are prohibited from any of the following:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this article.

(2) Restraining, coercing, or interfering with the employer in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Refusing to bargain collectively with the employer if the employee organization is the certified representative.

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects.

(5) Hindering or preventing, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or exit from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance by any person, public or private.

(6) Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the employer.

(7) Taking or retaining unauthorized possession of property of the employer, or refusing to do work or use certain goods or

materials as lawfully required by the employer.

(8) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed nor to be performed.

(c) A charge of prohibited practice may be filed by the employer, an employee organization, or any individual employee. The charge or charges shall be filed with the Labor Relations Administrator, and copies shall be sent to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the Labor Relations Administrator to investigate the charge. The Labor Relations Administrator may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The Labor Relations Administrator has the authority to maintain whatever independent investigation she determines is necessary and to develop regulations for an independent investigation. If, upon investigation, the Labor Relations Administrator finds that a charge is sufficiently supported to raise an issue of fact or law, she shall, if she is unable to achieve settlement or resolution of the matter, hold a hearing on the charge after notification to the parties. In any hearing, charging parties shall present evidence in support of the charges, and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense against the charges.

(d) If the Labor Relations Administrator determines that the person charged has committed a prohibited practice, she shall make findings

of fact and conclusions of law and may issue an order requiring the person charged to cease and desist from the prohibited practice, and may take affirmative actions that will remedy the violation of this article. Remedies of the Labor Relations Administrator include reinstating employees with or without back pay, making employees whole for any loss relating to County employment suffered as a result of any prohibited practices, or withdrawing or suspending the employee organization's authority to negotiate or continue an agency shop provision or a voluntary dues or service fee deduction provision. If the Labor Relations Administrator finds that the party charged has not committed any prohibited practices, she shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Labor Relations Administrator shall not receive or entertain charges based upon an alleged prohibited practice occurring more than 6 months before the filing of the charge.

33-110. **Expression of views.**

(a) The expression or dissemination of any views, argument, or opinion, whether orally, in writing, or otherwise, does not constitute and is not evidence of a prohibited practice under any of the provisions of this law, nor is it grounds for invalidating any election conducted under this law if the expression or dissemination does not contain a threat of reprisal or promise of benefit.

(b) Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of the associations or are of particular

applicability to it or its members.

33-111. Strikes and lockouts.

(a) An employee or employee organization shall not either directly or indirectly cause, instigate, encourage, condone, or engage in any strike, nor the employer in any lockout. An employee or employee organization shall not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when that employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during the strike.

(c) If an employee or employee organization violates the provisions of this section, the employer, after adequate notice and a fair hearing before the Labor Relations Administrator who finds that the violations have occurred and finds that any or all of the following actions are necessary in the public interest, may impose any of the following sanctions, subject to the Law-Enforcement Officers' Bill of Rights, Article 27, Sections 727-734D, Annotated Code of Maryland:

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in the conduct.

(2) Terminate or suspend the employee organization's dues deduction privilege, if any.

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of 2 years.

(d) This article does not prohibit an employer or a certified employee

organization from seeking any remedy available in a court of competent jurisdiction.

33-112. Effect of prior enactments.

~~Any laws, executive orders, or regulations adopted by the County and any department or agency of the County that are or may be considered inconsistent with the provisions of this article shall not be held to be repealed or modified until they are specifically repealed or modified by the County or any department or agency of the County.~~

(a) NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO REPEAL ANY LAW, EXECUTIVE ORDER, RULE, OR REGULATION ADOPTED BY THE COUNTY OR ANY OF ITS DEPARTMENTS OR AGENCIES THAT IS NOT INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE.

(b) ANY EXECUTIVE ORDER, RULE, OR REGULATION OF THE COUNTY OR ANY OF ITS DEPARTMENTS OR AGENCIES THAT REGULATES ANY SUBJECT THAT IS BARGAINABLE UNDER THIS ARTICLE SHALL NOT BE HELD TO BE REPEALED OR MODIFIED BY A PROVISION OF A COLLECTIVE BARGAINING AGREEMENT NEGOTIATED UNDER THIS ARTICLE EXCEPT TO THE EXTENT THAT THE APPLICATION OF THE ORDER, RULE, OR REGULATION IS INCONSISTENT WITH THE PROVISION IN THE COLLECTIVE BARGAINING AGREEMENT. HOWEVER, IF THE INCONSISTENT ORDER, RULE, OR REGULATION IS SUBJECT TO AND HAS RECEIVED COUNCIL APPROVAL, THE COLLECTIVE BARGAINING AGREEMENT SHALL NOT GOVERN UNLESS THE ORDER, RULE, OR REGULATION WAS IDENTIFIED TO THE COUNCIL BY THE PARTIES PRIOR TO THE COUNCIL'S RATIFICATION OF THE COLLECTIVE BARGAINING AGREEMENT, AS REQUIRED BY SECTION 33-108(g); OR UNLESS THE ORDER, RULE, OR REGULATION IS REPEALED OR MODIFIED BY THE COUNCIL.

Sec. 3. Severability.

If a court holds that part of this act is invalid, the invalidity does not affect other parts.

Sec. 4. Effective Date.

This act takes effect 91 days after it becomes law.

Approved:

William E. Hanna, Jr., President, County Council — June 27, 1986 Date

Approved:

Charles W. Gilchrist, County Executive — June 30, 1986 Date

This is a correct copy of Council action.

Kathleen A. Freedman, Secretary, County Council — 7/1/86 Date

APPROVED

5851

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tues., June 24, 1986 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:20 A.M. on Tuesday, June 24, 1986.

PRESENT

William E. Hanna, Jr., President
Scott Fosler, President Pro Tem
Rose Crenca
Neal Potter, Vice President
Michael L. Gudis
David L. Scull
Esther P. Gelman

The President in the Chair.

CALL OF BILLS FOR FINAL READING

SUBJECT: Bill No. 9-86, Montgomery County Urban Districts

ISSUES DISCUSSED: The memorandum, with attachments, dated June 24, 1986, from Legislative Counsel Moran setting forth the issues considered by the Transportation and Environment Committee; whether an urban district should be created in Wheaton.

(The Vice President in the Chair.)

ISSUES DISCUSSED: Mr. Hanna's motion to authorize Wheaton as an urban district, but delay its implementation until such time as development warrants.

(The President in the Chair.)

ISSUES DISCUSSED: Mr. Potter's amendment to Mr. Hanna's motion (accepted by the maker) that the County Executive determine when to implement the Wheaton urban district; Ms. Crenca's statement that Wheaton is in the early stages of

revitilization and that the Wheaton Revitilization Advisory Community Board should make the decision regarding designation of the Wheaton urban district when appropriate; the written testimony contained in the packet from the Wheaton/Kensington Citizens Advisory Board indicating its support of the concept of creating urban districts, but that expected development in Wheaton is several years away; the funding for maintenance in the Wheaton business district; Director of the Department of Transportation McGarry's statement that Wheaton does not generate enough in taxes to the Suburban District for maintenance under the present system and his suggestion that the County establish a policy that the Suburban District fund balances not support Wheaton area maintenance; whether the Council can delegate the authority to the County Executive to implement the Wheaton urban district at a later date; whether to amend the legislation to outline specific criteria to be followed for implementation of the Wheaton urban district in order to avoid the delegation of authority problem; Ms. Gelman's concern that amending the bill to exclude Wheaton would be contrary to the Council's intent; Planning Board Chairman Christeller's suggested revision to Mr. Hanna's motion to provide that implementation of the Wheaton urban district would not take place until the Executive submits a budget to the Council and the Council approves it; Mr. Gudis's amendment to the amended motion (accepted by the maker) that Mr. Hanna's motion incorporate Mr. Christeller's suggested revisions; Mr. Scull's suggestion that action on the bill be postponed until later in the week to allow the legal staff time to draft the amendments for Council review.

ACTION: Agreed to postpone final action on the bill until later in the day to allow the attorneys time to draft an amendment incorporating the suggestions by Councilmembers and Mr. Christeller regarding the creation of the Wheaton urban district

by motion of Councilmember Fosler, without objection.

SUBJECT: Bill No. 4-86, Compensation of Elected Officials

ISSUES DISCUSSED: Mr. Scull's motion to conform the bill to County Code revisions previously enacted; the question of whether restrictions apply to the State's Attorney and the Sheriff regarding outside income; Mr. Hanna's statement that the Government Structure, Automation and Regulation (GSA) Committee did not recommend changing the law in this regard; the question of whether the law specifically states that the position of councilmember will be full-time or part-time; and Legislative Counsel Fadden's response that the law is silent in this respect; Mr. Potter's suggestion that the retirement system for elected officials be changed to provide vesting, coupled with indexing, prior to the current requirement of five years of service; Mr. Hanna's statement that he will shortly introduce legislation that will address Mr. Potter's concerns; Mr. Potter's response that current limitations of the retirement system regarding when retirement benefits commence affect all County employees and that he would like a legal opinion as to the feasibility of subsequent amendment of the proposed legislation; Assistant County Attorney Stern's response that the issue touches on Section 107 of the Charter and will

be reviewed within that context; Mr. Fosler's statement that the position of councilmember should be part-time to allow pursuit of outside employment, that such outside employment has intrinsic value because it provides another perspective, that setting salaries of public officials too high will lead the public to conclude the position of councilmember is a full-time position, that legislators in neighboring jurisdictions, such as Fairfax County, spend less time on the job because the County Manager is full time and the same should hold true for Montgomery County as Montgomery County has a full-time executive; Mr. Gudis's opinion that it seems reasonable to set a councilmember's salary at a level to compensate for the demands on a person's time and energy; Ms. Crenca's remarks that the Council's involvement is greater than previously despite the Council/Executive form of government; Mr. Scull's remarks that the County can benefit from legislators that are actively pursuing other commitments and employment and that the County's ethics law offers protection against potential conflicts of interest, that the proposed salary increase for councilmembers is too great in view of the current rate of inflation and that councilmembers' salaries be set at $43,000 and that of the County Executive at $78,000; Mr. Fosler's statement that a salary increase of 10% and/or dollar amount of $42,000 for councilmembers is reasonable; Ms. Crenca's motion (did not receive a second) to defer action on the bill until next week.

ACTION: Amended Sec. 2-106 to provide that compensation for members of the County Council shall be $43,000 per annum

by motion of Councilmember Fosler

YEAS: Crenca, Fosler, Gelman, Scull
NAYS: Gudis, Potter, Hanna.

ISSUES DISCUSSED: Ms. Crenca's motion to amend the bill to provide that the Sheriff's rate of compensation per annum be the same as councilmembers (the motion failed for lack of a majority vote, with Councilmember Crenca voting in the affirmative, the remaining Councilmebers voting in the negative).

ACTION: Amended Section 2-106 of the bill to provide that the compensation for the County Executive will be $78,000 per annum

by motion of Councilmember Crenca

YEAS: Crenca, Gelman, Gudis, Scull
NAYS: Fosler, Potter, Hanna.

Accepted the Committee's recommendation to delete the ceilings on cost-of-living adjustments for each public office as set forth in the bill

by motion of Vice President Potter, without objection.

(The Vice President in the Chair.)

ISSUES DISCUSSED: The provision in the bill to reduce the annual cost-of-living adjustment to officeholders' salaries from the current 75% of the change in the annual Consumer Price Index (CPI) increase to 67%.

ACTION: Defeated Mr. Hanna's motion to amend the bill to provide that the annual cost-of-living adjustment to officeholders' salaries be 75% of the annual CPI change

YEAS: Crenca, Gudis, Hanna
NAYS: Fosler, Gelman, Scull Potter.

(The President in the Chair.)

Waived the reading of the title, and approved the amendments recommended by the Government Structure, Automation and Regulation Committee, as follows, including the amendment earlier moved by Councilmember Scull to conform the bill to Code revisions previously enacted:

by motion of Councilmember Scull.

EXPLANATION:
- **Boldface** indicates matter that is a heading or a defined term.
- Underlining indicates matter added to existing law.
- [[Double Brackets]] indicate matter repealed from existing law.
- CAPITALS indicate matter quoted from existing law which is added to the bill by amendment.
- UNDERLINED CAPITALS indicate matter added to existing law by amendment to the bill.
- ~~Strikes~~ indicate matter deleted from the bill by amendment.
- * * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Sections 2-7, ~~2-24,~~ ~~2-66,~~ 2-106, and 2-123A of Chapter 2 are amended to read as follows:

2-7. Location of sheriff's office; compensation of sheriff; required use of vehicle.

(a) The sheriff for the county shall hold his office at the courthouse and shall attend at such office at all times, Sunday excepted, in person or by deputy, for the transaction of business.

(b) The sheriff shall be compensated for the performance of public duties [[thirty six thousand five hundred five dollars ($36,505.00)]] $45,000 per annum, which shall be adjusted on the first day of the term of office of the person elected to that office on November [[2, 1982]] 4, 1986, and adjusted thereafter on the annual anniversary of the first day of the term of office by a percentage which is [[seventy-five (75)]] 67 percent of the percentage by which the consumer price index for all urban consumers for the Washington metropolitan area for September shall have changed from the preceding September~~,~~ ~~subject to a maximum compensation of [[forty-two thousand dollars ($42,000.00)]] $54,500 per annum.~~

(c) The sheriff is directed and required to use his county vehicle, at county expense, to travel to and from work, in order to maintain communication with his office and with other county officials.

~~2-24. Compensation of county executive.~~

~~The county executive shall be compensated for the performance of public duties under the Charter of the county [[sixty-two thousand nine hundred thirty-eight dollars ($62,938.00)]] $80,000 per annum, which shall be adjusted on the first Monday in December [[1982]] 1986, and adjusted annually thereafter on the first Monday in December by a percentage which is~~

[[seventy-five/(75)]]/67/percent/of/the/percentage/by/which/the/consumer price/index/for/all/urban/consumers/for/the/Washington/metropolitan/area/for September/shall/have/changed/from/the/preceding/September,/subject/to/a maximum/compensation/of/[[seventy-one/thousand/dollars/($71,000.00)]] $96,300/per/annum.

2-66.//Compensation/of/members/of/the/county/council/

The/compensation/of/the/members/of/the/county/council/for/the performance/of/public/duties/under/the/charter/of/the/county/shall/be [[twenty-six/thousand/dollars/($26,000.00)]]/$48,000/$45,000/per/annum, beginning/on/the/first/Monday/in/December,/[[1978]]/1986,/and/adjusted annually/thereafter/on/the/first/Monday/in/December/by/a/percentage/which/is [[seventy-five/(75)]]/67/percent/of/the/percentage/by/which/the/consumer price/index/for/all/urban/consumers/for/the/Washington/metropolitan/area/for September/shall/have/changed/from/the/preceding/September,/subject/to/the maximum/compensation/of/$38,000/per/annum.//[[The]]/Notwithstanding/that maximum/compensation,/the//THE/compensation/of/the/president/of/the/county council/shall/be/fixed/at/[[twenty-five/hundred/dollars/($2,500.00)]]/10% per/annum/in/excess/of/the/salary/of/other/council/members.//Service/by/a council/member/on/any/board,/agency,/authority/or/commission,/where/the council/member/is/appointed/or/confirmed/by/the/council,/shall/be/considered part/of/the/official/duties/of/the/council/member,/and/there/shall/be/no additional/compensation/for/such/services.

2-106. SALARIES OF THE COUNTY EXECUTIVE AND THE COUNCILMEMBERS.

(a) BASE SALARIES. BEGINNING ON DECEMBER [[3, 1984,]] 1, 1986:

(1) THE COUNTY EXECUTIVE RECEIVES AN ANNUAL SALARY OF $70,034 $80,000 $78,000;

(2) COUNCILMEMBERS EACH RECEIVE AN ANNUAL SALARY OF ~~$36,418~~ ~~$45,000~~ $43,000; AND

(3) THE PRESIDENT OF THE COUNCIL RECEIVES AN ADDITIONAL ~~$2,500~~ 10 PERCENT OF THE SALARY OF OTHER COUNCILMEMBERS.

(b) ANNUAL ADJUSTMENTS. THE SALARIES OF THE COUNTY EXECUTIVE AND THE COUNCILMEMBERS ARE ADJUSTED EACH YEAR ON THE FIRST MONDAY IN DECEMBER BY ~~THREE-QUARTERS~~ 67 PERCENT OF THE CHANGE IN THE CONSUMER PRICE INDEX FROM SEPTEMBER OF THE PREVIOUS YEAR TO SEPTEMBER OF THAT YEAR. THE ADJUSTMENT IS DEFINED BY THE FOLLOWING FORMULA.

$$A = B ((~~.75~~ .67 (C - D) / D) + 1)$$

WHERE:

A IS THE SALARY IN THE PRESENT YEAR;

B IS THE SALARY IN THE PREVIOUS YEAR;

C IS THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON METROPOLITAN AREA IN SEPTEMBER OF THE PRESENT YEAR; AND

D IS THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON METROPOLITAN AREA IN SEPTEMBER OF THE PREVIOUS YEAR.

~~(c) MAXIMUM SALARY. THE SALARY OF THE COUNTY EXECUTIVE MUST NOT EXCEED $71,000 A YEAR.~~

~~(d)~~ (c) ADDITIONAL COMPENSATION.

(1) COUNTY EXECUTIVE. THE COUNTY EXECUTIVE'S AUTHORITY TO ACCEPT ADDITIONAL COMPENSATION IS LIMITED BY SECTIONS 203 AND 407 OF THE CHARTER.

(2) COUNCILMEMBERS. COUNCILMEMBERS MUST NOT RECEIVE ADDITIONAL COMPENSATION FOR PERFORMING THEIR DUTIES TO THE COUNTY. THE DUTIES OF A COUNCILMEMBER INCLUDE SERVICE ON ANY BOARD, AGENCY, AUTHORITY, OR COMMISSION IF THE COUNCIL APPOINTS OR CONFIRMS THE COUNCILMEMBER.

2-123A. Compensation of the state's attorney.

As authorized by state law, the county council shall set the salary of the state's attorney for Montgomery County. The compensation of the state's attorney for the performance of public duties under the constitution and public laws of this state shall be [[fifty-nine thousand seven hundred ninety dollars (59,790.00)]] $75,000 per annum, which shall be adjusted on the first Monday in January, [[1983]] 1987, and adjusted annually thereafter on the first Monday in January by a percentage which is [[seventy-five (75)]] 67 percent of the percentage by which the consumer price index for all urban consumers for the Washington metropolitan area for September shall have changed from the preceding September[[subject to a maximum compensation of [[sixty-eight thousand dollars ($68,000.00)]] $90,300 per annum.

Enacted Bill No. 4-86, Draft No. 4, dated June 6, 1986, as amended, by roll-call vote

YEAS: Crenca, Fosler, Gelman, Gudis, Scull, Potter, Hanna.

SUBJECT: Bill No. 9-86, Montgomery County Urban Districts

ACTION: Amended the bill as follows:

Page 3, Section 1, to provide exclusion of Wheaton from the Suburban District when the Wheaton Urban District is created under Section 68A-3;

Page 5, line 26, Section 68A-3(a), delete [Wheaton];

Page 6, Section 68A-3, insert as (b):

An urban district is created in Wheaton, as described in Section 68A-8 of this Chapter, on July 1 after:
(1) A budget for that district has been approved; and
(2) The Council approves an urban district tax levy for that district.

Page 6, Section 68A-3, change [(b)] to (c) and [(c)] to (d)

by motion of President Hanna, without objection.
(SECRETARY'S NOTE: President Hanna stated that he would accept this amendment as a substitute for his previous amended motion regarding the creation of the Wheaton Urban District.)

Waived the reading of the title, and approved the amendments recommended by the Transportation and Environment Committee as well as the technical and stylistic amendments recommended by staff, as follows:

by motion of Vice President Potter, without objection.

EXPLANATION:
- **Boldface** indicates matter that is a heading or a defined term.
- Underlining indicates matter added to existing law.
- [[Double Brackets]] indicate matter repealed from existing law.
- CAPITALS indicate matter quoted from existing law which is added to the bill by amendment.
- UNDERLINED CAPITALS indicate matter added to existing law by amendment to the bill.
- ~~Strikes~~ indicate matter deleted from the bill by amendment.
- * * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 68-1 is amended to read as follows:

68-1. Area defined.

* * *

(b) [[There shall be excepted and excluded]] Excluded from the Montgomery County Suburban District are the areas lying within the boundaries of the following cities, towns, villages, and special taxing areas, as ~~such~~ THESE areas are now or ~~hereafter~~ IN THE FUTURE prescribed by law: Rockville, Takoma Park, Garrett Park, Glen Echo, Kensington, Somerset, Chevy Chase Village, Friendship Heights, and ~~The Hills,~~ Oakmont, ~~Section No. 3 Chevy Chase~~ CHEVY CHASE SECTION 3, ~~Section No. 4~~ TOWN OF Chevy Chase, ~~Section No. 5 Chevy Chase~~ CHEVY CHASE SECTION 5, Martin's Additions ~~to Chevy Chase~~, North Chevy Chase, Chevy Chase View, [[and]] Drummond, and ON JULY 1, 1987, the urban districts of Bethesda, AND Silver Spring, ~~and Wheaton~~ as ~~defined~~ DESCRIBED in Section 68A-~~3~~4 8 OF THIS CODE. THE URBAN DISTRICT OF WHEATON, AS DESCRIBED IN SECTION 68A-8 OF THIS CODE, IS EXCLUDED FROM THE SUBURBAN DISTRICT WHEN THE WHEATON URBAN DISTRICT IS CREATED UNDER SECTION 68A-3(b).

Sec. 2. Chapter 68A is added as follows:

Chapter 68A

Montgomery County Urban Districts

68A-1. Definitions.

For purposes of this chapter, the following terms have the meaning indicated:

(1) "**DEPARTMENT**" MEANS A COUNTY DEPARTMENT, PRINCIPAL OFFICE, OR OTHER OFFICE THAT THE COUNTY EXECUTIVE DESIGNATES TO PERFORM FUNCTIONS UNDER THIS CHAPTER.

~~(1) "Maintenance of streetscape amenities" includes street sweeping and flushing, sidewalk vacuuming and cleaning, litter collection, trash receptacle service, tree pruning, and various landscaping activities.~~

(1)(2) "MAINTAINING STREETSCAPE AMENITIES" MEANS CLEANING, REPAIRING, REHABILITATING, ~~AND~~ OR REPLACING STREETSCAPE AMENITIES.

(2)(3) "MAINTAINING THE STREETSCAPE" INCLUDES CLEANING SIDEWALKS, DRIVEWAYS, STREETS, AND OTHER PUBLIC AREAS; COLLECTING TRASH; AND CARING FOR TREES AND OTHER PLANTINGS.

(3)(4) "Off site ~~amenities~~ AMENITY" means A streetscape ~~amenities~~ AMENITY installed by an optional method developer on a public right-of-way.

(4)(5) "On site ~~amenities~~ AMENITY" means A streetscape ~~amenities~~ AMENITY installed by an optional method developer on property owned by the optional method developer OR ON PRIVATE PROPERTY NOT OWNED BY AN OPTIONAL METHOD DEVELOPER.

(5)(6) "Optional method developer" means the owner of an optional method development.

(6)(7) "Optional method development" means property for which the owner has agreed with the Maryland-National Capital Park and Planning Commission to be responsible for installing and maintaining both on site and off site amenities.

(7)(8) "Streetscape amenity" includes ~~driveways, street trees, street lights, street furniture, and trash containers~~ SUCH ITEMS AS BULLETIN BOARDS AND ELECTRONIC DISPLAYS; COMMUNICATION SYSTEMS; CONTAINERS FOR GROWING THINGS; FOUNTAINS AND POOLS; FUNCTIONAL AND DECORATIVE LIGHTING; OUTDOOR HEATING; RESTROOMS; SEATING AND OTHER

STREET FURNITURE; SHELTERS FOR PEDESTRIANS AND PERSONS USING PUBLIC TRANSPORTATION; SIDEWALKS; TREES AND OTHER PLANTINGS; TRASH CONTAINERS; VENDING BOOTHS AND KIOSKS; WORKS OF ART; ANY ~~AMENITY~~ OUTDOOR ITEM THAT AN OPTIONAL METHOD DEVELOPER AGREED TO INSTALL AND MAINTAIN ~~IN A PUBLIC RIGHT-OF-WAY~~ AS A CONDITION OF SITE PLAN APPROVAL; AND OTHER ~~AMENITIES~~ ITEMS OF A SIMILAR CHARACTER OR PURPOSE.

68A-2. FINDINGS; GENERAL INTENT.

(a) CERTAIN AREAS OF MONTGOMERY COUNTY HAVE BECOME, OR MAY IN THE FUTURE BECOME, INTENSELY DEVELOPED COMMUNITIES CONTAINING DIVERSIFIED COMMERCIAL, INSTITUTIONAL, AND RESIDENTIAL DEVELOPMENT. IN ORDER TO MAINTAIN AND ENHANCE THESE AREAS AS PROSPEROUS, LIVABLE URBAN CENTERS, AND TO AVOID BLIGHT, THE COUNTY SHOULD:

(1) INCREASE THE MAINTENANCE OF THE STREETSCAPE AND ITS AMENITIES;

(2) PROVIDE ADDITIONAL PUBLIC AMENITIES SUCH AS PLANTINGS, SEATING, SHELTERS, AND WORKS OF ART;

(3) PROMOTE THE COMMERCIAL AND RESIDENTIAL INTERESTS OF THESE AREAS; AND

(4) PROGRAM CULTURAL AND COMMUNITY ACTIVITIES.

(b) URBAN DISTRICTS ARE CREATED TO PROVIDE AN ADMINISTRATIVE AND FINANCIAL FRAMEWORK THROUGH WHICH TO ACCOMPLISH THESE GOALS.

68A-23. Creation of Urban Districts; Purposes.

~~As of July 1, 1986, urban districts are created in the business districts of Bethesda, Silver Spring, and Wheaton for the purposes of:~~

(a) URBAN DISTRICTS ARE CREATED IN THE BUSINESS DISTRICTS OF BETHESDA, AND SILVER SPRING, ~~AND WHEATON,~~ AS DESCRIBED IN SECTION 68A-~~4~~ 8 OF THIS CHAPTER.

(b) AN URBAN DISTRICT IS CREATED IN WHEATON, AS DESCRIBED IN SECTION 68A-8 OF THIS CHAPTER, ON JULY 1 AFTER:

(1) A BUDGET FOR THAT DISTRICT IS APPROVED; AND

(2) THE COUNCIL APPROVES AN URBAN DISTRICT TAX LEVY FOR THAT DISTRICT.

~~(b)~~(c) THE DEPARTMENT MAY PROVIDE THE PUBLIC SERVICES AND FACILITIES NECESSARY TO IMPLEMENT THE FOLLOWING PURPOSES OF AN URBAN DISTRICT:

(1) maintaining ~~and/replacing~~ THE STREETSCAPE AND streetscape amenities on:

(A) public rights-of-way; AND

~~(B) public areas between a public right-of-way and a building line; and~~

~~(C) public areas of optional method developments;~~

(B) ANY PROPERTY THAT IS USED BY THE GENERAL PUBLIC.

(2) promoting and ~~sponsoring~~ PROGRAMMING ~~the cultural, commercial, and~~ public interest activities THAT BENEFIT BOTH RESIDENTIAL AND COMMERCIAL INTERESTS of an urban district;~~/and~~

~~(3) setting up funding mechanisms for each urban district;~~

~~(A)~~ (3) ~~CONSTRUCTING MINOR PUBLIC FACILITIES NOT COSTING MORE THAN $200,000 ANNUALLY FOR EACH URBAN DISTRICT~~ PROVIDING ADDITIONAL STREETSCAPE AMENITIES WITH AN APPROPRIATION OF NO MORE THAN $200,000 ANNUALLY FOR EACH URBAN DISTRICT; AND

~~(B)~~ (4) MONITORING ACTIVITIES~~, SAFETY, AND COMFORT NEEDS IN PUBLIC AREAS~~ TO ENHANCE THE SAFETY~~,~~ AND SECURITY~~, AND COMFORT OF RESIDENTS, EMPLOYEES, AND VISITORS~~ OF PERSONS AND PROPERTY IN PUBLIC AREAS.

~~(c)~~(d) URBAN DISTRICTS ARE CREATED TO PROVIDE PUBLIC SERVICES AND

FACILITIES THAT ARE:

(1) PRIMARILY OF BENEFIT TO THE PROPERTY AND PERSONS WITHIN THE URBAN DISTRICT RATHER THAN TO THE COUNTY AS A WHOLE; AND

(2) IN ADDITION TO SERVICES AND FACILITIES THAT THE COUNTY PROVIDES GENERALLY.

68A-54. Urban/District Funding.

(a) General.

Each urban district is funded through the:

(1) Urban District Tax.

(A) Each STARTING IN 1987-88, EACH TAX year the County Council may levy against all the assessable REAL AND PERSONAL property in each AN urban district a sum not greater than $.30 on each $100 of assessable property.

(B) A levy under this section must be made on all taxable real and personal property within the urban district.

(B)(C) The urban district tax is levied and collected as other County taxes are levied and collected by law.

(C)(D) The urban district tax has the same priority rights, bear BEARS the same interest and penalties, and in every respect must be treated the same as other County taxes.

(D)(E) The urban district tax rate may vary DIFFER from one urban district to another.

(2) Surcharge/on Parking Fees.

(A) The County Council may add/a/surcharge/to/the/hourly TRANSFER REVENUE FROM parking fees in/any TO THE FUND

OF THE urban district FROM WHICH THE FEES ARE COLLECTED.

(B) The ~~rate of the surcharge~~ AMOUNT OF REVENUE FROM PARKING FEES ~~may~~ MUST not be greater than ~~$.10 per~~ hour THE AMOUNT CALCULATED BY MULTIPLYING:

(i) THE NUMBER OF PARKING SPACES IN THE URBAN DISTRICT BY

(ii) THE NUMBER OF ENFORCEMENT HOURS PER YEAR BY

(iii) $.10.

(C) The amount of ~~the surcharge~~ REVENUE FROM PARKING FEES may ~~vary~~ DIFFER from one urban district to another.

(3) Maintenance ~~Assessment~~ CHARGE on Optional Method Developments.

~~(A) The County Council may charge a maintenance assessment on optional method developments. The maintenance assessment must be reasonably related to the difference between the cost of maintaining and replacing off site amenities on optional method developments and the amount of the urban district taxes paid on optional method developments.~~

~~(B) An individual maintenance assessment on an optional method development must be based on the square footage of the off site amenity areas for that optional method development.~~

~~(C) A maintenance assessment is levied and collected as other County taxes are levied and collected by law.~~

~~(D) A maintenance assessment has the same priority, bears the same interest and penalties, and in every respect must be treated the same as other County taxes.~~

~~(E) Maintenance assessments must be separately determined for each urban district.~~

(A) THE COUNTY EXECUTIVE MAY CHARGE EACH OPTIONAL METHOD DEVELOPMENT FOR THE COST OF MAINTAINING OFF SITE AMENITIES FOR THAT DEVELOPMENT, INCLUDING THE COUNTY'S COST OF LIABILITY INSURANCE.

(B) THE COUNTY EXECUTIVE MAY COLLECT A MAINTENANCE CHARGE UNDER THIS SECTION IN THE SAME WAY THAT THE COUNTY COLLECTS TAXES.

(C) A MAINTENANCE CHARGE UNDER THIS SECTION HAS THE SAME PRIORITY AND BEARS THE SAME INTEREST AND PENALTIES AS COUNTY TAXES.

(b) **URBAN DISTRICT FUND; Surplus Balances.**

(1) THE DIRECTOR OF FINANCE MUST ESTABLISH A SEPARATE FUND FOR EACH URBAN DISTRICT.

(2) If in any fiscal year a balance remains in an urban district fund, the Director of Finance must maintain this balance for use in funding the budget of that urban district in subsequent years.

(c) **Funding Restrictions.**

(1) Bethesda Urban District:

Each revenue source for the Bethesda urban district is limited so that:

(A) the parking fee surcharge funds 25 to 30 per cent of the total budget;

(B) the urban district tax funds 25 to 30 per cent of the total budget; and

(C) the maintenance assessments fund no more than 40 per cent of the total budget.

(2) Silver Spring Urban District. Each revenue source for the Silver Spring urban district is limited so that:

(A) the parking fee surcharge funds 25 to 30 per cent of the total budget;

(B) the urban district tax funds 25 to 30 per cent of the total budget; and

(C) the maintenance assessments fund no more than 40 per cent of the total budget.

(3) Wheaton Urban District. Each revenue source for the Wheaton urban district is limited so that:

(A) the parking fee surcharge funds 25 to 30 per cent of the total budget;

(B) the urban district tax funds 25 to 75 per cent of the total budget; and

(C) the maintenance assessments fund no more than 40 per cent of the total budget.

(4) In this subsection the term "total budget" means the total budget of an urban district less amounts included in the budget of the district for agreements under Section 68A-6.

STARTING IN THE 1987-88 FISCAL YEAR, IN ANY URBAN DISTRICT, THE PROCEEDS FROM THE URBAN DISTRICT TAX AND PARKING FEES TRANSFERRED INTO AN URBAN DISTRICT FUND MUST EACH BE NOT LESS THAN 20 NOR MORE THAN 80 PERCENT OF THE SUM OF THE URBAN DISTRICT TAX AND THE PARKING FEES FOR THAT DISTRICT THEIR COMBINED TOTAL.

(d) **Use of Funds.**

~~The funds generated from each urban district must be used only for:~~

~~(1) the purposes of that district as set out in Section 68A-21; and~~

~~(2) the kinds and amounts of public services and facilities that are appropriate to an intensely developed business district, in addition to the services and facilities that are provided by the county in areas that are not in any special tax area or district.~~

THE COUNTY GOVERNMENT MUST USE FUNDS OBTAINED ~~through the provisions of~~ UNDER THIS SECTION ONLY:

(1) FOR THE URBAN DISTRICT IN WHICH THEY ARE OBTAINED; AND

(2) FOR THE PURPOSES OF AN URBAN DISTRICT AS SET FORTH IN SECTION 68A-3 OF THIS CHAPTER.

68A-65. Advisory Committees.

(a) **Composition.**

Each urban district must have an advisory committee whose members are appointed by the County Executive and confirmed by the County Council.

(1) THE WHEATON URBAN DISTRICT ADVISORY COMMITTEE HAS 8 MEMBERS IF THERE ARE 2 OR MORE OPTIONAL METHOD DEVELOPMENTS; 7 MEMBERS IF THERE IS ONLY ONE OPTIONAL METHOD DEVELOPMENT; AND 6 MEMBERS IF THERE ARE NO OPTIONAL METHOD DEVELOPMENTS. The County Executive must appoint the members ~~of the Wheaton Urban District Advisory Committee~~ so that:

(A) 2 members are persons nominated by the Wheaton-Kensington Chamber of Commerce;

(B) 2 members represent businesses that employ fewer than 10 persons;

(C) ONE MEMBER REPRESENTS A RESIDENTIAL COMMUNITY IN THE URBAN DISTRICT;

~~(C)~~(D) one member represents a residential community IN OR OUTSIDE OF THE URBAN DISTRICT and is nominated by the Wheaton Citizens Advisory Board; and

~~(D)~~(E) 2 THE REMAINING members represent optional method developers~~, if there are 2 or more optional method developments~~.

(2) THE BETHESDA AND SILVER SPRING URBAN DISTRICT ADVISORY COMMITTEES HAVE 8 MEMBERS. The County Executive must appoint the members ~~of the Bethesda and Silver Spring Urban District Advisory Committees~~ so that:

(A) 2 members are persons nominated by the respective Chamber of Commerce of each urban district;

(B) 3 members represent optional method developers;

(C) one member represents a business that employs fewer than 10 employees;~~ and~~

(D) ONE MEMBER REPRESENTS A RESIDENTIAL COMMUNITY IN THE URBAN DISTRICT; AND

~~(D)~~(E) one member represents a residential community IN OR OUTSIDE OF THE URBAN DISTRICT and is nominated by the ~~respective~~ Citizens Advisory Board from ~~each~~ THE urban district.

(3) The County Executive may reject individuals nominated to serve on an advisory committee and request additional nominations.

(b) **Term.**

(1) Committee members serve for a period of ~~2~~ 3 years beginning July 1. However, ~~for the first appointments, one member nominated by the Chamber and one member who represents the optional method developers serve on the committee for only one year.~~ WHEN AN ADVISORY COMMITTEE IS FIRST FORMED, THE FOLLOWING MEMBERS SERVE FOR ONLY 2 YEARS:

(A) ONE MEMBER NOMINATED BY THE CHAMBER OF COMMERCE;

(B) ONE MEMBER WHO REPRESENTS THE OPTIONAL METHOD DEVELOPERS; AND

(C) ONE MEMBER WHO REPRESENTS A BUSINESS THAT EMPLOYS FEWER THAN 10 PERSONS.

(2) The County Executive may reappoint committee members.

(c) **Duties.**

(1) An urban district advisory committee ~~must~~ MAY ADVISE THE COUNTY GOVERNMENT ON ALL ASPECTS OF THE PROGRAM, MANAGEMENT, AND FINANCES OF THE URBAN DISTRICT.

~~(A) by July 15 each year advise the Department of Transportation/DEPARTMENT on the desired types and levels of maintenance services and promotional and PROGRAMMING activities, MINOR PUBLIC FACILITIES, AND MONITORING ACTIVITIES, SAFETY, AND COMFORT NEEDS IN PUBLIC SPACES;~~

~~(B) by September 15 each year review the urban district budget and submit comments to the Department of Transportation/DEPARTMENT; and~~

~~(C) by October 1 each year meet with the Director of the~~

~~Department of Transportation, HEAD OF THE DEPARTMENT to resolve Areas of disagreement regarding the budget.~~

~~(2) An urban district advisory committee may advise the County on:~~

~~(A) standards of maintenance;~~

~~(B) promotional AND PROGRAMMING activity; and~~

~~(C) urban district problems.~~

(2) AN URBAN DISTRICT ADVISORY COMMITTEE SHOULD:

(A) BY JULY 15 EACH YEAR, ADVISE THE DEPARTMENT ON THE PROGRAM AND BUDGET OF THE URBAN DISTRICT;

(B) BY SEPTEMBER 15 EACH YEAR, REVIEW THE URBAN DISTRICT BUDGET AND SUBMIT COMMENTS TO THE DEPARTMENT; AND

(C) BY OCTOBER 1 EACH YEAR, MEET WITH THE HEAD OF THE DEPARTMENT TO RESOLVE AREAS OF DISAGREEMENT REGARDING THE BUDGET.

(d) **Compensation.**

(1) The County does not compensate members of urban district advisory committees for their services.

(2) Committee members are exempt from the requirements of the Financial Disclosure Law, Section 19A-12 of this Code.

(e) **Advisory Category.**

Urban district advisory committees are in the advisory category established in Section 2-143 of this Code.

~~(f) Chairperson.~~

~~An urban district advisory committee must elect a chairperson.~~

~~(g) Procedures.~~

~~(1) An urban district advisory committee meets at the direction of~~

the chairperson.

(2) A majority of the members of an advisory committee must be present for the committee to conduct any official business.

(3) If a majority of members attending a meeting, a meeting at which the committee may take an official action.

(h) Attendance.

(1) A committee member is considered to have resigned from an urban district advisory committee if in a 6 month period the member is absent from the greater of

(A) 25 per cent of the scheduled meetings, or

(B) 2 scheduled meetings.

(2) In this subsection, "scheduled meeting" means a meeting of the members of an urban district advisory committee for which advance notice is given.

(3) The chairperson must promptly notify the County Executive and the members of an urban district advisory committee of any absence and any extenuating circumstances.

(4) A resignation under this subsection becomes effective 30 days after the County Executive receives the notice of absence.

(5) The County Executive may waive the resignation for good cause such as

(A) illness,

(B) emergency situations, or

(C) other extenuating circumstances.

(6) The County Executive must notify the member in writing whether or not a waiver has been granted.

(g) PROCEDURES AND ATTENDANCE.

AN URBAN DISTRICT ADVISORY COMMITTEE MAY ~~ADOPT BYLAWS TO GOVERN ITS PROCEDURES AND ATTENDANCE~~ ESTABLISH ITS OWN RULES OF PROCEDURE. A COMMITTEE MAY ADOPT A RULE THAT PROVIDES FOR REMOVAL OF A MEMBER BECAUSE OF FAILURE TO ATTEND MEETINGS.

~~68A-76 COUNTY WORK ON PUBLIC AND PRIVATE PROPERTY~~

~~THE COUNTY MAY ENTER INTO AGREEMENTS WITH OPTIONAL METHOD DEVELOPERS TO PROVIDE MAINTENANCE FOR ON SITE AMENITIES THE COUNTY AND OPTIONAL METHOD DEVELOPERS MAY ENTER INTO AGREEMENTS FOR THE COUNTY OR THE OPTIONAL METHOD DEVELOPER TO MAINTAIN STREETSCAPE AMENITIES ON EITHER PUBLIC OR PRIVATE PROPERTY~~

68A-76. MAINTENANCE AGREEMENTS.

THE COUNTY AND AN OPTIONAL METHOD DEVELOPER MAY ENTER INTO AN AGREEMENT FOR:

(1) THE COUNTY TO MAINTAIN STREETSCAPE AMENITIES ON PRIVATE PROPERTY; OR

(2) AN OPTIONAL METHOD DEVELOPER TO MAINTAIN STREETSCAPE AMENITIES ON PUBLIC RIGHTS-OF-WAY.

~~68A-77 PROMOTION OF URBAN DISTRICTS~~

~~AT THE REQUEST AN ADVISORY COMMITTEE THE COUNTY MAY USE FUNDS TO PROMOTE CULTURAL COMMERCIAL AND PUBLIC INTEREST ACTIVITIES TO MAINTAIN AN URBAN DISTRICT AS A VITAL AND VIABLE URBAN CENTER THE COUNTY MUST ADMINISTER THE PROMOTION AND MUST USE STANDARD CONTRACT PROCEDURES UNDER THE CODE~~

68A-87. Budget Preparation.

(a) The ~~DEPARTMENT OF TRANSPORTATION~~ DEPARTMENT must ~~DEVELOP~~ PREPARE a budget for each urban district and, EXCEPT FOR THE FIRST BUDGET, SHOULD submit the budget to the appropriate urban district

advisory committee by August 15 of each year. ~~The budget must show:~~

~~(1) maintenance and replacement costs for the entire urban district;~~

~~(2) maintenance and replacement costs for all off site amenities;~~

~~(3) maintenance and replacement costs for all on site amenities;~~

~~(4) proposed urban district taxi~~

~~(5) proposed maintenance assessment;~~

~~(6) proposed surcharge on parking fees; and~~

~~(7) promotional activity costs;~~

(b) EXCEPT FOR THE FIRST BUDGET, THE ~~The Director of the Department of Transportation~~ HEAD OF THE DEPARTMENT must:

(1) submit the proposed budget for review to the ~~respective~~ urban district advisory committee; and ~~must~~

(2) meet with the ~~committees~~ COMMITTEE to attempt to resolve any areas of disagreement.

(c) The ~~Department of Transportation~~ DEPARTMENT must include the budget of each urban district in its departmental budget. The ~~Department of Transportation~~ DEPARTMENT COUNTY EXECUTIVE must note any areas of disagreement with an advisory committee in the departmental budget ~~that the County Executive submits~~ SUBMITTED TO THE COUNTY COUNCIL.

68A-38. Urban District Boundaries.

(a) Bethesda Urban District.

The Bethesda Urban District is all land in the seventh election district of the County within the area described as follows:

(1) beginning at a point on the east right-of-way line of Wisconsin Avenue at the northwest corner of Lot 47, Block 1,

in the Resubdivision of Lots 1, 2, and 3 of Rosedale Park, as recorded January 9, 1939, in Plat Book 16, Plat 1038, among the land records of Montgomery County, Maryland;

(2) then in an easterly direction along the north line of Lot 47 and Lot 48 to the northeast corner of Lot 48 as shown in Plat Book 16, Plat 1038, recorded January 9, 1939, among the land records of Montgomery County, Maryland, which is also the north line of Block 1 of the Rosedale Park subdivision, as recorded August 5, 1908, in Plat Book 1, Plat 92, among the land records of Montgomery County, Maryland;

(3) then in an easterly direction along the north line of Block 1 in the Rosedale Park subdivision to the northeast corner of Lot 5, Block 1, Rosedale Park, as shown in Plat Book 1, Plat 92, recorded August 5, 1908, among the land records of Montgomery County, Maryland;

(4) then in a southerly direction along the common lot line, which is the east line of Lot 5 and the west line of Lot 6, Block 1, Rosedale Park, to its intersection with the north right-of-way line of Chestnut Street, as shown in Plat Book 1, Plat 92, recorded August 5, 1908, among the land records of Montgomery County, Maryland;

(5) then crossing Chestnut Street to the northwest corner of Lot 7, Block 3, Rosedale Park, as shown in Plat Book 1, Plat 92, recorded August 5, 1908, among the land records of Montgomery County, Maryland;

(6) then in a southerly direction along the west line of Lot 7, Block 3, Rosedale Park, to the northwest corner of Lot 16,

Block 3, Rosedale Park, as shown in Plat Book 1, Plat 92, recorded August 5, 1908, among the land records of Montgomery County, Maryland;

(7) then along the west line of Lot 16, Block 3, Rosedale Park, to its intersection with the north right-of-way line of Rosedale Avenue;

(8) then crossing Rosedale Avenue to the northwest corner of Lot 7, Block 7, Rosedale Park, as shown in Plat Book 1, Plat 92, recorded August 5, 1908, among the land records of Montgomery County, Maryland;

(9) then in a southerly direction along the west line of Lot 7, Block 7, Rosedale Park, to the northwest corner of Lot 15, Block 7, Rosedale Park, as shown in Plat Book 1, Plat 92, recorded August 5, 1908, among the land records of Montgomery County, Maryland;

(10) then in a southerly direction along the west line of Lot 15, Block 7, Rosedale Park, to its intersection with the north right-of-way line of Maple Avenue;

(11) then along the north right-of-way line of Maple Avenue to its intersection with the west right-of-way line of Tilbury Street;

(12) then in a southerly direction along the west right-of-way line of Tilbury Street, crossing Maple Avenue and Highland Avenue to the south line of Highland Avenue;

(13) then in a westerly direction along the south right-of-way line of Highland Avenue to its intersection with the northeast corner of Lot 8, Block 5, West Chevy Chase Heights subdivision, as recorded April 31, 1916, in Plat Book 2, Plat 186, among the land records of Montgomery County, Maryland;

(14) then in a southerly direction along the common lot line, which is the east line of Lot 8 and the west line of Lot 9, Block 5, West Chevy Chase Heights subdivision, as shown in Plat Book 2, Plat 186, recorded April 31, 1916, among the land records of Montgomery County, Maryland, crossing a public alley to the northwest corner of Lot 18, Block 5, West Chevy Chase Heights subdivision, as shown in Plat Book 2, Plat 186, recorded April 31, 1916, among the land records of Montgomery County, Maryland;

(15) then in an easterly direction along the north line of Lot 18, Block 5, to the northeast corner of Lot 18, Block 5, West Chevy Chase Heights subdivision, as shown in Plat Book 2, Plat 186, recorded April 31, 1916, among the land records of Montgomery County, Maryland;

(16) then in a southerly direction along the common lot line, which is the east line of Lot 18 and the west line of Lot 19, Block 5, to its intersection with the north right-of-way line of West Virginia Avenue, as shown in Plat Book 2, Plat 186, recorded April 31, 1916, among the land records of Montgomery County, Maryland;

(17) then in an easterly direction along the north right-of-way line of West Virginia Avenue to its intersection with a northern extension of the west lot line of Lot 15, Block 9, West Chevy Chase heights subdivision, as shown in Plat 2, Plat 186, recorded April 31, 1916, among the land records of Montgomery County, Maryland;

(18) then in a southerly direction along that extension, crossing West Virginia Avenue to the northwest corner of Lot 15, Block

9, West Chevy Chase Heights, as shown in Plat Book 2, Plat 186, recorded April 31, 1916, among the land records of Montgomery County, Maryland;

(19) then in a southerly direction along the common lot line, which is the west line of Lot 15 and the east line of Lot 14, to the southwest corner of Lot 15, Block 9, West Chevy Chase Heights subdivision, as shown in Plat Book 2, Plat 186, recorded April 31, 1916, among the land records of Montgomery County, Maryland;

(20) then crossing a 10 foot wide alley that is dedicated in Plat Book 2, Plat 186, recorded April 31, 1916, among the land records of Montgomery County, Maryland, to the northeast corner of Lot 22, Block 9, West Chevy Chase Heights subdivision, as shown in Plat Book 2, Plat 186, recorded April 31, 1916, among the land records of Montgomery County, Maryland;

(21) then in a southerly direction along the common lot line, which is the east line of Lot 22 and Lot 23, Block 9, West Chevy Chase Heights subdivision, to its intersection with the north right-of-way line of Chase Avenue, as shown in Plat Book 2, Plat 186, recorded April 31, 1916, among the land records of Montgomery County, Maryland;

(22) then crossing Chase Avenue to the northwest corner of Outlot "A", Block 1, Westboro subdivision, as recorded July 12, 1937, in Plat Book 12, Plat 839, among the land records of Montgomery County, Maryland;

(23) then in a southerly direction along the common line, which is the east line of a 20 foot public alley and the west line of Outlot "A", Block 1, Westboro subdivision, to its intersection

with the north right-of-way line of Cheltenham Drive, as shown in Plat Book 12, Plat 839, recorded July 12, 1937, among the land records of Montgomery County, Maryland;

(24) then in an easterly direction along the north right-of-way line of Cheltenham Drive to its intersection with the west right-of-way line of Tilbury Street;

(25) then in a southerly direction along the west right-of-way line of Tilbury Street crossing Cheltenham Drive and along an extension of that right-of-way line of Tilbury Street to its intersection with the north line of Rabner's Subdivision, as recorded May 11, 1936, in Plat Book 9, Plat 675, among the land records of Montgomery County, Maryland;

(26) then in an easterly direction along the north line of Rabner's Subdivision to the northeast corner of Lot 6, Rabner's Subdivision, as shown in Plat Book 9, Plat 675, recorded May 11, 1936, among the land records of Montgomery County, Maryland;

(27) then in a southerly direction along the common lot line, which is the east line of Lot 6 and the west line of Lot 7, Rabner's Subdivision, to its intersection with the north right-of-way line of Middleton Lane, as shown in Plat Book 9, Plat 675, recorded May 11, 1936, among the land records of Montgomery County, Maryland;

(28) then in a westerly direction along the north right-of-way line of Middleton Lane to its intersection with a northern extension of the common lot line, which is the east line of Lot 2 and the west line of Lot 3, Mae S. Middleton's Subdivision, as recorded December 31, 1935, in Plat Book 8, Plat 639, among the land

records of Montgomery County, Maryland;

(29) then in a southerly direction along the common lot line between Lot 2 and Lot 3, Middleton's Subdivision, as shown in Plat Book 8, Plat 639, recorded December 31, 1935, among the land records of Montgomery County, Maryland, to its intersection with the north line of the George G. Bradley Subdivision, as recorded December 31, 1935, in Plat Book 8, Plat 635, among the land records of Montgomery County, Maryland;

(30) then in a westerly direction along the north line of the George G. Bradley Subdivision to the northwest corner of Lot 5, George G. Bradley Subdivision;

(31) then in a southerly direction along the west line of Lot 5, George G. Bradley Subdivision, to its intersection with the north right-of-way line of Avondale Street, as shown in Plat Book 8, Plat 635, recorded December 31, 1935, among the land records of Montgomery County, Maryland;

(32) then crossing Avondale Street to the northwest corner of Lot 22, George G. Bradley Subdivision, as shown in Plat Book 8, Plat 635, recorded December 31, 1935, among the land records of Montgomery County, Maryland;

(33) then in a southerly direction along the west line of Lot 22 to its intersection with the southern line of the George G. Bradley Subdivision, as shown in Plat Book 8, Plat 635, recorded December 31, 1935, among the land records of Montgomery County, Maryland;

(34) then in an easterly direction along the south line of the George G. Bradley Subdivision to the southeast corner of Lot

14, George G. Bradley Subdivision, which is also the intersection of the east and south lines of the George G. Bradley Subdivision as shown in Plat Book 8, Plat 635, recorded December 31, 1935, among the land records of Montgomery County, Maryland, and also the northeast corner of Parcel A, Waverly House, as recorded November 12, 1976, in Plat Book 101, Plat 11383, among the land records of Montgomery County, Maryland;

(35) then in a southerly direction along the east line of Parcel A, Waverly House, as shown in Plat Book 101, Plat 11383, recorded November 12, 1976, among the land records of Montgomery County, Maryland, to its intersection with the north right-of-way line of East-West Highway;

(36) then in an easterly direction along the north line of East-West Highway to its intersection with the east right-of-way line of Pearl Street;

(37) then in a northerly direction along the east right-of-way line of Pearl Street to its intersection with the northwest corner of Lot 1, Block A, subdivision of part of Charles W. Pafflow's property, as recorded April 24, 1926, in Plat Book 4, Plat 329, among the land records of Montgomery County, Maryland;

(38) then in an easterly direction along the north lot line of Lots 1, 2, 3 and 4 to its intersection with the east line of Block A, as shown in Plat Book 4, Plat 329, recorded April 24, 1926, among the land records of Montgomery County, Maryland;

(39) then in a northerly direction along the east line of Block A to the northeast corner of Block A, as shown in Plat Book 4, Plat 329, recorded April 24, 1926, among the land records of

Montgomery County, Maryland;

(40) then in an easterly direction along the north line of the lot recorded by deed dated July 1, 1919, which is part of the boundary of the Bethesda Chevy Chase High School property, to the northwest corner of Lot 1, East-West Apartment site, as recorded August 10, 1957, in Plat Book 60, Plat 4987, among the land records of Montgomery County, Maryland;

(41) then in an easterly direction along the north line of Lot 1 of the East-West Apartment site to its northeast corner, as shown in Plat Book 60, Plat 4987, recorded August 10, 1957, among the land records of Montgomery County, Maryland;

(42) then in a southerly direction along the east line of Lot 1 of the East-West Apartment site to its intersection with the north right-of-way line of East-West Highway, crossing East-West Highway along a southerly extension of that lot line to its intersection with the south right-of-way line of East-West Highway;

(43) then in an easterly direction along the south right-of-way line of East-West Highway crossing Montgomery Avenue to its intersection with the north right-of-way line of the B & O Railroad;

(44) then in a southwesterly direction with the north right-of-way line of the B & O Railroad to its intersection with the east line of Pearl Street;

(45) then in a southerly direction crossing the B & O Railroad right-of-way along an extension of the east right-of-way line of Pearl Street to its intersection with the south right-of-way

line of the B & O Railroad;

(46) then in a westerly direction along the south right-of-way line of the B & O Railroad right-of-way to its intersection with the northwest corner of Lot 2, Block L, Section 8-B, Chevy Chase Subdivision, as recorded July 29, 1926, in Plat Book 4, Plat 336, among the land records of Montgomery County, Maryland;

(47) then in a southerly direction along the common lot line, which is the west line of Lot 2 and the east line of Lot 1, Block L, Section 8-B, Chevy Chase Subdivision, as shown in Plat Book 4, Plat 336, recorded July 29, 1926, among the land records of Montgomery County, Maryland, to its intersection with the north right-of-way line of Elm Street;

(48) then in a westerly direction along the north right-of-way line of Elm Street to its intersection with a northerly extension of the west right-of-way line of 47th Street;

(49) then in a southerly direction along that extension crossing Elm Street and continuing in a southerly direction along the west right-of-way line of 47th Street, crossing Willow Lane to the south right-of-way line of Willow Lane;

(50) then in an easterly direction along the south right-of-way line of Willow Lane to its intersection with the west right-of-way line of 46th Street;

(51) then in a southerly direction along the west right-of-way line of 46th Street, crossing Leland Street and Walsh Street to its intersection with the south right-of-way line of Walsh Street;

(52) then in an easterly direction along the south right-of-way line of Walsh Street to its intersection with the west right-of-way

line of West Avenue;

(53) then in a southerly direction along the west right-of-way line of West Avenue, crossing Stanford Street, to its intersection with the north right-of-way line of Bradley Lane;

(54) then in a westerly direction along the north right-of-way line of Bradley Lane to its intersection with the east right-of-way line of Wisconsin Avenue;

(55) then crossing Wisconsin Avenue to the southeast corner of Lot 3, Block 2, Section 1, Bradley Hills - Bethesda Subdivision, as recorded August 10, 1957, in Plat Book 60, Plat 4990, among the land records of Montgomery County, Maryland;

(56) then in a northwesterly direction along the north right-of-way line of Bradley Boulevard to its intersection with a southern extension of the east right-of-way line of Strathmore Street;

(57) then in a northerly direction along the east right-of-way line of Strathmore Street, crossing Leland Street to the north right-of-way line of Leland Street at the southwest corner of Lot 2, Block 1, Plat of Section One, George P. Sack's Subdivision Bethesda, as recorded November 24, 1931, in Plat Book 5, Plat 435, among the land records of Montgomery County, Maryland;

(58) then in a northerly direction along the common lot line, which is the west line of Lot 2 and the east line of Lot 3, Block 1, George P. Sack's Subdivision, to its intersection with the north line of George P. Sack's Subdivision as shown in Plat Book 5, Plat 435, recorded November 24, 1931, among the land records of Montgomery County, Maryland;

(59) then in a westerly direction along the north line of George P. Sack's Subdivision to the northwest corner of Lot 11, Block 1, George P. Sack's Subdivision, as shown in Plat Book 5, Plat 435, recorded November 24, 1931, among the land records of Montgomery County, Maryland;

(60) then in a westerly direction along the north line of George P. Sack's Subdivision to its intersection with the south right-of-way line of the Metropolitan and Southern Branch of the Baltimore & Ohio Railroad,

(61) then in a westerly direction along the extension of that subdivision line to its intersection with the north right-of-way line of the Metropolitan and Southern Branch of the Baltimore & Ohio Railroad;

(62) then in a southerly direction along the north line of the Metropolitan and Southern Branch of the Baltimore & Ohio Railroad right-of-way, crossing Bradley Boulevard, to its intersection with a southern extension of the west line of Parcel "EYE", Bradley Hills, Section 2, as recorded December 16, 1954, in Plat Book 50, Plat 3893, among the land records of Montgomery County, Maryland;

(63) then in a northerly direction along the west line of Parcel "EYE", Bradley Hills Section 2 Subdivision, to its intersection with the south right-of-way line of Bradley Boulevard, as shown in Plat Book 50, Plat 3893, recorded December 16, 1954, among the land records of Montgomery County, Maryland;

(64) then in a northerly direction, crossing Bradley Boulevard, to the southwest corner of Parcel B, Bradley Hills Subdivision, as

recorded December 30, 1948, in Plat Book 25, Plat 1582, among the land records of Montgomery County, Maryland;

(65) then in a northerly direction along the west line of Parcel B, Bradley Hills Subdivision, as shown in Plat Book 25, Plat 1582, recorded December 30, 1948, among the land records of Montgomery County, Maryland, to its intersection with the southern boundary of Miller's Addition to Bethesda Subdivision, as recorded October 23, 1946, in Plat Book 29, Plat 1823, among the land records of Montgomery County, Maryland;

(66) then in a westerly direction along the southern boundary of Miller's Addition to Bethesda Subdivision to its intersection with the east line of Lot Pt 6, Block E, Miller's Addition to Bethesda Subdivision, as recorded by deed dated September 2, 1948, and described as Parcel No. 1 in Liber 1185, Folio 513, among the land records of Montgomery County, Maryland;

(67) then in a northerly direction along that east line of Lot Pt 6, Block E, to its intersection with the south right-of-way line of Bethesda Avenue;

(68) then crossing Bethesda Avenue to the intersection of the north right-of-way line of Bethesda Avenue and the east line of Lot Pt 6, Block D, Miller's Addition to Bethesda Subdivision, as recorded by deed dated September 2, 1948, and described as Parcel No. 2 in Liber 1185, Folio 513, among the land records of Montgomery County, Maryland;

(69) then in a northerly direction along that east line of Lot Pt 6, Block D, Miller's Addition to Bethesda Subdivision, as recorded by deed dated September 2, 1948, and described as Parcel No. 2

in Liber 1185, Folio 513, among the land records of Montgomery County, Maryland, to its intersection with the south line of another Lot Pt 6, Block D, Miller's Addition to Bethesda Subdivision, as recorded by deed dated July 14, 1949, in Liber 1274, Folio 367, among the land records of Montgomery County, Maryland;

(70) then in an easterly direction along the south line of the same Lot Pt 6, Block D, Miller's Addition to Bethesda Subdivision, as recorded by deed dated July 14, 1949, in Liber 1274, Folio 367, among the land records of Montgomery County, Maryland to the southwest corner of Lot Pt 8, Block D, as recorded by deed dated July 14, 1949, in Liber 1274, Folio 367, among the land records of Montgomery County, Maryland;

(71) then in an easterly direction along the south line of the same Lot Pt 8, Block D, to the southeast corner of the same Lot Pt 8, Block D;

(72) then in a northerly direction along the east line of the same Lot Pt 8, Block D, to its intersection with the south right-of-way line of Elm Street;

(73) then in an easterly direction along the south right-of-way line of Elm Street, crossing Arlington Road, to its intersection with the east right-of-way line of Arlington Road;

(74) then in a northerly direction along the east right-of-way line of Arlington Road, crossing Elm Street and Hampden Lane, to its intersection with the north right-of-way line of Hampden Lane;

(75) then in an easterly direction along the north right-of-way line of Hampden Lane to the southeast corner of Lot 9, Block 24D,

Edgemoor Subdivision, as recorded June 4, 1935, in Plat Book 7, Plat 573, among the land records of Montgomery County, Maryland, which is also on the west line of a public alley running between Hampden Lane and Montgomery Lane, and also the proposed western right-of-way line for Woodmont Avenue;

(76) then in a northerly direction along the west line of that alley to its intersection with the south right-of-way line of Montgomery Lane;

(77) then crossing Montgomery Lane to the intersection of the north right-of-way line of Montgomery Lane and the west right-of-way line of Woodmont Avenue;

(78) then in a northerly direction along the west right-of-way line of Woodmont Avenue, crossing North Lane and Edgemoor Lane to the south right-of-way line of Middlesex Lane;

(79) then in a westerly and northwesterly direction along the south right-of-way line of Middlesex Lane to its intersection with the south right-of-way line of Moorland Lane;

(80) then in a westerly direction along the south right-of-way line of Moorland Lane to its intersection with the east right-of-way line of Arlington Road;

(81) then in a northerly direction along the east right-of-way line of Arlington Road to its intersection with the southwest right-of-way line of Old Georgetown Road;

(82) then in a northwesterly direction along the southwest right-of-way line of Old Georgetown Road, crossing Arlington Road, to its intersection with the north right-of-way line of Wilson Lane;

(83) then in a westerly direction along the north right-of-way line of Wilson Lane, crossing Cordell Avenue, to its intersection with the west right-of-way line of Cordell Avenue;

(84) then in a northerly direction along the west right-of-way line of Cordell Avenue to its intersection with the common lot line, which is the north line of Lot 5 and the south line of Lot 4, Block L, Section 2, Battery Park Subdivision, as recorded July 24, 1925, in Plat Book 4, Plat 304, among the land records of Montgomery County, Maryland;

(85) then in a westerly direction along the common lot line of Lots 4 and 5 as shown in Plat Book 4, Plat 304, recorded July 24, 1925, among the land records of Montgomery County, Maryland, to its intersection with the east line of Lot 6, Block L, Section 2, Battery Park Subdivision, as shown in Plat Book 4, Plat 304, recorded July 24, 1925, among the land records of Montgomery County, Maryland;

(86) then in a northerly direction along the east line of Lot 6 to the southernmost corner of Lot 21, Block L, Section 2, Battery Park Subdivision, as recorded November 30, 1951, in Plat Book 41, Plat 2973, among the land records of Montgomery County, Maryland;

(87) then in a northwesterly direction along the southwest lines of Lots 21, 20 and 1, Block L, Section 2, Battery Park Subdivision, as shown in Plat Book 41, Plat 2973, recorded November 30, 1951, among the land records of Montgomery County, Maryland, to its intersection with the south right-of-way line of Del Ray Avenue;

(88) then in a westerly direction along the south right-of-way line of Del Ray Avenue to its intersection with the common lot line dividing Lot 16 and Lot 17, Block L, Section 2, Battery Park Subdivision, as recorded August 24, 1923, in Plat Book 3, Plat 261, among the land records of Montgomery County, Maryland;

(89) then crossing Del Ray Avenue to the southwest corner of Lot 8, Block K, Section 2, Battery Park Subdivision, as recorded February 26, 1962, in Plat Book 70, Plat 6614, among the land records of Montgomery County, Maryland;

(90) then in a northerly direction along the west line of Lot 8, Block K, Section 2, Battery Park Subdivision to the southwest corner of Lot 29, Block K, Section 2, Battery Park Subdivision, as shown in Plat Book 70, Plat 6614, recorded February 26, 1962, among the land records of Montgomery County, Maryland;

(91) then in a northwesterly direction along the southern lot lines of Lots 7, 6, and 5, Block K, Section 2, Battery Park Subdivision, as recorded August 24, 1923, in Plat Book 3, Plat 261, among the land records of Montgomery County, Maryland, to the southwest corner of Lot 5, Block K, Section 2, Battery Park Subdivision, as shown in Plat Book 3, Plat 261, recorded August 24, 1923, among the land records of Montgomery County, Maryland;

(92) then in a northwesterly direction along the southern line of Lot 35, Block K, Section 2, Battery Park Subdivision, to its intersection with the southern right-of-way line of Glenbrook Road, as recorded June 6, 1980, in Plat Book 111, Plat 12996, among the land records of Montgomery County, Maryland;

(93) then in a northeasterly direction along the southern

right-of-way line of Glenbrook Road to the southwest right-of-way line of Old Georgetown Road;

(94) then crossing Old Georgetown Road to the intersection of the northeast right-of-way line of Old Georgetown Road and the southeast right-of-way line of Glenbrook Road;

(95) then in a northeasterly direction along the southeast right-of-way line of Glenbrook Road to the northeast corner of Lot 1, Block A, Samuel T. Robertsons Addition to Bethesda Subdivision, as recorded January 9, 1930, in Plat Book 5, Plat 407, among the land records of Montgomery County, Maryland;

(96) then in a southeasterly direction along the northeast line of Lots 1 and 2, Block A, Samuel T. Robertsons Addition to Bethesda Subdivision, to its intersection with the southeast boundary line for Samuel T. Robertsons Addition to Bethesda Subdivision, as shown in Plat Book 5, Plat 407, recorded January 9, 1930, among the land records of Montgomery County, Maryland, which is also being the common subdivision boundary with Woodmont Subdivision as recorded November 13, 1894, in Plat Book 1, Plat 4, among the land records of Montgomery County, Maryland;

(97) then in a northeasterly direction along the common subdivision boundary line between Samuel T. Robertsons Addition to Bethesda and Woodmont Subdivisions to its intersection with the southwest right-of-way line of Norfolk Avenue;

(98) then in a northerly direction along the common subdivision boundary line between Samuel T. Robertsons Addition to Bethesda and Woodmont Subdivisions, crossing Rugby Avenue to

its intersection with the southern boundary line of Northwest Park Subdivision, as recorded October 10, 1910, in Plat Book 2, Plat 134, among the land records of Montgomery County, Maryland;

(99) then in an easterly direction along the common subdivision boundary line between Northwest Park and Woodmont Subdivisions to its intersection with the westernmost line of Lot 633, Woodmont Subdivision, as recorded October 8, 1982, in Plat Book 119, Plat 14027, among the land records of Montgomery County, Maryland;

(100) then in a northerly direction along the westernmost line of Lot 633, Woodmont Subdivision, to its intersection with the northernmost line of Lot 633, Woodmont Subdivision, as shown in Plat Book 119, Plat 14027, recorded October 8, 1982, among the land records of Montgomery County, Maryland;

(101) then in an easterly direction along the northernmost line of Lot 633, Woodmont Subdivision, to its intersection with the east line of Lot 633, Woodmont Subdivision, which is also the west line of Lot 45, Block 1, Northwest Park Subdivision, as recorded October 10, 1910, in Plat Book 2, Plat 134, among the land records of Montgomery County, Maryland;

(102) then in a southerly direction along the common lot line of Lot 633, Woodmont Subdivision and Lot 45, Block 1, Northwest Park Subdivision, to its intersection with the northern boundary line of the Woodmont Subdivision as shown in Plat Book 2, Plat 134, recorded October 10, 1910, among the land records of Montgomery County, Maryland;

(103) then in an easterly direction along the northern boundary of the Woodmont Subdivision as recorded November 13, 1894, in Plat Book 1, Plat 4, among the land records of Montgomery County, Maryland, to its intersection with the west line of the Montgomery County Public Parking Facility No. 35 site as recorded in Liber 2388, Folio 521;

(104) then in a northerly direction along the west line of Public Parking Facility No. 35 to its intersection with the north line of Public Parking Facility No. 35;

(105) then in an easterly direction along the north line of Public Parking Facility No. 35 to its intersection with the western right-of-way line of Woodmont Avenue;

(106) then in a northerly direction along the western right-of-way line of Woodmont Avenue to its intersection with the southern right-of-way line of Battery Lane;

(107) then in a northerly direction, crossing Battery Lane, to the northern right-of-way line of Battery Lane at the southeast corner of Lot 47, Block 2, Northwest Park Subdivision, as recorded October 10, 1910, in Plat Book 2, Plat 134, among the land records of Montgomery County, Maryland;

(108) then in a northerly direction along the east line of Lot 47, Block 2, Northwest Park Subdivision, which is also the west line of Lot 20, Block 2, Northwest Park Subdivision, to its intersection with the northern boundary line for the Northwest Park Subdivision, as shown in Plat Book 2, Plat 134, recorded October 10, 1910, among the land records of Montgomery County, Maryland;

(109) then in an easterly direction along the northern boundary line of the Northwest Park Subdivision to its intersection with the west right-of-way line of Wisconsin Avenue;

(110) then in an easterly direction, crossing Wisconsin Avenue, to the point of beginning; and

(111) any lot that is partially within and partially outside of the areas under paragraphs (1) through (110).

(b) **Silver Spring Urban District.**

The Silver Spring urban district is all land in the thirteenth election district of the County within the area described as follows:

(1) beginning at a point on the Maryland-District of Columbia boundary line at the intersection of the west right-of-way of Georgia Avenue with the Maryland-District of Columbia boundary line, and running in a northwesterly direction along the Maryland-District of Columbia boundary line, and crossing Sixteenth Street along an extension of that boundary line to its intersection with the west right-of-way line of Sixteenth Street;

(2) then in a northerly direction along the west right-of-way line of Sixteenth Street, crossing East-West Highway to its intersection with a southwesterly extension of the northerly right-of-way line of Spring Street;

(3) then in a northeasterly direction along that extension crossing Sixteenth Street to its intersection with the east right-of-way line of Sixteenth Street;

(4) then in a northeasterly direction along the northern right-of-way line of Spring Street, crossing Second Avenue, First

Avenue, Georgia Avenue, and Alton Parkway, then southeasterly to its intersection with the northwest right-of-way line of Fairview Road;

(5) then in a northeasterly direction approximately 390 feet along the northwest right-of-way line of Fairview Road to its intersection with the westward extension of the southwest line of Lots 1 and 2, Block B, Section 4, Woodside Park, as recorded January 30, 1923, in Plat Book 3, Plat 244, among the land records of Montgomery County, Maryland;

(6) then crossing Fairview Road in a southeasterly direction along the southwest line of Lots 1 and 2, Block B, Section 4, Woodside Park, to its intersection with the southwest right-of-way line of Noyes Drive;

(7) then in a southeasterly direction along the southwest right-of-way line of Noyes Drive to its intersection with the northwest right-of-way line of Colesville Road;

(8) then crossing Colesville Road in a southeasterly direction to the intersection of the southeast right-of-way line of Colesville Road and the southwest line of the Silver Spring Public Library site, Parcel No. P959;

(9) then along that line to the southeast right-of-way line of Ellsworth Drive;

(10) then in a southwesterly direction along the southeast right-of-way line of Ellsworth Drive to its intersection with the common line of the Academy of the Holy Names site and the northeast line of Evanswood Sec. 1 Subdivision, also shown as the common lot line of Lot 9 and Lot 10, Evanswood Section

One, as recorded March 2, 1932, in Plat Book 5, Plat 439 among the land records of Montgomery County, Maryland;

(11) then in a southeasterly direction along the northeast lot lines of Lots 1 through 9 as shown in Plat Book 5, Plat 439, recorded March 2, 1932, among the land records of Montgomery County, Maryland, crossing Pershing Drive along an extenstion of that line to its intersection with the southeast right-of-way line of Pershing Drive;

(12) then in a southwesterly direction along the southeast right-of-way line of Cedar Street;

(13) then in a southeasterly direction along the northeast right-of-way line of Cedar Street, crossing Wayne Avenue, to its intersection with the southeast right-of-way line of Wayne Avenue;

(14) then in a southwesterly direction along the southeast right-of-way line of Wayne Avenue for approximately 750 feet, to its intersection with the east lot line of Lot 24, Block 4, in Jordan's and Smith's Addition to Silver Spring Park, as recorded June 2, 1925, in Plat Book 4, Plat 301, among the land records of Montgomery County, Maryland;

(15) then in a southeasterly direction along the east line of Lot 24 to the southeast corner of Lot 24;

(16) then in a southwesterly direction approximately 15 feet to the northeast corner of Lot 14, Block 4, Jordan's and Smith's Addition to Silver Spring Park, as shown in Plat Book 4, Plat 301, recorded June 2, 1925, among the land records of Montgomery County, Maryland;

(17) then in a southeasterly direction along the east line of Lot 14, as shown in Plat Book 4, Plat 301, recorded June 2, 1925, among the land records of Montgomery County, Maryland, to the northwest right-of-way line of Bonifant Street;

(18) then in a southerly direction crossing Bonifant Street to the intersection of the southeastern right-of-way line of Bonifant Street and the northeast corner of Lot 5, Block U, Silver Spring Park, as shown in Plat Book 1, Plat 99, recorded April 4, 1909, among the land records of Montgomery County, Maryland, which is also the same as the northeast corner of Montgomery County Public Parking Facility 29;

(19) then in a southerly direction along the common lot line, which is the east line of Lot 5 and the west line of Lot 6 as shown in Plat Book 1, Plat 99, recorded April 4, 1909, among the land records of Montgomery County, Maryland, crossing Easley Street along the southern extension of that line to its intersection with the south right-of-way line of Easley Street;

(20) then in a westerly direction along the south right-of-way line of Easley Street approximately 50 feet to its intersection with the common lot line, which is the west line of Lot 7 and the east lot line of Lot 28, Block P, Silver Spring Park, as shown in Plat Book 1, Plat 99, recorded April 4, 1909, among the land records of Montgomery County, Maryland;

(21) then in a southerly direction along the common line of Lot 7 and Lot 28, Block P and the common line of Lot 18 and Lot 19, Block P, Silver Spring Park, as shown in Plat Book 1, Plat 99, recorded April 4, 1909, among the land records of Montgomery

County, Maryland, crossing Thayer Avenue to the intersection of the south right-of-way line of Thayer Avenue and the common lot line which is the east lot line of Lot 5 and the west lot line of Lot 6, Block G, as shown on a "Map of Building Sites for Sale at Silver Spring", as recorded May 23, 1904, in Plat Book 1, Plat 54, among the land records of Montgomery County, Maryland;

(22) then in a southerly direction along the common lot line of Lot 5 and Lot 6, Block G, and with an extension of that line to the south right-of-way line of a 20-foot alley dividing Block G and Block H, as shown on the "Map of Building Sites for Sale at Silver Spring";

(23) then in a westerly direction approximately 50 feet along the south line of that alley to its intersection with the common lot line, which is the east line of Lot 4 and the west line of Lot 5, Block H, as shown on the "Map of Building Sites for Sale at Silver Spring";

(24) then in a southerly direction along the common lot line of Lot 4 and Lot 5, Block H, to its intersection with the northern right-of-way line of Silver Spring Avenue;

(25) then crossing Silver Spring Avenue to the intersection of the southern right-of-way line of Silver Spring Avenue and the common lot line, which is the east line of Lot 4 and the west line of Lot 5, Block I, as shown on the "Map of Building Sites for Sale at Silver Spring";

(26) then in a southerly direction along the common lot line of Lot 4 and Lot 5, Block I, crossing a 20-foot alley dividing Block

I and Block J, as shown on the "Map of Building Sites for Sale at Silver Spring", to its intersection with the south right-of-way line of that alley and the common lot line, which is the east line of Lot 4 and the west line of Lot 5, Block J, as shown on the "Map of Building Sites for Sale at Silver Spring";

(27) then in a southerly direction along the common lot line of Lot 4 and Lot 5, Block J, to its intersection with the northern right-of-way line of Sligo Avenue;

(28) then along a southern extension of that common lot line of Lot 4 and Lot 5, Block J, to its intersection with the southern right-of-way line of Sligo Avenue;

(29) then in a northwesterly direction along the southern right-of-way line of Sligo Avenue to its intersection with the northeast corner of Lot 19, Block A, shown on a plat of Blair Section 1, recorded June 7, 1922, in Plat Book 3, Plat 229 among the land records of Montgomery County, Maryland;

(30) then in a southerly direction along the east line of Lot 19, Block A, to its intersection with the remainder of Lot 25, Block A, as shown on the plat of Blair Section 1, recorded June 7, 1922, in Plat Book 3, Plat 229, among the land records of Montgomery County, Maryland;

(31) then in an easterly direction approximately 15 feet to its intersection with the northwest corner of Lot 51, Block A, as shown on a plat of Blair Section 1, recorded November 16, 1935, in Plat Book 8, Plat 626, among the land records of Montgomery County, Maryland;

(32) then in a southerly direction along the west line of that Lot 51 to its intersection with the northern right-of-way line of Gist Avenue;

(33) then along a southerly extension of the west line of that Lot 51 to the southern right-of-way line of Gist Avenue;

(34) then in a westerly direction along the southern right-of-way line of Gist Avenue to its intersection with the eastern right-of-way line of Fenton Street;

(35) then in a southerly direction along the eastern right-of-way line of Fenton Street crossing Philadelphia Avenue, Isington Street, and New York Avenue to its intersection with the corporate limit line of the City of Takoma Park;

(36) then in a southwesterly direction with the corporate limit line of the City of Takoma Park crossing the northeast right-of-way line of the B & O Railroad to its intersection with the southwest right-of-way line of the B & O Railroad;

(37) then in a southeasterly direction with the southwest right-of-way line of the B & O Railroad to its intersection with the northeast right-of-way line of Blair Road;

(38) then in a northwesterly direction along the northeast right-of-way line of Blair Road to its intersection with an extension of the southeast line of Parcel One, Yost's Addition to Silver Spring, as shown in Plat Book 85, Plat 8874, recorded March 13, 1968, among the land records of Montgomery County, Maryland;

(39) then in a southwesterly direction along that line to its intersection with the northeast line of Eastern Avenue, which

is also the Maryland-District of Columbia boundary line;

(40) then in a northwesterly direction along the Maryland-District of Columbia boundary line to the point of beginning; and

(41) any lot that is partially within and partially outside of the areas under paragraphs (1) through 40.

(c) **Wheaton Urban District.**

The Wheaton Urban District is all land in the thirteenth election district of the County within the area described as follows:

(1) beginning on the west right-of-way line of Amherst Avenue at the southeast corner of Parcel A, Wheaton Place, as recorded February 26, 1965, in Plat Book 77, Plat 7696, among the land records of Montgomery County, Maryland;

(2) then in a westerly direction along the south line of the same Parcel A to its intersection with the east right-of-way line of Georgia Avenue, as shown in Plat Book 77, Plat 7696, recorded February 26, 1965, among the land records of Montgomery County, Maryland;

(3) then crossing Georgia Avenue along a westerly extension of the south line of the same Parcel A to its intersection with the west right-of-way line of Georgia Avenue;

(4) then in a northerly direction along the west right-of-way line of Georgia Avenue to its intersection with the southern line of Parcel 4, Wheaton Plaza, as recorded August 11, 1960, in Plat Book 66, Plat 6037, among the land records of Montgomery County, Maryland;

(5) then in a westerly and then northerly direction along the southern and western lines of Parcel 4, Wheaton Plaza, to its

intersection with the south right-of-way line of University Boulevard West, as shown in Plat Book 66, Plat 6037, recorded August 11, 1960, among the land records of Montgomery County, Maryland;

(6) then crossing University Boulevard West to the southwest corner of Lot PT8, Block G, Kensington View subdivision, as recorded July 10, 1925, in Plat Book 4, Plat 303, among the land records of Montgomery County, Maryland, which is also the northeast intersection of University Boulevard West and Midvale Road;

(7) then in a northerly direction along the west line of the same Lot PT8 to its intersection with the north line of the same Lot PT8;

(8) then in an easterly direction along the north lines of Lots 1 through 8, Block G, Kensington View, to its intersection with the west line of East Avenue, as shown in Plat Book 4, Plat 303, recorded July 10, 1925, among the land records of Montgomery County, Maryland;

(9) then in a northerly direction along the west line of East Avenue, crossing Upton Drive and Kensington Boulevard to the north line of Kensington Boulevard;

(10) then in an easterly direction along the north line of Kensington Boulevard, including its planned extension, to its intersection with the west line of Viers Mill Road;

(11) then crossing Viers Mill Road to the west corner of Lot 1, Block B, Triangle Park as shown in Plat Book No. 4, on Plat No. 338, recorded among the land records of Montgomery County,

Maryland;

(12) then with the southerly side of Kensington Boulevard in an easterly direction and crossing Wheaton Hill Road to a point on the easterly side of the same Wheaton Hill Road, which is also the north corner of Lot 16, Block A, as shown on the plat of Triangle Park in Plat Book 4, on Plat No. 338, recorded among the land records of Montgomery County, Maryland;

(13) then running with the easterly side of Wheaton Hill Road northeast to the south side of Blueridge Avenue, which is also the P.T. of Fillet curve No. 4 and generally the northwest corner of Lot 1, Block 44, as shown on Plat No. 9, Wheaton Hills, recorded in Plat Book 32, on Plat 2058, among the land records of Montgomery County, Maryland;

(14) then with the southerly side of Blueridge Avenue, with the arc of a curve to the left in a general easterly direction, to the east side of Grandview Avenue;

(15) then with the east side of Grandview Avenue north to the common front corner of Lots 19 and 20, Block 27, as shown on Plat No. 9, Wheaton Hills, recorded in Plat Book 32, on Plat 2058, among the land records of Montgomery County, Maryland;

(16) then leaving the east side of Grandview Avenue and running with the dividing line of the same Lots 19 and 20, and Lots 9 and 10, Block 27, as shown on Plat No. 9, Wheaton Hills, recorded in Plat Book 32, on Plat 2058, among the land records of Montgomery County, Maryland, east to the west side of Georgia Avenue;

(17) then with the west side of Georgia Avenue and running south,

approximately 200 feet;

(18) then leaving the west side of Georgia Avenue, crossing Georgia Avenue, and running east with the northerly subdivision limits of Villa Verde Subdivision as shown in Plat Book No. 4, on Plat No. 388, recorded among the land records of Montgomery County, Maryland, to the northeast corner of Lot 8, Villa Verde;

(19) then in a southerly direction along the east line of the same Lot 8, Villa Verde, and crossing Blueridge Avenue to the intersection of the extension of the east line of Lot 8, Villa Verde and the south line of Blueridge Avenue;

(20) then along the south line of Blueridge Avenue to approximately 125 feet east of the east line of Amherst Avenue, which is a point on the dividing line between Lot 1, Block 1, Wheaton Manor, and the property occupied by Columbia Broadcasting Company as shown in Plat Book 45, on Plat No. 3390, recorded among the land records of Montgomery County, Maryland;

(21) then in a southerly direction along that line to its intersection with the northerly line of Lot 3, Block 1, Wheaton Manor;

(22) then in an easterly direction along that northerly line of Lot 3, Block 1, Wheaton Manor, to its intersection with the easterly line of the same Lot 3, Block 1;

(23) then in a southerly direction along that easterly line of Lot 3, Block 1 to the intersection of the extension of that line with the southerly line of University Boulevard West (formerly Old Bladensburg Road);

(24) then in a northeasterly direction along that southerly line of University Boulevard West to its intersection with the west line of Amherst Avenue (formerly Vernosia Place);

(25) then in a southerly direction along that west line of Amherst Avenue, crossing Reedie Drive and Prichard Road to the point of beginning; and

(26) any lot that is partially within and partially outside of the areas under paragraphs (1) through (25).

~~68A-9///ADMINISTRATION OF URBAN DISTRICTS BY A NON-PROFIT CORPORATION/~~

~~IN ADDITION TO THE SOLE-SOURCE CONTRACT AUTHORITY UNDER SECTION 11B-42 OF THIS CODE//THE COUNTY EXECUTIVE MAY MAKE A SOLE-SOURCE CONTRACT WITH A NON-PROFIT CORPORATION FORMED BY THE ADVISORY COMMITTEE IN ANY URBAN DISTRICT TO PERFORM THE FUNCTIONS OF SECTION 68A-2///THE COUNTY COUNCIL MUST APPROVE A SOLE-SOURCE CONTRACT MADE BY THE COUNTY EXECUTIVE UNDER THIS SECTION BEFORE IT IS EFFECTIVE/~~

Sec. 3. Section 60-16 is amended to read as follows:

60-16. Purpose of parking lot funds; loans to county, etc.

(a) The DIRECTOR OF FINANCE MUST KEEP THE special taxes and parking ~~debts~~ fees collected from each district [[shall]] ~~must~~ ~~be~~ ~~kept~~ in A separate ~~funds~~ FUND FOR EACH DISTRICT, and each fund [[shall]] must be used so that there [[shall be]] ~~is~~ ~~paid first~~ [[therefrom]] ~~from the fund~~ ARE AVAILABLE ENOUGH FUNDS TO PAY the principal and interest ~~payments~~, as they become due, upon any bonds issued pursuant to law for the purpose of acquiring, constructing, maintaining, and operating the off-street parking facilities in the particular district from which the money in [[such]] that fund [[has been]] is collected[[, and

the]]. The balance [[shall]] must be used for the purpose of acquiring, constructing, operating, and maintaining off-street parking facilities in [[such]] that district. If in any fiscal year any balance [[shall remain]] remains after [[the aforesaid]] those payments, it [[shall]] THE DIRECTOR OF FINANCE must ~~be held by the director of finance~~ HOLD IT until the following fiscal year and ~~applied~~ APPLY IT as ~~above~~ provided ABOVE.

(b) [[No on-site]] On-site expenses in connection with the acquisition, improvement, operation, or maintenance of the off-street parking facilities [[shall]] must not be paid from the general revenues of the ~~county or suburban district funds, except, that~~ COUNTY. HOWEVER, general revenues ~~of suburban district funds~~ may be temporarily advanced for the acquisition and improvement of [[such]] those facilities in anticipation of the proceeds of bonds to be used ~~therefor, provided that any~~ [[such]] ~~of~~ FOR THAT PURPOSE, SO LONG AS the advance [[shall]] ~~must be~~ IS repaid within ~~six (6)~~ 6 months, or ~~prior to~~ BEFORE the end of the fiscal year in which the advance is made, whichever is sooner.

~~(b) Under Section 68A-4 of this Code, the County may add a surcharge to the parking meter rates in an urban district. The surcharge may not exceed $.10 per hour. Funds collected from this surcharge must be transferred into the fund balance of the respective urban district and used only in the urban district in which they are collected.~~

(c) (1) NOTWITHSTANDING THE LIMITATIONS IN SUBSECTIONS (a) OR (b) OR ANY OTHER PROVISIONS OF THIS CHAPTER, THE COUNTY COUNCIL MAY

TRANSFER REVENUE FROM PARKING FEES TO THE FUND OF ANY URBAN DISTRICT FROM WHICH THE FEES ARE COLLECTED AS LIMITED BY SECTION 68A-54(a)(2)(B).

(2) IN THIS SUBSECTION, "PARKING FEE" MEANS REVENUE FROM PARKING METERS, PARKING PERMITS, OR ANY OTHER USER CHARGE FOR PARKING.

Sec. 4. Section 60-13 is repealed as follows:

60-13. ~~SAME/+/COST/OF/TO/BE/APPROPRIATED/FROM/SUBURBAN/DISTRICT/TAX/~~

RESERVED.

~~TO/DEFRAY/THE/COSTS/OF/ADMINISTERING/THE/OFF+STREET/PARKING/PROGRAM PROVIDED/IN/THIS/CHAPTER,/EXCEPT/ON+SITE/EXPENSES/INCURRED/IN/CONNECTION WITH/THE/ACQUISITION,/IMPROVEMENT,/OPERATION/AND/MAINTENANCE/OF/OFF+STREET PARKING/FACILITIES,/THERE/SHALL/BE/APPROPRIATED/IN/EACH/AND/EVERY/FISCAL YEAR/COMMENCING/WITH/THE/YEAR/OF/1953+54,/FOR/THE/DEPARTMENT/OF TRANSPORTATION,/FROM/THE/SUBURBAN/DISTRICT/TAX,/SUCH/AMOUNT/AS/IS/ESTIMATED BY/THE/COUNCIL/TO/BE/NECESSARY/TO/DEFRAY/SUCH/ADMINISTRATIVE/COSTS/~~

Enacted Bill No. 9-86, Draft No. 6, dated June 10, 1986, as amended, by roll-call vote

YEAS: Crenca, Fosler, Gelman, Gudis, Scull, Potter, Hanna.

SUBJECT: Bill No. 19-86, Collective Bargaining for County Employees

ACTION: Amended the bill as follows:

Page 18, line 22, following the word "other" insert like;

Page 19, line 10, following the word "units" insert as defined in Section 33-105;

by motion of Vice President Potter, without objection.

ISSUES DISCUSSED: The question of whether the labor relations adminstrator has the authority to adopt regulations and procedures for the implementation of his duties as set forth in the bill; Mr. Scull's opinion that the authority to promulgate regulations should remain with the County Executive; the precedent established by other agencies, such as the Fire and Rescue Commission, to promulgate regulations; Consultant Willcox's statement that the County Executive will be a party to the collective bargaining negotiations and it is important that the labor relations administrator be independent.

ACTION: Page 29, line 12, following the word "Maryland" insert responsible for conducting labor elections

by motion of Vice President Potter, without objection.

Page 12, line 7, insert: If the majority vote is for no representation the Chief Administrative Officer shall so certify.

by motion of Vice President Potter, without objection.

Waived the reading of the title, and approved the amendments recommended by the Personnel Committee and technical amendments as follows:

by motion of Councilmember Gelman, without objection.

EXPLANATION:
- **Boldface** indicates matter that is a heading or a defined term.
- Underlining indicates matter added to existing law.
- [[Double Brackets]] indicate matter repealed from existing law.
- CAPITALS indicate matter quoted from existing law which is added to the bill by amendment.
- UNDERLINED CAPITALS indicate matter added to existing law by amendment to the bill.
- ~~strikes~~ indicate matter deleted from the bill by amendment.
- * * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 33-11(b) is amended to read as follows:

33-11. Classification; salary and wage plans.

* * *

(b) **Uniform salary plan.** [[There is hereby established for all classes of positions in the merit system a uniform salary plan entitled the "general salary schedule" which shall contain grades, salary rates and ranges for each grade. All classes of positions shall be assigned an appropriate grade under the general salary schedule by the chief administrative officer. All positions involving comparable duties, experience, responsibilities and authority shall be paid comparable salaries in accordance with the relative value of the services performed. In establishing salary rates, consideration shall be given to experience, prevailing salary rates for comparable services in both the public and private sectors, living costs, and fringe and other benefits received by the employee under the merit system. The chief administrative officer shall, subject to the approval of the county council, promulgate and from time to time amend the general salary schedule, compensation policies for overtime, pay differential and other appropriate salary and wage benefits.]]

(1) Subject to approval by the County Council, the Chief Administrative Officer must issue and periodically amend a uniform salary plan known as the "general salary schedule" for all classes of positions in the merit system.

(2) The general salary schedule must contain grades, salary rates, and salary ranges for each grade.

(3) The Chief Administrative Officer must assign an appropriate grade under the general salary schedule to all classes of positions.

(4) All positions involving comparable duties, experience, responsibilities, and authority must be paid comparable salaries in accordance with the relative value of the services performed.

(5) In setting salary rates, the Chief Administrative Officer must consider experience, prevailing salary rates for comparable services in both the public and private sectors, living costs, and fringe and other benefits received by the employee under the merit system.

(6) Subject to approval by the County Council, the Chief Administrative Officer must also issue and periodically amend compensation policies for overtime, pay differentials, and other appropriate salary and wage benefits.

(7) Any plan, policy, or schedule issued by the Chief Administrative Officer under this subsection is subject to the limitations in Articles V and VII of this chapter regarding County police department and government employees who are represented by a certified employee organization.

Sec. 2. Article IV of Chapter 33 is amended to read as follows:

ARTICLE IV. EMPLOYER-EMPLOYEE RELATIONS

33-62. STATEMENT OF LEGISLATIVE INTENT.

THE/COUNTY/COUNCIL/HEREBY/FINDS/THAT/THE/TREND/IN/LABOR/RELATIONS BETWEEN/GOVERNMENT/AND/ITS/EMPLOYEES/IS/BECOMING/SOMEWHAT/ALIGNED/WITH/THE PRACTICES/OF/THE/PRIVATE/SECTOR/OF/REPRESENTATION/OF/EMPLOYEE/GROUPS/BY DESIGNATED/ELECTED/EMPLOYEE/ORGANIZATIONS//THE/COUNCIL/BELIEVES/THAT GOVERNMENT/SHOULD/TAKE/THE/INITIATIVE/IN/PROVIDING/A/VEHICLE/WHEREBY GOVERNMENT/EMPLOYEE/REPRESENTATION/CAN/EMERGE/AND/EVOLVE/IN/A/FASHION/

CONSISTENT/WITH/BOTH/THE/NEEDS/OF/THE/EMPLOYEE/AND/THOSE/OF/GOVERNMENT///THE COUNCIL/FURTHER/BELIEVES/THAT/THIS/CAN/BEST/BE/ACCOMPLISHED/BY/ENACTING LOCAL/LEGISLATION/WHICH/PROVIDES/FOR/THE/VOLUNTARY/REPRESENTATION/OF GOVERNMENT/EMPLOYEES/BY/THEIR/DULY/DESIGNATED/AND/ELECTED/EMPLOYEE ORGANIZATIONS///THE/COUNCIL/ALSO/BELIEVES/THAT/THE/EFFICIENT/ADMINISTRATION OF/THE/COUNTY/GOVERNMENT/IS/ENHANCED/BY/PROVIDING/EMPLOYEES/AN/OPPORTUNITY TO/PARTICIPATE/IN/THE/FORMULATION/AND/IMPLEMENTATION/OF/POLICIES/AND PRACTICES/AFFECTING/THE/CONDITIONS/OF/THEIR/EMPLOYMENT///BECAUSE/THE/COUNCIL BELIEVES/IT/IS/DESIRABLE/TO/MINIMIZE/THE/PROLIFERATION/OF/EMPLOYEE/UNITS,//IT HAS/LIMITED/THE/NUMBER/OF/SUCH/UNITS/TO/SEVEN/(7),//HOWEVER,/THE/COUNCIL WOULD/CONSIDER/CHANGING/THAT/LIMITATION/AT/A/FUTURE/DATE/UPON/THE RECOMMENDATION/OF/THE/CHIEF/ADMINISTRATIVE/OFFICER/OR/AN/AFFECTED/GROUP/OF EMPLOYEES///THE/COUNCIL/FURTHER/STATES/THAT/THE/ELIGIBILITY/AS/TO/MEMBERSHIP IN/AN/EMPLOYEE/UNIT/FOR/PURPOSES/OF/THIS/MEET-AND-CONFER/TYPE/OF/EMPLOYEE REPRESENTATION/WOULD/NOT/NECESSARILY/BE/EXTENDED/IN/THE/SAME/MANNER/IF AUTHORITY/FOR/COLLECTIVE/BARGAINING/WERE/GRANTED,//MEMBERSHIP/OR NONMEMBERSHIP/IN/AN/EMPLOYEE/ORGANIZATION/SHALL/IN/NO/WAY/LIMIT/THE/ABILITY OF/AN/EMPLOYEE/TO/OBTAIN/GOVERNMENT/INFORMATION/TO/WHICH/HE/SHE/WOULD NORMALLY/HAVE/ACCESS,///NOTHING/IN/THIS/ARTICLE/SHALL/RESTRICT/THE/ABILITY/OF ANY/EMPLOYEE,/WHETHER/MEMBER/OR/NONMEMBER/OF/AN/EMPLOYEE/ORGANIZATION,/TO DISCUSS/MATTERS/CONCERNING/EMPLOYEES/OR/EMPLOYEE/GROUPS/TO/THE/EXTENT/THAT SUCH/DISCUSSION/DOES/NOT/CONFLICT/WITH/THE/DUTIES/AND/RESPONSIBILITIES/OF THE/EMPLOYEE/

IN ENACTING ARTICLE VII OF THIS CHAPTER, WHICH PROVIDES THE OPPORTUNITY AND ESTABLISHES PROCEDURES FOR COLLECTIVE BARGAINING FOR MOST COUNTY MERIT SYSTEM EMPLOYEES, THE COUNTY COUNCIL CONCLUDED:

(1) THAT IT WOULD BE INAPPROPRIATE TO INCLUDE STATE-COUNTY MERIT SYSTEM

EMPLOYEES SUCH AS THOSE IN THE DEPARTMENT OF SOCIAL SERVICES AMONG THE EMPLOYEES ENTITLED TO BE REPRESENTED FOR PURPOSES OF COLLECTIVE BARGAINING UNDER ARTICLE VII; AND

(2) THAT STATE-COUNTY MERIT SYSTEM EMPLOYEES SHOULD CONTINUE TO BE ENTITLED TO MEET AND CONFER REPRESENTATION TO THE EXTENT THEIR SALARIES AND WORKING CONDITIONS ARE SUBJECT TO OR AFFECTED BY COUNTY POLICIES. THE COUNCIL HAS THEREFORE REVISED ARTICLE IV OF THIS CHAPTER TO ACHIEVE THIS INTENT.

33-63. DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING WORDS AND PHRASES ~~SHALL~~ HAVE THE MEANINGS ~~RESPECTIVELY/ASCRIBED/TO/THEM/BY/THIS/SECTION;~~ INDICATED:

~~(a) CERTIFICATION;//THE/PROCEDURE/WHEREBY/EMPLOYEE/ORGANIZATIONS/ARE/ELECTED/AND/RECOGNIZED/TO/REPRESENT/EMPLOYEE/UNITS;~~

(1) "CERTIFICATION". THE PROCEDURE BY WHICH AN EMPLOYEE ORGANIZATION IS SELECTED AND RECOGNIZED TO REPRESENT THE EMPLOYEE UNIT.

~~(b) DECERTIFICATION;~~

(2) "DECERTIFICATION". THE PROCEDURE BY WHICH THE CHIEF ADMINISTRATIVE OFFICER WITHDRAWS ~~COUNTY~~ COUNTY RECOGNITION OF ~~AN~~ THE EMPLOYEE ORGANIZATION WITH OR WITHOUT AN ELECTION BY THE EMPLOYEES OF ~~AN~~ THE ~~EMPLOYEE~~ UNIT.

~~(c) EMPLOYEE;//ANY/COUNTY/MERIT/SYSTEM/EMPLOYEE/WORKING/ON/A CONTINUOUS/FULL-TIME;/CAREER/OR/PART-TIME;/CAREER/BASIS;/ELIGIBLE/TO/BE INCLUDED/IN/A/UNIT/OF/RECOGNITION/EXCEPT/FOR/THE/FOLLOWING;~~

~~(1) CONFIDENTIAL/AIDES/TO/ELECTED/OFFICIALS;~~

~~(2) ALL/NON-MERIT-SYSTEM/EMPLOYEES;~~

~~(3) ALL/HEADS/OF/PRINCIPAL/DEPARTMENTS;/OFFICES/AND/AGENCIES;~~

~~(4) DEPUTY/OR/ASSISTANT/DEPARTMENT/HEADS;~~

(5) EMPLOYEES/PROVIDING/DIRECT/STAFF/OR/ADMINISTRATIVE/SUPPORT/TO/THE DIRECTOR/OF/THE/DEPARTMENT;/OR/DEPUTY/OR/ASSISTANT/DIRECTORS/WITHIN/THE DIRECTOR/S/IMMEDIATE/OFFICE;

(6) EMPLOYEES/WHO/REPORT/DIRECTLY/TO/OR/WHOSE/IMMEDIATE/SUPERVISOR/IS THE/COUNTY/EXECUTIVE;/COUNTY/COUNCIL;/COUNTY/COUNCIL/MEMBERS/OR/THE/CHIEF ADMINISTRATIVE/OFFICER/AND/THE/PRINCIPAL/AIDES/TO/THE/FOREGOING;

(7) EMPLOYEES/OF/THE/OFFICE/OF/THE/COUNTY/ATTORNEY;

(8) EMPLOYEES/OF/THE/OFFICE/OF/MANAGEMENT/AND/BUDGET;

(9) EMPLOYEES/OF/THE/OFFICE/OF/EMPLOYEE/RELATIONS;

(10) EMPLOYEES/OF/THE/PERSONNEL/OFFICE;

(11) EMPLOYEES/OF/THE/MERIT/SYSTEM/PROTECTION/BOARD;

(12) HEADS/OF/THE/FOLLOWING/CONSTITUENT/OFFICES;/DIVISIONS/AND SECTIONS/IN/THE/DEPARTMENT/OF/TRANSPORTATION/EXISTING/AT/THE/TIME/OF ENACTMENT/OF/THIS/BILL/AND/POSITIONS/CARRYING/A/SIMILAR/DEGREE/OF/PERSONNEL MANAGEMENT/RESPONSIBILITIES/IN/OTHER/DEPARTMENTS/AND/OFFICES/AS/DETERMINED BY/THE/CHIEF/ADMINISTRATIVE/OFFICER;//DIRECTOR/S/OFFICE;/OFFICE/OF RIGHT-OF-WAY/ACQUISITION;/OFFICE/OF/ADMINISTRATIVE/SERVICES;/OFFICE/OF TRANSPORTATION/PLANNING;/DIVISION/OF/TRANSPORTATION/ENGINEERING;/SUBDIVISION DEVELOPMENT/SECTION;/DESIGN/SECTION;/CONSTRUCTION/SECTION;/DIVISION/OF TRAFFIC/ENGINEERING;/TRAFFIC/PLANNING/AND/SURVEY/SECTION;/TRAFFIC/OPERATIONS SECTION;/DIVISION/OF/OPERATIONS;/TESS/MINIBUS;/HIGHWAY/MAINTENANCE/SECTION; EQUIPMENT/SECTION/AND/DIVISION/OF/PARKING/LOT/DISTRICTS;

(13)/AN/EMPLOYEE/OF/THE/POLICE/DEPARTMENT;/AS/DEFINED/IN/SECTION/33-76 OF/THIS/CHAPTER;/WHO/IS/REPRESENTED/BY/A/CERTIFIED/EMPLOYEE/ORGANIZATION PURSUANT/TO/THE/PROVISIONS/OF/ARTICLE/V;/TITLE/7/POLICE/LABOR/RELATIONS7/OF THIS/CHAPTER/

(3) "EMPLOYEE". ANY STATE-COUNTY MERIT SYSTEM EMPLOYEE EXCEPT PERSONS

DESCRIBED IN SUBPARAGRAPHS 33-102(4)(A), (C), (D), (E), (M), (N), (R), AND (S) OF ARTICLE VII OF THIS CHAPTER.

~~(d) EMPLOYEE/ORGANIZATION/// ANY/LAWFUL/ORGANIZATION/WHICH/REPRESENTS EMPLOYEES/IN/THEIR/EMPLOYMENT/RELATIONS/WITH/THE/COUNTY/// THE/TERM 'EMPLOYEE/ORGANIZATION'/DOES/NOT/INCLUDE/ANY/ORGANIZATION/WHICH/~~

~~(1) DISCRIMINATES/WITH/REGARD/TO/TERMS/AND/CONDITIONS/OF/MEMBERSHIP WITH/REGARD/TO/RACE,//COLOR,//RELIGION,//CREED,//SEX,//AGE,//NATIONAL/ORIGIN, ANCESTRY/OR/MARITAL/STATUS,~~

~~(2) DOES/NOT/ADHERE/TO/DEMOCRATIC/PROCEDURES/AND/PRACTICES/WITH/REGARD TO/ELECTION/OF/OFFICERS,//INDIVIDUAL/PARTICIPATION/IN/ORGANIZATIONAL/AFFAIRS, EQUAL/TREATMENT/UNDER/ITS/BYLAWS,//INCLUDING/DUES/PROCESSING,//AND DISCIPLINARY/PROCEDURES,//OR~~

~~(3) DOES/NOT/MAINTAIN/FISCAL/INTEGRITY/IN/THE/CONDUCT/OF/THE/AFFAIRS/OF THE/ORGANIZATION,//INCLUDING/ACCOUNTING/CONTROLS/AND/REGULAR/FINANCIAL REPORTS/TO/MEMBERS;~~

(4) "EMPLOYEE ORGANIZATION". ANY ORGANIZATION THAT ADMITS EMPLOYEES TO MEMBERSHIP AND THAT HAS AS A PRIMARY PURPOSE THE REPRESENTATION OF EMPLOYEES IN COLLECTIVE BARGAINING OR MEET AND CONFER REPRESENTATION OR BOTH.

~~(e) EMPLOYEE/UNIT///GROUPINGS/OF/EMPLOYEES/FOR/PURPOSES/OF REPRESENTATION/IN/COUNTY/EMPLOYEE/RELATIONS;~~

(5) "EMPLOYEE UNIT" OR "UNIT". ALL EMPLOYEES AS DEFINED IN SUBSECTION 33-63(3) OF THIS CHAPTER.

~~(f) POSITION/PAPER;~~

(6) "POSITION PAPER". A NONBINDING WRITTEN MEMORANDUM REFLECTING ALL ITEMS DISCUSSED BY THE ~~COUNTY~~ COUNTY AND ~~AN~~ THE EMPLOYEE ORGANIZATION.

(7) "STATE-COUNTY MERIT SYSTEM EMPLOYEE". A STATE MERIT SYSTEM EMPLOYEE WHOSE SALARY IS SUPPLEMENTED BY THE COUNTY.

~~(g) UNIFORMED SERVICES: THOSE ACTIVITIES ENGAGED IN THE PROTECTION OF LIFE AND PROPERTY, LAW ENFORCEMENT OR CORRECTIONAL ACTIVITIES, AND WHOSE EMPLOYEES HAVE AS THEIR PRIMARY DUTIES AND RESPONSIBILITIES THE OPERATIONAL ACTIVITIES OF SUCH PUBLIC SAFETY ACTIVITIES.~~

33-64. EMPLOYEE RIGHTS.

* * *

(b) ~~EACH EMPLOYEE SHALL~~ THE EMPLOYEES HAVE THE RIGHT TO BE REPRESENTED BY AN EMPLOYEE ~~ORGANIZATIONS~~ ORGANIZATION, INCLUDING THE RIGHT TO MEET WITH REPRESENTATIVES OF THE ~~COUNTY~~ COUNTY CONCERNING CONDITIONS OF EMPLOYMENT AND THE RESOLUTION OF GRIEVANCES.

(c) NOTHING IN THIS ARTICLE SHALL PRECLUDE THE RIGHTS OF AN EMPLOYEE TO PURSUE AN INDIVIDUAL GRIEVANCE THROUGH ESTABLISHED ADMINISTRATIVE PROCEDURES OR THROUGH APPEAL TO THE PERSONNEL BOARD, IN THAT NOTHING IN THIS ARTICLE SHALL CIRCUMVENT OR SHALL BE DEEMED TO SUPERSEDE OR ANNUL THE PROVISIONS OF THE LAWS OF THE ~~STATE~~ STATE, THE ~~COUNTY CHARTER~~ COUNTY CHARTER, ~~AND~~ OR THE LAWS AND ORDINANCES OF THE ~~COUNTY~~ COUNTY, INCLUDING THE PERSONNEL REGULATIONS.

(d) ~~NO EMPLOYEE, WHO IS NOT A MEMBER OF AN EMPLOYEE ORGANIZATION SHALL EVER BE REQUIRED TO BECOME A MEMBER OF SUCH AN ORGANIZATION OR TO PAY MONEY TO SUCH AN ORGANIZATION, EXCEPT ON A PURELY VOLUNTARY BASIS.~~ AN EMPLOYEE WHO IS NOT A MEMBER OF AN EMPLOYEE ORGANIZATION MUST NEVER BE REQUIRED TO BECOME A MEMBER OF AN EMPLOYEE ORGANIZATION OR TO PAY MONEY TO AN EMPLOYEE ORGANIZATION EXCEPT ON A PURELY VOLUNTARY BASIS.

33-65///DETERMINATION/OF/EMPLOYEE/UNITS/

(a) THE/CHIEF/ADMINISTRATIVE/OFFICER/SHALL/MAKE/THE/FINAL/DETERMINATION AS/TO/THE/COMPOSITION/OF/EMPLOYEE/UNITS///IN/UNDISPUTED/CASES,//THE DETERMINATION/OF/APPROPRIATE/UNITS/SHALL/BE/MADE/BY/THE/CHIEF/ADMINISTRATIVE OFFICER/WITHIN/THIRTY/(30)/CALENDAR/DAYS/AFTER/RECEIPT/OF/A/REQUEST/FOR CERTIFICATION/UNDER/SECTION/33-66/OF/THIS/ARTICLE/

(b) EMPLOYEE/UNITS/MAY/BE/ESTABLISHED/ON/THE/BASIS/OF/GROUPINGS/OF EMPLOYEES/WHO/SHARE/A/CLEAR/AND/IDENTIFIABLE/COMMUNITY/OF/INTEREST///SUCH FACTORS/AS/THOSE/EMPLOYEES/SHARING/COMMON/SKILLS,//WORKING/CONDITIONS, PHYSICAL/LOCATIONS,//ORGANIZATIONAL/STRUCTURES/AND/INTEGRATED/WORK/PROCESSES SHALL/BE/CONSIDERED///A/UNIT/SHALL/NOT/BE/ESTABLISHED/SOLELY/ON/THE/BASIS/OF THE/EXTENT/TO/WHICH/EMPLOYEES/IN/A/PROPOSED/UNIT/HAVE/ORGANIZED/

(c) DETERMINATION/OF/UNITS/SHALL/BE/MADE/SO/AS/TO/INCLUDE/THE/LARGEST POSSIBLE/NUMBERS/OF/EMPLOYEES/TO/AVOID/PROLIFERATION/AND/FRAGMENTATION/OF REPRESENTATIVE/UNITS///THE/PROVISIONS/OF/THIS/SECTION/SHALL/NOT/PRECLUDE/THE ESTABLISHMENT/OF/ONE/UNIT/TO/REPRESENT/ALL/ELIGIBLE/EMPLOYEES///THE/NUMBER OF/UNITS/CERTIFIED/SHALL/NOT/BE/GREATER/THAN/SEVEN/(7)/

(d) UNITS/FOR/EMPLOYEES/OF/THE/UNIFORMED/SERVICES/SHALL/BE/LIMITED/TO EMPLOYEES/IN/THE/RANKS/OF/CORPORAL/OR/EQUIVALENT/RANK/AND/BELOW/

(e) IN/CASES/WHERE/THE/MATTERS/OF/UNIT/DETERMINATION/ARE/QUESTIONED, THE/DECISION/OF/THE/CHIEF/ADMINISTRATIVE/OFFICER/SHALL/BE/FINAL/AFTER OPPORTUNITY/IS/PROVIDED/FOR/THOSE/DISPUTING/THE/DETERMINATION/TO/BE/HEARD/BY THE/CHIEF/ADMINISTRATION/OFFICER/

33-66///PROCEDURES/FOR/CERTIFICATION/OF/EMPLOYEE/ORGANIZATIONS/

33-65. PROCEDURES FOR CERTIFICATION OF AN EMPLOYEE ORGANIZATION.

(a) INITIALLY/OR/WHERE/THERE/IS/NO/OFFICIAL/REPRESENTATIVE/EMPLOYEE ORGANIZATION,//THE/CHIEF/ADMINISTRATIVE/OFFICER, THE CHIEF ADMINISTRATIVE

OFFICER, UPON PETITION OF AN EMPLOYEE ORGANIZATION SHOWING WRITTEN EVIDENCE OF INTEREST BY AT LEAST ~~THIRTY/(30)~~ 30 PERCENT OF THE EMPLOYEES OF THE ~~EMPLOYEE~~ UNIT, SHALL ARRANGE FOR THE CONDUCTING OF A SECRET BALLOT ELECTION TO DETERMINE WHETHER THE EMPLOYEES DESIRE SUCH ORGANIZATION TO ACT AS THEIR REPRESENTATIVE. FOLLOWING SUCH PETITION, THE ~~CHIEF/ADMINISTRATIVE OFFICER~~ CHIEF ADMINISTRATIVE OFFICER SHALL GIVE AN APPROPRIATE NOTICE TO THE EMPLOYEES ~~INVOLVED~~.

(b) AN EMPLOYEE ORGANIZATION SEEKING TO REPRESENT ~~AN/EMPLOYEE~~ THE UNIT SHALL SUBMIT TO THE PERSONNEL OFFICE A ROSTER OF ITS OFFICERS AND REPRESENTATIVES, A COPY OF ITS CONSTITUTION AND BYLAWS, AND A SCHEDULE OF DUES FOR ITS MEMBERS.

(c) ELIGIBILITY TO VOTE IN ANY ELECTION FOR CHOICE OF AN OFFICIAL REPRESENTATIVE SHALL BE LIMITED TO PERSONS WHO ARE EMPLOYEES ~~WHO/ARE/FILLING COUNTY/POSITIONS~~ AS OF THE BEGINNING OF THE PAY PERIOD PRECEDING THE ELECTION DATE.

(d) ELECTIONS WILL BE CONDUCTED BY THE PERSONNEL OFFICE, WHICH MAY USE THE SERVICES OF THE ~~STATE/DIVISION/OF/LABOR/AND/INDUSTRY~~ STATE DIVISION OF LABOR AND INDUSTRY OR ANY OTHER THIRD PARTY HAVING SIMILAR QUALIFICATIONS.

(e) THE BALLOT SHALL CONTAIN THE NAME OF ANY ADDITIONAL EMPLOYEE ORGANIZATION SHOWING TIMELY WRITTEN EVIDENCE OF INTEREST BY AT LEAST ~~TEN/(10)~~ 10 PERCENT OF THE EMPLOYEES WITHIN THE ~~APPROPRIATE/EMPLOYEE~~ UNIT. IN EVERY INSTANCE, THE BALLOT SHALL CONTAIN A PROVISION FOR A MARKING OF "NO REPRESENTATION." WHERE MORE THAN ONE ~~(1)~~ EMPLOYEE ORGANIZATION IS ON THE BALLOT AND NO ONE ~~(1)~~ OF THE ORGANIZATIONS RECEIVES A MAJORITY VOTE OF THE EMPLOYEES VOTING, A RUNOFF ELECTION SHALL BE HELD. THE RUNOFF ELECTION SHALL CONTAIN THE ~~TWO/(2)~~ 2 CHOICES WHICH RECEIVED THE LARGEST AND SECOND LARGEST NUMBER OF VOTES IN THE ORIGINAL ELECTION.

(f) WHEN AN ORGANIZATION RECEIVES AT LEAST ~~FIFTY/(50)~~ 50 PERCENT OF VALID VOTES CAST IN THE ELECTION, THE ~~CHIEF/ADMINISTRATIVE/OFFICER~~ CHIEF ADMINISTRATIVE OFFICER SHALL CERTIFY IT AS THE OFFICIAL EMPLOYEE ORGANIZATION FOR THE ~~EMPLOYEE~~ UNIT. IF THE MAJORITY VOTE IS FOR "NO REPRESENTATION," THE CHIEF ADMINISTRATIVE OFFICER SHALL SO CERTIFY.

(g) IF, DURING THE 30 DAYS FOLLOWING THE EFFECTIVE DATE OF THIS REVISED ARTICLE, A PETITION IS FILED BY THE INCUMBENT MEET AND CONFER REPRESENTATIVE OF UNIT EMPLOYEES CERTIFIED UNDER THE PRIOR ARTICLE IV OF THIS CHAPTER, AND NO OTHER EMPLOYEE ORGANIZATION FILES A VALID PETITION, AND NO PETITION CALLING FOR AN ELECTION SIGNED BY 20 PERCENT OF UNIT EMPLOYEES HAS BEEN FILED WITH THE CHIEF ADMINISTRATIVE OFFICER, THE INCUMBENT CERTIFIED REPRESENTATIVE SHALL BE CERTIFIED WITHOUT AN ELECTION, PROVIDED IT PRODUCES EVIDENCE, ACCEPTABLE TO THE CHIEF ADMINISTRATIVE OFFICER AND DATED AFTER THE ENACTMENT OF THIS REVISED ARTICLE, THAT A MAJORITY OF THE EMPLOYEES IN THE UNIT DESIRE TO BE REPRESENTED BY THE INCUMBENT REPRESENTATIVE FOR THE PURPOSES OF MEET AND CONFER REPRESENTATION UNDER THE PROVISIONS OF THIS REVISED ARTICLE.

~~(g)~~ (h) THE ~~COUNTY~~ COUNTY SHALL RECOGNIZE AS THE OFFICIAL EMPLOYEE RELATIONS REPRESENTATIVE AN EMPLOYEE ORGANIZATION ~~WHICH~~ THAT HAS BEEN SELECTED IN ACCORDANCE WITH PROCEDURES OUTLINED IN THIS SECTION.

~~(h)~~ (i) RECOGNIZING AN EMPLOYEE ORGANIZATION DOES NOT PRECLUDE THE ~~COUNTY~~ COUNTY FROM DEALING WITH RELIGIOUS, SOCIAL, FRATERNAL, PROFESSIONAL, OR OTHER LAWFUL ASSOCIATIONS WITH RESPECT TO MATTERS OR POLICIES ~~WHICH~~ THAT INVOLVE INDIVIDUAL MEMBERS OF THE ASSOCIATIONS OR ARE OF PARTICULAR APPLICABILITY TO IT OR ITS MEMBERS.

~~(i)~~ (j) NO QUESTION CONCERNING CERTIFICATION MAY BE RAISED BY AN EMPLOYEE OR AN EMPLOYEE ORGANIZATION WITHIN ONE ~~(1)~~ YEAR OF THE DATE OF CERTIFICATION OF AN EMPLOYEE ORGANIZATION OR THE DATE THAT A MAJORITY OF THE

EMPLOYEES VOTING VOTED FOR NO REPRESENTATION.

(j) (k) THE COUNTY COUNTY MAY, AFTER DISCUSSIONS WITH AN EMPLOYEE ORGANIZATION AND ON THE BASIS OF WRITTEN AUTHORIZATION FROM EACH EMPLOYEE, PROVIDE FOR DEDUCTION FROM THE PAY OF SUCH EMPLOYEE MONIES IN PAYMENT OF MEMBERSHIP DUES IN A DULY CERTIFIED EMPLOYEE ORGANIZATION. SUCH MONIES SHALL BE REMITTED TO THE EMPLOYEE ORGANIZATION.

33/67/// PROCEDURE/FOR/DECERTIFICATION/OF/EMPLOYEE/ORGANIZATIONS/

33-66. PROCEDURE FOR DECERTIFICATION OF AN EMPLOYEE ORGANIZATION.

(a) AN EMPLOYEE ORGANIZATION SHALL BE SUBJECT TO DECERTIFICATION WHEN THIRTY/(30) 30 PERCENT OF THE EMPLOYEES IN THE EMPLOYEE UNIT PETITION FOR THE EMPLOYEE ORGANIZATION TO BE DECERTIFIED. THE PROCEDURES FOR DETERMINING WHETHER, IN FACT, AN EMPLOYEE ORGANIZATION SHALL BE DECERTIFIED SHALL BE THE SAME AS THOSE PRESCRIBED IN SECTION 33/66 33-65 FOR THE CERTIFICATION OF AN EMPLOYEE ORGANIZATION, EXCEPT AS PROVIDED IN SUBSECTION (b) OF THIS SECTION.

(b) IF AN EMPLOYEE ORGANIZATION FAILS TO ADHERE TO ANY OF THE PROVISIONS OF SECTION 33/73 33-72 DEALING WITH EMPLOYEE ORGANIZATION RESPONSIBILITIES, THEN:

(1) ITS CERTIFICATION MAY BE REVOKED BY THE CHIEF/ADMINISTRATIVE OFFICER CHIEF ADMINISTRATIVE OFFICER AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD/; AND

(2) IT MAY BE DISQUALIFIED BY THE CHIEF/ADMINISTRATIVE/OFFICER CHIEF ADMINISTRATIVE OFFICER FROM PARTICIPATING IN REPRESENTATION ELECTIONS FOR A PERIOD OF UP TO TWO/(2) 2 YEARS AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD.

33/68/ 33-67. COSTS OF CONDUCTING ELECTIONS.

ANY COST OF CONDUCTING A SECRET BALLOT ELECTION UNDER THIS ARTICLE SHALL

BE BORNE ~~FIFTY/(50)~~ 50 PERCENT BY THE ~~COUNTY~~ COUNTY AND ~~FIFTY/(50)~~ 50 PERCENT BORNE EQUALLY BY THE EMPLOYEE ORGANIZATION(S) WHOSE NAME(S) APPEAR ON THE BALLOTS.

~~33-69/~~ 33-68. COUNTY-EMPLOYEE ORGANIZATION MEETINGS AND DISCUSSIONS.

(a) AN EMPLOYEE ORGANIZATION ~~WHICH~~ THAT HAS BEEN RECOGNIZED BY THE ~~COUNTY~~ COUNTY ~~PURSUANT/TO~~ UNDER SECTION ~~33-66~~ 33-65 OF THIS ARTICLE SHALL BE ENTITLED TO MEET AT REASONABLE TIMES WITH ~~COUNTY~~ COUNTY REPRESENTATIVES TO DISCUSS WITH SUCH REPRESENTATIVES PERSONNEL POLICIES, PRACTICES, AND MATTERS AFFECTING WORKING CONDITIONS OF THE EMPLOYEE UNIT IT REPRESENTS, SO FAR AS DISCUSSIONS MAY BE APPROPRIATE UNDER EXISTING LAWS OR REGULATIONS. THE ~~COUNTY~~ COUNTY SHALL MEET A LEAST ~~TWO/(2)~~ 2 TIMES ANNUALLY WITH ~~EACH~~ THE CERTIFIED EMPLOYEE ORGANIZATION.

(b) THE REQUIREMENT TO MEET SHALL NOT OBLIGATE EITHER THE ~~COUNTY~~ COUNTY OR ~~AN~~ THE EMPLOYEE ORGANIZATION TO AGREE TO ANY PROPOSAL OR TO MAKE ANY CONCESSION WITH RESPECT TO ANY MATTER DISCUSSED BY THE PARTIES AT SUCH A MEETING. ANY DECISION MADE AT ANY SUCH MEETING IS IN NO WAY BINDING UPON THE PARTIES.

(c) THE ~~COUNTY~~ COUNTY AND ~~AN~~ THE EMPLOYEE ORGANIZATION MAY, IF DESIRED, AND AT THE CONCLUSION OF THEIR DISCUSSIONS, JOINTLY OR SEPARATELY, PREPARE WRITTEN POSITION PAPERS ~~WHICH~~ THAT REFLECT FOR FUTURE REFERENCE THE RESPECTIVE POSITIONS OF THE PARTIES ON THE ISSUES DISCUSSED AT SUCH MEETINGS. SUCH POSITION PAPERS SHALL IN NO WAY LEGALLY BIND ANY PARTY TO THE MATTERS EXPRESSED ~~THEREIN/~~ IN THEM, AND THE ~~COUNTY~~ COUNTY SHALL NOT BE OBLIGATED TO CONCUR IN A POSITION PAPER ADDRESSING THE INHERENT RIGHT TO MANAGE THE ~~COUNTY~~ COUNTY GOVERNMENT.

~~33-70/~~ 33-69. EMPLOYEE ORGANIZATION REPRESENTATION OF EMPLOYEE MEMBERS.

(a) AN EMPLOYEE WHO IS A MEMBER OF ~~AN~~ THE EMPLOYEE ORGANIZATION MAY

REQUEST AND SHALL BE GRANTED THE RIGHT FOR A MEMBER OR REPRESENTATIVE OF SUCH ORGANIZATION TO BE PRESENT IN ANY DISCUSSIONS OR COUNSELING WITH ~~COUNTY~~ COUNTY REPRESENTATIVES CONCERNING AN INDIVIDUAL GRIEVANCE.

(b) ~~AN~~ THE EMPLOYEE ORGANIZATION MAY SUBMIT A GRIEVANCE CONCERNING ANY DISPUTE INVOLVING A CLAIM OF VIOLATION, MISINTERPRETATION, OR MISAPPLICATION OF THE PERSONNEL REGULATIONS OR WORK PRACTICES OF THE ~~COUNTY~~ COUNTY ON THE SAME BASIS AS PROVIDED FOR INDIVIDUAL GRIEVANCES.

~~33-71.~~ 33-70. DISPUTES.

ALL DECISIONS OF THE ~~CHIEF ADMINISTRATIVE OFFICER~~ CHIEF ADMINISTRATIVE OFFICER UNDER THE PROVISIONS OF THIS ARTICLE SHALL BE FINAL, SUBJECT TO APPEAL TO THE ~~MERIT SYSTEM PROTECTION BOARD~~ MERIT SYSTEM PROTECTION BOARD WHERE PROVIDED BY LAW.

~~33-72.~~ 33-71. COUNTY RESPONSIBILITIES.

IT SHALL BE THE RESPONSIBILITY OF THE ~~COUNTY~~ COUNTY NOT TO:

(a) INTERFERE WITH, RESTRAIN, OR COERCE AN EMPLOYEE IN THE EXERCISE OF THE RIGHTS ASSURED BY THIS ARTICLE;

(b) ENCOURAGE OR DISCOURAGE MEMBERSHIP IN AN EMPLOYEE ORGANIZATION BY DISCRIMINATION IN REGARD TO HIRING, TENURE, PROMOTION, OR OTHER CONDITIONS OF EMPLOYMENT;

(c) SPONSOR, CONTROL, OR OTHERWISE ASSIST ~~AN~~ THE EMPLOYEE ORGANIZATION; EXCEPT, THAT THE ~~COUNTY~~ COUNTY MAY FURNISH CUSTOMARY AND ROUTINE SERVICES AND FACILITIES WHEN CONSISTENT WITH THE BEST INTEREST OF THE ~~COUNTY~~, COUNTY, ITS EMPLOYEES, AND THE ORGANIZATION, AND WHEN THE SERVICES AND FACILITIES ARE FURNISHED, IF REQUESTED, ON AN IMPARTIAL BASIS TO ORGANIZATIONS HAVING EQUIVALENT STATUS;

(d) REFUSE TO ACCORD APPROPRIATE RECOGNITION TO ~~AN~~ THE EMPLOYEE ORGANIZATION QUALIFIED FOR SUCH RECOGNITION; OR

(e) REFUSE TO CONSULT, CONFER, OR MEET WITH ~~AN~~ THE EMPLOYEE ORGANIZATION CERTIFIED ~~PURSUANT TO~~ UNDER THIS ARTICLE.

~~33-71~~ 33-72. EMPLOYEE ORGANIZATION RESPONSIBILITIES.

* * *

(b) ATTEMPT TO INDUCE THE ~~COUNTY~~ COUNTY TO COERCE AN EMPLOYEE IN THE EXERCISE OF THE RIGHTS UNDER THIS ARTICLE;

(c) COERCE, ATTEMPT TO COERCE, OR DISCIPLINE, FINE, OR TAKE OTHER ECONOMIC SANCTION AGAINST AN EMPLOYEE MEMBER OF AN EMPLOYEE ORGANIZATION AS PUNISHMENT OR REPRISAL, OR FOR THE PURPOSE OF HINDERING OR IMPEDING WORK PERFORMANCE OR THE DISCHARGE OF DUTIES OWED AS AN EMPLOYEE OF THE ~~COUNTY~~ COUNTY;

(d) CALL OR ENGAGE IN A STRIKE, WORK STOPPAGE, OR SLOWDOWN, PICKET THE ~~COUNTY~~ COUNTY IN CONNECTION WITH A STRIKE, WORK STOPPAGE, OR SLOWDOWN IN A ~~COUNTY-EMPLOYEE~~ COUNTY-EMPLOYEE DISPUTE, OR CONDONE ANY SUCH ACTIVITY BY FAILING TO TAKE AFFIRMATIVE ACTION TO PREVENT OR STOP IT;

(e) DISCRIMINATE AGAINST AN EMPLOYEE WITH REGARD TO THE TERMS OR CONDITIONS OF MEMBERSHIP BECAUSE OF RACE, COLOR, RELIGION, CREED, SEX, AGE, NATIONAL ORIGIN, ANCESTRY, OR MARITAL STATUS.

33-73. RESERVED.

33-74. COST-OF-LIVING ADJUSTMENT.

* * *

(d) THIS SECTION IS AUTOMATICALLY REPEALED UPON CERTIFICATION THAT THE COUNTY MERIT SYSTEM EMPLOYEES IN THE UNITS ESTABLISHED UNDER ARTICLE VII ARE REPRESENTED FOR THE PURPOSE OF COLLECTIVE BARGAINING UNDER ARTICLE VII OF THIS CHAPTER.

Sec. 2 3. ~~Sections 33-63A and 33-74(d) and~~ Article VII of Chapter 33 are is added as follows:

~~33-63A. Applicability.~~

~~Upon certification that the employees in the units are represented for collective bargaining, this article shall not apply to any person.~~

~~33-74. Cost of living adjustment.~~

~~(d) This section is automatically repealed upon certification that the employees in the units are represented for the purpose of collective bargaining under Article VII of this chapter.~~

Article VII. County Collective Bargaining.

33-101. Declaration of policy.

It is the public policy of Montgomery County to promote a harmonious, peaceful, and cooperative relationship between the County government and its employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of County government and services. Since unresolved disputes in public service are harmful to the public and to employees, adequate means should be available for preventing disputes and for resolving them when they occur. To that end, it is in the public interest that employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, as authorized by Charter Section 511, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of County employees bargain collectively in good faith without interference with the orderly process of government and that they implement any agreements reached through collective bargaining.

The County Council also recognizes that employee organizations and the County government each possess substantial means for initiating actions on

wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the public service, the County Council states that once the employees voluntarily select a representative, collective bargaining shall be used in place of, and not in addition to, existing means for initiating governmental action on subjects that are defined as appropriate for LIKE collective bargaining in this article.

33-102. Definitions.

The following terms have the meaning indicated when used in this article:

(1) "Agency shop" means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require an employee to pay initiation fees, assessments, fines, or any other LIKE collections or their equivalent as a condition of continued employment. A collective bargaining agreement shall not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the COLLECTIVE BARGAINING agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, WITH PROVISION FOR DISPUTE RESOLUTION IF THERE IS NOT AGREEMENT, and to give to the employer and the certified representative written proof of this payment. THE CERTIFIED REPRESENTATIVE SHALL ADHERE AT ALL TIMES TO ALL FEDERAL ~~CONSTITUIONAL~~ CONSTITUTIONAL REQUIREMENTS IN ITS ADMINISTRATION OF

ANY AGENCY SHOP SYSTEM MAINTAINED BY IT.

(2) "Certified representative" means an employee organization chosen to represent EMPLOYEES AS THEIR EXCLUSIVE BARGAINING AGENT IN one or both units AS DEFINED IN SECTION 33-105 in accordance with the procedures of this article.

(3) "Collective bargaining" means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this article. This article shall not be interpreted to compel either party to agree to a proposal or make a concession.

(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 for the following:

(A) Confidential aides to elected officials.

(B) All persons who are not covered by the County government merit system.

(C) Heads of principal departments, offices, and agencies.

(D) Deputies and assistants to heads of principal departments, offices, and agencies.

(E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

(F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

(G) Persons who work for the office of the County Executive and the office of the Chief Administrative Officer.

(H) Persons who work for the County Council.

(I) Persons who work for the office of the County Attorney.

(J) Persons who work for the Office of Management and Budget.

(K) Persons who work for the Personnel Office.

(L) Persons who work for the Merit System Protection Board.

(M) Persons who work on a temporary, seasonal, or substitute basis.

(N) Newly hired persons on probationary status.

(O) Persons who work for the police department who are represented by a certified employee organization under Article V of this chapter.

(P) Officers in the uniformed services (corrections, fire and rescue, police, office of the sheriff) in the rank of sergeant and above. Subject to any limitations in State law, deputy sheriffs below the rank of sergeant are employees.

(Q) Persons who are members of the State merit system.

(R) Supervisors, which means persons having authority to do any of the following:

(i) Hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively to recommend any one of these actions.

(ii) Direct the activity of three or more employees.

(iii) Adjust or recommend adjustment of grievances.

~~(iii) Adjust or recommend adjustment of grievances.~~

(S) Persons in grade 27 or above, whether or not they are supervisors.

(5) "Employee organization" means any organization that admits employees to membership and that has as a primary purpose the

representation of employees in collective bargaining.

(6) "Employer" means the County Executive and his or her designees.

(7) "Lockout" means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) "Mediation" means an effort by the mediator/fact-finder chosen under this article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) "Strike" means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) "Unit" means either of the units defined in section 33-105.

(11) When either the female or the male pronoun appears herein, it is to be read to include both genders.

33-103. Labor Relations Administrator.

(a) There is established the position of Labor Relations Administrator, to provide for the effective implementation and administration of this article concerning 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:

(1) Periodically adopt, amend, and rescind, under method (1) of section 2A-15 of this Code, regulations and procedures for the implementation and administration of the duties of the Labor Relations Administrator under this article.

(2) Request from the employer or an employee organization, and the employer or such organization may at its discretion provide, any relevant assistance, service, and data that will enable her properly to carry out her duties under this article.

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents.

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue the certification or decertification.

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure, the Labor Relations Administrator shall defer to that procedure for the resolution

of disputes properly submissible to the procedure absent a showing that the deferral results in the application of principles repugnant to this article. Furthermore, the Labor Relations Administrator shall defer to State procedures in those matters which are governed by the Law-Enforcement Officers' Bill of Rights, Article 27, Sections 727-734D, Annotated Code of Maryland.

(6) Determine unresolved issues of a person's inclusion in or exclusion from the units.

(7) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County.

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

(b) (1) The Labor Relations Administrator must be a person with experience as a neutral in the field of labor relations and must not be a person who, on account of vocation, employment, or affiliation, can be classed as a representative of the interest of the employer or any employee organization.

(2) The first Labor Relations Administrator is appointed by the County Executive, with the confirmation of the County Council, serves for a term of 4 years, and is eligible for reappointment.

(3) After the initial term of office of the Labor Relations Administrator provided in subsection (b)(2), the County Executive shall thereafter appoint the Labor Relations Administrator for a term of 5 years from a list of 5 nominees agreed upon by any certified employee representative(s) and

the Chief Administrative Officer, which list may include the incumbent Labor Relations Administrator. Such appointment must be confirmed by the County Council. If the County Council does not confirm the appointment, the new appointment shall be from a new agreed list of 5 nominees. Should there be no certified representative, the Labor Relations Administrator shall be appointed under the procedure and for the term set forth in subsection (b)(2).

(c) The Labor Relations Administrator will be paid a daily fee as set forth by contract with the County, and will be reimbursed for necessary expenses.

33-104. Employee rights.

(a) Employees have the right to:

(1) form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) be represented fairly by their certified representative, if any.

(b) The employer has the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties in accordance with this article.

(c) A certified representative serves as the EXCLUSIVE bargaining agent for all employees in the unit for which it is certified and has the duty to represent fairly and without discrimination all employees in the unit without regard to whether the employees are members of the

employee organization, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of a certified representative to receive voluntary dues or service fee deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this article. A collective bargaining agreement may not include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision.

33-105. **Units for collective bargaining.**

(a) There are two units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, excluding the categories listed as exceptions to the definition of employee in section 33-102(4) of this article. The employees are divided into 2 units in accordance with the following descriptions:

(1) **Service, labor, and trades (SLT) unit.** This unit is composed of all eligible classes that are associated with service/maintenance and skilled crafts. This means job classes in which workers perform duties that result in or contribute to the comfort and convenience of the general public or that contribute to the upkeep and care of buildings, facilities, or grounds of public property. Workers in this group may operate specialized machinery or heavy equipment. These job classes may also

require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work that is acquired through on the job training and experience or through apprenticeship or other formal training programs.

(2) **Office, professional, and technical (OPT) unit.** This unit is composed of all eligible classes associated with office, professional, paraprofessional, and technical functions.

(A) **Office.** Job classes in which workers are responsbile for internal and external communication, recording and retrieval of data and/or information, and other paperwork required in an office.

(B) **Professional.** Job classes that require special and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge.

(C) **Paraprofessional.** Job classes in which workers perform, in a supportive role, some of the duties of a professional or technician. These duties usually require less formal training and/or experience than is normally required for professional or technical status.

(D) **Technical.** Job classes that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post secondary school education or through equivalent on the job training.

(b) Specific job classes included in these units of representation, and not otherwise excluded under section 33-102(4), shall be based on the designations made by the Chief Administrative Officer under the prior

meet and confer process. In the event a new classification is created by the County, or an existing classification's duties and responsibilities are substantially changed, the County Personnel Director must place the classification in one of the units or state that the classification falls within one of the exceptions to the definition of employee under this article within 60 days of the creation or substantial alteration of the class and must publish the decision in the Montgomery County Register. Any individual or certified representative disagreeing with the decision of the Personnel Director may, within 10 days of publication, file objections to the decision with the Labor Relations Administrator, with notice to the Personnel Director.

The Labor Relations Administrator shall promptly decide the question on the basis of the duties and responsibilities of the job classification, the unit definition, and the community of interests between and among employees in the job classification and collective bargaining unit.

33-106. Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) Any employee organization seeking certification as representative of a unit shall file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The employee organization shall also send a copy of the petition, ~~not~~ including ~~the names~~ A COPY OF THE SIGNATURES of the supporting employees ON THE

PETITION, to the employer. The petition shall contain the uncoerced signatures of 30 percent of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) If an employee organization has been certified, an employee within the unit may file a petition with the Labor Relations Administrator for decertification of this certified representative. The employee shall also send a copy of the petition to the employer and the certified representative, not including the names of the supporting employees. The petition shall contain the uncoerced signatures of 30 percent of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) Petitions may be filed within 30 days following the date on which this article becomes effective. Thereafter, if a lawful collective bargaining agreement is not in effect, petitions may be filed between September 1 and September 30 of any year, but not sooner than 22 months after an election held under this section.

(4) If a lawful collective bargaining agreement is in effect, a petition filed under this section shall not be entertained unless it is filed during September of the final year of the agreement.

(b) If the Labor Relations Administrator determines that a petition is properly supported and timely filed, she shall cause an election of all eligible employees to be held within a reasonable time, but no

later than October 20 of any year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Labor Relations Administrator and shall be conducted by secret ballot at the time and place that she directs. The Labor Relations Administrator may select and retain the services of an agency of the State of Maryland RESPONSIBLE FOR CONDUCTING LABOR ELECTIONS, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least 10 days before the election of at least 10 percent representation of the employees within the unit IN THE SAME MANNER AS DESCRIBED IN PARAGRAPH (a)(1) OF THIS SECTION, and a choice that the employee does not desire to be represented by any of the named employee organizations.

(3) The employer and each party to the election may be represented by observers selected in accordance with limitations and conditions that the Labor Relations Administrator may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of the challenge or the Labor Relations Administrator's decision as to the validity of the challenge, unless the number of challenges is not determinative, in which case the challenged

ballots shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Labor Relations Administrator in the presence of the observers.

(6) The Labor Relations Administrator shall immediately prepare and serve upon the employer and each of the parties a report certifying the results of the election. If an employee organization receives the votes of a majority of the employees who voted, the Labor Relations Administrator shall certify the employee organization so elected as the exclusive agent.

(7) If no employee organization receives the votes of a majority of the employees who voted, the Labor Relations Administrator shall not certify a representative. Unless a majority of the employees who vote choose "no representative", a runoff election shall be conducted. The runoff election shall contain the 2 choices that received the largest and second largest number of votes in the original election.

(c) The Labor Relations Administrator's certification of results is final unless within 7 days after service of the report and the certification, any party serves on all other parties and files with the Labor Relations Administrator objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds for the objections. The Labor Relations Administrator shall investigate the objections and, if substantial factual issues exist, shall hold a hearing. Otherwise, she may determine the matter without a hearing. The Labor Relations Administrator may invite, either by rule or by invitation, written or

oral argument to assist her in determining the merits of the objections. If the Labor Relations Administrator finds that the election was conducted in substantial conformity with this article, she shall confirm the certification initially issued. If the Labor Relations Administrator finds that the election was not held in substantial conformity with this article, then she shall hold another election under this section.

(d) The cost of conducting an election shall be paid by the County.

(e) If, during the 30 days following the effective date of this article, a petition is filed by the incumbent representative of unit employees certified under Article IV of this chapter, and no other employee organization files a valid petition, and no petition calling for an election signed by ~~10~~ 20 percent of unit employees has been filed with the Labor Relations Administrator, the incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the Labor Relations Administrator and dated after the enactment of this article, that a majority of the employees in the unit desire to be represented by the incumbent representative for the purposes of collective bargaining under the provisions of this article.

33-107. Collective bargaining.

(a) Duty to bargain; matters subject to bargaining.

Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects:

(1) 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, provided that salaries and wages shall be uniform for all employees in the same classification.

(2) ~~With respect to pension and retirement benefits, only defined contribution plans for new employees or current employees who choose to transfer from a defined benefit plan, provided that bargaining rights regarding such plans will not accrue unless and until the County has enacted a law establishing such plans.~~ PENSION AND OTHER RETIREMENT BENEFITS SHALL BE NEGOTIABLE, FOR ACTIVE EMPLOYEES ONLY, ONE YEAR AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

(3) Employee benefits such as insurance, leave, holidays, and vacations. ~~, but not including pension and retirement benefits except to the extent stated in subsection (a)(2).~~

(4) Hours and working conditions.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include:

(A) binding third party arbitration, provided that the arbitrator shall have no authority to amend, add to, or subtract from the provisions of the collective bargaining agreement; and

(B) provisions for exclusivity of forum.

(6) Matters affecting the health and safety of employees.

(7) Amelioration of the effect on employees when the exercise of employer rights listed in subsection (b) causes a loss of existing jobs in the unit.

(b) **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 90 days prior to signing the contract, OR SUCH OTHER DATE OF NOTICE AS AGREED BY THE 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 law, Federal or State law, or the terms of the collective bargaining agreement.

(c) **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.

(d) 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.

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

(a) Collective bargaining shall begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative (EXCEPT THAT IN 1986, COLLECTIVE BARGAINING MAY BEGIN AS LATE AS DECEMBER 1) and shall be finished on or before January 15. The resolution of a bargaining impasse or fact-finding shall be finished by February 1.

(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 year or for more than 3 years. All agreements become effective July 1 and end June 30.

(c) A collective bargaining agreement becomes effective only after ratification by the employer and by the certified representative. The certified representative may provide its own rules for ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator shall appoint a mediator/fact-finder, who may be a person recommended to her by both parties. The mediator/fact-finder shall be available during the period from January 2 to February 1. Fees and expenses of the mediator/fact-finder shall be shared equally by the employer and the certified representative.

(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/fact-finder, or the parties may jointly request his services before declaration of an impasse. If the parties do not reach an agreement by January 15, an impasse exists.

(2) The dispute shall be submitted to the mediator/fact-finder whenever an impasse has been reached, or before that as provided in subsection (e)(1). The mediator/fact-finder shall engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will tend to bring about the settlement of the dispute.

(3) If and when the mediator/fact-finder finds in his sole discretion that the parties are at a bona fide impasse, he shall implement the following fact-finding process:

(A) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.

(B) He may require the parties to submit evidence or make oral or written argument in support of their proposals. He may hold a hearing for this purpose at a time, date, and place selected by him. This hearing shall not be open to the public.

(C) On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not

be made public at this time.

(D) In making findings of fact and recommendations, the mediator/fact-finder may take into account only the following factors:

(i) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

(ii) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland.

(iii) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

(iv) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

(v) The interest and welfare of the public.

(vi) The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services provided by the employer.

(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party

does not accept, in whole or in part, the recommendations of the mediator/fact-finder, the report of the mediator/fact-finder, WITH RECOMMENDATIONS ON AGREED ITEMS DELETED, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.

(g) The budget that the employer submits to the Council shall include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed OR DISPUTED term or condition submitted to the Council that requires an appropriation of funds, or the enactment, repeal, or modification of any County law or regulation, OR WHICH HAS OR MAY HAVE A PRESENT OR FUTURE FISCAL IMPACT, MAY BE ACCEPTED OR REJECTED IN WHOLE OR IN PART BY THE COUNCIL. SUCH TERMS OR CONDITIONS shall be identified to the Council by ~~the/employer~~ EITHER OR BOTH PARTIES. The employer shall make a good faith effort to have THE COUNCIL TAKE ACTION TO IMPLEMENT any term or condition ~~that/has/been~~ TO WHICH THE PARTIES HAVE agreed ~~to/implemented/by/Council/action~~.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement and the recommendations for resolving bargaining disputes.

(i) On or before April 15, the Council shall indicate by a majority vote its intention to appropriate or otherwise implement the items that have been agreed to, or its intention not to do so, and shall state its reasons for any intent to reject any part of the items, OF THE

KIND SPECIFIED IN SUBSECTION (g), that have been agreed to. The Council shall also indicate by a majority vote its position on disputed matters WHICH COULD REQUIRE AN APPROPRIATION OF FUNDS OR ENACTMENT, REPEAL, OR MODIFICATION OF ANY COUNTY LAW OR REGULATION OR WHICH HAVE PRESENT OR FUTURE FISCAL IMPACT.

(j) Then the Council shall designate a representative to meet with the parties and present the Council's views in the parties' further ~~negotiations~~ NEGOTIATION on disputed matters and/or agreed matters that the Council has indicated its intention to reject. The results of the negotiation, whether a complete or a partial agreement, shall be submitted to the Council on or before May 1. The Council may extend this deadline for no more than one week. Any agreement shall provide for automatic reduction or elimination of wage and/or benefits adjustments if:

(1) the Council does not take action necessary to implement the agreement, or a part of it;

(2) funds are not appropriated; or

(3) lesser amounts than those stated in the agreement are appropriated.

(k) The Council shall take whatever actions it considers required by the public interest with respect to matters still in dispute between the parties. However, those actions shall not be part of the agreement between the parties unless the parties specifically incorporate them in the agreement.

33-109. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from any of the following:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under this article.

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it, under an agreement or otherwise. However, the employer and a certified representative may agree to and apply an agency shop provision under this article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of County facilities for communicating with employees.

(3) Encouraging or discouraging membership in any employee organization by discriminating in hiring, tenure, wages, hours, or conditions of employment. However, nothing in this article precludes an agreement from containing a provision for an agency shop.

(4) Discharging or discriminating against a public employee because she or he files charges, gives testimony, or otherwise lawfully aids in the administration of this article.

(5) Refusing to bargain collectively with the certified representative.

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement that has been agreed to in all respects.

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement.

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached between the employer and the certified

representative under this article.

(9) Engaging in a lockout of employees.

(b) Employee organizations, their agents, representatives, and persons who work for them are prohibited from any of the following:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this article.

(2) Restraining, coercing, or interfering with the employer in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Refusing to bargain collectively with the employer if the employee organization is the certified representative.

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects.

(5) Hindering or preventing, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or exit from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance by any person, public or private.

(6) Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the employer.

(7) Taking or retaining unauthorized possession of property of the employer, or refusing to do work or use certain goods or

materials as lawfully required by the employer.

(8) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed nor to be performed.

(c) A charge of prohibited practice may be filed by the employer, an employee organization, or any individual employee. The charge or charges shall be filed with the Labor Relations Administrator, and copies shall be sent to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the Labor Relations Administrator to investigate the charge. The Labor Relations Administrator may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The Labor Relations Administrator has the authority to maintain whatever independent investigation she determines is necessary and to develop regulations for an independent investigation. If, upon investigation, the Labor Relations Administrator finds that a charge is sufficiently supported to raise an issue of fact or law, she shall, if she is unable to achieve settlement or resolution of the matter, hold a hearing on the charge after notification to the parties. In any hearing, charging parties shall present evidence in support of the charges, and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense against the charges.

(d) If the Labor Relations Administrator determines that the person charged has committed a prohibited practice, she shall make findings

of fact and conclusions of law and may issue an order requiring the person charged to cease and desist from the prohibited practice, and may take affirmative actions that will remedy the violation of this article. Remedies of the Labor Relations Administrator include reinstating employees with or without back pay, making employees whole for any loss relating to County employment suffered as a result of any prohibited practices, or withdrawing or suspending the employee organization's authority to negotiate or continue an agency shop provision or a voluntary dues or service fee deduction provision. If the Labor Relations Administrator finds that the party charged has not committed any prohibited practices, she shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Labor Relations Administrator shall not receive or entertain charges based upon an alleged prohibited practice occurring more than 6 months before the filing of the charge.

33-110. Expression of views.

(a) The expression or dissemination of any views, argument, or opinion, whether orally, in writing, or otherwise, does not constitute and is not evidence of a prohibited practice under any of the provisions of this law, nor is it grounds for invalidating any election conducted under this law if the expression or dissemination does not contain a threat of reprisal or promise of benefit.

(b) Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of the associations or are of particular

applicability to it or its members.

33-111. Strikes and lockouts.

(a) An employee or employee organization shall not either directly or indirectly cause, instigate, encourage, condone, or engage in any strike, nor the employer in any lockout. An employee or employee organization shall not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when that employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during the strike.

(c) If an employee or employee organization violates the provisions of this section, the employer, after adequate notice and a fair hearing before the Labor Relations Administrator who finds that the violations have occurred and finds that any or all of the following actions are necessary in the public interest, may impose any of the following sanctions, subject to the Law-Enforcement Officers' Bill of Rights, Article 27, Sections 727-734D, Annotated Code of Maryland:

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in the conduct.

(2) Terminate or suspend the employee organization's dues deduction privilege, if any.

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of 2 years.

(d) This article does not prohibit an employer or a certified employee

organization from seeking any remedy available in a court of competent jurisdiction.

33-112. Effect of prior enactments.

~~Any laws, executive orders, or regulations adopted by the County and any department or agency of the County that are or may be considered inconsistent with the provisions of this article shall not be held to be repealed or modified until they are specifically repealed or modified by the County or any department or agency of the County.~~

(a) NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO REPEAL ANY LAW, EXECUTIVE ORDER, RULE, OR REGULATION ADOPTED BY THE COUNTY OR ANY OF ITS DEPARTMENTS OR AGENCIES THAT IS NOT INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE.

(b) ANY EXECUTIVE ORDER, RULE, OR REGULATION OF THE COUNTY OR ANY OF ITS DEPARTMENTS OR AGENCIES THAT REGULATES ANY SUBJECT THAT IS BARGAINABLE UNDER THIS ARTICLE SHALL NOT BE HELD TO BE REPEALED OR MODIFIED BY A PROVISION OF A COLLECTIVE BARGAINING AGREEMENT NEGOTIATED UNDER THIS ARTICLE EXCEPT TO THE EXTENT THAT THE APPLICATION OF THE ORDER, RULE, OR REGULATION IS INCONSISTENT WITH THE PROVISION IN THE COLLECTIVE BARGAINING AGREEMENT. HOWEVER, IF THE INCONSISTENT ORDER, RULE, OR REGULATION IS SUBJECT TO AND HAS RECEIVED COUNCIL APPROVAL, THE COLLECTIVE BARGAINING AGREEMENT SHALL NOT GOVERN UNLESS THE ORDER, RULE, OR REGULATION WAS IDENTIFIED TO THE COUNCIL BY THE PARTIES PRIOR TO THE COUNCIL'S RATIFICATION OF THE COLLECTIVE BARGAINING AGREEMENT, AS REQUIRED BY SECTION 33-108(g); OR UNLESS THE ORDER, RULE, OR REGULATION IS REPEALED OR MODIFIED BY THE COUNCIL.

Enacted Bill No. 19-86, Draft No. 3, dated June 19, 1986, as amended by a roll-call vote

YEAS: Crenca, Fosler, Gelman, Gudis, Sculll Potter, Hanna.

MISCELLANEOUS BUSINESS

SUBJECT: Bill No. 36-86, Room Rental and Transient Tax - Exemption

ISSUES DISCUSSED: The amendments to the bill as set forth in the memorandum, dated June 19, 1986, from Senior Assistant County Attorney Malone; Mr. Scull's suggestion to include an amendment to provide an exemption from any County tax in situations where the cost to collect the tax is more than the tax; Ms. Crenca's request that the staff review whether there are religious organizations owning chains of hotels as it has come to her attention that certain nonprofit organizations own profitmaking organizations and therefore should be not be entitled to the room rental tax exemption.

ACTION: Introduced the amendments as set forth in the memorandum earlier referenced from County Attorney Malone, dated June 19, 1986, as amended by Mr. Scull to change a section number to provide an exemption from any County tax where the cost to collect such a tax is more than the actual tax, rather than just an exemption from the room rental tax

by motion of Vice President Potter, without objection, Councilmember Gelman temporarily absent.

The meeting adjourned at 12:50 P.M.

This is an accurate account of the meeting.

Kathleen A. Freedman, Secretary
County Council

Montgomery County Government

ROCKVILLE, MARYLAND 20850

Charles W. Gilchrist
County Executive
(301) 251-2500
TTY 279-1083

M E M O R A N D U M

May 29, 1986

TO: William E. Hanna, President
Montgomery County Council

FROM: Charles W. Gilchrist, County Executive

SUBJECT: County Employee Collective Bargaining Legislation
Bill No. 19-86

This memorandum outlines my general comments regarding the County Employee Collective Bargaining Legislation, Bill No. 19-86, now before the Council. In addition, I have detailed my position on each of the amendments submitted with the legislation initially on April 22, 1986.

INTRODUCTION

Bill No 19-86 is the result of the electorate's adoption of Section 511 of the County Charter in November, 1984. County employees have enjoyed limited rights to representation by employee organizations pursuant to the Montgomery County Employer-Employee Relations Act, commonly known as "meet & confer." However, Bill No. 19-86 establishes a comprehensive labor relations system for all County employees. I support such a program and welcome the opportunity to establish equitable conditions of employment for County employees through the collective bargaining process.

In this regard, the Bill establishes a labor relations system similar to those elsewhere, as are found, for example, in the approximately 35 states which accord collective bargaining rights to public employees, the Federal sector, pursuant to the provisions of Title VII of the Civil Service Reform Act of 1978 and, of course, in the private sector under the National Labor Relations Act.

My comments include general observations, substantive revisions to the Bill and technical corrections which seek to ensure a successful labor relations program which will protect the interests of the electorate in an efficient County government. I have sought the support of the existing employee organizations whenever possible. I urge the County Council to adopt the necessary amendments to Bill No. 19-86 and reject those amendments as I have detailed below:

COMMENTS

I. 33-102 Definitions

Page

6 L16 Change term "certified representative" to "certified exclusive representative"

II. 33-102(4)(Q) Definitions

8 L02 This provision excludes State Merit Employees from coverage under Bill No. 19-86. My position is that these employees' conditions of employment are substantially determined by the State. To include them within the ambit of this Bill, for the small portion of their working conditions set by the County, creates an unnecessarily cumbersome system and a significant burden on the management of County government.

III. 33-102(4)(s) Definitions

8 L10 This provision excludes County employees in grade 27 or above regardless of position, from coverage by Bill No. 19-86. The limitation operates to exclude 22 employees: five Architects at grade 27; seven Physician I's at grade 33; seven Physician II's at grade 34 and three Dentists at grade 29. These employees are top-level professional staff who occupy positions with special relationships and special circumstances to the County government due to their professional standing. Therefore, I support the Bill and they should not be included in the collective bargaining process due to the special circumstances of their employment.

IV. 33-106(a)(1) Selection, Certification and Decertification Procedures

15 L12-13 Strike the words: "Not including the names of the supporting employees" and Add: "including a copy of the signatures of the supporting employees on the petition." Only the employer is in a position to ensure that all persons who signed the petition are active employees and that the signatures on the petition are truly those of the employees. There is no reason to believe that an employee would suffer reprisal for supporting an employee organization based upon the Executive's support of this legislation and the experience pursuant to the Police Collective Bargaining Act. The Montgomery County Government Employees Organization/Local 400 has agreed to this amendment.

V. 33-106 Selection, Certification and Decertification Procedures

16 L27 Add the following language after the words:"... within the unit,": "...in the same manner as described in section (a)(1) above,"

Currently, the Bill provides no procedure for an intervening employee organization to petition for inclusion on the ballot except to say that the organization must show written proof of at least 10% representation of employees in the unit. This purely technical amendment would require the intervenor to meet the same petition standards of the petitioner. MCGEO/Local 400 has agreed to this amendment.

VI. 33-107(a)(7) Collective Bargaining

20 L4-6 This provision permits "effects" bargaining when the exercise of an employer right causes a loss of existing job(s) within the bargaining unit. The exclusive representative would negotiate with the employer in an effort to ameliorate the effects of the loss of job(s). The proposed amendments seek to expand this "effects" bargaining section. Any broader provision will significantly hamper the County in the valid exercise of management/employer rights pursuant to 33-107(b). The present language should be retained with the specific intent of the Council being thereby established that "effects" bargaining cannot limit, delay, infringe, or impair the exercise of employer rights.

VII. 33-111(a) Strikes and Lockouts

31 L03 Strike the period after the word "strike" and add the following: "... or condone any such activity by failing to take appropriate action to prevent or stop any strike."

This amendment places an affirmative duty upon the employee organization to join with the employer in preventing and/or stopping strike activity. The amendment is consistent with the intent of the section and reflects similar language found in the provisions of Title VII of the Civil Service Reform Act of 1978 in the Federal Sector and the provisions of many state comprehensive labor relations statutes in the public sector.

RESPONSES TO AMENDMENTS

I. Amendment #1
Subject: One Unit Instead of Two Units.
Executive's Position: Opposed

Comment:

This amendment seeks to place all County employees to be covered by the provisions of Bill 19-86 into a single bargaining unit. Such an approach to collective bargaining is unsound. Bargaining units have traditionally developed around workers with a community of interest. The County's work force is clearly and easily divided into the two units described in the Bill: Service, Labor and Trades (SLT) and Office, Professional and Technical (OPT). Such a division will facilitate the negotiations process. Moreover, under the County's "meet & confer" these units are already in place. Finally, the Government has experienced no problems or difficulties in relating to employees in this two bargaining unit model. Therefore, I request that the Council REJECT the amendment. MCGEO/Local 400 agrees with the Executive's position.

II. Amendment #2
Subject: Majority of Unit must Participate in Certification Election
Executive's Position: Opposed

Comment:

This amendment would require that over 50% of the bargaining unit vote in any certification election before it would be valid. The amendment is inconsistent with sound democratic principles. It would encourage non-participation in the selection of an employee representative. It is inconsistent with the experience in the Federal sector, private sector and public sector of labor relations. Therefore, I request that the Council REJECT the amendment. MCGEO/Local 400 agrees with the Executive's position.

III. Amendment #3
Subject: No Certification Without an Election
Executive's Position: Opposed

Comment:

This amendment would require an election of an employee organization in all cases regardless of a majority showing of interest on a petition. This amendment would incur the expense and delay of an election even when an employee organization clearly had established itself as the choice of a majority of employees for collective bargaining purposes through a

petition. Many states recognize the wastefulness of requiring any election for certification and currently provide for certification without election upon the establishment of a majority showing of interest. This is a sound and frugal model for the County to follow. I request that the Council REJECT this amendment. MCGEO/Local 400 agrees with the Executive's position.

IV. Amendment #4
Subject: No Agency Shop
Executive's Position: Opposed

Comment:

This amendment seeks to place all County employees to be covered by the provisions of Bill 19-86 into a single bargaining unit. Such an approach to collective bargaining is unsound. Bargaining units have traditionally developed around workers with a community of interest. The County's work force is clearly and easily divided into the two units described in the Bill: Service, Labor and Trades (SLT) and Office, Professional and Technical (OPT). Such a division will facilitate the negotiations process. Moreover, under the County's "meet & confer" these units are already in place. Finally, the Government has experienced no problems or difficulties in relating to employees in this two bargaining unit model. Therefore, I request that the Council REJECT the amendment. MCGEO/Local 400 agrees with the Executive's position.

V. Amendment #5
Subject: Agency Shop for Employees With Less Than 10 Years' Service
Executive's Position: Opposed

Comment:

This amendment would permit the employer and the employees' organization to negotiate over the subject of agency shop for all employees except those with more than ten years' service in the County Merit System. The comments in item IV above apply here with equal force. In addition, the amendment creates two classes of employees in relation to agency shop, imposes a record keeping requirement as to years of service upon the employer and lacks any sound, rational purpose. I request that the Council REJECT this Amendment. MCGEO/Local 400 agrees with the Executive's position.

VI. Amendment #6
Subject: All Pensions Non-Bargainable
Executive's Position: Opposed

Comment:

This amendment would eliminate negotiations over employee pensions, leaving the matter to be determined unilaterally by the Executive and the Council. Such a limitation on a significant economic issue is inconsistent with the broad scope of bargaining found throughout the Bill. Both the employer and the employee organization benefit by broad scope bargaining. The elimination of this sort of significant economic issue from the bargaining table hampers the process. I request that the Council REJECT this Amendment. MCGEO/Local 400 agrees with the Executive's position.

VII. Amendment #7
Subject: Advisory Grievance Abritration in all Cases Except Discipline and Discharge Cases.
Executive's Position: Opposed
Comment:

This amendment would make arbitration of all matters, except discharge and discipline, advisory unless the parties agree to binding arbitration. The experience with advisory grievance arbitration in comprehensive labor relations programs in other jurisdictions and sectors has not been good. Grievance procedures and grievance arbitrations are fundamentally dispute resolution procedures. Advisory arbitration fails to provide finality, and in those cases in which the employer fails or refuses to accept the arbitrator's advisory award, acrimony continues between the parties and further litigation usually results. From 1962 through the early 1970's, advisory arbitration was utilized in the Federal sector pursuant to Executive Order 10982 and Executive Order 11491, with unsatisfactory results. The practice was abandoned totally, and in 1975 broad scope grievance and binding arbitration became the rule pursuant to Executive Order 11491, as amended. Finally, the provision of Title VII of the Civil Service Reform Act of 1978, 5 USC section 7101, et seq made broad scope grievances and binding arbitration a statutory requirement in all collective bargaining agreements. I request that the Council REJECT this amendment. MCGEO/Local 400 agrees with the Executive's position.

VIII Amendment #8
Subject: Broader "Effects" Bargaining
Executive's Position: Opposed

Comment:

This amendment would greatly expand the scope of negotiations to include the subject of the effects of the exercise of a management right. The comments made in regard to 33-107(a)(7) above apply as to this amendment. The amendment would severely hamper the exercise of employer rights described in 33-107 (b). Indeed, it is forseeable that management would be prevented from acting at all if this amendment is adopted by the Council. The employer rights listed in 33-107 (b) of the Bill are narrow, traditional and essential management rights which are crucial to the sound and efficient operation of government. The amendment would tip the delicate balance of rights between the parties, creating, at the minimum, delay in the valid exercise of management right or worse, a paralysis in the employer's ability to manage, act and govern at all. I strongly oppose this, or any other effort to further limit the ability of the employer to validly exercise a management right. I request that the Council REJECT this amendment.

IX. Amendment #9
Subject: Short First Year Bargaining
Executive's Position: Opposed
Comment:

Upon certification of an employee organization, this amendment would require bargaining immediately over non-economic subjects only during the fiscal year in which the act, now a Bill, becomes effective.

This amendment is simply impractical due to timing of the legislative process. It is likely that the Bill will become law around the end of June, 1986. Thus, its effective date will be mid-August, 1986. Even if an employee organization were to be certified immediately, which is unlikely, short-term bargaining would not begin until mid-October, 1986. The bill provides for full-fledge bargaining to begin November 1, 1986, and each November 1, thereafter. Therefore, eliminating the need for such short term bargaining since the parties would be bargaining for a term of approximately two weeks or less. This result is not only impractical, it is wasteful. The amendment would establish a pointless obligation on the parties and require a meaningless exercise by the parties. I request that the Council REJECT this amendment.

X. Amendment #10
Subject: Right of the Union to Veto Reappointment of Labor Relations Administrator, But Not Formally Nominate Appointees.
Executive Position: Opposed

Comment:

This amendment would permit the certified employee representative to stop or "veto" the reappointment of the Labor Relations Administrator (LRA). The Bill provides for appointment of the LRA by the Executive with the advice and consent of the Council. The LRA position is a quasi-judicial neutral position which will require, in the fulfillment of the duties assigned, that the LRA administer the provisions of the statute. This charge or obligation may require that the LRA find, in his or her dispositions, against the employer or against the employee organization in matters presented and cases adjudicated. Therefore, it is unwise to permit either party "veto" power over reappointment. The Bill provides a viable and recognized appointment and confirmation procedure for the position, which is followed as a model for many other positions throughout the government. I request that the Council REJECT this amendment. MCGEO/Local 400 agrees with the Executive's position.

XI. Amendment #11
Subject: Council Participation in Nomination of Appointees
Executive's Position: Opposed

Comment:

This amendment would cause the nomination of the LRA to be a three party process involving the employee organization(s), the Chief Administrative Officer (CAO) and the Council. The appointment of the LRA pursuant to the current provisions of the Bill is accomplished by the Executive with the advice and consent, through confirmation by the Council. Thus, the Council has significant authority over the appointment through confirmation of the LRA. Excluding the Council leaves it freer to make an independent judgment on confirmation of a reappointment. Including the Council at the nomination phase unnecessarily complicates an administrative process which has been proven to be successful throughout government. I request that the Council REJECT the amendment.

XII. Amendment #12
Subject: Continuation of State Merit System Employees in Meet and Confer.
Executive's Position: Opposed

Comment:

This amendment would continue coverage of State Merit Employees under the "meet & confer" legislation which Bill No. 19-86 is intended to replace. The comments above concerning 33-102(4)(Q), Definitions, which excludes State Merit Employees from coverage by Bill No. 19-86, apply as to the amendment. It is inconsistent with the comprehensive nature of the labor relations program established by Bill No. 19-86 to continue to include State employees under "meet & confer". As detailed above, only conflict and confusion will result. I request that the Council REJECT the amendment.

XIII. Amendment #13 (Gelman)
Subject: Short First-Year Bargaining with Limited Scope of Subjects of Bargaining.
Executive's Position: Opposed

Comment:

The amendment is essentially the same as Amendment #9, infra, except the scope of the short term first-year bargaining would be limited to specific subjects. As I detailed above in my comment on Amendment #9, this amendment is impractical due to the schedule of the legislative process. I request that the Council REJECT the amendment.

* * *

Resolution No. 10-894
Introduced: July 31, 1984
Adopted: July 31, 1984

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

SUBJECT: Proposed Amendments to County Charter and Ballot Titles

WHEREAS, Section 5 of Article XI-A of the Constitution of Maryland, and Section 16-14 of the Montgomery County Code, 1972, as amended, provide that amendments to the County Charter may be proposed by a resolution of the County Council; and

WHEREAS, pursuant to Section 23-1 of Article 33 of the Annotated Code of Maryland, proposed Charter amendments must be certified to the Board of Supervisors of Elections on or before the third Monday in the month of August in the year in which there is to be a general or Congressional election at which those Charter amendments are to be voted upon; and

WHEREAS, the Council desires to submit to the Board of Supervisors of Elections for inclusion on the 1984 general election ballot, the following Charter amendments:

1. Amendments to Section 305; and
2. Amendment to Section 401 and addition of Section 511; and

WHEREAS, Section 16-16 of the Montgomery County Code, 1972, as amended provides that there shall appear in print on the voting machine or ballot a ballot title or summary, prepared by the Council, of all proposed Charter amendments; now therefore,

BE IT RESOLVED by the County Council for Montgomery County, Maryland that -

I.

It is proposed to amend Section 305 of the County Charter to read as follows:

SECTION 305 Approval of the Budget; Tax Levies

The Council may add to, delete from, increase or decrease any appropriation item in the operating or capital budget. The Council shall approve the budgets, as amended, and appropriate the funds therefor not later than May 15 of the year in which it is submitted. The aggregate operating budget [excluding the Washington Suburban Sanitary Commission, the bi-county portion of the Maryland-National Capital Park and Planning Commission, and the Washington Suburban Transit Commission] which exceeds the aggregate operating budget for the preceding year by a percentage increase greater than that of the Consumer Price Index for all urban consumers for the Washington

metropolitan area for the twelve months preceding [calendar] December first of each year, shall be approved by the affirmative vote of five Councilmembers. For the purposes of this limitation the aggregate operating budget shall exclude operating budgets for enterprise funds, the Washington Suburban Sanitary Commission, the bi-county portion of the Maryland-National Park and Planning Commission, and the Washington Suburban Transit Commission. Prior to June 30, the Council shall make the tax levies deemed necessary to finance the budgets.

The ballot title shall be designated and read as follows:

"Question A.

Amend Section 305 of the County Charter to exempt the operating budgets of enterprise funds from the computation of the aggregate operating budget when making the determination as to whether the affirmative vote of five Councilmembers is required to approve the budget; to provide that the Consumer Price Index in the computation is computed for the twelve months preceding December first of each year; and to make a clarifying change."

II.

It is proposed to amend Section 401 of the County Charter and to add Section 511 to the County Charter to read as follows:

SECTION 401 Merit System

The Council shall prescribe by law a merit system for all officers and employees of the County government, except members of the Council, the County Executive, the Chief Administrative Officer, the County Attorney, the heads of the departments, the heads of the principal offices and agencies, as defined by law, one confidential aide for each member of the Council, two senior professional staff positions for the Council as a whole as may be designated from time to time by the Council, three special assistant positions in the office of the County Executive as may be designated from time to time by the County Executive, special legal counsel employed pursuant to this Charter, and members of boards and commissions and other officers authorized by law to be appointed to serve in a quasi-judicial capacity. Officers and employees who are members of a unit for which a collective bargaining contract exists may be excluded from provisions of the merit system, only to the extent that such provisions are subject to collective bargaining pursuant to legislation enacted under Section 510 or Section 511 of this Charter. The merit system shall provide the means to recruit, select, develop, and maintain an effective, non-partisan, and responsive work force with personnel actions based on demonstrated merit and fitness. Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. The Council shall establish by law a system of retirement pay.

SECTION 511 Collective Bargaining - County Employees

The Montgomery County Council may provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the County government not covered by Section 510 of this Charter. Any law so enacted shall prohibit strikes or work stoppages for such officers and employees.

The ballot title shall be designated and read as follows:

"Question B.

Amend Section 401 of the County Charter and add Section 511 to the County Charter to authorize the County Council to provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the County government not covered by Section 510 of the Charter; to provide that if a law is enacted it shall prohibit strikes or work stoppages for the officers and employees; and to provide that the officers and employees may be excluded from the provisions of the merit system to the extent that the provisions are subject to legislation enacted under Sections 510 or 511."

BE IT FURTHER RESOLVED, that immediately following each of the ballot titles on the ballot, the ballot questions should be stated as follows:

"For the Amendment"

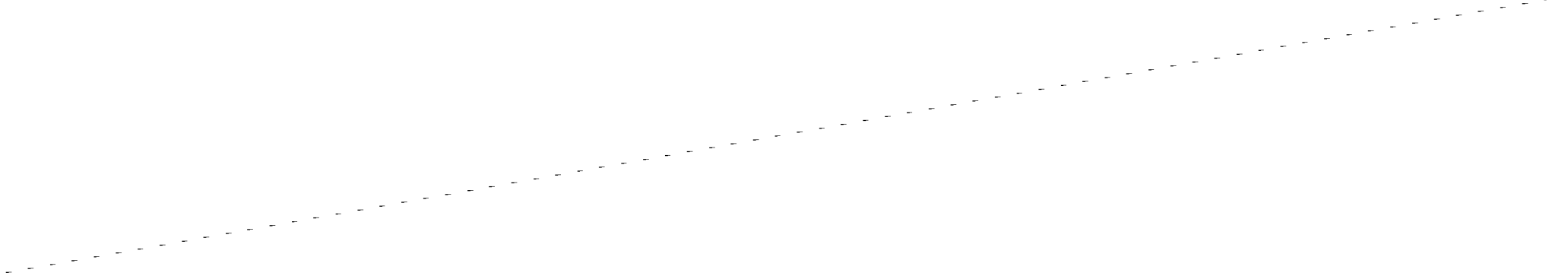
"Against the Amendment"

BE IT FURTHER RESOLVED, that the Secretary of the County Council is authorized and directed to file a certified copy of the Resolution with the Board of Supervisors of Elections.

A True Copy.

Attest:

Kathleen A. Freedman, Acting Secretary
of the County Council for Montgomery
County, Maryland



MINORITY VIEWS

CHARTER REVIEW COMMISSION RECOMMENDATION B

A NEW SECTION 511 RE COLLECTIVE BARGAINING FOR COUNTY EMPLOYEES

The undersigned members of the Charter Review Commission wish to make known their views with respect to the Commission's Recommendation B endorsing a Charter amendment relating to collective bargaining for county employees not covered by Section 510 of the Charter. While we support the action of the Commission and applaud its unanimous, bipartisan decision to advance this Charter amendment, we are concerned that the language adopted in the amendment may not accomplish its implied objective.

In 1980, Montgomery County voters approved by an overwhelming majority a Charter amendment, -- Section 510 -- which declared that "the Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County police officers. Any law so enacted shall prohibit strikes or work stoppages by police officers."

As a result of this action, the subsequent enacting legislation was passed by the County Council, collective bargaining was entered into by County Government and the police and a contract was agreed subsequently upon. The undersigned believe that this process, which eventuated the achievement of collective bargaining rights, occurred solely because the voters had approved this charter amendment which had directed the County Council to pass the appropriate legislation.

However, the language now proposed by the Charter Review Commission in a new Section 511 may not effect this outcome. It provides only that the Montgomery Council "may provide by law for collective bargaining . . ." An effort by members of the Commission to amend Section 511 conform to the "shall provide" language of the existing Section 510 was defeated by a 6-5 roll call vote. The undersigned members of the Commission still advocate the inclusion of the "shall provide" language for several reasons.

First, Charter amendments adopted by the Charter Review Commission in theory and in practice have and should continue to advance specific public policy objective(s) with respect to change(s) in the Charter. Such objective(s), once approved by the County Council for submission to the voters, ask the electorate to pass judgement on the Commission's recommendation(s) in those areas where the Commission and the Council deem that revision of the Charter is either appropriate or necessary.

However, the proposed Section 511 amendment is deficient in this regard specifically with respect to the clarity of its public policy objective. The "may provide" language of the currently proposed is ambiguous and fails to offer the voters a clear choice on the public

policy question of whether or not their county employees should have collective bargaining rights. We fear the electorate is very likely to believe that it is rendering a decision on the merits of this issue, as it did in 1980, only to find out that after it has cast its ballots that, in fact, the language of the Charter amendment does not guarantee county workers the statutory right to collective bargaining. That decision is left to the legislative discretion of the County Council by Section 511 as drafted.

While we believe it is appropriate to leave the formulation of the particulars of any subsequent collective bargaining statute to the County Council, it is a disservice to the electorate to have them cast their votes on a public policy matter of this magnitude and then, if it is approved, leave open the distinct possibility that its implementation would be denied by the County Council. The decision of the electorate then would have been circumvented and the Charter amendment process will have been, in this case, effectively reduced to an advisory referenda. This we feel is contrary to the purpose of the Charter Review process. We firmly believe, therefore, that recommendations of the Charter Review Commission ought to be unmistakeably clear with respect to the choice being offered to the voters and that such a choice assures implementation of a specific policy. In this respect, the recommendation of the Commission as now drafted is deficient.

Secondly, we that county employees are being treated somewhat disingenuously by the Charter Review Commission. Given both the exhaustive review of this policy question by this and previous Charter Review Commissions as well as the voter's overwhelming decision in 1980 on this issue, we feel the Commission has an obligation to our county employees to offer voters a decision on a Charter amendment which at a minimum embraces the economic rights already afforded another class of county workers namely, the police. Instead, we have offered them the illusion of collective bargaining and not the assurance that they will ultimately attain by law the right to collective bargaining. To hold out such false hopes is both a disservice to county employees and the voters who will decide this question.

Thirdly, it should be noted that since the voters approved a collective bargaining with binding arbitration for the police in 1980 as a charter amendment, that the Commission is now offering the voters a second, more broad-based decision on this matter -- applicable to the vast majority of other county employees -- which is a weaker statement of public support for the right of collective bargaining than that already approved by the voters. The undersigned believed the Charter Review Commission should provide at least the same policy choice in 1984 as that approved in 1980.

Finally, objection has been heard to the inclusion of the "shall provide" language on the basis that it provides a legislative directive to the County Council which exceeds the

responsibility of the Charter Review Commission. The undersigned agree with the point of view that the Commission should not undertake legislative policymaking. However, the majority, which rejected the "shall provide" language, saw fit to do exactly that by incorporating language from Section 510 within the new Section 511 that prohibits "strikes or work stoppages." The undersigned believe that the inclusion of the "no strike" language does in fact interfere with the legislative discretion of the Council in providing for collective bargaining rights by specifiying the parameters of such a statute. We clearly understand, differentiate and respect the need to maintain the legislative discretion of the Montgomery County Council with respect to the Commission's public policy recommendation(s). Yet the majority on this question has seen fit to breach this principle with respect to their amendment to prohibit strikes. We seek here only to clarify for the record the inconsistency of the views offered by the majority in their opposition to the "shall provide" language.

In conclusion, the undersigned members of the Commission continue to support the inclusion of the "shall provide" language for the reasons herein stated. We request, therefore, that these views represent the minority viewpoint on Recommendation B.

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, July 26, 1984 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:47 A.M. on Thursday, July 26, 1984.

PRESENT

Esther P. Gelman, President
Rose Crenca
Scott Fosler
Michael L. Gudis, Vice President
Neal Potter
David L. Scull
William E. Hanna, Jr., President Pro Tem

The President in the Chair.

Re: Worksession on Charter Amendments, Petitions and Ballot Questions

The Council reviewed Charter amendments, petitions, and ballot questions in accordance with a memorandum of July 24, 1984 from Myriam Bailey, Office of Legislative Counsel. The Council began its review by considering recommendations of the Charter Review Commission.

Ballot Question A and Proposed Charter Amendment (Approval of the Budget) - This involves an amendment to Section 305 of the Charter which exempts the budgets of certain self-funding programs from the computation of the aggregate operating budget when determining whether an affirmative vote of five Councilmembers is required to approve the budget; provides that the Consumer Price Index shall be computed for the twelve months preceding December first of each year; and makes a clarifying change.

Councilman Potter directed attention to his proposed additional amendment to add the following language after the phrase "For the purposes of this limitation the aggregate operating budget":

> shall include all items for which appropriations were included in the operating budget of the preceding year

Mr. Potter said that his amendment has been discussed with the Office of Management and Budget. The amendment is proposed to ensure that the comparison from one year to the next truly reflects the increase in operating budget expenditures. He said that it might be helpful to add the following clarifying language:

> Unless an item has been shifted from the operating budget to the Capital Improvements Program or from the Capital Improvements Program to the operating budget, in which case the item shall be included, for purposes of calculating the percentage increase in the operating budget, in the aggregate budget or the CIP in the way in which it was included in the preceding year.

Mr. Norman Christeller, Chairman of the Montgomery County Planning Board, said that Mr. Potter's amendment attempts to remove the incentive to shift items from the operating budget to the Capital Improvements Program which should not be part of the CIP.

Councilman Hanna moved, duly seconded, deletion of the last sentence of the proposed Charter amendment:

> Also excluded from aggregate operating budgets for purposes of this limitation shall be the current receipts or accumulated revenues used to finance a part of the Capital Improvements Program.

Councilman Hanna, in moving to delete this sentence, said that anything that is placed in the budget and funded during the current fiscal year is part of the operating budget and should not be excluded.

Councilman Potter explained the need to compare similar items to understand the rise and decline of expenditures. He said a more accurate measure of real financial growth is needed.

Mr. Hanna said that it makes sense to have a reconciliation of the budget figures from year to year, but he is viewing this from an accountant's viewpoint and believes that standard rules should be followed.

Councilwoman Crenca stressed the need for consistency in whatever method is followed.

Mr. Treworgy said that the Office of Management and Budget supports Mr. Potter's amendment for comparability purposes.

Councilman Fosler expressed the view that the retention of the last sentence requires the clarifying language proposed by Mr. Potter.

Councilman Potter said that his amendment would ensure comparability and prevent the shifting of figures.

Councilman Hanna expressed the view that surplus funds should not be shifted to the capital budget because the budget is prepared on an annual basis and taxes should be levied accordingly. He urged the Council to support his motion to delete the last sentence of the Charter amendment.

Councilman Gudis expressed support for Mr. Potter's amendment, noting its desirability in helping the County maintain its triple A bond rating and its fiscal policy.

Councilman Scull expressed support for the Charter amendment without modification because the amendment has been reviewed and recommended by the Charter Review Commission. Mr. Scull said that he does not believe Mr. Potter's amendment is needed at this time because it introduces a new element about general revenue receipts funding and does not provide any benefit to the taxpayer.

Councilman Fosler noted that Mr. Potter's proposed amendment does not just address the last sentence but rather goes beyond it. He expressed the view that, if the last sentence is included in the proposed Charter amendment, Mr. Potter's sentence is needed. He said that he now agrees with Mr. Hanna that the last sentence of the Charter amendment will create a problem. He suggested that the last sentence be deleted and the clarifying language proposed by Mr. Potter be substituted.

Councilwoman Gelman suggested that a balance sheet be prepared to depict the funding changes which have occurred since the previous fiscal year. Council Staff Director Spengler said that this could be done but the level of detail has to be considered, as well as the definition of "item."

Councilman Potter, agreeing with Ms. Gelman's suggestion, said that the balance sheet would have to show the comparability being used to calculate the percentage increase from one year to the next. This could be accomplished by a footnote or be placed in the budget as it is presented by the County Executive.

Councilman Hanna reiterated his concern about the last sentence of the proposed Charter amendment, expressing the view that it will be misunderstood by the public. He noted that the City of Rockville prepares a reconciliation statement on the order of what is being discussed here. He believes that this is the proper form for setting forth an accurate funding comparison.

Councilman Gudis said that the Finance and Intergovernmental Committee has been attempting to address the problem of which items should be included in the capital budget and which ones in the operating budget. This past week, the FIN Committee discussed the fiscal policy question which is a

related issue. Mr. Gudis explained that he supports the inclusion of the last sentence in the Charter amendment because the Charter will then provide for the exclusion of current receipts or accumulated revenues used to finance part of the Capital Improvements Program from the aggregate operating budgets. He said that he had objected to previous suggestions from the Office of Management and Budget regarding this procedure because the Charter did not contain this provision.

Councilmembers Hanna, Scull, Fosler, Crenca and Gelman voting in the affirmative and Councilmembers Potter and Gudis voting in the negative, the Council deleted the last sentence of the proposed Charter amendment for Section 305.

Councilman Potter said that it is even more important to prepare a table of comparable items from year to year since the Council has deleted the sentence relating to the exclusion of current receipts from the aggregate operating budget which are used for CIP projects.

Councilman Hanna moved that the Council, by policy resolution, require the County Executive to provide each year a reconciliation between the current fiscal year's budget and the projected fiscal year's budget, so that audit statements will be available for the public. There was no second to Mr. Hanna's motion.

Councilman Fosler proposed that the concept suggested by Mr. Hanna be included in the Charter, i.e. the inclusion of a statement that it shall be the responsibility of the County Executive to provide a reconciliation on funding shifts between the capital and operating budgets.

Councilman Gudis expressed the view that the Charter should not be encumbered with intricate management tools.

Councilman Fosler moved, duly seconded, to prepare a Charter amendment which would add a simple sentence calling for a reconciliation statement. He provided the following suggested language for the sentence:

> For the purposes of this limitation, a reconciliation table shall be provided in each year's budget showing the changes in the aggregate.

Without objection, the Council agreed to defer action on this motion to provide the opportunity for the preparation of language for the Charter amendment proposed by Mr. Fosler.

The Council then turned its attention to another amendment proposed by Mr. Potter, i.e. "All final budget actions shall be taken by roll-call vote of the Council."

Councilman Scull objected to the inclusion of this provision in the Charter because of the complications that arise when procedures such as this are included in a document as formal as the Charter. He noted that a roll call vote is called for in the State Constitution and is a cumbersome, time-consuming procedure. He said that he would be glad to work with Mr. Potter on an amendment to the Council's Rules of Procedures that would address this issue.

Councilman Potter noted that he believes a roll-call vote should be taken on all final budget actions in the same way that roll-call votes are taken on final actions on zoning issues and legislation. He suggested that the language could be amended to say that all final budget actions before May 15 shall be taken by roll-call vote of the Council.

Councilman Hanna said that he would not object to the amendment if it were construed to mean final budget actions. He suggested that the language be amended to say that action on the final annual budget shall be taken by roll-call vote of the Council.

Councilman Gudis said that he feels strongly about the Charter being the constitution of the County; it should not become a set of procedures. He said that he believes that the Council's Rules of Procedures should be amended to to require a roll-call vote on final budget actions or that legislation to this effect should be enacted.

Councilman Fosler said that he believes the language should be included in the Charter and suggested that Mr. Potter's proposed language could be amended to say that action on all final budget resolutions shall be taken by roll-call vote of the Council.

Mr. Spengler suggested that the Charter could be amended to say the Council shall by roll-call vote approve the budgets as amended.

President Gelman expressed the view that the setting of the tax rate should also be done by roll-call vote.

Without objection, the Council agreed to defer consideration of this issue to provide the opportunity for review and recommendation by a Council subcommittee composed of Councilmembers Scull and Potter.

Mr. Spengler directed attention to the Charter Review Commission's proposed Charter language for Section 305, noting that the word "fully" between "for" and "self-supporting" in the proposed language is used to describe enterprise funds which are not necessarily fully self-supporting.

Councilman Gudis moved, duly seconded, to delete the word [fully] between "for" and "self-supporting" in the Charter amendment.

Councilman Hanna suggested that the word "self-supporting" be deleted also. Mr. Gudis accepted Mr. Hanna's suggestion as an amendment to his motion.

Mr. Spengler said that accountants use the term "primarily" self-supporting. If it meets that test, it is considered an enterprise fund.

Councilman Potter moved, duly seconded, an amendment to Mr. Gudis' motion to substitute the word "primarily" for "fully."

Councilman Hanna said that, if the word "primarily" is used, it will have to be defined. In his opinion, it is simpler to say "enterprise funds" without any adjectives.

Councilmembers Potter and Fosler voting in the affirmative and Councilmembers Hanna, Gudis, Scull, Crenca and Gelman voting in the negative, the amendment to Mr. Gudis' motion failed for lack of a majority vote.

Without objection, the Council approved Mr. Gudis' motion, as amended, to delete the words [fully self-supporting].

Upon motion of Councilman Gudis, duly seconded and without objection, the Council agreed to delete [the Parking Lot districts] from the proposed Charter amendment for Section 305 of the Charter.

Ballot Question B and Proposed Charter Amendment (Collective Bargaining - County Employees - This involves an amendment to Section 401 of the Charter and the addition of a new Section 511 authorizing the Council to provide by law for collective bargaining.

President Gelman asked about the distinction between "mediation" and "arbitration." Mr. Newman said that mediation is a resolution of differences by an informal procedure, while arbitration is a resolution of differences by a formal procedure involving the issuance of a decision by an arbitrator. The question of whether the decision is binding or not depends upon the agreements reached by the parties involved. Councilman Fosler noted that "binding arbitration" is another term to be considered.

Councilman Hanna moved, duly seconded, to delete from the proposed Charter amendment for Section 511 the words [arbitration or other impasse resolution procedures] and to substitute mediation or non-binding arbitration.

Ms. Elizabeth Spencer, a member of the Charter Review Commission, said that the Charter Review Commission felt that the language in the Charter should be as broadly permissive as possible because the legislation enacted by the Council may be different for different groups.

President Gelman expressed the view that the language in the Charter amendment should be broad because it empowers the Council to enact legislation.

Councilman Hanna said that he prefers to restrict the law that may be enacted to provide for only non-binding arbitration.

Councilman Potter suggested that Mr. Hanna would only need to add the word "non-binding" before the word "arbitration" to accomplish his objective. Mr. Hanna accepted Mr. Potter's suggestion as an amendment to his motion.

Ms. Spencer pointed out that this will create a conflict with Section 510 of the Charter which provides for binding arbitration with an authorized representative of the Montgomery County police officers.

Mr. Geno Renne, President of the Montgomery County Government Employees' Organization (MCGEO), cited the need for equity among County employees. He said that, regardless of whether it is included in the Charter, the Council has the ultimate responsibility of deciding whether it will accept binding arbitration. He said that both of the groups represented by MCGEO are currently under "meet and confer", and that it was hoped that the Charter amendment would provide one system of arbitration for all employees. He said that binding arbitration is preferred because without it there will be inconsistency and uncertainty about how an impasse will be resolved.

Councilman Potter said that he believes binding arbitration would remove from the Council its authority to make the final decision. Noting that he believes that it might be appropriate in situations where strikes are prohibited, Mr. Potter raised objections to the language proposed for Section 511 that says that "any law so enacted shall prohibit strikes or work stoppages." He believes that the Charter amendment should provide some flexibility and balance. He noted that Section 510 prohibits strikes, but provides for binding arbitration.

Councilman Hanna said that he objects to relinquishing of the Council's responsibility to an arbitrator and believes that it could have negative results. He cited a case where employees negotiated an agreement under binding arbitration which called for salary increases which could not be met without a tax increase. He said that the court ruling in this case was that the only individuals who have the overall responsibility of the government are the elected officials; an arbitrator cannot remove those powers and demand something that is against the public interest. He said that he is in favor of collective bargaining for employees if this is what the employees wish.

Councilmembers Hanna and Scull voting in the affirmative and Councilmembers Gudis, Potter, Crenca, Fosler and Gelman voting in the negative, Mr. Hanna's motion to add non-binding before the word "arbitration" failed for lack of a majority vote.

With respect to the language which indicates that the authority for collective bargaining may be granted to authorized representatives of officers and employees of the County government not covered by Section 510, Mr. Renne pointed out that MCGEO cannot represent non-merit employees. He believes that the Council can address this issue through the legislation it enacts in this regard.

Councilman Potter moved to substitute the word may for "shall" before the word "prohibit" in the language proposed for Section 511. The motion failed for lack of a second. In making the motion, Mr. Potter said that he believes that the issue of prohibiting or permitting strikes could be addressed in legislation the Council enacts.

Mr. Renne requested that the record reflect MCGEO's opposition to the lack of flexibility in the Charter amendment for County employees.

Councilman Potter moved to delete the word [only] between "system" and "to" in the language proposed for Section 401. Following discussion, without objection, the Council agreed to amend this language by including a comma before the word "only", as suggested by Ms. Spencer.

Councilman Hanna raised a question about the language proposed for Section 401 that says that "officers and employees who are members of a unit for which a collective bargaining contract exists may be excluded from the provisions of the merit system." He expressed the view that employees should

not have this choice. It was noted that collective bargaining may address only one of several benefits that County employees have under the merit system.

Councilman Hanna took issue with the word "authorize" in the second sentence of Ballot Question B. Following discussion, he requested the record to reflect that it is the Council's understanding that the authorization given to the County Council to provide by law for collective bargaining is enabling only.

Without objection, the Council approved Ballot Question B and the charter language proposed for Sections 401 and 511, as amended to include a comma before the word "only" in the language proposed for Section 401.

Ballot Question C and Proposed Charter Amendment (Council Legal Representative) - This involves the addition of Section 119 and an amendment to Section 213 of the Charter concerning the employment of separate legal counsel by the County Council.

The Council turned its attention to the County Attorney's suggested language for Ballot Question C.:

> Add Section 119 to the County Charter and amend Section 213 of the County Charter to authorize the County Council to employ or retain legal counsel to assist it in the exercise of its powers, without the consent of the County Attorney.

Councilman Gudis moved, duly seconded, to approve the language suggested by the County Attorney.

Councilman Scull expressed opposition to the suggested language, noting that the proposed amendments to the Charter clarify the existing practice, and the language should not be revised to make it sound as if a change is being made.

Councilman Fosler said that he believes the language suggested by the County Attorney is a clear and accurate statement of what the amendment would do. It does not say whether it is a change from what presently exists, but rather what the amendment will accomplish. He said that he is concerned with the language proposed by the Charter Review Commission for Ballot Question C because it seems to imply that there is no change when the amendment would change the existing practice of the County Council in obtaining the consent of the County Attorney for separate legal assistance.

Councilman Potter said that in the early seventies the language of the Charter was interpreted to mean that the County Attorney was the principal legal advisor for the County Council and that the Council could not hire an attorney independently. The Council succeeded in changing this through practice, receiving automatic consent to hire outside legal counsel for particular representations. Although he believes the proposed amendments are desirable, they connote a change from the present practice and should be so stated in the ballot question. Therefore, he prefers the language suggested by the County Attorney.

Councilman Hanna said that he believes a compromise between the two versions of Ballot Question C would be appropriate, suggesting that the language proposed by the Charter Review Commission be amended to include after the word "explicit" the words to clarify.

Councilman Scull said that he supports Mr. Hanna's suggestion. He is opposed to the language suggested by the County Attorney because it might be misinterpreted by the voters.

Councilwoman Crenca expressed the view that the Council had always had the understanding that it had to obtain permission from the County Attorney for separate legal counsel. She believes this has always been done, and that the Council's requests have never been denied. If it is true that the Council has always had this authority, there is no reason to include this question on the ballot.

Without objection, the Council agreed to defer further consideration of this issue until its meeting on Tuesday, July 31, 1984.

Ballot Question D and Proposed Charter Amendment (HOC Bonds Exception) - This involves an amendment to Section 312 to provide that housing revenue bonds issued by the Housing Opportunities Commission may be structured with substantially level debt service payments and payments of interest only during construction of projects financed with bonds and that a portion of the bonds issued may be sold as term bonds structured with mandatory sinking fund payments.

Councilman Potter suggested that the language in the question and the amendment be changed to substitute payments of interest only for the words [interest only payments]. Without objection, the Council approved this change.

Upon motion of Councilman Scull, duly seconded and without objection, the Council approved Ballot Question D and the amendment to Section 312, as amended.

Ballot Question E and Proposed Charter Amendment (Composition and Election of Councilmembers) - This involves an amendment to Section 102 of the Charter which has been petitioned to referendum, providing that five members of the Council shall be elected by voters of the Councilmanic district in which the member resides and that two members will be elected as members-at-large by voters of the entire County.

Councilman Fosler requested that the ballot question be given to a member of the Coalition for Representative Government for review to make certain it is an accurate interpretation of the proposed amendment.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council approved Ballot Question E and the proposed amendment to Section 102.

With respect to Ballot Questions F, G and H and accompanying amendments, as more particularly set forth in Ms. Bailey's memorandum of July 24, 1984, Ms. Bailey said that these would be before the Council later if they are certified by the Supervisors of Elections.

(The meeting recessed at 12:26 and reconvened in the Third Floor Conference Room at 12:40 P.M.)

Re: Discussion of Renovation Plans for Third Floor Hearing and Conference Rooms

The Council met with Council Staff Director Spengler; Mr. Larry White, Office of Architectural Services, Department of Facilities and Services; Mr. Tom Kamstra, Mr. Mike Miller, and Ms. Edie Alguadich, of the architectural firm of Kamstra, Dickerson and Associates (KDA), to discuss KDA's preliminary plans for the renovation of the Council's third floor

MONTGOMERY COUNTY GOVERNMENT

EMPLOYEE ORGANIZATION

50 MONROE STREET - ROOM 201

ROCKVILLE, MARYLAND 20850

279-1025

MEMORANDUM

October 27, 1983

TO: Montgomery County Charter Review Commission

FROM: Gino Renne, President, M.C.G.E.O.

SUBJECT: Collective Bargaining

I am Gino Renne, newly elected President of M.C.G.E.O., the recognized representative of twenty-three hundred County employees within the Office, Professional and Technical Units.

Collective bargaining with binding arbitration, agency shop, and a no strike clause is long overdue County employees currently excluded from this process. Since mid 1982, M.C.G.E.O. has had a labor relationship with the County under the provisions of Meet and Confer. Since then, and prior to, County employees have suffered reduced benefits, primarily in terms of Cost of Living Adjustments and yearly increments. R.I.F.'s are becoming more common. County employees are depicted in the

media as an over-funded tax burden. In effect, things do not look promising for public employees. This of course is not the County's fault. It is the fault of every employee excluded from Collective Bargaining who is content with the current arrangement of Meet and Confer.

Since recently taking office, I cannot be overly critical of those persons in County Government who represent the interest of the County. I am confident they confer in good faith, and I am pleased with the sincere reception they have given M.C.G.E.O. I would simply like to state our position on this issue as I stated to Mr. Torgesen during our last Meet and Confer session--that Collective Bargaining be a top priority.

Allow me to explain what our concern is with Meet and Confer, and why we think we are entitled to Collective Bargaining.

First, under Meet and Confer the reality is that we request; and they decide. What they decide, is what goes. There is no third party to mediate any dispute or impasse. Basically, what we have is a relationship of paternalism. Generally known in labor circles as "we take care of our own however, we decide what's best." This concept is intellectually offensive to those who can think and reason for themselves regarding issues having impact on working conditions which currently prevail. By the

same token, most of the criticism aimed at Collective Bargaining for public employees is based on the following assumptions:

1) Elected Officials should not bargain with employees on budget issues.

2) Collective Bargaining implies that tax dollars are at stake.

3) If Collective Bargaining is adopted, the taxpayers loose because workers will bargain for higher pay, which will ultimately inflate the budget.

Nothing could be further from the truth. Collective Bargaining would not make public workers fiscally irresponsible. No one knows better than us who pays our salaries, and who our bosses really are. We would be the last to place selfish interest to the detriment of the taxpayers. After all, public workers are taxpayers themselves.

In this same light, our electorate are among the most well informed and well educated in the country. I truly believe that the majority of the people in this county do not view Collective Bargaining as a fiscal threat.

In closing, we accept the fact that the Teachers and the Police have won Collective Bargaining as an effective tool to solve labor disputes. To deny other County employees the same consideration would be unjust and contrary to democratic principles.

Agenda Item #2
3/25/86

M E M O R A N D U M

TO: County Council

FROM: Frances Moran, Staff Attorney
Office of Legislative Counsel

SUBJECT: Introduction - Bill 19-86, County Employee Collective Bargaining

Bill 19-86, sponsored by the Personnel Committee, is scheduled for introduction on March 25, 1986.

Attached for your consideration are:

1. Bill 19-86 (Circle 1)
2. Legislative Request Report (Circle 33)
3. Amendments (Circle 35)

FM/ink
488/53

Attachments

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MONTGOMERY COUNTY COUNCIL

SUMMARY OF BILL providing for COUNTY EMPLOYEE COLLECTIVE BARGAINING

Recommended by the Personnel Committee, 3/17/86, for Introduction 3/25/86

Introduction

This is a bill to permit County Government employees to engage in collective bargaining.

The bill takes its framework and most of its basic language from the police collective bargaining law. However, collective bargaining for County employees presents some different issues from the issues presented by collective bargaining for the police, and therefore the bill differs from the police law in several significant ways. Moreover, the language and format of the police law have been altered somewhat, in line with the Council's plain language rules and principles. The bill has not, however, been fully "plain languaged."

On several of the important issues, alternative proposals have been drafted as amendments to the bill, in order to assure that options are presented for public debate and Council choice.

The bill provides for two bargaining units, in large measure the same units (Service, Labor, and Trades and Office, Professional and Technical) now in existence under the meet and confer law. The bill further provides that there will be no unit of supervisors. An amendment offers the option that there will be only one unit of all eligible employees.

The bill provides for the use of fact-finding and recommendations by a mediator, instead of binding arbitration, when there is a bargaining impasse.

The bill permits the collective bargaining contract to contain an agency shop provision, with a proviso that any employee who objects to paying union dues or a service fee on religious grounds may substitute payment of the same amount of money to a charity. Amendments offer agency shop options (1) that no agency shop be permitted, and (2) that agency shop could only apply to employees who have not yet reached 10 years of service as of the effective date of the bill.

Key Provisions

1. Two bargaining units -- (Service Labor, and Trades [SLT] and Office, Professional, and Technical [OPT] units), with certain exclusions; no supervisory unit. [Sections 33-102(4), 105, 106].

Amendment: Single unit of all employees. [Amendment #1].

2. Exclusions from the bargaining units: The employees excluded from the collective bargaining units are in most respects the same as those excluded from the meet and confer units. There have, however, been some additions to the list of those excluded from the units, principally all employees in the Office of the County Executive and the Office of the CAO, all County Council employees, officers in the uniformed services in the rank of sergeant and above, State Merit System employees, all persons in Grade 27 or above, temporary employees, and newly hired employees on probationary status. [Section 33-102(4)].

3. Choice of Collective Bargaining Representative [Section 33-106].

The draft provides for an election in which the employees may express their desires with respect to collective bargaining. The bill further provides that a majority of those voting will determine the outcome. An amendment provides that a majority of the unit must participate in the election for the result to be determinative. [Amendment #2].

The bill also provides an alternative to an election, which is that the Labor Relations Administrator may accept cards or petitions signed by a majority of the employees designating the incumbent meet and confer Union as the bargaining representative, unless another Union, or 10% of the employees in the unit, have petitioned for an election. An amendment provides that the only method of choice shall be an election. [Amendment #3].

4. Subjects of Bargaining [Section 33-107(a)].

A. Salaries and wages; hours and working conditions; health and safety.

B. Agency Shop, with religious exception (from state teacher law).

Amendments: (1) No agency shop is permissible, or (2) agency shop is permissible only for new employees and

employees who have not reached 10 years service as of the effective date of the bill. [Amendments #s 4 & 5].

C. Pensions: (1) The bill states the County must bargain only about defined-contribution pension plans for new employees and for current employees who may choose to switch from their existing defined-benefit plan to a defined-contribution plan. Such bargaining would not occur unless and until the County enacts a law establishing a defined-contributon plan for new employees. The existing defined-benefit plans for current employees would not be subject to bargaining.

Amendment: No bargaining on pensions. [Amendment #6].

D. Binding grievance arbitration.

Amendment: Binding grievance arbitration for discipline and discharge cases only; for other cases arbitration is advisory only, unless the parties agree the decision in a particular case will be binding. [Amendment #7].

E. "Effects" bargaining. The bill does not import the provision of the police law which mandates bargaining about "the effect on employees of management's exercise" of all its management rights. The bill confines "effects" bargaining to bargaining about effects on employees when the exercise of management rights causes the loss of bargaining unit jobs. An amendment uses the police law's broad "effects" bargaining language. [Amendment #8].

5. Management rights [Section 33-107(b)]. The bill adds more detail to the management rights section than is in the police law. Note: One of the stated management rights is the right to contract out, modified by a proviso that no contracting of work which will displace employees may be undertaken by the County without 90 days notice to the Union.

6. Bargaining impasse to be broken with fact-finding, not binding arbitration [Section 33-108]. The fact-finder makes recommendations on disputed issues. Parties bargain 10 more days. If full agreement is not reached, Council gets recommendations of fact-finder and both parties, participates in final bargaining as in police law, and has the final say as in police law.

7. Timing of bargaining [Section 33-108]. Under the bill, bargaining would commence no later than November 1, 1986, if a Union is certified as the bargaining representative. Therefore, bargaining would start with the present Executive, and finish with the new Executive and the new Council. Under this schedule the first contract would be effective July 1, 1987. An amendment provides for bargaining of a short contract for 1986-87 that would contain only non-economic items. [Amendment #9].

8. Labor Relations Administrator [Section 33-103]. This official, appointed by the Executive and confirmed by the Council, conducts elections and judges "prohibited practices", as in police law. The initial term of the LRA is four years. Further terms are five years. The Union is able, if it chooses, to veto the LRA's reappointment. An amendment gives the Union a formal role in the appointment process. [Amendment #10].

9. Mandated 75% cost-of-living law is repealed for all County government personnel if and when the employees eligible for collective bargaining choose a Union pursuant to the new law. [p. 5 of bill].

10. Meet and confer stays on books for now, but would become inapplicable if and when employees choose a Union pursuant to the new law. [p. 4 of bill]. An amendment provides that State merit system employees, who are excluded from collective bargaining under the bill, would keep meet and confer rights. [Amendment #12].

INDEX TO ARTICLE VII - EMPLOYER-EMPLOYEE COLLECTIVE BARGAINING

		Page
§33-101	Declaration of policy	5
102	Definitions	5
103	Labor Relations Administrator	9
104	Employee rights	11
105	Unit for collective bargaining	12
106	Selection, certification, and decertification procedures	15
107	Collective bargaining	19
108	Bargaining, impasse, fact-finding, and legislative procedures	22
109	Prohibited practices	26
110	Expression of views	30
111	Strikes and lockouts	30
112	Effect of prior enactments	31

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Bill No.: 19-86
Concerning: County Employee Collective Bargaining
Draft No. & Date: STAFF - 3/17/86
Introduced: March 25, 1986
Expires: September 25, 1987
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co., FY ___

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Personnel Committee

AN ACT TO:

(1) establish a framework for public employer-employee labor relations;

(2) provide the method for designating an employee organization as the exclusive representative of public employees in the appropriate unit;

(3) provide procedures for collective bargaining of wages, hours, and other terms and conditions of employment;

(4) provide for the appointment of a labor relations administrator;

(5) define the rights of employees, employee organizations, and the public employer;

(6) prohibit certain conduct;

(7) provide procedures for resolving differences between the public employer and employees;

(8) generally assure uninterrupted operation of government services; and

(9) generally provide for the establishment of County employee collective bargaining.

By amending
Chapter 33, Personnel
Section 33-11(b) of the Montgomery County Code

By adding
Chapter 33, Personnel
Sections 33-63A and 33-74(d), and Article VII of the
Montgomery County Code

EXPLANATION:
- **Boldface** indicates matter that is a heading or a defined term.
- Underlining indicates matter added to existing law.
- [[Double Brackets]] indicate matter repealed from existing law.
- CAPITALS indicate matter quoted from existing law which is added to the bill by amendment.
- UNDERLINED CAPITALS indicate matter added to existing law by amendment to the bill.
- ~~Strikes~~ indicate matter deleted from the bill by amendment.
- * * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 33-11(b) is amended to read as follows:

33-11. Classification; salary and wage plans.

(b) Uniform salary plan. [[There is hereby established for all classes of positions in the merit system a uniform salary plan entitled the "general salary schedule" which shall contain grades, salary rates and ranges for each grade. All classes of positions shall be assigned an appropriate grade under the general salary schedule by the chief administrative officer. All positions involving comparable duties, experience, responsibilities and authority shall be paid comparable salaries in accordance with the relative value of the services performed. In establishing salary rates, consideration shall be given to experience, prevailing salary rates for comparable services in both the public and private sectors, living costs, and fringe and other benefits received by the employee under the merit system. The chief administrative officer shall, subject to the approval of the county council, promulgate and from time to time amend the general salary schedule, compensation policies for overtime, pay differential and other appropriate salary and wage benefits.]]

(1) Subject to approval by the County Council, the Chief Administrative Officer must issue and periodically amend a uniform salary plan known as the "general salary schedule" for all classes of positions in the merit system.

(2) The general salary schedule must contain grades, salary rates, and salary ranges for each grade.

(3) The Chief Administrative Officer must assign an appropriate grade under the general salary schedule to all classes of positions.

(4) All positions involving comparable duties, experience,

responsibilities, and authority must be paid comparable salaries in accordance with the relative value of the services performed.

(5) In setting salary rates, the Chief Administrative Officer must consider experience, prevailing salary rates for comparable services in both the public and private sectors, living costs, and fringe and other benefits received by the employee under the merit system.

(6) Subject to approval by the County Council, the Chief Administrative Officer must also issue and periodically amend compensation policies for overtime, pay differentials, and other appropriate salary and wage benefits.

(7) Any plan, policy, or schedule issued by the Chief Administrative Officer under this subsection is subject to the limitations in Articles V and VII of this chapter regarding County police department and government employees who are represented by a certified employee organization.

Sec. 2. Sections 33-63A and 33-74(d) and Article VII of Chapter 33 are added as follows:

33-63A. Applicability.

Upon certification that the employees in the units are represented for collective bargaining, this article shall not apply to any person.

33-74. Cost-of-living adjustment.

(d) This section is automatically repealed upon certification that the employees in the units are represented for the purpose of collective bargaining under Article VII of this chapter.

(4)

Article VII. County Collective Bargaining.

33-101. Declaration of policy.

It is the public policy of Montgomery County to promote a harmonious, peaceful, and cooperative relationship between the County government and its employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of County government and services. Since unresolved disputes in public service are harmful to the public and to employees, adequate means should be available for preventing disputes and for resolving them when they occur. To that end, it is in the public interest that employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, as authorized by Charter Section 511, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of County employees bargain collectively in good faith without interference with the orderly process of government and that they implement any agreements reached through collective bargaining.

The County Council also recognizes that employee organizations and the County government each possess substantial means for initiating actions on wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the public service, the County Council states that once the employees voluntarily select a representative, collective bargaining shall be used in place of, and not in addition to, existing means for initiating governmental action on subjects that are defined as appropriate for collective bargaining in this article.

33-102. Definitions.

The following terms have the meaning indicated when used in this article:

(1) "**Agency shop**" means a provision in a collective bargaining

⑤

agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require an employee to pay initiation fees, assessments, fines, or any other collections or their equivalent as a condition of continued employment. A collective bargaining agreement shall not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, and to give to the employer and the certified representative written proof of this payment.

(2) "**Certified representative**" means an employee organization chosen to represent one or both units in accordance with the procedures of this article.

(3) "**Collective bargaining**" means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this article. This article shall not be interpreted to compel either party to agree to a proposal or make a concession.

(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 for the following:

(A) Confidential aides to elected officials.

(B) All persons who are not covered by the County government merit

system.

(C) Heads of principal departments, offices, and agencies.

(D) Deputies and assistants to heads of principal departments, offices, and agencies.

(E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

(F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

(G) Persons who work for the office of the County Executive and the office of the Chief Administrative Officer.

(H) Persons who work for the County Council.

(I) Persons who work for the office of the County Attorney.

(J) Persons who work for the Office of Management and Budget.

(K) Persons who work for the Personnel Office.

(L) Persons who work for the Merit System Protection Board.

(M) Persons who work on a temporary, seasonal, or substitute basis.

(N) Newly hired persons on probationary status.

(O) Persons who work for the police department who are represented by a certified employee organization under Article V of this chapter.

(P) Officers in the uniformed services (corrections, fire and rescue, police, office of the sheriff) in the rank of sergeant and above. Subject to any limitations in State law, deputy sheriffs below the rank of sergeant are employees.

(Q) Persons who are members of the State merit system.

(R) Supervisors, which means persons having authority to do any of the following:

(i) Hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively to recommend any one of these actions.

(ii) Direct the activity of three or more employees.

(iii) Adjust or recommend adjustment of grievances.

(S) Persons in grade 27 or above, whether or not they are supervisors.

(5) "**Employee organization**" means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining.

(6) "**Employer**" means the County Executive and his or her designees.

(7) "**Lockout**" means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) "**Mediation**" means an effort by the mediator/fact-finder chosen under this article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) "Strike" means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) "Unit" means either of the units defined in section 33-105.

(11) When either the female or the male pronoun appears herein, it is to be read to include both genders.

33-103. Labor Relations Administrator.

(a) There is established the position of Labor Relations Administrator, to provide for the effective implementation and administration of this article concerning 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:

(1) Periodically adopt, amend, and rescind, under method (1) of section 2A-15 of this Code, regulations and procedures for the implementation and administration of the duties of the Labor Relations Administrator under this article.

(2) Request from the employer or an employee organization, and the employer or such organization may at its discretion provide, any

relev assistance, service, and data at will enable her properly to carry out her duties under this article.

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents.

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue the certification or decertification.

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure, the Labor Relations Administrator shall defer to that procedure for the resolution of disputes properly submissible to the procedure absent a showing that the deferral results in the application of principles repugnant to this article. Furthermore, the Labor Relations Administrator shall defer to State procedures in those matters which are governed by the Law-Enforcement Officers' Bill of Rights, Article 27, Sections 727-734D, Annotated Code of Maryland.

(6) Determine unresolved issues of a person's inclusion in or exclusion from the units.

(7) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County.

(8) Exercise any other powers and perform any other duties and

functions as may be specified in this article.

(b) (1) The Labor Relations Administrator must be a person with experience as a neutral in the field of labor relations and must not be a person who, on account of vocation, employment, or affiliation, can be classed as a representative of the interest of the employer or any employee organization.

(2) The first Labor Relations Administrator is appointed by the County Executive, with the confirmation of the County Council, serves for a term of 4 years, and is eligible for reappointment.

(3) After the initial term of office of the Labor Relations Administrator provided in subsection (b)(2), the County Executive shall thereafter appoint the Labor Relations Administrator for a term of 5 years from a list of 5 nominees agreed upon by any certified employee representative(s) and the Chief Administrative Officer, which list may include the incumbent Labor Relations Administrator. Such appointment must be confirmed by the County Council. If the County Council does not confirm the appointment, the new appointment shall be from a new agreed list of 5 nominees. Should there be no certified representative, the Labor Relations Administrator shall be appointed under the procedure and for the term set forth in subsection (b)(2).

(c) The Labor Relations Administrator will be paid a daily fee as set forth by contract with the County, and will be reimbursed for necessary expenses.

33-104. Employee rights.

(a) Employees have the right to:

(1) form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) be represented fairly by their certified representative, if any.

(b) The employer has the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties in accordance with this article.

(c) A certified representative serves as the bargaining agent for all employees in the unit for which it is certified and has the duty to represent fairly and without discrimination all employees in the unit without regard to whether the employees are members of the employee organization, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of a certified representative to receive voluntary dues or service fee deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this article. A collective bargaining agreement may not include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision.

33-105. Units for collective bargaining.

(a) There are two units for collective bargaining and for purposes of

certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, excluding the categories listed as exceptions to the definition of employee in section 33-102(4) of this article. The employees are divided into 2 units in accordance with the following descriptions:

(1) **Service, labor, and trades (SLT) unit.** This unit is composed of all eligible classes that are associated with service/ maintenance and skilled crafts. This means job classes in which workers perform duties that result in or contribute to the comfort and convenience of the general public or that contribute to the upkeep and care of buildings, facilities, or grounds of public property. Workers in this group may operate specialized machinery or heavy equipment. These job classes may also require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work that is acquired through on the job training and experience or through apprenticeship or other formal training programs.

(2) **Office, professional, and technical (OPT) unit.** This unit is composed of all eligible classes associated with office, professional, paraprofessional, and technical functions.

(A) **Office.** Job classes in which workers are responsbile for internal and external communication, recording and retrieval of data and/or information, and other paperwork required in an office.

(B) **Professional.** Job classes that require special and theoretical knowledge that is usually acquired through

college training or through work experience and other training that provides comparable knowledge.

(C) **Paraprofessional.** Job classes in which workers perform, in a supportive role, some of the duties of a professional or technician. These duties usually require less formal training and/or experience than is normally required for professional or technical status.

(D) **Technical.** Job classes that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post secondary school education or through equivalent on the job training.

(b) Specific job classes included in these units of representation, and not otherwise excluded under section 33-102(4), shall be based on the designations made by the Chief Administrative Officer under the prior meet and confer process. In the event a new classification is created by the County, or an existing classification's duties and responsibilities are substantially changed, the County Personnel Director must place the classification in one of the units or state that the classification falls within one of the exceptions to the definition of employee under this article within 60 days of the creation or substantial alteration of the class and must publish the decision in the Montgomery County Register. Any individual or certified representative disagreeing with the decision of the Personnel Director may, within 10 days of publication, file objections to the decision with the Labor Relations Administrator, with notice to the Personnel Director.

The Labor Relations Administrator shall promptly decide the

question on the basis of the duties and responsibilities of the job classification, the unit definition, and the community of interests between and among employees in the job classification and collective bargaining unit.

33-106. Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) Any employee organization seeking certification as representative of a unit shall file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The employee organization shall also send a copy of the petition, not including the names of the supporting employees, to the employer. The petition shall contain the uncoerced signatures of 30 percent of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) If an employee organization has been certified, an employee within the unit may file a petition with the Labor Relations Administrator for decertification of this certified representative. The employee shall also send a copy of the petition to the employer and the certified representative, not including the names of the supporting employees. The petition shall contain the uncoerced signatures of 30 percent of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) Petitions may be filed within 30 days following the date on which this article becomes effective. Thereafter, if a lawful collective bargaining agreement is not in effect, petitions may be filed between September 1 and September 30 of any year, but not sooner than 22 months after an election held under this section.

(4) If a lawful collective bargaining agreement is in effect, a petition filed under this section shall not be entertained unless it is filed during September of the final year of the agreement.

(b) If the Labor Relations Administrator determines that a petition is properly supported and timely filed, she shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of any year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Labor Relations Administrator and shall be conducted by secret ballot at the time and place that she directs. The Labor Relations Administrator may select and retain the services of an agency of the State of Maryland, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least 10 days before the election of at least 10 percent representation of the employees within the unit, and a choice that the employee does not desire

to be represented by any of the named employee organizations.

(3) The employer and each party to the election may be represented by observers selected in accordance with limitations and conditions that the Labor Relations Administrator may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of the challenge or the Labor Relations Administrator's decision as to the validity of the challenge, unless the number of challenges is not determinative, in which case the challenged ballots shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Labor Relations Administrator in the presence of the observers.

(6) The Labor Relations Administrator shall immediately prepare and serve upon the employer and each of the parties a report certifying the results of the election. If an employee organization receives the votes of a majority of the employees who voted, the Labor Relations Administrator shall certify the employee organization so elected as the exclusive agent.

(7) If no employee organization receives the votes of a majority of the employees who voted, the Labor Relations Administrator shall not certify a representative. Unless a majority of the employees who vote choose "no representative", a runoff election shall be conducted. The runoff election shall contain the 2 choices that received the largest and second largest number of votes in the original election.

(c) The Labor Relations Administrator's certification of results is final unless within 7 days after service of the report and the certification, any party serves on all other parties and files with the Labor Relations Administrator objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds for the objections. The Labor Relations Administrator shall investigate the objections and, if substantial factual issues exist, shall hold a hearing. Otherwise, she may determine the matter without a hearing. The Labor Relations Administrator may invite, either by rule or by invitation, written or oral argument to assist her in determining the merits of the objections. If the Labor Relations Administrator finds that the election was conducted in substantial conformity with this article, she shall confirm the certification initially issued. If the Labor Relations Administrator finds that the election was not held in substantial conformity with this article, then she shall hold another election under this section.

(d) The cost of conducting an election shall be paid by the County.

(e) If, during the 30 days following the effective date of this article, a petition is filed by the incumbent representative of unit employees certified under Article IV of this chapter, and no other employee organization files a valid petition, and no petition calling for an election signed by 10 percent of unit employees has been filed with the Labor Relations Administrator, the incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the Labor Relations Administrator and dated after the enactment of this article, that a majority of the

employees in the unit desire to be represented by the incumbent representative for the purposes of collective bargaining under the provisions of this article.

33-107. Collective bargaining.

(a) Duty to bargain; matters subject to bargaining.

Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects:

(1) Salary and wages, including the increase and/or decrease in the salary and wages budget, and the percentage of any increase in the salary and wages budget that will be devoted to merit increments and cash awards, provided that salaries and wages shall be uniform for all employees in the same classification.

(2) With respect to pension and retirement benefits, only defined-contribution plans for new employees or current employees who choose to transfer from a defined-benefit plan, provided that bargaining rights regarding such plans will not accrue unless and until the County has enacted a law establishing such plans.

(3) Employee benefits such as insurance, leave, holidays, and vacations, but not including pension and retirement benefits except to the extent stated in subsection (a)(2).

(4) Hours and working conditions.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include:

(A) binding third party arbitration, provided that the arbitrator shall have no authority to amend, add to, or subtract from the provisions of the collective bargaining

agreement; and

(B) provisions for exclusivity of forum.

(6) Matters affecting the health and safety of employees.

(7) Amelioration of the effect on employees when the exercise of employer rights listed in subsection (b) causes a loss of existing jobs in the unit.

(b) **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 90 days prior to signing the contract 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 law, Federal or State law, or the terms

of the collective bargaining agreement.

(c) **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.

(d) 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.

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

(a) Collective bargaining shall begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative and shall be finished on or before January 15. The resolution of a bargaining impasse or fact-finding shall be finished by February 1.

(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 year or for more than 3 years. All agreements become effective July 1 and end June 30.

(c) A collective bargaining agreement becomes effective only after ratification by the employer and by the certified representative. The certified representative may provide its own rules for ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator shall appoint a mediator/fact-finder, who may be a

person recommended to her by both parties. The mediator/fact-finder shall be available during the period from January 2 to February 1. Fees and expenses of the mediator/fact-finder shall be shared equally by the employer and the certified representative.

(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/fact-finder, or the parties may jointly request his services before declaration of an impasse. If the parties do not reach an agreement by January 15, an impasse exists.

(2) The dispute shall be submitted to the mediator/fact-finder whenever an impasse has been reached, or before that as provided in subsection (e)(1). The mediator/fact-finder shall engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will tend to bring about the settlement of the dispute.

(3) If and when the mediator/fact-finder finds in his sole discretion that the parties are at a bona fide impasse, he shall implement the following fact-finding process:

(A) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.

(B) He may require the parties to submit evidence or make oral or written argument in support of their proposals. He may hold a hearing for this purpose at a time, date, and place selected by him. This hearing shall not be open to the public.

(C) On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.

(D) In making findings of fact and recommendations, the mediator/fact-finder may take into account only the following factors:

(i) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

(ii) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland.

(iii) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

(iv) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

(v) The interest and welfare of the public.

(vi) The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services provided by

the employer.

(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator/fact-finder, the report of the mediator/fact-finder shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.

(g) The budget that the employer submits to the Council shall include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed term or condition submitted to the Council that requires an appropriation of funds or the enactment, repeal, or modification of any County law or regulation shall be identified to the Council by the employer. The employer shall make a good faith effort to have any term or condition that has been agreed to implemented by Council action.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement and the recommendations for resolving bargaining disputes.

(i) On or before April 15, the Council shall indicate by a majority vote its intention to appropriate or otherwise implement the items that have been agreed to, or its intention not to do so, and shall state its reasons for any intent to reject any part of the items that have been agreed to. The Council shall also indicate by a majority vote

its positic.. on disputed matters.

(j) Then the Council shall designate a representative to meet with the parties and present the Council's views in the parties' further negotiations on disputed matters and/or agreed matters that the Council has indicated its intention to reject. The results of the negotiation, whether a complete or a partial agreement, shall be submitted to the Council on or before May 1. The Council may extend this deadline for no more than one week. Any agreement shall provide for automatic reduction or elimination of wage and/or benefits adjustments if:

(1) the Council does not take action necessary to implement the agreement, or a part of it;

(2) funds are not appropriated; or

(3) lesser amounts than those stated in the agreement are appropriated.

(k) The Council shall take whatever actions it considers required by the public interest with respect to matters still in dispute between the parties. However, those actions shall not be part of the agreement between the parties unless the parties specifically incorporate them in the agreement.

33-109. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from any of the following:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under this article.

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other

support to it, under an agreement or otherwise. However, the employer and a certified representative may agree to and apply an agency shop provision under this article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of County facilities for communicating with employees.

(3) Encouraging or discouraging membership in any employee organization by discriminating in hiring, tenure, wages, hours, or conditions of employment. However, nothing in this article precludes an agreement from containing a provision for an agency shop.

(4) Discharging or discriminating against a public employee because she or he files charges, gives testimony, or otherwise lawfully aids in the administration of this article.

(5) Refusing to bargain collectively with the certified representative.

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement that has been agreed to in all respects.

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement.

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached between the employer and the certified representative under this article.

(9) Engaging in a lockout of employees.

(b) Employee organizations, their agents, representatives, and persons who work for them are prohibited from any of the following:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this article.

(2) Restraining, coercing, or interfering with the employer in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Refusing to bargain collectively with the employer if the employee organization is the certified representative.

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects.

(5) Hindering or preventing, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or exit from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance by any person, public or private.

(6) Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the employer.

(7) Taking or retaining unauthorized possession of property of the employer, or refusing to do work or use certain goods or materials as lawfully required by the employer.

(8) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither

performed nor to be performed.

(c) A charge of prohibited practice may be filed by the employer, an employee organization, or any individual employee. The charge or charges shall be filed with the Labor Relations Administrator, and copies shall be sent to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the Labor Relations Administrator to investigate the charge. The Labor Relations Administrator may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The Labor Relations Administrator has the authority to maintain whatever independent investigation she determines is necessary and to develop regulations for an independent investigation. If, upon investigation, the Labor Relations Administrator finds that a charge is sufficiently supported to raise an issue of fact or law, she shall, if she is unable to achieve settlement or resolution of the matter, hold a hearing on the charge after notification to the parties. In any hearing, charging parties shall present evidence in support of the charges, and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense against the charges.

(d) If the Labor Relations Administrator determines that the person charged has committed a prohibited practice, she shall make findings of fact and conclusions of law and may issue an order requiring the person charged to cease and desist from the prohibited practice, and may take affirmative actions that will remedy the violation of this article. Remedies of the Labor Relations Administrator include

reinstating employees with or without back pay, making employees whole for any loss relating to County employment suffered as a result of any prohibited practices, or withdrawing or suspending the employee organization's authority to negotiate or continue an agency shop provision or a voluntary dues or service fee deduction provision. If the Labor Relations Administrator finds that the party charged has not committed any prohibited practices, she shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Labor Relations Administrator shall not receive or entertain charges based upon an alleged prohibited practice occurring more than 6 months before the filing of the charge.

33-110. Expression of views.

(a) The expression or dissemination of any views, argument, or opinion, whether orally, in writing, or otherwise, does not constitute and is not evidence of a prohibited practice under any of the provisions of this law, nor is it grounds for invalidating any election conducted under this law if the expression or dissemination does not contain a threat of reprisal or promise of benefit.

(b) Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of the associations or are of particular applicability to it or its members.

33-111. Strikes and lockouts.

(a) An employee or employee organization shall not either directly or indirectly cause, instigate, encourage, condone, or engage in any

strike, nor the employer in any lockout. An employee or employee organization shall not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when that employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during the strike.

(c) If an employee or employee organization violates the provisions of this section, the employer, after adequate notice and a fair hearing before the Labor Relations Administrator who finds that the violations have occurred and finds that any or all of the following actions are necessary in the public interest, may impose any of the following sanctions, subject to the Law-Enforcement Officers' Bill of Rights, Article 27, Sections 727-734D, Annotated Code of Maryland:

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in the conduct.

(2) Terminate or suspend the employee organization's dues deduction privilege, if any.

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of 2 years.

(d) This article does not prohibit an employer or a certified employee organization from seeking any remedy available in a court of competent jurisdiction.

33-112. Effect of prior enactments.

Any laws, executive orders, or regulations adopted by the County and any

department or agenc[illegible]f the County that are or may b[illegible]onsidered inconsistent with the provisions of this article shall not be held to be repealed or modified until they are specifically repealed or modified by the County or any department or agency of the County.

Sec. 3. Severability.

If a court holds that part of this act is invalid, the invalidity does not affect other parts.

Sec. 4. Effective Date.

This act takes effect 91 days after it becomes law.

Approved:

_____ _____

William E. Hanna, Jr., President, County Council — Date

Approved:

_____ _____

Charles W. Gilchrist, County Executive — Date

This is a correct copy of Council action.

_____ _____

Kathleen A. Freedman, Secretary, County Council — Date

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LEGISLATIVE REQUEST REPORT

Bill 19-86
County Employee Collective Bargaining

DESCRIPTION: This bill:

(1) establishes a framework for public employer-employee labor relations;
(2) provides the method for designating an employee organization as the exclusive representative of public employees in the appropriate unit;
(3) provides procedures for collective bargaining of wages, hours, and other terms and conditions of employment;
(4) provides for the appointment of a labor relations administrator;
(5) defines the rights of employees, employee organizations, and the public employer;
(6) prohibits certain conduct;
(7) provides procedures for resolving differences between the public employer and employees; and
(8) generally assures uninterrupted operation of government services.

PROBLEM: Under Article IV of Chapter 33 (Personnel) eligible employees presently "meet and confer" with the County through their representative. However, County law does not implement the authority for collective bargaining found in the 1984 Charter amendments in §511.

GOALS AND OBJECTIVES: It is the public policy of Montgomery County to promote a harmonious, peaceful, and cooperative relationship between the County government and its employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of County government and services.

COORDINATION:

FISCAL IMPACT: Not available.

ECONOMIC IMPACT: Not available.

EVALUATION: Not available.

EXPERIENCE ELSEWHERE: Not available.

SOURCE OF INFORMATION: Arthur W. Spengler
Council Staff Director (251-7900)

William Willcox, Esq.
Special Counsel (457-6100)

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: Not applicable.

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: One Unit Instead of Two Units

1. On page 4, strike lines 21 and 22, and substitute:

"UPON CERTIFICATION OF AN EMPLOYEE ORGANIZATION AS THE UNIT'S REPRESENTATIVE FOR COLLECTIVE BARGAINING, THIS ARTICLE SHALL NOT APPLY TO ANY PERSON."

2. On page 6, in line 17, strike "one or both units" and substitute "THE UNIT".

3. On page 9, in line 11, strike "either of the units defined in section 33-105" and substitute "ALL EMPLOYEES AS DEFINED IN THIS SECTION".

4. On page 10, in line 23, strike "units" and substitute "UNIT".

5. On page 12, in line 12, strike "for which it is certified".

6. On page 12, in line 19, strike "a" and substitute "THE".

7. On page 12, in line 26, strike "Units" and substitute "UNIT".

8. On page 12, in line 27, strike "are two units" and substitute "IS ONE UNIT".

9. On page 13, in line 1, strike "Persons in these units are" and substitute "THIS UNIT IS DEFINED AS".

10. On page 13, in line 5, strike "The employees are divided into 2" and lines 6 through 27.

11. On page 14, strike lines 1 through 11.

12. On page 14, in line 12, strike "these units of represenation" and substitute "THE UNIT".

13. On page 14, in line 18, strike "in one of the units" and substitute "THE UNIT".

14. On page 15, in line 7, strike "a" and substitute "THE".

15. On page 15, in line 10, after "representative of" strike "a" and substitute "THE".

16. On page 27, in line 2, strike "a" and substitute "THE".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Majority of Unit Must Participate
in Certification Election

1. On page 17, in line 20, after "agent" insert ", PROVIDED THAT A MAJORITY OF THE ELIGIBLE EMPLOYEES VOTED IN THE ELECTION".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: No Certification without an Election

1. On page 9, in line 17, strike "selection" and substitute "ELECTION".

2. On page 15, in line 5, strike "Selection" and substitute "ELECTION".

3. On page 18, strike lines 19 through 27.

4. On page 19, strike lines 1 through 3.

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: No Agency Shop

1. On page 5, strike line 27.

2. On page 6, strike lines 1 through 15.

3. On pages 6 through 9, renumber "(2)", "(3)", "(4)", "(5)", "(6)", "(7)", "(8)", "(9)", "(10)", and "(11)" to be "(1)", "(2)", "(3)", "(4)", "(5)", "(6)", "(7)", "(8)", "(9)", and "(10)".

4. On page 12, in line 16, strike "However, it is not a violation of this duty for a" and strike lines 17 and 18.

5. On page 12, in line 20, strike "or agency shop provisions".

6. On page 12, in line 25, strike "other than an agency shop provision".

7. On page 27, in line 8, strike "However, nothing in this article" and strike lines 9 and 10.

8. On page 30, in lines 4 and 5, strike "an agency shop provision or".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Agency Shop for Employees with
Less than 10 Years' Service

1. On page 6, in line 2, after "employees" add "WITH LESS THAN 10 YEARS' SERVICE IN THE COUNTY GOVERNMENT MERIT SYSTEM".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: All Pensions Non-Bargainable

1. On page 19, strike lines 14 through 18 and line 21.

2. On page 19, in line 20, after "benefits" insert a period.

3. On pages 19 and 20, renumber "(3)", "(4)", "(5)", "(6)", and "(7)" to be "(2)", "(3)", "(4)", "(5)", and "(6)".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Advisory Grievance Arbitration in all Cases Except Discipline and Discharge Cases

1. On page 19, in line 26, strike ", provided that the"; strike lines 27 through 28, and substitute:

"OF DISCHARGE AND DISCIPLINE CASES;

(B) ADVISORY THIRD PARTY ARBITRATION OF OTHER CASES UNLESS THE PARTIES AGREE AT THE TIME A PARTICULAR CASE IS TO BE ARBITRATED THAT THE ARBITRATION WILL BE BINDING; AND".

2. On page 20, strike line 1.

3. On page 20, in line 2, strike "(B)" and substitute "(C)".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Broader "Effects" Bargaining

1. On page 20, strike lines 4 through 6 and substitute:

"(7) THE EFFECT ON EMPLOYEES OF THE EMPLOYER'S EXERCISE OF THE RIGHTS ENUMERATED IN SUBSECTION (B) HEREOF."

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Short First-Year Bargaining

1. On page 22, after line 11 insert:

(A) (1) THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE SHALL UNDERTAKE BARGAINING IMMEDIATELY UPON THE CERTIFICATION OF THE REPRESENTATIVE PURSUANT TO THIS ACT. SUCH BARGAINING SHALL CONTINUE FOR NOT MORE THAN 60 DAYS. EITHER PARTY MAY REQUEST THE ASSISTANCE OF A MEDIATOR IF NO AGREEMENT HAS BEEN REACHED WITHIN 45 DAYS AFTER BARGAINING HAS BEGUN. THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT SHALL COMMENCE IMMEDIATELY UPON THE CONCLUSION OF BARGAINING, AND SHALL TERMINATE AT THE END OF THE FISCAL YEAR.

(2) THE COLLECTIVE BARGAINING AGREEMENT ENTERED INTO PURSUANT TO THIS SUBSECTION WILL INCLUDE NO PROVISIONS WHICH CONCERN SALARIES OR WAGES, RETIREMENT AND PENSION BENEFITS, OR WHICH REQUIRE THAT THE COUNTY COUNCIL APPROPRIATE ADDITIONAL FUNDS, OR ENACT, REPEAL, OR MODIFY ANY COUNTY LAW.

(3) THIS SUBSECTION SHALL BE IMPLEMENTED ONLY DURING AND FOR THE FISCAL YEAR IN WHICH THIS ACT BECOMES EFFECTIVE. COLLECTIVE BARGAINING FOR FUTURE FISCAL YEARS SHALL BE GOVERNED BY THE SUBSECTIONS SET FORTH HEREAFTER.

2. On pages 22 through 26, reletter "(a)", "(b)", "(c)", "(d)", "(e)", "(f)", "(g)", "(h)", "(i)", "(j)", and "(k)" to be "(B)", "(C)", "(D)", "(E)", "(F)", "(G)", "(H)", "(I)", "(J)", "(K)", and "(L)".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Right of Union to Veto Reappointment of Labor Relations Administrator, but not to Formally Nominate Appointees

1. On page 11, in line 7, strike "first".

2. On page 11, in line 9, strike "4" and substitute "5".

2. On page 11, after line 9, insert:

"HOWEVER, SHE WILL NOT BE REAPPOINTED IF, DURING THE PERIOD BETWEEN 60 AND 30 DAYS BEFORE THE EXPIRATION OF THE TERM, THE CERTIFIED REPRESENTATIVE FILES A WRITTEN OBJECTION TO THE REAPPOINTMENT WITH THE COUNTY EXECUTIVE."

3. On page 11, strike lines 10 through 22.

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Council Participation in
Nomination of Appointees

1. On page 11, in line 14, strike "and" and substitute a comma.

2. On page 11, in line 15, after "Officer," insert "AND THE COUNTY COUNCIL,"

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Continuation of State Merit System Employees in Meet & Confer

1. On page 4, in line 22, strike the period and insert "EXCEPT STATE MERIT SYSTEM EMPLOYEES WHO WERE COVERED BY IT PRIOR TO THE ENACTMENT OF ARTICLE VII.".

MONTGOMERY COUNTY COUNCIL

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PUBLIC HEARING

- - - - -

April 22, 1986

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Bill 19-86 *
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The hearings were held in the Third Floor Hearing Room, County Office Building, 100 Maryland Avenue, Rockville, Maryland, at 7:30 p.m., William Hanna, President, presiding.

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PRESENT:

WILLIAM HANNA	President
NEAL POTTER	Vice President
SCOTT FOSLER	Member
DAVID SCULL	Member
ESTHER P. GELMAN	Member
MICHAEL GUDIS	Member
ROSE CRENCA	Member

WITNESSES:

Mr. William Garrett
Personnel Director
Montgomery County Government

Mr. William Thompson
Zwerdling, Paul, Leeibig, Kahn & Thompson
1025 Connectivut Avenue, N.W.
Suite 307
Washington, D.C. 20036

Mr. Keith Prouty
9714 Rutley Road
Bethesda, Maryland

Dr. Robert Allnutt
9104 Alton Parkway
Silver Spring, Maryland

Ms. Sarita Kubli
8012 Park Lane
Bethesda, Maryland

Mr. Ron Phillips
3815 Rodman Street, N.W.
Washington, D.C.

Dr. Rochelle Herman
5125 King Charles Way
Bethesda, Maryland

Ms. Darlene Taper
8024 Park Lane
Bethesda, Maryland

Ms. Lulu Richardson
1106 Ednor Road
Silver Spring, Maryland

Ms. Diana Tash
1216 North Belgrade Road
Silver Spring, Maryland

Mr. Irv Riskind

Ms. Maureen Walter
17419 Hoskinson Road
Poolesville, Maryland

WITNESSES (continued)

Mr. Vincent Foo
Mr. James Morrow
Mr. Ernie Greco
Mr. Josh Williams
Maryland/D.C. ALF-CIO
1012 14th Street, N.W.
Washington, D.C.

Mr. Mark Simon
Montgomery County Education Association

Mr. Dave Robbins
17 Lodge Drive
Rockville, Maryland

Mr. Earl Casey
6940 Westmoreland Road
Falls Church, Virginia

Ms. Maria Coleman
6979 Barrett Road
Falls Church, Virginia

Mr. Mark Simon
6923 Jefferson Avenue
Falls Church, Virginia

Dr. Mauricio Cortina
5 Sunnyside Road
Silver Spring, Maryland

Ms. Heidi Hsia

Mr. Roger Wolfe
Montgomery County Equipment Division

Mr. Harold Wirth
Montgomery County Taxpayers League

P R O C E E D I N G S

(7:37 p.m.)

MR. HANNA: Good evening, ladies and gentlemen. This is a public hearing on Legislative Bill 19-86, County Employee Collective Bargaining, an act to (1) establish the framework for public employer-employee labor relations; (2) provide the method for designating an employee organization as the exclusive representative of public employees in the appropriate unit; (3) provide procedures for collective bargaining of wages, hours and other terms and conditions of employment; (4) provide for the appointment of a labor relations administrator; (5) define the rights of employees, employee organizations and the public emloyer; (6) prohibit certain conduct; (7) provide procedures for resolving differences between the public employer and employees; (8) generally assure uninterrupted operation of government services; and (9) generally provide for the establishment of County employee collective bargaining.

At the conclusion of the hearing, the record will be kept open for two weeks. The Council has scheduled work sessions on the bill beginning, hopefully, May 29th.

So, okay, the ground rules are as follows.

We go by a system of lights. We have two microphones. I'll ask two people to, the speaker and the one following, to come to the bench up here. If you're the speaker, please give your name, the organization you represent if you do represent one, and your address. And you have had times assigned to you, either as five minutes for an organization or three minutes for an individual. And we operate according to the lights. When you have 30 seconds left of your time, the amber light will go on. When your time is up, the red light will go on. And I would ask when the red light goes on that you finish the sentence you're in the middle of and stop. Otherwise, I will stop you, and you won't like that and I don't like to do it either. But we do have a large number of speakers. And so in order that we run it as efficiently as possible, I'd appreciate your cooperation.

With that, the first two speakers are William Garrett and followed by William Thompson.

Good evening, Mr. Garrett.

MR. GARRETT: Good evening, sir.

MR. HANNA: At your --

MR. GARRETT: Are you going to give me a que or --

MR. HANNA: Take it away!

MR. GARRETT: Mr. President and members of the Council, my name is William Garrett. I'm Personnel Director for Montgomery County Government. And I've been requested by the County Executive, Mr. Charles Gilchrist, to present his views on Bill No. 19-86, County Employee Collective Bargaining.

The voters of Montgomery County adopted Section 511 of the County Charter in November of 1984 permitting the County Council to provide by law for collective bargaining for County employees not otherwise covered.

The introduction of Bill 19-86 complies with this Charter language and represents a significant milestone in personnel administration and labor relations in the County Government.

Formal presentation of employees by employee organizations is not new to the County Government. The County's Employer-employee Relations Act, commonly referred to as Meet and Confer, was adopted by the County Council in 1977. This law has served a vital role in the transition of collective bargaining.

This Council has also had firsthand experience in reviewing negotiated agreements resulting from collective bargaining provisions of the Police Labor Relations Act. As a result, the Government and

its employees are now prepared for this important step in the evolution of the employer-employee relationship.

The bill as introduced covers those elements of the bargaining process which are common to most collective bargaining laws. It also recognizes the unique characteristics of public sector employment and the role of elected officials in representing the public as an employer in the areas having physical impact.

My comments this evening will be directed to specific provisions of the law which the Executive finds accurately reflect his opinion or are in the need of further review.

1. The bill includes by definition the units for representation. The net effect of the unit structure as proposed will give bargaining rights to approximately 1270 employees in the service, labor and trades unit, and 2300 employees in the office, professional and technical unit.

Including the unit structure in the legislation will insure greater stability of labor relations by minimizing the potential for a fragmented unit structure and thereby avoiding major differences in the treatment of employees.

The structure will help to focus collective bargaining and subsequent contract administration on uniform and consistent treatment of employeees, the hallmark of the County's merit system. The two units proposed were adopted under the Meet and Confer Law, and this will provide for an easy transition from Meet and Confer to the Collective Bargaining Relationship.

Employee as defined under the law provides for a number of exclusions which affect those employees in confidential, managerment or supervisory positions. These employees have been traditionally excluded from bargaining rights because of their role in the development of management issues, exposure to confidential personnel matters and enforcement of negotiated agreements.

In addition, other exclusions include probationary personnel who have yet to obtain full status as employees, and State-County Merit System employees who are minimally impacted by collective bargaining decisions as their conditions of employment are governed by another system.

The law requires that the selection of the collective bargaining representative be based upon a majority of those voting. The Executive is opposed

to the proposed amendment which would require a majority of those eligible to vote in order for there to be a valid election. This amendment creates an unnecessary hurdle to representation and is not consistent with the Democratic tradition of popular elections with which we are all familiar.

The subjects of bargaining and proposed amendments causes some concern. The bill in its present form limits bargaining on retirement to a defined contribution retirement plan. The Montgomery County Employees Retirement System is an intrical part of the Employee Compensation package.

We believe that employees through their representative should have the opportunity to bargain over the rull range of retirement benefits. As all of the covered employees are currently members of the County's retirement system, they do have a clear interest in initiating or reacting to changes which may affect their retirement.

The agency shop issue is also a matter which is probably and properly the subject of negotiations. Union security issues have traditionally been bargained, and we are therefore opposed to any amendment which excludes or limits this area as a subject for bargaining.

The Executive Branch is opposed to any expansion of the meaning of effects bargaining under Section 107(a)(7). Without careful delineation of of the subject matter in this area, negotiating the effects on employees of management actions can undermine the employer's ability to function.

As an example, management must be in a position to transfer employees based on organizational need, typically, to improve the effectiveness of operations and delivery of services. Under the suggested amendment, management could be precluded from transferring bargaining unit employees until the economic impact of the transfer on employees was negotiated.

The preservation of employer rights is important in assuring that the Government's ability to manage programs and provide services in an efficient and effective manner is not obstructed. The Executive Branch supports the clarification and the elaboration of these rights in contrast to what is currently in the Police law.

In particular, management must have the right to set standards and take advantage of new technology or research which improves the delivery of services. The mechanics of the bargaining process

are somewhat similar to those now provided under the Police Law. It is noted that bargaining will commence under the law no later than November 1. This is conducive to the Executive Branch budget deliberations and allow for the culmination of bargaining in a time frame compatible with the presentation of the County Executive's budget recommendations to the County Council.

The proposed amendment to permit immediate bargaining on subjects not requiring Council appropriation or legislative action is ill advised. The time frame for passage of this law and the requirement to begin normal bargaining no later than November 1 would not leave sufficient time to implement the other aspects of the law relating to the appointment of the Labor Relations Administrator, the conduct of elections if necessary, and the appropriate preparation for bargaining with the two designated units.

Moreover, the full range of issues under subjects of bargaining should be available to the parties in order to fashion an agreement which is fair to the Government and its employees.

Finally, we concur in the use of factfinding with recommendations as the basis for obtaining resolution of bargaining impasses. We believe that the public

airing of disputes will create the appropriate incentive for the parties to make their best efforts in obtaining an agreement.

This approach is used in many state and local jurisdictions and has been shown to be effective. In those situations where significant differences exist in the parties' positions, Council involvement will provide an additional catalyst for resolution.

In conclusion, there are other issues of a more minor nature for which we will reserve comment as the bill proceeds through the legislative process. In the main, the Executive Branch is supportive of the legislation as proposed and pledges its full support in upcoming Council work sessions to obtain legislation that is equitable to all parties and that will foster a harmonious relationship between the County Government and its employees.

Thank you for your attention.

MR. HANNA: Thank you, Mr. Garrett. Mrs. Gelman has -- whoops, don't run away. Ms. Gelman has a question.

MS. GELMAN: I don't know how to turn this on anymore. Mr. Garrett, am I reading between the lines and am I reading too much into it, to find in here that the Executive does not want us to do the

defined contributions?

MR. GARRETT: No, I don't believe you can --

MS. GELMAN: I shouldn't infer that?

MR. GARRETT: No. My statements refer to the fact that the elements of the bill only specifically relate to bargaining on defined contributions.

MS. GELMAN: That's right. And we don't have it yet, but we want to have it?

MR. GARRETT: Right. My statement refers to the fact that not only does the Executive believe that defined contribution plans --

MS. GELMAN: Can be bargained?

MR. GARRETT: -- can be bargained, but also our current defined benefit plans as well, the full range of retirement programs.

MS. GELMAN: Is there any representative of the employees group on the Board now, supervises the investments?

MR. GARRETT: No, we have no such structur.

MS. GELMAN: No such Board at all?

MR. GARRETT: There is a proposed Board.

MS. GELMAN: But there's -- who supervises the investments now?

MR. GARRETT: Currently, it falls to my

responsibility with the final authority being vested in the Chief Administrative Officer.

MS. GELMAN: I see, okay. So there really is nobody that sits on the Board. Even years ago at the Planning Commission, there was always somebody at the Board to oversee the pension arm.

MR. GARRETT: That's right. That structure is missing here in Montgomery County.

MS. GELMAN: I sat on that Board, that's why.

MR. GARRETT: Which is strange.

MR. HANNA: Thank you, Mr. Garrett. That's it? William Thompson.

MR. RENNE: Mr. President, Gino Renne. I'm going to cede my time to Mr. Thompson. Ken Reichard and Rex Trabue will be the same.

MR. HANNA: All right.

MR. THOMPSON: Good evening. My name is William W. Thompson, II. I am a member of the law firm of Zwerdling, Paul, Leibig, Kahn & Thompson, 1025 Connecticut Avenue, N.W., Suite 307, D.C., 20036.

I am here representing MCGEO UFCW Local 400. MCGEO Local 400 is the incumbent employee organization representing approximately 3500 County Merit System employees, pursuant to the County's present Meet and

Confer Employee Relations Procedure.

On behalf of approximately 2300 office, professional and technical employees and 1200 serivce, labor and trades employees of the County, McGeo Local 400 has been at the forefront of the struggle to obtain a comprehensive and equitable collective bargaining law for Merit System employees.

This effort has culminated in the proposal which the Council has before it today. However, the struggle is not over. The proposed bill as reported out of the Personnel Committee of the Council includes a number of provisions and optional provisions which seriously undermine the overall effectiveness of the legislation, should these provisions be included in the statute as passed by the full Council.

We will briefly discuss the most important of these shortcomings in the time remaining. However, I should point out that by not discussing a particular section of the bill, we are indicating our complete support of it at this time.

First, the bill, while making provision for two collective bargaining units, includes an option that one unit of all eligible Merit System employees be created. MCGEO-Local 400 is uniquely qualified to comment on this issue since we have been representing

the two units, SLT and OPT, under Meet and Confer.

We strongly urge that the single unit concept be rejected. The present unit structure was created by the County after extensive review of the natural and appropriate communities of interest among Merit System employees.

We respectfully request that the Council adopt the two-unit structure as set forth in the principal body of the bill.

Second, the bill would exclude from coverage of collective bargaining rights many Merit System personnel who are currently included in the Meet and Confer system. Among the employees to be excluded are all employees in the Department of Social Services and all persons in Merit Grade 27 and above.

The County's several hundred DSS employees are hybrid State-County employees. We do not believe that it is fair to deny these employees a voice in the determination of that portion of their salary which is set by the County. Bargaining over such a narrow question would not be disruptive or even significantly time consuming in the context of the parties' overall relationship.

DSS employeees who are principally female should not be treated as second class citizens.

The County Administration has also sought to have all employees at Grade 27 and above declared to be exempt from collective bargaining, apparently on the theory that they are ipso facto managers. MCGEO-Local 400 currently represents dozens of these employees under Meet and Confer.

The County's proposal is thus contradicting its own earlier determination that many employees at Grade 27 and above have been appropriately included in the community of interest of the present Meet and Confer unit structure.

Third, the principal text of the bill permits a one-time opportunity for the incumbent Meet and Confer union to be recertified for collective bargaining upon written proof that more than 50 per cent of the collective bargaining unit wishes to be represented by it.

Thus, when collective bargaining goes into effect, another election would not be necessary. However, an amendment would require MCGEO-Local 400 to go through the expensive and time-consuming process of yet another election. This proposed requirement is not necessary, especially in light of the fact that MCGEO-Local 400 doesn't want an election in the SLT unit with 70 per cent of the vote. We strongly

oppose any automatic requirement for yet another election.

The bill also proposes that 10 per cent of the employees can petition to force an election under that circumstance rather than the utilization of the procedure for written proof of majority status. We are absolutely opposed to permitting 10 per cent of any group to dictate to the majority how a determination of the incumbent's majority status will be made.

We concede that if 30 per cent of the employees in a unit wish to have an election rather than a card check when this law goes into effect, then an election would be appropriate. Thirty per cent is a significant proportion of the group. Ten per cent is not.

In most labor relations laws, includding this bill, 30 per cent of the employees can petition for an election to decertify a union. We submit that the same number should be required to force an election rather than a card check.

Fourth, we strongly support the provision of the bill permitting the parties to bargain an agency shop. Agency shop would require nonmembers to pay a certain fee for representation by the certified

representative unless such a payment is objected to upon bona fide religious grounds. This provision represents the normal rule in most jurisdictions.

We urge that the Council reject the options that either no agency shop is permissible or that agency shop can only be applied to employees who have less than ten years of service.

Fifth, we wholeheartedly support the Executive's position that all pensions should be bargainable. That is a fundamental term and condition of employment which should not in any way be excised from the purview of collective bargaining under this bill.

The bill as it stands limits bargaining over pensions only to any new defined contribution plan which might be promulgated by the County. We vehemently object to limiting bargaining of any new plan, assuming that it's so limited, to a defined contribution plan.

What if the Council or the Administration seek to establish a new defined benefit as opposed to defined contribution plan? There is no reason only to allow bargaining rights if a new defined contribution plan is enacted.

Sixth, we absolutely support the provision

of the bill which permits the parties to bargain binding grievance arbitration. Grievance arbitration provides a relatively quick and inexpensive method for collective bargaining partners to insure that their formal agreement is faithfully observed and implemented.

Binding grievance arbitration is a hallmark of collective bargaining in both the public and private sectors. Without binding grievance arbitration, both the County and the employee organization could be subjected to endless contract litigation in the courts.

The option appended to the bill which would limit binding arbitration only to disciplinary matters would take away from the employees the primary method for enforcing contractual promises in collective bargaining. A contract without binding arbitration to enforce all of its provisions is not a complete collective bargaining agreement.

Seventh, we strongly urge the Council to reject the bill's proposed limitation on the County's duty to bargain over the effects on emloyees of the exercise of nonbargainable management rights. Often management decisions such as the movement of workplace from one area of the County to another cause serious

effects on employees. We believe that such effects as transportation problems of affected employees must be bargained. The bill would not permit such effects bargain.

MCGEO-Local 400 urges the Council to adopt the proposed option which is taken from the County's Police Bargaining Bill and which requires that all effects of the exercise of management rights be bargained. Such a provision does not in any way limit management's right to make the management decisions.

Eighth, MCGEO-Local 400 submits that one of the principal shortcomings of the body of the bill is its failure to provide for any collective bargaining agreement until July 1, 1987. If we assume that this law will go into effect sometime in mid-1986, it is absolutely unconscionable for the County to be able to delay its implementation for approximately a year.

If the County has determined that public policy is served by granting collective bargaining to Merit employees, then Merit employees should be able to bargain. We support the bill's option which would permit simplified bargaining for a short agreement on non-economic items only.

Finally, we strongly urge that the Meet and

Confer System be maintained and continued for all employees who now enjoy its benefits but who are not included in the collective bargaining system.

We have made our position clear that all Meet and Confer employees should also be included under collective bargaining. Should the Council, however, choose otherwise, we urgently request that at the very least, you do not take away from these employees that right which they already have and leave them consequently in a Meet and Confer relationship with the County.

In conclusion, MCGEO-Local 400 congratulates the County and particularly Personnel Committee Chairperson Gelman and the other members of that committee for having brought thus far an issue which is of enormous interest and importance to the County employees as well as the rest of the labor movement in this area.

We urge the Council to seriously consider the points that we have made to further improve the bill which is now before you. MCGEO-Local 400 looks forward eagerly to the early passge of this legislation and to working with the Council and Executive under this law in the years to come to foster responsible and effective employeee relations.

We believe that the morale and high quality of service of County Merit System employees can be considerably enhanced as a result of the recognition that employees are partners with the County and service to the public.

Thank you very much.

MR. HANNA: Thank you, Mr. Thompson.

(General Applause)

MR. HANNA: Ms. Gelman, is your light on?

MS. GELMAN: Yes, it is. It's on now. Mr. Thompson, thank you for the kind words. Let me assure everyone that we have spent more time together in the last year than either of us has with our own families.

MR. THOMPSON: That's true.

MS. GELMAN: And the fact that we're still talking to each other is a mark of our stability and our respect for one another. We've both learned a lot. I think I've learned more than you have.

MR. THOMPSON: I've learned quite a bit myself.

MS. GELMAN: But anyway, the way this bill is presented, -- and we should have said this right at the beginning -- we gave all the options for all the possible clauses. And the first bill had many

substitutions made by the -- some of the options were chosen over the included language by the Committee. And we expect that the Council will do some of the same.

But we hoped to save time -- and I certainly hope we did -- because we spent enormous amounts of time outlining all the possible options. For example, those people under ten years were simply one option in a series of options of how to do it. It wasn't that anyone necessarily advocated it.

Now that I've thoroughly confused the issue, thank you again.

MR. HANNA: Mr. Potter.

MR. POTTER: Does MCGEO represent all the employees in these two categories of office, professional and technical and service, labor and trades?

MR. THOMPSON: Essentially, yes. There are, I believe, a few changes which might be made when the law goes into effect. One or two or three job classifications might at the edges of those units be in or out because of changes over the years in the work force. The work force, the job classifications constantly change.

But essentially, the answer to the question

is yes. It's the same two units.

MR. POTTER: They've all signed up and support your testimony? Or what's your -- what are your operating rules?

MR. THOMPSON: Well, the members of the union, of course, are extremely supportive of this bill and are understanding. And information is that an overwhelming majority of both of the units are cheering from the sidelines that this bill be passed.

Recently there was a service, labor and trades election in December of 1985, and MCGEO-Local 400 won in that election an absolute majority of all the votes that could be cast in the whole unit. So I think there's no question of the support of the employees for collective bargaining because one of the main issues in that election was the fact that collective bargaining was a goal of MCGEO-Local 400.

MR. POTTER: Sir, I understand that. I'm just trying to understand to what extent there's participation by all these people in your operations.

MR. RENNE: Gino Renne, Vice President, MCGEO-Local 400.

MR. POTTER: Thank you.

MR. RENNE: I have to learn how to use the mike before I can speak. To be specific to your

question, Mr. Potter, in the SLT Unit, we have better than 65 to 70 per cent sign-up ratio. And in the OPT Unit, we're closing the gap on approximately 50 per cent. We're somewhere between 43 per cent and 50 per cent sign-up. Those are the ratios as far as membership is concerned.

MR. POTTER: Thank you.

MR. RENNE: You're welcome.

MR. POTTER: Thank you, gentlemen.

MR. THOMPSON: Thank you very much.

MR. HANNA: All right, Keith Prouty, followed by Robert Allnutt.

(Mr. Prouty approaches stand)

MR. HANNA: Good evening, Keith.

MR. PROUTY: Mr. President, Member of the Council, my name is Keith Prouty. I live at 9714 Rutley Road in Bethesda. I appear before you as a friend of the Council and as a friend of employee representation and of the collective bargaining process.

I want to make three very simple points in my comments this evening, Mr. President. First, I urge that the Council move with alacrity to bring Bill 19-86 through the work session process before the Council in legislative session so that it can be

adopted in final form well before the summer is upon us.

My purpose is not to find fault with any member of the Council but simply to remind all of the members that the enabling legislation permitting a collective bargaining bill was approved by the voters on November 6, 1984. This is now April 22, 1986, and it's time we put democracy and the will of the voters into practice with an absolute minimum of delay.

Second, adoption of collective bargaining for County emloyees is going to require a change in attitude toward employee relations on the part of both the County Executive and the County Council. Collective bargaining means that employees have a voice in the terms and conditions under which they work.

The days of unilateral decisions will soon be gone. Employee relations will become a two-way street. This is not an easy election for management in most cases to learn. I urge each member of the Council to begin now to shift gears, whether you are a candidate for re-election or whether you are moving on to other arenas and to fulfill other ambitions.

Thirdly, as you deliberate on the details

of Bill 19-86, remember that you are creating the climate under which labor relations will be conducted with County employees. You can make a positive contribution and build an attitude of trust and of mutual responsibility by constructing a broad-based bill which gives the parties the latitude to develop a mature and a responsive relationship.

If, on the other hand, you haggle over commas and threat over covering every contingency, you will be breeding distrust, thereby sowing the seeds of a devisive and a non-constructive relationship.

I have great respect for the members of the Council. I have great faith that you will bargain in good faith in producing a sound, a flexible, and a broadly-conceived document, one which is inclusive rather than exclusive, in terms of subject matter for negotiations, thereby no only establishing stable labor relations but in gendering a cooperative and a productive work force.

Thank you.

MR. HANNA: Thank you, Mr. Prouty. It looks like you're getting off easy tonight. I don't see any lights.

MR. PROUTY: Thank you, Mr. President.

MR. HANNA: Mr. Allnutt, followed by Gustavo Caballero.

DR. ALLNUTT: Good evening, Mr. Hanna. My name is Dr. Robert Allnutt. I live at 9104 Alton Parkway in Silver Spring. A system of checks and balances is essential to the continued democratic function of our government. Providing collective bargaining for the employees of Montgomery County is a long-awaited step which will augment our system.

Careful consideration is required to produce legislation which will be as fair as possible and beneficial to all concerned.

As a member of a class who presently has Meet and Confer status and whose right to collective bargaining would be refused under this bill, I would like to point out to the Council that blanket exclusion of Grades 27 and above should be considered an oversimplification.

It is understood why supervisory personnel are to be carefully excluded from collective bargaining. However, supervisory personnel can be found at many different grade levels throughout County service. And a specific grade is not necessarily an indication of supervisory or management function.

Arbitrarily drawing a line at Grade 27

discriminates unfairly against employees who by virtue of their training and experience are in Grade 27 and above. This is particularly true among County dentists, physicians and psychologists who in the current structure of the Health Department are not supervisory in function.

I would like to suggest an amendment that would strike the Grade 27 provision and instead rely upon the definition of supervisor as put forth immediately prior to that section. That is to strike lines 10 and 11 on page 8. I am concerend that there is an underlying message in this provision, that in the foreseeable future the County Government does not plan to emloy non-managerial Merit employees at Grade 27 or above.

As a member of a program which has also had to face repeated threats of contracting out, I would recommend passage of Amendment A which allows broader effects bargaining so that employees may gain the fairest possible treatment.

Collective bargaining will best serve all of us if the Council addresses the structure the bill conceptually as well as specifically to provide desirable results, not just relying on simplicity but instead by appraising the situation independently

and making judgments based on fact.

Thank you.

MR. HANNA: Thank you, Mr. Allnutt. Mr. Gudis?

MR. GUDIS: Ms. Gelman, don't run away. As Chairperson of the Personnel Committee, was there anything -- maybe I should ask Mr. Wilcox. The doctor is concerned that there's an implication, something that we don't see here, about the fact that since Grade 27 and above are not included, that the County may be faced with the fact you had absolutely no --

MR. GELMAN: We had no --

MR. GUDIS: Nothing like that in mind?

MS. GELMAN: No, but I understand where he's coming from. We all know that the Executive has tried to contract out --

MR. GUDIS: Constantly, constantly.

MS. GELMAN: -- the physician services and all. That was certainly not in our minds. The -- had nothing to do -- I don't even know how the 27 -- we needed a cutoff at some point. And --

MR. GUDIS: So that's it's possible that as we go through these sessions here, if we decide that we want to include people 27 and above that are

nonsupervisory, we might -- well, we would certainly consider them?

MS. GELMAN: You might have another -- there are many options. Somebody later tonight is going to suggest a separate unit for medical. There are many options. There's no one way, but none of that came before us.

MR. GUDIS: But I just think we want to make sure we have on the record that it had nothing to do with the idea --

MS. GELMAN: Now may I call my husband whom I haven't spoken to since 6 o'clock this morning? Thank you. He came in the other day just to see if he could pick me out of the line-up.

MR. HANNA: Gustavo Caballero -- not with us. All right. Sarita Kubli followed by Ron Phillips. Is Ron Phillips with us?

(Ms. Kubli approaches stand.)

MS. KUBLI: My name is Sarita Kubli. I live at 8012 Park Lane in Bethesda. I speak tonight as President of the Montgomery County Department of Public Libraries Staff Association, an organization representing over 70 per cent of all eligible library employees.

Seven days a week, including four evenings,

(for which we have never received shift differentials), we provide the best possible public library service and an ever-expanding range of other services to County citizens.

Many of our members support collective bargaining for County employees. The reasons are simple. Although County Government public policy assures the responsive, orderly, and efficient operation of County Government and services, the reality is a daily battle to maintain our own and our patrons' safety, security and health.

We have always worked through the proper channels to try to achieve a safe and secure working environment, but this has not worked very well. Perhaps working conditions are tolerable in the EOB and COB, but we invite you to come out of the main County office buildings and visit libraries and other work sites.

For over five years, computer and telephone wires dangled under desks in the branches. These wires caused several accidents including a broken rib. Basic supplies and services are also a problem. We fight daily for light bulbs, soap, toilet paper, dusting, trash cans emptied.

Needless to say, contract cleaning isn't working. How can buildings be properly maintained

when, we understand, there are only four carpenters and four painters for 150 County buildings? Security within the libraries is a constant worry. We handle increasing amounts of money. And as other community services are added, there will be even more.

Frankly, since, in our view, the County Government has not assured the safety, security, and decent working conditions that all employees deserve, many library personnel feel they must use collective bargaining to get decent working conditions.

Pay equity is also a major concern. We believe there is gender-based wage discrimination in County Government. One of the ways to achieve pay equity is through collective bargaining. It has been effective in other areas of the Country, and it may be the most effective method for us.

We read in the local press on March 6th of a pay equity proposal. We suspect this is nothing but election year rhetoric. We've exhausted other routes, and we are counting on collective bargaining to hasten pay equity implementation and improved working conditions for all County employees.

Thank you.

MR. HANNA: Thank you, Ms. Kubli.

(General Applause)

MR. HANNA: Is your light on? No questions.

Ron Phillips followed by Dr. Rochelle Herman.

MR. PHILLIPS: Thank you. My name is Ron Phillips. I am the National Representative for the Union of American Physicians and Dentists. My address is 3815 Rodman Street, N.W., Washington, D.C. And I thank you for the opportunity to speak before the Council.

The Union of American Physicians and Dentists is a bona fide labor union registered with the United States Department of Labor that has been in existence for 13 years. At present, we represent over 30,000 physicians and dentists in all practice settings.

At the behest of the majority of physicians employed by Montgomery County, I come before you to petition for the inclusion of physicians in the collective bargaining process.

As presently drafted, Bill 19-86 would exclude all employees holding a Grade 27 or above classification from the collective bargaining process. The Union of American Physicians and Dentists concludes from this language that employees Grade 27 or above are

being excluded from the collective bargaining process solely on the basis of their salary range.

If we are correct in our assumptions, we submit to you that there is no rationale, basis or legal precedent for such a position. Indeed, one merely needs to review the trends of collective bargaining in recent years to learn that professional baseball players, football players, movie producers and directors are now being legally represented in contract negotiations by their union.

Moreover, notwithstanding a general decline in nationwide union membership due to the decline in our industrial base, there has been a steady rise in union membership in the white collar professional and government employee areas.

Legally speaking, the Annotated Code of Maryland, Article 89, Section 29 defines amonst other things, an employer as the state, county, city and municipal governments in any agency thereof. And it defines an employee as an employee of the state, county, city, and municipal government in any agency thereof.

In my review of the above-cited Code, I could find no reference in this enabling legislation that would exclude government employees from collective bargaining on the basis of salary range.

In addition to the question of exclusion on the basis of salary range, it is well established in both the public and private sectors that physicians are properly placed in their own bargaining unit, separate from other employees, health care and non-health care professional and nonprofessional. In numerous instances, the Union of American Physicians and Dentists has more than adequately demonstrated the distinct community of interest that exists amongst physicians based ont he work situation of physicians in state and federal law.

However, it appears that in the drafting of Bill 19-86, the authors have arbitrarily refused to recognize not only the physicians right to collective bargaining but also to the question of the right of physicians to their own unit.

Furthermore, the authors have taken a position that runs contrary to the preponderance of expressed statutory and case law which grants physicians these rights.

For the reasons stated above, the Union of American Physicians and Dentists requests that a separate full and fair hearing be on the issues raised and any other issues deemed to be relevant to the question of representation of physicians and their

right to a separate bargaining unit as soon as possible to insure the physicians' right to full access to the law.

Thank you.

MR. HANNA: Thank you, Mr. Phillips. Dr. Herman, followed by Darlene Taper.

DR. HERMAN: My name is Rochelle Herman. I live at 5125 King Charles Way, Bethesda. I have been a psychiatrist with the County for six and a half years. And I am a member of the Union of American Physicians and Dentists even though I have no Meet and Confer rights presently.

The medical profession has been under siege from every direction. The same serious problems affecting quality care in the private sector are now facing medical care in the County. Essentially, control over the quality of care is being wrested from our profession and handed over to non-medical personnel.

My Director is a Budget Analyst from OMB whose professional abilities, as good as they are, do not include any mental health experience whatsoever. For one year now --

any clinical administrative support.

My memos about health care are given low priority in favor of the pressing political issues. There are no positions assigned to the Committee for the Mental Health Reorganizations, and our opinions have gone unheard.

Because of our ongoing concerns, we have appealed to the American Psychiatric Association for help. Dr. Roman testified before this Council in April voicing strenuous objections to the de-medicalization of mental health. Those objections were transmitted to the administration and dismissed.

The recent mental health study which cost the taxpayers $60,000 was conducted by non-physicians who declared that the medical model was no longer relevant. Those investigators, heralded by the administration, wanted to define physician roles as just writing prescriptions and signing off Medicaid forms, such as the role psychiatrists have in P.G. County. And they have a poor reputation for mental health care.

The social model promulgated by cost-conscious administrators is indeed cheaper because it utilizes lesser-trained personnel. But it has its consequences. To cite a few examples from my cases, a seriously ill patient in the highest risk category

for suicide was treated for two years by a lesser trained counselor before a psychiatric evaluation was requested.

A minimally trained counselor sat with my patient who was vomiting for 12 hours attempting to determine if his symptoms were "nerves or physical." Nonmedical counselors have often told my patients that their medication should be increased or decreased or changed. One of my patients is convinced she has a serious complication because of a nonmedical counselor.

Not only am I told how to practice medicine by nonmedical clinicians, but management retains the right to do so also. I was told that I ordered too many lab tests in December. The intrusion of non-medical personnel to the daily practice of medicine requires some counterbalancing force.

If quality care is not a persuasive argument for collective bargaining, then consider medical malpractice suits. The HMO's are learning quickly that cost-cutting efficiency produces increased liability.

In conclusion, I urge you to consider what kind of treatment you yourselves would wish to receive if you were less fortunate among our

citizens and consider that collective bargaining for physicians is not merely an issue of salary but of basic quality of care.

Thank you.

MR. HANNA: Thank you, Dr. Herman.

(General Applause.)

MR. HANNA: Mr. Gudis has a question.

MR. GUDIS: Yeah. Dr. Herman, can we get a copy of your testimony?

DR. HERMAN: Yes, I will provide later. I didn't have the time to type it tonight. I'll provide it. Shall I send it to each member?

MR. GUDIS: Just send it to the President, and we'll all get a copy automatically. Thank you.

MR. HANNA: Darlene Taper followed by Lulu Richardson.

(Ms. Taper approaches stand.)

MS. TAPER: My name is Darlene Taper, Chairperson of the Staff Nurse Council. I reside at 8024 Park Lane in Bethesda, Maryland. I am here tonight to testify on behalf of the Staff Nurse Council of Montgomery County.

The Staff Nurse Council represents professional community health nurses employed in the Health Department working in a variety of settings

which includes schools, health centers, clinics and homes. They provide numerous services which improve and maintain the quality of life in this County.

Some of their numerous responsibilities include the administration of immunizations, health assessments of the newborn, school-age child and the elderly, counseling and teaching for maternity patients, screening for tuberculosis and other communicable diseases with contact studies to prevent their further spread, crisis intervention for child abuse, adult abuse, suicide prevention, counseling and referral for alcohol and drug abuse within our school age and adult population, and counseling and referral for needed mental health services.

Our patients range in age from the unborn to the elderly, transcending all socio-economic levels. We are frequently called upon to provide nursing intervention in situations that may be considered the dark side of life in our County.

We the nurses of Montgomery County Health Department have experienced firsthand the limitations of Meet and Confer. Our nurses were intimately involved in the Joint Committee for Classification Review which was established in July of 1984 to review the classification of the Nurse Series which

was to have been reviewed in 1981. This action was taken only after numerous attempts had been made over a two-year period to have a consultant study of our series released. This study was made available to us only after a grievance was filed and the study found to be deficient and inaccurate in many areas.

After nine months of Joint Committee meetings, which included representatives from the Personnel Department, Montgomery County Health Department staff and nursing professionals outside of the Health Department, the final personnel recommendations were not consistent with the quantifiable evidence as to our qualifications and present job responsibilities.

It was only after the intervention of William Thompson, the attorney for MCGEO, that the nurses obtained the appropriate pay grades. Phase two of this struggle over classification continues and will probably not be resolved until the summer of 1986 in the Circuit Court of Appeals.

The County trend toward contracting out has caused much unrest and anxiety among the community health nurses. Although from a purely theoretical economic standpoint it may seem the logical thing to do, studies have shown that not only

the employees, but clients suffer in the long run.

The recently-publicized employee attitudes survey initiated by the Merit Systems Protection Board indicated that all is not well with the employees of Montgomery County Government. Wurther & Lockhart in discussing labor relations in the health profession stated the following: Advanced educational requirements, years of study, and the proliferation of other professionals have changed the character of health care providers. Although still influenced by humanitarian consideration, they are primarily employees. Their motivations include more than just the esteem needs of achievement and recognition derived from helping others. They are also motivated to work by economic and interpersonal need. Unlike their predecessors, these employees demand more than just humanitarian satisfaction. This is especially true when you consider the growing number of single, divorced and widowed nurses who in many cases are supporting not only themselves but oftentimes children and parents.

It is difficult to pay for the necessities of life, not to mention medical and dental expenses, with humanitarian satisfaction. This point becomes even more of a reality when you consider that this

year teachers in Montgomery County will be getting a 5 per cent cost of living allocation, police, 4 per cent, and we the nurses of Montgomery County Health Department, 3 per cent at best.

Wurther & Lockhart go on to say that when the multiple economic, social and esteem needs of today's health care workers are not satisfied, the repercussions reverberate throughout the facility. Whether employees resign or become less productive, these responses create problems that could diminish the quality of health care. Sooner or later, these problems require action by management. If that action does not result in sufficient and properly-distributed rewards, the employees taken action.

With that in mind, I would like to conclude by saying that the Community Health Nurses of Montgomery County have found the policy of Meet and Confer to be unsatisfactory. The voters of the County have given us the privilege of collective bargaining, and it is the consensus of the staff nurses of the Montgomery County Health Department that they wish to be represented by MCGEO in this endeavor.

I thank you.

(General Applause)

MR. HANNA: Mr. Scull.

MR. SCULL: What was the result of your Merit Board action in terms of a percentage pay increase?

MS. TAPER: It was a grade increase. It was not to exceed 5 per cent in most cases. We initially had all staff nurses at a Grade 18. As a result of the Joint Committee, it was recommended that we be reclassified as incoming at Grade 19 and full performance as Grade 21. However, the majority recommendations were at Grade 19 and Grade 22. And it was a result of the intervention of Mr. Thompson that we indeed did get Grades 19's and 22's.

MR. SCULL: What did that work out to for the average nurse?

MS. TAPER: The average nurse was to get a pay increase not to exceed 5 per cent in most cases.

MR. SCULL: And it was retroactive for some?

MS. TAPER: It was retroactive. The initial agreement was for retroactivity to December 31st of 1984.

MR. SCULL: Is that the way it came out?

MS. TAPER: At present, that's what the standing is. What is now within the, what is now going

to, probably going to the Court of Appeals is retroactivity back to August of 1981.

MR. SCULL: But it did work out to 5 per cent average for all?

MS. TAPER: There were some people because of where they were within the pay scale that I believe received more than 5 per cent. But the majority of us received a pay increase that did not exceed 5 per cent.

MR. SCULL: Thank you.

MS. TAPER: Thank you.

MR. HANNA: Mr. Gudis.

MR. GUDIS: Yes. The reason it went to court was because?

MS. TAPER: The Merit Protection, Merit Systems Protection Board had originally agreed with the recommendation for the retroactivity. But it was appealed by the Montgomery County Government.

MR. GUDIS: It was appealed by the Montgomery County Government?

MS. TAPER: It is being appealed. It's in the process of being appealed.

MR. GUDIS: I'm just trying to think of -- did we know about that?

MS. TAPER: I believe so.

MR. GUDIS: But that's the only reason it went to court? It went to court because of the retroactivity?

MS. TAPER: That's correct.

MR. GUDIS: Of course, it didn't go to court on the basis of the grades?

MS. TAPER: No. No, it didn't.

MR. GUDIS: I -- the reason I am especially interested is because I met with the group of nurses. Gosh, I don't remember how many -- at least two to three years ago.

MS. TAPER: That's correct.

MR. GUDIS: And I remember we talked about it. And I went to the Personnel Department after that, and they told me they were working on it. It sure took a long time.

MS. TAPER: It took a very long time.

MR. GUDIS: We have to do something about that. Thank you.

MS. TAPER: Thank you.

MR. HANNA: Thank you, Ms. Taper. Lulu Richardson followed by Diana Tash.

MS. RICHARDSON: I am Lulu Richardson. I work for the Montgomery County Health Department, the Dennis Avenue facility. And I live at 1106

Ednor Road, Silver Spring Maryland.

You have, I'm sure, often heard the expression, I was an Army brat or I was a Navy brat. Well, I was a union brat. My father was for 40 years the National President of a strong and effective government union.

I grew up during the time when great reforms were brought about by collective bargaining. Wage reforms, tremendous strides in environmental safety in the work arena, reasonable and compassionate changes in sick and annual leave policies, fair recognition of longevity and better retirement benefits are just a few of the important elements in a safe, secure and more efficient working atmosphere brought about by the unity of the workers for collective bargaining.

By following many individual demands to be heard in one strong voice, you are not only benefiting the workers and the laborers, but management as well. By allowing the union to gather, collate and present the views and proposals of the workers, you are eliminating the frustration, anger, dissatisfaction and belligerency of the individual and exchanging it for an unemotional unification of facts through the voice of the union.

There is a problem in the work theater of

the Montgomery County Government. In fact, there are several. The one with which I am most concerned is the feeling among my fellow workers that there is little or no communication between management and the working population.

There seems to be a laxity on the part of management in assuring we are advised of policy changes and/or proposals for changes. Memos advising us of changes which affect our security and our jobs or our well being as employees often go astray.

A number of times we have received such information after the fact or not at all, thus effectively preventing us from voicing our views or opinions before the deadline. And there is always a deadline. We are left with no alternatives.

Year after year we are plagued by the budget blues. Like the sword of Damocles, the threat of being RIF'd hangs by a thread over our heads. Family economic security and plans for a predictable future are a constant concern.

By allowing us the privilege of a collective bargaining system, we feel much of this problem will be alleviated by having the burden of furthering issues voiced by our collective bargaining representative.

I thank you for permitting me to present my

views and would like to close by saying, make us happy, make our day, give us the means to have our say. Help us to bargain effectively by letting us do it collectively.

(General Applause)

MR. HANNA: Thank you, Ms. Richardson. Diana Tash followed by Fred Keeney.

MS. TASH: Good evening. My name is Diana Tash. I live at 1216 North Belgrade Road in Silver Spring. For the past nine years, I have been a Health Room Technician for the Health Department based in the public schools.

I feel that collective bargaining would be very beneficial to all of us. As things stand now, we have no strong way to make our opinions heard or to protest when we feel injustices. Because teachers and supporting services personnel who are also County employees have had collective bargaining for some time, they have much more say in wages, benefits and working conditions than we.

There are 100 Health Room Technicians assigned throughout the County with very little opportunity to meet and discuss problems or job-related concerns.

In January of 1981, the Health Room Techs

felt we deserved a reallocation of pay as we thought there was an inequity of pay within the County. Three of us worked for 15 months putting together a packet which we presented to personnel in July of 1982. We worked alone with very limited knowledge of the system.

It took until March of 1984 for our upgrade to be realized. Had we had a union and collective bargaining, our endeavors could have been much more expedient. Professionals could have given us guidelines to follow and spoken for or with us to Personnel and the Merit Board.

Had we had some expertise and been fully aware of time constraints, we would not have lost retroactive pay due to timeliness.

It is proposed that next year the Vision and Hearing Screening Program be contracted out. There are only seven Vision Techs serving the entire County. These women are very experienced, in the implementation of this State-mandated program. It seems to me that these positions are being abolished to save benefits, not cost.

There was no staff input into this decision. It is very possible that the entire program could suffer from the absence of these experienced personnel.

Collective bargaining would give us input into the decisions affecting our employment and the opportunity to propose ideas and solutions that might make the implementation of these decisions smoother and more equitable for all.

We need to know that our wages, benefits, hours and working conditions will remain constant and fair. Collective bargaining would give us a sense of security in our jobs, a feeling of stability, and the knowledge that someone would speak for us and with us and that we would be heard.

Thank you.

(General Applause)

MR. HANNA: Thank you, Ms. Tash. Fred Keeney? No Fred Keeney. All right. In that case, Abe Bloom followed by Maureen Walter.

(Pause)

MR. RISKIND: My name is Irv Riskind of the Grey Panthers. I'm sorry Mr. Bloom couldn't be here this evening, but he asked if I would make a statement for him.

I represent the Montgomery County and the Grey Panthers. And we support Bill No. 19-86. We support the right of collective bargaining for all employees, a right engaged County employees, a right

enjoyed by workers in the private sector by law and enjoyed by millions of State, County, and municipal workers in other jurisdictions.

To deny these Montgomery County employees this right places them in a status of second class citizenship. We urge you to support Bill No. 19-86.

MR. HANNA: That was short.

MR. RISKIND: Very short. I don't want to -- just want to let you know that.

MR. HANNA: Thanks, Irv. Maureen Walter followed by Vincent Foo.

MS. WALTER: My name is Maureen Walter. I live at 17419 Hoskinson Road, Poolesville, Maryland. And I'm speaking for the Police Service Aides Association.

I have worked for Montgomery County for 16½ years. My group has 35 members, and the PSA's work around the clock at the Police District Stations. Many of us used to want to be career employees. Now we're not so sure.

Frankly, I never thought I would be here speaking up for collective bargaining. However, in the last couple of years, I have seen a glaring need for a system that would allow fair and equitable treatment for County employees.

County employees are at a disadvantage when it comes to dealing with the bureaucracy of the government. We need to have a set of rules and regulations that can't be bent arbitrarily to suit either side's needs.

We need to have the security of a contract with set standards for wages, pensions and working conditions. We need to know what to expect when we go to work. There must be some recourse for employees when the rules are not followed.

Almost two years ago our group put in for a reclassification. We have been assigned many jobs that were outside of our current class specifications. These specs were thoroughly researched, and we submitted a very complete request package which included economic growth, population growth, commercial growth, job comparisons from other metropolitan police agencies, and job assignments we have been assigned due to budget constraints. This was fully endorsed by the Police Department administrative personnel.

We met in December of 1985 with the Personnel Director. And he again stated that we were performing duties that were not in our class specs. This was to be straightened out with the Chief of Police.

However, we were notified that we were to go to a classification review committee who unanimously recommended an upgrade.

It is our understanding that yesterday the CAO decided that it was up to the Police Department to include these duties in the position description and not personnel.

After almost two years of going through the present system, writing memo after memo justifying our request time and time again, we are right back where we started doing job duties that are outside of our class specs. It is no wonder that many County employees and supervisors are not satisfied, thereby affecting the citizens of Montgomery County.

County employees have no say in their employment issues. We have a very complicated system to go through in order to make any changes. There is no recourse for employees who along with their supervisors feel there is a problem that needs to be corrected.

Our particular position of PSA is caught between the County Personnel Department and the Police Department, both with their own sets of rules and regulations. When we have a problem, we get passed from one to the other with no satisfaction.

Collective bargaining is sorely needed to improve this lot of County workers and ultimately the citizens of Montgomery County.

(General Applause)

MR. HANNA: Thank you, Ms. Walter. Mr. Potter has a question.

MR. POTTER: Yeah. Some of the arbitrated unfair treatment that you complained about in the first part of your statement sounds like a basis for grievances. Have you ever, any of you gone that route?

MS. WALTER: Well, we just found this out yesterday. This has been two years that this -- almost two years that this has been going on. We've met with everybody in Personnel. We've done everything that we did, that we had to. We got out the Personnel Regulations, the administrative procedures. We've just done everything.

MR. POTTER: Yeah. I can understand the class job description and that kind of thing goes through a lot of red tape and takes time. But you spoke of arbitrated unfair treatment. You're talking about with respect to this classification rather than individual mistreatment. Is that it?

MS. WALTER: No. Along in the job -- there's

just so many things. I mean it's the Police Department. We have the Police Department telling us this is what we need to have done, and this is what you're going to do.

As it turns out, these things are, according to Personnel, not in our class specs and therefore, we shouldn't be doing them. And yet we go to the Police Department and they say that -- Personnel says it's not in our class specs, and they say this is in your class specs. This is what we tell you to do, and this is what you have to do. So we're kind of stuck.

MR. HANNA: All right. Vincent Foo followed by Mark Simon.

MR. FOO: Good evening, Mr. President and members of the Council. I have with me a few people that represent labor. And I ask your indulgence or your permission to modify the agenda here. Ed Lamon --

MR. HANNA: You can do anything with it as long as it doesn't take more than five minutes.

MR. FOO: That's right. Ed Lamon, President of Maryland/DC AFL-CIO is not here, but Mr. Joseph Williams from Metropolitan Washington Council will speak for him. And I have cleared with two other people ahead of Mr. Lamon, Mark Simon and Dave Robbins,

for us to come up here together so that if it's okay with you, we'll go ahead with the testament. Mine is short, and I'd like to cede my time to Mr. Williams. Thank you very much.

I'd like to introduce the people up here. On my right is James Morrow, the Chairman of the Montgomery County Court. On my left, Mr. Ernie Greco from the Maryland State/D.C. AFL-CIO. And my extreme left, Mr. Josh Williams, the President of the Metropolitan/Washington Council.

MR. HANNA: All right.

MR. FOO: My name is Vincent Foo. I'm the President of MCCSSE Local 500 of the Service Employees International Union, AFL-CIO, representing 5500 non-certificated employees of the public schools in Montgomery County.

I'm here tonight to support the collective bargaining bill for County Government employees. Perhaps it should be noted that the citizens of Montgomery County gave the employees the right to bargain collectively with their employer. And we are here tonight to help determine the procedures to be sued to carry out the mandate of the electorate.

Let me address some of the key issues. One, I believe collective bargaining rights were approved

by the citizens for all County Government employees. And this Council has no right to exclude any employee group.

Two, there should be no exclusions to the subjects of bargaining, especially the pension plans. And three, once an agreement is negotiated, all matters in the agreement must be grievable and subject to binding arbitration or the harmonious, peaceful and cooperative relationship which the Council wants with the employees will not exist.

The referendum on collective bargaining for County employees was approved in November, 1984. It is high time the County Council heed the voice of the people and sit down at the negotiating table with their employees.

Thank you very much.

(General Applause)

MR. GRECO: Mr. President and members of the Council, my name is Ernie Greco of the Maryland State and D.C. AFL-CIO. I'm here to give support to the testimony you're about to hear from our Second Vice President of our organization and also the President of the Metropolitan Washington Central Labor Council, Josh Williams.

MR. WILLIAMS: Mr. Chairman, members of the

Council, my name is Joshlin Williams. I am Second Vice President of the Maryland State/D.C. AFL-CIO. I'm also President of the Metropolitan Washington Council AFL-CIO, address, 1012 14th Street, N.W., Washington, D.C.

I would like to commend the Council for holding this hearing. And we look forward certainly to a speedy action on the part of the Council. I would like to comment upon a few sections with which we have particular concerns.

One, we are opposed to the exclusion of employees who work for the County Executive, the County Council, the County Attorney, the Office of Management and Budget, the Personnel Office, and the Merit Systems Protection Board. While we agree that confidential employees should be exempt, everyone who works in these departments cannot be so categorized, and they should be part of the appropriately defined units.

Two, we oppose defining supervisor as anyone directing the activities of three or more people. Unless an employee has the authority to do the activities outlined in the first part of that definition, they are not truly a supervisor and should be part of the appropriate unit.

Three, most public sector bargaining laws and the private sector allow for elections to be held among employees no sooner than 12 months after an election at which no union was chosen. The 22 months outlined in this bill seems inordinately

Four, we have several problems with the Management Rights clause. Aside from being overly exhaustive, it includes several things which we feel should be subject to bargaining. Item 7, allowing the employer to arbitrarily decide when a job is inefficient or nonproductive, and item 17, allowing contracting out or abolishing of jobs with only notice to employees is not acceptable language.

These items as well as work rules and regulations should be subject to bargaining.

Five, we would recommend eliminating the list of items which limit the mediator when making recommendations to the parties. It is unnecessarily limiting and could work against the best interests of management, labor and the public.

For example, another jurisdiction outside the metro area may be more appropriate for certain types of comparison.

Six, we do not agree with the process outlined for impasse resolution. We are sympathetic

with the Council's interest in being an active part of the collective bargaining process and in changing the current situation which required the Council to either approve or disapprove the final package. But the process as outlined requires in effect that the union bargain with the employees simultaneously and would wreak havoc on the already complex and time consuming activites.

To allow the Council to take votes on disputed matters and to appropriate monies to pay for either management or labor's position before agreement has been reached makes the Council the final and binding arbitrator and the real necessity of management and labor come into an equitable agreement.

Seven, the language of the Prohibited Practices section seem to promote the idea that unions are violent, coercive, destruction organizations by specifically prohibiting sabotage, etcetera. We would like to see this type of language removed or added to that, that the Employer Section language prohibiting surveillance of employees, threats, harassment and intimidation by the employer activities which we see evidence of every day of the week.

Eight, in reference to the suggested amendment we support two units instead of one as more

appropriately representing the interests of the affected employees. We oppose requiring a majority of employees to participate in an election before it can be certified. Elected officials do not have to live with this restriction. And we see no reason why public employees should.

We are in favor of allowing agency shop. Since the union is required by law to represent all workers in the bargaining unit, whether or not they are a member, and since the union would have been chosen by a majority of those voting, it is only fair that the union be allowed to charge a fee to those who choose not to belong.

The agency shop should extend to all, regardless of length of service. Pensions as a form of deferred wages and salaries should be a subject of bargaining. Binding arbitration should be applicable to all grievances including discipline and discharge. And we support the right of the union to veto re-appointment of the Labor Relations Administrator.

We have attached a summary of our position to our testimony. Again, we commend the County Council for tackling this legislation, and we look forward to working with you on its passage through the legislative process.

Thank you.

(General Applause)

MR. HANNA: Thank you, gentlemen. I don't see any questions, so thank you.

Mark Simon, followed by Dave Robbins.

MR. SIMON: Council President Hanna, members of the Council, my name is Mark Simon. I'm President of the Montgomery County Education Association representing the 6500 teachers of Montgomery County.

I'm here tonight to testify concerning Bill 19-86 which would provide for County employees collective bargaining rights. As members of the Council are aware, the collective bargaining rights of the County's public school teachers are separately regulated by State and County law. Thus, employees represented by MCEA would not be covered by 19-86 if it is enacted.

Nevertheless, we support any iniative which recognizes the right of public employees to engage in legitimate collective bargaining. To the extent that Bill 19-86 accomplishes this aim by scrapping Meet and Confer, and giving Montgomery County employees some semblance of the right enjoyed by their counterparts in the private sector to bargain over wages, hours, working conditions, health and safety, we

applaud the effort.

There are, however, certain aspects of Bill 19-86 that trouble MCEA. For example, the bill proposes to exclude all person who are State Merit System employees and persons in Grade 27 or above from the unit eligible for collective bargaining rights. These employees are currently represented by Montgomery County Government Employees' Organization under Meet and Confer. And it's both arbitrary and unfair to exclude them from collective bargaining.

Under Bill 19-86 the Labor Relations Administrator may accept cards or petitions signed by a majority of the employees designating the incumbent union as the bargaining agent unless another union or 10 per cent of the employees petition for an election.

We believe the alternative of accepting cards is a good one, and it's one teachers also enjoy. However, allowing 10 per cent of the employees to thwart card certification is counter-productive because it allows a very small minority to require the majority to undergo the time, effort and expense associated with an election.

It goes without saying that MCEA opposes the proposed amendment to Bill 19-86 which would make an

election the only method for choosing a collective bargaining representative.

While MCEA applauds the right to bargaining concerning wages, hours and working conditions which Bill 19-86 would guarantee, we do not understand the limitations on bargaining applicable to pensions. Bill 19-86 would not require the County to bargain about the defined benefit plans which now provide pensions for current employees.

The County would be required to bargain only about defined contribution plans which do not now exist. Furthermore, the County would be required to bargain over defined contribution plans only if the County enacts a law establishing a defined contribution plan for new employees and for current employees who choose to switch from their defined benefit plan to a defined contribution plan.

There is no question that pensions are among the most important of employee benefits. To limit the type of plans about which the County must bargain to plans which don't exist is thoroughly inequitable and guts much of the impact of the ability to bargain over basic conditions of employment with which Bill 19-86 supposedly empowers public employees.

Finally, a word must be said about Bill 19-

86's impasse procedure. Under Bill 19-86, impasse will be broken by factfinding, which the County may choose to accept or to ignore. County teachers are familiar with this kind of factfinding as a way to break impasse because a process similar to that prescribed by 19-86 governs collective bargaining for the County schools.

All that needs to be said is this. When the employer is ultimately free to accept or reject the recommendations of the factfinder and in the end institutes whatever terms and conditions of employment it wishes, there is little incentive for the employer to engage in good faith bargaining becasue there is little risk in denying the Union's proposal.

For bargaining to be effective, there must be some semblance of parity between the parties. Otherwise, bargaining is all, all too often becomes a meaningless charade. If the County is truly interested in meaningful collective bargaining, it must either endow County employees with the right to strike, or at the very least provide for binding arbitration of impasse.

Thank you.

MR. HANNA: Thank you, Mr. Simon.

(General Applause)

MR. HANNA: No questions. Mr. Robbins.

MR. ROBBINS: Thank you, Mr. President. I am Dave Robbins, and I reside at 17 Lodge Drive, Rockville, Maryland.

I am pleased that the Montgomery County Council is moving to implement Section 511 of the Charter. With the introduciton and hopefully the passage of Bill 19-86, Montgomery County Merit System employees can look forward to a new and, I believe, very positive era in their relationship to government management.

As an individual who has spent 23 of my 29 years in government as a Merit System or Civil Service employee, I can readily identify with the aspirations of public service employees who want to play a greater role in determining their own destinies.

I am convinced that the productivity of public employees and the quality of the public service they render is influenced by their relationship with governmental management and the degree of influence they feel they have with management.

Collective bargaining is an idea whose time has come in public sector labor relations and is certainly a logical evolution step for Meet and

Confer. Bill 19-86 provides for a sound and workable collective bargaining process. I would, however, recommend that in the area of retirement plans, the bargaining not be limited to any single plan but that any and all plans or proposed plans be subject to the bargaining process.

On the issue of breaking bargaining deadlocks, I would hope that the Council would take a hard look at binding arbitration models currently in practice in the public sector to see if one could be adopted to the proposed collective bargaining process.

In summary, the Council's Personnel Committee is to be commended for introducing this progressive legislation. And I urge the full Council to act favorably on it.

Thank you very much.

MR. HANNA: Thank you, Dave.

(General Applause)

MR. HANNA: Ms. Gelman has a question.

MS. GELMAN: Just a quick question, David.

MR. ROBBINS: Yes.

MS. GELMAN: We accept your thanks. We did it because it was assigned to us, not because we were looking for things to do. Very interesting year and

a half.

Let me ask you, when you transferred your various years of government -- and I don't mean to be too personal. I know you went from the Planning Commission to the Federal Government -- were you able to consolidate it all into our retirement plan?

MR. ROBBINS: No. Unfortunately, --

MS. GELMAN: I'm not going to ask you to explain that to me here.

MR. ROBBINS: No.

MS. GELMAN: I just am becoming more and more aware --

MR. ROBBINS: There was a way of buying some service, but it became so outrageously expensive when you came back that it just wasn't economically possible.

MS. GELMAN: I'm becoming more and more concerned about portability for -- we'll talk about it another time. Your answer of no is --

MR. ROBBINS: But you bring up a real serious problem.

MS. GELMAN: It's a major problem. And what happens is people become tethered to a particular unit, you know, a unit of government. And it may be

wrong for both. Okay, that's the next thing we'll deal with.

MR. HANNA: Thanks, David. All right, Ed Lamon followed by Minor Christian.

No, not with us? All right, Minor Christian followed by Betty Valdes.

MR. CASEY: Mr. President, my name is Earl Casey. I am sitting in for Mr. Christian tonight. I am Executive Director for the Food and Allied Service Trades, Washington Metropolitan Council.

MR. HANNA: Okay.

MR. CASEY: I reside at 6940 Westmoreland Road, Falls Church, Virginia. We support the bill's option which would permit simplified bargaining for a short agreement on non-economic issues. Such an agreement would only be in effect until July 1 of '87.

Such a contract would serve to establish many of the more basic standard type contract' clauses so that bargaining for the first full-blown contract could proceed more efficiently. We respectfully request that the Council decide to grant the process of collective bargaining as soon as possible

We strongly urge that the Meet and Confer

system be maintained and continued for all employees who now enjoy its benefits but who are included in a collective bargaining system.

We urgently request that at the very least you do not take away from these employees that right which they already had. Meet and Confer does not require the County to sit down and come to an agreement regarding any employees concerned. Surely the County has nothing to lose by continuing to offer this group of employees at least a formal mechanism for conducting representative discussions with their employeees.

We urge the County to seriously consider the points that we have made and to further improve the bill which is now before you.

Thank you very much.

(General Applause)

MR. HANNA: Thank you, Mr. Casey. Betty Valdes, not with us. Okay, Maria Coleman followed by Mark Simon. This is a different Mark Simon?

MS. GELMAN: Two mothers with but a single thought.

MS. COLEMAN: Thank you, Mr. President and Council members. My name is Maria Coleman, and I'm President of Latin American Council for

Advancement.

I reside at 6979 Barrett Road, Falls Church, Virginia. And I applaud this effort on your part for Bill 19-86. However, as representative of a group of minority or Hispanics, some of the areas here concerns my membership. And as their representative, I'm here addressing these issues.

And I would strongly urge you to take a closer look at certain provisions and amendments that you have proposed. Reading and quoting from your statements, you seek to establish a framework for public employee-employer labor relationships. You also are seeking to provide procedures for resolving differences between the public employer and employee.

Your provisions are calling for a single unit versus a two bargaining unit. This amendment attaches or attacks the principal of the basic rights, the right to be well represented in our society. We have developed certain categories and specializations to handle the needs of each individual.

What you are proposing takes away from those rights. An example would be that you may be suggesting that a plumber intercede for a physician, and one cannot relate to the other's needs.

Another provision that you have suggested or amended is binding grievances. How can a framework be established for labor relations if discrepancies and disagreements cannot be ventilated to the process of arbitration except for those cases of discipline and discharge?

This amendment alone I feel will compound, not eliminate, the problems and discrepancies that will be existing.

The amendment for a majority of the eligible units to participate in the election to be, for the result to be determinative, the right to vote as one of my colleagues earlier said, also consists on the right not to vote because in the U.S. of A, there are more people that do not vote than those who are. And if we follow this theory, our honorable President, Ronald Reagan, would never have been elected to the Presidency of the United States because he was elected by 27 per cent of the eligible vote, not of the people who voted, not of those who voted, the total citizens voting within the U.S. of A.

So I seek your attention to these and many other amendments that you propose to this bill. I thank you for the opportunity to addressing this Council. And we hope we can work together in this and

many other situations.

Thank you.

MR. HANNA: Thank you, Ms. Coleman. Mark Simon followed by Dr. Mauricio Cortina.

MR. SIMON: Mr. President, I am also Mark Simon. I'm here to tell you that the Mark Simons of this world support this legislation.

(General Laughter)

I am a representative of the Washington Building and Construction Trades Council. I reside at 6923 Jefferson Avenue in Falls Church. On behalf of 30,000 area union construction workers who understand and appreciate the importance of collective bargaining, I urge you to extend collective bargaining to County employees.

The cornerstone of our democracy is free association. Without that right, labor unions as we know them would not exist. In communist countries, there are no free trade unions. In the United States, labor unions seek to improve wages and working conditions, insure respect for individual dignity, and provide security ont he job.

The process through which this is accomplished is collective bargaining. The fundamental purpose of collective bargaining is to provide a

forum to reach accord on matters of concern to management and labor. It is a means of matching employee desire with employer needs. It is also a system designed to protect the public welfare from strife and unrest. When there is no such system to settle differences or when bargaining breaks down because inequality exists at the table, society suffers.

In construction we know collective bargaining as a system that has provided a fair living wage, health insurance, retirement income, and protection from arbitrary and abusive treatment. The system also works for management.

Within the last several years union contractors were able to win cost-reducing changes from unions at the table they thought were necessary to compete with the open shop. Both labor and management benefit from mature and respected bargaining relationships.

It has been established through careful academic analysis that a unionized work force will be more productive than a non-union. In construction a 1983 study by Steven G. Allen at North Carolina State University found square foot production per man hour to be 38 per cent higher in construction of office

buildings built predominantly by union labor.

Allen cited apprenticeship programs, less supervision requirements, hiring halls and increased management efficiency. Sleicher, Healy & Livernash of Harvard Business School also have carefully examined the effects unionization has on management practices. They report more rational personnel practices and careful monitoring of work raise productivity by reducing organization slack.

Other studies by Brown and Medoff, University of Maryland, Leonard, California State, Berkeley, and Margaret Connerton at the U.S. Department of Labor report superior union productivity in various other settings.

As a basic right in our democratic society, as a proven method of settling differences and because of its effect on productivity, the ability to form unions and engage in collective bargaining is in all our interests.

The Washington Building and Construction Trades Council supports this legislation to permit County employees to engage in collective bargaining as defined by MCGEO-Local 400.

Thank you.

MR. HANNA: Thank you, Mr. Simon.

(General Applause)

MR. HANNA: Dr. Cortina followed by Heidi Hsia.

DR. CORTINA: My name is Mauricio Cortina. My address is 5 Sunnyside Road, Silver Spring, Maryland. I'm a psychiatrist employed half time by the Montgomery County Health Department. Dr. Shaw and I have brought with us a petition signed by other members of the Health Department that support our testimony.

I shall begin my testimony by telling a true story. A committee was set up with representatives from two different divisions in the County Government to promote communication and understanding among staff of the programs in the respective divisions.

After having met for some times, the committee members requested a meeting with managers to clarify the committee's responsibility and authority and to question why they were not being asked to participate in the broader reorganization.

In the meeting, one of the managers finally admitted that it was no accident that employees were excluded. The decision was deliberate and based on higher management's belief that line workers should not participate in reorganizations or policy matters.

When one employee protested, he was told, "employees have no rights." Unfortunately, this obsolete type of management seems to be the norm rather than the exception in the County. The recent survey of employee attitudes sponsored by the Merit Systems Protection Board confirms this. And I quote: "The consultant based on elective experiencing conducting surveys stated that he never seen more cynicism, despair or general lack of trust in management by a group of employees as found in these surveys."

It was his belief that the results showed a form of "absentee management as those responsible for administration, supervision are not in touch with their subordinates and exhibit a lack of concern for them and their problems."

Many of us providing direct professional services to Montgomery County citizens through the County Government have turned to the union not because we want better salaries or fringe benefits but because we see the union as a viable channel to voice our collective concerns and to participate cooperatively with managers in developing more effective and efficient programs.

The decision to exclude employees with

Grades 27 and above is both arbitrary and unjust, arbitrary because many employees like myself with Grades 27 and above are primarily providing direct services, and there is no reason why we should be excluded from collective bargaining.

Clearly, the distinction should be made based on managerial supervisory responsibility and not on grade. The proposed rule is unjust because under Meet and Confer Grades 27 and above had been represented by the union. The exclusion would penalize County employees because of our professional degrees and leave us no channels to contribute to the organization of our workplace.

I would like to point out that union-management relations need not be adversarial. Both managers and employees have many interests in common. Some of the largest and most important companies in the United States are sponsoring significant, cooperative union-management projects to deal with problems of productivity and low morale.

Among them are AT&T and the Communications Workers of America, General Motors and Ford, and the United Auto Workers and Jamestown, an impressive example of a decaying city that was revitalized by government management and union cooperation. Can I

finish the testimony?

MR. HANNA: You have 30 seconds.

DR. CORTINA: Okay. Montgomery County has prided itself in being a leader. Union-management cooperative projects can be a groundbreaking and hopeful alternative to bureaucratic cynicism and more effective programs.

I for one as a union member would welcome the opportunity to help develop cooperative union-management efforts in Montgomery County. But first you have to let me stay in the union.

Thank you.

MR. HANNA: Dr. Cortina, thank you.

(General Applause)

DR. HANNA: I don't see any questions, so thank you. Heidi Hsia followed by Roger Wolfe. How close did I come to your name?

MS. HSIA: "SHA."

MR. HANNA: "SHA." Not even close.

MS. HSIA: Very close. Good evening, President Hanna and members of the County Council. My name is Heidi Hsia, and I'm a psychologist who has worked in the Division of Mental Health Services of the County Health Department for 13 years. I'm presenting my testimony as an individual employee

rather than as a representative of my agency.

I support the enactment of the collective bargaining law. I also support the idea that as contracting out affects the job security of the employees, then it becomes a bargainable issue.

However, the proposed bill would exclude from collective bargaining persons of Grade 27 or above who are currently included under the Meet and Confer provisions.

I'm here tonight to advocate for the inclusion of these employees in the proposed collective bargaining unit because I strongly believe that a grade cutoff at Grade 27 is extremely arbitrary.

First of all, in our department those of us who occupy positions Grade 27 or above do so largely because of the highly technical nature of our jobs which required many years of postgraduate training. We are the front line service providers who do not possess power to make policies and to influence work conditions. To exclude us from the bargaining unit is to penalize us for our additional training and skills as well as to preclude a highly educated group of people from contributing to the collective bargaining process.

Secondly, if the intent of the proposed law

is to exclude supervisory personnel, then clearly it cannot be done by grade level as there exists supervisors below the Grade 27 and nonsupervisors above Grade 27.

Thirdly, even for those of us who also serve as clinic or program directors and/or professional chiefs in addition to our clinical duties, we have been penalized for the second time in a different way. That is, not one of us is compensated with salary increases for our additional administrative and supervisory duties because the Personnel Office considers them coordinative rather than supervisory in nature. Therefore, we are called coordinators sometimes when the Personnel Office decides to deny us our salary increases and supervisors at other times when it decides to deny us union representation.

Such inconsistencies in our personnel system lead to utter frustration and low morale in our County employees which has been so timely demonstrated in the recent employees' attitudes survey.

In light of recent and still anticipated change of leadership in the Health Department, we the front line service providers Grade 27 or above more than ever before need an effective avenue to voice our expertise, to assist the new leaders, and most of

all, to assure continuity of quality service to our community.

I urge you to support the inclusion in collective bargaining units of persons currently included in the Meet and Confer units so we may become active participants in what I hope is a continuously forward movement of our County Government.

Thank you.

(General Applause)

MR. HANNA: All right, Roger Wolfe followed by Don Shaw.

MR. WOLFE: Mr. President and County Council, I'm representing, of course, the Equipment Section on Seven Lockes Road.

(Microphone adjusted)

Mr. President and County Council, I'm representing, of course, the Equipment Section on Seven Lockes Road. And being a mechanic and the people there, we -- they wanted me to address this bill to keep what we already have in benefits.

And one thing that we have had a great concern about is our differences in our cost of living raises between the Police Department and the School Board and of course which don't seem to be inconsistent and our insurance which seems to be unreal because it,

which is much higher than we feel is applicable.

Some of the departments or a majority of the departments are furnished with tools and things of this nature, and our department is not.

(Long Pause)

That's all I have. Thank you.

MR. HANNA: All right, Mr. Wolfe. Thank you very much.

(General Applause)

MR. HANNA: Don Shaw followed by Harold Wirth.

MR. SHAW: My name is Donald C. Shaw. I live at 124 Whittier Street, Takoma Park, D.C. I'm employed by Montgomery County Department of Transportation, Rockville-Gaithersburg Ride-On. I'm here speaking on behalf of the bus operators and mechanic helpers and controllers at the Gaithersburg office to voice our support for Bill 19-86, collective bargaining for County employees.

With collective bargaining and strong union representation for County employees, I believe it will improve a lot of things for us, especially in seniority violations and management doing whatever they want to do in telling you that you have no rights if you want to do anything about it, even if they do something and you can prove them wrong. By

the time you prove it, you've already been punished.

So it's no outlet for you. You don't have any say-so in anything that affects you. Also, we feel that all of the employees currently represented by MCGEO-Local 400 should be a part of the collective bargaining process.

We also feel that the County accepting cards is a good idea. The 10 per cent provision to turn that election around, we don't agree with that. We feel that there should be a minimum of 30 per cent because if the majority wants it, it should be something close to the majority that can turn everything around again.

Okay, on pensions, we feel that bargaining should be allowed on any new pension plan. Also, we feel that some form of binding arbitration is necessary, period. Factfinding and Meet and Confer, that's pretty much the way things are now, and it's not working.

On agency shop, we feel that anybody who benefits from the work of the union and the majority of the people in that union, if they're going to, you know, receive the benefits, then they should have to pay a fee whether they want to join the union or not. It's only fair to the majority.

Thank you.

(General Applause)

MR. HANNA: Thank you, Mr. Shaw. I thank you.

MR. SHAW: You're welcome.

MR. HANNA: Harold Wirth.

MR. WIRTH: Mr. President and members of our County Council, before I begin my testimony, I'd like to introduce you to the Chairman of the Board of the Montgomery County Taxpayers League who is with me on my right, Mr. Richard Mancuso.

My name is Harold Wirth. It hink you all know me and my address. But at our regular meeting of the Board of Directors on April 7th, the Montgomery County Taxpayers League voted unanimously to unalterably oppose the approval of Bill 19-86.

Since union control of government inevitably leads to higher costs of government, our responsibility to the taxpayers of our County dictates that we impress upon you the unfairness of approving any act leading to higher costs and therefore taxes.

There are several additional reasons why we oppose enactment of such an unneeded and as possibly leading to dual sovereignty law which is a contradiction in terms.

Thomas Hobbes and John Locke in 17th Century Great Britain stated that in order for a democratic form of government to retain its integrity, it cannot permit dual sovereignty which is a contradiction in terms.

In recent times, Sylvester Petro, a professor of law at Wake Forest University in North Carolina, has stated in the Wake Forest Law Review: "Government sovereignty and compulsive public sector bargaining are contradictory as well in practice as in logic. The contradiction is so corrosive indeed as to dissolve all into meaningless.

Sovereignty means the supreme and unchallengable power of compulsion. Now, how therefore can a genuine soverign be forced by a private person or agency to do something and remain still soverign?"

The Missouri Supreme Court has stated: "Public office or employment never has been and cannot become a matter of bargaining and contracts."

Our County employees have great advantages over employees in private industry. They have tenure, are assured of steady work, an excellent vacation schedule, and a pension far and above their neighbors in the private sector.

I have friends who retired in the late

sixties and seventies whose pensions today far exceed their salaries and wages while in full time County employment. No private organization can possibly afford such a pension program. It would bankrupt any industry which attempted it.

To illustrate the lack of planning on the part of those responsible for the preparation of Bill 19-86, you will note on page 33 of the Legislative Request Report dated March 25, 1986, which states as follows, and I quote:

"Coordination:

Fiscal Impact -- not available.

Economic Impact -- not available.

Evaluation -- not available.

Experience Elsewhere -- not available."

How can any intelligent government enact a law with no knowledge of its financial or economic impact on its taxpaying citizens or with no evaluation or research on the impact of similar actions elsewhere?

On page 30, paragraph 33.111a states that no strikes or lockouts will be permitted. But immediately following on paragraphs 33.111b and c, provisions are outlined as to actions to be taken should a strike occur, which implies that our County

Government is powerless to prevent a strike from taking place if this bill is enacted.

Our final plea to you to reject this bill is the fact that you will be breaking faith with your constituents who elected you in good faith, assuming you would justly govern them. This bill takes your elective power right out of your hands and places this power in the hands of union bosses who will control our government. After unions find themselves in power, they immediately endeavor to force their members to pay for political beliefs and candidates they oppose. It becomes apparent that union bosses will elect your members in the future, not your loyal constituents.

Therefore, you should reject this bill, 19-86, in toto.

MR. HANNA: Thank you, Mr. Wirth. Mr. Potter has a question.

MR. POTTER: Yeah. About the will of the electorate, how do you account for the passage of Section 511 of the Charter two years ago?

(General Applause)

MR. WIRTH: Mr. Potter, I really don't believe I understand your question.

MR. POTTER: Well, I understand that a

majority of people voting in that election voted to approve Section 511 which provides the power to provide collective bargaining. So it has been to referendum.

MR. WIRTH: You mean your own employees did this?

MR. POTTER: No. I'm talking about a valid question in the election of 1984. I agree with you we should check into experience elsewhere. I don't think it would confirm your ominous testimony. The -- I'm wondering if you're familiar with the basic tenets of the Federal system which does imply divided sovereignty. There are certain things which the states can rule on and certain things which the Federal Government can rule on. And when there is conflict, the Federal Government supersedes. There are a lot of things where there is not conflict, and the Federal Government has no power to interfere. So I think that's an illustration of divided sovereignty, contrary to the quotes that you give from certain academic sources.

MR. WIRTH: I have here, Mr. Potter and Mr. Chairman, Mr. President, several very, very extensive studies on the effects of public unions. I'd like to give them to you for study by your members before you actually enter into a work session on this

bill.

MR. POTTER: We'd appreciate the loan.

MR. WIRTH: These are written by authorities on the subject from all over the United States. And I'd like to present them to you.

MR. HANNA: Fine. We'll see that they are available for circulation and reading.

MR. WIRTH: They're all different, Mr. Chairman. So I would appreciate it if you would arrange to have your various members pass them around among each other so they can get the various viewpoints of the authorities on this subject.

MR. HANNA: We'll make them all available to all of the Council.

MR. WIRTH: Thank you, sir.

MR. HANNA: Ms. Gelman.

MS. GELMAN: Yes. Mr. Wirth, the material that's attached to the bill that gives the fiscal and economic impact comes over from the Office of Management and Budget. And I claim no credit for it.

But we will try to get more updated material. Okay? Because that certainly is insufficient. You're absolutely right. We want more material. Thank you.

MR. HANNA: Mr. Scull.

MR. SCULL: I don't recall the Taxpayers League taking the position on the Charter Amendment last time that authorized collective bargaining. I don't remember any testimony at the hearing we held before we put that on the ballot at the recommendation of the Charter Review Commission. It wasn't a matter of discussion at the Taxpayers League in '84, was it?

MR. WIRTH: Not that I recall, Mr. Scull.

MR. SCULL: Thank you.

MR. HANNA: I believe that's all the questions.

MR. WIRTH: It's very possible that the Taxpayers League didn't realize the import of that bill at the time.

MR. SCULL: Well, it was -- as Mr. Potter said, it was approved by some totally overwhelmingly vote, 99 per cent or something like that. There wasn't any --

MR. POTTER: Not quite that much.

MR. SCULL: I don't what it was, but it was --

MEMBER: It was 72.

MR. SCULL: Seventy-two. Well, was there any organized opposition?

MEMBER: None whatsoever.

MR. SCULL: I didn't recall any. Okay, thank you.

MR. WIRTH: I think you'll find a lot of reasons why you want to consider this very carefully before you pass this bill anyway.

MR. HANNA: Thank you, Mr. Wirth. I understand one of the speakers who wasn't here at the time he was called has come in. So I -- Fred Keeney? Is he here? Oh, there he is. Now he is our last speaker.

MR. KEENEY: Mr. President and members of the Council, I feel like I've been around the world tonight. I started off tonight in Bethesda and had to rush to Upper Marlboro to testify before the Prince George's County Council and rushed back over here before you concluded your meetings.

So I'll try to be as brief as possible. I did write up something short. Excuse me? I'm trying to get Metro Station between Rockville and Upper Marlboro.

When you're having joint council sessions on the Park and Planning Budget, everybody gets -- not tonight. They've got over 100 speakers out there.

The Fraternal Order of Police, the Maryland

National County and Park Police, support the rights of the Montgomery County employees to have collective bargaining.

We have reviewed the bill and would make the following suggestions for your review. We would like for you to allow employees of the uniformed services serving at the rank of Lieutenant and below to be included in the unit. To exclude these ranks from the unit would cause eventual compression of salary.

Montgomery County is the only county that I know of at this point in Maryland that excludes Sergeants from bargaining. If you will recall the collective bargaining bill just passed for the Park Police, that includes Sergeants and below.

The recall of the union that there be a requirement of 30 per cent of the employees' signatures on petition, the proposed 10 per cent recall allows union busting by management, that all pensions be allowed to be negotiated, to provide binding arbitration on bargaining impasse. This provides a fair and equitable resolution to problems.

That State Merit System employees be allowed to keep at minimum the Meet and Confer status they enjoy now. The FOP also supports the ability of the

union to have involvement in the selection of the Labor Relations Administrator. Collective bargaining fosters good relationships between employee and employer through participatory management. One only needs to look towards Prince George's County where collective bargaining and employeee-management relations over the last five years to realize that it works.

That concludes my written statement. One thing I did want to add. If you recall two or three years ago, Prince George's County was under TRIM. The Labor Relations Administrator for Prince George's County sat down with all the unions -- and I believe they have about 25 different bargaining units they have to bargain with.

They explained the County situation, the predicament they were under TRIM, and the County employees agreed not to ask for cost of living in their budget. And they have binding arbitration. They could have probably gone to an arbitrator and gotten it. But because the relationship was there between the County's administration and the unions, they were dealt with fairly and equitably, and the unions felt right to see the side of the County Government at that point.

I think if you go into collective bargaining with an open mind and you're willing to work with each other, you're going to resolve a lot of problems very quickly and without a lot of problems.

MR. HANNA: Thank you, Mr. Keeney. Thank you all, ladies and gentlemen. That concludes our hearing for this evening.

(Whereupon, at 9:42 o'clock p.m., the hearing was concluded.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Bill 19-86

Before: Montgomery County Council

Date: April 22, 1986

Place: Rockville, Maryland

represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.

Miles Anderson

Miles Anderson

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, May 29, 1986 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 2:10 P.M. on Thursday, May 29, 1986.

PRESENT

William E. Hanna, Jr., President	Neal Potter, Vice President
Scott Fosler, President Pro Tem	Michael L. Gudis
Rose Crenca	David L. Scull

Esther P. Gelman

The President in the Chair.

SUBJECT: Bill No. 19-86. County Employee Collective Bargaining

ISSUES DISCUSSED: President Hanna's offer to grant five minutes for summarizing positions on issues to be discussed today to Mr. Willcox, special attorney for the Council, representatives of MCGEO (Local 400), and Mr. Sean Rogers, representing the County Executive, with Mr. Rogers noting that he has spoken with representatives from MCGEO and that the positions of the County Executive and MCGEO on the major issues are substantially similar; explanation provided by Councilmember Gelman regarding the preparation of the subject bill and the attempt made by the Personnel Committee to include the alternatives raised for every major provision; the distinction between trade and technical work, as defined on pages 13 and 14 of the subject bill.

ACTION: Agreed to the provision of two bargaining units (service labor and trades, and office, professional and technical) as set forth in the subject bill.

SUBJECT: Certificate of Appreciation

President Hanna presented a certificate of appreciation to Myriam Bailey, Senior Attorney, Office of Legislative Counsel, in recognition of the legal assistance provided to the Council for the past several years.

SUBJECT: Bill No. 19-86, County Employee Collective Bargaining Legislation (Cont'd)

ISSUES DISCUSSED: Whether the State/County merit employees in the Department of Social Services and all persons in Grade 27 or above should be excluded from the bargaining units; the feasibility of permitting the supplementary salary provided by the County for State/County merit employees to be a bargaining item; comments of Mr. Thompson, representing MCGEO, suggesting that Section 33-63A of the bill could be amended to retain the "meet and confer" benefit for the State/County employees and those individuals above Grade 27 who have been under the "meet and confer" law, which benefit is proposed to be terminated after the collective bargaining units have been established; comments of Mr. Rogers concerning the County Executive's opposition to including County/State merit employees and individuals over Grade 27 under the collective bargaining provisions of the subject bill because the conditions of employment for the State/County positions are substantially determined by the State and because the positions above Grade 27 are held by top level professional staff with special relationships and special circumstances to the County Government; comments of Mr. Willcox that, when collective bargaining is established, the "meet and confer" benefit should be discontinued; Mr. Thompson's comments that, if the employees of these positions were allowed to continue to have the "meet and confer" benefit as set forth in existing law, the Chief Administrative Officer would determine how to place them in employee units.

ACTION: Agreed to amend the subject bill to retain the "meet and confer" provision for County/State employees.

Agreed to exclude employees at Grade 27 and above from the "meet and confer" benefit.

It was noted that, should some reason become apparent in the future for the "meet and confer" benefit for employees at Grade 27 and above, the law could be amended to provide this benefit.

ISSUES DISCUSSED: The provision in the bill for an election in which the employees express their desires with respect to collective bargaining as well as an alternative to an election in which the Labor Relations Administrator accepts cards or petitions signed by a majority of the employees designating the incumbent "meet and confer" union as the bargaining representative unless another union or ten percent of the employees in the unit have petitioned for an election.

ACTION: Amended the bill, page 18, line 23, to substitute 20 for [10] percent of unit employees

by motion of Councilmember Fosler, without objection.

ISSUES DISCUSSED: Whether there is a need to change the "10 percent" on line 26, page 16, (showing support for intervention by another union in certification or decertification election) to "20 percent" representation of

the employees within the unit because of the percentage change made on page 18, with Councilmembers noting the distinctions between the two provisions which would not require a change to be made to page 16; amendments proposed by the County Executive in his memorandum of May 29, 1986, page 2, IV, and V.

ACTION: Amended the bill, page 15, line 13, to delete [not]; and on page 16, line 27, added the following phrase in the same manner as described in section (a)(1) above

Mr. Thompson indicated that MCGEO supports the amendment to page 15, providing that the Labor Relations Administrator is the individual who makes a determination concerning the validity of the names submitted on the petition, with Mr. Willcox assuring him that that is the intent of the bill.

ISSUES DISCUSSED: The provision in the bill allowing a majority of those voting to choose the collective bargaining representative; Councilmember Potter's comments regarding his preference for a minimum percentage of employees, approximately 25 percent, to be the determining body rather than a majority of those voting; the amendment which provides that decisions on collective bargaining to be made by a majority of eligible employees; Councilmember Potter's motion, which did not come to a vote, to amend the bill, page 17, line 20, to add after "agent" provided that a majority of the eligible employees voted in the election; the application of the majority vote provisions to both the certification and decertification of an employee organization as the exclusive agent; comments of Mr. Potter with respect to his decision to support the language in the bill rather than the amendment because the provision requiring a majority of employees to vote applies to both certification and decertification; Councilmember Crenca's question regarding the reasons for excluding County Council staff from collective bargaining, with Councilmember Gelman noting that she was told that the Council's role in the collective bargaining process is the basis for excluding employees of the Legislative Branch; the provision in the bill that makes "agency shop" a subject of collective bargaining; Assistant County Attorney Sherman's comments regarding the opinion of the Supreme Court, in the Chicago Teachers' Union v. Hudson case, that an agency shop is permissible and employees can be required to join but the dues they pay must be for collective bargaining purposes only; Councilmember Hanna's concern with respect to requiring an employee to join a union to keep his job; the amendments proposed for page 12, lines 15 through 20, that would remove "agency shop" as a bargaining subject; the requirement under an agency shop that an employee, who for any reason does not wish to join the union, pay a service fee for benefits obtained through collective bargaining or, in lieu of the service fee if the objection is a religious objection, to pay a service fee to a charitable organization which is approved by the certified representative; how a disagreement between the union and the employee about whether a charitable organization chosen by the employee is appropriate might be resolved, with Mr. Rogers noting that this would be part of the dispute resolution process; Councilmember Potter's concern regarding the potential for abuse that exists in providing that the union has to approve the charitable organization to

which a service charge is made; Mr. Willcox's proposed amendment to the bill to provide for dispute resolutions in such instances.

ACTION: Amended the bill, page 6, line 13, to add after the word "representative," with provision for dispute resolution if there is not agreement.

ISSUES DISCUSSED: Councilmember Crenca's question regarding whether employees excluded from collective bargaining would be required to pay a service charge for benefits received as a result of collective bargaining, with Mr. Willcox, Mr. Rogers, and Mr. Thompson responding in the negative; the collective bargaining provision for defined contribution pension plans for new employees and for current employees who may decide to transfer from their existing defined benefit plan to a defined contribution plan; the advantages and disadvantages of including pension plans as a subject of collective bargaining; the position of the County Executive in support of the inclusion of all pension plans; the amendments proposed that exclude pension plans from collective bargaining; Mr. Willcox's comments regarding the problem of including pension plans as a subject of collective bargaining because the pension plans are very complicated and, during the collective bargaining process, decisions may be made without time to consider the consequences; Councilmember Potter's comments concerning the reduced liability the County would have under a defined contribution plan as a reason that it may have been included as a subject for collective bargaining; Councilmember Potter's motion to include all pension plans as subjects of collective bargaining; Councilmember Gelman's amendment to Mr. Potter's motion, accepted by Mr. Potter, that the defined benefit plan will be a subject of collective bargaining if a defined contribution plan is not adopted within one year of the effective date of this law; Councilmember Potter's amendment to his motion to provide that a defined benefit plan would not be subject to bargaining unless a defined contribution plan failed to be adopted within one year of the effective date of the law (restated by Mr. Potter, using the following language suggested by Mr. Thompson: For one year from the effective date of the law, pensions will not be open to collective bargaining.).

ACTION: Adopted Mr. Potter's motion as amended and restated to amend the bill to add the following: For one year from the effective date of the law, pensions will not be open to collective bargaining

by motion of Councilmember Potter, Councilmember Crenca abstaining.

The meeting adjourned at 5:03 P.M.
This is an accurate account of the meeting:

Kathleen A. Freedman

Kathleen A. Freedman, Secretary
County Council

TESTIMONY ON COLLECTIVE BARGAINING BILL 19-86 April 22, 1986

Good Evening. My name is Gail Ewing. I live at 12804 North Commons Way, Potomac, Md.

I am a candidate for the Montgomery County Council and prior to February of this year was a County Council employee for 5 years.

I applaud the Council's effort to bring to Montgomery County employees a choice -- Collective Bargaining.

The voter referendum which signaled the public's endorsement of County employees' right to collective bargaining is well served by the intent of the bill before you. At last employees will have a chance to let their voices be heard.

Bill 19-86 contains many provisions and several amendments. I will be submitting written testimony for the record which highlights my position on many of the various areas addressed by the bill.

There are two items, however, which I would like to speak to, tonight.

First, I am particularly pleased that the Council addresses Pay Equity in Section 1 #4 (on page 3). This item reads "All positions involving comparable duties, experience, responsibilities and authority must be paid comparable salaries..." This item goes on to say, however, "inaccordance with the relative value of the service performed." I ask for your consideration of additional wording that clearly states an intention not to tolerate discrimination and to assure pay equity across the board -- in determining the "relative value of the service performed." It is past time for Pay Equity in Montgomery County and certainly any collective bargaining bill must contain Pay Equity as a part of its framework.

The second issue of concern is the fact-finding provision, when there is an impasse in collective bargaining negotiations. Fact-finding is an unsatisfactory end of the road -- management maintains a heavy-hand in the process rather than promoting a management-employee partnership. Fact-finding which draws the Council -- our legislative body -- into the final impasse resolution through public hearings and negotiations (through their representative) with the Union is unwise and unfair. The County Executive, or his designate, must be the good-faith bargainer to the end. County Government must speak with <u>one voice</u> in negotiations and it is imperative that the work of the Executive Branch not be simply a stepping stone to the Council. Collective bargaining by the 7-member legislative body spells trouble. The Council should help determine the parameters of the County Government's position --but once the negotiations have

started the Council's role should be in support of the Executive's role as negotiator. With the fact-finding procedure outlined in this bill I forsee major problems ahead and ask that the Council consider stepping back from it's involvement at impasse.

I further request your consideration of binding arbitration, rather than fact-finding at impasse. Leaving an impasse to an impartial judge is fair -- fair to management, employees and the public.

By the same token, just as employees may reject a negotiated settlement between the Union and County Government, the Council should be able to reject the agreement, as well. In both cases, rejection should send the parties back to the bargaining table.

I realize that the issues that I bring to you are controversial. However, in this instance, as with every issue, I have tried to put myself in the place of each party involved. What would I as a voter who voted for the 1982 referendum expect the Council to do? What would I as a County employee expect the Council to do? And, what should I, as a Councilmember, do to live up to the fiscal responsibilities of governing as well as meet the obligation to the citizens of the County who will have to pay for whatever negotiations produce. I am confident that a Collective Bargaining Bill with Pay Equity and binding arbitration will give employees a clear choice and -- is a responsible approach.

I thank you for your consideration of my position on these issues and look forward to the Council's worksessions on the bill in the weeks ahead.

TESTIMONY ON MC 19-86
BY SENATOR STEWART BAINUM, JR.
MONTGOMERY COUNTY COUNCIL
APRIL 22, 1986

I regret being unable to attend today's hearing, but appreciate the opportunity to submit written testimony in support of MC 19-86, which authorizes collective bargaining for 3600 Montgomery County employees. I understand the bill before you represents the result of a year long effort by the County Executive, the Personnel Committee of the County Council, and MCGEO-Local 400 to reach agreement on this issue, and I want to commend these parties for their contributions.

In general, I am pleased with the legislation. For over 50 years private sector employees have enjoyed the right of collective bargaining, as granted by the National Labor Relations Act of 1935. In a democratic society, discrimination should not exist between private and public sector workers. In many cases, employees in both sectors possess the same skills and perform the same functions. Fairness dictates that public sector workers be accorded the rights of their private sector counterparts.

Collective bargaining simply grants employees a voice in determining the economic and non-economic conditions of their employment. Under "meet and confer" conditions, the employer is not obligated to act in good faith towards the resolution of conflict. Collective bargaining, on the other hand, bestows real power on the workers. Subsequent negotiation between equal units can and does result in the amicable resolution of grievances, and achieves greater consistency in personnel policies.

Twenty-two states recognize the fairness in this policy, and have thus conferred such power on all public employees. Eighteen other states, including Maryland, have provided collective bargaining for selected employees by means of county and local ordinances. At present, various Montgomery County workers possess this right, including the police, the firefighters and employees of the Washington Suburban Sanitary Commission and the Montgomery County Education Association. MC 19-86 simply expands collective bargaining to incorporate a greater number of County workers.

As stated earlier, I do support the legislation. However, I am concerned about the provision defining the topics of negotiation. Pensions constitute an important, if not the most important, element in a worker's benefits package. At present, defined contribution pension plans do not exist, and if the legislation is not approved, no discussion of pensions will be allowed.

I am also concerned about the procedures for ending negotiation impasses. Although the method outlined in the bill parallels the existing process for Montgomery County police, I am afraid an increasing amount of County Council time may have to be devoted towards this end, and I wonder whether such activity is appropriate.

Again, thank you for allowing me the opportunity to offer my comments. I am convinced MC 19-86 will result in more harmonious labor relations and greater efficiency in public administration, and therefore hope you will approve the measure.

lr 85 024

I HEREBY CERTIFY THAT 25 COPIES OF THIS BILL ARE AVAILABLE TO THE PUBLIC AT LARGE. 3/25/86
Kathleen A. Freedman
SECRETARY TO THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Bill No.: 19-86
Concerning: County Employee Collective Bargaining
Draft No. & Date: STAFF - 3/17/86
Introduced: March 25, 1986
Expires: September 25, 1987
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co., FY ___

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Personnel Committee

AN ACT TO:

(1) establish a framework for public employer-employee labor relations;

(2) provide the method for designating an employee organization as the exclusive representative of public employees in the appropriate unit;

(3) provide procedures for collective bargaining of wages, hours, and other terms and conditions of employment;

(4) provide for the appointment of a labor relations administrator;

(5) define the rights of employees, employee organizations, and the public employer;

(6) prohibit certain conduct;

(7) provide procedures for resolving differences between the public employer and employees;

(8) generally assure uninterrupted operation of government services; and

(9) generally provide for the establishment of County employee collective bargaining.

By amending
Chapter 33, Personnel
Section 33-11(b) of the Montgomery County Code

By adding
Chapter 33, Personnel
Sections 33-63A and 33-74(d), and Article VII of the
Montgomery County Code

EXPLANATION:
- **Boldface** indicates matter that is a heading or a defined term.
- Underlining indicates matter added to existing law.
- [[Double Brackets]] indicate matter repealed from existing law.
- CAPITALS indicate matter quoted from existing law which is added to the bill by amendment.
- UNDERLINED CAPITALS indicate matter added to existing law by amendment to the bill.
- ~~Strikes~~ indicate matter deleted from the bill by amendment.
- * * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 33-11(b) is amended to read as follows:

33-11. Classification; salary and wage plans.

(b) Uniform salary plan. [[There is hereby established for all classes of positions in the merit system a uniform salary plan entitled the "general salary schedule" which shall contain grades, salary rates and ranges for each grade. All classes of positions shall be assigned an appropriate grade under the general salary schedule by the chief administrative officer. All positions involving comparable duties, experience, responsibilities and authority shall be paid comparable salaries in accordance with the relative value of the services performed. In establishing salary rates, consideration shall be given to experience, prevailing salary rates for comparable services in both the public and private sectors, living costs, and fringe and other benefits received by the employee under the merit system. The chief administrative officer shall, subject to the approval of the county council, promulgate and from time to time amend the general salary schedule, compensation policies for overtime, pay differential and other appropriate salary and wage benefits.]]

(1) Subject to approval by the County Council, the Chief Administrative Officer must issue and periodically amend a uniform salary plan known as the "general salary schedule" for all classes of positions in the merit system.

(2) The general salary schedule must contain grades, salary rates, and salary ranges for each grade.

(3) The Chief Administrative Officer must assign an appropriate grade under the general salary schedule to all classes of positions.

(4) All positions involving comparable duties, experience,

(3)

re. nsibilities, and authority mus e paid comparable salaries in accordance with the relative value of the services performed.

(5) In setting salary rates, the Chief Administrative Officer must consider experience, prevailing salary rates for comparable services in both the public and private sectors, living costs, and fringe and other benefits received by the employee under the merit system.

(6) Subject to approval by the County Council, the Chief Administrative Officer must also issue and periodically amend compensation policies for overtime, pay differentials, and other appropriate salary and wage benefits.

(7) Any plan, policy, or schedule issued by the Chief Administrative Officer under this subsection is subject to the limitations in Articles V and VII of this chapter regarding County police department and government employees who are represented by a certified employee organization.

Sec. 2. Sections 33-63A and 33-74(d) and Article VII of Chapter 33 are added as follows:

33-63A. Applicability.

Upon certification that the employees in the units are represented for collective bargaining, this article shall not apply to any person.

33-74. Cost-of-living adjustment.

(d) This section is automatically repealed upon certification that the employees in the units are represented for the purpose of collective bargaining under Article VII of this chapter.

Article VII. County Collective Bargaining.

33-101. Declaration of policy.

It is the public policy of Montgomery County to promote a harmonious, peaceful, and cooperative relationship between the County government and its employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of County government and services. Since unresolved disputes in public service are harmful to the public and to employees, adequate means should be available for preventing disputes and for resolving them when they occur. To that end, it is in the public interest that employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, as authorized by Charter Section 511, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of County employees bargain collectively in good faith without interference with the orderly process of government and that they implement any agreements reached through collective bargaining.

The County Council also recognizes that employee organizations and the County government each possess substantial means for initiating actions on wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the public service, the County Council states that once the employees voluntarily select a representative, collective bargaining shall be used in place of, and not in addition to, existing means for initiating governmental action on subjects that are defined as appropriate for collective bargaining in this article.

33-102. Definitions.

The following terms have the meaning indicated when used in this article:

(1) **"Agency shop"** means a provision in a collective bargaining

agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require an employee to pay initiation fees, assessments, fines, or any other collections or their equivalent as a condition of continued employment. A collective bargaining agreement shall not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, and to give to the employer and the certified representative written proof of this payment.

(2) "Certified representative" means an employee organization chosen to represent one or both units in accordance with the procedures of this article.

(3) "Collective bargaining" means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this article. This article shall not be interpreted to compel either party to agree to a proposal or make a concession.

(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 for the following:

(A) Confidential aides to elected officials.

(B) All persons who are not covered by the County government merit

system.

(C) Heads of principal departments, offices, and agencies.

(D) Deputies and assistants to heads of principal departments, offices, and agencies.

(E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

(F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

(G) Persons who work for the office of the County Executive and the office of the Chief Administrative Officer.

(H) Persons who work for the County Council.

(I) Persons who work for the office of the County Attorney.

(J) Persons who work for the Office of Management and Budget.

(K) Persons who work for the Personnel Office.

(L) Persons who work for the Merit System Protection Board.

(M) Persons who work on a temporary, seasonal, or substitute basis.

(N) Newly hired persons on probationary status.

(O) Persons who work for the police department who are represented by a certified employee organization under Article V of this chapter.

(P) Officers in the uniformed services (corrections, fire and rescue, police, office of the sheriff) in the rank of sergeant and above. Subject to any limitations in State law, deputy sheriffs below the rank of sergeant are employees.

(Q) Persons who are members of the State merit system.

(R) Supervisors, which means persons having authority to do any of the following:

(i) Hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively to recommend any one of these actions.

(ii) Direct the activity of three or more employees.

(iii) Adjust or recommend adjustment of grievances.

(S) Persons in grade 27 or above, whether or not they are supervisors.

(5) "**Employee organization**" means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining.

(6) "**Employer**" means the County Executive and his or her designees.

(7) "**Lockout**" means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) "**Mediation**" means an effort by the mediator/fact-finder chosen under this article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) "Strike" means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) "Unit" means either of the units defined in section 33-105.

(11) When either the female or the male pronoun appears herein, it is to be read to include both genders.

33-103. Labor Relations Administrator.

(a) There is established the position of Labor Relations Administrator, to provide for the effective implementation and administration of this article concerning 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:

(1) Periodically adopt, amend, and rescind, under method (1) of section 2A-15 of this Code, regulations and procedures for the implementation and administration of the duties of the Labor Relations Administrator under this article.

(2) Request from the employer or an employee organization, and the employer or such organization may at its discretion provide, any

relevant assistance, service, and data that will enable her properly to carry out her duties under this article.

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents.

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue the certification or decertification.

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure, the Labor Relations Administrator shall defer to that procedure for the resolution of disputes properly submissible to the procedure absent a showing that the deferral results in the application of principles repugnant to this article. Furthermore, the Labor Relations Administrator shall defer to State procedures in those matters which are governed by the Law-Enforcement Officers' Bill of Rights, Article 27, Sections 727-734D, Annotated Code of Maryland.

(6) Determine unresolved issues of a person's inclusion in or exclusion from the units.

(7) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County.

(8) Exercise any other powers and perform any other duties and

functions as may be specified in this article.

(b) (1) The Labor Relations Administrator must be a person with experience as a neutral in the field of labor relations and must not be a person who, on account of vocation, employment, or affiliation, can be classed as a representative of the interest of the employer or any employee organization.

(2) The first Labor Relations Administrator is appointed by the County Executive, with the confirmation of the County Council, serves for a term of 4 years; and is eligible for reappointment.

(3) After the initial term of office of the Labor Relations Administrator provided in subsection (b)(2), the County Executive shall thereafter appoint the Labor Relations Administrator for a term of 5 years from a list of 5 nominees agreed upon by any certified employee representative(s) and the Chief Administrative Officer, which list may include the incumbent Labor Relations Administrator. Such appointment must be confirmed by the County Council. If the County Council does not confirm the appointment, the new appointment shall be from a new agreed list of 5 nominees. Should there be no certified representative, the Labor Relations Administrator shall be appointed under the procedure and for the term set forth in subsection (b)(2).

(c) The Labor Relations Administrator will be paid a daily fee as set forth by contract with the County, and will be reimbursed for necessary expenses.

33-104. Employee rights.

(a) Employees have the right to:

(1) fo , join, support, contribute to r participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) be represented fairly by their certified representative, if any.

(b) The employer has the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties in accordance with this article.

(c) A certified representative serves as the bargaining agent for all employees in the unit for which it is certified and has the duty to represent fairly and without discrimination all employees in the unit without regard to whether the employees are members of the employee organization, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of a certified representative to receive voluntary dues or service fee deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this article. A collective bargaining agreement may not include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision.

33-105. Units for collective bargaining.

(a) There are two units for collective bargaining and for purposes of

certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, excluding the categories listed as exceptions to the definition of employee in section 33-102(4) of this article. The employees are divided into 2 units in accordance with the following descriptions:

(1) **Service, labor, and trades (SLT) unit.** This unit is composed of all eligible classes that are associated with service/ maintenance and skilled crafts. This means job classes in which workers perform duties that result in or contribute to the comfort and convenience of the general public or that contribute to the upkeep and care of buildings, facilities, or grounds of public property. Workers in this group may operate specialized machinery or heavy equipment. These job classes may also require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work that is acquired through on the job training and experience or through apprenticeship or other formal training programs.

(2) **Office, professional, and technical (OPT) unit.** This unit is composed of all eligible classes associated with office, professional, paraprofessional, and technical functions.

(A) **Office.** Job classes in which workers are responsbile for internal and external communication, recording and retrieval of data and/or information, and other paperwork required in an office.

(B) **Professional.** Job classes that require special and theoretical knowledge that is usually acquired through

college training or through work experience and other training that provides comparable knowledge.

(C) **Paraprofessional.** Job classes in which workers perform, in a supportive role, some of the duties of a professional or technician. These duties usually require less formal training and/or experience than is normally required for professional or technical status.

(D) **Technical.** Job classes that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post secondary school education or through equivalent on the job training.

(b) Specific job classes included in these units of representation, and not otherwise excluded under section 33-102(4), shall be based on the designations made by the Chief Administrative Officer under the prior meet and confer process. In the event a new classification is created by the County, or an existing classification's duties and responsibilities are substantially changed, the County Personnel Director must place the classification in one of the units or state that the classification falls within one of the exceptions to the definition of employee under this article within 60 days of the creation or substantial alteration of the class and must publish the decision in the Montgomery County Register. Any individual or certified representative disagreeing with the decision of the Personnel Director may, within 10 days of publication, file objections to the decision with the Labor Relations Administrator, with notice to the Personnel Director.

The Labor Relations Administrator shall promptly decide the

question on the basis of the duties and responsibilities of the job classification, the unit definition, and the community of interests between and among employees in the job classification and collective bargaining unit.

33-106. Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) Any employee organization seeking certification as representative of a unit shall file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The employee organization shall also send a copy of the petition, not including the names of the supporting employees, to the employer. The petition shall contain the uncoerced signatures of 30 percent of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) If an employee organization has been certified, an employee within the unit may file a petition with the Labor Relations Administrator for decertification of this certified representative. The employee shall also send a copy of the petition to the employer and the certified representative, not including the names of the supporting employees. The petition shall contain the uncoerced signatures of 30 percent of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) Petitions may be filed within 30 days following the date on which this article becomes effective. Thereafter, if a lawful collective bargaining agreement is not in effect, petitions may be filed between September 1 and September 30 of any year, but not sooner than 22 months after an election held under this section.

(4) If a lawful collective bargaining agreement is in effect, a petition filed under this section shall not be entertained unless it is filed during September of the final year of the agreement.

(b) If the Labor Relations Administrator determines that a petition is properly supported and timely filed, she shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of any year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Labor Relations Administrator and shall be conducted by secret ballot at the time and place that she directs. The Labor Relations Administrator may select and retain the services of an agency of the State of Maryland, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least 10 days before the election of at least 10 percent representation of the employees within the unit, and a choice that the employee does not desire

to be represented by any of the named employee organizations.

(3) The employer and each party to the election may be represented by observers selected in accordance with limitations and conditions that the Labor Relations Administrator may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of the challenge or the Labor Relations Administrator's decision as to the validity of the challenge, unless the number of challenges is not determinative, in which case the challenged ballots shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Labor Relations Administrator in the presence of the observers.

(6) The Labor Relations Administrator shall immediately prepare and serve upon the employer and each of the parties a report certifying the results of the election. If an employee organization receives the votes of a majority of the employees who voted, the Labor Relations Administrator shall certify the employee organization so elected as the exclusive agent.

(7) If no employee organization receives the votes of a majority of the employees who voted, the Labor Relations Administrator shall not certify a representative. Unless a majority of the employees who vote choose "no representative", a runoff election shall be conducted. The runoff election shall contain the 2 choices that received the largest and second largest number of votes in the original election.

(c) The Labor Relations Administrator's certification of results is final unless within 7 days after service of the report and the certification, any party serves on all other parties and files with the Labor Relations Administrator objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds for the objections. The Labor Relations Administrator shall investigate the objections and, if substantial factual issues exist, shall hold a hearing. Otherwise, she may determine the matter without a hearing. The Labor Relations Administrator may invite, either by rule or by invitation, written or oral argument to assist her in determining the merits of the objections. If the Labor Relations Administrator finds that the election was conducted in substantial conformity with this article, she shall confirm the certification initially issued. If the Labor Relations Administrator finds that the election was not held in substantial conformity with this article, then she shall hold another election under this section.

(d) The cost of conducting an election shall be paid by the County.

(e) If, during the 30 days following the effective date of this article, a petition is filed by the incumbent representative of unit employees certified under Article IV of this chapter, and no other employee organization files a valid petition, and no petition calling for an election signed by 10 percent of unit employees has been filed with the Labor Relations Administrator, the incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the Labor Relations Administrator and dated after the enactment of this article, that a majority of the

employees in the unit desire to be represented by the incumbent representative for the purposes of collective bargaining under the provisions of this article.

33-107. Collective bargaining.

(a) Duty to bargain; matters subject to bargaining.

Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects:

(1) Salary and wages, including the increase and/or decrease in the salary and wages budget, and the percentage of any increase in the salary and wages budget that will be devoted to merit increments and cash awards, provided that salaries and wages shall be uniform for all employees in the same classification.

(2) With respect to pension and retirement benefits, only defined-contribution plans for new employees or current employees who choose to transfer from a defined-benefit plan, provided that bargaining rights regarding such plans will not accrue unless and until the County has enacted a law establishing such plans.

(3) Employee benefits such as insurance, leave, holidays, and vacations, but not including pension and retirement benefits except to the extent stated in subsection (a)(2).

(4) Hours and working conditions.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include:

(A) binding third party arbitration, provided that the arbitrator shall have no authority to amend, add to, or subtract from the provisions of the collective bargaining

agreement; and

(B) provisions for exclusivity of forum.

(6) Matters affecting the health and safety of employees.

(7) Amelioration of the effect on employees when the exercise of employer rights listed in subsection (b) causes a loss of existing jobs in the unit.

(b) **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 90 days prior to signing the contract 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 law, Federal or State law, or the terms

of the collective bargaining agreement.

(c) **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.

(d) 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.

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

(a) Collective bargaining shall begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative and shall be finished on or before January 15. The resolution of a bargaining impasse or fact-finding shall be finished by February 1.

(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 year or for more than 3 years. All agreements become effective July 1 and end June 30.

(c) A collective bargaining agreement becomes effective only after ratification by the employer and by the certified representative. The certified representative may provide its own rules for ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator shall appoint a mediator/fact-finder, who may be a

person recommended to her by both parties. The mediator/fact-finder shall be available during the period from January 2 to February 1. Fees and expenses of the mediator/fact-finder shall be shared equally by the employer and the certified representative.

(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/fact-finder, or the parties may jointly request his services before declaration of an impasse. If the parties do not reach an agreement by January 15, an impasse exists.

(2) The dispute shall be submitted to the mediator/fact-finder whenever an impasse has been reached, or before that as provided in subsection (e)(1). The mediator/fact-finder shall engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will tend to bring about the settlement of the dispute.

(3) If and when the mediator/fact-finder finds in his sole discretion that the parties are at a bona fide impasse, he shall implement the following fact-finding process:

(A) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.

(B) He may require the parties to submit evidence or make oral or written argument in support of their proposals. He may hold a hearing for this purpose at a time, date, and place selected by him. This hearing shall not be open to the public.

(C) On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.

(D) In making findings of fact and recommendations, the mediator/fact-finder may take into account only the following factors:

(i) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

(ii) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland.

(iii) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

(iv) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

(v) The interest and welfare of the public.

(vi) The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services provided by

the employer.

(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator/fact-finder, the report of the mediator/fact-finder shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.

(g) The budget that the employer submits to the Council shall include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed term or condition submitted to the Council that requires an appropriation of funds or the enactment, repeal, or modification of any County law or regulation shall be identified to the Council by the employer. The employer shall make a good faith effort to have any term or condition that has been agreed to implemented by Council action.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement and the recommendations for resolving bargaining disputes.

(i) On or before April 15, the Council shall indicate by a majority vote its intention to appropriate or otherwise implement the items that have been agreed to, or its intention not to do so, and shall state its reasons for any intent to reject any part of the items that have been agreed to. The Council shall also indicate by a majority vote

its pos on on disputed matters.

(j) Then the Council shall designate a representative to meet with the parties and present the Council's views in the parties' further negotiations on disputed matters and/or agreed matters that the Council has indicated its intention to reject. The results of the negotiation, whether a complete or a partial agreement, shall be submitted to the Council on or before May 1. The Council may extend this deadline for no more than one week. Any agreement shall provide for automatic reduction or elimination of wage and/or benefits adjustments if:

(1) the Council does not take action necessary to implement the agreement, or a part of it;

(2) funds are not appropriated; or

(3) lesser amounts than those stated in the agreement are appropriated.

(k) The Council shall take whatever actions it considers required by the public interest with respect to matters still in dispute between the parties. However, those actions shall not be part of the agreement between the parties unless the parties specifically incorporate them in the agreement.

33-109. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from any of the following:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under this article.

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other

support to it, under an agreement or otherwise. However, the employer and a certified representative may agree to and apply an agency shop provision under this article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of County facilities for communicating with employees.

(3) Encouraging or discouraging membership in any employee organization by discriminating in hiring, tenure, wages, hours, or conditions of employment. However, nothing in this article precludes an agreement from containing a provision for an agency shop.

(4) Discharging or discriminating against a public employee because she or he files charges, gives testimony, or otherwise lawfully aids in the administration of this article.

(5) Refusing to bargain collectively with the certified representative.

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement that has been agreed to in all respects.

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement.

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached between the employer and the certified representative under this article.

(9) Engaging in a lockout of employees.

(b) Employee organizations, their agents, representatives, and persons who work for them are prohibited from any of the following:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this article.

(2) Restraining, coercing, or interfering with the employer in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Refusing to bargain collectively with the employer if the employee organization is the certified representative.

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects.

(5) Hindering or preventing, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or exit from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance by any person, public or private.

(6) Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the employer.

(7) Taking or retaining unauthorized possession of property of the employer, or refusing to do work or use certain goods or materials as lawfully required by the employer.

(8) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither

performed nor to be performed.

(c) A charge of prohibited practice may be filed by the employer, an employee organization, or any individual employee. The charge or charges shall be filed with the Labor Relations Administrator, and copies shall be sent to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the Labor Relations Administrator to investigate the charge. The Labor Relations Administrator may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The Labor Relations Administrator has the authority to maintain whatever independent investigation she determines is necessary and to develop regulations for an independent investigation. If, upon investigation, the Labor Relations Administrator finds that a charge is sufficiently supported to raise an issue of fact or law, she shall, if she is unable to achieve settlement or resolution of the matter, hold a hearing on the charge after notification to the parties. In any hearing, charging parties shall present evidence in support of the charges, and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense against the charges.

(d) If the Labor Relations Administrator determines that the person charged has committed a prohibited practice, she shall make findings of fact and conclusions of law and may issue an order requiring the person charged to cease and desist from the prohibited practice, and may take affirmative actions that will remedy the violation of this article. Remedies of the Labor Relations Administrator include

reinsta. .g employees with or without ba pay, making employees whole for any loss relating to County employment suffered as a result of any prohibited practices, or withdrawing or suspending the employee organization's authority to negotiate or continue an agency shop provision or a voluntary dues or service fee deduction provision. If the Labor Relations Administrator finds that the party charged has not committed any prohibited practices, she shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Labor Relations Administrator shall not receive or entertain charges based upon an alleged prohibited practice occurring more than 6 months before the filing of the charge.

33-110. Expression of views.

(a) The expression or dissemination of any views, argument, or opinion; whether orally, in writing, or otherwise, does not constitute and is not evidence of a prohibited practice under any of the provisions of this law, nor is it grounds for invalidating any election conducted under this law if the expression or dissemination does not contain a threat of reprisal or promise of benefit.

(b) Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of the associations or are of particular applicability to it or its members.

33-111. Strikes and lockouts.

(a) An employee or employee organization shall not either directly or indirectly cause, instigate, encourage, condone, or engage in any

strike, or the employer in any lockout. An employee or employee organization shall not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when that employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during the strike.

(c) If an employee or employee organization violates the provisions of this section, the employer, after adequate notice and a fair hearing before the Labor Relations Administrator who finds that the violations have occurred and finds that any or all of the following actions are necessary in the public interest, may impose any of the following sanctions, subject to the Law-Enforcement Officers' Bill of Rights, Article 27, Sections 727-734D, Annotated Code of Maryland:

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in the conduct.

(2) Terminate or suspend the employee organization's dues deduction privilege, if any.

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of 2 years.

(d) This article does not prohibit an employer or a certified employee organization from seeking any remedy available in a court of competent jurisdiction.

33-112. Effect of prior enactments.

Any laws, executive orders, or regulations adopted by the County and any

department or ac cy of the County that are or m be considered inconsistent with the provisions of this article shall not be held to be repealed or modified until they are specifically repealed or modified by the County or any department or agency of the County.

Sec. 3. Severability.

If a court holds that part of this act is invalid, the invalidity does not affect other parts.

Sec. 4. Effective Date.

This act takes effect 91 days after it becomes law.

Approved:

_____ _____

William E. Hanna, Jr., President, County Council — Date

Approved:

_____ _____

Charles W. Gilchrist, County Executive — Date

This is a correct copy of Council action.

_____ _____

Kathleen A. Freedman, Secretary, County Council — Date

lr 85 024

LEGISLATIVE REQUEST REPORT

Bill 19-86
County Employee Collective Bargaining

DESCRIPTION: This bill:

(1) establishes a framework for public employer-employee labor relations;
(2) provides the method for designating an employee organization as the exclusive representative of public employees in the appropriate unit;
(3) provides procedures for collective bargaining of wages, hours, and other terms and conditions of employment;
(4) provides for the appointment of a labor relations administrator;
(5) defines the rights of employees, employee organizations, and the public employer;
(6) prohibits certain conduct;
(7) provides procedures for resolving differences between the public employer and employees; and
(8) generally assures uninterrupted operation of government services.

PROBLEM: Under Article IV of Chapter 33 (Personnel) eligible employees presently "meet and confer" with the County through their representative. However, County law does not implement the authority for collective bargaining found in the 1984 Charter amendments in §511.

GOALS AND OBJECTIVES: It is the public policy of Montgomery County to promote a harmonious, peaceful, and cooperative relationship between the County government and its employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of County government and services.

COORDINATION:

FISCAL IMPACT: Not available.

ECONOMIC IMPACT: Not available.

EVALUATION: Not available.

EXPERIENCE ELSEWHERE: Not available.

SOURCE OF INFORMATION: Arthur W. Spengler
Council Staff Director (251-7900)

William Willcox, Esq.
Special Counsel (457-6100)

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: Not applicable.

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: One Unit Instead of Two Units

1. On page 4, strike lines 21 and 22, and substitute:

"UPON CERTIFICATION OF AN EMPLOYEE ORGANIZATION AS THE UNIT'S REPRESENTATIVE FOR COLLECTIVE BARGAINING, THIS ARTICLE SHALL NOT APPLY TO ANY PERSON."

2. On page 6, in line 17, strike "one or both units" and substitute "THE UNIT".

3. On page 9, in line 11, strike "either of the units defined in section 33-105" and substitute "ALL EMPLOYEES AS DEFINED IN THIS SECTION".

4. On page 10, in line 23, strike "units" and substitute "UNIT".

5. On page 12, in line 12, strike "for which it is certified".

6. On page 12, in line 19, strike "a" and substitute "THE".

7. On page 12, in line 26, strike "Units" and substitute "UNIT".

8. On page 12, in line 27, strike "are two units" and substitute "IS ONE UNIT".

9. On page 13, in line 1, strike "Persons in these units are" and substitute "THIS UNIT IS DEFINED AS".

10. On page 13, in line 5, strike "The employees are divided into 2" and lines 6 through 27.

11. On page 14, strike lines 1 through 11.

12. On page 14, in line 12, strike "these units of represenation" and substitute "THE UNIT".

13. On page 14, in line 18, strike "in one of the units" and substitute "THE UNIT".

14. On page 15, in line 7, strike "a" and substitute "THE".

15. On page 15, in line 10, after "representative of" strike "a" and substitute "THE".

16. On page 27, in line 2, strike "a" and substitute "THE".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Majority of Unit Must Participate
in Certification Election

1. On page 17, in line 20, after "agent" insert ", PROVIDED THAT A MAJORITY OF THE ELIGIBLE EMPLOYEES VOTED IN THE ELECTION".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: No Certification without an Election

1. On page 9, in line 17, strike "selection" and substitute "ELECTION".

2. On page 15, in line 5, strike "Selection" and substitute "ELECTION".

3. On page 18, strike lines 19 through 27.

4. On page 19, strike lines 1 through 3.

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: No Agency Shop

1. On page 5, strike line 27.

2. On page 6, strike lines 1 through 15.

3. On pages 6 through 9, renumber "(2)", "(3)", "(4)", "(5)", "(6)", "(7)", "(8)", "(9)", "(10)", and "(11)" to be "(1)", "(2)", "(3)", "(4)", "(5)", "(6)", "(7)", "(8)", "(9)", and "(10)".

4. On page 12, in line 16, strike "However, it is not a violation of this duty for a" and strike lines 17 and 18.

5. On page 12, in line 20, strike "or agency shop provisions".

6. On page 12, in line 25, strike "other than an agency shop provision".

7. On page 27, in line 8, strike "However, nothing in this article" and strike lines 9 and 10.

8. On page 30, in lines 4 and 5, strike "an agency shop provision or".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Agency Shop for Employees with
Less than 10 Years' Service

1. On page 6, in line 2, after "employees" add "WITH LESS THAN 10 YEARS' SERVICE IN THE COUNTY GOVERNMENT MERIT SYSTEM".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: All Pensions Non-Bargainable

1. On page 19, strike lines 14 through 18 and line 21.

2. On page 19, in line 20, after "benefits" insert a period.

3. On pages 19 and 20, renumber "(3)", "(4)", "(5)", "(6)", and "(7)" to be "(2)", "(3)", "(4)", "(5)", and "(6)".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Advisory Grievance Arbitration in all Cases Except Discipline and Discharge Cases

1. On page 19, in line 26, strike ", provided that the"; strike lines 27 through 28, and substitute:

"OF DISCHARGE AND DISCIPLINE CASES;

(B) ADVISORY THIRD PARTY ARBITRATION OF OTHER CASES UNLESS THE PARTIES AGREE AT THE TIME A PARTICULAR CASE IS TO BE ARBITRATED THAT THE ARBITRATION WILL BE BINDING; AND".

2. On page 20, strike line 1.

3. On page 20, in line 2, strike "(B)" and substitute "(C)".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Broader "Effects" Bargaining

1. On page 20, strike lines 4 through 6 and substitute:

"(7) THE EFFECT ON EMPLOYEES OF THE EMPLOYER'S EXERCISE OF THE RIGHTS ENUMERATED IN SUBSECTION (B) HEREOF."

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Short First-Year Bargaining

1. On page 22, after line 11 insert:

(A) (1) THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE SHALL UNDERTAKE BARGAINING IMMEDIATELY UPON THE CERTIFICATION OF THE REPRESENTATIVE PURSUANT TO THIS ACT. SUCH BARGAINING SHALL CONTINUE FOR NOT MORE THAN 60 DAYS. EITHER PARTY MAY REQUEST THE ASSISTANCE OF A MEDIATOR IF NO AGREEMENT HAS BEEN REACHED WITHIN 45 DAYS AFTER BARGAINING HAS BEGUN. THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT SHALL COMMENCE IMMEDIATELY UPON THE CONCLUSION OF BARGAINING, AND SHALL TERMINATE AT THE END OF THE FISCAL YEAR.

(2) THE COLLECTIVE BARGAINING AGREEMENT ENTERED INTO PURSUANT TO THIS SUBSECTION WILL INCLUDE NO PROVISIONS WHICH CONCERN SALARIES OR WAGES, RETIREMENT AND PENSION BENEFITS, OR WHICH REQUIRE THAT THE COUNTY COUNCIL APPROPRIATE ADDITIONAL FUNDS, OR ENACT, REPEAL, OR MODIFY ANY COUNTY LAW.

(3) THIS SUBSECTION SHALL BE IMPLEMENTED ONLY DURING AND FOR THE FISCAL YEAR IN WHICH THIS ACT BECOMES EFFECTIVE. COLLECTIVE BARGAINING FOR FUTURE FISCAL YEARS SHALL BE GOVERNED BY THE SUBSECTIONS SET FORTH HEREAFTER.

2. On pages 22 through 26, reletter "(a)", "(b)", "(c)", "(d)", "(e)", "(f)", "(g)", "(h)", "(i)", "(j)", and "(k)" to be "(B)", "(C)", "(D)", "(E)", "(F)", "(G)", "(H)", "(I)", "(J)", "(K)", and "(L)".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Right of Union to Veto Reappointment of Labor Relations Administrator, but not to Formally Nominate Appointees

1. On page 11, in line 7, strike "first".

2. On page 11, in line 9, strike "4" and substitute "5".

2. On page 11, after line 9, insert:

"HOWEVER, SHE WILL NOT BE REAPPOINTED IF, DURING THE PERIOD BETWEEN 60 AND 30 DAYS BEFORE THE EXPIRATION OF THE TERM, THE CERTIFIED REPRESENTATIVE FILES A WRITTEN OBJECTION TO THE REAPPOINTMENT WITH THE COUNTY EXECUTIVE."

3. On page 11, strike lines 10 through 22.

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Council Participation in
Nomination of Appointees

1. On page 11, in line 14, strike "and" and substitute a comma.

2. On page 11, in line 15, after "Officer," insert "AND THE COUNTY COUNCIL,"

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Continuation of State Merit System Employees in Meet & Confer

1. On page 4, in line 22, strike the period and insert "EXCEPT STATE MERIT SYSTEM EMPLOYEES WHO WERE COVERED BY IT PRIOR TO THE ENACTMENT OF ARTICLE VII.".

8L1

WORKSESSION
May 29, 1986
2:00 PM

M E M O R A N D U M

May 27, 1986

TO: County Council

FROM: Arthur W. Spengler, Council Staff Director

SUBJECT: Worksession: Bill 19-86, County Employee Collective Bargaining

The following materials are attached:

- The key issues which the Council must decide (pages i - iii)
- Bill 19-86 (pages 1 thru 32)
- Amendments as Introduced (pages 35 thru 48)
- Summary of the public hearing testimony and correspondence received (pages 49 thru 55)

AWS/jm

B571-95

Key Provisions

1. Two bargaining units -- (Service Labor, and Trades [SLT] and Office, Professional, and Technical [OPT] units), with certain exclusions; no supervisory unit. [Sections 33-102(4), 105, 106].

Amendment: Single unit of all employees. [Amendment #1]. (35)(36)

2. Exclusions from the bargaining units: The employees excluded from the collective bargaining units are in most respects the same as those excluded from the meet and confer units. There have, however, been some additions to the list of those excluded from the units, principally all employees in the Office of the County Executive and the Office of the CAO, all County Council employees, officers in the uniformed services in the rank of sergeant and above, State Merit System employees, all persons in Grade 27 or above, temporary employees, and newly hired employees on probationary status. [Section 33-102(4)].

3. Choice of Collective Bargaining Representative [Section 33-106].

The draft provides for an election in which the employees may express their desires with respect to collective bargaining. The bill further provides that a majority of those voting will determine the outcome. An amendment provides that a majority of the unit must participate in the election for the result to be determinative. [Amendment #2]. (37)

The bill also provides an alternative to an election, which is that the Labor Relations Administrator may accept cards or petitions signed by a majority of the employees designating the incumbent meet and confer Union as the bargaining representative, unless another Union, or 10% of the employees in the unit, have petitioned for an election. An amendment provides that the only method of choice shall be an election. [Amendment #3]. (38)

4. Subjects of Bargaining [Section 33-107(a)].

A. Salaries and wages; hours and working conditions; health and safety.

B. Agency Shop, with religious exception (from state teacher law).

Amendments: (1) No agency shop is permissible, or (2) agency shop is permissible only for new employees and

employees who have not reached 10 years service as of the effective date of the bill. [Amendments #s 4 & 5]. (39) (40)

C. Pensions: (1) The bill states the County must bargain only about defined-contribution pension plans for new employees and for current employees who may choose to switch from their existing defined-benefit plan to a defined-contribution plan. Such bargaining would not occur unless and until the County enacts a law establishing a defined-contributon plan for new employees. The existing defined-benefit plans for current employees would not be subject to bargaining.

Amendment: No bargaining on pensions. [Amendment #6]. (41)

D. Binding grievance arbitration.

Amendment: Binding grievance arbitration for discipline and discharge cases only; for other cases arbitration is advisory only, unless the parties agree the decision in a particular case will be binding. [Amendment #7]. (42)

E. "Effects" bargaining. The bill does not import the provision of the police law which mandates bargaining about "the effect on employees of management's exercise" of all its management rights. The bill confines "effects" bargaining to bargaining about effects on employees when the exercise of management rights causes the loss of bargaining unit jobs. An amendment uses the police law's broad "effects" bargaining language. [Amendment #8]. (43)

5. Management rights [Section 33-107(b)]. The bill adds more detail to the management rights section than is in the police law. Note: One of the stated management rights is the right to contract out, modified by a proviso that no contracting of work which will displace employees may be undertaken by the County without 90 days notice to the Union.

6. Bargaining impasse to be broken with fact-finding, not binding arbitration [Section 33-108]. The fact-finder makes recommendations on disputed issues. Parties bargain 10 more days. If full agreement is not reached, Council gets recommendations of fact-finder and both parties, participates in final bargaining as in police law, and has the final say as in police law.

7. Timing of bargaining [Section 33-108]. Under the bill, bargaining would commence no later than November 1, 1986, if a Union is certified as the bargaining representative. Therefore, bargaining would start with the present Executive, and finish with the new Executive and the new Council. Under this schedule the first contract would be effective July 1, 1987. An amendment provides for bargaining of a short contract for 1986-87 that would contain only non-economic items. [Amendment #9 and #13] (44) (48)

8. Labor Relations Administrator [Section 33-103]. This official, appointed by the Executive and confirmed by the Council, conducts elections and judges "prohibited practices", as in police law. The initial term of the LRA is four years. Further terms are five years. The Union is able, if it chooses, to veto the LRA's reappointment. An amendment gives the Union a formal role in the appointment process. [Amendment #10]. (45)

9. Mandated 75% cost-of-living law is repealed for all County government personnel if and when the employees eligible for collective bargaining choose a Union pursuant to the new law. [p. 5 of bill].

10. Meet and confer stays on books for now, but would become inapplicable if and when employees choose a Union pursuant to the new law. [p. 4 of bill]. An amendment provides that State merit system employees, who are excluded from collective bargaining under the bill, would keep meet and confer rights. [Amendment #12]. (47)

INDEX TO ARTICLE VII - EMPLOYER-EMPLOYEE COLLECTIVE BARGAINING

		Page
§33-101	Declaration of policy	5
102	Definitions	5
103	Labor Relations Administrator	9
104	Employee rights	11
105	Unit for collective bargaining	12
106	Selection, certification, and decertification procedures	15
107	Collective bargaining	19
108	Bargaining, impasse, fact-finding, and legislative procedures	22
109	Prohibited practices	26
110	Expression of views	30
111	Strikes and lockouts	30
112	Effect of prior enactments	31

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Bill No.: 19-86
Concerning: County Employee Collective Bargaining
Draft No. & Date: STAFF - 3/17/86
Introduced: March 25, 1986
Expires: September 25, 1987
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co., FY ___

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Personnel Committee

AN ACT TO:

(1) establish a framework for public employer-employee labor relations;

(2) provide the method for designating an employee organization as the exclusive representative of public employees in the appropriate unit;

(3) provide procedures for collective bargaining of wages, hours, and other terms and conditions of employment;

(4) provide for the appointment of a labor relations administrator;

(5) define the rights of employees, employee organizations, and the public employer;

(6) prohibit certain conduct;

(7) provide procedures for resolving differences between the public employer and employees;

(8) generally assure uninterrupted operation of government services; and

(9) generally provide for the establishment of County employee collective bargaining.

By amending
Chapter 33, Personnel
Section 33-11(b) of the Montgomery County Code

By adding
Chapter 33, Personnel
Sections 33-63A and 33-74(d), and Article VII of the
Montgomery County Code

EXPLANATION:
- **Boldface** indicates matter that is a heading or a defined term.
- Underlining indicates matter added to existing law.
- [[Double Brackets]] indicate matter repealed from existing law.
- CAPITALS indicate matter quoted from existing law which is added to the bill by amendment.
- UNDERLINED CAPITALS indicate matter added to existing law by amendment to the bill.
- ~~Strikes~~ indicate matter deleted from the bill by amendment.
- * * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 33-11(b) is amended to read as follows:

33-11. Classification; salary and wage plans.

(b) **Uniform salary plan.** [[There is hereby established for all classes of positions in the merit system a uniform salary plan entitled the "general salary schedule" which shall contain grades, salary rates and ranges for each grade. All classes of positions shall be assigned an appropriate grade under the general salary schedule by the chief administrative officer. All positions involving comparable duties, experience, responsibilities and authority shall be paid comparable salaries in accordance with the relative value of the services performed. In establishing salary rates, consideration shall be given to experience, prevailing salary rates for comparable services in both the public and private sectors, living costs, and fringe and other benefits received by the employee under the merit system. The chief administrative officer shall, subject to the approval of the county council, promulgate and from time to time amend the general salary schedule, compensation policies for overtime, pay differential and other appropriate salary and wage benefits.]]

(1) Subject to approval by the County Council, the Chief Administrative Officer must issue and periodically amend a uniform salary plan known as the "general salary schedule" for all classes of positions in the merit system.

(2) The general salary schedule must contain grades, salary rates, and salary ranges for each grade.

(3) The Chief Administrative Officer must assign an appropriate grade under the general salary schedule to all classes of positions.

(4) All positions involving comparable duties, experience,

responsibilities, and authority must be paid comparable salaries in accordance with the relative value of the services performed.

(5) In setting salary rates, the Chief Administrative Officer must consider experience, prevailing salary rates for comparable services in both the public and private sectors, living costs, and fringe and other benefits received by the employee under the merit system.

(6) Subject to approval by the County Council, the Chief Administrative Officer must also issue and periodically amend compensation policies for overtime, pay differentials, and other appropriate salary and wage benefits.

(7) Any plan, policy, or schedule issued by the Chief Administrative Officer under this subsection is subject to the limitations in Articles V and VII of this chapter regarding County police department and government employees who are represented by a certified employee organization.

Sec. 2. Sections 33-63A and 33-74(d) and Article VII of Chapter 33 are added as follows:

33-63A. Applicability.

Upon certification that the employees in the units are represented for collective bargaining, this article shall not apply to any person.

33-74. Cost-of-living adjustment.

(d) This section is automatically repealed upon certification that the employees in the units are represented for the purpose of collective bargaining under Article VII of this chapter.

Article VII. County Collective Bargaining.

33-101. Declaration of policy.

It is the public policy of Montgomery County to promote a harmonious, peaceful, and cooperative relationship between the County government and its employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of County government and services. Since unresolved disputes in public service are harmful to the public and to employees, adequate means should be available for preventing disputes and for resolving them when they occur. To that end, it is in the public interest that employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, as authorized by Charter Section 511, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of County employees bargain collectively in good faith without interference with the orderly process of government and that they implement any agreements reached through collective bargaining.

The County Council also recognizes that employee organizations and the County government each possess substantial means for initiating actions on wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the public service, the County Council states that once the employees voluntarily select a representative, collective bargaining shall be used in place of, and not in addition to, existing means for initiating governmental action on subjects that are defined as appropriate for collective bargaining in this article.

33-102. Definitions.

The following terms have the meaning indicated when used in this article:

(1) "**Agency shop**" means a provision in a collective bargaining

⑤

agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require an employee to pay initiation fees, **assessments, fines, or any other collections or their equivalent as a condition of continued employment. A collective bargaining agreement shall not require payment of a service fee by any employee who** opposes joining or financially supporting an employee organization on religious grounds. However, the agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, and to give to the employer and the certified representative written proof of this payment.

(2) **"Certified representative"** means an employee organization chosen to represent one or both units in accordance with the procedures of this article.

(3) **"Collective bargaining"** means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as **defined under this article. This article shall not be interpreted to compel either party to agree to a proposal or make a concession.**

(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 for the following:

(A) Confidential aides to elected officials.

(B) All persons who are not covered by the County government merit

system.

(C) Heads of principal departments, offices, and agencies.

(D) Deputies and assistants to heads of principal departments, offices, and agencies.

(E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

(F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

(G) Persons who work for the office of the County Executive and the office of the Chief Administrative Officer.

(H) Persons who work for the County Council.

(I) Persons who work for the office of the County Attorney.

(J) Persons who work for the Office of Management and Budget.

(K) Persons who work for the Personnel Office.

(L) Persons who work for the Merit System Protection Board.

(M) Persons who work on a temporary, seasonal, or substitute basis.

(N) Newly hired persons on probationary status.

(O) Persons who work for the police department who are represented by a certified employee organization under Article V of this chapter.

(P) Officers in the uniformed services (corrections, fire and rescue, police, office of the sheriff) in the rank of sergeant and above. Subject to any limitations in State law, deputy sheriffs below the rank of sergeant are employees.

(Q) Persons who are members of the State merit system.

(R) Supervisors, which means persons having authority to do any of the following:

(i) Hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively to recommend any one of these actions.

(ii) Direct the activity of three or more employees.

(iii) Adjust or recommend adjustment of grievances.

(S) Persons in grade 27 or above, whether or not they are supervisors.

(5) **"Employee organization"** means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining.

(6) **"Employer"** means the County Executive and his or her designees.

(7) **"Lockout"** means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) **"Mediation"** means an effort by the mediator/fact-finder chosen under this article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) "Strike" means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) "Unit" means either of the units defined in section 33-105.

(11) When either the female or the male pronoun appears herein, it is to be read to include both genders.

33-103. Labor Relations Administrator.

(a) There is established the position of Labor Relations Administrator, to provide for the effective implementation and administration of this article concerning 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:

(1) Periodically adopt, amend, and rescind, under method (1) of section 2A-15 of this Code, regulations and procedures for the implementation and administration of the duties of the Labor Relations Administrator under this article.

(2) Request from the employer or an employee organization, and the employer or such organization may at its discretion provide, any

relevant assistance, service, and data that will enable her properly to carry out her duties under this article.

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents.

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue the certification or decertification.

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure, the Labor Relations Administrator shall defer to that procedure for the resolution of disputes properly submissible to the procedure absent a showing that the deferral results in the application of principles repugnant to this article. Furthermore, the Labor Relations Administrator shall defer to State procedures in those matters which are governed by the Law-Enforcement Officers' Bill of Rights, Article 27, Sections 727-734D, Annotated Code of Maryland.

(6) Determine unresolved issues of a person's inclusion in or exclusion from the units.

(7) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County.

(8) Exercise any other powers and perform any other duties and

functions as may be specified in this article.

(b) (1) The Labor Relations Administrator must be a person with experience as a neutral in the field of labor relations and must not be a person who, on account of vocation, employment, or affiliation, can be classed as a representative of the interest of the employer or any employee organization.

(2) The first Labor Relations Administrator is appointed by the County Executive, with the confirmation of the County Council, serves for a term of 4 years, and is eligible for reappointment.

(3) After the initial term of office of the Labor Relations Administrator provided in subsection (b)(2), the County Executive shall thereafter appoint the Labor Relations Administrator for a term of 5 years from a list of 5 nominees agreed upon by any certified employee representative(s) and the Chief Administrative Officer, which list may include the incumbent Labor Relations Administrator. Such appointment must be confirmed by the County Council. If the County Council does not confirm the appointment, the new appointment shall be from a new agreed list of 5 nominees. Should there be no certified representative, the Labor Relations Administrator shall be appointed under the procedure and for the term set forth in subsection (b)(2).

(c) The Labor Relations Administrator will be paid a daily fee as set forth by contract with the County, and will be reimbursed for necessary expenses.

33-104. Employee rights.

(a) Employees have the right to:

(1) form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) be represented fairly by their certified representative, if any.

(b) The employer has the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties in accordance with this article.

(c) A certified representative serves as the bargaining agent for all employees in the unit for which it is certified and has the duty to represent fairly and without discrimination all employees in the unit without regard to whether the employees are members of the employee organization, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of a certified representative to receive voluntary dues or service fee deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this article. A collective bargaining agreement may not include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision.

33-105. Units for collective bargaining.

(a) There are two units for collective bargaining and for purposes of

certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, excluding the categories listed as exceptions to the definition of employee in section 33-102(4) of this article. The employees are divided into 2 units in accordance with the following descriptions:

(1) **Service, labor, and trades (SLT) unit.** This unit is composed of all eligible classes that are associated with service/ maintenance and skilled crafts. This means job classes in which workers perform duties that result in or contribute to the comfort and convenience of the general public or that contribute to the upkeep and care of buildings, facilities, or grounds of public property. Workers in this group may operate specialized machinery or heavy equipment. These job classes may also require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work that is acquired through on the job training and experience or through apprenticeship or other formal training programs.

(2) **Office, professional, and technical (OPT) unit.** This unit is composed of all eligible classes associated with office, professional, paraprofessional, and technical functions.

(A) **Office.** Job classes in which workers are responsbile for internal and external communication, recording and retrieval of data and/or information, and other paperwork required in an office.

(B) **Professional.** Job classes that require special and theoretical knowledge that is usually acquired through

college training or through work experience and other training that provides comparable knowledge.

(C) **Paraprofessional.** Job classes in which workers perform, in a supportive role, some of the duties of a professional or technician. These duties usually require less formal training and/or experience than is normally required for professional or technical status.

(D) **Technical.** Job classes that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post secondary school education or through equivalent on the job training.

(b) Specific job classes included in these units of representation, and not otherwise excluded under section 33-102(4), shall be based on the designations made by the Chief Administrative Officer under the prior meet and confer process. In the event a new classification is created by the County, or an existing classification's duties and responsibilities are substantially changed, the County Personnel Director must place the classification in one of the units or state that the classification falls within one of the exceptions to the definition of employee under this article within 60 days of the creation or substantial alteration of the class and must publish the decision in the Montgomery County Register. Any individual or certified representative disagreeing with the decision of the Personnel Director may, within 10 days of publication, file objections to the decision with the Labor Relations Administrator, with notice to the Personnel Director.

The Labor Relations Administrator shall promptly decide the

question on the basis of the duties and responsibilities of the job classification, the unit definition, and the community of interests between and among employees in the job classification and collective bargaining unit.

33-106. Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) Any employee organization seeking certification as representative of a unit shall file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The employee organization shall also send a copy of the petition, not including the names of the supporting employees, to the employer. The petition shall contain the uncoerced signatures of 30 percent of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) If an employee organization has been certified, an employee within the unit may file a petition with the Labor Relations Administrator for decertification of this certified representative. The employee shall also send a copy of the petition to the employer and the certified representative, not including the names of the supporting employees. The petition shall contain the uncoerced signatures of 30 percent of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) Petitions may be filed within 30 days following the date on which this article becomes effective. Thereafter, if a lawful collective bargaining agreement is not in effect, petitions may be filed between September 1 and September 30 of any year, but not sooner than 22 months after an election held under this section.

(4) If a lawful collective bargaining agreement is in effect, a petition filed under this section shall not be entertained unless it is filed during September of the final year of the agreement.

(b) If the Labor Relations Administrator determines that a petition is properly supported and timely filed, she shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of any year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the Labor Relations Administrator and shall be conducted by secret ballot at the time and place that she directs. The Labor Relations Administrator may select and retain the services of an agency of the State of Maryland, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least 10 days before the election of at least 10 percent representation of the employees within the unit, and a choice that the employee does not desire

to be represented by any of the named employee organizations.

(3) The employer and each party to the election may be represented by observers selected in accordance with limitations and conditions that the Labor Relations Administrator may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of the challenge or the Labor Relations Administrator's decision as to the validity of the challenge, unless the number of challenges is not determinative, in which case the challenged ballots shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the Labor Relations Administrator in the presence of the observers.

(6) The Labor Relations Administrator shall immediately prepare and serve upon the employer and each of the parties a report certifying the results of the election. If an employee organization receives the votes of a majority of the employees who voted, the Labor Relations Administrator shall certify the employee organization so elected as the exclusive agent.

(7) If no employee organization receives the votes of a majority of the employees who voted, the Labor Relations Administrator shall not certify a representative. Unless a majority of the employees who vote choose "no representative", a runoff election shall be conducted. The runoff election shall contain the 2 choices that received the largest and second largest number of votes in the original election.

(c) The Labor Relations Administrator's certification of results is final unless within 7 days after service of the report and the certification, any party serves on all other parties and files with the Labor Relations Administrator objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds for the objections. The Labor Relations Administrator shall investigate the objections and, if substantial factual issues exist, shall hold a hearing. Otherwise, she may determine the matter without a hearing. The Labor Relations Administrator may invite, either by rule or by invitation, written or oral argument to assist her in determining the merits of the objections. If the Labor Relations Administrator finds that the election was conducted in substantial conformity with this article, she shall confirm the certification initially issued. If the Labor Relations Administrator finds that the election was not held in substantial conformity with this article, then she shall hold another election under this section.

(d) The cost of conducting an election shall be paid by the County.

(e) If, during the 30 days following the effective date of this article, a petition is filed by the incumbent representative of unit employees certified under Article IV of this chapter, and no other employee organization files a valid petition, and no petition calling for an election signed by 10 percent of unit employees has been filed with the Labor Relations Administrator, the incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the Labor Relations Administrator and dated after the enactment of this article, that a majority of the

employees in the unit desire to be represented by the incumbent representative for the purposes of collective bargaining under the provisions of this article.

33-107. Collective bargaining.

(a) Duty to bargain; matters subject to bargaining.

Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects:

(1) Salary and wages, including the increase and/or decrease in the salary and wages budget, and the percentage of any increase in the salary and wages budget that will be devoted to merit increments and cash awards, provided that salaries and wages shall be uniform for all employees in the same classification.

(2) With respect to pension and retirement benefits, only defined-contribution plans for new employees or current employees who choose to transfer from a defined-benefit plan, provided that bargaining rights regarding such plans will not accrue unless and until the County has enacted a law establishing such plans.

(3) Employee benefits such as insurance, leave, holidays, and vacations, but not including pension and retirement benefits except to the extent stated in subsection (a)(2).

(4) Hours and working conditions.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include:

(A) binding third party arbitration, provided that the arbitrator shall have no authority to amend, add to, or subtract from the provisions of the collective bargaining

agreement; and

(B) provisions for exclusivity of forum.

(6) Matters affecting the health and safety of employees.

(7) Amelioration of the effect on employees when the exercise of employer rights listed in subsection (b) causes a loss of existing jobs in the unit.

(b) 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 90 days prior to signing the contract 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 law, Federal or State law, or the terms

of the collective bargaining agreement.

(c) **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.

(d) 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.

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

(a) Collective bargaining shall begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative and shall be finished on or before January 15. The resolution of a bargaining impasse or fact-finding shall be finished by February 1.

(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 year or for more than 3 years. All agreements become effective July 1 and end June 30.

(c) A collective bargaining agreement becomes effective only after ratification by the employer and by the certified representative. The certified representative may provide its own rules for ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator shall appoint a mediator/fact-finder, who may be a

person recommended to her by both parties. The mediator/fact-finder shall be available during the period from January 2 to February 1. Fees and expenses of the mediator/fact-finder shall be shared equally by the employer and the certified representative.

(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/fact-finder, or the parties may jointly request his services before declaration of an impasse. If the parties do not reach an agreement by January 15, an impasse exists.

(2) The dispute shall be submitted to the mediator/fact-finder whenever an impasse has been reached, or before that as provided in subsection (e)(1). The mediator/fact-finder shall engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will tend to bring about the settlement of the dispute.

(3) If and when the mediator/fact-finder finds in his sole discretion that the parties are at a bona fide impasse, he shall implement the following fact-finding process:

(A) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.

(B) He may require the parties to submit evidence or make oral or written argument in support of their proposals. He may hold a hearing for this purpose at a time, date, and place selected by him. This hearing shall not be open to the public.

(C) On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.

(D) In making findings of fact and recommendations, the mediator/fact-finder may take into account only the following factors:

(i) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

(ii) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland.

(iii) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

(iv) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

(v) The interest and welfare of the public.

(vi) The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services provided by

the employer.

(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator/fact-finder, the report of the mediator/fact-finder shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.

(g) The budget that the employer submits to the Council shall include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed term or condition submitted to the Council that requires an appropriation of funds or the enactment, repeal, or modification of any County law or regulation shall be identified to the Council by the employer. The employer shall make a good faith effort to have any term or condition that has been agreed to implemented by Council action.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement and the recommendations for resolving bargaining disputes.

(i) On or before April 15, the Council shall indicate by a majority vote its intention to appropriate or otherwise implement the items that have been agreed to, or its intention not to do so, and shall state its reasons for any intent to reject any part of the items that have been agreed to. The Council shall also indicate by a majority vote

its position on disputed matters.

(j) Then the Council shall designate a representative to meet with the parties and present the Council's views in the parties' further negotiations on disputed matters and/or agreed matters that the Council has indicated its intention to reject. The results of the negotiation, whether a complete or a partial agreement, shall be submitted to the Council on or before May 1. The Council may extend this deadline for no more than one week. Any agreement shall provide for automatic reduction or elimination of wage and/or benefits adjustments if:

(1) the Council does not take action necessary to implement the agreement, or a part of it;

(2) funds are not appropriated; or

(3) lesser amounts than those stated in the agreement are appropriated.

(k) The Council shall take whatever actions it considers required by the public interest with respect to matters still in dispute between the parties. However, those actions shall not be part of the agreement between the parties unless the parties specifically incorporate them in the agreement.

33-109. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from any of the following:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under this article.

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other

support to it, under an agreement or otherwise. However, the employer and a certified representative may agree to and apply an agency shop provision under this article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of County facilities for communicating with employees.

(3) Encouraging or discouraging membership in any employee organization by discriminating in hiring, tenure, wages, hours, or conditions of employment. However, nothing in this article precludes an agreement from containing a provision for an agency shop.

(4) Discharging or discriminating against a public employee because she or he files charges, gives testimony, or otherwise lawfully aids in the administration of this article.

(5) Refusing to bargain collectively with the certified representative.

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement that has been agreed to in all respects.

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement.

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached between the employer and the certified representative under this article.

(9) Engaging in a lockout of employees.

(b) Employee organizations, their agents, representatives, and persons who work for them are prohibited from any of the following:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this article.

(2) Restraining, coercing, or interfering with the employer in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Refusing to bargain collectively with the employer if the employee organization is the certified representative.

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects.

(5) Hindering or preventing, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or exit from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance by any person, public or private.

(6) Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the employer.

(7) Taking or retaining unauthorized possession of property of the employer, or refusing to do work or use certain goods or materials as lawfully required by the employer.

(8) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither

performed nor to be performed.

(c) A charge of prohibited practice may be filed by the employer, an employee organization, or any individual employee. The charge or charges shall be filed with the Labor Relations Administrator, and copies shall be sent to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the Labor Relations Administrator to investigate the charge. The Labor Relations Administrator may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The Labor Relations Administrator has the authority to maintain whatever independent investigation she determines is necessary and to develop regulations for an independent investigation. If, upon investigation, the Labor Relations Administrator finds that a charge is sufficiently supported to raise an issue of fact or law, she shall, if she is unable to achieve settlement or resolution of the matter, hold a hearing on the charge after notification to the parties. In any hearing, charging parties shall present evidence in support of the charges, and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense against the charges.

(d) If the Labor Relations Administrator determines that the person charged has committed a prohibited practice, she shall make findings of fact and conclusions of law and may issue an order requiring the person charged to cease and desist from the prohibited practice, and may take affirmative actions that will remedy the violation of this article. Remedies of the Labor Relations Administrator include

reinstating employees with or without back pay, making employees whole for any loss relating to County employment suffered as a result of any prohibited practices, or withdrawing or suspending the employee organization's authority to negotiate or continue an agency shop provision or a voluntary dues or service fee deduction provision. If the Labor Relations Administrator finds that the party charged has not committed any prohibited practices, she shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The Labor Relations Administrator shall not receive or entertain charges based upon an alleged prohibited practice occurring more than 6 months before the filing of the charge.

33-110. Expression of views.

(a) The expression or dissemination of any views, argument, or opinion, whether orally, in writing, or otherwise, does not constitute and is not evidence of a prohibited practice under any of the provisions of this law, nor is it grounds for invalidating any election conducted under this law if the expression or dissemination does not contain a threat of reprisal or promise of benefit.

(b) Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of the associations or are of particular applicability to it or its members.

33-111. Strikes and lockouts.

(a) An employee or employee organization shall not either directly or indirectly cause, instigate, encourage, condone, or engage in any

strike, nor the employer in any lockout. An employee or employee organization shall not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when that employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during the strike.

(c) If an employee or employee organization violates the provisions of this section, the employer, after adequate notice and a fair hearing before the Labor Relations Administrator who finds that the violations have occurred and finds that any or all of the following actions are necessary in the public interest, may impose any of the following sanctions, subject to the Law-Enforcement Officers' Bill of Rights, Article 27, Sections 727-734D, Annotated Code of Maryland:

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in the conduct.

(2) Terminate or suspend the employee organization's dues deduction privilege, if any.

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of 2 years.

(d) This article does not prohibit an employer or a certified employee organization from seeking any remedy available in a court of competent jurisdiction.

33-112. Effect of prior enactments.

Any laws, executive orders, or regulations adopted by the County and any

department or agency of the County that are or may be considered inconsistent with the provisions of this article shall not be held to be repealed or modified until they are specifically repealed or modified by the County or any department or agency of the County.

Sec. 3. Severability.

If a court holds that part of this act is invalid, the invalidity does not affect other parts.

Sec. 4. Effective Date.

This act takes effect 91 days after it becomes law.

Approved:

_____ _____

William E. Hanna, Jr., President, County Council — Date

Approved:

_____ _____

Charles W. Gilchrist, County Executive — Date

This is a correct copy of Council action.

_____ _____

Kathleen A. Freedman, Secretary, County Council — Date

lr 85 024

LEGISLATIVE REQUEST REPORT

Bill 19-86
County Employee Collective Bargaining

DESCRIPTION: This bill:

(1) establishes a framework for public employer-employee labor relations;
(2) provides the method for designating an employee organization as the exclusive representative of public employees in the appropriate unit;
(3) provides procedures for collective bargaining of wages, hours, and other terms and conditions of employment;
(4) provides for the appointment of a labor relations administrator;
(5) defines the rights of employees, employee organizations, and the public employer;
(6) prohibits certain conduct;
(7) provides procedures for resolving differences between the public employer and employees; and
(8) generally assures uninterrupted operation of government services.

PROBLEM: Under Article IV of Chapter 33 (Personnel) eligible employees presently "meet and confer" with the County through their representative. However, County law does not implement the authority for collective bargaining found in the 1984 Charter amendments in §511.

GOALS AND OBJECTIVES: It is the public policy of Montgomery County to promote a harmonious, peaceful, and cooperative relationship between the County government and its employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of County government and services.

COORDINATION:

FISCAL IMPACT: Not available.

ECONOMIC IMPACT: Not available.

EVALUATION: Not available.

EXPERIENCE ELSEWHERE: Not available.

SOURCE OF INFORMATION: Arthur W. Spengler
Council Staff Director (251-7900)

William Willcox, Esq.
Special Counsel (457-6100)

APPLICATION WITHIN MUNICIPALITIES: **Not applicable.**

PENALTIES: **Not applicable.**

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: One Unit Instead of Two Units

1. On page 4, strike lines 21 and 22, and substitute:

"UPON CERTIFICATION OF AN EMPLOYEE ORGANIZATION AS THE UNIT'S REPRESENTATIVE FOR COLLECTIVE BARGAINING, THIS ARTICLE SHALL NOT APPLY TO ANY PERSON."

2. On page 6, in line 17, strike "one or both units" and substitute "THE UNIT".

3. On page 9, in line 11, strike "either of the units defined in section 33-105" and substitute "ALL EMPLOYEES AS DEFINED IN THIS SECTION".

4. On page 10, in line 23, strike "units" and substitute "UNIT".

5. On page 12, in line 12, strike "for which it is certified".

6. On page 12, in line 19, strike "a" and substitute "THE".

7. On page 12, in line 26, strike "Units" and substitute "UNIT".

8. On page 12, in line 27, strike "are two units" and substitute "IS ONE UNIT".

9. On page 13, in line 1, strike "Persons in these units are" and substitute "THIS UNIT IS DEFINED AS".

10. On page 13, in line 5, strike "The employees are divided into 2" and lines 6 through 27.

11. On page 14, strike lines 1 through 11.

12. On page 14, in line 12, strike "these units of represenation" and substitute "THE UNIT".

13. On page 14, in line 18, strike "in one of the units" and substitute "THE UNIT".

14. On page 15, in line 7, strike "a" and substitute "THE".

15. On page 15, in line 10, after "representative of" strike "a" and substitute "THE".

16. On page 27, in line 2, strike "a" and substitute "THE".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Majority of Unit Must Participate
in Certification Election

1. On page 17, in line 20, after "agent" insert ", PROVIDED THAT A MAJORITY OF THE ELIGIBLE EMPLOYEES VOTED IN THE ELECTION".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: No Certification without an Election

1. On page 9, in line 17, strike "selection" and substitute "ELECTION".

2. On page 15, in line 5, strike "Selection" and substitute "ELECTION".

3. On page 18, strike lines 19 through 27.

4. On page 19, strike lines 1 through 3.

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: No Agency Shop

1. On page 5, strike line 27.

2. On page 6, strike lines 1 through 15.

3. On pages 6 through 9, renumber "(2)", "(3)", "(4)", "(5)", "(6)", "(7)", "(8)", "(9)", "(10)", and "(11)" to be "(1)", "(2)", "(3)", "(4)", "(5)", "(6)", "(7)", "(8)", "(9)", and "(10)".

4. On page 12, in line 16, strike "However, it is not a violation of this duty for a" and strike lines 17 and 18.

5. On page 12, in line 20, strike "or agency shop provisions".

6. On page 12, in line 25, strike "other than an agency shop provision".

7. On page 27, in line 8, strike "However, nothing in this article" and strike lines 9 and 10.

8. On page 30, in lines 4 and 5, strike "an agency shop provision or".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Agency Shop for Employees with
Less than 10 Years' Service

1. On page 6, in line 2, after "employees" add "WITH LESS THAN 10 YEARS' SERVICE IN THE COUNTY GOVERNMENT MERIT SYSTEM".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: All Pensions Non-Bargainable

1. On page 19, strike lines 14 through 18 and line 21.

2. On page 19, in line 20, after "benefits" insert a period.

3. On pages 19 and 20, renumber "(3)", "(4)", "(5)", "(6)", and "(7)" to be "(2)", "(3)", "(4)", "(5)", and "(6)".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Advisory Grievance Arbitration in all Cases Except Discipline and Discharge Cases

1. On page 19, in line 26, strike ", provided that the"; strike lines 27 through 28, and substitute:

"OF DISCHARGE AND DISCIPLINE CASES;

(B) ADVISORY THIRD PARTY ARBITRATION OF OTHER CASES UNLESS THE PARTIES AGREE AT THE TIME A PARTICULAR CASE IS TO BE ARBITRATED THAT THE ARBITRATION WILL BE BINDING; AND".

2. On page 20, strike line 1.

3. On page 20, in line 2, strike "(B)" and substitute "(C)".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Broader "Effects" Bargaining

1. On page 20, strike lines 4 through 6 and substitute:

"(7) THE EFFECT ON EMPLOYEES OF THE EMPLOYER'S EXERCISE OF THE RIGHTS ENUMERATED IN SUBSECTION (B) HEREOF."

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Short First-Year Bargaining

1. On page 22, after line 11 insert:

(A) (1) THE EMPLOYER AND THE CERTIFIED REPRESENTATIVE SHALL UNDERTAKE BARGAINING IMMEDIATELY UPON THE CERTIFICATION OF THE REPRESENTATIVE PURSUANT TO THIS ACT. SUCH BARGAINING SHALL CONTINUE FOR NOT MORE THAN 60 DAYS. EITHER PARTY MAY REQUEST THE ASSISTANCE OF A MEDIATOR IF NO AGREEMENT HAS BEEN REACHED WITHIN 45 DAYS AFTER BARGAINING HAS BEGUN. THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT SHALL COMMENCE IMMEDIATELY UPON THE CONCLUSION OF BARGAINING, AND SHALL TERMINATE AT THE END OF THE FISCAL YEAR.

(2) THE COLLECTIVE BARGAINING AGREEMENT ENTERED INTO PURSUANT TO THIS SUBSECTION WILL INCLUDE NO PROVISIONS WHICH CONCERN SALARIES OR WAGES, RETIREMENT AND PENSION BENEFITS, OR WHICH REQUIRE THAT THE COUNTY COUNCIL APPROPRIATE ADDITIONAL FUNDS, OR ENACT, REPEAL, OR MODIFY ANY COUNTY LAW.

(3) THIS SUBSECTION SHALL BE IMPLEMENTED ONLY DURING AND FOR THE FISCAL YEAR IN WHICH THIS ACT BECOMES EFFECTIVE. COLLECTIVE BARGAINING FOR FUTURE FISCAL YEARS SHALL BE GOVERNED BY THE SUBSECTIONS SET FORTH HEREAFTER.

2. On pages 22 through 26, reletter "(a)", "(b)", "(c)", "(d)", "(e)", "(f)", "(g)", "(h)", "(i)", "(j)", and "(k)" to be "(B)", "(C)", "(D)", "(E)", "(F)", "(G)", "(H)", "(I)", "(J)", "(K)", and "(L)".

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Right of Union to Veto Reappointment of Labor Relations Administrator, but not to Formally Nominate Appointees

1. On page 11, in line 7, strike "first".

2. On page 11, in line 9, strike "4" and substitute "5".

2. On page 11, after line 9, insert:

"HOWEVER, SHE WILL NOT BE REAPPOINTED IF, DURING THE PERIOD BETWEEN 60 AND 30 DAYS BEFORE THE EXPIRATION OF THE TERM, THE CERTIFIED REPRESENTATIVE FILES A WRITTEN OBJECTION TO THE REAPPOINTMENT WITH THE COUNTY EXECUTIVE."

3. On page 11, strike lines 10 through 22.

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Council Participation in
Nomination of Appointees

1. On page 11, in line 14, strike "and" and substitute a comma.

2. On page 11, in line 15, after "Officer," insert "AND THE COUNTY COUNCIL,"

Amendments to Bill 19-86
County Employee Collective Bargaining

Subject: Continuation of State Merit System Employees in Meet & Confer

1. On page 4, in line 22, strike the period and insert "EXCEPT STATE MERIT SYSTEM EMPLOYEES WHO WERE COVERED BY IT PRIOR TO THE ENACTMENT OF ARTICLE VII.".

Amendments to Bill 19-86
County Employee Collective Bargaining

By: Councilmember Gelman

1. On page 22, after line 11 insert:

"(a) (1) THIS SUBSECTION APPLIES ONLY DURING THE FISCAL YEAR IN WHICH THIS ARTICLE TAKES EFFECT. THEREAFTER, THE FOLLOWING SUBSECTIONS GOVERN COLLECTIVE BARGAINING.

(2) THE EMPLOYER AND A CERTIFIED REPRESENTATIVE MUST START BARGAINING AS SOON AS AN EMPLOYEE ORGANIZATION IS CERTIFIED AS THE EXCLUSIVE REPRESENTATIVE OF A BARGAINING UNIT UNDER THIS ARTICLE. THIS BARGAINING MUST NOT CONTINUE FOR MORE THAN 60 DAYS. EITHER PARTY MAY REQUEST THE ASSISTANCE OF A MEDIATOR IF THE PARTIES HAVE NOT REACHED AN AGREEMENT WITHIN 45 DAYS AFTER BARGAINING BEGINS.

(3) THE TERM OF A COLLECTIVE BARGAINING AGREEMENT UNDER THIS SUBSECTION STARTS AS SOON AS THE PARTIES REACH AN AGREEMENT AND ENDS AT THE CLOSE OF THE FISCAL YEAR.

(4) A COLLECTIVE BARGAINING AGREEMENT UNDER THIS SUBSECTION MUST NOT INCLUDE PROVISIONS THAT CONCERN SALARIES, WAGES, OR RETIREMENT AND PENSION BENEFITS, OR THAT REQUIRE THE COUNTY COUNCIL TO APPROPRIATE FUNDS OR TO ENACT, REPEAL, OR MODIFY ANY COUNTY LAW. EXCEPT AS OTHERWISE PROVIDED, SUBJECTS OF BARGAINING FOR AN AGREEMENT UNDER THIS SUBSECTION MUST INCLUDE:

(A) MECHANICS OF CONTRACT ADMINISTRATION.

(B) DISCRIMINATION ISSUES.

(C) WORKING CONDITIONS.

(D) UNION SECURITY.

(E) LEAVE, HOLIDAYS, AND VACATIONS.

(F) UNION RIGHTS AND PRIVILEGES.

(G) GRIEVANCE ARBITRATION."

2. On pages 22 through 26, reletter "(a)", "(b)", "(c)", "(d)", "(e)", "(f)", "(g)", "(h)", "(i)", "(j)", and "(k)" to be "(b)", "(c)", "(d)", "(e)", "(f)", "(g)", "(h)", "(i)", "(j)", "(k)", and "(l)".

Issue	Mr. Garrett Personnel Director	Mr. Thompson MCGEO	Mr. Williams Maryland AFL-CIO	Mr. Shaw Ride-On	Mr. Keeney MNCPPC FOP	Mr. Simon MCEA
# of units	2	2	2	-	-	-
Exclusions from Units*	as in bill	°include State employees °include Grade 27 and above	°include all except confidential employees °questions definition of supervisor	-	°include State employees °include Grade 27 and above °include Sgts. and Lieutenants	°include State employees °include Grade 27 and above
Selection of Representative	election by a majority of those voting	°support check-off designating incumbent union °oppose 10% call for an election	°oppose majority participation	°support check-off °oppose 10% call for an election	°oppose 10% call for an election	°support check-off °oppose 10% call for an election
Agency Shop	bargainable	bargainable	bargainable	bargainable	-	-
Pensions	bargain fully including defined-benefit	bargain fully including defined-benefit	fully bargainable	fully bargainable	fully bargainable	fully bargainable
Effects Bargaining**	as stated in the bill in Sec. 107(a)(7)	reject bill and use police bargaining provisions	-	-	-	-
Employer Rights	as in the bill Sec. 107(b)	-	questions #7 and #17	-	-	-
Immediate Interim Bargain	oppose	support for non-economic issues	-	-	-	-
Factfinding for Bargaining Impasse	support fact-finding	-	eliminate items which limit the mediator; keep Council out of process	use binding arbitration	use binding arbitration	use binding arbitration
Meet and Confer	-	Maintain for those not in collective bargaining	-	-	-	-

* Others who spoke against the exclusion of Grade 27 and above were:
Dr. Robert Allnutt, Mr. Ron Phillips, Dr. Rochelle Herman, Dr. Mauricio Cortina, and Ms. Heidi Hsia.

** Dr. Robert Allnutt supports broader effects bargaining.

Other Testimony

1. The following expressed support for collective bargaining, citing examples of how it will help:

   Keith Prouty, Individual
   Sarita Kubli, Libraries Staff Association
   Darlene Taper, Staff Nurse Council
   Lulu Richardson, Individual, Health Department
   Diana Tash, Individual, Health Department
   Irv Riskind, Individual, Health Department
   Maureen Walter, Police Service Aides Association
   Vincent Foo, MCCSSE
   Dave Robbins, Individual
   Earl Casey, Food and Allied Service Trades Council
   Maria Coleman, Latin American Council for Advancement
   Mark Simon, Building and Construction Trades Council
   Roger Wolfe, Equipment Section, DOT

2. Mr. Harold Wirth, representing the Taxpayers' League, expressed opposition to collective bargaining.

3. Mr. Josh Williams (AFL-CIO) felt the prohibited practices language (Sec. 33-109) is too strident.

Correspondence Received

Requested Amendments

1. Dr. Thomas Sumners, a Grade 27 Psychologist, wishes to be included in Collective Bargaining.

2. Denise Morton, a member of the dental staff, wishes to have "contracting out" as a bargainable issue.

3. 87 letters were received from DSS employees asking to be included in collective bargaining.

Opposition

1. Ms. Claire Gunster-Kuby:

   - opposes forced requirement for an agency shop;
   - does not want those not covered by bargaining to have bargaining agreement forced on them;
   - thinks employees are compensated fairly.

2. Ms. Patricia Ross has the following concerns:

   - wants a majority participation in any election; a few should not be able to choose for the entire workforce;
   - current employees must be given a choice for union membership; opposes paying a union fee to keep her present job; supports no agency shop;
   - union should not be able to bargain pensions; supports all pensions being non-bargainable;
   - opposes an interim bargain in an election year.

3. Ms. Margaret Mansfield has following suggestions:

   - exclude Administrative Aides from bargaining;
   - require majority participation in an election.

AWS/jm
B725/2

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April 18, 1986

Mr. William P. Garrett
Director of Personnel
Montgomery County Government
101 Monroe Street
Rockville, Maryland 20850

Dear Bill:

The purpose of this letter is to confirm the status of the merit system and its implementing rules and regulations once the proposed collective bargaining bill becomes law.

It is our understanding that proposed Section 33-112 of the collective bargaining bill means inter alia, that all merit system rules, policies, and procedures in effect at the time this bill becomes law, and which concern subjects for bargaining, will continue in effect unless and until they are directly amended or affected by a collective bargaining agreement executed by the County and a certified representative.

Section 33-112 exists, in part, to ensure that there will not be a "void" in the merit system inadvertently created as the result of a time delay between the effective date of the law and the first collective bargaining agreement.

If you or anyone else who receives a copy of this letter have any disagreement with our understanding of the meaning of Section 33-112, please inform me as soon as possible.

Sincerely,

William W. Thompson, II

WWT:dy

cc: Hon. Charles W. Gilchrist
William H. Willcox, Esquire
Art Spengler
Jim Torgesen

Montgomery County Government

April 25, 1986

Mr. William Thompson
Zwerdling, Paul, Leibig, Kahn and Thompson, P.C.
1025 Connecticut Avenue, N.W.
Suite 307
Washington D.C. 20036

Dear Bill:

This is a response to your letter dated April 18, 1986. As you are perhaps aware, the full Council will begin deliberation of the draft bargaining law in work sessions in late May. As a result of those worksessions, there may be amendments to the draft resulting in additions or deletions of language which would otherwise alter the meaning of the bill as it is now constituted. We believe that it is therefore premature to make any assumptions as to the status of " merit system rules, policies and procedures" during the initial stages of the law, although your position is not unreasonable.

Nevertheless, our reading of Section 33-112 does not coincide with your interpretation that "all merit system rules, policies and procedures in effect at the time this bill becomes law, and which concern subjects of bargaining will continue in effect unless and until they are directly amended or affected by a collective bargaining agreement...." To the contrary, the bill currently states that laws, executive orders, regulations adopted by the County that "are or may be considered inconsistent with the provisions of this article shall not be repealed or modified until they are specifically repealed or modified by the County or any department or agency of the County." The language appears to permit inconsistences to remain in effect until they are specifically repealed or modified. I would recommend that this issue be raised at future Council work sessions so that the language can be clarified and/or the legislative intent be further understood.

Sincerely,

William P. Garrett
Personnel Director

0284B
WPG:JET

cc: William H. Wilcox
Arthur W. Spengler

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May 8, 1986

William H. Willcox, Esquire
Reed, Smith, Shaw & McClay
1150 Connecticut Avenue, N.W.
Washington, DC 20036

Re: Collective bargaining bill and the status of the Merit System

Dear Bill:

In reference to my letter of April 18th and Garrett's letter of April 25th, in response I would like to suggest that the bill might be clarified at section 33-112, to read as follows:

> Any laws, executive orders, or regulations of the County and any department or agency of the County that are or may be considered inconsistent with the provisions of this article, shall not be held to be repealed or modidfied until they are specifically repealed or modified by the County, any department or agency of the County, or the provisions of the collective bargaining agreement between the County and a certified representative.

I would welcome any comments you might have.

Very truly yours,

William W. Thompson, II

WWT/kem

cc: Arthur W. Spengler
William P. Garrett

(55)

Positions excluded from Collective Bargaining by Grade 27 and Above exclusion:

5	Architects	Grade 27
3	Dentist II	Grade 29
7	Physician I	Grade 33
7	Physician II	Grade 34
22		

AWS/jm
B725/1

GRADE	04		
	1060	N	RECREATOR IV
GRADE	05		
	1175	N	LIBRARY DESK ASSISTANT
	2412	N	LABORATORY HELPER
	2877	N	SOCIAL SERVICES AIDE I
	9218	N	GENERAL CLERK I
	9252	N	MESSENGER-CLERK
GRADE	06		
	0666	N	RETIRED SR VOLUNTEER PROGRAM AIDE
	4535	N	PARKING CASHIER I
	5309	N	BUILDING SERVICE WORKER I
	5315	N	BUILDING ATTENDANT
	9226	N	CLERK-TYPIST I
GRADE	07		
	2876	N	SOCIAL SERVICES AIDE II
	3515	N	CROSSING GUARD
	5232	N	PUBLIC SERVICE WORKER I
	5242	N	MOTOR POOL ATTENDANT I
	5245	N	GENERAL MAINTENANCE WORKER I
	9007	N	DATA PREPARATION OPERATOR I
	9217	N	GENERAL CLERK II
GRADE	08		
	1168	N	LIBRARY MESSENGER/CLERK
	2110	N	DENTAL ASSISTANT
	3416	N	CENTREX TELEPHONE OPERATOR
	4042	N	ENGINEER AIDE I
	4468	N	TRANSIT AIDE
	5180	N	PRINTING SERVICES AIDE
	5190	N	MAIL CLERK
	5231	N	*PUBLIC SERVICE WORKER II
	5244	N	*GENERAL MAINTENANCE WORKER II
	5308	N	*BUILDING SERVICE WORKER II
	8117	N	TRK DRVR HLPR/WAREHOUSE WKR

GRADE 08 (CONTINUED)

9225	N	*CLERK-TYPIST II
9250	N	DRIVER-MESSENGER

GRADE 09

0132	N	PUBLIC SERVICES INTERN
0720	N	LEGISLATIVE INTERN
1148	N	MINI-COMPUTER SYSTEM OPERATOR
2875	N	SOCIAL SERVICES AIDE III
4534	N	PARKING CASHIER II
5012	N	MECHANICS HELPER
5054	N	APPRENTICE PAINTER
5178	N	PRINTING EQUIPMENT OPERATOR I
5227	N	APPRENTICE SIGN FABRICATOR
5241	N	MOTOR POOL ATTENDANT II
9006	N	*DATA PREPARATION OPERATOR II
9012	N	DATA CONTROL SPECIALIST I
9107	N	ADMINISTRATIVE AIDE I
9205	N	OFFICE ASSISTANT I
9237	N	SUPPLY CLERK I
9264	N	WORD PROCESSING OPERATOR I

GRADE 10

0623	N	COMMUNITY SERVICES AIDE I
0881	N	INFORMATION & REFERRAL AIDE I
1166	N	LIBRARY ASSISTANT I
1170	N	BOOKMOBILE DRIVER CLERK
2702	N	HEALTH ROOM TECHNICIAN I
2704	N	HEALTH CLINIC TECHNICIAN
2707	N	HEARING & VISION SCREENING TECHNICIAN
3098	N	FINGERPRINT IDENTIFICATION CLERK
3428	N	ELECTRONICS EQUIPMENT MECHANIC
3510	N	PARKING ENFORCEMENT OFFICER I
3512	N	PHOTOGRAPHIC AIDE
4525	N	PARKING METER COLLECTOR-REPAIRER I
5019	N	AUTOMOTIVE MAINTENANCE DISPATCHER
5034	N	APPRENTICE MASON
5044	N	APPRENTICE CARPENTER
5064	N	APPRENTICE PLUMBER
5074	N	APPRENTICE ELECTRICIAN
5084	N	APPRENTICE H V A C MECHANIC
5216	N	APPRENTICE TREE CLIMBER
8017	N	LIQUOR STORE CLERK I
9106	N	*ADMINISTRATIVE AIDE II

GRADE 10 (CONTINUED)

9204	N	OFFICE ASSISTANT II
9262	N	*WORD PROCESSING OPERATOR II

GRADE 11

0687	N	CONSUMER AFFAIRS AIDE I
1019	N	RECREATION OUTREACH WORKER I
3509	N	PARKING ENFORCEMENT OFFICER II
3535	N	SECURITY OFFICER I
4321	N	REFUSE DISPOSAL CASHIER I
4466	N	BUS OPERATOR
5011	N	APPRENTICE MECHANIC
5016	N	APPRENTICE AUTOBODY REPAIRER
5177	N	*PRINTING EQUIPMENT OPERATOR II
5230	N	PUBLIC SERVICE WORKER III
5243	N	GENERAL MAINTENANCE WORKER III
8114	N	CONSOLE OPERATOR
9005	N	DATA PREPARATION OPERATOR III
9011	N	*DATA CONTROL SPECIALIST II
9105	N	ADMINISTRATIVE AIDE III
9203	N	OFFICE ASSISTANT III
9236	N	*SUPPLY CLERK II

GRADE 12

0522	N	COMPUTER OPERATOR I
0622	N	COMMUNITY SERVICES AIDE II
0880	N	INFORMATION & REFERRAL AIDE II
1160	N	LIBRARY TECHNICIAN
1165	N	LIBRARY ASSISTANT II
2105	N	DENTAL HYGIENIST
2420	N	X-RAY TECHNICIAN
2701	N	HEALTH ROOM TECHNICIAN II
2703	N	MENTAL HEALTH ASSISTANT
4041	N	*ENGINEER AIDE II
4047	N	DRAFTER I
4459	N	TRANSIT INFORMATION ASSISTANT
4523	N	PARKING METER MECHANIC I
4524	N	PARKING METER COLLECTOR/REP II
5113	N	EQUIPMENT OPERATOR I
5307	E	BUILDING CLEANING SUPERVISOR I
8016	N	LIQUOR STORE CLERK II
8120	N	WAREHOUSE EQUIPMENT OPERATOR
9104	N	ADMINISTRATIVE AIDE IV
9202	N	OFFICE ASSISTANT IV
9235	N	SUPPLY CLERK III

GRADE 13

3425	N	COMMUNICATIONS EQUIPMENT TECHNICIAN I
3501	N	POLICE SERVICES AIDE
3503	N	ABANDONED VEHICLE SPECIALIST
3506	N	PARKING ENFORCEMENT OFFICER III
4320	N	REFUSE DISPOSAL CASHIER II
4458	N	TRANSIT EQUIPMENT TECHNICIAN
5053	N	*PAINTER I
5112	N	EQUIPMENT OPERATOR II
5213	N	WORK FORCE LEADER I
5215	N	*TREE CLIMBER
5226	N	*SIGN FABRICATOR I
5229	N	PUBLIC SERVICE CRAFTSWORKER
9270	N	RECORDS CENTER ASSISTANT

GRADE 14

0215	N	ACCOUNTING ASSISTANT
0521	N	*COMPUTER OPERATOR II
0534	N	COMPUTER ANALYST/PROGRAMMER TRAINEE
0618	N	RELOCATION COUNSELOR
0619	N	COMMUNITY ACTIVITIES COORDINATOR
0621	N	COMMUNITY SERVICES AIDE III
0663	N	PROGRAM SPECIALIST
0686	N	*CONSUMER AFFAIRS AIDE II
0867	N	AUDIOVISUAL PRODUCTION SPECIALIST
1018	N	RECREATION OUTREACH WORKER II
1163	E	LIBRARY ASSISTANT SUPERVISOR
2814	N	SOCIAL WORKER ASSISTANT I
3096	N	POLICE TECHNICIAN I
3182	N	FIRE/RESCUE COMMUNICATIONS TRAINEE
3530	N	DEPUTY SHERIFF I (PRIVATE)
3534	N	SECURITY OFFICER II
4046	N	*DRAFTER II
4119	N	APPRENTICE TRAFFIC SIGNAL TECHNICIAN
4421	N	PLANNING TECHNICIAN I
4441	N	GRAPHIC DESIGNER I
4462	N	TRANSIT CONTROLLER
4522	N	PARKING METER MECHANIC II
5014	N	GROUNDS EQUIPMENT MECHANIC
5052	N	PAINTER II
5111	N	EQUIPMENT OPERATOR III
5176	N	PRINTER I
5189	E	SUPERVISOR OF MAIL SERVICES

GRADE 14 (CONTINUED)

5225	N	SIGN FABRICATOR II
5306	E	BUILDING CLEANING SUPERVISOR II
8020	N	LIQUOR ORDER ASSISTANT
8112	N	TRUCK DRIVER/WAREHOUSE WORKER
9004	E	DATA PREPARATION SUPERVISOR
9103	N	ADMINISTRATIVE AIDE V
9112	N	OFFICE AUTOMATION ADMINISTRATOR I
9201	E	OFFICE SUPERVISOR

GRADE 15

0672	E	EMPLOYMENT SPECIALIST I
2226	N	CODE ENFORCEMENT INSPECTOR I
3095	N	*POLICE TECHNICIAN II
3229	N	FOOD SERVICES COORDINATOR
3239	N	CORRECTIONAL OFFICER CANDIDATE
3529	N	*DEPUTY SHERIFF II (PFC)
4037	N	ENGINEER TECHNICIAN I
5010	N	*MECHANIC I
5018	N	AUTOMOTIVE DAMAGE APPRAISER
5033	N	*MASON I
5043	N	*CARPENTER I
5063	N	*PLUMBER I
5212	N	WORK FORCE LEADER II
5214	N	TREE CREW LEADER
6115	N	LEGAL ASSISTANT
8110	N	WAREHOUSE LEADER
9010	E	DATA CONTROL SUPERVISOR
9234	N	SENIOR SUPPLY CLERK

GRADE 16

0124	N	PERSONNEL ASSISTANT
0135	N	PUBLIC ADMINISTRATION INTERN
0183	E	BUYER I
0409	N	BUDGET ASSISTANT
0520	N	COMPUTER OPERATOR III
0616	N	COMMUNITY DEVELOPMENT TECHNICIAN
0620	E	SENIOR COMMUNITY SERVICES AIDE
0719	E	LEGISLATIVE SENIOR AIDE
1016	E	RECREATION SPECIALIST I
2243	N	CONSTRUCTION CODES REPRESENTATIVE I
2755	E	THERAPEUTIC COUNSELOR I
2813	E	SOCIAL WORKER ASSISTANT II

GRADE 16 (CONTINUED)

3170	N	FIREFIGHTER
3180	N	FIRE EDUCATION SPECIALIST
3222	N	PARAMEDIC (CORRECTION & REHAB)
3236	N	CORRECTIONAL OFFICER I (PVT)
3528	N	DEPUTY SHERIFF III (CORPORAL)
4460	N	TRANSIT ANALYST
4521	E	SUPVR PARKING ENFORCEMENT UNIT
5009	N	*MECHANIC II
5015	N	*AUTOBODY REPAIRER
5017	N	WELDER
5032	N	MASON II
5042	N	CARPENTER II
5062	N	PLUMBER II
5073	N	*ELECTRICIAN I
5083	N	*H V A C MECHANIC I
5175	N	PRINTER II
5211	E	WORK FORCE LEADER III
9102	E	SENIOR ADMINISTRATIVE AIDE
9110	N	OFFICE AUTOMATION ADMINISTRATOR II

GRADE 17

0671	E	*EMPLOYMENT SPECIALIST II
2225	N	*CODE ENFORCEMENT INSPECTOR II
2408	E	LABORATORY SCIENTIST I
3094	N	POLICE TECHNICIAN III
3237	N	*CORRECTIONAL OFFICER II (PFC)
3249	E	CORRECTIONAL SPECIALIST I
3424	N	*COMMUNICATIONS EQUIPMENT TECHNICIAN II
3532	E	SUPERVISOR-SECURITY OFFICERS
4036	N	*ENGINEER TECHNICIAN II
4045	N	DRAFTER III
4420	N	PLANNING TECHNICIAN II
4440	N	GRAPHIC DESIGNER II
4457	E	TRANSIT OPERATIONS SUPERVISOR
5041	N	ASST SUPERVISOR OF CARPENTER SHOP
5050	E	SUPERVISOR OF PAINT SHOP
5072	N	ELECTRICIAN II
5082	N	H V A C MECHANIC II
8012	E	LIQUOR STORE ASSISTANT MANAGER

GRADE 18

0123	E	PERSONNEL SPECIALIST I
0152	E	ADMINISTRATIVE ASSISTANT I
0157	E	ADMIN AIDE TO THE COUNTY EXECUTIVE
0167	E	MANAGEMENT ANALYST I
0182	E	*BUYER II
0212	E	ACCOUNTANT I
0230	E	AUDITOR I
0277	E	FISCAL ANALYST
0330	E	RIGHT-OF-WAY AGENT I
0428	E	MANAGEMENT & BUDGET SPECIALIST I
0519	E	COMPUTER TECHNICAL/DATA COMM SPEC
0533	E	COMPUTER ANALYST/PROGRAMMER I
0630	E	COMMUNITY ORGANIZATION SPECIALIST I
0837	E	PROGRAM ASSISTANT I
1015	E	*RECREATION SPECIALIST II
1152	E	LIBRARIAN I
2242	N	*CONSTRUCTION CODES REPRESENTATIVE II
2307	E	COMMUNITY HEALTH NURSE I
2308	E	SENIOR CLINIC STAFF NURSE
2606	E	OCCUPATIONAL THERAPIST
2810	E	SOCIAL WORKER I
2840	E	PUBLIC HEALTH SOCIAL WORKER I
3236	N	CORRECTIONAL OFFICER III (CORP)
3527	E	DEPUTY SHERIFF IV (SERGEANT)
4024	E	ENGINEER I
4118	N	*TRAFFIC SIGNAL TECHNICIAN I
5008	N	MECHANIC LEADER
5030	E	SUPERVISOR OF MASON SHOP
5081	N	ASST SUPERVISOR OF H V A C SHOP
5304	E	SUPERVISOR BUILDING CLEANING SECTION
5312	E	PROPERTY MANAGER I

GRADE 19

0283	E	ACCIDENT PREVENTION SPECIALIST I
0638	E	COUNSELING SPECIALIST (CFW)
0645	E	INVESTIGATOR I
0670	E	EMPLOYMENT SPECIALIST III
0709	E	LEGISLATIVE INFORMATION SPECIALIST
0714	N	ASST SECRETARY OF THE COUNTY COUNCIL
2224	N	CODE ENFORCEMENT INSPECTOR III
2246	E	CONSTRUCTION CODES ANALYST I
2407	E	LABORATORY SCIENTIST II
2602	E	PHYSICAL THERAPIST
2706	E	NUTRITIONIST

GRADE 19 (CONTINUED)

2711	E	HEALTH EDUCATOR
2718	E	PUBLIC HEALTH ADVISOR
3248	E	*CORRECTIONAL SPECIALIST II
3505	N	LATENT PRINT EXAMINER
3650	N	CONSTRUCTION REPRESENTATIVE
4035	N	ENGINEER TECHNICIAN III
4117	N	TRAFFIC SIGNAL TECHNICIAN II
4456	E	TRANSIT SERVICES SUPERVISOR
4520	E	SUPVR PARKING METER UNIT
5007	E	MECHANIC SUPERVISOR
5040	E	SUPERVISOR OF CARPENTER SHOP
5085	E	FACILITIES EQUIPMENT SUPERVISOR
5210	E	WORK FORCE LEADER IV
8108	E	WAREHOUSE SUPERVISOR

GRADE 20

0146	E	PUBLICATIONS & GRAPHICS SUPERVISOR
1013	E	SENIOR RECREATION SPECIALIST
2839	E	PUBLIC HEALTH SOCIAL WORKER II
3093	E	POLICE TECHNICIAN SUPERVISOR
3148	E	FIRE/RESCUE INSTRUCTOR
3168	E	FIRE SERGEANT
3235	E	CORRECTIONAL OFFICER IV (SGT)
3422	N	COMMUNICATIONS SYSTEM SUPERVISOR
5060	E	SUPERVISOR OF PLUMBING SHOP
5070	E	SUPERVISOR OF ELECTRICAL SHOP
5080	E	SUPERVISOR OF H V A C SHOP
5170	E	PRINT SHOP MANAGER
8009	E	LIQUOR STORE MANAGER
9232	E	AUTOMOTIVE SUPPLY SUPERVISOR

GRADE 21

0122	E	PERSONNEL SPECIALIST II
0151	E	*ADMINISTRATIVE ASSISTANT II
0166	E	*MANAGEMENT ANALYST II
0181	E	SENIOR BUYER
0211	E	*ACCOUNTANT II
0229	E	*AUDITOR II
0282	E	ACCIDENT PREVENTION SPECIALIST II
0329	E	*RIGHT-OF-WAY AGENT II
0426	E	MANAGEMENT & BUDGET SPECIALIST II
0517	E	COMPUTER OPERATIONS SUPERVISOR
0532	E	COMPUTER ANALYST/PROGRAMMER II

GRADE 21 (CONTINUED)

0542	E	COMPUTER SYSTEMS PROGRAMMER ASSISTANT
0614	E	COMMUNITY DEVELOPMENT COORDINATOR I
0629	E	COMMUNITY ORGANIZATION SPECIALIST II
0644	E	*INVESTIGATOR II
0717	E	LEGISLATIVE ANALYST I
0811	E	INFORMATION OFFICER I
0836	E	PROGRAM ASSISTANT II
0871	E	STATE AFFAIRS LEGISLATIVE ASST I
1144	E	LIBRARY SYSTEMS SPECIALIST
1151	E	LIBRARIAN II
2223	E	CODE ENFORCEMENT SUPERVISOR
2245	E	CONSTRUCTION CODES ANALYST II
2306	E	*COMMUNITY HEALTH NURSE II
2717	E	SENIOR PUBLIC HEALTH ADVISOR
2720	E	CHILD DEVELOPMENT SPECIALIST
2754	E	*THERAPEUTIC COUNSELOR II
2809	E	*SOCIAL WORKER II
3067	E	POLICE SERGEANT
3247	E	CORRECTIONAL SPECIALIST III
3403	E	TELEPHONE SERVICES MANAGER
3519	E	FORENSIC CHEMIST
3526	E	DEPUTY SHERIFF V (LIEUTENANT)
3670	E	FAC REMODELING & RENOVATION SPECIALIST
4023	E	*ENGINEER II
4115	E	SUPVR TRAFFIC SIGNAL UNIT
4306	E	LANDFILL SUPERVISOR
4404	E	ASSOCIATE PLANNER
4479	E	TRANSIT MARKETING SPECIALIST
4530	E	SUPVR PARKING FACILITIES MAINTENANCE
5005	E	SHOP SUPERVISOR
5205	E	DISTRICT SUPERVISOR
5206	E	ARBORIST
5223	E	SUPVR SIGN AND MARKING UNIT
5311	E	*PROPERTY MANAGER II

GRADE 22

1012	E	RECREATION SUPERVISOR
2241	E	CONSTRUCTION CODES FIELD SUPERVISOR
2425	E	SUPERVISOR OF LABORATORY SERVICES
2601	E	SUPVR PHYSICAL THERAPY PROGRAMS
2611	E	AUDIOLOGIST
3233	E	CORRECTIONAL TEAM LEADER
4031	E	SENIOR ENGINEER TECHICIAN

GRADE 22 (CONTINUED)

5023	E	MAINTENANCE SUPERINTENDENT (DF&S)

GRADE 23

0121	E	*PERSONNEL SPECIALIST III
0142	E	EXEC SEC TO COMMISSION ON AGING
0150	E	ADMINISTRATIVE ASSISTANT III
0165	E	MANAGEMENT ANALYST III
0209	E	FINANCIAL SUPERVISOR
0328	E	RIGHT-OF-WAY AGENT III
0424	E	MANAGEMENT & BUDGET SPECIALIST III
0531	E	COMPUTER ANALYST/PROGRAMMER III
0613	E	*COMMUNITY DEVELOPMENT COORDINATOR II
0643	E	INVESTIGATOR III
0716	E	LEGISLATIVE ANALYST II
0810	E	INFORMATION OFFICER II
0834	E	PROGRAM MANAGER
0870	E	STATE AFFAIRS LEGISLATIVE ASST II
1008	E	AQUATIC PROGRAMS SUPERVISOR
1140	E	LIBRARY SYSTEMS MANAGER
1150	E	LIBRARIAN III
2305	E	COMMUNITY HEALTH NURSE III
2309	E	NURSE PRACTITIONER
2504	E	PSYCHOLOGIST I
2753	E	THERAPEUTIC COUNSELOR III
2838	E	*PUBLIC HEALTH SOCIAL WORKER III
3167	E	FIRE LIEUTENANT
3246	E	CORRECTIONAL SPECIALIST IV
3402	E	CHIEF COMMUNICATIONS MAINT SECTION
3525	E	DEPUTY SHERIFF VI (CAPTAIN)
4403	E	*PLANNER

GRADE 24

0713	E	SECRETARY OF THE COUNTY COUNCIL
1054	E	RECREATION PROGRAM COORDINATOR I
1137	E	SENIOR LIBRARIAN
2808	E	SOCIAL WORKER III
2845	E	CHILD PROTECTION COORDINATOR
3065	E	POLICE LIEUTENANT
3231	E	ASST CHIEF CUSTODY & SECURITY
3244	E	CHIEF OF INMATE SERVICES
3607	E	FIRE PROTECTION ENGINEER
4022	E	ENGINEER III
5202	E	ASST CH SERVICES SECTION (DOT)
6108	E	ATTORNEY I

GRADE 25

0120	E	SENIOR PERSONNEL SPECIALIST
0125	E	SUPVR EMPLOYEE SAFETY PROGRAMS
0148	E	INFORMATION AND RESEARCH ASST
0162	E	MANAGEMENT SPECIALIST
0173	E	DEPUTY ELECTIONS ADMINISTRATOR
0174	E	ASST PUBLIC ADVOCATE ASSMTS TAXATION
0188	E	AGRICULTURAL RESOURCES COORDINATOR
0207	E	FINANCIAL PROGRAMS MANAGER
0422	E	*SENIOR MGT & BUDGET SPECIALIST
0530	E	*SENIOR COMPUTER ANALYST/PROGRAMMER
0541	E	*COMPUTER SYSTEMS PROGRAMMER I
0611	E	SENIOR COMMUNITY DEVELOPMENT COORD
0707	E	LEGISLATIVE OVERSIGHT PROG EVALUATOR
0715	E	LEGISLATIVE ANALYST III
0832	E	PROGRAMS DEVPMT & EVALUATION OFFICER
1130	E	COMMUNITY LIBRARIAN
2010	E	HEALTH PROGRAM COORDINATOR
2304	E	NURSE MANAGER
2503	E	PSYCHOLOGIST II
2705	E	SENIOR NUTRITIONIST
2710	E	SENIOR HEALTH EDUCATOR
3146	E	FIRE/RESCUE PROGRAM DEVELOPMENT OFCR
3150	E	EXEC SECRETARY FIRE/RESCUE COMMISSION
3418	E	COMMUNICATIONS SYSTEMS ENGINEER
3518	E	CHIEF FORENSIC CHEMIST
3660	E	CAPITAL PROJECTS COORDINATOR
4010	E	ASST CH HIGHWAY MAINTENANCE SECTION
4021	E	SENIOR ENGINEER
4402	E	SENIOR PLANNER
5303	E	LEASING CONTRACT SPECIALIST

GRADE 26

0180	E	CHIEF PROCUREMENT SECTION
0265	E	CHIEF MATERIEL MANAGEMENT SECTION
0711	E	LEGISLATIVE INFORMATION COORDINATOR
1007	E	RECREATION AREA DIRECTOR
1053	E	RECREATION PROGRAM COORDINATOR II
1125	E	REGIONAL LIBRARIAN
2248	E	CHIEF REFUSE REG & COLLECT SECT
2835	E	CHIEF PUBLIC HEALTH SOCIAL WORKER
3165	E	FIRE CAPTAIN
3230	E	CHIEF CUSTODY & SECURITY
3524	E	CHIEF DEPUTY SHERIFF
5025	E	CHIEF OF MAINTENANCE (DF&S)

GRADE 26 (CONTINUED)

5150	E	CHIEF OF PRINTING & MAIL SERVICES
5201	E	CHIEF SERVICES SECTION (DOT)
5301	E	CHIEF OF CLEANING SERVICES
5322	E	CHIEF ENGINEERING SECTION

GRADE 27

0087	E	COMMUNITY CRISIS CENTER DIRECTOR
0119	E	ASST TO PERS DIR FOR LABOR RELATIONS
0127	E	ORGANIZATION DEVP & TRAINING MANAGER
0138	E	ADMINISTRATIVE SERVICES COORDINATOR
0206	E	ASST CHIEF DIV OF ACCOUNTING
0226	E	CHIEF AUDITING SECTION
0246	E	ASST CHIEF DIV OF REVENUE
0420	E	MANAGEMENT & BUDGET SUPERVISOR
0528	E	COMPUTER APPLICATIONS SUPERVISOR
0540	E	COMPUTER SYSTEMS PROGRAMMER II
0661	E	CH DIV SVS TO HANDICAPPED INDIVIDUALS
0696	E	CHIEF DIVISION OF CHILDREN & YOUTH
1110	E	LIBRARY PROGRAMS COORDINATOR
2008	E	HEALTH CARE CENTER DIRECTOR
2232	E	CHIEF LICENSURE & REGULATORY SERVICES
2240	E	ENVIRONMENTAL PROTECTION MANAGER
2303	E	NURSE ADMINISTRATOR
2502	E	PSYCHOLOGIST III
3063	E	POLICE CAPTAIN
4011	E	CHIEF CONSTRUCTION SECTION
4015	E	CHIEF DESIGN SECTION
4017	E	CHIEF SUBDIVISION DEVELOPMENT SECTION
4019	E	FACILITIES & SVS ENGINEER SPECIALIST
4103	E	CHIEF TRAFFIC OPERATIONS SECTION
4106	E	CHIEF TRAFFIC PLAN & SURVEY SECTION
4401	E	PLANNING PROGRAM COORDINATOR
4406	E	ARCHITECT
4476	E	TRANSIT CHIEF
4510	E	CHIEF PARKING OPERATIONS SECTION
4512	E	CHIEF PARKING ENGINEERING SECTION
5003	E	EQUIPMENT MANAGER
6107	E	*ATTORNEY II
8101	E	CHIEF WAREHOUSE DIVISION

GRADE 28

0079	E	DIRECTOR COMMUNITY SERVICES CENTER
0163	E	SENIOR MANAGEMENT SPECIALIST
0203	E	MONEY & INVESTMENT MANAGER
0325	E	CHIEF RIGHT-OF-WAY ACQUISITION
0608	E	CHIEF OF HOUSING & COMMUNITY DEVP
0680	E	DEPUTY DIR OFFICE OF CONSUMER AFFAIRS
0712	E	SENIOR LEGISLATIVE ANALYST
1106	E	ASST CHIEF LIBRARY PUBLIC SERVICES
1108	E	REGIONAL ADMINISTRATOR
3163	E	ASSISTANT FIRE CHIEF
3401	E	CHIEF OF COMMUNICATIONS (DFS)
3602	E	ASST CHIEF DIV CONST CODES ENFORCEMENT
4002	E	ENGINEERING SERVICES COODINATOR
4009	E	CHIEF HIGHWAY MAINTENANCE SECTION
4102	E	ASST CH DIV OF TRAFFIC ENGINEERING
4502	E	ASST CH DIVISION OF PARKING
5310	E	CHIEF OF SPACE & LEASING MANAGEMENT

GRADE 29

0064	E	PUBLIC ADVOCATE ASSESSMENTS & TAXATION (NM)
0095	E	INFORMATION DIRECTOR
0110	E	CHIEF DIV OF CLASSIFICATION & COMP
0112	E	CHIEF DIVISION OF EMPLOYMENT
0114	E	CHIEF DIVISION OF EMPLOYEE SERVICES
0260	E	CHIEF DIVISION OF RISK MANAGEMENT
0405	E	CAPITAL IMPROVEMENTS PROGRAM MANAGER
0503	E	TECHNICAL SUPPORT MANAGER (OMB)
0513	E	APPLICATIONS SYSTEMS MANAGER (OMB)
0606	E	ASST DIR OFF OF ENVIRONMENTAL PLAN
0692	E	CHIEF DIVISION OF ELDER AFFAIRS
1051	E	CHIEF DIVISION OF RECREATION PROGRAMS
1103	E	CHIEF LIBRARY TECHNICAL OPERATIONS
2104	E	PUBLIC HEALTH DENTIST I
2301	E	CHIEF NURSE
2501	E	PSYCHOLOGIST IV

GRADE 30

0065	E	DIR DEPT ANIMAL CONTROL & HUMANE TREAT (NM)
0089	E	DIR COMMUNITY USE EDUC FACILITIES SVS
0097	E	ELECTIONS ADMINISTRATOR
0179	E	CHIEF DIV PROCUREMENT & MATERIEL MGT
0205	E	CHIEF DIV OF ACCOUNTING
0245	E	CHIEF DIV OF REVENUE

GRADE 30 (CONTINUED)

0703	E	DEPUTY DIRECTOR OF COUNCIL STAFF
3061	E	POLICE MAJOR
3635	E	CHIEF OF ARCHITECTURAL DESIGN/CONST
[illegible]	E	SPECIAL ASSISTANT FOR WMATA AFFAIRS
6106	E	ASSOCIATE COUNTY ATTORNEY
8002	E	CHIEF DIV FINANCIAL & SYSTEM MGT (DLC)
8003	E	CHIEF DIV WHOLESALE OPERATIONS (DLC)
8004	E	CHIEF DIV RETAIL OPERATIONS (DLC)

GRADE 31

0105	E	COMMUNITY & GOVT RELATIONS SPECIALIST
0202	E	REVENUE & TAX SPECIALIST
0511	E	CHIEF COMPUTER CENTER (OMB)
1105	E	ASSOCIATE LIBRARY DIRECTOR
2103	E	*PUBLIC HEALTH DENTIST II
2803	E	DIRECTOR OFFICE OF MGT SERVICES (DSS)
3202	E	DEPUTY DIRECTOR (DETENTION)
3203	E	DEPUTY DIRECTOR (PRE-RELEASE)
3601	E	CHIEF DIV OF CONST CODES ENFORCEMENT
4301	E	CHIEF DIV OF SOLID WASTE MANAGEMENT
4450	E	DIRECTOR OFF TRANSPORTATION PLANNING

GRADE 32

0067	E	DIRECTOR OFF OF ENVIRONMENTAL PLANNING
0071	E	DIRECTOR OFF OF DESIGN & CONSTRUCTION
0073	E	EXEC DIR OFFICE OF CONSUMER AFFAIRS
0077	E	EXEC SEC TO COMMISSION FOR WOMEN
0080	E	EXEC DIRECTOR TO HUMAN RELATIONS COMM
0082	E	EXEC SEC TO MERIT SYS PROTECTION BOARD
0104	E	ASST DIR DEPT OF FACILITIES & SERVICES
0404	E	CHIEF INTERAGENCY ANAL & REVIEW DIVISION
0510	E	CHIEF MANAGEMENT SYSTEMS (OMB)
0602	E	DEPUTY DIR DEPT HOUSING & COMM DEVP
2007	E	HEALTH CARE SERVICES ADMINISTRATOR
3060	E	POLICE LIEUTENANT COLONEL
3440	E	CHIEF CABLE TV & TELECOMMUNICATIONS
4003	E	CHIEF DIV OF TRANSPORTATION ENG
4005	E	CHIEF DIV OF OPERATIONS
4101	E	CHIEF DIV OF TRAFFIC ENGINEERING
4470	E	CHIEF DIVISION OF TRANSIT SERVICES
4501	E	CHIEF DIVISION OF PARKING
5001	E	CHIEF DIV OF EQUIPMENT MANAGEMENT
6105	E	SENIOR ASSISTANT COUNTY ATTORNEY

GRADE	33			
	0059	E	DIRECTOR OFFICE OF STATE AFFAIRS	(NM)
	0103	E	ASSISTANT CHIEF ADMINISTRATIVE OFFICER	
	0201	E	DEPUTY DIR DEPT OF FINANCE	
	0403	E	CHIEF BUDGETS DIVISION	
	2001	E	ASSOCIATE HEALTH DIRECTOR	
	2006	E	PHYSICIAN I	
GRADE	34			
	2005	E	PHYSICIAN II	
	2101	E	CHIEF DENTAL HEALTH SERVICES	
GRADE	35			
	0054	E	DIRECTOR OFF OF ECONOMIC DEVELOPMENT	(NM)
	0101	E	SENIOR ASSISTANT CHIEF ADMIN OFFICER	
	2004	E	*PHYSICIAN III	
	6101	E	DEPUTY COUNTY ATTORNEY (RESEARCH)	
	6121	E	HEARING EXAMINER	(NM)
GRADE	36			
	0022	E	DIRECTOR DEPT OF ENVIRONMENTAL PROTECT	(NM)
	0027	E	DIRECTOR DEPT OF FIRE/RESCUE SERVICES	(NM)
	0030	E	DIRECTOR DEPT OF PUBLIC LIBRARIES	(NM)
	0042	E	DIRECTOR DEPT OF CORRECTION AND REHAB	(NM)
	0045	E	DIRECTOR DEPT OF FACILITIES & SERVICES	(NM)
	0046	E	PERSONNEL DIRECTOR	(NM)
	0047	E	DIRECTOR DEPT OF FAMILY RESOURCES	(NM)
	0050	E	DIRECTOR DEPARTMENT OF RECREATION	(NM)
	0052	E	DIRECTOR DEPT OF HOUSING & COMM DEVP	(NM)
	0704	E	DIRECTOR OFF OF LEGISLATIVE OVERSIGHT	(NM)
	2002	E	MEDICAL PROGRAM SPECIALIST	
	6120	E	ADMINISTRATIVE HEARING EXAMINER	(NM)
GRADE	38			
	0702	E	DIRECTOR OF COUNCIL STAFF	(NM)

GRADE	39			
	0005	E	COUNTY ATTORNEY	(NM)
	0010	E	COUNTY HEALTH OFFICER	(NM)
	0015	E	DIRECTOR DEPT OF TRANSPORTATION	(NM)
	0017	E	DIRECTOR DEPARTMENT OF POLICE	(NM)
	0020	E	DIRECTOR DEPARTMENT OF FINANCE	(NM)
	0021	E	DIRECTOR OFFICE OF MANAGEMENT & BUDGET	(NM)
	0035	E	DIRECTOR DEPT OF LIQUOR CONTROL	(NM)
GRADE	40			
	0001	E	CHIEF ADMINISTRATIVE OFFICER	(NM)

kcs/0879e

Petition

Petition to include Montgomery County Department of Social Services Employees in Collective Bargining Bill 19-86.

Montgomery County Department of Social Services employees have limited representation at the County level. Presently, they have the right only to meet and confer. A bill is being presented to the County Council on April 22, 1986 that would allow County employees to engage in collective bargaining. Montgomery County Department of Social Services employees will not be included in this bill since it states that they are members of the State merit system and are therefore not County employees.

We wish to demonstrate that Montgomery County Department of Social Services employees are indeed County employees, and have the right to and therefore the desire to be included in the collective bargaining bill or, at the very least, retain the right to meet and confer.

As Montgomery County Department of Social Services employees we:

1. Receive salaries determined by the County salary scale.
2. Work County hours which include one half hour longer than the State workday.
3. Are categorized under the County merit system.
4. Are eligible for health, life, and dental insurance from the County.
5. Can join the County credit union.
6. Accrue annual and sick leave from the County.
7. Are allowed State holidays but lose annual leave from the County if the holiday is not recognized by the County.
8. Are located in County buildings and allowed County parking privileges.
9. Work under the guidance of a director who is selected by the County Board of Social Services.

We feel that we provide the citizens of Montgomery County with special services and the county will support the programs we administer with $12,388,650.00 in fiscal year 1987. Services include the following functions:

1. Maintaining office hours daily for an additional half hour longer than State hours.
2. Processing additional administrative work associated with the County's supplementation of the majority of income maintenance programs and the programs provided through Adult and Family Services, Child Support Enforcement, Child Welfare Services, Foster Care, Refugee Programs, Natural Parent Services, Protective Services, Respite Care, Single Parent Services, and Day Care Programs.
3. Administering County funded programs such as County Day Care, Home Care, Local Emergency Shelter, Family Independence Project, and Burial Assistance.
4. Assisting in processing the rental assistance program.

We, the undersigned, support recognition of Montgomery County Department of Social Services employees as County employees. We also wish to be included in the bill 19-86 for collective bargaining or, at the very least, retain the right to meet and confer.

Name	Position	Address and Telephone Number
Michael A Pond	WORD PROCESSOR	7008 WOODLAND AVE., T.P. 20912 - 270-3415
Barbara Infante	CWA II	13903 Drake Dr Rockville 871-3719
Dana Matthews	CWA II	5307 41ST Pl Hyattsville, Md 20781 927-6056
Carol Bosco	CWA II	3008 Bel Pre Rd #104, Silver Spring, Md 871-50
Linda E. Long	CWA II	13824 Blair Stone Ln SS Md 20906 460-33
Kate Kelkye	CWA II	1515 Andover Ln. Fred. MD. (301) 695-745
Sara Harris	CWA II	2720 Woodridge Rd S S MD. 946-6173
Susan Jordan	CWA III	17804 October Ct Roch 926-6630
Bonnie Berman	CWA II	2432 Henslowe Dr. Potomac, Md 251-0519
Robert J. Lawrence	CWA II	8845 E. Grove Upper Marlboro, MD 735-6614
Eugene Aughtman	CWA II	7312 Rochridge Rd Balto, Md 21207 484-838
Mary Alice Carroll	CWA II	11802 IVANHOE ST, WHEATON, MD 20902 933-45
Karen Power	CWA II	9350 Harvest Wy Laurel, MD
Thomas E Rosser Jr	CWA III	5025 Wilkens Ave, Balt, Md 21
Russ L. Rjeldsen	CWA II	9679 Basket Ring Rd #3, Columbia M 210
Deborah D. Hackett	OFF. Clerk II	17603 Lindstrom Ct. Gaithersburg, Md 208
Roberta W. Barnhard	Off Clerk II	2120 Randolph Rd. Sil Sp. Md 2090
John E. Edsemoole	CWA II	1617 Gruenther Ave. Rockville, Md. 208
Presta Pulliam	Office Clerk I	2569 Holman Ave. Sil. Spr., Md. 20910
[illegible]	CWA II	574 RUTGERS ST. Rockville MD 2085
Kim McCauley	C.A. III	2424 Reedie Dr., Wheaton, Md. 2090
Yvonne Baskerville	SW III	1812 Allison St. N.W. Wash DC 2001
Millie Bellmann	CWA II	8708 Garfield St Bethesda Md
Sandra P Marshall	SW III	591 Columbia Rd, Wash DC 2001
Stephen Dickstein	CWA III	15333 NORWALK CT. Bowie, MD 207

We, the undersigned, support recognition of Montgomery County Department of Social Services employees as County employees. We also wish to be included in the bill 19-86 for collective bargaining or, at the very least, retain the right to meet and confer.

Name	Position	Address and Telephone Number
Aida F. Payan	Fiscal Clerk II	12102 Portree Dr. Rockville, Md. 20852
Mary E. Miller	Fiscal Clerk III	1611 Rosemont Ave. Frederick, Md. 21701
Janet W. Lin	Fiscal Clerk II	17225 Amity Dr., Rockville, Md 2
Teresa Sherwood	Fiscal Clerk II	4223 34th St Mt. Rainier, Md. 20712
Susan C. Schiavone	Fiscal Clerk II	17324 Sandy Knall Court Olney, MD 20832
Eddie Fray	Fiscal Clerk II	3121 Berry Rd. N.E. Wash, D.C. 20018
Charlotte J Duck	Fiscal Clerk II	14402 Oakvale St, Rockville Md 208
Pauline E. Jarrett	Fiscal Clerk III	3924 Minden Rd, Wheaton Md 20906
Vishal P. Arora	Fiscal Clerk II	5 Jeremy Ct. Derwood, Md.
Sue Kinnon	Supp Coll Ag. III	5681 Thicket Lane Col Md
Bonnie J. Bigeske	Fiscal Clerk II	10512 Apple Ridge Rd Gaithersburg 2
Maria Madalena Shamoun	Fiscal III	10827 Georgia Ave S.S. 209
Reginald S Love	Fiscal II	9 Korando Ct 1B Balt. Md
Elsie Sumner	Clerk II	14312 Oakvale St. Rockville
Mary C. Mitchell	CW II	5 Manchester Pl. #101 S.
Josephine Hinton	Fiscal II	5630 Fishers Ln.
Carolyn A. Hohlfeld	Personnel Associate	5630 Fishers Lane, Rock
Deborah H. Murphy	Fiscal II	8229 Imperial Drive, Laurel
Mary Dewease	Fiscal Clerk II	680 Highland Way, Hagerstown
Florence E. Orbach	Casework Assoc II	615 Hyde Rd., S.S., Md. 2090

Name	Position	Address and Telephone Number
[illegible] Morris	Casewocker II	468-4301 WK - 5630 Fishers Ln Rock. MD 20852
Karen Dickey	"	"
Marlene Foreman	CWA II	468-4301 MCDSS 5630 Fishers Ln. Rock. 20852
Martha Myers	CWA II	468-4301 MCDSS 5630 Fishers Lane.
Lucette Gamble	Data Device Ope I	468-4118 5630 Fishers Lane
MY TONG	Device ope I	468-4111 5630 Fishers Lane
Teresa Chiaverini	CWA III	468-4301 5630 Fishers La.
Patricia P. Olivi	CWA II	468-4301 5630 Fishers Lane
Sandra L. Thompson	OA II	468-4287 5630 Fishers Lane Rockville, Md. 20852
Sheila Rowe	OA I	468-4287 5630 Fisher Lane Rockville, Md 20852
Verna Smith	CWA II	468-4287 1214 Clagett Dr. Rockville, Md.
Deborah Amin	CWA II	468-428 5630 Fisher Lane Rockville, MD 20852 20851
Ruth Heiss	CWA II	468-4287 5630 Fishers Lane Rockville, Md. 20852
Marlene Brown	CWA I	468-4339 5630 Fisher Lane Rockville, Md. 20852
Cheryl Simmons	CWA II	468-4305 Rockville Md 20852
Gail Johnson	CWA II	468 4307 Rockville Md 20852
Richard C. Sappington Jr.	CWA II	468-4307 Rockville, MD 20852
Antoine Le	OC II	468-4337 Rockville, Md.
Laura Betts	Office Clerk II	468-4297 MCDSS
Julie Procter	Office Clerk I	468-4297 MCDSS Rockville
Linda Gamble	Clerk Typist IV	468-4332 MCDSS Rockville

Name	Position	Address and Telephone Number
Gloria Wixters	CWA III	8818 Ga. Ave. (301) 565-7936 Silver Spring, Md
Zetha Wofford	CWA II	8818 Georgia Ave (301) 565-793 Silver Spring, Md
Lisa McDonald	CWA II	7508 Marston Rd. Balto, Md. 2124
Sharon Frock	CWA II	8818 Ga Ave Silver Spring Md
Maxine A. Grons	CWA II	8818 Georgia Avenue Silver Spring 2091
Denise M. Watts	W Processor & Secretary	8818 Georgia Ave. Silver Spring 20910
Nicole Raines	SW II	8818 Georgia Ave. " " "
Tommy Lett. Rec.		8818 Georgia Ave Sil. Sp. 20910
Elizabeth Bell	SWA II	11382 Cherry Hill Rd Beltsville 2070
J. Hector	Sec. Fam. Sec.	8818 Ga Ave, Sil Spr. 565-7903
Bounthinh	THAO HSW III	8818 Georgia Ave. S-S Md 20
[illegible]	HSW III	8818 Georgia Ave. S/S Md
Ngaetho Lam	Typist-clerk.	8670 Piney Branch Road, Apt. T-1 - S/S Md. 2090
Marcia Williams	HSW III	8818 Georgia Ave SS. 20910
Dian N. Duong	HSW III	8818 Georgia Ave. SS, 565
Betty B. Moore, Receptionist		8818 Georgia Ave, SS
Augustine B. Gloster, Office Assistant,		1805 Briggs Rd. S.S. Md. 20
Suzanne B. Houston Adm. Aide		2802 Lindell ST, S.S. Md
Audrey Wilson	Payroll Supervisor,	4802 Ed McClain Rd. Monrovia Md 2
Bess McCallister	Child Support Enf	7112 Bexhill Rd Balti, Md 21207 301-944
Georgia Groomes	Child Support Enf.	40614 Summit Ave #101 Gaithersburg Md 20877

Name	Position	Address and Telephone Number
Homer L. Hammond	Employment Spec III	921 Butternut St Washington, D.C. 20012
Kathleen Shapiro	CWA II	#10 Arlive Ct. Rockville, Md 20854 424-062
Eileen Bennett	CWA II	6960 Scotch Drive Laurel, MD 20707 953-7337
Margie Sutton	Fiscal Clerk II	5909 Crawford Dr. Rockville Md. 20851
Jean Carter	CWA II	20327 Beacon Field Terr #01 Germantown 20874
Shirley Cohen	Unit Secretary	422-1809 2515 Amherst Rd. Hyattsville Md 2078
William J. Clark	Casework Associate II	8818 Georgia Ave - S.S. Md 20910
Nora D. Healy	Office Clerk II	12030 Claridge Rd. Wheaton, Md. 20902
Brenda Little	CWA II	4261 58th Ave #2 - Bladensburg 2071
Nancy Fink	CWA II	305 Seth Place Rockville, Md. 2085
Priscilla Moore	CWA II	10488 Faulkner Ridge Columbia Md 21041
Nicole [illegible]	CWA II	17017 Kim, James Way Apt 3-2 Gaithersburg, MD 20877
Seida R. Tamayo	CWA II	7400 Maple Ave Takoma Park 20912
Nguyen Van Lang	CWA III	8818 Georgia Ave. S.S. Md. 20910
Phan Tri Van	CWA II	"
Gloria Hall Johnson	CWA II	8818 Georgia Ave SS MD 20910
Thomas A. Kennedy	CWA II	" " " " "
Florine Ugochukwu	CWA II	8818 Georgia Ave S.S. Md 20911
Lucy Paul	CWA II	8818 Georgia Ave. SS. Md. 2091
Janice L Burton	CWA II	6306 Kennedy St Riverdale Md 20737
Jean Rose	Office Clerk I	8600 16th St. #407 S.S. Md. 20910
Gary Carozza	CWA II	109 Beechwood Ave. Catonsville, MD. 21228
Annie Powell	Office Clerk II	2841 Round Rd Balto Md 21.

Name	Position	Address and Telephone Number
[illegible]	Fiscal Clerk II	3910 Blackburn Ln. #11 [illegible] MD. [illegible]
K.H. Pasleton	" " 5630 Fishers Lane	468-4323
Jenny T. [illegible]	Fiscal Clerk II	7801 Burdette Rd.
Debbie Brown	Caseworker II	Bethesda, MD. 20817 Tel. ~~469-5~~ 468-4323
Conley Wallace	Clerk II	5630 Fishers La. Rockville MD 468-4301
Mary Lyles	OFF. CLK. II	~~[illegible]~~ 56301 Fishers La Rock. 468-4333 MCDSS 468-4301
Michael H Mattson	CWA III	MCDSS - 468-4396
Ida Pepperman	CWA II	MCDSS 468-4396
Nancy Greene	CWA II	MCDSS 468-4678 4 5515 Sonoma Rd Bethesda MD 20817
Vicki Allen	Social Worker II	MCDSS 468-4044
Annie Chapman Stewart	Social Worker III	MCDSS 5630 Fishers La
Susan Cohen	SW III	MCDSS Rockville Md 468-4373
Patricia Scott	SW III	MCDSS Rockville, Md 468-4373
Margery Gomberg	S.W. III	MCDSS Rockville 468-4373
Bonnie Tilliam	SW III	MCDSS Rockville 468-432

19-86

001339

April 23, 1986

23 Rcvd

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council Members:

I am writing to you as an employee of the Montgomery County Department of Social Services to encourage you to include the Montgomery County Department of Social Services employees in Collective Bargaining Bill 19-86.

Montgomery County Department of Social Services employees are:

1. Categorized under the County Merit System.
2. Receive salaries determined by the County salary scale.
3. Process additional administrative work associated with the County's supplementation of the majority of Income Maintenance programs and through Adult & Family Services, Child Welfare, Day Care and many other programs.

We provide Montgomery County residents with services they are not otherwise able to obtain and will distribute 12 million dollars of County funds in fiscal year 1987.

We are Montgomery County Employees who want to be and believe we have the right to be included in Collective Bargaining Bill 19-86.

Sincerely,

Ruth L. Kjelden
9079 Basket Ring Rd
#3
Columbia, Md
21045

April 23, 1986

1339

TALLY

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100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Mary Alice Cowell

April 23, 1986

1339

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Rockville, Maryland 20850

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Sincerely,

John E. Eckenrode

April 23, 1986

1339

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Rockville, Maryland 20850

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Sincerely,

Sandra P. Marshall

April 23, 1986 1339

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,
M. Hellmann

April 23, 1986

1359

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Bonnie Berman

April 23, 1986

1339

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Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Eugene Oughtman

April 23, 1986

1339

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Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Yvonne Sackenwalth

April 23, 1986

1339

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

/Donna L. Hammond

April 23, 1986

1339

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Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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We provide Montgomery County residents with services they are not otherwise able to obtain and will distribute 12 million dollars of County funds in fiscal year 1987.

We are Montgomery County Employees who want to be and believe we have the right to be included in Collective Bargaining Bill 19-86.

Sincerely,

Mark Sowlen

April 23, 1986

TALLY 1339

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council Members:

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Sincerely,

Roberta Barnhard

April 23, 1986

1339

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Kathleen Zarin-Kellogg

April 23, 1986 1339

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Deborah D. Hackett

April 23, 1986

TALLY 1339

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Presta Pulliam

April 23, 1986

1339

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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April 23, 1986

TALLY 1339

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Rockville, Maryland 20850

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Sincerely,

Carol Bosco

April 23, 1986

1339

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Flora S. Carter

April 23, 1986

1339

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Barbara Infante

April 23, 1986

1359

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Kathleen C. Shapiro

April 23, 1986

TALLY 1339

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Eric Doan

April 23, 1986

TALLY 1339

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Gina Maxwell

April 23, 1986

TALLY 1339

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Karen Powers

April 23, 1986

TALLY 1339

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Susan Feldman

1986

001365

April 23, 1986

APR 28 P2:13

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Patrick T. Hammond

Patrick T. Hammond
Supervisor, Adoptions,
Child Welfare Intake

01062

April 23, 1986

P2:13

TALLY

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Linda McCauley

April 23, 1986

P2: 13

01362

TAB

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Ellen Bennett

001371

April 23, 1986

APR 23 A9:45

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

R. L Lawrence

001385

TALLY

32 Read

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Deborah K. Arlev

DEBORAH K. ARLEV
468-4287
5630 PHILLIES LANE
ROCKVILLE, MARYLAND 20852

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Verna Smith
CWA II
Medical Assistance

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Ruth F. Henson
CWA II
Rockville office
301-468-4257

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Kevin D. Barwick

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
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James M. Pearson

001385

April 23, 1986

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Sincerely,

Sheila M Rowe
Office Assistant I

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
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Sincerely,

Ron Leggett

001385

April 23, 1986

Montgomery County Council
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Sincerely,

Mary C. Mitchell

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Kathryn M. Dwire

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
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Sincerely,

Nancy Greene
5515 Sonoma Rd
Bethesda MD 20817
897-8157

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Teresa M. Chiaverini

001385

April 23, 1986

Montgomery County Council
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Rockville, Maryland 20850

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Sincerely,

Debbie Brown

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Charles L. Jackson
CWA II
468-4404

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Susan M. Brown

001385

April 23, 1986

Montgomery County Council
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Sincerely,

[signature]

468-4339

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Ellen M. Dickerson

468-4339

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Cheryl J Simmons
CWA II

APR 29 P

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council Members:

I am writing to you as an employee of the Montgomery County Department of Social Services to encourage you to include the Montgomery County Department of Social Services employees in Collective Bargaining Bill 19-86.

Montgomery County Department of Social Services employees are:

1. Categorized under the County Merit System.
2. Receive salaries determined by the County salary scale.
3. Process additional administrative work associated with the County's supplementation of the majority of Income Maintenance programs and through Adult & Family Services, Child Welfare, Day Care and many other programs.

We provide Montgomery County residents with services they are not otherwise able to obtain and will distribute 12 million dollars of County funds in fiscal year 1987.

We are Montgomery County Employees who want to be and believe we have the right to be included in Collective Bargaining Bill 19-86.

Sincerely,

Gjohnson

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council Members:

I am writing to you as an employee of the Montgomery County Department of Social Services to encourage you to include the Montgomery County Department of Social Services employees in Collective Bargaining Bill 19-86.

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Sincerely,

Ruth Patterson

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

4-24-86

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Florence S. Orbach
CWA II
468-4404

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Martha E. Myers

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Mary Katherine D'Addario

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

M S Branch Stone

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Margaret B Clem

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Esther S. Veney

Sincerely,

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Marie Schwartz

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Barbara Johnston

[redacted] 001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Linda L. Reed

001385

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Marlene L. Foreman

00138 5

April 23, 1986

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Scott Alan Morrison

ARC

19

April 23, 1986

P2 15

001407

TALLY

(2 Resid)

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Sincerely,

Mary Lyles

April 23, 1986

00407
Tally

[redacted]

P2: 15

Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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We are Montgomery County Employees who want to be and believe we have the right to be included in Collective Bargaining Bill 19-86.

Sincerely,

Cindy Wallace

April 20, 1986

The undersigned employees wish to express our opposition to Section 30-102(4) of Bill #19-86 Montgomery County Collective Bargaining Law, which excludes all persons in grade 27 and above from bargaining units.

NAME	GRADE
Roey David Grodsky	33
Jay Miller	35
Yaneer Pakhabeshe	35
Louise Postman	35
Lidia Pariagua	35

April 20, 1986

The undersigned employees wish to express out opposition to Section 33-102 (4) of Bill #19-86 Montgomery County Collective Bargaining Law -- which excludes all persons in Grade 27 or above from the bargaining units.

Names	Grades	Names	Grades
Maurice Cartier	33		
Elizabeth McC. Stern	23		
[illegible]	27		
[illegible]	35		
Jody Martin	23		
[illegible]	27		
Julia D. Kane	34		
Jadwiga Riesen	35		
[illegible] Moye	26		
Rosalind W. Harrison	25		
Orchelle Henry MD	35		
Izzeh S. Nelson	35		
June R. Pollack	35		

April 20, 1986

THE UNDERSIGNED EMPLOYEES WISH TO EXPRESS OUR OPPOSITION TO SECTION 33-102 #4 of BILL #19-86, MONTGOMERY COUNTY COLLECTIVE BARGAINING LAW WHICH EXCLUDES ALL PERSON IN GRADE 27 AND ABOVE FROM THE BARGAINING UNIT.

NAME	GRADE
Rosalie M. Barry MSL	35
Robert Yellett DDS	31
Abraham S. Goldstein, MD	34
Teresa S. Spindel, M.D.	35
Adele Asimow, Ph.D.	27

April 20, 1986

The undersigned employees wish to express our opposition to Bill #19-86 Montgomery County Collective Bargaining Law -- Section 33-102 (4) which excludes all persons in Grade 27 or above from the bargaining units.

names	grades	names	grades
JOSEPH M. GAFFNEY, PH.D Health Dept. Grade 27.			
[illegible] 27			
[illegible]			

April 20, 1986

The undersigned employees wish to express our opposition to Bill #19-86 Montgomery County Collective Bargaining Law -- Section 33-102 (4) which excludes all persons in Grade 27 or above from the bargaining units.

names	grades	names	grades
Tom Summers, Ph.D.	27		

April 20, 1986

The undersigned employees wish to express our opposition to Bill #19-86 Montgomery County Collective Bargaining Law -- Section 33-102 (4) "which excludes all persons in Grade 27 or above from the bargaining units."

PUBLIC HEALTH DENTISTS

names	grades	names	grades
Philip Ewing	31		
Janina Mischel	31		
Kurt Odell	31		

AWS
CC

Bill 19-86

'86 JUN 16 A10:50

Montgomery County Government

MEMORADUM

002195

June 13, 1986

TO: William E. Hanna, Jr., President
Montogomery County Council

FROM: Sean J. Rogers, Chief, Labor/Employee Relations and Training

SUBJECT: Amendments to Bill No. 19-86, County Employee Collective Bargaining, Section 33-107(a)(2) and (3) concerning negotiability of pension and retirement benefits.

At the last Council work session concerning the above-captioned bill, the Council determined to amend section 33-107(a)(2) to provide for the negotiability of pensions and retirement benefits one year after the effective date of the statute. The Staff Director, Counselor Willcox, Couselor Thompson and I met to draft legislative language representing the will of the Council as stated on May 29, 1986. The parties found that they were unable to agree on the appropriate language for Section 33-107(a)(2). Therefore, I have suggested that we each draft language on the section and present it to the Council for approval. This memorandum represents the position of the Executive and of MCGEO/Local 400 on the appropriate language which we inferred from the Council's last work session .

Mr. Spengler and Mr. Willcox inferred that it was the sense of the Council to limit negotiations to pension benefits covered by legislative enactment, excluding any additional retirement benefits, such as, insurance benefits related to retirement. Neither the Executive nor MCGEO/Local 400 agrees with this inference.

The Executive proposed an amendment to the bill in this section at the May twenty-ninth work session to broaden negotiations in this area. The Council was not opposed to the amendment, but sought a one year delay in negotiations to allow the legislative body the opportunity to revise existing pension and retirement systems. The Executive sought, in his amendment to the section, to permit both pension benefits prescribed by law and other retirement benefits to be immediately and fully negotiable. As a compromise and to accomodate the Council, the Executive and MCGEO/Local 400 proposed a one year delay in the negotiability of pension and retirement

benefits. This position was adopted by the Council with little discussion or debate. In order to clarify the scope of bargaining regarding the retirement issue the Executive proposes and the union concurs with the following language:

> Section 33-107(a)(2):
> With respect to pension and retirement benefits, pension benefits derived from County law and additional retirement benefits, including but not limited to those not specifically derived from law, shall be negotiable one year after the effective date of the statute.

In addition, to ensure legislative consistency, the provisions of 33-107(a)(3) need to be amended by striking the words:

> ...,but not including pension and retirement benefits except to the extent stated in subsection (a)(2).

These proposed amendments in no way imply a right to bargain pension and retirement benefits on behalf of current retirees as they are not defined as "employees" under the statute. Therefore, the Executive, joined by MCGEO/Local 400, requests that the Council amend the provisions of Bill No. 19-86 with the language presented above.

cc: David Scull, Councilmember
Rose Crenca, Councilmember
Esther Gelman, Councilmember
Michael Gudis, Councilmember
Neal Potter, Councilmember
Scott Fosler, Councilmember
William Willcox, Esq.
Arthur Spengler, Staff Director

COUNCIL WORKSESSION
June 19, 1986
4:30 PM - 7CHR

M E M O R A N D U M

June 17, 1986

TO: County Council

FROM: Arthur W. Spengler, Council Staff Director

SUBJECT: Collective Bargaining Legislation

Staff has one issue for the Council to discuss before the final draft of the collective bargaining bill can be completed -- i.e., should retiree benefits, in addition to pension benefits, be bargainable for active employees?

Council staff's recollection is that the Council's debate on retiree benefits was confined to pension benefits (i.e., defined benefit versus defined contribution plans); we do not recall any discussion regarding other retiree benefits (e.g., medical and dental benefits; cost sharings).

With regard to these non-pension retirement benefits, I would make the following points:

- unlike pensions, these benefits are not established in law;
- since they are not established by law, it would be possible for a bargaining agreement to reduce these benefits and there would be no opportunity for the Council to veto such changes.
- employees who might be adversely impacted would not have their voices heard in a public proceeding; this becomes more critical when the average age and length of service of unit members declines.
- these benefits are not bargainable for MCPS or College employees.

There are two alternative amendments for consideration:

County Executive and MCGEO

"With respect to pension and retirement benefits, pension benefits derived from County law and additional retirement benefits, including but not limited to those not specifically derived from law, shall be negotiable one year after the effective date of the statute."

Also amend Section 33-107(a)(3) by striking the words:

". . . but not including pension and retirement benefits except to the extent stated in subsection (a)(2)."

Council Staff

"With respect to pension and retirement benefits, pension benefits only shall be negotiable, for active employees only, one year after the effective date of this statute."

AWS/jm
B727/14-15

employees in the unit desire to be represented by the incumbent representative for the purposes of collective bargaining under the provisions of this article.

33-107. Collective bargaining.

(a) Duty to bargain; matters subject to bargaining.

Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects:

(1) Salary and wages, including the increase and/or decrease in the salary and wages budget, and the percentage of any increase in the salary and wages budget that will be devoted to merit increments and cash awards, provided that salaries and wages shall be uniform for all employees in the same classification.

(2) With respect to pension and retirement benefits, only defined-contribution plans for new employees or current employees who choose to transfer from a defined-benefit plan, provided that bargaining rights regarding such plans will not accrue unless and until the County has enacted a law establishing such plans.

(3) Employee benefits such as insurance, leave, holidays, and vacations, but not including pension and retirement benefits except to the extent stated in subsection (a)(2).

(4) Hours and working conditions.

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include:

(A) binding third party arbitration, provided that the arbitrator shall have no authority to amend, add to, or subtract from the provisions of the collective bargaining

agreement; and

(B) provisions for exclusivity of forum.

(6) Matters affecting the health and safety of employees.

(7) Amelioration of the effect on employees when the exercise of employer rights listed in subsection (b) causes a loss of existing jobs in the unit.

(b) 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.

(4)

AWS
CC

Montgomery County Government

JUN 16 A10

MEMORADUM

002195

June 13, 1986

TO: William E. Hanna, Jr., President
Montogomery County Council

FROM: Sean J. Rogers, Chief, Labor/Employee Relations and Training

SUBJECT: Amendments to Bill No. 19-86, County Employee Collective Bargaining, Section 33-107(a)(2) and (3) concerning negotiability of pension and retirement benefits.

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5

Personnel Office
Executive Office Building, 101 Monroe Street, 7th Floor, Rockville, Maryland 20850, 301/251-2284

benefits. This position was adopted by the Council with little discussion or debate. In order to clarify the scope of bargaining regarding the retirement issue the Executive proposes and the union concurs with the following language:

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cc: David Scull, Councilmember
Rose Crenca, Councilmember
Esther Gelman, Councilmember
Michael Gudis, Councilmember
Neal Potter, Councilmember
Scott Fosler, Councilmember
William Willcox, Esq.
Arthur Spengler, Staff Director

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, June 19, 1986 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 2:15 P.M., on Thursday, June 19, 1986.

PRESENT

William E. Hanna, Jr., President	Neal Potter, Vice President
Scott Fosler, President Pro Tem	Esther P. Gelman
Rose Crenca	David L. Scull

ABSENT

Michael L. Gudis

The President in the Chair.

SUBJECT: Executive Regulation No. 145-85. Personnel Regulations

ISSUES DISCUSSED: The memorandum to the Council from Council Staff Director Spengler, dated June 13, 1986, setting forth the issues for discussion and attaching the regulations; Section 7-4, Position Classification, and the procedures for appeal under the existing and proposed regulations; the position of the Montgomery County Government Employees' Organization (MCGEO) that it is important to retain the employees' right of appeal in all classification actions, not just on downgradings; the suggestion of Councilmember Potter that some criteria be established to prevent every classification case from being appealed and his suggestion that a small charge to the employee might prevent frivolous appeals; the recommendation of Mr. Spengler and MCGEO that the Chief Administrative Officer (CAO) make the final decision on classification issues, rather than the Personnel Director as proposed, so that the decision is not purely internal to the Personnel Office; the statement of Mr. Brewster, Chief, Classification Division, that he will provide the Council with precise statistics on the number of classification appeals and the County's rate of success; the suggestion of MCGEO representatives that a compromise be adopted to permit employees whose positions are downgraded or recommended for no change to appeal classification decisions, but not permit employees whose positions have been upgraded to appeal for a further upgrading; the observation of Mr. Spengler that the Council may not amend the Personnel Regulations, and his suggestion that the

Council could delete certain language in the hope that it will force the County Executive to make certain amendments.

ACTION: Agreed to delete the following language from lines 5 and 6, page 43 of the Regulations: [whose position is downgraded as a result of a reclassification or reallocation]

by motion of Councilmember Gelman:

YEAS: Gelman, Potter, Fosler
NAYS: Hanna
ABSTAIN: Crenca
ABSENT: Scull (temporarily); Gudis.

SUBJECT: Notice of Public Hearings on Supplemental and Emergency Appropriations

ACTION: Adopted the following resolutions:

Resolution No. 10-2012, setting a public hearing for 1:30 P.M. on Tuesday, June 24, 1986, on a proposed emergency appropriation to the FY86 Operating Budget of Montgomery County Public Schools, in the amount of $4,000 for a revision to Montgomery County Public Schools Instructional Guide for Physical Education;

Resolution No. 10-2013, setting a public hearing for 1:30 P.M. on Tuesday, June 24, 1986, on a proposed emergency appropriation to the FY86 Operating Budget of Montgomery County Public Schools, in the amount of $4,586 for Vocational Education Programs;

Resolution No. 10-2014, setting a public hearing for 1:30 P.M. on Tuesday, June 24, 1986, on a proposed emergency appropriation to the FY86 Operating Budget of Montgomery County Public Schools, in the amount of $43,106 for Job Training Partnership Grant to provide a summer vocational orientation program for economically disadvantaged youth;

Resolution No. 10-2015, setting a public hearing for 1:30 P.M. on Tuesday, June 24, 1986, on a proposed emergency appropriation to the FY86 Operating Budget to Montgomery County Public Schools, in the amount of $2,300 for "Cross-Age Science Teaching" (CAST) Program;

Resolution No. 10-2016, setting a public hearing for 1:30 P.M. on Tuesday, June 24, 1986, on a proposed emergency appropriation to the FY86 Operating Budget to Montgomery County Public Schools, in the amount of $30,407 for Vocational Exploration Program for Sepcial Education students;

Resolution No. 10-2017, setting a public hearing for 1:30 P.M. on Tuesday, June 24, 1986, on a proposed emergency appropriation to the

FY86 Operating Budget to Montgomery County Public Schools, in the amount of $2,092 for Audiovisual Series to supplement Senior High Composition Program;

Resolution No. 10-2018, setting a public hearing for 1:30 P.M. on Tuesday, June 24, 1986, on a proposed emergency appropriation to the FY86 Operating Budget to Montgomery County Public Schools, in the amount of $4,561 for Project High Hopes;

Resolution No. 10-2019, setting a public hearing for 1:30 P.M. on Tuesday, June 24, 1986, on a proposed emergency appropriation to the FY86 Operating Budget to Montgomery County Public Schools, in the amount of $2,940 for Integrated Reading and Writing Project in Area I;

Resolution No. 10-2020, setting a public hearing for 1:30 P.M. on Tuesday, June 24, 1986, on a proposed emergency appropriation to the FY86 Operating Budget to Montgomery County Public Schools, in the amount of $43,159 for Follow-Up Study of children who received Chapter I Services;

Resolution No. 10-2021, setting a public hearing for 1:30 P.M. on Tuesday, June 24, 1986, on a proposed emergency appropriation to the FY86 Operating Budget to Montgomery County Public Schools, in the amount of $11,000 for Computer Support System for Community Use of Schools;

by motion of Councilmember Potter, without objection, Councilmember Scull temporarily absent.

Resolution No. 10-2022, setting a public hearing for 10:00 A.M. on Monday, July 7, 1986, on an emergency appropriation to the FY87 Capital Budget and an amendment to the FY87-92 Capital Improvements Program of the Department of Transportation for eleven road and bridge projects for which 100% appropriation of the construction costs is needed in order to allow them to be counted in determining adequacy of roads in the administration of the Adequate Public Facilities Ordinance

by motion of Councilmember Potter, without objection, Councilmember Scull temporarily absent.

SUBJECT: Executive Regulation No. 145-85, Personnel Regulations

ISSUES DISCUSSED: Elimination of the retroactivity provision and the immediate pay increases associated with reclassifications; the position of Mr. Brewster that six months is an adequate amount of time for his office to complete individual position reclassifications, but that large classes, such as Community Health Nurse, cannot be done in that amount of time; the explanation of Mr. Sherman, Assistant County Attorney, that the reason for the

effective date of six months after the filing of requests for reclassifications is that, if 30 requests are filed during the June/December filing period, the Classification Division must choose which to do first, and it would not be fair to employees whose requests are addressed first to have immediate pay increases, while those employees whose requests are addressed later in the six month period must wait.

The Vice President in the Chair.

ACTION: Agreed with the suggestion of Vice President Potter that the Regulations should be amended to provide that pay increases as a result of reclassifications shall be effective as of the date the review is due, Councilmembers Hanna, Crenca and Scull temporarily absent.

SUBJECT: Bill No. 19-86. Collective Bargaining for County Employees

ISSUES DISCUSSED: The memorandum to the Council from Mr. Spengler, dated June 17, 1986, setting forth a final issue for discussion on Bill No. 19-86 prior to completion of the final draft of the bill, i.e., whether retiree benefits, such as medical and dental benefits or cost-sharing, should be bargainable for active employees, and his recommendation that they not be because, if reduced by a bargaining agreement, it would be impossible for the Council to veto the changes; Councilmember Gelman's motion that the following language be added to the bill as proposed by Mr. Spengler: "With respect to pension and retirement benefits, pension benefits only shall be negotiable, for active employees only, one year after the effective date of this statute."; Vice President Potter's request that the motion be divided to permit the Council to vote separately on the question of bargaining for active employees only, and on the question of whether non-pension benefits can be negotiated;

ACTION: Agreed that pension and retirements benefits would be bargainable for active employees only

by motion of Councilmember Gelman, without objection, Councilmember Hanna temporarily absent.

Agreed that the bill be amended to provide that "other retirement benefits" would also be bargainable

by motion of Councilmember Gelman, without objection, Councilmember Hanna temporarily absent.

Agreed that the bill be amended to provide that the date for the start of negotiations for the first year the law is in effect only would be December 1, rather than November 1

by motion of Councilmember Gelman, without objection, Councilmember Hanna temporarily absent.

SUBJECT: Executive Regulation No. 145-85. Personnel Regulations

ISSUES DISCUSSED: The lack of flexibility in Section 29-5 for the Merit System Protection Board (MSPB) to decide whether an appeal should be dismissed; the ability of the MSPB to adopt its own rules of procedure; the retention of records of commendations, reprimands and disciplinary actions for five years rather than two; the objection of MCGEO representatives to keeping records of disciplinary actions for five years; the opinion of Councilmember Scull that the Personnel Regulations should be renumbered to conform to the numbering system of the Code of Montgomery County Regulations.

ACTION: Agreed to delete Section 29-5, Dismissal of an Appeal

by motion of Councilmember Scull, without objection, Councilmembers Fosler and Hanna temporarily absent.

Directed staff to draft a bill to clarify that the Merit System Protection Board adopts its own rules of procedure which would be codified as part of the Code of Montgomery County Regulations

by motion of Councilmember Scull, without objection, Councilmembers Hanna, Gelman, Fosler and Crenca temporarily absent.

SUBJECT: Executive Session

The County Council convened in executive session on a matter of potential litigation.

The meeting adjourned at 5:47 P.M.

This is an accurate account of the meeting:

Kathleen A. Freedman, Secretary
County Council

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, June 5, 1986 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:15 A.M. on Thursday, June 5, 1986.

PRESENT

William E. Hanna, Jr., President	Neal Potter, Vice President
Esther P. Gelman	Michael L. Gudis
Rose Crenca	David L. Scull

ABSENT
Scott Fosler

The President in the Chair.

SUBJECT: Executive Regulation No. 145-85, Personnel Regulations

ISSUES DISCUSSED: The memorandum to the Council from Council Staff Director Spengler, dated June 3, 1986, setting forth the issues to be reviewed; the provision in Section 1-13(c) regarding the time frame for which an employee can receive a remedy from the date of filing the action; the position of the Personnel Office that no harm is done to the employee until a decision is made regarding the reclassification request, grievance, or appeal, and, therefore, there is no need for a retroactive provision; the concern of Mr. Thompson, attorney for the Montgomery County Government Employees' Organization (MCGEO) that the provision of Section 1-13 eliminates the retroactive provision for reallocations, which are likely to affect large classes of employees such as the nurses, but retains it for individual position reclassifications; concerns expressed by various Councilmembers that future reclassification/reallocation actions not take as long as it took to reclassify the nurses; the five-year cycle for reclassification reviews and the ability of the Personnel Office to keep up with that schedule; the opinion of Councilmember Gelman that it was inappropriate for the County to appeal a decision of the Merit System Protection Board regarding the reclassification of the nurses, and her desire for the County Attorney to brief and consult with the Council before initiating such action; the desire of Councilmember Potter to differentiate in Section 1-13 between those persons who file a request routinely at the beginning of a five-year reclassification review cycle in order to obtain the maximum benefit if their position is reclassified or reallocated upwards, and those cases where retroactivity is justified, and his inability to find the appropriate language to make the

distinction; the concern of Councilmember Scull that the provisions of Section 1-11, Prohibited Activities, does not include all of the activities which are prohibited under the ethics chapter of the law nor do they inform employees that there are further prohibitions and provisions for obtaining waivers from the Ethics Commission, and his suggestion that the regulations be amended to include a statement that "all County employees are subject to the ethics requirements of the Charter and Chapter 19A of the Montgomery County Code, and information is available from the Ethics Commission;" Councilmember Scull's concern regarding the definition of "family" in the Personnel Regulations and its apparent conflict with the definition of "family" in the ethics chapter of the Code; Councilmember Scull's concerns that certain sections of the Montgomery County Charter are reprinted in the Personnel Regulations and his statement that, in the Code revision process, the Council has decided not to repeat provisions of the Code; the provisions of Section 3-2 and 5-9 which define a "displaced homemaker" and allow the Chief Administrative Officer (CAO) to provide special scoring credits for a merit system examination for displaced homemakers; President Hanna's desire to delete the special credits for displaced homemakers; Councilmember Gelman's desire to retain special credits for displaced homemakers; Councilmember Fosler's belief that recognition be given to women who stay at home to care for their families but that, as a practical matter, he is concerned about how the system would be administered, and he does not believe that it can be done without the potential for abuse; Councilmember Scull's inquiry as to the statutory authority for the policy of preferential points for displaced homemakers, his belief that such a policy should not be instituted through the regulation process but rather through the legislative process, his suggestion that these provisions be deleted from the Personnel Regulations without the Council having made a final policy decision as to whether the County should have such a policy, and his statement that the preferential treatment for veterans is a matter of State law that cannot be repealed by the Council by removing it from the Personnel Regulations; the recommendation of the Personnel Committee that Section 6-4(d) be amended to delete the requirement that employees serving a probationary period must be advised of the steps to be taken to achieve an acceptable level of performance; President Hanna's belief that it is not necessary to advise a probationary employee in writing as to what must be done to achieve an acceptable level of performance; the statement by Mr. Garrett that the original draft required that employees be advised in writing but that it has been changed to require that the employees be "advised"; the opinion of Mr. Renne, President, MCGEO, that, if an employee is not working at an acceptable level of performance, he should be informed and given the opportunity to improve before the end of the probationary period.

ACTION: Recommended that the County Executive make the following amendments to the Personnel Regulations:

On page 11 of the draft, dated 5/20/86, delete [effect] from line 13 and insert in lieu thereof the word affect;

On page 19, lines 7 through 16, delete Section 3-2 in its entirety; and page 27, delete the language on line 22 through the end of line 23, as follows: [and to County residents who are displaced homemakers (as defined in Section 3-2 of these regulations)];

On page 31, lines 13 through 17, delete subsection (d) of Section 6-4, Probationary Period, in its entirety;

Agreed to meet again to review the Personnel Regulations from 1:30 to 4:30 P.M. on June 6 and from 2:00 to 5:00 P.M. on June 19, with the day of June 27 being held for an additional worksession if needed.

(The Council recessed at 12:20 P.M. and reconvened at 2:14 P.M.

SUBJECT: Bill No. 19-86, County Employee Collective Bargaining

ISSUES DISCUSSED: The staff summary, dated June 5, 1986, setting forth issues on the subject continued from the last worksession of May 29, 1986; Issue 4.D. of the summary, Binding Grievance Arbitration; the proposed amendment to pages 19 and 20 of the subject bill that would require binding grievance arbitration for discipline and discharge cases and advisory arbitration for other cases, unless the parties agree that the decision in a particular case will be binding.

ACTION: Agreed to retain the language contained in the bill on pages 19 and 20 regarding binding arbitration.

ISSUES DISCUSSED: Issue 4.E. of the summary, "Effects" Bargaining; the proposed amendment to page 20, lines 4 through 6, that would substitute the broad language from the police collective bargaining law on "effects" bargaining for the language in the bill which confines "effects" bargaining to the exercise of management rights when the exercise of management rights causes the loss of bargaining unit jobs; the County Executive's opposition to the amendment, as set forth on pages three and seven of his memorandum of May 29, 1986; the statement by Mr. Thompson, attorney representing MCGEO (Local 400), that the broader language is usually included in collective bargaining legislation, and is needed in the subject bill; the statement by Mr. Rogers, representing the County Executive, that the amendment should not be included in the bill because it would limit the power of the government to act in emergency and security situations and to make changes within the government involving technology and standards; the statement by Mr. Torgesen, staff of the Personnel Office, that the broader language was included in the police law because, when it was written, management was unaware of the potential impact of "effects" bargaining; the opinion of Mr. Willcox, special attorney, that the inclusion of the amendment could delay the implementation of a government action which might result in litigation; President Hanna's belief that inclusion of the amendment might interfere with the government's ability to implement improvements; Councilmember Potter's suggestion that an amendment might be drafted that would distinguish between actions the government must take in carrying out its responsibilities and actions the government could take to harass employees; Councilmember Potter's belief that a broader definition of "grievance procedure" is needed; the statement by Councilmember Fosler concerning the need for continuous communication between employees and employers when collective bargaining for public employees is initiated to avoid misunderstandings, and his support of the provision

included in the bill on "effects" bargaining; whether a government action resulting in the relocation of an employee's work place should be a subject of collective bargaining; Councilmember Gelman's suggestion that the bill could be amended to provide priority transfer to other County positions for employees who are being relocated similar to the priority granted to County employees who have lost their jobs as a result of a reduction in force action.

ACTION: Agreed to support the language in the subject bill regarding "effects" bargaining (subsection 33-107(7)) unless an acceptable amendment is drafted, as suggested by Councilmember Potter, that would distinguish between employer rights that must be exercised by the government and employer rights that might be exercised by the government as a form of employee harassment.

Adopted the following amendment proposed by Mr. Thompson:

In subsection 33-107(b)(17), after "representative," substitute , for [.] and add unless another date for notification is agreed upon by the parties.

ISSUES DISCUSSED: Issue 6 of the summary, Bargaining Impasse to be Broken with Fact-finding, not Binding Arbitration (Section 33-108); the statement by Mr. Thompson in opposition to the procedure set forth in the subject bill for the submission of the recommendations of the mediator/fact-finder and both negotiating parties to the County Council because he believes negotiators will make a greater effort to reach an agreement on issues if only the report of the mediator/fact-finder is submitted to the Council when the parties fail to reach an agreement; Councilmember Hanna's observation that the subject bill provides that, after the mediator/fact-finder makes recommendations on dispute issues, the parties are permitted to bargain an additional 10 days before the report of the mediator/fact-finder and the position of the two parties are submitted to the Council; the statement by Councilmember Fosler concerning the Personnel Committee's review of this issue, and its support of Section 33-108, as written; Councilmember Scull's concern that the Council's role in the bargaining process under the subject legislation is too broad and should be limited to budgetary and legislative actions; the language in the law (subsection 33-108(k)) which indicates that actions taken by the Council in resolving issues that are in dispute shall not be part of the agreement between parties unless the parties specifically incorporate them in the agreement; Mr. Willcox's suggestion that additional language could be added to indicate that matters that are still in dispute or that do not involve legislation or significant expenditure of capital will not be included in the contract; Councilmember Potter's concern regarding the language in subsection 33-108(i) which indicates that the Council will state its reasons for any intent to reject any part of the items agreed to by the negotiating parties; Mr. Willcox's suggestion that subsection 33-108(i) could be revised for clarification; the need for a technical amendment in the last sentence of 33-108(g).

ACTION: Amended, without objection, subsection 33-108(g), the last sentence, to substitute to which the parties have for [that has been agreed] and to add , after "to."

ISSUES DISCUSSED: Issue 7 of the summary, Timing of Bargaining (Section 33-108); the statement by Mr. Thompson withdrawing the amendment proposed by MCGEO that would provide for bargaining of a short contract for 1986-87 that would contain only non-economic items; Issue 8 of the summary, Labor Relations Administrator (Section 33-103); the proposed amendment that makes the first term of the Labor Relations Administrator five years, deletes the list of future appointees agreed upon by any certified employee representative(s) and the Chief Administrative Officer, and limits the participation in appointments by any certified employee representative(s) to the right to veto any reappointment; statements by Messrs. Thompson and Rogers indicating their support of the language included in the bill for Section 33-103 rather than the proposed amendment; Issue 9 of the summary, Repeal of the Mandated 75% Cost-of-Living Law (subsection 33-74(d)); the effect of the repeal upon County employees excluded from collective bargaining under subsection 33-102(4); Issue 10 of the summary, Meet and Confer (subsection-33-63A); the provision in this section which indicates that "meet and confer" respresentation will not be applicable to any person upon certification that the employees in the units are represented for collective bargaining; the proposed amendment that provides that State Merit System employees, who are excluded from collective bargaining under the bill, would retain "meet and confer" rights; the following amendment proposed by MCGEO to Section 33-112, Effect of Prior Enactments:

> (a) Nothing contained in this article shall be construed to repeal any laws, executive orders, rules, or regulations adopted by the County and any department or agency thereof not inconsistent with the provisions of this article.
>
> (b) Any executive orders, rules or regulations of the County and any department or agency of the County which concern any subject for bargaining pursuant to the provisions of this article shall not be held to be repealed or modified except to the extent that their subject matter is governed by the provisions of a collective bargaining agreement between the County and a certified exclusive employee representative.;

the statement by Mr. Thompson that the (b) paragraph of the proposed amendment provides that the collective bargaining agreement supersedes any executive order, rule or regulation of the County which is a subject for bargaining and is in conflict with the agreement; the statement by Mr. Willcox that the amendment might interfere with the implementation of subsection 33-108(g) which provides for the identification of any term or condition agreed to in the contract that requires an appropriation of funds or the enactment, repeal, or modification of any County law or regulation; the statement by Councilmember Potter that clarifying language needs to be added to this section to indicate that the agreement will not supersede any order, rule, or regulation which is in conflict with the collective bargaining agreement if it has not been identified as being in conflict; the need to add clarifying language to subsection 33-108(g) and to redraft the (b) paragraph of the amendment proposed by MCGEO.

ACTION: Asked that clarifying amendments be made to subsection 33-108(g) to emphasize the need for identification of County orders, rules or regulations that are in conflict with the collective bargaining agreement;

Approved the amendment proposed by MCGEO for Section 33-112, as redrafted to conform to subsection 33-108(g), as amended.

Approved Bill No. 19-86, as amended, by a straw vote.

by motion of Councilmember Gelman, without objection.

(SECRETARY'S NOTE: The bill is scheduled for final reading by the Council on June 24, 1986.)

(The Council recessed at 4:55 P.M. and reconvened at 7:30 P.M.)

SUBJECT: Public Hearing on Zoning Text Amendment No. 86007, Prohibiting Off-Site Commercial Signs

ACTION: The public hearing was conducted as reflected in the transcript of the hearing. The Council instructed that the record be kept open until close of business on June 19, 1986.

The meeting adjourned at 8:20 P.M.

This is an accurate account of the meeting:

Kathleen A. Freedman, Secretary
County Council

Bill No. 26-99
Concerning: Collective Bargaining - Amendments
Revised: 3-3-00 Draft No. 5
Introduced: September 14, 1999
Enacted: March 7, 2000
Executive: March 16, 2000
Effective: June 15, 2000
Sunset Date: None
Ch. 2 Laws of Mont. Co. 2000

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin and Silverman

AN ACT to:

(1) modify certain functions of the Labor Relations Administrator;
(2) revise the process for certifying employee organizations;
(3) revise the timetable for certain collective bargaining actions;
(4) require binding arbitration of certain collective bargaining agreements; and
(5) generally amend the law governing collective bargaining for certain County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-103, 33-106, and 33-108

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:

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:

* * *

(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.

33-106 Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for **[**the purpose of**]** collective bargaining **[**shall be initiated in accordance with**]** must comply with the following procedures:

* * *

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b) * * *

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

* * *

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

(a) Collective bargaining **[**shall**]** must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and **[**shall**]** must be finished on or before **[**January**]** February **[[**15**]]** 1. **[**The resolution of a bargaining impasse or fact-finding shall be finished by February 1.**]**

(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 year or for more than 3 years. All agreements **[**become effective**]** take effect July 1 and end June 30.

(c) A collective bargaining agreement **[**becomes effective**]** takes effect only after ratification by the employer and **[**by**]** the certified representative. The certified representative may **[**provide**]** adopt its own **[**rules for**]** ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator **[**shall**]** must appoint a mediator/**[**fact-finder**]** arbitrator, who may be a person recommended **[**to her**]** by both parties. The mediator/**[**fact-finder**]** arbitrator **[**shall**]** must be available **[**during the

period**]** from January 2 to **[**February 1**]** June 30. Fees and expenses of the mediator/**[**fact-finder**]** arbitrator **[**shall**]** must be shared equally by the employer and the certified representative.

(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 **[[**15**]]** 1, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) **[[**This**]]** Any dispute, except a dispute involving the negotiability of a bargaining proposal, **[**shall**]** must be submitted to the mediator/**[**fact-finder**]** arbitrator whenever an impasse has been reached, or **[**before that**]** as provided in subsection (e)(1). The mediator/**[**fact-finder**]** arbitrator **[**shall**]** must engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will **[**tend to bring about the**]** encourage settlement of the dispute.

(3) If **[**and when**]** the mediator/**[**fact-finder**]** arbitrator finds, in **[**his**]** the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, **[**he shall implement the following fact-finding process:**]** or as of February **[[**15**]]** 1 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.**]**

(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 wage premiums or differentials, allowances, merit increments, and

amounts allocated for cash awards), pension and other **[[**welfare**]]** retirement benefits, and employee benefits such as **[[**health**]]** insurance. The mediator/arbitrator must decide any issue regarding whether a particular proposal is economic or non-economic.**]]**

[(b.)**]** (2) **[**He**]** The mediator/arbitrator may require the parties to submit oral or written evidence **[**or make oral or written**]** and arguments in support of their proposals. **[**He**]** The mediator/arbitrator may hold a hearing for this purpose at a time, date, and place selected by **[**him**]** the mediator/arbitrator. This hearing **[**shall**]** must not be open to the public.

[(c.)**]** (3) **[**On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.**]**

On or before **[[**March 1**]]** February 15, the mediator/arbitrator must select, as a whole, the more reasonable of **[[**(A)**]]** the final **[[**economic**]]** offers submitted by the parties**[[**, and (B) the final non-economic offers 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 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.**]]**

[(d.)**]** (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:

[(i)**]** (A) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history

of employee wages, hours, benefits, and working conditions.

[(ii)**]** (B) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland.

[(iii)**]**(C) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

[(iv)**]** (D) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

[(v)**]** (E) The interest and welfare of the public.

[(vi)**]** (F) The ability of the employer to finance economic adjustments, and the effect of the adjustments **[**upon**]** on the normal standard of public services provided by the employer.

(5) The **[[**economic **[[**offer**]]** and non-economic offers**]]** offer selected by the mediator/arbitrator, **[[**together with the mediator/arbitrator's conclusion on each non-economic proposal,**]]** integrated with all previously agreed on items, **[[**is**]]**

[[comprise**]]** is the final agreement between the employer and the certified representative, need not be ratified by any party, and **[[**has**]] [[**have**]]** has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement, and any provision which requires action in the County budget must be included in the budget which the employer submits to the County Council.

[(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator-fact-finder, the report of the mediator-fact-finder, with recommendations on agreed items deleted, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.**]**

(g) The **[[**budget that the**]]** employer **[[**submits**]]** must submit to the Council **[**shall**] [[**must include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed

or disputed**]]** any term or condition **[[**submitted to the Council**]]** of the collective bargaining agreement that requires an appropriation of funds, or the enactment**[**, repeal, or modification**]** or adoption of any County law or regulation, or which has or may have a present or future fiscal impact**[[**, may be accepted or rejected in whole or in part by the Council**]]**. **[**Such terms or conditions shall be identified to the Council by either or both parties.**]** The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. The employer **[**shall**]** must make a good faith effort to have the Council **[[**take action to implement**]]** approve **[**any term or condition to which the parties have agreed**]** all terms of the final agreement that require Council review.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement **[**and the recommendations for resolving bargaining disputes**]**.

(i) The Council may accept or reject all or part of any term or condition that requires Council review under subsection (g). On or before May 1, the Council **[**shall**]** must indicate by resolution its intention to appropriate funds for or otherwise implement the **[**items that have been agreed to**]** **[[**agreement**]]** items that require Council review or its

intention not to do so, and **[**shall**]** must state its reasons for any intent to reject any **[**items of the kind specified in subsection (g) that have been agreed to**] [[**item of the final agreement**]]** such item. **[**The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.**]**

(j) **[**Then**]** If the Council indicates its intention to reject any item **[[**of the final agreement**]]** that requires Council review, the Council **[**shall**]** must designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on **[**disputed matters and/or agreed upon**] [[**matters**]]** items that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, **[**shall be submitted**]** to the Council on or before May 10. The Council then must consider the

agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement, or its intention not to do so.

(k) Any agreement **[**shall**]** must provide for automatic reduction or elimination of wage **[**and/**]**or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year **[**in which**]** when the agreement is in effect.

[(k)**]** (l) The Council **[**shall**]** must take **[**whatever actions it considers**]** any action required by the public interest with respect to **[**matters**]** any matter still in dispute between the parties. However, **[**those actions shall not be**]** any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate **[**them**]** it in the agreement.

Approved:

/S/ 3/9/00

Michael L. Subin, President, County Council Date

Approved:

/S/	3/16/00
Douglas M. Duncan, County Executive	Date

This is a correct copy of Council action.

/S/	3/21/00
Mary A. Edgar, CMC, Clerk of the Council	Date

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, March 7, 2000 Rockville, Md.

The County Council for Montgomery County, Maryland convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:05 A.M. on Tuesday, March 7, 2000.

PRESENT

Michael L. Subin, President	Blair G. Ewing, Vice President
Phil Andrews	Isiah Leggett
Nancy H. Dacek	Marilyn J. Praisner
Betty Ann Krahnke	Steven A. Silverman

ABSENT

Derick Berlage

The President in the Chair.

SUBJECT: Approval of Legislative Journal

ACTION: Approved the legislative journals of February 8 and 15, 2000, as amended.

The journals were approved by motion of Councilmember Praisner, without objection, Councilmember Berlage absent.

INTRODUCTION OF BILLS

SUBJECT: Bill 8-00. Streets and Roads – Ground Cover in Public Rights-of-Way

Councilmember Ewing, a sponsor of the legislation, stated that the bill would allow property owners to place alternative, conservation-promoting plants or other ground cover on their property in the public right-of-way. At present, residents are not allowed to grow anything in these strips of property except turf grass despite the lack of existing legislation or regulations concerning this matter. Mr. Ewing expressed the view that the bill represents a good environmental proposal.

Councilmember Praisner stated that she is sympathetic with the concerns that led to the legislation, but questions whether there are broader issues that need to be addressed such as how the right-of-way is defined and the possibility of addressing the issue through regulation rather than legislation. Ms. Praisner expressed the hope that the Council will examine this issue from a broader perspective rather than attempting to enact legislation for uses in rights-of-way.

Councilmember Dacek said that there are issues that need to be addressed such as the penalty for not applying the appropriate ground cover to rights-of-way and identifying the agency that would be responsible for enforcing the legislation. Ms. Dacek stated that she could not support the legislation as it is currently written.

President Subin said that if Councilmembers have questions concerning the bill, they should present them to the Council committee that will review the legislation.

ACTION: Introduced Draft 4 of the bill sponsored by Councilmembers Ewing and Krahnke.

SUBJECT: Bill 26-99, Collective Bargaining Amendments

Councilmember Andrews, lead Councilmember for Personnel, presented the report of the Management and Fiscal Policy (MFP) Committee, in accordance with the information contained in the memorandum from Senior Legislative Attorney Faden, dated March 7, 2000. He said that the Committee majority recommended against enactment of the bill and that the Committee majority indicated that if the Council enacts the bill the Committee amendments would offer a reasonable approach. Mr. Andrews said that he did not support the Committee's recommendation.

With respect to the type of binding arbitration, Councilmember Andrews stated that the Committee is recommending a two package approach, last best offer approach in which the arbitrator would review an economic package and a non-economic package and select the more reasonable of each. He said that in Committee, he voted against this approach, preferring instead the original "hybrid" approach: the economic issues would be decided on a last best offer total package basis. The arbitrator would decide which issues are economic and which are non-economic, could decide each non-economic item separately, and would not be bound by the parties' offers.

Councilmember Andrews moved, duly seconded, a substitute motion to amend the bill to substitute the last best offer total package approach for the two-package approach recommended by the Committee majority. He distributed to the Council a written amendment in this regard.

Councilmember Praisner discussed the Committee's review of the bill and explained the Committee majority's rationale for recommending "a two-package, last best offer approach," if the bill is enacted. She said that the majority of the Committee was concerned that without a separation of fiscal and non-fiscal issues, there would not be adequate consideration of the non-compensation issues as the arbitrators tended to focus on that one item. Furthermore the MCGEO bargaining unit, unlike police and fire, incorporated many different functions and positions which also argued for different consideration. She said that in Committee, Councilmember Andrews continued to support the hybrid approach, as originally proposed.

Councilmember Dacek commented on issues related to the types of binding arbitration, expressed concern about binding arbitration in general, and stated that she does not support the bill.

ACTION: Amended the bill to make the technical amendments recommended by Council Staff and incorporate Councilmember Andrews' amendment concerning the type of binding arbitration.

The amendments were approved by motion of Councilmember Andrews:

YEAS: Andrews, Leggett, Ewing, Subin, Silverman
NAYS: Dacek, Praisner, Krahnke
ABSENT: Berlage.

Adopted the following amendments as reflected in the bill:

AN ACT to:

(1) modify certain functions of the Labor Relations Administrator;
(2) revise the process for certifying employee organizations;
(3) revise the timetable for certain collective bargaining actions;
(4) require binding arbitration of certain collective bargaining agreements; and
(5) generally amend the law governing collective bargaining for certain County employees.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-103, 33-106, and 33-108

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:

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:

* * *

(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.

33-106. Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

* * *

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b) * * *

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization. and a properly supported and timely filed petition to certify another employee organization. are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization. if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations. and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

* * *

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

(a) Collective bargaining [shall] must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and [shall] must be finished on or before [January] February [[15]] 1. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]

(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 year or for more than 3 years. All agreements [become effective] take effect July 1 and end June 30.

(c) A collective bargaining agreement [becomes effective] takes effect only after ratification by the employer and [by] the certified representative. The certified representative may [provide] adopt its own [rules for] ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator [shall] must appoint a mediator/[fact-finder] arbitrator, who may be a person recommended [to her] by both parties. The mediator/[fact-finder] arbitrator [shall] must be available [during the period] from January 2 to [February 1] June 30. Fees and expenses of the mediator/[fact-finder] arbitrator [shall] must be shared equally by the employer and the certified representative.

(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 [[15]] 1, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) [[This]] Any dispute, except a dispute involving the negotiability of a bargaining proposal, [shall] must be submitted to the mediator/[fact-finder] arbitrator whenever an impasse has been reached, or [before that] as provided in subsection (e)(1). The mediator/[fact-finder] arbitrator [shall] must engage in mediation by bringing the parties together

voluntarily under such favorable circumstances as will [tend to bring about the] encourage settlement of the dispute.

(3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his] the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, [he shall implement the following fact-finding process:] or as of February [[15]] 1 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

(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 wage premiums or differentials, allowances, merit increments, and amounts allocated for cash awards), pension and other [[welfare]] retirement benefits, and employee benefits such as [[health]] insurance. The mediator/arbitrator must decide any issue regarding whether a particular proposal is economic or non-economic.]]

[(b.)] (2) [He] The mediator/arbitrator may require the parties to submit oral or written evidence [or make oral or written] and arguments in support of their proposals. [He] The mediator/arbitrator may hold a hearing for this purpose at a time, date, and place selected by [him] the mediator/arbitrator. This hearing [shall] must not be open to the public.

[(c.)] (3) [On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.]

On or before [[March 1]] February 15, the mediator/arbitrator must select, as a whole, the more reasonable of [[(A)]] the final [[economic]] offers submitted by the parties[[, and (B) the final non-economic offers 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 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.]]

[(d.)] (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:

[(i)] (A) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

[(ii)] (B) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland.

[(iii)](C) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

[(iv)] (D) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

[(v)] (E) The interest and welfare of the public.

[(vi)] (F) The ability of the employer to finance economic adjustments, and the effect of the adjustments [upon] on the normal standard of public services provided by the employer.

(5) The [[economic [[offer]] and non-economic offers]] offer selected by the mediator/arbitrator. [[together with the mediator/arbitrator's conclusion on each non-economic proposal,]] integrated with all previously agreed on

items. [[is]] [[comprise]] is the final agreement between the employer and the certified representative. need not be ratified by any party, and [[has]] [[have]] has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement. and any provision which requires action in the County budget must be included in the budget which the employer submits to the County Council.

[(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator-fact-finder, the report of the mediator-fact-finder, with recommendations on agreed items deleted, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.]

(g) The [[budget that the]] employer [[submits]] must submit to the Council [shall] [[must include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed]] any term or condition [[submitted to the Council]] of the collective bargaining agreement that requires an appropriation of funds, or the enactment[, repeal, or modification] or adoption of any County law or regulation, or which has or may have a present or future fiscal impact[[, may be accepted or rejected in whole or in part by the Council]]. [Such terms or conditions shall be identified to the Council by either

or both parties.] The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. The employer [shall] must make a good faith effort to have the Council [[take action to implement]] approve [any term or condition to which the parties have agreed] all terms of the final agreement that require Council review.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement [and the recommendations for resolving bargaining disputes].

(i) The Council may accept or reject all or part of any term or condition that requires Council review under subsection (g). On or before May 1, the Council [shall] must indicate by resolution its intention to appropriate funds for or otherwise implement the [items that have been agreed to] [[agreement]] items that require Council review or its intention not to do so, and [shall] must state its reasons for any intent to reject any [items of the kind specified in subsection (g) that have been agreed to] [[item of the final agreement]] such item. [The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]

(j) [Then] If the Council indicates its intention to reject any item [[of the final agreement]] that requires Council review, the Council [shall] must designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on [disputed matters and/or agreed upon] [[matters]] items that the Council has indicated its intention to reject. This representative

must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, [shall be submitted] to the Council on or before May 10. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement, or its intention not to do so.

(k) Any agreement [shall] must provide for automatic reduction or elimination of wage [and/]or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year [in which] when the agreement is in effect.

[(k)] (l) The Council [shall] must take [whatever actions it considers] any action required by the public interest with respect to [matters] any matter still in dispute between the parties. However, [those actions shall not be] any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate [them] it in the agreement.

Enacted Bill 26-99, as amended.

The bill was enacted as amended by a roll call vote:

YEAS: Andrews, Leggett, Ewing, Subin, Silverman
NAYS: Dacek, Praisner, Krahnke
ABSENT: Berlage.

SUBJECT: Emergency Bill 35-99, Rental Assistance Program

Councilmember Ewing, Chair, Health and Human Services Committee, presented the Committee report on Bill 35-99, in accordance with the memorandum from Senior Legislative Attorney Faden, dated March 7, 2000.

ACTION: Adopted the following amendments as reflected in the bill:

AN EMERGENCY ACT to:

(1) revise the law governing eligibility for and payment of Rental Assistance Program and Handicapped Rental Assistance Program benefits;
(2) repeal the Supplemental Rental Assistance program for families with dependent children;
(3) remove inconsistencies in the law governing the Rental Assistance Program, and make stylistic and technical changes; and
(4) generally amend the law governing rental assistance programs.

By amending

Montgomery County Code
Chapter 41A, Rental Assistance

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, September 14, 1999 Rockville, Md.

The County Council for Montgomery County, Maryland convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:30 A.M. on Tuesday, September 14, 1999.

PRESENT

Isiah Leggett, President	Phil Andrews
Blair G. Ewing	Derick Berlage
Betty Ann Krahnke	Nancy H. Dacek
Marilyn J. Praisner	Steven A. Silverman

ABSENT

Michael L. Subin, Vice President

The President in the Chair.

INTRODUCTION OF BILLS

SUBJECT: **Bill 24-99, Working Families Income Supplement – Establishment**

ACTION: Introduced Draft 2 of the subject bill sponsored by Councilmembers Silverman and Subin.

SUBJECT: **Bill 25-99, Arts and Humanities – Humanities Programs**

ACTION: Introduced Draft 3 of the subject bill sponsored by the Council President at the request of the County Executive.

SUBJECT: **Bill 26-99, Collective Bargaining – Amendments**

ACTION: Introduced Draft 2 of the subject bill sponsored by Councilmembers Subin and Silverman.

The meeting adjourned at 10:32 A.M.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Elda Dodson, Deputy Clerk

AGENDA ITEM #6
September 14, 1999
Introduction

MEMORANDUM

September 10, 1999

TO: County Council

FROM: Michael E. Faden, Senior Legislative Attorney

SUBJECT: **Introduction**: Bill 26-99, Collective Bargaining - Amendments

Bill 26-99, Collective Bargaining – Amendments, sponsored by Councilmembers Subin and Silverman, is scheduled to be introduced September 14. A public hearing is tentatively scheduled for November 9 at 1:30 pm.

This bill requires arbitration of collective bargaining agreements for County government employees. The form of binding arbitration is last best offer for the entire economic package, and last best offer item-by-item for non-economic items. The arbitrator would decide which issues are economic or non-economic. Bill 26-99 also revises the process for certifying employee organizations and the timetable for certain collective bargaining actions.

This packet contains:	Circle #
Bill 26-99	1
Legislative Request Report	14

f:\law\bills\9926 binding arbitration\intro memo.doc

Bill No. 26-99
Concerning: Collective Bargaining - Amendments
Revised: 9-8-99 Draft No. 2
Introduced: September 14, 1999
Expires: March 14, 2001
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin and Silverman

AN ACT to:

(1) modify certain functions of the Labor Relations Administrator;
(2) revise the process for certifying employee organizations;
(3) revise the timetable for certain collective bargaining actions;
(4) require binding arbitration of certain collective bargaining agreements; and
(5) generally amend the law governing collective bargaining for certain County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-103, 33-106, and 33-108

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:

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:

* * *

(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.

33-106 Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

(2)

* * *

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b) * * *

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

* * *

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

(a) Collective bargaining [shall] must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and [shall] must be finished on or before [January] February 15. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]

(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 year or for more than 3 years. All agreements [become effective] take effect July 1 and end June 30.

(c) A collective bargaining agreement [becomes effective] takes effect only after ratification by the employer and [by] the certified representative. The certified representative may [provide] adopt its own [rules for] ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator [shall] must appoint a mediator/[fact-finder] arbitrator, who may be a person recommended [to her] by both parties. The mediator/[fact-finder] arbitrator [shall] must be available [during the

period] from January 2 to [February 1] June 30. Fees and expenses of the mediator/[fact-finder] arbitrator [shall] must be shared equally by the employer and the certified representative.

(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 15, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) This dispute [shall] must be submitted to the mediator/[fact-finder] arbitrator whenever an impasse has been reached, or [before that] as provided in subsection (e)(1). The mediator/[fact-finder] arbitrator [shall] must engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will [tend to bring about the] encourage settlement of the dispute.

5

(3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his] the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, [he shall implement the following fact-finding process:] or as of February 15 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

(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 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.

[(b.)] (2) [He] The mediator/arbitrator may require the parties to submit oral or written evidence [or make oral or written] and arguments in support of their proposals. [He] The mediator/arbitrator may hold a hearing for this purpose at a time, date, and place selected by [him] the mediator/arbitrator. This hearing [shall] must not be open to the public.

[(c.)] (3) [On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.]

On or before March 1, the mediator/arbitrator must select, as a whole, the more reasonable of the final economic offers submitted by the parties. With regard to the economic offers, 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

7

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 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.

[(d.)] (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:

[(i)] (A) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

[(ii)] (B) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public

8

employers in the Washington Metropolitan Area and in Maryland.

[(iii)](C) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

[(iv)] (D) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

[(v)] (E) The interest and welfare of the public.

[(vi)] (F) The ability of the employer to finance economic adjustments, and the effect of the adjustments [upon] on the normal standard of public services provided by the employer.

(5) The economic offer selected by the mediator/arbitrator, together with the mediator/arbitrator's conclusion on each non-economic proposal, integrated with all previously agreed on items, is the final agreement between the employer and the certified representative, need not be ratified by any party, and has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement, and any provision which requires action in the County budget must

be included in the budget which the employer submits to the County Council.

[(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator-fact-finder, the report of the mediator-fact-finder, with recommendations on agreed items deleted, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.]

(g) The budget that the employer submits to the Council [shall] must include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed term or condition submitted to the Council that requires an appropriation of funds, or the enactment[, repeal, or modification] or adoption of any County law or regulation, or which has or may have a present or future fiscal impact, may be accepted or rejected in whole or in part by the Council. [Such terms or conditions shall be identified to the

Council by either or both parties.] The employer must expressly identify any term or condition that requires Council review. The employer [shall] must make a good faith effort to have the Council take action to implement [any term or condition to which the parties have agreed] all terms of the final agreement.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement [and the recommendations for resolving bargaining disputes].

(i) On or before May 1, the Council [shall] must indicate by resolution its intention to appropriate funds for or otherwise implement the [items that have been agreed to] agreement or its intention not to do so, and [shall] must state its reasons for any intent to reject any [items of the kind specified in subsection (g) that have been agreed to] item of the final agreement. [The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]

(j) [Then] If the Council indicates its intention to reject any item of the final agreement, the Council [shall] must designate a representative to

meet with the parties and present the Council's views in the parties' further negotiation on [disputed matters and/or agreed upon] matters that the Council has indicated its intention to reject. The parties must submit the results of the negotiation, whether a complete or a partial agreement, [shall be submitted] to the Council on or before May 10.

(k) Any agreement [shall] must provide for automatic reduction or elimination of wage [and/]or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year [in which] when the agreement is in effect.

[(k)] (l) The Council [shall] must take [whatever actions it considers] any action required by the public interest with respect to [matters] any matter still in dispute between the parties. However, [those actions shall not be] any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate [them] it in the agreement.

Approved:

Isiah Leggett, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council Date

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LEGISLATIVE REQUEST REPORT

Bill 26-99

Collective Bargaining - Amendments

DESCRIPTION:	Requires binding arbitration of collective bargaining agreements for County government employees. The form of binding arbitration is last best offer for the entire economic package, and last best offer item-by-item for non-economic items. The arbitrator would decide which issues are economic or non-economic. Also revises the process for certifying employee organizations and the timetable for certain collective bargaining actions.
PROBLEM:	Need for other County government employees to have the same right to bargaining arbitration as County public safety employees now have.
GOALS AND OBJECTIVES:	To make the collective bargaining process fairer to employees.
COORDINATION:	Office of Human Resources, Office of Management and Budget
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County government.
PENALTIES:	None

(14)

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

GOOD AFTERNOON, MY NAME IS JAMES TORGESEN, LABOR/EMPLOYEE RELATONS 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 CERTIFED 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

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 CONSTITUES AN ECONOMIC ITEM, RATHER THAT 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 CHIIEFS WITHIN THE GOVERNMENT AND WOULD EFFECT APPROXIMATELY 50-75 POSITIONS.

- WE PROPOSE THAT THE CURRENT LANGUGE 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 MARYLYAND 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.

- 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 ARTICULTED 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.~~

* * *

(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.*

* * *

(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:

* * *

(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.*

* * *

(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.*

* * *

(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 ~~15~~, 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.

* * *

(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.*

* * *

(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:

* * *

[(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:

* * *

(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.

#12

STATEMENT ON BEHALF OF THE
MONTGOMERY COUNTY GOVERNMENT EMPLOYEES' ORGANIZATION,
A DIVISION OF UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 400

My name is William W. Thompson, II. I am a member of the law firm of Zwerdling, Paul, Leibig, Kahn & Thompson, P. C., and am here representing MCGEO-Local 400.

MCGEO-Local 400 is the incumbent employee organization representing approximately 3,500 County merit system employees pursuant to the County's present "meet and confer" employee relations procedure. On behalf of 2,300 Office, Professional, and Technical employees, and 1,200 Service, Labor, and Trades employees of the County, MCGEO-Local 400 has been at the forefront of the struggle to obtain a comprehensive and equitable collective bargaining law for merit system employees. This effort has culminated in the proposal which the Council has before it today.

MCGEO-Local 400 is proud of the central role it has played in the endeavor to obtain for merit system employees an effective share of the responsibility for determining their salaries and working conditions. This hearing marks a historic milestone in the road to full recognition by Montgomery County that its merit system employees deserve collective bargaining rights similar to those already accorded to almost all other employees of the County and its agencies.

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However, the struggle is not over. The proposal Bill, as reported out of the Personnel Committee of the Council includes a number of provisions and "optional" provisions which seriously undermine the overall effectiveness of this legislation, should those provisions be included in the statute as passed by the full Council. We will briefly discuss the most important of these shortcomings in the time remaining. We will address these matters in the order that they appear in the proposed Bill.

First, the Bill, while making provision for two collective bargaining units, includes an option that <u>one</u> unit of all eligible merit system employees be created. MCGEO-Local 400 is uniquely qualified to comment on this issue, since we have been representing the two units - Service Labor and Trades, and Office Professional and Technical, under meet-and-confer. We strongly urge that the single-unit concept be rejected. The present unit structure was created by the County after extensive review of the natural and appropriate communities of interest among merit system employees. Service Labor and Trades employees have distinct needs and interest which should not be subsumed in a larger unit made up primarily of Office, Professional, and Technical employees. We believe the vast majority of both groups wish the units to remain as they now exist. We respectfully request that the Council adopt the two-unit structure as set forth in the principal body of the Bill.

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Second, the Bill would exclude from coverage of collective bargaining rights many merit system personnel who are currently included in the meet-and-confer system. Among the employees to be excluded are all employees in the Department of Social Services (DSS) and all persons in Merit Grade 27 and above. The County's several hundred DSS employees are "hybrid" state-County employees. We do not believe that it is fair to deny these employees a voice in the determination of that portion of their salary which is set by the County. Bargaining over such a narrow question would not be disruptive or even significantly time-consuming in the context of the parties' overall relationship. DSS employees, who are principally female, should not be treated as second-class citizens.

The County administration has also sought to have all employees at Grade 27 and above, declared to be exempt from collective bargaining, apparently on the theory that they are, ipso facto, managers. MCGEO-Local 400 currently represents dozens of these employees under meet and confer. The County is thus contradicting its own earlier determination that many employees at Grade 27 and above have been appropriately included in the community of interest of the present meet-and-confer unit structure. One's salary level does not always correlate directly to whether one is a "manager." Many professional positions in the Grade 27 and above range have no supervisory or managerial role at all. Such non-managerial employees must not be denied the right to bargain.

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Third, the principal text of the Bill permits a one-time opportunity for the incumbent meet-and-confer union to be recertified for collective bargaining upon written proof that more than 50% of the collective bargaining unit wish to be represented by it. Thus, when collective bargaining goes into effect, another election would not be necessary. However, an amendment would require MCGEO-Local 400 to go through the expensive and time-consuming process of another election. This proposed requirement is not necessary, especially in light of the fact that MCGEO-Local 400 just won an election in December in the SLT unit with 70% of the vote. We strongly oppose any automatic requirement for another election. We are prepared to prove to the County that a majority of the employees in both units wish to continue to be represented by MCGEO-Local 400 for collective bargaining purposes.

The Bill also proposes that 10% of the employees can petition to <u>force</u> an election rather than the utilization of the procedure for written proof of majority status. We are absolutely opposed to permitting 10% of <u>any</u> group to dictate to the majority how a determination of the incumbent's majority status will be made. We concede that if 30% of the employees in a unit wish to have an election rather than a card check when this law goes into effect, then an election would be appropriate. 30% is a significant proportion of the group. 10% is not. In most labor relations laws, including this Bill, 30% of the employees can petition for an election to <u>de</u>certify a union. We submit that the

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same number should be required to force an election rather than a card check.

Fourth, we strongly support the provision of the Bill permitting the parties to bargain an agency shop. Agency shop would require nonmembers to pay a certain fee for representation by the certified representative, unless such a payment is objected to upon bona fide religious grounds. This provision represents the normal rule in most jurisdictions. We urge that the Council reject the options that either no agency shop is permissable, or that agency shop can only be applied to employees who have less than 10 years of service. A recognized employee organization is given the duty under the Bill to represent fairly and vigorously all unit employees, not just those who are members. Any union could well be crippled and rendered unable effectively to represent members or nonmembers if it received insufficient income to pay for the service representatives and professional assistance necessary to effectively do the job for 3,500 employees.

Fifth, the Bill limits bargaining over pensions only to any new "defined contribution" plan which might be promulgated by the County. We vehemently object to limiting bargaining of any new plan solely to a defined-contribution plan. What if the Council and the Administration seek to establish a new defined benefit, as opposed to defined contribution plan. There is no reason only to allow bargaining rights if a new defined contribution plan is enacted. Employees should have input into any new pension plans. There is no logic to this limitation in the Bill. Of course, we

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are also absolutely opposed to the option attached to the Bill which would foreclose any pension bargaining whatsoever. Pension coverage is a major term and condition of employment and is bargained in almost every jurisdiction around the country.

Sixth, we absolutely support the provision of the Bill which permits the parties to bargain binding grievance arbitration. Grievance arbitration provides a relatively quick and inexpensive method for collective bargaining partners to ensure that their formal agreement is faithfully observed and implemented. Binding grievance arbitration is a hallmark of collective bargaining in both the public and private sectors. Without binding grievance arbitration, both the County and the employee organization could be subjected to endless contract litigation in the Courts. The option appended to the Bill which would limit binding arbitration only to disciplinary matters, would take away from the employees the primary method for enforcing contractual promises in collective bargaining. A contract without binding arbitration to enforce all of its provisions, is not a complete collective bargaining agreement.

Seventh, we strongly urge the Council to reject the bill's proposed limitation on the County's duty to bargain over the effects on employees of the exercise of nonbargainable managment rights. Often, management decisions, such as the movement of a workplace from one area of the County to another, cause serious

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effects on the employees, who, for instance, must report to work in Germantown rather than Bethesda. We believe that such effects as the transportation problems of affected employees must be bargained. The Bill would not permit such effects bargaining. The Bill would limit effects bargaining solely to the loss of a job position by a merit system employee. MCGEO-Local 400 urges the Council to adopt the proposed option, which is taken from the County's police bargaining bill, and which requires that all effects of the exercise of management rights be bargained. Such a provision does not in any way limit management's right to make management decisions. Such an approach is the rule in most jurisdictions.

Eighth, MCGEO-Local 400 submits that one of the principal shortcomings of the body of the Bill is its failure to provide for any collective bargaining agreement until July 1, 1987. If we assume that this law will go into effect sometime in mid-1986, it is absolutely unconscionable for the County to be able to delay its implementation for approximately a year. If the County has determined that public policy is served by granting collective bargaining to merit employees, then merit employees should be able to bargain. We support the Bill's option which would permit simplified bargaining for a short agreement on noneconomic items only. Such an agreement would only be in effect until July 1, 1987. This proposal meets any legitimate concerns that

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bargaining would interefere with the budget cycle, since no monies would be spent by reason of the preliminary, short-term agreement. Furthermore, such a contract could serve to establish many of the more basic "standard" type contract clauses, so that bargaining for the first full-blown contract could proceed more efficiently. We respectfully request that the Council act decisively to grant the process of collective bargaining as well as the right of collective bargaining as soon as possible. There is no reason to have approximately a year in which the law provides a right without the ability to exercise that right.

Finally, we strongly urge that the meet-and-confer system be maintained and continued for all employees who now enjoy its benefits, but who are not included in the collective bargaining system. We have made our position clear that all meet-and-confer employees should also be included under collective bargaining. Should the Council choose otherwise, we urgently request that, at the very least, you not take away from these employees that right which they already have. Meet-and-confer does not require the County to sit down and come to an agreement regarding any employee concerns. Surely the County has nothing to lose by continuing to offer this group of employees at least a formal mechanism for conducting representative discussions with their employees.

In conclusion, MCGEO-Local 400 congratulates the Council and particulary Personnel Committee Chairperson Gelman and the other

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members of that committee for having brought thus far an issue which is of enormous interest and importance to the County employees as well as the rest of the labor movement in this area.

We urge the Council to seriously consider the points that we have made and to further improve the Bill which is now before you. MCGEO-Local 400 looks forward eagerly to the early passage of this legislation, and to working with the Council and the Executive under this law in the years to come, to foster responsible and effective employee relations. We believe that the morale and high quality of service of County merit system employees can be considerably enhanced as a result of the recognition that employees are partners with the County in service to the public.

Zwerdling Paul Leibig Kahn & Thompson P C

MFP ITEM 1
November 29, 1999
Worksession

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession**: Bill 26-99, Collective Bargaining - Amendments

Bill 26-99, Collective Bargaining – Amendments, sponsored by Councilmembers Subin and Silverman, was introduced September 14. Bill 26-99 requires arbitration of collective bargaining agreements for County government employees. The form of binding arbitration proposed is last best offer for the entire economic package, and last best offer item-by-item for non-economic items. The arbitrator would decide which issues are economic or non-economic. Bill 26-99 also revises the process for certifying employee organizations and the timetable for certain collective bargaining actions.

A public hearing was held on November 16. The only speakers were James Torgesen of the Office of Human Resources, representing the County Executive, and representatives of the Municipal & County Government Employees Organization (MCGEO), the bargaining agent for County employees. Both supported the bill but suggested different amendments. See testimony, ©15-30.

Attorneys for MCGEO requested corrective amendments to clarify the Council's role in reviewing collective bargaining agreements. See MCGEO letter, ©31-39. They also responded to amendments proposed on behalf of the County Executive (see Executive testimony, ©22-27).

Summary

Bill 26-99 would make the folowing changes in the current County employee collective bargaining law:

1) It allows the Labor Relations Administrator to resolve issues regarding the negotiability of any collective bargaining proposal. See ©2, lines 12-13. This is consistent with current practice.

2) It maintains continuity in a collective bargaining agreement when a different union takes over representation. See ©3, lines 22-26. In staff's view, this is a sensible clarification.
3) It allows a combined decertification/certification election if proper petitions have been filed. See ©2, lines 28-39. This appears to be reasonable, but may already be allowed under current law.
4) It moves the collective bargaining agreement schedule back 1 month, so that the report from the fact finder (under the bill, the arbitrator) would be due on March 1 instead of February 1.
5) It converts the current mediation/fact finding collective bargaining process for the County employees bargaining units to a binding arbitration system.

In 1998, Council staff sought the County Attorney's opinion on an initial **legal issue** raised then by Bill 45-97, the predecessor to Bill 26-99. Binding arbitration was mandated for employees in the public safety (police and fire) bargaining units by express provisions in the County Charter (§§510, 510A). In contrast, Charter §511 authorizes the Council to provide "arbitration or other impasse resolution procedures" for the remaining bargaining units but does not expressly authorize binding arbitration. Bill 26-99 would grant binding arbitration rights to employees, and impose similar legal obligations on the County Executive, by legislation. The legal issue this posed is whether, without expressly amending the Charter to permit it, delegating the County Executive's decision-making authority regarding a collective bargaining agreement to a private arbitrator would amount to an unlawful delegation of the executive power assigned to the Executive by §201 of the Charter. The County Attorney concluded that this issue is not squarely posed because, in drafting Charter §511 in 1984, the Council intended the term "arbitration" to include binding arbitration and expressly rejected an amendment to allow only "non-binding" arbitration. (See County Attorney memo, ©40-51.)

Major Issues

Binding arbitration for non-public safety employees? Until now, binding arbitration has been legislatively adopted in Montgomery County only when the Charter requires it, and only for public safety (police, fire) employees. (Unlike some other jurisdictions, the distinction between employee groups is not based on the presence or absence of a right to strike; here the Charter expressly prohibits strikes by any employee group.) Binding arbitration transfers authority from the County Executive to a third-party arbitrator; it directly removes the Executive's discretion to accept or not accept a collective bargaining agreement, and indirectly increases the pressure on the Council to fund the arbitrator's award. Experts argue about whether binding arbitration increases or reduces the willingness of the parties to reach agreement on their own, and whether it increases an employer's costs over time.

A major difference between the public safety employee groups and the broader County employee bargaining units is the greater uniformity of issues in the public safety bargaining units. Each unit has fewer employees, they are in a single occupation, and they work for a single department with its own unique set of demands and work requirements. By contrast, MCGEO represents a larger and more heterogeneous group of employees, who are subject to widely

varied demands, and who work in more than two dozen different departments and offices and many dissimilar work settings and working conditions. (The larger size of the MCGEO units also means, of course, that the fiscal impact of an arbitrator's award can be much greater than it is for the public safety units.) In addition, without diminishing the risks and stresses faced by non-public safety employees, they rarely if ever rise to the life-threatening levels that public safety employees may face at any time.

Of other Maryland jurisdictions, only Prince George's County has adopted a form of binding arbitration for non-public safety employees; however, it can only be used if the employer and union both agree. Prince George's County also has binding arbitration for its public safety employees, broadly defined. The District of Columbia has binding arbitration on compensation issues for all represented employees, and on all issues for police and firefighters. Baltimore City has binding arbitration for firefighters only. No other Maryland jurisdiction employs binding arbitration. Nor does the federal government or any Virginia jurisdiction (Virginia does not allow public employee collective bargaining).

Type of binding arbitration The form of binding arbitration that now applies to the County fire and police collective bargaining units is **last best offer for the entire contract** ("total package"), rather than **last best offer issue-by-issue** ("line item") or conventional (**arbitrator's discretion** or "split the difference") arbitration. The binding arbitration proposed by Bill 26-99 for the MCGEO units is a **hybrid**: the economic issues would be decided on a last best offer total package basis, but the arbitrator could decide each non-economic issue separately and would not be limited to the parties' offers. Under the bill the arbitrator would decide which issues are economic and which are non-economic.

For the parties' views on which form of binding arbitration is preferable, see ©16-17 (Executive) and ©28-33 (MCGEO). In Council staff's view, a bifurcated system may offer little incentive for the parties to compromise on non-economic issues, which are mainly day-to-day operating issues. On the other hand, one can argue that in total package arbitration the economic issues normally drive the arbitrator's decision and the non-economic issues are "along for the ride"; in that system the arbitrator would give the non-economic issues scant separate consideration. If so, the system proposed in Bill 26-99 would elevate the importance and visibility of the non-economic issues.

If the economic/non-economic distinction is maintained in the law, Executive staff suggest limits on what issues are defined as economic. See item #8 on ©25-26. MCGEO did not respond to this definition.

Scope of bargaining unit The Executive would exclude from the bargaining unit those probationary employees whose probationary period is 12 months or more, and certain confidential employees. See ©23. MCGEO opposes these exclusions and would broaden the bargaining unit to cover non-attorneys in the State's Attorney's Office, temporary employees, and sergeants in the Sheriff's Office. See ©37-38. As Councilmember Subin announced at the hearing, he plans to introduce separate legislation next week to expand the bargaining unit along the lines of some of MCGEO's proposals. Council staff suggest that issues regarding the scope of the bargaining unit be handled in the context of Councilmember Subin's bill.

Collective bargaining agreement calendar Bill 26-99 would move the deadline for the arbitrator's award from February to March 1. The Executive prefers February 15. While the bill moves the deadline closer to the operating budget submission deadlines, in our view it reflects how the process has actually operated in recent years.

Economic comparisons Executive staff proposed an amendment to allow the arbitrator to consider private sector wages and benefits in the entire Washington metropolitan area and the state, rather than only the County. See ©24. MCGEO strongly opposes this. See ©35. In our view, this amendment seems reasonable because public sector wages and benefits are already compared across these jurisdictions, and the arbitrator can certainly take differing costs of living in the various areas into account as well.

Management rights Executive staff proposed language that would direct the arbitrator to not diminish or condition management rights in determining whether a collective bargaining item is negotiable. See ©24-25. MCGEO strongly opposes this. See ©35-36. While we agree that management rights may need more protection, Council staff is not sure what the actual effect of this language would be.

5-year term Executive staff would lengthen the maximum term of a collective bargaining agreement with MCGEO from 3 to 5 years. MCGEO did not comment on this amendment. The collective bargaining agreement could, of course, allow one or more issues to be reopened during that period. This amendment seems reasonable.

Council role MCGEO proposed several amendments to clarify that the Council, in reviewing a collective bargaining agreement, only can act on those terms and conditions that require funding or a change in law. While the thrust of these amendments is consistent with the intent of the current law, Council staff would prefer to work with the parties in sharpening the language to make sure that the Council's role is not inadvertently limited.

This packet contains:	Circle #
Bill 26-99	1
Legislative Request Report	14
Executive testimony	15
Executive amendments	22
Summary of Executive amendments	27
MCGEO testimony	28
MCGEO letter with amendments	31
1998 County Attorney memo with attachments	40

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Bill No. 26-99
Concerning: Collective Bargaining - Amendments
Revised: 9-8-99 Draft No. 2
Introduced: September 14, 1999
Expires: March 14, 2001
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin and Silverman

AN ACT to:

(1) modify certain functions of the Labor Relations Administrator;
(2) revise the process for certifying employee organizations;
(3) revise the timetable for certain collective bargaining actions;
(4) require binding arbitration of certain collective bargaining agreements; and
(5) generally amend the law governing collective bargaining for certain County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-103, 33-106, and 33-108

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:

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:

* * *

(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.

33-106 Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

(2)

* * *

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b) * * *

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

* * *

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

(a) Collective bargaining [shall] must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and [shall] must be finished on or before [January] February 15. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]

(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 year or for more than 3 years. All agreements [become effective] take effect July 1 and end June 30.

(c) A collective bargaining agreement [becomes effective] takes effect only after ratification by the employer and [by] the certified representative. The certified representative may [provide] adopt its own [rules for] ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator [shall] must appoint a mediator/[fact-finder] arbitrator, who may be a person recommended [to her] by both parties. The mediator/[fact-finder] arbitrator [shall] must be available [during the

(4)

period] from January 2 to [February 1] June 30. Fees and expenses of the mediator/[fact-finder] arbitrator [shall] must be shared equally by the employer and the certified representative.

(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 15, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) This dispute [shall] must be submitted to the mediator/[fact-finder] arbitrator whenever an impasse has been reached, or [before that] as provided in subsection (e)(1). The mediator/[fact-finder] arbitrator [shall] must engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will [tend to bring about the] encourage settlement of the dispute.

5

(3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his] the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, [he shall implement the following fact-finding process:] or as of February 15 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

(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 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.

[(b.)] (2) [He] The mediator/arbitrator may require the parties to submit oral or written evidence [or make oral or written] and arguments in support of their proposals. [He] The mediator/arbitrator may hold a hearing for this purpose at a time, date, and place selected by [him] the mediator/arbitrator. This hearing [shall] must not be open to the public.

[(c.)] (3) [On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.]

On or before March 1, the mediator/arbitrator must select, as a whole, the more reasonable of the final economic offers submitted by the parties. With regard to the economic offers, 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 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.

[(d.)] (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:

[(i)] (A) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

[(ii)] (B) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public

employers in the Washington Metropolitan Area and in Maryland.

[(iii)](C) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

[(iv)] (D) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

[(v)] (E) The interest and welfare of the public.

[(vi)] (F) The ability of the employer to finance economic adjustments, and the effect of the adjustments [upon] on the normal standard of public services provided by the employer.

(5) The economic offer selected by the mediator/arbitrator, together with the mediator/arbitrator's conclusion on each non-economic proposal, integrated with all previously agreed on items, is the final agreement between the employer and the certified representative, need not be ratified by any party, and has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement, and any provision which requires action in the County budget must

be included in the budget which the employer submits to the County Council.

[(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator-fact-finder, the report of the mediator-fact-finder, with recommendations on agreed items deleted, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.]

(g) The budget that the employer submits to the Council [shall] must include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed term or condition submitted to the Council that requires an appropriation of funds, or the enactment[, repeal, or modification] or adoption of any County law or regulation, or which has or may have a present or future fiscal impact, may be accepted or rejected in whole or in part by the Council. [Such terms or conditions shall be identified to the

Council by either or both parties.] The employer must expressly identify any term or condition that requires Council review. The employer [shall] must make a good faith effort to have the Council take action to implement [any term or condition to which the parties have agreed] all terms of the final agreement.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement [and the recommendations for resolving bargaining disputes].

(i) On or before May 1, the Council [shall] must indicate by resolution its intention to appropriate funds for or otherwise implement the [items that have been agreed to] agreement or its intention not to do so, and [shall] must state its reasons for any intent to reject any [items of the kind specified in subsection (g) that have been agreed to] item of the final agreement. [The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]

(j) [Then] If the Council indicates its intention to reject any item of the final agreement, the Council [shall] must designate a representative to

11

meet with the parties and present the Council's views in the parties' further negotiation on [disputed matters and/or agreed upon] matters that the Council has indicated its intention to reject. The parties must submit the results of the negotiation, whether a complete or a partial agreement, [shall be submitted] to the Council on or before May 10.

(k) Any agreement [shall] must provide for automatic reduction or elimination of wage [and/]or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year [in which] when the agreement is in effect.

[(k)] (l) The Council [shall] must take [whatever actions it considers] any action required by the public interest with respect to [matters] any matter still in dispute between the parties. However, [those actions shall not be] any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate [them] it in the agreement.

Approved:

Isiah Leggett, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council Date

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LEGISLATIVE REQUEST REPORT

Bill 26-99

Collective Bargaining - Amendments

DESCRIPTION:	Requires binding arbitration of collective bargaining agreements for County government employees. The form of binding arbitration is last best offer for the entire economic package, and last best offer item-by-item for non-economic items. The arbitrator would decide which issues are economic or non-economic. Also revises the process for certifying employee organizations and the timetable for certain collective bargaining actions.
PROBLEM:	Need for other County government employees to have the same right to bargaining arbitration as County public safety employees now have.
GOALS AND OBJECTIVES:	To make the collective bargaining process fairer to employees.
COORDINATION:	Office of Human Resources, Office of Management and Budget
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County government.
PENALTIES:	None

(14)

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

GOOD AFTERNOON, MY NAME IS JAMES TORGESEN, LABOR/EMPLOYEE RELATONS 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 CERTIFED 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

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 CONSTITUES AN ECONOMIC ITEM, RATHER THAT 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 CHIIEFS WITHIN THE GOVERNMENT AND WOULD EFFECT APPROXIMATELY 50-75 POSITIONS.

- WE PROPOSE THAT THE CURRENT LANGUGE 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 MARYLYAND 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.

- 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 ARTICULTED 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.~~

* * *

(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.*

* * *

(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:

* * *

(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.*

* * *

(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.*

* * *

(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 ~~15~~, 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.

* * *

(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.*

* * *

(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:

* * *

[(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:

* * *

(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.

COUNTY COLLECTIVE BARGAINING LAW AMENDMENTS

Impasse resolution – Proposed legislation differentiates treatment of economic and non-economic items in dispute. As an alternative to the proposed language the arbitrator would determine reasonableness on each item in dispute. The current fact-finding process permits this and this would provide a balanced opportunity for the Arbitrator to review each offer separately or in combination with others, rather that deciding economics as a package and non-economics item by item. In addition, a clearer definition of what is "economic" is needed, tracking the definition contained in the scope of bargaining.

Minimum 12 month probationary period – law needs to be clarified to insure that newly hired employees are not eligible to participate in the bargaining unit until having completed 12 months probation.

Confidential Employees- defines a group of employees currently not excluded from the bargaining unit who regularly handle personnel matters concerning bargaining unit employees. Many of these employees provide clerical support to division and section level heads and process discipline or other employee related actions.

Deadline dates for declaring and resolving bargaining impasse – move the proposed impasse deadlines back by two weeks to provide adequate time to finalize the Executive's budget recommendations.

Term of labor agreements – increase capability to negotiate agreements up to 5 years in duration. Provides flexibility for parties to establish long term contracts and enhance the stability of labor relations.

Comparison of wages, benefits and working conditions – parties to include comparable jurisdictions in comparison of private sector employers during impasse proceedings. Currently, comparisons are limited to Montgomery County.

Labor Relations Administrator decision parameters- include language which directs LRA not to interpret the bargaining law in such a way so as to diminish or restrict in any way issues which touch on enumerated management rights.

OHR/9-24-99

TESTIMONY IN SUPPORT OF BILL 26-99
COLLECTIVE BARGAINING - AMENDMENTS

Good afternoon, my name is Bill Thompson. I am a principal in the firm of Zwerdling, Paul, Leibig, Kahn, Thompson & Wolly, P.C., 1025 Connecticut Avenue, N. W., Suite 712, Washington, D.C. 20036, 202-857-5000. I am the General Counsel of MCGEO-UFCW Local 1994, and have been its attorney since the early 1980's. I was also one of the drafters of the County Collective Bargaining Law in 1986.

The County now has three collective bargaining laws: for police, for fire and rescue, and for general blue collar and white collar employees. This last law is colloquially known as the "MCGEO" law.

The proposed amendments to the MCGEO law which are before you this afternoon, if adopted by the Council, will add to the MCGEO law highly effective impasse resolution procedures which already exist both in the police bargaining law and the fire and rescue bargaining law.

Specifically, the MCGEO law lacks a binding arbitration provision. As you know, both the police and fire and rescue statutes force a definitive closure to the bargaining process by means of an arbitrator's binding award. Such an award resolves outstanding unsettled bargaining issues by requiring the union and the Executive to accept the arbitrator's decision regarding those issues, as their final contract. Whether or not the final contract results from arbitration, the Council thereafter reviews

and acts upon any provisions of the agreement which require its involvement.

The current MCGEO law is flawed by lack of a binding arbitration provision. Instead of forcing finality both on the union and the Executive, the MCGEO fact-finding process replicates the procedure of binding arbitration -- final offers and a hearing before the fact-finder (who is invariably an arbitrator) -- but lacks the substance of a binding decision. Instead of ending the bargaining process, the fact-finder can only issue toothless recommendations. And, as the current MCGEO law provides:

> After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain.

Section 108(f). Thus, we have an entirely circular process.

Today the MCGEO bargaining law has the "worst of both worlds" in this regard. If an impasse in negotiations is reached, the Executive and MCGEO are forced to spend the time, money, and effort to present and defend their respective proposals in a formal proceeding before the fact-finder. However, unlike binding arbitration the resulting "recommendations" don't force the parties to a resolution. Rather, the fact-finder's toothless recommendations invariably drop into a proverbial "file 13," and the parties go back to the table again.

Furthermore, this non-binding fact-finding procedure also robs the initial stage of third party intervention in a

bargaining dispute of any real possibility of success. Here we are speaking of mediation, which proceeds both binding arbitration in the two public safety laws, and fact-finding in the MCGEO law. At mediation the third party neutral arbitrator or fact-finder attempts to bring the parties together without the need for a formal proceeding. Common sense dictates that a mediator can be more persuasive in leading both sides into a mediated settlement, if the parties know that he or she will later have the power to bind them via an ultimate arbitration award. We strongly urge that the Council add binding arbitration of impasses to the MCGEO law.

Other bargaining process-related proposals in this bill are more technical. The bill would amend the statutory deadlines for various stages of the bargaining process, so that they are more realistically in tune with the Executive and Council operating budget cycle. Another proposed amendment will enable employees to make more efficient choices about which, if any, union they want to represent them. Also included are several clarifications of the authority of the Labor Relations Administrator, and the parameters of bargaining subjects. We urge that these aspects of Bill 26-99 be adopted, as well.

As the certified collective bargaining representative for more than 3000 blue and white collar County Merit System employees, we respectfully urge the Council to pass Bill 26-99.

ZWERDLING, PAUL, LEIBIG, KAHN, THOMPSON & WOLLY, P.C.

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November 22, 1999

VIA FACSIMILE & U.S. MAIL

Michael Faden, Esquire
Montgomery County Council
100 Maryland Avenue, Room 601
Rockville, Maryland 20850

Re: Bill 26-99

Dear Mike:

As was requested by the Council during the November 16, 1999 hearing regarding this bill, these are MCGEO-UFCW Local 1994's comments regarding the County Executive's proposed amendments to the bill introduced at the hearing, together with some criticisms and suggestions we have regarding a few aspects of the existing bill.

The Executive's Proposed Amendments

Executive Item #1: Change Impasse Process In Bill.

- The bill proposes an interest arbitration procedure bifurcated between economic and non-economic proposals. (See bill pages 6-8). Economic proposals of each side will be decided as a complete package, "winner-take-all." This is the same method which exists for all proposals in the Police and Fire and Rescue bargaining laws. Non-economic "working condition" proposals will be decided item by item, and the Arbitrator will be empowered to compromise or alter the proposals in his/her final award.

- The reason this bill (as did its predecessor bill 45-97) varies from the complete "winner-take-all" system used in the two other bargaining laws it that while the economic benefits of employment for those in the MCGEO bargaining units are basically uniform, working conditions vary greatly. In the Police and Fire and

Rescue bargaining units, working conditions as well as economic benefits are relatively homogeneous. However, MCGEO-represented employees have working conditions which are as varied as the myriad of job classifications included in the blue collar and white collar units.

- Therefore, it may be very difficult and unwieldy for any Arbitrator to reach a decision choosing one or the other final offer, each of which includes many working conditions which only affect subgroups of employees within the MCGEO bargaining units. By removing non-economic working conditions from the winner-take-all system, we feel that the Arbitrator will have the appropriate flexibility to arrive at a coherent non-economic working condition award which he/she can integrate logically with the winner-take-all economic award.

- The Executive's proposed amendment would authorize item-by-item choices by the Arbitrator for all proposals, economic and non-economic, but without giving the Arbitrator the ability to compromise or vary from one or the other proposal. This suggestion is a recipe for bargaining chaos. What if the parties have differing proposals which do not mirror the same subject matter? For instance, if MCGEO presents a final proposal for some item and there is no directly corresponding County counter proposal, does that mean MCGEO automatically wins? Without the ability to compromise or ignore various aspects of each side's proposals, the Arbitrator will be hard pressed to correlate them on a "one-to-one" basis.

- Regardless of how the Arbitrator differentiates between economic and non-economic proposals, his determinations of what is "economic" or "non-economic" will not be binding on the Council. Under the bill, the Arbitrator's final award including both categories of proposals becomes the parties' complete collective bargaining agreement. (See bill pages 9 and 10). Only after that agreement has been concluded does the Council review process begin. That separate review

process in the bill requires that the Council approve "[a]ny ... term or condition ... that requires an appropriation of funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact." With one purely technical amendment, this substantive standard for Council review continues the system which has existed since 1986.

- Therefore, we request that the Council reject the Executive's proposed item by item impasse resolution system.

Executive Item #2: Require A Minimum 12-Month Probationary Period.

- This proposed amendment is an effort by the County to have the Council overturn a recent decision by the County Labor Relations Administrator that determined the length of the new hire probationary period to be bargainable under the law. The County has appealed the LRA's decision to Circuit Court.

- We strongly object to the County's effort to overturn the LRA's decision. That critical piece of background information was deleted from the County's explanation. The County's desire to delay for six months the graduation of probationary employees into the MCGEO bargaining units is a matter which must be negotiated between the Executive and MCGEO, not improperly injected into the political process.

Executive Item #3: Exclude Confidential Employees From The Bargaining Unit.

- The law already excludes from the bargaining units:

  (A) Confidential aides to elected officials.

  * * *

  (D) Deputies and assistants to heads of principal departments, offices, and agencies.

(E) Persons who provide direct staff or administrative support to the head ... or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

* * *

(G) Persons who work for the Office of the County Executive and the Office of the Chief Administrative Officer.

* * *

(J) Persons who work for the Office of Management and Budget.

(K) Persons who work for the Office of Human Resources.

* * *

(S) Supervisors....

(T) Persons in Grade 27 or above....

Section 33-102(4).

- Given the breadth of these and other existing exclusions from the bargaining units, the proposed exclusion of "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..." constitutes either a repetition of an existing exclusions, or an effort by the County Executive to stretch the concept of "policies affecting" working conditions far beyond what is necessary to safeguard management's privacy. Under this definition, a decision by a building service work to move a water cooler closer to the office door could be argued to constitute a policy decision affecting working conditions.

- We urge the Council to reject this suggestion.

Executive Item #4: Establish Earlier Deadline Dates For Declaring And Resolving Bargaining Impasses.

Executive Item #5: Allow Labor Agreements To Have A Maximum 5-Year Term.

- We are reviewing these suggestions, and have not yet concluded our considerations.

Executive 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.

- We are strenuously opposed to any effort to dilute the economic comparisons between County employees and who usually live in the Montgomery County vicinity with those in the distant suburbs, the Eastern Shore, Baltimore, and Western Maryland. Many of these proposed "comparables" are radically less expensive communities with much lower costs of living.

Executive Item #7: Include Language In The Bill That Prohibits The Labor Relations Administrator From Diminishing Management Rights When He Makes A Negotiability Determination.

- The current law includes the following provision at Section 33-107(b):

  > Employer rights. This article and any agreement made under it shall not impair the right and responsibility of the employer to perform the following [management rights].

  Any negotiability determination made by the LRA under the current law cannot "impair the right and responsibility of the employer...." Therefore this proposal is entirely unnecessary.

- Moreover, all negotiability determinations must balance management rights with the subjects which are negotiable. We are concerned that the County will try

to use this proposed new language to shift the balance which has existed since 1986 by claiming in a court appeal that the Council has enacted this amendment to criticize or somehow repudiate the LRA decisions regarding negotiability which have been issued between 1986 and 1999.

- We request that the Council reject this proposal.

Executive Item #8: Proposed Amendment To Impasse Process If Council Bifurcates Consideration Of Economic And Non-Economic Items.

- We are reviewing this suggestion and have not yet completed our deliberations.

MCGEO's Suggested Amendments

We have several suggested amendments to the current bill as follows:

Item A: Clarification of Council Review Language

§33-108(g) [p. 10 line 171]:

(g) The budget that the employer submits to the Council [shall] must include any term or condition of the parties' agreement [[the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed term or condition submitted to the Council]] that requires an appropriation of funds, or the enactment [, repeal, or modification] or adoption of any County law or regulation, or which has or may have a present or future fiscal impact [[,]]. Any such term or condition of the agreement, may be accepted or rejected in whole or in part by the Council. [Such terms or conditions shall be identified to the Council by either or both parties.] The employer must expressly identify any term or condition that requires Council review, and

simultaneously provide notice of that identification to the other party. The employer [shall] must make a good faith effort to have the Council take action to implement [any term or condition [[to which the parties have agreed] all terms of the final agreement]] so identified.

33-108(i) [p. 11, lines 190-2]

...[shall] must state its reasons for any intent to reject any [items of the agreement of the kind specified in subsection (g) that have been agreed to] [[item of the final agreement]].

33-108(j) [p. 11, lines 196-7]

(j) [Then] If the Council indicates its intention to reject any item of the final agreement of the kind specified in subsection (g), the Council must....

- The purpose for these proposed additional amendments is to ensure that the language accurately reflects the facts that a complete agreement between the parties, whether or not as the result of arbitration, must exist prior to the transmittal of the Executive's proposed budget, and that council review is not of the complete agreement, but only the specifically identified terms and conditions.

Item B: Amendments To Definitions Of Employees Included In The Collective Bargaining Units.

Section 33-102:

(4) Employee means any person who works under the County government merit system, or any non-attorneys who work for the Office of the State's Attorney for Montgomery County, on a continuous full-time, career or part-time, career basis, except:

* * *

- This proposed amendment would extend collective bargaining rights for the specified employees only to the extent their terms and conditions of employment (including, e.g., health insurance and retirement benefits) are regulated by the County.

[(M) Persons who work on a temporary, seasonal or substitute basis.]

- We are deeply concerned that the Executive is increasing the use of temporary, seasonal and substitute employees at sub-par wages and benefits to do regular work which should be performed by merit system employees. We ask the Council to provide collective bargaining protection to these working members of our community, so that the principles of work place fairness can be extended to them, as well.

[(P) Officers in the uniformed services (Corrections, ~~Fire and Rescue, Police,~~ Office of the Sheriff) in the rank of ~~sergeant~~ lieutenant and above. Subject to any limitations in State law, Deputy Sheriffs below the rank of ~~sergeant~~ lieutenant are employees.]

- This proposed amendment clarifies the fact that no sworn police officers or firefighters in the uniformed services are included in the MCGEO law. Furthermore, police and/or Sheriffs office sergeants are often included in collective bargaining units because, while they are often supervisors, they are not members of the command staff. Local jurisdictions where police sergeants are in the bargaining unit include Baltimore City, Baltimore County, and Prince George's County.

We will be happy to discuss all these matters with you, Council staff, and/or Council members at your convenience. Feel free to contact me if you have any questions.

Very truly yours,

William W. Thompson, II

wwt:dr

cc: Gino Renne

OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

July 22, 1998

TO: Michael Faden, Senior Legislative Attorney
Montgomery County Council

VIA: Charles W. Thompson, Jr.
County Attorney

FROM: Marc P. Hansen, Chief
Division of General Counsel

RE: Bill 45-97, Collective Bargaining - Binding Arbitration

QUESTION

You have asked for our opinion regarding the legality of a provision in Bill 45-97, Collective Bargaining - Amendments, which requires a neutral party to resolve a collective bargaining impasse between the County Executive and the representative of non-public safety employees. You state, "The fundamental legal issue this poses is whether, without expressly amending the Charter to permit it, delegating the County Executive's decision-making authority with respect to a collective-bargaining agreement to a private arbitrator would amount to an unlawful delegation of the executive power assigned to the Executive by §201 of the Charter."

SHORT ANSWER

Because Charter §511 authorizes the County Council by legislation to provide for arbitration to resolve an impasse in reaching a collective bargaining agreement, Bill 45-97 may authorize a third party to resolve that impasse.

(40)

101 Monroe Street, Rockville, Maryland 20850-2589
301-217-2600 • TTD 301-217-2499 • FAX 217-2662 • hansem@co.mo.md.us

ANALYSIS

The Court of Appeals has on several occasions concluded that authorization to engage in arbitration to resolve an impasse in collective bargaining must arise from a public general law or County charter. *See, Anne Arundel County v. Fraternal Order of Anne Arundel Detention Officers and Personnel,* 313 Md. 98, 543 A.2d 841 (1988).[1] The key issue, therefore, is whether Charter §511 authorizes the Council to provide for arbitration. If it does, Bill 45-97 may validly impose a binding dispute resolution process to resolve an impasse in collective bargaining.

You have pointed out that Charter §§510 and 510A require the Council to provide by law for collective bargaining with "binding" arbitration.[2] Charter §511, on the other hand, omits the term "binding." You have raised the question whether the failure to use the term "binding" in Charter §511 means that the Council is not authorized to provide for "binding" arbitration in Bill 45-97.

We do not believe that the failure to use the term "binding" in Charter §511 is significant in this case. Both the plain meaning of the language used in Charter §511 and its legislative history leave little doubt that Charter § 511 authorizes the Council to provide by law for a binding dispute resolution process to resolve collective bargaining impasses.

A county charter is to be read and construed in the same manner as a statute and its words generally are to be given their natural meaning. *Anderson v. Harford County,* 50 Md. App. 48, 435 A.2d 496 (1981). Charter §511 provides:

> The Montgomery County Council may provide by law for collective bargaining, **with arbitration** or other impasse-resolution procedures, with authorized representatives of officers and employees of the County Government not covered by either Section 510

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[1]In *Anne Arundel County v. Fraternal Order*, the Court of Appeals indicated that a charter provision authorizing collective bargaining arbitration must be consistent with Article XI-A of the Maryland Constitution. *Id*, at 111. Because neither Charter §511 nor Bill 45-97 attempts to limit the decision-making authority of the County Council, we do not believe that Article XI-A of the Maryland Constitution would be violated by imposing binding arbitration on representatives of the collective-bargaining unit and the County Executive. *See Ritchmount Partnership v. Bd. of Supervisors of Elections*, 283 Md. 48, 388 A.2d 523 (1977) (County Council of a charter county must serve as the primary legislative body of the county.)

(41)

[2]Charter §510 (collective bargaining for police officers) was approved in 1980; Charter §511 was approved in 1984; and Charter §510A (collective bargaining for firefighters) was approved in 1994. While Charter §511 was placed on the ballot by the County Council, Charter §§510 and 510A were placed on the ballot as the result of citizen petition.

> or Section 510A of this Charter. Any law so enacted shall prohibit strikes or work-stoppages for such officers and employees. (Emphasis added.)

Webster's dictionary defines the term "arbitration" as: "settlement of a dispute by a person or persons chosen to hear both sides and come to a decision."[3] Black's Law Dictionary defines "arbitration" as, "a method of dispute resolution involving one or more neutral third parties who are chosen by or agreed to by the disputing parties, **and whose decision is binding**." (Emphasis added.)[4] Accordingly, the normal meaning of the term "arbitration" involves as a key element a binding dispute resolution process.

The legislative history concerning Charter §511 confirms that §511 was intended to authorize a binding dispute resolution process. The 1984 report of the Charter Review Commission recommended that the County Council place on the ballot for approval by the voters Charter §511.[5] The Charter Review Commission report states, "The Commission believes that the Council should have the opportunity and the clear authority to deal **uniformly** with the issue of collective bargaining for County employees other than police officers; that position was unanimous and bi-partisan." (Emphasis added.) As noted, Charter §510, which had been approved in 1980, mandated binding arbitration to resolve an impasse in collective bargaining for police officers.

On July 26, 1984, the County Council discussed placing Charter §511 on the ballot. There was considerable discussion regarding whether Charter §511 should authorize the Council to provide for a binding dispute resolution process.[6] The Council minutes reflect that Council member Hanna moved to delete from Charter §511 the phrase "arbitration or other impasse-resolution procedures," and substitute "mediation or **non-binding** arbitration." (Emphasis added.) Ms. Spencer, a member of the Charter Review Commission, pointed out that Mr. Hanna's amendment would create a conflict with §510, which provides for binding arbitration for police officers. Mr. Renne, president of the Montgomery County Government Employees Organization, indicated that his organization hoped that the Charter would provide for "one system of arbitration for all employees." Mr. Renne indicated that "binding arbitration is preferred because without it there will be inconsistency and uncertainty about how an impasse will be resolved."

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[3]Webster's New World Dictionary of the American Language (College Edition, 1960)

[4]Black's Law Dictionary (Bryan A. Garner, ed., West Publishing Company, Pocket Edition, 1996)

[5]Relevant portions of the 1984 Charter Review Commission Report are attached.

[6]Relevant portions of the Council minutes for July 26, 1984, are attached.

In short, the legislative history of Charter §511 clearly indicates that the Charter amendment was intended to enable the Council to provide for binding dispute resolution, and the actual words used in Charter §511 are consistent with that intent.

CONCLUSION

Unless authorized by the County Charter, the Council would be without the authority to enact legislation to impose a binding dispute-resolution process on the exercise of an executive function—like agreeing to a collective bargaining agreement—by the County Executive. But Charter §511 does authorize the Council to enact legislation providing for arbitration to resolve collective bargaining impasses. Bill 45-97 accordingly may legally provide for arbitration to resolve an impasse in the collective bargaining process.

We trust you will find this memorandum responsive to your inquiry. If you have any concerns or questions regarding our advice, please let us know.

# # #

MPH:manm
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c: Bruce Romer, Chief Administrative Officer
Marta Brito Perez, Director/Office of Human Resources
Deborah Snead, Assistant Chief Administrative Officer
Bernadette F. Lamson, Assistant County Attorney
David E. Stevenson, Associate County Attorney

1984 REPORT of the CHARTER REVIEW COMMISSION

May 1984

(44)

Montgomery County, Maryland

RECOMMENDATION B. Collective Bargaining for County employees.

A new Section 511 should be added to the Charter to authorize the County Council to provide by law for collective bargaining with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the county government not covered by Section 510 of the Charter; such law would prohibit strikes and work stoppages.

PROPOSED CHARTER LANGUAGE

Revised Section 511

SECTION 511 Collective Bargaining - County Employees

The Montgomery County Council may provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the county government not covered by Section 510 of this Charter. Any law so enacted shall prohibit strikes or work stoppages for such officers and employees.

A new second sentence for Section 401 shall be added as follows:

PROPOSED CHARTER LANGUAGE

Revised Section 401

SECTION 401 Merit System

The Council shall prescribe by law a merit system for all officers and employees of the County government, except members of the Council, the County Executive, the Chief Administrative Officer, the County Attorney, the heads of the departments, the heads of the principal offices and agencies, as defined by law, one confidential aide for each member of the Council, two senior professional staff positions for the

Council as a whole as may be designated from time to time by the Council, three special assistant positions in the office of the County Executive as may be designated from time to time by the County Executive, special legal counsel employed pursuant to this Charter, and members of boards and commissions and other officers authorized by law to be appointed to serve in a quasi-judicial capacity. Officers and employees who are members of a unit for which a collective bargaining contract exists may be excluded from provisions of the merit system only to the extent that such provisions are subject to collective bargaining pursuant to legislation enacted under Section 510 or Section 511 of this Charter. The merit system shall provide the means to recruit, select, develop, and maintain an effective, non-partisan, and responsive work force with personnel actions based on demonstrated merit and fitness. Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. The Council shall establish by law a system of retirement pay.

Note: New matter: underscored

DISCUSSION

Collective bargaining for county employees has been considered by previous Charter Review Commissions and County Councils. Other public employees (i.e. teachers, school supporting service employees, and employees of Montgomery College) have obtained collective bargaining through passage of public general laws by the Maryland General Assembly. In addition, Montgomery County Police Officers obtained the right to bargain collectively through a Charter amendment which they proposed by initiative.

The Commission believes that the Council should have the opportunity and the clear authority to deal uniformly with the issue of collective bargaining for County employees other than police officers; that position was unanimous and bipartisan.

The proposed amendment would leave to the discretion of the Council the decision as to whether or not county employees should have the right to bargain collectively. The proposed amendment also leaves to Council discretion the extent to which county employees under collective bargaining should remain within the merit system. The proposed amendment would also prohibit strikes by county employees who are the subject of a collective bargaining agreement.

There was disagreement among the Commission members as to whether the proposed amendment should mandate action by the Council to create a framework for collective bargaining (five members favored the mandatory language) and on whether there should be a "no strike" provision in the proposal (the same five members opposed the strike ban). Commissioner Michael Gildea has written a minority statement covering these two positions, and Commissioners Goldman, Garber, and Gildenhorn subscribed to those views. They are included in this report, pages 21-26. Commissioner Frosh has also written a minority statement on these two positions. His comments are included on page 27 of this report.

The Commission does not recommend any action at this time on the issues of a separate merit system for legislative and/or judicial employees, RIF/replacement rights between and among executive, legislative, and judicial employees, or increased non-merit staff for the County Council. The Commission believes that these issues require further study.

Submitted in packet of 8/17
Council review cutoff 8/23
Approval scheduled 8/28

NOT APPROVED (8/17)
DISTRIBUTION LIMITED TO COUNCIL & STAFF

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, July 26, 1984 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:47 A.M. on Thursday, July 26, 1984.

PRESENT

Esther P. Gelman, President — Michael L. Gudis, Vice President
Rose Crenca — Neal Potter
Scott Fosler — David L. Scull
William E. Hanna, Jr., President Pro Tem

The President in the Chair.

Re: Worksession on Charter Amendments, Petitions and Ballot Questions

The Council reviewed Charter amendments, petitions, and ballot questions in accordance with a memorandum of July 24, 1984 from Myriam Bailey, Office of Legislative Counsel. The Council began its review by considering recommendations of the Charter Review Commission.

Ballot Question A and Proposed Charter Amendment (Approval of the Budget) - This involves an amendment to Section 305 of the Charter which exempts the budgets of certain self-funding programs from the computation of the aggregate operating budget when determining whether an affirmative vote of five Councilmembers is required to approve the budget; provides that the Consumer Price Index shall be computed for the twelve months preceding December first of each year; and makes a clarifying change.

Councilman Potter directed attention to his proposed additional amendment to add the following language after the phrase "For the purposes of this limitation the aggregate operating budget":

shall include all items for which appropriations were included in the operating budget of the preceding year

Mr. Potter said that his amendment has been discussed with the Office of Management and Budget. The amendment is proposed to ensure that the comparison from one year to the next truly reflects the increase in operating budget expenditures. He said that it might be helpful to add the following clarifying language:

Mr. Spengler directed attention to the Charter Review Commission's proposed Charter language for Section 305, noting that the word "fully" between "for" and "self-supporting" in the proposed language is used to describe enterprise funds which are not necessarily fully self-supporting.

Councilman Gudis moved, duly seconded, to delete the word [fully] between "for" and "self-supporting" in the Charter amendment.

Councilman Hanna suggested that the word "self-supporting" be deleted also. Mr. Gudis accepted Mr. Hanna's suggestion as an amendment to his motion.

Mr. Spengler said that accountants use the term "primarily" self-supporting. If it meets that test, it is considered an enterprise fund.

Councilman Potter moved, duly seconded, an amendment to Mr. Gudis' motion to substitute the word "primarily" for "fully."

Councilman Hanna said that, if the word "primarily" is used, it will have to be defined. In his opinion, it is simpler to say "enterprise funds" without any adjectives.

Councilmembers Potter and Fosler voting in the affirmative and Councilmembers Hanna, Gudis, Scull, Crenca and Gelman voting in the negative, the amendment to Mr. Gudis' motion failed for lack of a majority vote.

Without objection, the Council approved Mr. Gudis' motion, as amended, to delete the words [fully self-supporting].

Upon motion of Councilman Gudis, duly seconded and without objection, the Council agreed to delete [the Parking Lot districts] from the proposed Charter amendment for Section 305 of the Charter.

Ballot Question B and Proposed Charter Amendment (Collective Bargaining - County Employees - This involves an amendment to Section 401 of the Charter and the addition of a new Section 511 authorizing the Council to provide by law for collective bargaining.

President Gelman asked about the distinction between "mediation" and "arbitration." Mr. Newman said that mediation is a resolution of differences by an informal procedure, while arbitration is a resolution of differences by a formal procedure involving the issuance of a decision by an arbitrator. The question of whether the decision is binding or not depends upon the agreements reached by the parties involved. Councilman Fosler noted that "binding arbitration" is another term to be considered.

Councilman Hanna moved, duly seconded, to delete from the proposed Charter amendment for Section 511 the words [arbitration or other impasse resolution procedures] and to substitute mediation or non-binding arbitration.

Ms. Elizabeth Spencer, a member of the Charter Review Commission, said that the Charter Review Commission felt that the language in the Charter should be as broadly permissive as possible because the legislation enacted by the Council may be different for different groups.

President Gelman expressed the view that the language in the Charter amendment should be broad because it empowers the Council to enact legislation.

Councilman Hanna said that he prefers to restrict the law that may be enacted to provide for only non-binding arbitration.

Councilman Potter suggested that Mr. Hanna would only need to add the word "non-binding" before the word "arbitration" to accomplish his objective. Mr. Hanna accepted Mr. Potter's suggestion as an amendment to his motion.

Ms. Spencer pointed out that this will create a conflict with Section 510 of the Charter which provides for binding arbitration with an authorized representative of the Montgomery County police officers.

Mr. Geno Renne, President of the Montgomery County Government Employees' Organization (MCGEO), cited the need for equity among County employees. He said that, regardless of whether it is included in the Charter, the Council has the ultimate responsibility of deciding whether it will accept binding arbitration. He said that both of the groups represented by MCGEO are currently under "meet and confer", and that it was hoped that the Charter amendment would provide one system of arbitration for all employees. He said that binding arbitration is preferred because without it there will be inconsistency and uncertainty about how an impasse will be resolved.

Councilman Potter said that he believes binding arbitration would remove from the Council its authority to make the final decision. Noting that he believes that it might be appropriate in situations where strikes are prohibited, Mr. Potter raised objections to the language proposed for Section 511 that says that "any law so enacted shall prohibit strikes or work stoppages." He believes that the Charter amendment should provide some flexibility and balance. He noted that Section 510 prohibits strikes, but provides for binding arbitration.

Councilman Hanna said that he objects to relinquishing of the Council's responsibility to an arbitrator and believes that it could have negative results. He cited a case where employees negotiated an agreement under binding arbitration which called for salary increases which could not be met without a tax increase. He said that the court ruling in this case was that the only individuals who have the overall responsibility of the government are the elected officials; an arbitrator cannot remove those powers and demand something that is against the public interest. He said that he is in favor of collective bargaining for employees if this is what the employees wish.

Councilmembers Hanna and Scull voting in the affirmative and Councilmembers Gudis, Potter, Crenca, Fosler and Gelman voting in the negative, Mr. Hanna's motion to add non-binding before the word "arbitration" failed for lack of a majority vote.

With respect to the language which indicates that the authority for collective bargaining may be granted to authorized representatives of officers and employees of the County government not covered by Section 510, Mr. Renne pointed out that MCGEO cannot represent non-merit employees. He believes that the Council can address this issue through the legislation it enacts in this regard.

Councilman Potter moved to substitute the word may for "shall" before the word "prohibit" in the language proposed for Section 511. The motion failed for lack of a second. In making the motion, Mr. Potter said that he believes that the issue of prohibiting or permitting strikes could be addressed in legislation the Council enacts.

Mr. Renne requested that the record reflect MCGEO's opposition to the lack of flexibility in the Charter amendment for County employees.

Councilman Potter moved to delete the word [only] between "system" and "to" in the language proposed for Section 401. Following discussion, without objection, the Council agreed to amend this language by including a comma before the word "only", as suggested by Ms. Spencer.

Councilman Hanna raised a question about the language proposed for Section 401 that says that "officers and employees who are members of a unit for which a collective bargaining contract exists may be excluded from the provisions of the merit system." He expressed the view that employees should

MFP ITEM 1
February 24, 2000
Worksession

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: MF Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession**: Bill 26-99, Collective Bargaining - Amendments

Bill 26-99, Collective Bargaining – Amendments, sponsored by Councilmembers Subin and Silverman, was introduced September 14, 1999. Bill 26-99 requires arbitration of collective bargaining agreements for County government employees. The form of binding arbitration proposed is last best offer for the entire economic package, and last best offer item-by-item for non-economic items. The arbitrator would decide which issues are economic or non-economic. Bill 26-99 also revises the process for certifying employee organizations and the timetable for certain collective bargaining actions.

A public hearing was held on November 16. The only speakers were James Torgesen of the Office of Human Resources (OHR), representing the County Executive, and representatives of the Municipal & County Government Employees Organization (MCGEO), the bargaining agent for County employees. Both supported the bill but suggested different amendments. See testimony, ©15-30.

Attorneys for MCGEO requested corrective amendments to clarify the Council's role in reviewing collective bargaining agreements. See MCGEO letter, ©31-39. They also responded to amendments proposed on behalf of the County Executive (see Executive testimony, ©22-27).

At a worksession held on November 29, this Committee made tentative decisions on certain issues, described below, and encouraged OHR and MCGEO to work together, if possible, to reconcile their views on the kind of binding arbitration that should be adopted.

Summary

Bill 26-99 would make the following changes in the current County employee collective bargaining law:

1) It allows the Labor Relations Administrator to resolve issues regarding the negotiability of any collective bargaining proposal. See ©2, lines 12-13. This is consistent with current practice.
2) It maintains continuity in a collective bargaining agreement when a different union takes over representation. See ©3, lines 22-26. In staff's view, this is a sensible clarification.
3) It permits a combined decertification/certification election if proper petitions have been filed. See ©2, lines 28-39. This appears to be reasonable, but may already be allowed under current law.
4) It moves the collective bargaining agreement schedule back 1 month, so that the report from the fact finder (under the bill, the arbitrator) would be due on March 1 instead of February 1.
5) It converts the current mediation/fact finding collective bargaining process for the County employees bargaining units to a binding arbitration system.

In 1998, Council staff sought the County Attorney's opinion on an initial **legal issue** raised then by Bill 45-97, the predecessor to Bill 26-99. Binding arbitration was mandated for employees in the public safety (police and fire) bargaining units by express provisions in the County Charter (§§510, 510A). In contrast, Charter §511 authorizes the Council to provide "arbitration or other impasse resolution procedures" for the remaining bargaining units but does not expressly authorize binding arbitration. Bill 26-99 would grant binding arbitration rights to employees, and impose similar legal obligations on the County Executive, by legislation. The legal issue this posed is whether, without expressly amending the Charter to permit it, delegating the County Executive's decision-making authority regarding a collective bargaining agreement to a private arbitrator would amount to an unlawful delegation of the executive power assigned to the Executive by §201 of the Charter. The County Attorney concluded that this issue is not squarely posed because, in drafting Charter §511 in 1984, the Council intended the term "arbitration" to include binding arbitration and expressly rejected an amendment to allow only "non-binding" arbitration. (See County Attorney memo, ©40-51.)

Major Issues

Binding arbitration for non-public safety employees? Until now, binding arbitration has been legislatively adopted in Montgomery County only when the Charter requires it, which is only for public safety (police, fire) employees. (Unlike other jurisdictions, the distinction between employee groups is not based on the presence or absence of a right to strike; our Charter expressly prohibits strikes by any employee group.) Binding arbitration transfers authority from the County Executive to a third-party arbitrator; it directly removes the Executive's discretion to accept or not accept a collective bargaining agreement, and indirectly increases the pressure on the Council to fund the arbitrator's award. Experts argue about whether binding arbitration increases or reduces the willingness of the parties to reach agreement on their own, and whether it increases an employer's costs over time.

A major difference between the public safety employee groups and the broader County employee bargaining units is the greater uniformity of issues in the public safety bargaining

units. Each unit has fewer employees, they are in a single occupation, and they work for a single department with its own unique set of demands and work requirements. By contrast, MCGEO represents a larger and more heterogeneous group of employees, who are subject to widely varied demands, and who work in more than two dozen different departments and offices and many dissimilar work settings and working conditions. (The larger size of the MCGEO units also means, of course, that the fiscal impact of an arbitrator's award can be much greater than it is for the public safety units.) In addition, without diminishing the risks and stresses faced by non-public safety employees, they rarely if ever rise to the life-threatening levels that public safety employees may face at any time.

Of other Maryland jurisdictions, only Prince George's County has adopted a form of binding arbitration for non-public safety employees; however, it can only be used if the employer and union both agree. (See excerpts of Prince George's County law, ©52.) Prince George's County also has binding arbitration for its public safety employees, broadly defined. The District of Columbia has binding arbitration on compensation issues for all represented employees, and on all issues for police and firefighters. Baltimore City has binding arbitration for firefighters only. No other Maryland jurisdiction allows binding arbitration. Nor does the federal government or any Virginia jurisdiction (Virginia does not allow any public employee collective bargaining).

Type of binding arbitration The form of binding arbitration that now applies to the County *fire and police* collective bargaining units is **last best offer for the entire contract** ("total package"), rather than **last best offer issue-by-issue** ("line item") or conventional (**arbitrator's discretion** or "split the difference") arbitration. The binding arbitration proposed by Bill 26-99 for the *MCGEO* units is a **hybrid**: the economic issues would be decided on a last best offer total package basis, but the arbitrator could decide each non-economic item separately and would not be bound by the parties' offers. Under the bill the arbitrator decides which issues are economic and which are non-economic.

For the parties' views on which form of binding arbitration is preferable, see ©16-17 (Executive) and ©28-33 (MCGEO). In Council staff's view, a bifurcated system may offer little incentive for the parties to compromise on non-economic issues, which are mainly day-to-day operating issues. On the other hand, one can argue that in total package arbitration the economic issues normally drive the arbitrator's decision and the non-economic issues "go along for the ride" and are given scant separate consideration. In that case, the system proposed in Bill 26-99 would elevate the importance and visibility of the non-economic issues.

If the economic/non-economic distinction is maintained in the law, Executive staff suggested limits on what issues are defined as economic. See item #8 on ©25-26. At the worksession OHR Director Perez reiterated that the economic issues should be limited to wages, pensions, and health benefits. MCGEO preferred the broader definition in Bill 26-99.

After negotiations since the November worksession, OHR and MCGEO agreed to support an amendment to adopt the last best offer for the entire contract ("total package") process that is used in the police bargaining unit. If the Committee endorses this approach, Council staff will draft appropriate language, based generally on the current provisions in County

Code §33-81, for the Committee's approval. A "total package" approach would eliminate the need for the arbitrator to decide which issues are economic or non-economic. In staff's view, it would also continue the pattern we have observed in the police bargaining unit, where the arbitrator's award effectively hinges on the economic issues, especially the proposed wage and salary adjustments. Whether this process makes equal sense in the more varied MCGEO units merits further discussion.

Scope of bargaining unit The Executive would exclude from the bargaining unit those probationary employees whose probationary period is 12 months or more, and certain confidential employees. See ©23. MCGEO opposes these exclusions and would broaden the bargaining unit to cover non-attorneys in the State's Attorney's Office, temporary employees, and sergeants in the Sheriff's Office. See ©37-38. **At the November worksession the Committee recommended that changes in the scope of the bargaining unit not be addressed in this bill.**

Collective bargaining agreement calendar Bill 26-99 would move the deadline for the arbitrator's award from February 1 to March 1. The Executive preferred February 15. While these changes move the bargaining deadline closer to the operating budget submission deadline, in our view they reflect how the process has actually functioned in recent years. **After negotiations since the November worksession, OHR and MCGEO agreed to split their difference and move the relevant dates forward a half-month.** In other words, they agreed to require impasse to be declared by February 1 (the current law says January 15), and the arbitrator's report would be due by February 15 (the current law says February 1).

Economic comparisons Executive staff proposed an amendment to allow the arbitrator to consider private sector wages and benefits in the entire Washington metropolitan area and the state, rather than only the County. See ©24. MCGEO strongly opposes this. See ©35. In our view, this amendment seems reasonable because public sector wages and benefits are already compared across these jurisdictions, and the arbitrator can certainly take differing costs of living in the various areas into account as well. **After negotiations since the November worksession, OHR and MCGEO agreed to leave the current law unchanged on this point.**

Management rights Executive staff proposed language that would direct the arbitrator to not diminish or condition management rights in determining whether a collective bargaining item is negotiable. See ©24-25. MCGEO strongly opposes this. See ©35-36. While we agree that management rights may need more protection, Council staff is not sure what the actual effect of this language would be. **After negotiations since the November worksession, OHR and MCGEO agreed to leave the current law unchanged on this point.**

5-year term Executive staff would lengthen the maximum term of a collective bargaining agreement with MCGEO from 3 to 5 years. The collective bargaining agreement could, of course, allow one or more issues to be reopened during that period. At the November worksession OHR staff argued that a 5-year term would send a message of stability to County employees and bond rating agencies. Committee Chair Praisner noted that a 5-year contract could bypass an entire Council term, effectively taking major collective bargaining issues of the table during that period and allowing only isolated consideration of any reopeners. (However, the bypassed Council could decline to fund a cost item approved by the previous Council.)

Councilmember Andrews asked about the experience of other jurisdictions with length of collective bargaining agreements. **In negotiations since the November worksession, OHR and MCGEO agreed to support this amendment.**

Council role MCGEO proposed several amendments to clarify that the Council, in reviewing a collective bargaining agreement, only can act on those terms and conditions that require funding or a change in law. While the thrust of these amendments is consistent with the intent of the current law, in redrafting this bill Council staff will work with the parties to make sure that the Council's role is preserved as originally intended.

This packet contains:	Circle #
Bill 26-99	1
Legislative Request Report	14
Executive testimony	15
Executive amendments	22
Summary of Executive amendments	27
MCGEO testimony	28
MCGEO letter with amendments	31
1998 County Attorney memo with attachments	40
Prince George's County collective bargaining law (excerpts)	52
Letter from MCGEO attorney	60
Baltimore Teachers Union case	62
Beloit case	80

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Bill No. 26-99
Concerning: Collective Bargaining - Amendments
Revised: 9-8-99 Draft No. 2
Introduced: September 14, 1999
Expires: March 14, 2001
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin and Silverman

AN ACT to:

(1) modify certain functions of the Labor Relations Administrator;
(2) revise the process for certifying employee organizations;
(3) revise the timetable for certain collective bargaining actions;
(4) require binding arbitration of certain collective bargaining agreements; and
(5) generally amend the law governing collective bargaining for certain County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-103, 33-106, and 33-108

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:

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:

* * *

(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.

33-106 Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

(2)

* * *

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b) * * *

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

* * *

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

(a) Collective bargaining [shall] must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and [shall] must be finished on or before [January] February 15. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]

(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 year or for more than 3 years. All agreements [become effective] take effect July 1 and end June 30.

(c) A collective bargaining agreement [becomes effective] takes effect only after ratification by the employer and [by] the certified representative. The certified representative may [provide] adopt its own [rules for] ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator [shall] must appoint a mediator/[fact-finder] arbitrator, who may be a person recommended [to her] by both parties. The mediator/[fact-finder] arbitrator [shall] must be available [during the

period] from January 2 to [February 1] June 30. Fees and expenses of the mediator/[fact-finder] arbitrator [shall] must be shared equally by the employer and the certified representative.

(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 15, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) This dispute [shall] must be submitted to the mediator/[fact-finder] arbitrator whenever an impasse has been reached, or [before that] as provided in subsection (e)(1). The mediator/[fact-finder] arbitrator [shall] must engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will [tend to bring about the] encourage settlement of the dispute.

(5)

(3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his] the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, [he shall implement the following fact-finding process:] or as of February 15 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

(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 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.

[(b.)] (2) [He] The mediator/arbitrator may require the parties to submit oral or written evidence [or make oral or written] and arguments in support of their proposals. [He] The mediator/arbitrator may hold a hearing for this purpose at a time, date, and place selected by [him] the mediator/arbitrator. This hearing [shall] must not be open to the public.

[(c.)] (3) [On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.]

On or before March 1, the mediator/arbitrator must select, as a whole, the more reasonable of the final economic offers submitted by the parties. With regard to the economic offers, 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 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.

[(d.)] (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:

[(i)] (A) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

[(ii)] (B) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public

employers in the Washington Metropolitan Area and in Maryland.

[(iii)](C) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

[(iv)] (D) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

[(v)] (E) The interest and welfare of the public.

[(vi)] (F) The ability of the employer to finance economic adjustments, and the effect of the adjustments [upon] on the normal standard of public services provided by the employer.

(5) The economic offer selected by the mediator/arbitrator, together with the mediator/arbitrator's conclusion on each non-economic proposal, integrated with all previously agreed on items, is the final agreement between the employer and the certified representative, need not be ratified by any party, and has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement, and any provision which requires action in the County budget must

be included in the budget which the employer submits to the County Council.

[(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator-fact-finder, the report of the mediator-fact-finder, with recommendations on agreed items deleted, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.]

(g) The budget that the employer submits to the Council [shall] must include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed term or condition submitted to the Council that requires an appropriation of funds, or the enactment[, repeal, or modification] or adoption of any County law or regulation, or which has or may have a present or future fiscal impact, may be accepted or rejected in whole or in part by the Council. [Such terms or conditions shall be identified to the

Council by either or both parties.] The employer must expressly identify any term or condition that requires Council review. The employer [shall] must make a good faith effort to have the Council take action to implement [any term or condition to which the parties have agreed] all terms of the final agreement.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement [and the recommendations for resolving bargaining disputes].

(i) On or before May 1, the Council [shall] must indicate by resolution its intention to appropriate funds for or otherwise implement the [items that have been agreed to] agreement or its intention not to do so, and [shall] must state its reasons for any intent to reject any [items of the kind specified in subsection (g) that have been agreed to] item of the final agreement. [The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]

(j) [Then] If the Council indicates its intention to reject any item of the final agreement, the Council [shall] must designate a representative to

11

meet with the parties and present the Council's views in the parties' further negotiation on [disputed matters and/or agreed upon] matters that the Council has indicated its intention to reject. The parties must submit the results of the negotiation, whether a complete or a partial agreement, [shall be submitted] to the Council on or before May 10.

(k) Any agreement [shall] must provide for automatic reduction or elimination of wage [and/]or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year [in which] when the agreement is in effect.

[(k)] (l) The Council [shall] must take [whatever actions it considers] any action required by the public interest with respect to [matters] any matter still in dispute between the parties. However, [those actions shall not be] any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate [them] it in the agreement.

Approved:

Isiah Leggett, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council Date

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LEGISLATIVE REQUEST REPORT

Bill 26-99

Collective Bargaining - Amendments

DESCRIPTION:	Requires binding arbitration of collective bargaining agreements for County government employees. The form of binding arbitration is last best offer for the entire economic package, and last best offer item-by-item for non-economic items. The arbitrator would decide which issues are economic or non-economic. Also revises the process for certifying employee organizations and the timetable for certain collective bargaining actions.
PROBLEM:	Need for other County government employees to have the same right to bargaining arbitration as County public safety employees now have.
GOALS AND OBJECTIVES:	To make the collective bargaining process fairer to employees.
COORDINATION:	Office of Human Resources, Office of Management and Budget
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County government.
PENALTIES:	None

(14)

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

GOOD AFTERNOON, MY NAME IS JAMES TORGESEN, LABOR/EMPLOYEE RELATONS 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 CERTIFED 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

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 CONSTITUES AN ECONOMIC ITEM, RATHER THAT 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 CHIIEFS WITHIN THE GOVERNMENT AND WOULD EFFECT APPROXIMATELY 50-75 POSITIONS.

- WE PROPOSE THAT THE CURRENT LANGUGE 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 MARYLYAND 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.

- 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 ARTICULTED 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.~~

* * *

(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.*

* * *

(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:

* * *

(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.*

* * *

(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.*

* * *

(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 ~~15~~, 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.

* * *

(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.*

* * *

(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:

* * *

[(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:

* * *

(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.

COUNTY COLLECTIVE BARGAINING LAW AMENDMENTS

Impasse resolution – Proposed legislation differentiates treatment of economic and non-economic items in dispute. As an alternative to the proposed language the arbitrator would determine reasonableness on each item in dispute. The current fact-finding process permits this and this would provide a balanced opportunity for the Arbitrator to review each offer separately or in combination with others, rather that deciding economics as a package and non-economics item by item. In addition, a clearer definition of what is "economic" is needed, tracking the definition contained in the scope of bargaining.

Minimum 12 month probationary period – law needs to be clarified to insure that newly hired employees are not eligible to participate in the bargaining unit until having completed 12 months probation.

Confidential Employees- defines a group of employees currently not excluded from the bargaining unit who regularly handle personnel matters concerning bargaining unit employees. Many of these employees provide clerical support to division and section level heads and process discipline or other employee related actions.

Deadline dates for declaring and resolving bargaining impasse – move the proposed impasse deadlines back by two weeks to provide adequate time to finalize the Executive's budget recommendations.

Term of labor agreements – increase capability to negotiate agreements up to 5 years in duration. Provides flexibility for parties to establish long term contracts and enhance the stability of labor relations.

Comparison of wages, benefits and working conditions – parties to include comparable jurisdictions in comparison of private sector employers during impasse proceedings. Currently, comparisons are limited to Montgomery County.

Labor Relations Administrator decision parameters- include language which directs LRA not to interpret the bargaining law in such a way so as to diminish or restrict in any way issues which touch on enumerated management rights.

OHR/9-24-99

TESTIMONY IN SUPPORT OF BILL 26-99
COLLECTIVE BARGAINING - AMENDMENTS

Good afternoon, my name is Bill Thompson. I am a principal in the firm of Zwerdling, Paul, Leibig, Kahn, Thompson & Wolly, P.C., 1025 Connecticut Avenue, N. W., Suite 712, Washington, D.C. 20036, 202-857-5000. I am the General Counsel of MCGEO-UFCW Local 1994, and have been its attorney since the early 1980's. I was also one of the drafters of the County Collective Bargaining Law in 1986.

The County now has three collective bargaining laws: for police, for fire and rescue, and for general blue collar and white collar employees. This last law is colloquially known as the "MCGEO" law.

The proposed amendments to the MCGEO law which are before you this afternoon, if adopted by the Council, will add to the MCGEO law highly effective impasse resolution procedures which already exist both in the police bargaining law and the fire and rescue bargaining law.

Specifically, the MCGEO law lacks a binding arbitration provision. As you know, both the police and fire and rescue statutes force a definitive closure to the bargaining process by means of an arbitrator's binding award. Such an award resolves outstanding unsettled bargaining issues by requiring the union and the Executive to accept the arbitrator's decision regarding those issues, as their final contract. Whether or not the final contract results from arbitration, the Council thereafter reviews

and acts upon any provisions of the agreement which require its involvement.

The current MCGEO law is flawed by lack of a binding arbitration provision. Instead of forcing finality both on the union and the Executive, the MCGEO fact-finding process replicates the procedure of binding arbitration -- final offers and a hearing before the fact-finder (who is invariably an arbitrator) -- but lacks the substance of a binding decision. Instead of ending the bargaining process, the fact-finder can only issue toothless recommendations. And, as the current MCGEO law provides:

> After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain.

Section 108(f). Thus, we have an entirely circular process.

Today the MCGEO bargaining law has the "worst of both worlds" in this regard. If an impasse in negotiations is reached, the Executive and MCGEO are forced to spend the time, money, and effort to present and defend their respective proposals in a formal proceeding before the fact-finder. However, unlike binding arbitration the resulting "recommendations" don't force the parties to a resolution. Rather, the fact-finder's toothless recommendations invariably drop into a proverbial "file 13," and the parties go back to the table again.

Furthermore, this non-binding fact-finding procedure also robs the initial stage of third party intervention in a

bargaining dispute of any real possibility of success. Here we are speaking of mediation, which proceeds both binding arbitration in the two public safety laws, and fact-finding in the MCGEO law. At mediation the third party neutral arbitrator or fact-finder attempts to bring the parties together without the need for a formal proceeding. Common sense dictates that a mediator can be more persuasive in leading both sides into a mediated settlement, if the parties know that he or she will later have the power to bind them via an ultimate arbitration award. We strongly urge that the Council add binding arbitration of impasses to the MCGEO law.

Other bargaining process-related proposals in this bill are more technical. The bill would amend the statutory deadlines for various stages of the bargaining process, so that they are more realistically in tune with the Executive and Council operating budget cycle. Another proposed amendment will enable employees to make more efficient choices about which, if any, union they want to represent them. Also included are several clarifications of the authority of the Labor Relations Administrator, and the parameters of bargaining subjects. We urge that these aspects of Bill 26-99 be adopted, as well.

As the certified collective bargaining representative for more than 3000 blue and white collar County Merit System employees, we respectfully urge the Council to pass Bill 26-99.

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November 22, 1999

VIA FACSIMILE & U.S. MAIL

Michael Faden, Esquire
Montgomery County Council
100 Maryland Avenue, Room 601
Rockville, Maryland 20850

Re: Bill 26-99

Dear Mike:

As was requested by the Council during the November 16, 1999 hearing regarding this bill, these are MCGEO-UFCW Local 1994's comments regarding the County Executive's proposed amendments to the bill introduced at the hearing, together with some criticisms and suggestions we have regarding a few aspects of the existing bill.

The Executive's Proposed Amendments

Executive Item #1: Change Impasse Process In Bill.

- The bill proposes an interest arbitration procedure bifurcated between economic and non-economic proposals. (See bill pages 6-8). Economic proposals of each side will be decided as a complete package, "winner-take-all." This is the same method which exists for all proposals in the Police and Fire and Rescue bargaining laws. Non-economic "working condition" proposals will be decided item by item, and the Arbitrator will be empowered to compromise or alter the proposals in his/her final award.

- The reason this bill (as did its predecessor bill 45-97) varies from the complete "winner-take-all" system used in the two other bargaining laws it that while the economic benefits of employment for those in the MCGEO bargaining units are basically uniform, working conditions vary greatly. In the Police and Fire and

Rescue bargaining units, working conditions as well as economic benefits are relatively homogeneous. However, MCGEO-represented employees have working conditions which are as varied as the myriad of job classifications included in the blue collar and white collar units.

- Therefore, it may be very difficult and unwieldy for any Arbitrator to reach a decision choosing one or the other final offer, each of which includes many working conditions which only affect subgroups of employees within the MCGEO bargaining units. By removing non-economic working conditions from the winner-take-all system, we feel that the Arbitrator will have the appropriate flexibility to arrive at a coherent non-economic working condition award which he/she can integrate logically with the winner-take-all economic award.

- The Executive's proposed amendment would authorize item-by-item choices by the Arbitrator for all proposals, economic and non-economic, but without giving the Arbitrator the ability to compromise or vary from one or the other proposal. This suggestion is a recipe for bargaining chaos. What if the parties have differing proposals which do not mirror the same subject matter? For instance, if MCGEO presents a final proposal for some item and there is no directly corresponding County counter proposal, does that mean MCGEO automatically wins? Without the ability to compromise or ignore various aspects of each side's proposals, the Arbitrator will be hard pressed to correlate them on a "one-to-one" basis.

- Regardless of how the Arbitrator differentiates between economic and non-economic proposals, his determinations of what is "economic" or "non-economic" will not be binding on the Council. Under the bill, the Arbitrator's final award including both categories of proposals becomes the parties' complete collective bargaining agreement. (See bill pages 9 and 10). Only after that agreement has been concluded does the Council review process begin. That separate review

process in the bill requires that the Council approve "[a]ny ... term or condition ... that requires an appropriation of funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact." With one purely technical amendment, this substantive standard for Council review continues the system which has existed since 1986.

- Therefore, we request that the Council reject the Executive's proposed item by item impasse resolution system.

Executive Item #2: Require A Minimum 12-Month Probationary Period.

- This proposed amendment is an effort by the County to have the Council overturn a recent decision by the County Labor Relations Administrator that determined the length of the new hire probationary period to be bargainable under the law. The County has appealed the LRA's decision to Circuit Court.

- We strongly object to the County's effort to overturn the LRA's decision. That critical piece of background information was deleted from the County's explanation. The County's desire to delay for six months the graduation of probationary employees into the MCGEO bargaining units is a matter which must be negotiated between the Executive and MCGEO, not improperly injected into the political process.

Executive Item #3: Exclude Confidential Employees From The Bargaining Unit.

- The law already excludes from the bargaining units:

  (A) Confidential aides to elected officials.

  * * *

  (D) Deputies and assistants to heads of principal departments, offices, and agencies.

(E) Persons who provide direct staff or administrative support to the head ... or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

* * *

(G) Persons who work for the Office of the County Executive and the Office of the Chief Administrative Officer.

* * *

(J) Persons who work for the Office of Management and Budget.

(K) Persons who work for the Office of Human Resources.

* * *

(S) Supervisors....

(T) Persons in Grade 27 or above....

Section 33-102(4).

- Given the breadth of these and other existing exclusions from the bargaining units, the proposed exclusion of "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..." constitutes either a repetition of an existing exclusions, or an effort by the County Executive to stretch the concept of "policies affecting" working conditions far beyond what is necessary to safeguard management's privacy. Under this definition, a decision by a building service work to move a water cooler closer to the office door could be argued to constitute a policy decision affecting working conditions.

- We urge the Council to reject this suggestion.

Executive Item #4: Establish Earlier Deadline Dates For Declaring And Resolving Bargaining Impasses.

Executive Item #5: Allow Labor Agreements To Have A Maximum 5-Year Term.

- We are reviewing these suggestions, and have not yet concluded our considerations.

Executive 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.

- We are strenuously opposed to any effort to dilute the economic comparisons between County employees and who usually live in the Montgomery County vicinity with those in the distant suburbs, the Eastern Shore, Baltimore, and Western Maryland. Many of these proposed "comparables" are radically less expensive communities with much lower costs of living.

Executive Item #7: Include Language In The Bill That Prohibits The Labor Relations Administrator From Diminishing Management Rights When He Makes A Negotiability Determination.

- The current law includes the following provision at Section 33-107(b):

> Employer rights. This article and any agreement made under it shall not impair the right and responsibility of the employer to perform the following [management rights].

Any negotiability determination made by the LRA under the current law cannot "impair the right and responsibility of the employer...." Therefore this proposal is entirely unnecessary.

- Moreover, all negotiability determinations must balance management rights with the subjects which are negotiable. We are concerned that the County will try

to use this proposed new language to shift the balance which has existed since 1986 by claiming in a court appeal that the Council has enacted this amendment to criticize or somehow repudiate the LRA decisions regarding negotiability which have been issued between 1986 and 1999.

- We request that the Council reject this proposal.

Executive Item #8: Proposed Amendment To Impasse Process If Council Bifurcates Consideration Of Economic And Non-Economic Items.

- We are reviewing this suggestion and have not yet completed our deliberations.

MCGEO's Suggested Amendments

We have several suggested amendments to the current bill as follows:

Item A: Clarification of Council Review Language

§33-108(g) [p. 10 line 171]:

(g) The budget that the employer submits to the Council [shall] must include any term or condition of the parties' agreement [[the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed term or condition submitted to the Council]] that requires an appropriation of funds, or the enactment [, repeal, or modification] or adoption of any County law or regulation, or which has or may have a present or future fiscal impact [[,]]. Any such term or condition of the agreement, may be accepted or rejected in whole or in part by the Council. [Such terms or conditions shall be identified to the Council by either or both parties.] The employer must expressly identify any term or condition that requires Council review, and

simultaneously provide notice of that identification to the other party. The employer [shall] must make a good faith effort to have the Council take action to implement [any term or condition [[to which the parties have agreed] all terms of the final agreement]] so identified.

33-108(i) [p. 11, lines 190-2]

...[shall] must state its reasons for any intent to reject any [items of the agreement of the kind specified in subsection (g) that have been agreed to] [[item of the final agreement]].

33-108(j) [p. 11, lines 196-7]

(j) [Then] If the Council indicates its intention to reject any item of the final agreement of the kind specified in subsection (g), the Council must....

- The purpose for these proposed additional amendments is to ensure that the language accurately reflects the facts that a complete agreement between the parties, whether or not as the result of arbitration, must exist prior to the transmittal of the Executive's proposed budget, and that council review is not of the complete agreement, but only the specifically identified terms and conditions.

Item B: Amendments To Definitions Of Employees Included In The Collective Bargaining Units.

Section 33-102:

(4) Employee means any person who works under the County government merit system, or any non-attorneys who work for the Office of the State's Attorney for Montgomery County, on a continuous full-time, career or part-time, career basis, except:

* * *

- This proposed amendment would extend collective bargaining rights for the specified employees only to the extent their terms and conditions of employment (including, e.g., health insurance and retirement benefits) are regulated by the County.

[(M) Persons who work on a temporary, seasonal or substitute basis.]

- We are deeply concerned that the Executive is increasing the use of temporary, seasonal and substitute employees at sub-par wages and benefits to do regular work which should be performed by merit system employees. We ask the Council to provide collective bargaining protection to these working members of our community, so that the principles of work place fairness can be extended to them, as well.

[(P) Officers in the uniformed services (Corrections, ~~Fire and Rescue, Police,~~ Office of the Sheriff) in the rank of ~~sergeant~~ lieutenant and above. Subject to any limitations in State law, Deputy Sheriffs below the rank of ~~sergeant~~ lieutenant are employees.]

- This proposed amendment clarifies the fact that no sworn police officers or firefighters in the uniformed services are included in the MCGEO law. Furthermore, police and/or Sheriffs office sergeants are often included in collective bargaining units because, while they are often supervisors, they are not members of the command staff. Local jurisdictions where police sergeants are in the bargaining unit include Baltimore City, Baltimore County, and Prince George's County.

We will be happy to discuss all these matters with you, Council staff, and/or Council members at your convenience. Feel free to contact me if you have any questions.

Very truly yours,

William W. Thompson, II

wwt:dr

cc: Gino Renne

OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

July 22, 1998

TO: Michael Faden, Senior Legislative Attorney
Montgomery County Council

VIA: Charles W. Thompson, Jr.
County Attorney

FROM: Marc P. Hansen, Chief
Division of General Counsel

RE: Bill 45-97, Collective Bargaining - Binding Arbitration

QUESTION

You have asked for our opinion regarding the legality of a provision in Bill 45-97, Collective Bargaining - Amendments, which requires a neutral party to resolve a collective bargaining impasse between the County Executive and the representative of non-public safety employees. You state, "The fundamental legal issue this poses is whether, without expressly amending the Charter to permit it, delegating the County Executive's decision-making authority with respect to a collective-bargaining agreement to a private arbitrator would amount to an unlawful delegation of the executive power assigned to the Executive by §201 of the Charter."

SHORT ANSWER

Because Charter §511 authorizes the County Council by legislation to provide for arbitration to resolve an impasse in reaching a collective bargaining agreement, Bill 45-97 may authorize a third party to resolve that impasse.

(40)

101 Monroe Street, Rockville, Maryland 20850-2589
301-217-2600 • TTD 301-217-2499 • FAX 217-2662 • hansem@co.mo.md.us

ANALYSIS

The Court of Appeals has on several occasions concluded that authorization to engage in arbitration to resolve an impasse in collective bargaining must arise from a public general law or County charter. *See, Anne Arundel County v. Fraternal Order of Anne Arundel Detention Officers and Personnel,* 313 Md. 98, 543 A.2d 841 (1988).[1] The key issue, therefore, is whether Charter §511 authorizes the Council to provide for arbitration. If it does, Bill 45-97 may validly impose a binding dispute resolution process to resolve an impasse in collective bargaining.

You have pointed out that Charter §§510 and 510A require the Council to provide by law for collective bargaining with "binding" arbitration.[2] Charter §511, on the other hand, omits the term "binding." You have raised the question whether the failure to use the term "binding" in Charter §511 means that the Council is not authorized to provide for "binding" arbitration in Bill 45-97.

We do not believe that the failure to use the term "binding" in Charter §511 is significant in this case. Both the plain meaning of the language used in Charter §511 and its legislative history leave little doubt that Charter § 511 authorizes the Council to provide by law for a binding dispute resolution process to resolve collective bargaining impasses.

A county charter is to be read and construed in the same manner as a statute and its words generally are to be given their natural meaning. *Anderson v. Harford County,* 50 Md. App. 48, 435 A.2d 496 (1981). Charter §511 provides:

> The Montgomery County Council may provide by law for collective bargaining, **with arbitration** or other impasse-resolution procedures, with authorized representatives of officers and employees of the County Government not covered by either Section 510

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[1]In *Anne Arundel County v. Fraternal Order*, the Court of Appeals indicated that a charter provision authorizing collective bargaining arbitration must be consistent with Article XI-A of the Maryland Constitution. *Id*, at 111. Because neither Charter §511 nor Bill 45-97 attempts to limit the decision-making authority of the County Council, we do not believe that Article XI-A of the Maryland Constitution would be violated by imposing binding arbitration on representatives of the collective-bargaining unit and the County Executive. *See Ritchmount Partnership v. Bd. of Supervisors of Elections*, 283 Md. 48, 388 A.2d 523 (1977) (County Council of a charter county must serve as the primary legislative body of the county.)

(41)

[2]Charter §510 (collective bargaining for police officers) was approved in 1980; Charter §511 was approved in 1984; and Charter §510A (collective bargaining for firefighters) was approved in 1994. While Charter §511 was placed on the ballot by the County Council, Charter §§510 and 510A were placed on the ballot as the result of citizen petition.

> or Section 510A of this Charter. Any law so enacted shall prohibit strikes or work-stoppages for such officers and employees. (Emphasis added.)

Webster's dictionary defines the term "arbitration" as: "settlement of a dispute by a person or persons chosen to hear both sides and come to a decision."[3] Black's Law Dictionary defines "arbitration" as, "a method of dispute resolution involving one or more neutral third parties who are chosen by or agreed to by the disputing parties, **and whose decision is binding**." (Emphasis added.)[4] Accordingly, the normal meaning of the term "arbitration" involves as a key element a binding dispute resolution process.

The legislative history concerning Charter §511 confirms that §511 was intended to authorize a binding dispute resolution process. The 1984 report of the Charter Review Commission recommended that the County Council place on the ballot for approval by the voters Charter §511.[5] The Charter Review Commission report states, "The Commission believes that the Council should have the opportunity and the clear authority to deal **uniformly** with the issue of collective bargaining for County employees other than police officers; that position was unanimous and bi-partisan." (Emphasis added.) As noted, Charter §510, which had been approved in 1980, mandated binding arbitration to resolve an impasse in collective bargaining for police officers.

On July 26, 1984, the County Council discussed placing Charter §511 on the ballot. There was considerable discussion regarding whether Charter §511 should authorize the Council to provide for a binding dispute resolution process.[6] The Council minutes reflect that Council member Hanna moved to delete from Charter §511 the phrase "arbitration or other impasse-resolution procedures," and substitute "mediation or **non-binding** arbitration." (Emphasis added.) Ms. Spencer, a member of the Charter Review Commission, pointed out that Mr. Hanna's amendment would create a conflict with §510, which provides for binding arbitration for police officers. Mr. Renne, president of the Montgomery County Government Employees Organization, indicated that his organization hoped that the Charter would provide for "one system of arbitration for all employees." Mr. Renne indicated that "binding arbitration is preferred because without it there will be inconsistency and uncertainty about how an impasse will be resolved."

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[3]Webster's New World Dictionary of the American Language (College Edition, 1960)

[4]Black's Law Dictionary (Bryan A. Garner, ed., West Publishing Company, Pocket Edition, 1996)

[5]Relevant portions of the 1984 Charter Review Commission Report are attached.

[6]Relevant portions of the Council minutes for July 26, 1984, are attached.

In short, the legislative history of Charter §511 clearly indicates that the Charter amendment was intended to enable the Council to provide for binding dispute resolution, and the actual words used in Charter §511 are consistent with that intent.

CONCLUSION

Unless authorized by the County Charter, the Council would be without the authority to enact legislation to impose a binding dispute-resolution process on the exercise of an executive function—like agreeing to a collective bargaining agreement—by the County Executive. But Charter §511 does authorize the Council to enact legislation providing for arbitration to resolve collective bargaining impasses. Bill 45-97 accordingly may legally provide for arbitration to resolve an impasse in the collective bargaining process.

We trust you will find this memorandum responsive to your inquiry. If you have any concerns or questions regarding our advice, please let us know.

# # #

MPH:manm
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c: Bruce Romer, Chief Administrative Officer
Marta Brito Perez, Director/Office of Human Resources
Deborah Snead, Assistant Chief Administrative Officer
Bernadette F. Lamson, Assistant County Attorney
David E. Stevenson, Associate County Attorney

1984 REPORT
of the
CHARTER REVIEW
COMMISSION

May 1984

(44)

Montgomery County, Maryland

RECOMMENDATION B. Collective Bargaining for County employees.

A new Section 511 should be added to the Charter to authorize the County Council to provide by law for collective bargaining with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the county government not covered by Section 510 of the Charter; such law would prohibit strikes and work stoppages.

PROPOSED CHARTER LANGUAGE

Revised Section 511

SECTION 511 Collective Bargaining - County Employees

The Montgomery County Council may provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the county government not covered by Section 510 of this Charter. Any law so enacted shall prohibit strikes or work stoppages for such officers and employees.

A new second sentence for Section 401 shall be added as follows:

PROPOSED CHARTER LANGUAGE

Revised Section 401

SECTION 401 Merit System

The Council shall prescribe by law a merit system for all officers and employees of the County government, except members of the Council, the County Executive, the Chief Administrative Officer, the County Attorney, the heads of the departments, the heads of the principal offices and agencies, as defined by law, one confidential aide for each member of the Council, two senior professional staff positions for the

Council as a whole as may be designated from time to time by the Council, three special assistant positions in the office of the County Executive as may be designated from time to time by the County Executive, special legal counsel employed pursuant to this Charter, and members of boards and commissions and other officers authorized by law to be appointed to serve in a quasi-judicial capacity. Officers and employees who are members of a unit for which a collective bargaining contract exists may be excluded from provisions of the merit system only to the extent that such provisions are subject to collective bargaining pursuant to legislation enacted under Section 510 or Section 511 of this Charter. The merit system shall provide the means to recruit, select, develop, and maintain an effective, non-partisan, and responsive work force with personnel actions based on demonstrated merit and fitness. Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. The Council shall establish by law a system of retirement pay.

Note: New matter: underscored

DISCUSSION

Collective bargaining for county employees has been considered by previous Charter Review Commissions and County Councils. Other public employees (i.e. teachers, school supporting service employees, and employees of Montgomery College) have obtained collective bargaining through passage of public general laws by the Maryland General Assembly. In addition, Montgomery County Police Officers obtained the right to bargain collectively through a Charter amendment which they proposed by initiative.

The Commission believes that the Council should have the opportunity and the clear authority to deal uniformly with the issue of collective bargaining for County employees other than police officers; that position was unanimous and bipartisan.

The proposed amendment would leave to the discretion of the Council the decision as to whether or not county employees should have the right to bargain collectively. The proposed amendment also leaves to Council discretion the extent to which county employees under collective bargaining should remain within the merit system. The proposed amendment would also prohibit strikes by county employees who are the subject of a collective bargaining agreement.

There was disagreement among the Commission members as to whether the proposed amendment should mandate action by the Council to create a framework for collective bargaining (five members favored the mandatory language) and on whether there should be a "no strike" provision in the proposal (the same five members opposed the strike ban). Commissioner Michael Gildea has written a minority statement covering these two positions, and Commissioners Goldman, Garber, and Gildenhorn subscribed to those views. They are included in this report, pages 21-26. Commissioner Frosh has also written a minority statement on these two positions. His comments are included on page 27 of this report.

The Commission does not recommend any action at this time on the issues of a separate merit system for legislative and/or judicial employees, RIF/replacement rights between and among executive, legislative, and judicial employees, or increased non-merit staff for the County Council. The Commission believes that these issues require further study.

Submitted in packet of 8/17
Council review cutoff 8/23
Approval scheduled 8/28

NOT APPROVED (8/17)
DISTRIBUTION LIMITED TO COUNCIL & STAFF

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, July 26, 1984 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:47 A.M. on Thursday, July 26, 1984.

PRESENT

Esther P. Gelman, President
Rose Crenca
Scott Fosler
Michael L. Gudis, Vice President
Neal Potter
David L. Scull
William E. Hanna, Jr., President Pro Tem

The President in the Chair.

Re: Worksession on Charter Amendments, Petitions and Ballot Questions

The Council reviewed Charter amendments, petitions, and ballot questions in accordance with a memorandum of July 24, 1984 from Myriam Bailey, Office of Legislative Counsel. The Council began its review by considering recommendations of the Charter Review Commission.

Ballot Question A and Proposed Charter Amendment (Approval of the Budget) - This involves an amendment to Section 305 of the Charter which exempts the budgets of certain self-funding programs from the computation of the aggregate operating budget when determining whether an affirmative vote of five Councilmembers is required to approve the budget; provides that the Consumer Price Index shall be computed for the twelve months preceding December first of each year; and makes a clarifying change.

Councilman Potter directed attention to his proposed additional amendment to add the following language after the phrase "For the purposes of this limitation the aggregate operating budget":

shall include all items for which appropriations were included in the operating budget of the preceding year

Mr. Potter said that his amendment has been discussed with the Office of Management and Budget. The amendment is proposed to ensure that the comparison from one year to the next truly reflects the increase in operating budget expenditures. He said that it might be helpful to add the following clarifying language:

Mr. Spengler directed attention to the Charter Review Commission's proposed Charter language for Section 305, noting that the word "fully" between "for" and "self-supporting" in the proposed language is used to describe enterprise funds which are not necessarily fully self-supporting.

Councilman Gudis moved, duly seconded, to delete the word [fully] between "for" and "self-supporting" in the Charter amendment.

Councilman Hanna suggested that the word "self-supporting" be deleted also. Mr. Gudis accepted Mr. Hanna's suggestion as an amendment to his motion.

Mr. Spengler said that accountants use the term "primarily" self-supporting. If it meets that test, it is considered an enterprise fund.

Councilman Potter moved, duly seconded, an amendment to Mr. Gudis' motion to substitute the word "primarily" for "fully."

Councilman Hanna said that, if the word "primarily" is used, it will have to be defined. In his opinion, it is simpler to say "enterprise funds" without any adjectives.

Councilmembers Potter and Fosler voting in the affirmative and Councilmembers Hanna, Gudis, Scull, Crenca and Gelman voting in the negative, the amendment to Mr. Gudis' motion failed for lack of a majority vote.

Without objection, the Council approved Mr. Gudis' motion, as amended, to delete the words [fully self-supporting].

Upon motion of Councilman Gudis, duly seconded and without objection, the Council agreed to delete [the Parking Lot districts] from the proposed Charter amendment for Section 305 of the Charter.

Ballot Question B and Proposed Charter Amendment (Collective Bargaining - County Employees - This involves an amendment to Section 401 of the Charter and the addition of a new Section 511 authorizing the Council to provide by law for collective bargaining.

President Gelman asked about the distinction between "mediation" and "arbitration." Mr. Newman said that mediation is a resolution of differences by an informal procedure, while arbitration is a resolution of differences by a formal procedure involving the issuance of a decision by an arbitrator. The question of whether the decision is binding or not depends upon the agreements reached by the parties involved. Councilman Fosler noted that "binding arbitration" is another term to be considered.

Councilman Hanna moved, duly seconded, to delete from the proposed Charter amendment for Section 511 the words [arbitration or other impasse resolution procedures] and to substitute mediation or non-binding arbitration.

Ms. Elizabeth Spencer, a member of the Charter Review Commission, said that the Charter Review Commission felt that the language in the Charter should be as broadly permissive as possible because the legislation enacted by the Council may be different for different groups.

President Gelman expressed the view that the language in the Charter amendment should be broad because it empowers the Council to enact legislation.

Councilman Hanna said that he prefers to restrict the law that may be enacted to provide for only non-binding arbitration.

Councilman Potter suggested that Mr. Hanna would only need to add the word "non-binding" before the word "arbitration" to accomplish his objective. Mr. Hanna accepted Mr. Potter's suggestion as an amendment to his motion.

Ms. Spencer pointed out that this will create a conflict with Section 510 of the Charter which provides for binding arbitration with an authorized representative of the Montgomery County police officers.

Mr. Geno Renne, President of the Montgomery County Government Employees' Organization (MCGEO), cited the need for equity among County employees. He said that, regardless of whether it is included in the Charter, the Council has the ultimate responsibility of deciding whether it will accept binding arbitration. He said that both of the groups represented by MCGEO are currently under "meet and confer", and that it was hoped that the Charter amendment would provide one system of arbitration for all employees. He said that binding arbitration is preferred because without it there will be inconsistency and uncertainty about how an impasse will be resolved.

Councilman Potter said that he believes binding arbitration would remove from the Council its authority to make the final decision. Noting that he believes that it might be appropriate in situations where strikes are prohibited, Mr. Potter raised objections to the language proposed for Section 511 that says that "any law so enacted shall prohibit strikes or work stoppages." He believes that the Charter amendment should provide some flexibility and balance. He noted that Section 510 prohibits strikes, but provides for binding arbitration.

Councilman Hanna said that he objects to relinquishing of the Council's responsibility to an arbitrator and believes that it could have negative results. He cited a case where employees negotiated an agreement under binding arbitration which called for salary increases which could not be met without a tax increase. He said that the court ruling in this case was that the only individuals who have the overall responsibility of the government are the elected officials; an arbitrator cannot remove those powers and demand something that is against the public interest. He said that he is in favor of collective bargaining for employees if this is what the employees wish.

Councilmembers Hanna and Scull voting in the affirmative and Councilmembers Gudis, Potter, Crenca, Fosler and Gelman voting in the negative, Mr. Hanna's motion to add non-binding before the word "arbitration" failed for lack of a majority vote.

With respect to the language which indicates that the authority for collective bargaining may be granted to authorized representatives of officers and employees of the County government not covered by Section 510, Mr. Renne pointed out that MCGEO cannot represent non-merit employees. He believes that the Council can address this issue through the legislation it enacts in this regard.

Councilman Potter moved to substitute the word may for "shall" before the word "prohibit" in the language proposed for Section 511. The motion failed for lack of a second. In making the motion, Mr. Potter said that he believes that the issue of prohibiting or permitting strikes could be addressed in legislation the Council enacts.

Mr. Renne requested that the record reflect MCGEO's opposition to the lack of flexibility in the Charter amendment for County employees.

Councilman Potter moved to delete the word [only] between "system" and "to" in the language proposed for Section 401. Following discussion, without objection, the Council agreed to amend this language by including a comma before the word "only", as suggested by Ms. Spencer.

Councilman Hanna raised a question about the language proposed for Section 401 that says that "officers and employees who are members of a unit for which a collective bargaining contract exists may be excluded from the provisions of the merit system." He expressed the view that employees should

(d) No election shall be conducted pursuant to this Section in any appropriate bargaining unit within which in the preceding 12-month period an election shall have been held nor during the term of any lawful collective bargaining agreement between the employer and a labor organization, except that this restriction shall not apply to that period of time covered by any collective bargaining agreement which exceeds three years. For the purposes of this Section, extensions of agreement shall not affect the expiration date of the original agreement. Where a valid collective bargaining agreement is in existence, a petition for election may be filed only during the period beginning November 1 and ending on November 30 of the fiscal year in which said agreement will terminate.
(CB-1-1973)

Sec. 13A-108. Rights accompanying exclusive recognition.

(a) The labor organization which has been certified by the Panel shall be the exclusive representative of all employees in the unit and as such shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to membership in the labor organization.

(b) When the collective bargaining agreement provides for a grievance procedure, only that procedure shall be applicable to the employees in the unit.

(c) Where a labor organization has been certified as the exclusive representative of the employees in a unit, it shall be the only labor organization eligible to obtain an agreement from the employer to deduct from the pay of those employees in the unit, who provide written authorization, any fees designated or certified by the appropriate officer of the labor organization and to remit said fees to said labor organization, provided that any such authorization shall not be irrevocable for a period of more than one year or beyond the termination date of the applicable collective bargaining agreement, whichever occurs sooner.
(CB-1-1973)

Sec. 13A-109. Negotiations.

(a) The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process, and shall negotiate in good faith with respect to wages, hours and other terms and conditions of employment which are subject to negotiation under this law and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation shall not compel either the employer or the exclusive representative to agree to a proposal or require the making of a concession. The County Executive, or his designated authorized representative(s), shall represent the employer in collective bargaining, except as otherwise provided herein. Where a collective bargaining agreement pertains to fire fighters, the President of the Prince George's County Volunteer Fire Association and the Chairman of the Prince George's Fire Commission shall be notified of all negotiations between the County and the fire fighters union and the County Executive or his designated representative shall, prior to concluding negotiations, meet and confer with the President of the Volunteer Fire Association or his representative and the Chairman of the Fire Commission or his representative who shall be a Fire Commissioner. The purpose of said conference or conferences shall be to

12/01/99 16:42 NO. 177 002

apprise the President and Chairman of the terms of the proposed contract so that an opportunity is afforded the Volunteer representatives to advise the Executive of any concerns the proposed contract may have on the volunteer service.

(b) The employer shall not be obligated to negotiate with respect to those Countywide matters which must necessarily be uniform for all employees, such as a Countywide pension plan or reductions-in-force, unless a labor organization or council or group of labor organizations represent more than 50 percent of all employees, within the meaning of this law, subject to such uniform rules. However, the foregoing shall not prevent the employer from meeting with any other labor organization for the purpose of hearing the views and requests of its members on such matters, provided that the organization or council or group designated as representing more than 50 percent of such employees is informed in advance of the meeting, and any changes in the terms of such Countywide matters is effected only through negotiations with it; or be construed to deny to the employer or an exclusive representative the right to bargain for a variation of a particular application of any Countywide policy or variation of an agreement reached pursuant to these provisions, where considerations are special and unique to the class of employees or unit involved. Disputes over the identification of matters "which must necessarily be uniform" may be resolved pursuant to the procedures provided in Section 13A-111.

(c) Because effective and orderly operations of government are essential to the public, it is declared to be in the public interest that in the course of collective bargaining, the employer and the exclusive representative shall make every reasonable effort to conclude negotiations no later than March 1 of each year, and shall include provisions for an effective date, a reopening date, and an expiration date. Where an agreement is a multiyear agreement, negotiations thereon should be concluded by March 1 of the year in which the existing agreement will expire. With respect to matters requiring the appropriation of funds, the effective date of an agreement shall coincide with the employer's fiscal year.

(d) An agreement may contain a grievance procedure culminating in final and binding arbitration of grievances and disputed interpretations of such agreement. The grievance procedure shall set forth requirements for an election of remedies where other avenues of appeal may be equally available. The employer is authorized to agree, in his discretion, to voluntary binding arbitration with respect to negotiation impasse, which involves employees other than protective service employees. Negotiation impasses involving protective service employees are covered separately by the procedures contained in Section 13A-111.01.

(e) Any agreement reached by the negotiators shall be reduced to writing and shall be executed by both parties. Such agreement shall be valid and enforced under its terms when entered into, in accordance with the provisions of this law and County Charter.

(f) A request for funds necessary to implement such written agreement and for approval of any provision of the agreement which is in conflict with any County Law, Ordinance, Rule or Regulation, including those adopted by its agents such as the Personnel Board, or other action adopted by the employer with the force of law, shall be submitted to the County Council by the employer within the time schedule provided in the agreement. The County Council, except for agreements covering protective service employees governed by Section 13A-111.01 and Section 908 of the County Charter, may approve or reject such request as a whole. If the submission is rejected, the entire agreement shall be returned to the parties for further bargaining and either party may reopen all or part of the agreement. Rejection shall be accompanied by a detailed

bargaining. Such request shall be considered rejected if the Council fails within ninety (90) days after submission to said body to take final action thereon. Failure by the bargaining representative of the employer to submit request within the designated time period shall be considered an unfair labor practice committed by the employer.

(g) If upon approval of the County Council, there is a conflict between the collective bargaining agreement and any rule or regulation adopted by the employer, including merit system or other personnel regulations, the terms of such agreement shall prevail, except where specifically precluded by Charter or State law. Similarly, County Council, upon approval of such agreement, shall enact such legislation and appropriate whatever funds are required to comply with the collective bargaining agreement.

(h) The employer shall have the obligation to bargain on matters which, although otherwise within the scope of bargaining, require action by a body, agency, or official other than the County Executive or the County Council. In addition, the employer shall have the obligation to bargain on the question of whether it should request such body, agency or official to take such action or support such request, provided, however, that no impasse panel or other third party neutral utilized for impasse resolution shall be empowered to recommend that the employer make or support such a request.

(i) If the provisions of the Constitution or By-Laws of the exclusive representative require ratification of a collective bargaining agreement by its membership, only those members who belong to the bargaining unit involved shall be entitled to vote on such ratification notwithstanding such provisions.

(j) At least one representative of the exclusive representative shall be given reasonable time off without loss of compensation during normal working hours to participate in collective bargaining, subject to such terms as an agreement between the parties may provide.
(CB-1-1973; CB-172-1974; CB-24-1981; CB-24-1995)

Sec. 13A-118. Negotiability disputes.

(a) General. A negotiability dispute shall exist when a labor organization and an employer disagree on whether the collective bargaining agreement, applicable rules or regulations, this law, other law or the County Charter, as the case may be, prohibits bargaining with respect to a specified matter. For the purposes of this law, a negotiability dispute shall not refer to the situation where a party refuses to bargain as a matter of choice and not as the result of a purported legal or contractual prohibition or to the situation where the parties are unable to agree upon the terms of a collective bargaining agreement, insofar as the issue in dispute is not "what is negotiable."

(b) Grievances. An issue which involves the interpretation of a controlling agreement in existence shall be resolved under the procedures of the controlling agreement. Additionally, disputes over what is subject to a grievance procedure and what is arbitrable under such procedure shall not be resolved under the procedures set forth in this Section.

(c) Procedure.

(1) The services of the Unfair Labor Practices Panel shall be invoked in the manner prescribed in Section 13A-104(c), provided however, that the parties submit a sworn statement verifying that tentative agreement has been reached on all items of negotiations except those presented to the Panel, or, if this is not the case, a statement indicating why agreement has not

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(54)

Sec. 13A-111. Procedures pertaining to collective bargaining impasses other than those involving protective service employees.

(a) General.

(1) "Impasse" means the failure of the employer and the exclusive representative to reach a collective bargaining agreement despite good faith efforts to do so. However, the Impasse Panel shall be empowered to provide such dispute resolution services as deemed needed either by the parties or as found by the Panel to be essential to the public interest and welfare, even if impasse has not been reached.

(2) An Impasse Panel member shall have power to mediate, hold hearings, compel the attendance of witnesses and the production of documents, review data, make public any recommendations or findings after notice to the parties and take whatever action he considers necessary to resolve the impasse, provided that such action does not impose a final and binding settlement on the parties except as mutually authorized by the parties or except where the Impasse Panel has denied a labor organization the right to strike and has in its discretion required compulsory binding arbitration. In such cases, the decision of the Impasse Panel shall be submitted to the Council for approval. Unless the parties otherwise provide, a single Panel member rather than multiple members shall provide the services herein described, provided further that a member acting as a mediator shall not act as a fact finder or arbitrator in the same matter without the consent of the parties.

(3) Confidential information disclosed by the parties to a mediator in the performance of his mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him on behalf of any party to any case pending in any type of proceeding. A party shall have the right to bar a Panel member who becomes privy to confidential information about that party gained through mediation techniques, from serving in any fact finding or arbitration role relevant to that dispute.

(b) Action by the Parties.

(1) The employer shall have the power to enter into a written agreement with the exclusive representative setting forth an impasse procedure to resolve disputes over the terms or conditions of an initial or renewed collective bargaining agreement. The parties are not precluded from using third party neutrals other than on the impasse panel described in Section 13A-111(c)(4).

(2) The employer, by collective bargaining agreement or by written memorandum, may at any time agree to submit any or all of the issues in dispute to final and binding arbitration.

(3) Any final and binding settlement imposed upon the parties shall be subject to the same conditions for approval as set forth in Section 13A-110(f).

(c) Procedures.

(1) At least 30 days prior to the expiration date of any collective bargaining agreement but not later than March 1, or when 90 days have passed after the commencement of negotiations of an initial agreement, the parties shall notify the Panel of the status of negotiations. The Panel may on its own motion invoke mediation, except if the parties have provided otherwise pursuant to Section 13A-111(b)(1).

11/30/99 17:50 NO. 172 002

been reached on such other matters and why the Panel nevertheless should assert jurisdiction.

(2) The Impasse Panel, while dealing with an impasse, may invoke the provisions of this Section, pursuant to Section 13A-111(c)(2), without the consent of the parties.

(3) The parties, upon request of the Panel, or in petitioning the Panel to settle the dispute, shall stipulate the precise issue to be resolved. Each party shall file within 5 days after the submission of such stipulation, a brief supporting its position along with proof of service of a copy of such brief to all parties.

(4) If the parties cannot agree on a stipulation after reasonable attempts to do so, each shall file a written statement as to what it believes the issue to be, why agreement could not be reached on phrasing of the issue, what attempts were made to reach a stipulation and a brief in support of its position on the issue in dispute.

(d) **Powers of the Panel.** The Panel, at its discretion, may:

(1) Request the parties to file reply briefs;

(2) Refuse to entertain the matter, or a part thereof, and return the dispute to the parties;

(3) Rephrase the issue and request the parties to submit additional briefs;

(4) Call upon mediation or fact finding to be used by the parties prior to the Panel's acceptance of the case;

(5) Compel the parties to continue bargaining while the Panel is trying to resolve the issue; or

(6) Render a decision on the issue, in whole or in part.

(e) **Panel Procedures upon acceptance of the issue.**

(1) The Panel may decide the issue on the record or, after having notified the parties its phrasing of the issue to be resolved, may hear oral argument. Before, during, or after formal proceedings, the Panel may request evidence of added briefs on specified items.

(2) The Panel may invite as participants, experts, witnesses and others who may have an interest, direct or indirect, in the disputed issue or whose participation may assist the Board in reaching a determination. The Panel may also grant requests for the appearance of witnesses and the production of documents or records. The Panel may also take or cause to be taken depositions. Failure to comply with such requests shall be subject to the Panel sanctions applicable to unfair labor practices.

(3) An issue once submitted to the Panel may be withdrawn only upon consent of the Panel and subject to whatever conditions the Panel may prescribe.

(f) **The Panel's Decision.**

(1) The Panel may issue a statement, accompanied by reasons therefor, indicating whether item in dispute is negotiable. The statement may be accompanied also, when the Panel deems necessary, by an order directing the parties to take or pursue the actions specified in the order. The Panel by means of such order may compel the parties to bargain on such matter. The Panel may also determine, subject to the procedures set forth in Sections 13A-113 and 114, that an unfair labor practice has been committed and may also provide remedies therefor.

(2) To minimize the potential recurrence of similar disputes, the Panel shall publish periodically such decisions and shall distribute copies to all employers within the meaning of this law and to all labor organizations that have attained exclusive recognition.

(CB-1-1973)

(2) The Panel, except as otherwise provided by mutual agreement of the parties, may return the parties to collective bargaining for any or all items in dispute or may refer such items as deemed necessary to the procedure outlines in Section 13A-111 with respect to deciding the negotiability of a matter within the meaning of this law, other applicable laws and the County Charter.

(3) Nothing shall preclude a third party neutral from returning to mediation even after the institution of fact finding or arbitration, or from utilizing such mediation techniques as may be appropriate while engaged in fact finding or arbitration.

(4) The Impasse Panel may not make recommendations or findings upon any matter which requires implementation by a body, agency or official which is not a party to the negotiations and who have not agreed to be a party to such impasse resolution.

(5) From the date on which a collective bargaining notice is filed and ending on the date on which a collective bargaining agreement is concluded or, if impasse procedures have been invoked, until such time as the Panel has certified that it or other authorized parties have terminated efforts to resolve the dispute, the labor organization party to the negotiations and the public employees it represents, shall not induce or engage in any strikes, and the employer shall refrain from unilateral changes in wages, hours or working conditions.

(d) Notwithstanding any other provision of this Section or Subtitle, any clause in a collective bargaining agreement which sets forth procedures for a reduction-in-force, layoff, and recall, and/or guarantees against a reduction-in-force or a furlough of employees subject to that agreement, shall expire on the date that agreement expires by its express terms. If a collective bargaining agreement, which has remained in effect beyond its expiration date, provides for an annual merit increase for employees, payment of such increase shall be eliminated unless provided for in a successor bargaining agreement.

(e) Costs. The costs for mediation shall be borne by the County. All other costs shall be borne equally by the parties involved in the dispute, except in the unusual event that the National Center or an arbitrator appointed by it shall find pursuant to such rules as it shall issue, that the impasse has been caused or prolonged by flagrant conduct of one of the parties.
(CB-1-1973; CB-24-1981; CB-24-1995).

Sec. 13A-111.01. Procedures pertaining to collective bargaining impasses involving protective service employees.

(a) An impasse in collective bargaining shall exist if, by March 1 of the calendar year in which a collective bargaining agreement covering sworn police officers, uniformed firefighters, correctional officers, and deputy sheriffs (hereinafter "protective service employees") expires, the County and the organization recognized as the exclusive collective bargaining representative for such employees (hereinafter "Exclusive Representative") have failed to reach agreement in regard to wages, hours, and other terms and conditions of employment, provided that the County and the exclusive representative may, by written agreement, extend the period for collective bargaining beyond the last day of February, in which event an impasse shall exist if, by the first calendar day after the end of any period of extension, the parties have failed to reach agreement.

(b) Within three (3) calendar days after there is an impasse in collective bargaining, the County Executive shall send a written notice to the American Arbitration Association (hereinafter "AAA"), with a copy to the exclusive representative, informing them of the impasse and requesting

that the disputed matters be subm to an arbitrator who shall make findings of fact an opose terms of settlement which shall be binding upon the parties. If the County Executive fai. .o send the aforesaid notice within the time allowed, the exclusive representative may send such a notice to the AAA and, for purposes of this Section, the notice shall have the same effect as if it had been sent by the County Executive.

(c) Within five (5) calendar days after receipt of the written notice provided for in Subsection (b), above, the AAA shall designate an arbitrator. Said designation shall be made in accordance with the general rules of the AAA for the designation of arbitrators, provided that the person designated shall be a member of a special panel of three (3) arbitrators that the AAA shall maintain to perform the functions provided for in this Section. The members of this panel shall be designated by the County Executive, from among persons recommended to him by the AAA, and shall be subject to approval by a majority vote of the full County Council. Said designation shall stand approved if not acted upon by the County Council within thirty (30) working days. The County Council shall consider the views of the County Executive and all exclusive representatives in deciding whether to approve a panel nominee. Panel members shall be selected to serve for a period of three (3) years and shall be eligible for reappointment. A member of the panel may be removed upon recommendation of the County Executive and approval by a majority vote of the full County Council for just cause. A vacancy on the panel, whether created by removal, resignation or otherwise, shall be filled by the County Executive with the approval of the County Council promptly in accordance with the procedure set forth herein, and the person appointed to fill a vacancy shall serve pursuant to such appointment only for the unexpired period of the member whom he or she succeeds. Arbitrators shall be compensated for actual services performed on a case by case basis in accordance with the prevailing rates for such service in the Washington Metropolitan Area. The prevailing rate shall be established in the annual budget based upon information supplied to the County from AAA not later than March 1 of each year.

(d) Following notice of an impasse the AAA, within two (2) calendar days after an arbitrator has been designated, shall send a written notice to the County Executive and the exclusive representative informing them, among other things, of the name and address of the arbitrator. Within five (5) calendar days after receipt of said notice, the County Executive and the exclusive representative each shall submit to the arbitrator and the other party, a list which sets forth:

(1) Any agreement which that party contends the parties have reached in regard to any position of each subject of bargaining, the party's understanding of such agreement, and if the agreement has been reduced to writing, a copy of the document in question; and

(2) Any portion of each subject of bargaining in regard to which it contends the parties have not reached agreement and its position in regard to such disputed portion. As used in this Section, the phrase "subject of bargaining" means a subject matter area (e.g., a grievance procedure) and not the specific items within a subject matter area (e.g., a grievance procedure) and not the specific items within a subject matter area (e.g., the number and nature of the steps in a grievance procedure).

(e) Within seven (7) calendar days after receipt of the submissions provided for in Subsection (d), above, the arbitrator shall hold a prehearing conference with the County Executive and the exclusive representative in order to identify any portion of each subject of bargaining in regard to which the parties:

(1) Have reached agreement and the nature of such agreement; and

(2) Have not reached agreement and the nature of the dispute.

17:50 NO.172 003

At this prehearing conference, the arbitrator also shall obtain from the County Executive and the exclusive representative, their position in regard to any portion of each subject of bargaining as to which the parties have not reached agreement. This position shall be referred to as the party's "final position" and need not be the same as the position set forth in the list submitted pursuant to Subsection (d), above.

(f) If the impasse is not resolved prior to the conclusion of the prehearing conference, the arbitrator shall schedule a hearing in Prince George's County to begin as soon thereafter as possible, but in no event more than twenty (20) calendar days after the conclusion of the prehearing conference. Said hearing shall be open to the public and shall be conducted in accordance with rules and regulations adopted by the AAA for such purpose, provided that the arbitrator shall have the power, at the request of either party or at his or her own initiative, to request the County Council to issue subpoenas pursuant to rules established by the Council for the issuance of subpoenas, requesting the attendance and testimony of witnesses and the production of any records, papers or other information relating to any matter in issue before the arbitrator. The arbitrator shall have the power to request that testimony be under oath and may administer the oath or affirmation of the witness.

(g) If the impasse is not resolved prior to the conclusion of the hearing, the arbitrator shall prepare a written report, which shall include findings of fact and conclusions to which shall be attached a collective bargaining agreement between the County and the exclusive representative. This collective bargaining agreement shall include all agreements reached by the parties at any time prior to the conclusion of the hearing in regard to any portion of each subject of bargaining or other matter, and the final position of either the County or the exclusive representative in regard to the entire disputed portion of each separate subject of bargaining. In determining, for each separate subject of bargaining, whether to include in the collective bargaining agreement the final position of the County or the exclusive representative in regard to the entire disputed portion of each such subject of bargaining, the arbitrator shall consider, among other relevant factors, the following:

(1) The existing terms and conditions of employment of the employees in the bargaining unit;

(2) The ability of the County to meet costs, including both available financial resources and sources of additional financial resources;

(3) (A) The annual increase or decrease in consumer prices for goods and services as reflected in the most recent Consumer Price Index for the Washington Metropolitan Area published by the Bureau of Labor Statistics, United States Department of Labor, commonly known as the cost of living;

(B) The cost of living in the Washington, D.C. Metropolitan Area as compared to the national average and to other comparable metropolitan areas;

(4) The developments in regard to the wages and terms and conditions of employment of other employees performing similar services in other jurisdictions in the Washington Standard Metropolitan Statistical Area and comparable communities;

(5) The special nature of the work performed by the employees in the bargaining unit, including specifically, hazards of employment, physical requirements, educational qualifications, job training and skills, shift assignments and the demands placed upon such employees as compared to other County employees; and

(6) The interest and welfare of the public and the employees in the bargaining unit.

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November 30, 1999

Michael Faden, Esquire
Montgomery County Council
100 Maryland Avenue, Room 601
Rockville, Maryland 20850

Re: Bill 26-99

Dear Mr. Faden:

At yesterday's MFP hearing, we indicated that MCGEO would provide some case law regarding two issues: the relationship between interest arbitration and the legislative authority of the Council, and the classic "balancing" test which labor tribunals such as the County's Labor Relations Administrator utilize in determining whether particular subjects or negotiating proposals are bargainable, or impinge too directly on management rights.

Enclosed is a copy of Baltimore Teachers Union v. Mayor and CC of Baltimore, 151 LRRM 2706, cert. denied, 677 A.2d 565 (Ct. Spec. App. 1996). The BTU case is a detailed treatment of the whole subject of arbitration in the public sector in Maryland. In particular, the nature of the relationship between interest arbitration and the legislative budget making authority is discussed in "Section II" at pages 2716-20. BTU follows the general rule around the country that any labor contract provisions requiring the itemized legislative appropriation of implementing funds, or changes in the formal statutes of a jurisdiction, are only binding upon the legislature after such implementing actions are taken.

Also enclosed is the classic decision of the Wisconsin Supreme Court in City of Beloit v. Wisconsin Employment Relations Commission, 92 LRRM 3318 (1976). As I indicated yesterday, this case is considered to be a persuasive demonstration of the "balancing" process required for any tribunal to reach a determination regarding the negotiability of any subject matter in the public sector. Of course, the specific application of the

(60)

balancing principle must begin with the specific language of whatever state or local statute is being applied.

We will be happy to discuss this matter with the members of the Committee or with staff. Please ensure that this letter and material is provided to the members of the Committee. Thanks.

Very truly yours,

William W. Thompson, II

wwt:dr

cc: Gino Renne (By Fax, w/out enc.)

***167** 108 Md.App. 167

671 A.2d 80, 151 L.R.R.M. (BNA) 2706,
106 Ed. Law Rep. 1214

BALTIMORE TEACHERS UNION, AMERICAN FEDERATION OF TEACHERS, LOCAL 340, AFL-CIO
v.
MAYOR AND CITY COUNCIL OF BALTIMORE.

No. 710, Sept. Term, 1995.
Court of Special Appeals of Maryland.
Feb. 7, 1996.

City teachers union moved to modify or vacate arbitrator's decision not to grant remedy for city's alleged breach of wage agreement. The Circuit Court for Baltimore City, Thomas Ward, J., denied union's motion, and union appealed. The Court of Special Appeals, Davis, J., held that: (1) arbitrator's refusal to grant remedy for city's breach of wage agreement was improper abdication of his jurisdiction, but (2) arbitrator erred in determining that wage agreement was valid and binding agreement without Board of Estimate's approval.

Affirmed.

1. LABOR RELATIONS ⚖476
232A ----
232AVIII Alternative Dispute Resolution
232AVIII(D) Judicial Review and Enforcement of Decisions
232Ak476 In general.
Md.App. 1996.
Common-law principles for reviewing arbitration awards, rather than Uniform Arbitration Act, controlled arbitration of city's breach of wage agreement with teachers union, where neither agreement nor side letters expressly provided that Uniform Arbitration Act should apply. Code, Courts and Judicial Proceedings, § 3-206(b).

2. ARBITRATION ⚖77(4)
33 ----
33VI Award
33k75 Impeachment or Vacation
33k77 Motion to Set Aside or Vacate
33k77(4) Scope of inquiry in general.
Md.App. 1996.
Courts generally must defer to arbitrator's findings of fact and applications of law, since arbitration is considered to be "favored" dispute resolution method.

3. ARBITRATION ⚖77(.5)
33 ----
33VI Award
33k75 Impeachment or Vacation
33k77 Motion to Set Aside or Vacate
33k77(.5) In general.
Md.App. 1996.
Courts are reluctant to disturb award of arbitrator where award reflects honest decision of arbitrator and is product of full and fair hearing of parties.

4. ARBITRATION ⚖77(6)
33 ----
33VI Award
33k75 Impeachment or Vacation
33k77 Motion to Set Aside or Vacate
33k77(6) Affidavits, evidence, or record.
Md.App. 1996.
Burden of showing that arbitration award is invalid rests with party attacking award.

5. ARBITRATION ⚖77(7)
33 ----
33VI Award
33k75 Impeachment or Vacation
33k77 Motion to Set Aside or Vacate
33k77(7) Determination and relief; modification.
Md.App. 1996.
Where no issue of fact exists to be tried before circuit court, summary judgment may be granted in judicial proceeding challenging arbitration award.

6. APPEAL AND ERROR ⚖863
30 ----
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 In general.
Md.App. 1996.
In reviewing trial court's grant of summary judgment, appellate court is required to determine whether trial court's ruling was legally correct.

7. LABOR RELATIONS ⚖461
232A ----
232AVIII Alternative Dispute Resolution
232AVIII(C) Proceedings and Award
232Ak459 Award
232Ak461 Requisites and sufficiency in general.

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Md.App. 1996.
Arbitrator's refusal to grant remedy to city teachers union after determining that city had breached wage parity agreement was improper abdication of his jurisdiction; after determining that city breached its obligation to identify revenues with which to fund pay increase, arbitrator's finding that union was not entitled to remedy could only be described as gross mistake resulting in manifest injustice.

8. ARBITRATION ⚿61
33 ----
33VI Award
33k61 Consistency and reasonableness.
Md.App. 1996.
Arbitrators exceed their powers where they issue award which cannot be supported by any rational construction of parties' substantive contractual provisions.

9. ARBITRATION ⚿31
33 ----
33V Arbitrators and Proceedings
33k31 Mode and course of proceedings in general.
Md.App. 1996.
Arbitrators exceed their jurisdiction by refusing to consider all claims that are properly before them.

10.MUNICIPAL CORPORATIONS ⚿250
268 ----
268VII Contracts in General
268k250 Construction and operation.
Md.App. 1996.
Municipal contracts, particularly those made in furtherance of proprietary functions of municipality, are controlled by same rules of construction that apply to contracts of private corporations and individuals.

11.LABOR RELATIONS ⚿463
232A ----
232AVIII Alternative Dispute Resolution
232AVIII(C) Proceedings and Award
232Ak459 Award
232Ak463 Scope of relief.
Md.App. 1996.
Statute specifically defining salary setting powers of board of school commissioners did not divest arbitrator of power to award contract damages in arbitration over city's alleged breach of wage agreement with teachers union; provision did not define arbitrator's power to provide remedies for breach of salary agreements between city and its teachers, and arbitration order would merely compel city to follow procedure to set teacher salaries.

12.ARBITRATION ⚿29.6
33 ----
33V Arbitrators and Proceedings
33k29 Nature and Extent of Authority
33k29.6 Scope of relief.
Md.App. 1996.
Arbitrators have broad discretion in fashioning remedy for injustice which is found to have occurred.

13.LABOR RELATIONS ⚿462
232A ----
232AVIII Alternative Dispute Resolution
232AVIII(C) Proceedings and Award
232Ak459 Award
232Ak462 Conformity to submission and completeness.
Md.App. 1996.
Arbitrator erred in determining that binding and valid agreement existed between city teachers union and city on wage increase for fiscal year, where Board of Estimates never appropriated funds for wage increase; wage agreement was not binding until Board of Estimates actually included appropriations to fund wage increase in Ordinance of Estimates and City Council passed Ordinance of Estimates according to City Charter.

14.CONSTITUTIONAL LAW ⚿115
92 ----
92VII Obligation of Contracts
92VII(A) Powers of States in General
92k114 The Law Impairing the Obligation
92k115 In general.
Md.App. 1996.
To determine whether government has violated Contract Clause of United States Constitution, determination is required on whether there has been impairment of contract, whether state law has actually operated to substantially impair contractual relationship, and where, assuming substantial impairment, that impairment is permissible as legitimate exercise of government's sovereign powers. U.S.C.A. Const. Art. 1, § 10, cl. 1.

15.LABOR RELATIONS ⚿257.1
232A ----
232AV Labor Contracts
232Ak257 Construction
232Ak257.1 In general.
Md.App. 1996.
City Charter provision for setting salaries of school

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personnel did not render wage parity agreement between city teacher's union and city final and binding upon city; provision made clear that no increase in teachers salaries above maximum scale could be made during ensuing fiscal year without Board of Estimate's approval. Baltimore, MD. City Charter, Art. VII, § 65(b).

[671 A.2d 81] ***170** Joel A. Smith (Christyne L. Neff and Kahn, Smith & Collins, P.A., on the brief), Baltimore, for appellant.

James S. Ruckle, Jr. (Otho M. Thompson, Deputy City Solicitor, on the brief), Baltimore, for appellee.

Argued before BLOOM, CATHELL and DAVIS, JJ.

***171** DAVIS, Judge.

This appeal arises out of a dispute between the Baltimore Teachers Union, American Federation of Teachers, Local 340, AFL-CIO (appellant) and the Mayor and City Council of Baltimore (appellee) over appellee's alleged breach of a wage agreement between the parties. Although a number of questions are presented for our review, we [671 A.2d 82] restate them, distilled to two substantive issues, as follows:

I. Was it a "mistake so gross as to work manifest injustice" for the arbitrator to determine that he was without authority to award a remedy for the breach of contract?

II. Was it a "mistake so gross as to work manifest injustice" for the arbitrator to determine that a valid contract existed under which appellee could be liable?

We answer both questions in the affirmative. As we shall explain, the result of our disposition of these questions is that the judgment of the Circuit Court for Baltimore City (Ward, J.) must be affirmed.

FACTS

The sad affair that gives rise to this appeal presents yet another setback for the most noble of professions whose members perform the most essential function in a well-ordered society. Appellants won a Pyhrric victory in their quest for parity in pay with the jurisdictions surrounding Baltimore City--that victory coming in the form of an agreement with appellees to grant the pay increases--only to then face the dual obstacles of procedural barriers and budget shortfalls.

On June 24, 1992, appellant filed suit against appellee in the Circuit Court for Baltimore City to compel appellee to submit to arbitration a contract grievance between the parties, the details of which are fully discussed below. On June 25, 1993, the circuit court ordered that the parties submit their dispute to arbitration. The circuit court amended this order on August 3, 1993, directing "that the Parties proceed to arbitration on all issues, both procedural and substantive." Collectively, ***172** these orders shall be referred to as the circuit court's Orders to Arbitrate.

As ordered, the matter proceeded to arbitration. Over the course of several days in April and May of 1994, full hearings were held before an arbitrator from the Federal Mediation and Conciliation Service. Evidence was presented, testimony was taken, and arguments were submitted. On December 7, 1994, the arbitrator issued a lengthy written Opinion and Award. The Opinion and Award comprehensively recites the underlying facts of this dispute. As the parties do not dispute these facts, our discussion below summarizes the facts as set forth in the Opinion and Award.

Appellant represents appellee's teachers in collective bargaining negotiations with appellee. Salaries of Baltimore City teachers have historically been lower than the salaries of teachers in surrounding jurisdictions. This gap between salaries has reached $5,000 per year in recent years, and has caused difficulty in attracting quality teachers to Baltimore City and an ongoing loss of experienced teachers to higher paying surrounding jurisdictions. This disparity has been a concern of elected officials, including Mayor Schmoke, administrators, teachers, and appellant.

According to the testimony of witnesses for appellant, to address the wage disparity problem, appellant desired an 8% wage increase in the first two years of a three-year collective bargaining agreement and, in the third year, wage parity with surrounding jurisdictions. Appellant states that, in response, Mayor Schmoke stated something to the effect of "you've got it." According to appellant's witnesses, the Mayor was aware of anticipated APEX funding (FN1) from the State, and the parties contemplated that parity would be achieved out of those funds.

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***173** In 1988, appellee and appellant entered into negotiations over a collective bargaining agreement (Agreement). During these negotiations, then-Labor Commissioner Richard J. Whalen represented appellee. Whalen opposed the concept of automatic parity and refused to agree to the parity package. Appellant went to the Mayor, who supported appellant's position, and worked with appellant[671 A.2d 83] to craft a comparability formula. (FN2) According to appellant's witnesses, appellee thereupon changed its position at the bargaining table and accepted appellant's parity concept.

The agreement that was eventually negotiated covered the period July 1, 1989 through June 30, 1992 (fiscal years 1990, 1991 and 1992). (FN3) The agreement provided wage increases of 8% in each of the first two fiscal years. The following "wage reopener" provision (Section 5.1.3. of Article V, Compensation and Related Matters, of the Agreement) controlled in the third year of the Agreement (fiscal year 1992):

> The Employer and the Union agree to reopen negotiations on salaries for the 1991-92 school year. It is the goal of the City of Baltimore and the [Union] to support salary levels for teachers comparable to competitive area districts. Adjustments to the salary schedule for the third year shall be determined by the following methods:
>
> a. A list of districts shall be identified and 1991-92 salary schedules obtained from those districts.
>
> ***174** b. Benchmark positions are the minimum and maximum positions on each lane of the schedule.
>
> c. The benchmark positions shall be averaged for all districts in the sample.
>
> d. The City will cooperate with [Union] requests for revenue or expenditure estimates.
>
> e. Once implemented, the schedule shall remain in effect until modified through subsequent agreements.

By the fall of 1990, when negotiations began between appellee and appellant under the wage reopener provision, the economy was stagnant, and appellee and the State were experiencing serious financial problems. The Opinion and Award refers to *Baltimore Teachers Union v. Mayor and City Council of Baltimore,* 6 F.3d 1012, 1020 (4th Cir.1993), wherein appellee's poor financial condition and its operational and budgetary actions in response thereto are fully described.

In early February 1991, in advance of fiscal year 1992, the parties attempted to negotiate a successor agreement to the 1989-1992 Agreement. Appellant sought both general and parity wage increases, asserting that such increases were due under the wage parity reopener provision of the Agreement and that revenues were available to fund the increases. Furthermore, appellant asserted that a wage gap between appellee's teachers and surrounding jurisdictions remained. Appellant's calculations for fiscal year 1992 indicated a 12.9% wage gap. Appellant insisted that the agreed-upon parity "goal" meant a definite commitment to "do something" about achieving parity, assuming revenues could be identified.

Appellee's position, on the other hand, was that there were no funds available for wage increases for fiscal year 1992. Moreover, based on arguments concerning national wage levels for teachers in large cities, appellee asserted that parity increases were not due. Appellee further argued that the Agreement's use of the word "goal" was insufficient to constitute a binding promise. The parties ultimately agreed to a wage freeze for fiscal year 1992.

***175** The wage agreement for the fiscal year 1992 wage reopener was embodied in a September 12, 1991 letter from Jesse E. Hoskins, appellee's acting Labor Commissioner, to Irene Dandridge, appellant's President. The parties refer to this letter as the first "Side Letter." Dandridge counter-signed and dated the first Side Letter in an underlined space corresponding to the typed-word "ACCEPTED." Paragraph 3 of the first Side Letter reads, in pertinent part, as follows:

> [671 A.2d 84] [Appellee] and [appellant] agree to restate our position on Article V--Compensation and Related Matters, Paragraph 5.1(3). The parties agree that the *goal* of [appellee] and [appellant] is to support salary levels for teachers comparable to our competitive area districts. To further our mutual commitment, effective July 1, 1992, a minimum annual parity increase of not less than one percent (1%) will be received. Such parity increases in the aggregate shall not exceed six percent (6%). During FY 1993 and subsequent years both parties agree that the parity increase

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will only be received *provided revenues can be identified.*

(Emphasis added).

During fiscal year 1992, the State cut funding to appellee twice, totalling approximately $37.5 million. These cuts, along with a decline in tax revenues, forced appellee to terminate or cut programs, and furlough and lay off employees. During the course of fiscal year 1992, appellee also imposed several unpaid furlough days ("K days") on teachers.

The Agreement and first Side Letter were set to expire at the end of fiscal year 1992. For fiscal year 1993, the parties signed a second Side Letter, dated June 19, 1992, in which the parties confirmed their agreement to extend for one year the Agreement and the terms of the first Side Letter. The Opinion and Award states that appellant had the second Side Letter approved by appellee's Board of Estimates, committing appellee to honor its terms for fiscal year 1993. The second Side Letter was stamped "APPROVED BY THE BOARD OF ESTIMATES JUL 29 1992," and signed by appellee's comptroller. According to the arbitrator, Board of Estimates ***176** approval of the second Side Letter was consistent with its treatment of contracts with vendors and others, but not consistent with its general practice in reviewing collective bargaining agreements.

During negotiations for fiscal year 1993 (and also for previous fiscal year 1992), Hoskins reviewed the proposed "provided revenues can be identified" language of the first Side Letter with Edward Gallagher, appellee's Director of Finance. Gallagher assumed that Hoskins wrote that language, and indicated to Hoskins that Gallagher could "live with it." Gallagher testified that he understood the language to "obligat[e] the [appellee] to try, if it could identify revenues, to provide th[e] parity adjustment," and asserted that the identification of revenues was the right of appellee, rather than a joint task of appellee and appellant. Gallagher testified that "identifying revenues" was a budget term of art for finding revenues from new or unanticipated sources, over and above the current budget allocation. Gallagher conceded that appellee's administration was obligated to make a good-faith effort to identify revenues to fund the parity increase.

Notwithstanding this understanding, Gallagher stated that neither he nor his department carried out this obligation. Gallagher confirmed that the Board was ultimately responsible for identifying revenues, based on, though not necessarily adopting, appellee's recommendations. Gallagher conceded that neither the wage increase nor the obligation to identify revenues was included in his transmittals submitted to the Board of Estimates. Nor did Gallagher do anything else to alert the Board of Estimates of appellee's obligation to identify revenues. Gallagher conceded that it was appellee's duty to do this, and that the Board of Estimates might not have been aware of the obligation to identify revenues. In sum, Gallagher dismissed the process of identifying revenues as being much less important than his overall efforts to balance the budget that year.

Appellee spent its fiscal year 1993 APEX monies on fixed assets, additional administrators, a new management information ***177** system, and other items, none of which included salary increases for teachers, despite the fact that $16 million of the $38 million of APEX money that the State directed to appellee for education was considered "unrestricted." (FN4) The Department of Finance did not allocate [671 A.2d 85] revenues in its proposals for the fiscal year 1993 budget for a parity increase. When the budget proposals reached the Board of Estimates, neither the Department of Finance nor the Board raised the issue of wage parity. The budget recommendations adopted by the Board of Estimates for fiscal year 1993 included no such monies.

By letter dated June 15, 1992, appellant reiterated its position that revenues were available in the budget for a parity increase for fiscal year 1993. Appellant requested arbitration as to the meaning of the term "revenues" and the nature of the parties' obligations under the Side Letter for fiscal year 1993. (FN5) Appellee refused to arbitrate, whereupon appellant obtained the circuit court's Order to Arbitrate the fiscal year 1993 dispute.

After presenting these facts, the arbitrator made certain determinations. Central was the determination that the Side Letters constituted a binding contract for fiscal year 1993. Under this contract, the fiscal year 1993 wage increase to achieve parity was conditioned on the identification of revenues. The arbitrator further determined that appellee had an obligation to review its revenues and priorities diligently and in good faith in an attempt to identify sufficient revenues from which wage parity

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could be funded. According to the arbitrator, ***178** however, appellee failed to do this, thereby breaching its contract under the Side Letters for fiscal year 1993.

Although finding that appellee breached the fiscal year 1993 wage increase agreement, the arbitrator determined that he was without authority to grant a remedy for the breach. In this regard, the Opinion and Award reads, in pertinent part, as follows:

> Wages paid to teachers, including any parity increase for [fiscal year] 1993 which might have been paid pursuant to the Side Letters, come from appropriated funds. To be paid, the funds must be approved in accordance with the budget process. I have searched the language of the Agreement; and I am not persuaded that it gives me authority to direct the budget process and, in particular, no authority to direct the policy or legislative processes. I have searched [appellant's] arguments and case law for authorities which would support my authority to direct such a result. I find none.
>
> Indeed, the facts that the political and budget process have been completed for [fiscal year] 1993, the revenues (including the APEX funds) spent, and the books closed would appear to require that any monetary award be paid from funds from the current or subsequent fiscal year. And those payments would also require authorization from the appropriate legislative bodies. Thus, it does not appear that there is *any* effective way for any forum other than the Board of Estimates to remedy [appellee's] breach of its obligation.
>
> To require [appellee], at this time, to conduct a review to determine whether [fiscal year] 1993 APEX monies were required to have been spent on the parity increase, or whether other revenues might have been identified, would be an exercise in futility. The actual spending figures for that year superseded the budget figures prepared in advance. To require [appellee], retroactively, to pay the parity increase assumes the very determination as to revenue identification and priorities which the Side Letters did not require.
>
> ***179** Of [appellant's] argument that State law (the Maryland Educational Code) binds [appellee] to accept both arbitral determination and remedy, notwithstanding limitations the Charter might impose, I am not convinced. Neither the Agreement nor the general provision of the Code give me authority to order the appropriation of taxpayer funds. That is the exclusive prerogative of the legislature. Further, the most that I can enforce is the agreement of the Parties themselves. As the discussion in the foregoing sections indicates, I am not [671 A.2d 86] persuaded that the Side Letters required [appellee] to pay a parity increase.
>
> It may well be that other forums, judicial or political, have authority to compel [appellee] and Board to take concrete steps toward the goal of pay equity, based on the [fiscal year] 1993 obligation of [appellee], as expressed in the Side Letters. I express no opinion as to the existence of such authority by any other forum. If so, my conclusion and Award that [appellee] violated its obligation under those Letters may be a useful finding. However, I am not persuaded that I have authority to more than make such a declaration. The Award so reflects.
>
> (Citation omitted).

After the issuance of the arbitrator's Opinion and Award, appellant filed a motion with the circuit court to modify or vacate the arbitrator's decision. Therein, appellant requested, among other things, that the circuit court order the "payment of the parity wages due in Fiscal Year 1993 to the City's teachers" in order to correct the arbitrator's "palpable mistake of law" in refusing to fashion a remedy. Both parties filed motions for summary judgment. In support of its motion, appellee argued that the arbitrator's Opinion and Award should not be modified or vacated because: (1) the arbitrator did not commit a "palpable error of law" in determining that he was without authority to order or appropriate the expenditure of taxpayer money, and (2) since there was not a genuine dispute of material fact that the Board of Estimates did not appropriate the money for the wage increase, there was not a final approval of the wage increase agreement for fiscal year ***180** 1993, and thus, a valid and binding contract did not exist between the parties under which appellee could be liable.

On April 10, 1995, the circuit court granted appellee's motion for summary judgment and denied appellant's motion for summary judgment. In so doing, the circuit court "adopt[ed] the reasoning of [appellee]," without any further explanation. This appeal follows.

LEGAL ANALYSIS

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Standard of Review

[1] The principles controlling the standard of appellate review of an arbitrator's award are crucial in the case at hand. Because neither the Agreement nor Side Letters expressly provided that the Maryland Uniform Arbitration Act (MUAA) should apply, the MUAA does not apply here. MD.CODE ANN., CTS. & JUD.PROC. § 3-206(b) (1995); *Board of Educ. v. Prince George's County Educators' Ass'n.*, 309 Md. 85, 96, 522 A.2d 931 (1987). "Rather, the Maryland common law principles for reviewing arbitration awards are controlling." *Prince George's County Educators' Ass'n.*, 309 Md. at 98, 522 A.2d 931. In *Prince George's County Educators' Ass'n.*, the Court of Appeals held:

> Under Maryland common law standards for reviewing arbitration awards ... we hold that an award is subject to being vacated for a "palpable mistake of law or fact ... apparent on the face of the award" or for a "mistake so gross as to work manifest injustice."

Id. at 105, 522 A.2d 931. Additionally, *Prince George's County Educators' Ass'n.* recognized that courts have vacated arbitration awards based on the similar standard of "manifest disregard of law." *Id.* at 101-05, 522 A.2d 931. According to the Court of Appeals, courts consider a " 'manifest disregard of law ... [to] be something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law.' " *Id.* at 102, 522 A.2d 931 (quoting *San Martine Compania De Navegacion, SA v. Saguenay Terminals, Ltd.*, 293 F.2d 796, 801 (9th Cir.1961)). ***181** *See also Jih v. Long & Foster Real Estate, Inc.*, 800 F.Supp. 312, 317, 320 (D.Md.1992) ("manifest disregard of the law" is a common law basis for judicial review of arbitration awards connoting more than a mere legal error or misunderstanding).

[2] [3] Similarly, in *Chillum-Adelphi Volunteer Fire Dep't v. Button & Goode, Inc.*, 242 Md. 509, 517, 219 A.2d 801 (1966) (citations omitted), the Court of Appeals stated:

> [671 A.2d 87] Although a court may modify an arbitration award for a mistake of form such as an evident miscalculation of figures, an arbitrator's honest decision will not be vacated or modified for a mistake going to the merits of the controversy and resulting in an erroneous arbitration award, unless the mistake is so gross as to evidence misconduct or fraud on his part.

Indeed, because Maryland courts have historically considered arbitration to be a "favored" dispute resolution method, common law rule dictates that courts generally must defer to the arbitrator's findings of fact and applications of law. *Baltimore County v. City of Baltimore,* 329 Md. 692, 701, 621 A.2d 864 (1993). Thus, courts are fairly reluctant to disturb the award of an arbitrator where the award reflects the honest decision of the arbitrator and is the product of a full and fair hearing of the parties. *Id.* (citing *Prince George's County Educators' Ass'n,* 309 Md. at 98, 522 A.2d 931). *See also Mayor & City Council of Baltimore v. Allied Contractors, Inc.*, 236 Md. 534, 545, 204 A.2d 546 (1964) ("an award is final and conclusive on both parties in the absence of fraud or mistake so gross as to imply bad faith or the failure to exercise honest judgment.").

[4] Distinguishing between a "palpable mistake of law or fact ... apparent on the face of the award" or a "mistake so gross as to work manifest injustice," or a "manifest disregard" is like shoveling smoke. *Williams v. Superintendent,* 43 Md.App. 588, 591, 406 A.2d 1302 (1979), *vacated,* 288 Md. 523, 419 A.2d 383 (1980). Indeed, these standards are so closely related to each other that they appear to be no more than different ways of describing the same thing. However the ***182** mistake is characterized, the burden of showing that an award is invalid rests with the party attacking the award. *Parr Constr. Co. v. Pomer,* 217 Md. 539, 543, 144 A.2d 69 (1958). In view of the foregoing, this burden is a heavy one.

[5] [6] In addition to these principles, we must be mindful that the circuit court granted appellee's motion for summary judgment and denied appellant's motion for summary judgment, thereby denying appellee's petition to modify or vacate the arbitrator's award. Where no issue of fact exists to be tried before the circuit court, as in this case, summary judgment may properly be granted in a judicial proceeding challenging an arbitration award. *Chillum-Adelphi Volunteer Fire Dep't,* 242 Md. at 519, 219 A.2d 801. Thus, in reviewing a trial court's grant of summary judgment, an appellate court is required to determine whether the trial court's ruling was legally correct. *Nationwide Mut. Ins. Co. v. Scherr,* 101 Md.App. 690, 694, 647 A.2d 1297 (1994); *Hrehorovich v. Harbor Hosp. Ctr., Inc.*, 93 Md.App. 772, 785, 614 A.2d 1021

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(1992), *cert. denied,* 330 Md. 319, 624 A.2d 490 (1993). If, therefore, the arbitrator's award should, as a matter of law, remain undisturbed, then the trial court was legally correct in entering summary judgment against appellant and in favor of appellee. *Chillum-Adelphi Volunteer Fire Dep't,* 242 Md. at 519, 219 A.2d 801.

Before turning to the merits of this appeal, while keeping in mind the above principles, it is necessary to bring into focus our specific task on this review, in light of the nature of the circuit court's order granting summary judgment in favor of appellee and against appellant. As we stated above, the trial judge adopted appellee's reasoning in ruling as it did. Also as mentioned above, appellee's reasoning was that it was entitled to summary judgment on two grounds: (1) the arbitrator did not commit a "palpable error of law" in determining that he was without authority to grant a remedy; and (2) since it was undisputed that the Board of Estimates did not appropriate funds for the wage increase, the Board of Estimates did not ***183** finally approve the wage increase agreement, and, therefore, a binding, valid agreement did not exist.

Because the circuit court did not state on which of these two grounds its grant of summary judgment was based, we must operate on the basis that the circuit court's ruling was alternative in nature. In other words, under the circuit court's ruling, appellee was entitled to judgment as a matter of law because the arbitrator's determination that he was without authority to grant a remedy (assuming a valid contract existed) was not so erroneous under the above standard of [671 A.2d 88] review principles as to require that determination to be set aside or modified, or, in the alternative, because there was no contract between the parties. This means that on this review we must determine whether the circuit court was legally correct in basing its grant of summary judgment in favor of appellee and against appellant on either of the two alternative grounds.

I

[7] Our first task, under the above enunciated principles of judicial review, is to determine whether the circuit court was legally correct in leaving undisturbed the arbitrator's conclusion that he was without authority to grant a remedy. Essentially, appellant argues that the arbitrator's refusal to grant a remedy was a palpable error of law apparent on its face, which will work a manifest injustice. In this regard, appellant contends that the arbitrator "ducked" his responsibilities under the circuit court's Orders to Arbitrate, which required arbitration of "all issues, both procedural and substantive." Moreover, appellant asserts that the arbitrator defeated the strong public policy underlying arbitration (namely, that arbitration bring the dispute to a final resolution) by finding a breach of contract but not awarding a remedy therefor. Appellant relies on *Snyder v. Berliner Constr. Co.,* 79 Md.App. 29, 555 A.2d 523 (1989), for this proposition.

We agree with appellant's position. The arbitrator's decision declining to award a remedy was a palpable error resulting in a manifest injustice requiring the vacation or modification ***184** of the arbitrator's Opinion and Award. As fully explained below, consistent with the principles of appellate review of an arbitration award, we find that the arbitrator's refusal to grant appellant a remedy, after so definitely determining that appellee had breached the fiscal year 1993 wage parity agreement, to be an improper abdication of his jurisdiction.

Our holding rests largely on *Snyder.* While we recognize that *Snyder* may not be controlling on this appeal, because it was decided under the MUAA, the case is highly persuasive and is instructive in the resolution of this issue. In *Snyder,* a building owner refused to pay a contractor the final installment under a renovation contract. *Id.* at 31, 555 A.2d 523. The contract contained an arbitration clause, and the owner submitted the dispute by letter to the American Arbitration Association (AAA). *Id.* at 32, 555 A.2d 523. The letter, among other things, stated that "no money is due from the owner to the contractor." *Id.* The contractor responded with an "Answer and Counterclaim," stating that all work was properly performed under the contract, and that the final installment was therefore due and owing. *Id.* AAA then advised the contractor that the counterclaim was not necessary since the question of liability for the installment had been submitted by the owner's initial letter. *Id.* Accordingly, the contractor withdrew the counterclaim, reserving it as a defense to the owner's claim. *Id.* at 32-33, 555 A.2d 523.

After an evidentiary hearing, the arbitrator issued an order and opinion granting the owner's claim that it was not liable to the contractor for the final installment. *Id.* at 33, 555 A.2d 523. "In the same breath, however, the arbitrator stated that [the contractor's] claim was meritorious, lacking only a

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request for monetary relief." *Id.* In this regard, the arbitrator concluded that he was without authority to grant monetary relief since the counterclaim requesting such relief had been withdrawn. *Id.* The arbitrator "nevertheless granted [the owner] a monetary award of $1,500.00, 'in full settlement of all claims submitted.' " *Id.*

***185** In response, the contractor requested the circuit court to vacate the arbitrator's award. *Id.* Finding the arbitrator's award to be "clearly irrational," the trial judge vacated the award and remanded the case to AAA for a determination of the owner's liability. *Id.* The owner appealed the trial judge's remand order to this Court, and we affirmed the circuit court. *Id.*

[8] [9] During our discussion of an appellate court's standard of review under the MUAA of an arbitrator's award, we made several important observations. First, we noted that an arbitrator will be deemed to have exceeded his powers where he issues [671 A.2d 89] "an award which cannot be supported by any rational construction of the parties' *substantive contractual provisions.* " *Id.* at 37, 555 A.2d 523 (citing *O.S. Corp. v. Samuel A. Kroll, Inc.,* 29 Md.App. 406, 408-09, 348 A.2d 870 (1975)). (FN6) Second, we observed that "arbitrators exceed their jurisdiction by refusing to consider all claims that are properly before them." *Id.* at 37-38, 555 A.2d 523 (citing *McKinney Drilling Co. v. Mach I Ltd. Partnership,* 32 Md.App. 205, 211, 359 A.2d 100 (1976)).

With these principles in tow, we then set out to determine whether the arbitrator's failure to fashion a remedy warranted correction of the award. In so doing, we explained as follows:

> We begin by reiterating that [the owner's] original letter of submission to AAA requested a finding that "no money is due from the [owner] to the [contractor]." [The owner] plainly was referring to the final $86,767.28 contract installment.... Whether the arbitrator ever resolved this issue is difficult to ascertain due to the sparse record of the arbitration proceedings and the rather obtuse opinion issued by the arbitrator when announcing his award. While the arbitrator ultimately found that [the owner] owed no money to [the contractor], the basis for this decision is at best ***186** murky. He either decided the matter on a substantive basis, concluding that the [contractor's] work on [the owner's] property was deficient, or he decided the case on a procedural basis, concluding that he lacked the jurisdiction to grant an award in response to [the contractor's] perhaps otherwise meritorious position. In either case, we will affirm the ruling of the trial court.

Id. at 38, 555 A.2d 523. Accordingly, we held that if the arbitrator's decision was a substantive determination, then it was completely irrational. *Id.* at 39, 555 A.2d 523. In this regard, we stated that it approached the "height of irrationality" for the arbitrator to deny the contractor relief, yet state that the contractor's position was meritorious. *Id.* at 39, 555 A.2d 523.

Alternatively, if the arbitrator concluded that he was without authority to grant a remedy to the contractor for the owner's breach, then this was improper as a matter of law. *Id.* We held that the arbitrator's belief that the contractor's withdrawal of the counterclaim precluded monetary relief was an "unduly restrictive view of his jurisdiction." *Id.* at 39-40, 555 A.2d 523. This was because the arbitrator's power to grant an award emanated not from the contractor's counterclaim, but from the owner's original submission of the dispute to arbitration. *Id.* at 40, 555 A.2d 523. "Indeed, there would have been no need for an arbitration had this central issue of contract liability been removed from consideration." *Id.* at 39, 555 A.2d 523. We therefore affirmed the trial court's ruling remanding the case to the arbitrator for a full and complete determination. *Id.* at 40, 555 A.2d 523.

As mentioned, *Snyder* is not necessarily controlling on this appeal. Most obviously, *Snyder* was a MUAA case, and the instant appeal is under the common law. This, however, does not render *Snyder* uninstructive here. Although we need not decide conclusively, the common law principles discussed above relating to our standard of review appear to be quite similar to those embodied in the MUAA. As we explained in *Snyder*

> ***187** Section 3-223 of the MUAA provides that the court shall modify or correct an arbitrator's award if:
>
> (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
>
> (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
>
> (3) The award is imperfect in a matter of form,

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not affecting the merits of the controversy.

[671 A.2d 90] Section 3-224(b) further provides that an arbitrator's award will be vacated if:

(1) An award was procured by corruption, fraud, or other undue means;
(2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party;
(3) The arbitrators exceeded their powers;
(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing ... as to prejudice substantially the rights of a party; or
(5) There was no arbitration agreement ..., the issue was not adversely determined in proceedings under § 3-208, and the party did not participate in the arbitration hearing without raising the objection.

Id. at 36, 555 A.2d 523 (quoting MD.CODE ANN., CTS. & JUD.PROC. § 3-223(b) & § 3-224(b)).

As *Snyder* explained, under the provisions of the MUAA, an arbitrator will be deemed to have exceeded its powers where the arbitrator issues an award not supported by any rational construction of the parties' substantive contractual provisions, or refuses to consider all properly submitted claims. These principles provided the basis upon which *Snyder* held that the ***188** arbitrator's refusal to grant a remedy, after having found a breach, warranted correction of the arbitrator's award. These principles also appear to be embodied in the common law standard of a "mistake so gross as to work manifest injustice." In other words, an arbitrator's refusal to grant a remedy where empowered to do so would seem to result in a mistake so gross as to work manifest injustice. We are satisfied, therefore, that *Snyder* 's legal principles relating to an arbitrator's failure to provide a remedy, after having found a breach, are, at a minimum, helpful here. (FN7)

Thus, with *Snyder* as our guide, we are convinced that it was a mistake so gross as to work manifest injustice for the arbitrator to refuse to provide a remedy after determining that appellee breached the fiscal year 1993 wage parity agreement. Despite appellee's suggestion to the contrary, after our review of the arbitrator's Opinion and Award, we have no doubt that the arbitrator determined that a valid wage contract for fiscal year 1993 did in fact exist between the parties. (FN8) It is equally clear that the arbitrator found that appellee breached the contract by failing to undertake a good-faith effort to identify revenues with which to fund the pay increase. Having determined that appellee breached its obligation to identify revenues--a "precondition," according to the arbitrator, ***189** of appellee's duty to actually increase teacher salaries--that obligation was excused and appellant was entitled to damages. *See, e.g., Kahn v. Schleisner,* 165 Md. 106, 113, 166 A. 435 (1933) (where a promise is conditioned upon the happening of an event, the condition is dispensed with if the promisor prevents the event from happening). *See also Bushmiller v. Schiller,* 35 Md.App. 1, 368 A.2d 1044 (1977) (where a home buyer failed to make a good faith effort to satisfy the condition precedent of obtaining financing, seller was entitled to damages for the breach).

[671 A.2d 91] The arbitrator, however, determined that he was without authority to award damages. In this regard, the arbitrator concluded that, since the political and budget processes were completed for fiscal year 1993 and the revenues have been spent, any monetary damages would have to be paid from current or future fiscal years, which would "require authorization from the appropriate legislative bodies. Thus, it does not appear that there is *any* effective way for any forum other than the Board of Estimates to remedy [appellee's] breach of its obligation." Similarly, appellee argues that the arbitrator's factual finding that the Board of Estimates did not appropriate funds for the pay increase precluded the arbitrator from fashioning a remedy. In this regard, the arbitrator was not empowered to appropriate taxpayer funds to provide a remedy because this would be in contravention of the "virtually unfettered authority [that] the Board of Estimates has over the budget." Furthermore, appellee argues that "the arbitrator was required to keep within the limits set by law. Those limits included the State law making salaries of teachers subject to the approval of the City. See Maryland Education Code Annotated § 4-304(a)(3)." With all of these assertions, we disagree.

In this case, as in *Snyder,* both appellee and the arbitrator have an "unduly restrictive view of [the arbitrator's] jurisdiction." *See Snyder,* 79 Md.App. at 39-40, 555 A.2d 523. Preliminarily, we observe that the arbitrator made the critical mistake of believing that "[t]o require the City, retroactively, to

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pay the parity increase assumes the very determination as ***190** to revenue identification and priorities which the Side Letters did not require." Although it is true that the Side Letters conditioned the payment of wage increases on the identification of funds, appellee's failure to satisfy its good faith obligation to identify funds resulted in the condition being excused, as we just pointed out. The practical effect, therefore, is as if the condition precedent never existed in the first place. As a result, in awarding a remedy, the arbitrator should not have been concerned by the fact that revenues remained unidentified.

[10] The arbitrator made a second critical mistake in concluding that "[n]either the Agreement nor the general provision of the Code g[a]ve [him] authority to order the appropriation of taxpayer funds. That is the exclusive prerogative of the legislature." We fail to see why appellee's breach of contract in this case should be treated differently than any other instance when a municipality (or any other party for that matter) breaches a contract. Municipalities and counties are routinely sued for breach of contract and held answerable for contract damages. *American Structures, Inc. v. Mayor & City Council of Baltimore,* 278 Md. 356, 359-60, 364 A.2d 55 (1976). "Municipal contracts, particularly those made in furtherance of the proprietary functions of a municipality, are controlled by the same rules of construction as are applicable to the contracts of private corporations and individuals." *City of Frederick v. Brosius Homes Corp.*, 247 Md. 88, 92, 230 A.2d 306 (1967). *See also Anne Arundel County v. Crofton Corp.*, 286 Md. 666, 673, 410 A.2d 228 (1980).

Under the reasoning of the arbitrator and appellee, binding and final arbitration is rendered utterly impotent. The arbitrator determined that a contract existed, that appellee breached it, but that appellant was not entitled to a remedy. Such a result frustrates the very purpose of binding arbitration, and can only be described as a gross mistake resulting in manifest injustice.

[11] Additionally, we disagree with appellee that MD.CODE ANN., EDUC. § 4-304(a)(3) (1989) divested the arbitrator of the ***191** power to award contract damages in this case. Section 4-304 reads as follows:

> (a) *Powers.*--Subject to the applicable provisions of this article, the Board of School Commissioners of Baltimore City may:
>
> (1) Examine, appoint, and remove teachers;
>
> (2) Set teacher qualifications;
>
> (3) Subject to the approval of the Mayor and City Council, set teacher salaries; and
>
> (4) Select textbooks for the public schools in Baltimore City, except that [671 A.2d 92] the textbooks may not contain anything of a sectarian or partisan character.
>
> (b) *Duties.*--(1) The Board of School Commissioners shall report annually to the State Board on the condition of the schools under its jurisdiction.
>
> (2) The report shall include a statement of:
>
> (i) Expenditures;
>
> (ii) The number of children taught; and
>
> (iii) Any other statistical information the State Board requires.

For three reasons, § 4-304(a)(3) does not operate as appellee suggests. First, § 4-304 generally defines the "Powers" and the "Duties" of the Board of School Commissioners as limited by the Education Article. Subsection (a)(3) specifically defines the salary setting "Powers" of the Board of School Commissioners as limited by both the Education Article and the Mayor and City Council of Baltimore City. Thus, this provision focuses on what the Board of School Commissioners can and cannot do in relation to the Education Article, generally; and in relation to the Education Article and Mayor and City Council, specifically with respect to setting teacher salaries. The provision does not define the arbitrator's power to provide remedies for the breach of salary agreements between the appellee and its teachers. Second, the arbitrator, by ordering a remedy, is not compelling the Board of School Commissioners to "set teacher salaries." Rather, such an ***192** order compels appellee to follow procedure to set teacher salaries. After all, the arbitrator found that a valid wage contract previously existed between appellee and appellant. Third, MD.CODE ANN., EDUC. § 6-408(a)(2) specifically allows agreements for the employment of public school teachers to provide for binding arbitration of grievances. Binding arbitration would certainly lose much of its utility if

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the arbitrator could not issue a remedy for a breach of such an agreement.

[12] Thus, despite the large degree of deference afforded to an arbitrator, the arbitrator's failure to provide a remedy for the breach would normally warrant the vacation or correction of his Opinion and Award. "Arbitrators have broad discretion in fashioning a remedy for the injustice which is found to have occurred." *Baltimore County,* 329 Md. at 708, 621 A.2d 864. The record reflects, and the arbitrator acknowledged, that appellant "offer[ed] for consideration a number of alternative calculations" for determining a monetary award for appellee's breach.

In light of the foregoing, the circuit court was not legally correct in granting summary judgment against appellant and in favor of appellee on the first alternative ground. Ordinarily, we would be compelled to reverse the circuit court and remand this case to the arbitrator to fashion an appropriate remedy for the breach. Because in Part II of this opinion we hold that the circuit court was legally correct in granting summary judgment as it did based on the second alternative ground, however, we shall not reverse the circuit court.

II

[13] Next, we must determine whether the trial court was legally correct in entering summary judgment against appellant and in favor of appellee based on the second alternative ground. As we noted, the second alternative ground was that, since there was no genuine dispute of material fact, the Board of Estimates did not appropriate the money for the wage increase, there was not a final approval of the wage increase ***193** agreement for fiscal year 1993, and thus, a valid and binding contract did not exist between the parties.

If this assertion is correct--namely, that a valid contract never existed between the parties--then the circuit court must have necessarily (albeit implicitly) determined that the arbitrator manifestly disregarded the law or committed a "palpable mistake" or a "mistake so gross as to work manifest injustice" in determining that a valid contract existed. Although the circuit court provided no explanation, this must be the case since there is no doubt that the arbitrator found that a valid and binding contract existed between the parties. In other words, for the circuit court to grant summary judgment against appellant and in favor of appellee on this ground, [671 A.2d 93] it had to disagree with the arbitrator's finding of a valid contract. This disagreement, however, did not result in the modification or vacation of the arbitration award because the arbitrator ultimately concluded that appellant was not entitled to any relief. Stated differently, because the outcome in arbitration was identical to the outcome in the circuit court (though based on different grounds) the circuit court could leave the arbitrator's award intact. (FN9)

***194** As a result, our review of this issue is limited under the above principles of judicial review to whether the arbitrator's determination that a legally binding wage contract existed between the parties should be set aside. As we alluded to in the closing paragraph of Part I, we agree with the circuit court that the arbitrator erred in determining that a valid contract existed, and that this error was "so gross as to work manifest injustice."

As we shall explain, our holding is required under *Mayor & City Council of Baltimore v. American Fed'n of State, County & Mun. Employees,* 281 Md. 463, 379 A.2d 1031 (1977) (*AFSCME*), and *Baltimore Teachers Union v. Mayor & City Council of Baltimore,* 6 F.3d 1012 (4th Cir.1993) (*BTU*). These cases fully support appellee's position that a legally binding contract between appellee and appellant did not exist because the Board of Estimates never appropriated the funds for the wage increase.

AFSCME is a Court of Appeals case that comprehensively examines the role of the Board of Estimates in the appropriation process of Baltimore City. In *AFSCME,* various employee organizations (unions) exclusively represented certain Baltimore City employees pursuant to the provisions of the Municipal Employee Relations Ordinance (MERO) of the Baltimore City Code. *AFSCME,* 281 Md. at 466, 379 A.2d 1031. Following negotiations in 1976, each union executed a "Memorandum of Understanding" (memorandum) with the Board of Estimates covering the two-year period from July 1, 1976 to June 30, 1978. *Id.* The memoranda provided pay raises in each of the two years. *Id.* In addition, each memorandum contained the following preamble:

> To the extent that implementation of these points requires action by the City Council, this memorandum will ***195** serve as a request and recommendation to such body that it be so implemented.

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For the first contract year, the Board of Estimates included in its Ordinance of Estimates (FN10) that was submitted to the City Council appropriations sufficient to cover the pay increases. *Id.* at 467, 379 A.2d 1031. The Ordinance of Estimates for the second contract year, however, did not include appropriations for the pay increase for that year. *Id.* "Because, under the Baltimore City Charter, the City Council may neither increase any appropriation in the proposed Ordinance of Estimates nor include any new appropriations, the action of the Board of [671 A.2d 94] Estimates precluded the payment of annual increments to city employees." *Id.*

The unions contended that the memoranda constituted binding two-year contracts with the Board of Estimates, and that MERO authorized these contracts. *Id.* In this regard, the unions maintained that the agreements obligated the Board to include in the Ordinance of Estimates appropriations sufficient to cover the pay increase. *Id.* at 467-68, 379 A.2d 1031. The City, however, denied that the Board was contractually obligated to include the appropriations in the Ordinance of Estimates, arguing that the memoranda did not constitute a binding contract. *Id.* at 468, 379 A.2d 1031. Alternatively, the City contended that, under the terms of the memoranda, the parties intended that the pay increase promises were conditioned upon the Board's discretion to withhold payment of the pay increases in any contract year for financial reasons. *Id.* Finally, the City argued that, if the memoranda required the Board to appropriate the money for the pay increase, the memoranda would be invalid because "a municipality 'may not contract so as to deprive itself of powers conferred upon it' by its charter." *Id.* at 468, 379 A.2d 1031.

The unions filed suit and the Baltimore City Court agreed with their position, issuing an injunction requiring the Board ***196** to submit to the City Council an amended Ordinance of Estimates containing the appropriations. *Id.* at 465, 379 A.2d 1031. The City appealed to this Court, but the Court of Appeals granted a writ of certiorari before proceedings commenced here. *Id.*

Before resolving the dispute, the Court of Appeals reviewed the role of the Board in the appropriation process as provided in the Charter of Baltimore City. The Court of Appeals comprehensively delineated the mechanism by which appropriations become law:

The City of Baltimore, like the State of Maryland, has what is commonly known as an "executive budget system." At the heart of the City's system is the Board of Estimates which is composed of the Mayor, the President of the City Council, the Comptroller, the City Solicitor, and the Director of Public Works. Charter, Art. VI, § 1. Under the City Charter, the Board of Estimates is vested with broad discretionary powers concerning the City's fiscal management. The Board is "responsible for formulating, determining, and executing the fiscal policy of the City...." Art. VI, § 2(a). Accordingly, it is required to submit to the City Council for each fiscal year a proposed Ordinance of Estimates, Art. VI, § 2(b). The proposed ordinance must contain "[e]stimates of appropriations needed for the operations of each municipal agency," estimates for appropriations for other purposes, and a separate listing of appropriations needed for capital improvements, Art. VI, §§ 2(c)(1), (2). Accompanying the proposed Ordinance of Estimates must be "[a] breakdown of the amounts stated for each ... purpose ... of each municipal agency," including information concerning "the compensation of every officer and salaried employee of the City," Art. VI, § 2(f)(1). The Board also must submit comparisons between the appropriations actually contained in the ordinance for each agency with the appropriation requested by the agency, as well as the amounts appropriated for the current fiscal year compared to the amounts expended in the prior year, Art. VI, § 2(f)(2). Detailed information as to the source of funding ***197** for the appropriations must be submitted, Art. VI, § 2(f)(3). And the Mayor must send to the Council a message "explaining the major emphasis and objectives of the City's budget for the next ensuing fiscal year." Art. VI, § 2(f)(6).

The City Council has only limited powers in relation to the proposed Ordinance of Estimates. It "may reduce or eliminate any of the amounts fixed by the Board in the proposed Ordinance of Estimates...." However, the City Council does not have "the power to increase the amounts fixed by the Board or to insert any amount for any new purpose in the proposed Ordinance of Estimates," Art. VI, § 2(g). After the passage of the Ordinance of Estimates by the City Council, the Board of Estimates must certify to the City Council the difference between the anticipated expenditures [671 A.2d 95] contained in the ordinance and expected revenues other than those from the property tax. The Board must then state a property tax rate sufficient to meet this difference and the

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City Council must by ordinance set a property tax rate not less than that stated by the Board so as to insure a balanced budget, Art. VI, § 2(g). Once funds are appropriated, they may not be "diverted or used for any purpose other than that named in said ordinance," except under certain circumstances requiring the approval of the Board of Estimates, Art. VI, § 2(i).

Id. at 468-70, 379 A.2d 1031.

According to the Court of Appeals, "It is the Board of Estimates which is initially required to review the financial status of the City on an annual basis and to determine, in its sole discretion, which items should be included in the City budget." *Id.* at 471, 379 A.2d 1031. The Court of Appeals also stated that "if the Board determines, in its judgment, that an appropriation for a certain purpose should not be included in the budget, this determination is final, as the City Council is without power to include any new item in the Ordinance of Estimates." *Id.* The Court further explained:

> Consequently, under the Baltimore City Charter, the Board of Estimates plays a critical role in the appropriation process. The submission by the Board of Estimates to the ***198** City Council of the Ordinance of Estimates is not merely a request or a recommendation for an appropriation of funds. Instead, the Board finally determines the maximum appropriation for any particular purpose. The Board's submission of the Ordinance of Estimates is, therefore, an integral part of the law-making function.
>
> *Id.*

Turning to the facts in *AFSCME,* the Court of Appeals recognized that "the Board attempted to bind itself to include in the Ordinance of Estimates sufficient appropriations for payment of the annual [pay] increments." *Id.* The Court determined, however, that the Board was without authority to do so under MERO. *Id.* According to the Court of Appeals, MERO "is made expressly subject to the City Charter provision governing public employment and fiscal practices." *Id.* at 472, 379 A.2d 1031. Additionally, MERO states that any memorandum of understanding between the employer and union is subject to the provisions of the City Charter. *Id.* Furthermore, MERO requires that labor negotiations be conducted between the union and a *committee named by the Mayor*--not between the union and the Board. *Id.* at 472-73, 379 A.2d 1031. Finally, the Court of Appeals recognized that MERO treated memoranda of understanding as recommendations to the Board. *Id.* at 473-74, 379 A.2d 1031. Consequently, the Board's final approval of appropriations recommendations occurs when the Board actually includes the appropriations in the Ordinance of Estimates. *Id.* at 474, 379 A.2d 1031. As a result, therefore, the memoranda accepted by the Board were not binding upon the Board, and the unions were not entitled to relief. *Id.*

Because the facts of the instant case are extremely similar to those in *AFSCME,* we are satisfied that the principles of *AFSCME* control the outcome of the instant case. Here, as in *AFSCME,* despite the Board's prior approval, the Board did not appropriate funds in the Ordinance of Estimates for the fiscal year 1993 wage increase. For the same reasons that the Board's attempt to bind itself to include in the Ordinance of Estimates sufficient appropriations to cover pay increases was ***199** ineffective under the City Charter in *AFSCME,* the Board's similar attempt in the instant case is ineffective. In other words, just as the memoranda of understanding were not binding in *AFSCME* under the City Charter, the stamped-approved Side Letter is not binding here.

We recognize that *AFSCME* relied heavily on the provisions of MERO, which are not applicable here, in determining that the memoranda of understanding were not binding. From our reading of *AFSCME,* however, we believe that the Court of Appeals would have reached the same conclusion, based exclusively on the provisions of the City Charter, even had MERO not applied. Indicative of the fact that the result would have been the same is that the Court of [671 A.2d 96] Appeals recognized that MERO "is made expressly subject to the City Charter provision governing public employment and fiscal practices." *Id.* at 472, 379 A.2d 1031. "This would embrace the Charter provisions vesting in the Board of Estimates the duty of determining, according to the standard set forth in the Charter, the maximum limits of appropriations for particular purposes in the Ordinance of Estimates submitted to the City Council." *Id.* Furthermore, the Court of Appeals held:

> Considering this language [of MERO providing that agreements contained in memoranda of understanding are recommendations to the Board] *and the provisions of the City Charter together,* it is reasonable to conclude that final "approval" by the Board of Estimates of recommendations

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requiring appropriations will only take place by the Board's including such appropriations in the Ordinance of Estimates.

Id. at 474, 379 A.2d 1031 (emphasis added). Thus, it reasonably appears that *AFSCME* 's holding applies in full force to the instant case, regardless of the fact that MERO is not involved in this case.

As a result, the language in *AFSCME* relating to the finality of the Board's decision to appropriate or not to appropriate funds in the budget is determinative of this issue. *AFSCME* makes clear that the Board "finally determines the ***200** maximum appropriation for any particular purpose." *AFSCME,* 281 Md. at 471, 379 A.2d 1031. *See Baker v. Mayor & City Council of Baltimore,* 894 F.2d 679, 681 (4th Cir.1990) ("The Board's determination to exclude an appropriation for a given purpose, *e.g.,* an agency position, is final."). Thus, without the appropriation, the Side Letter wage agreement, like the memoranda of understanding in *AFSCME,* was never really an agreement at all, the Board's stamp of approval falling short of actual appropriation. In other words, under *AFSCME,* the Side Letter wage agreement was not binding unless and until the Board actually included the appropriations to fund the wage increase in the Ordinance of Estimates and the City Council passed the Ordinance of Estimates pursuant to the Baltimore City Charter.

In addition to *AFSCME, BTU*--a fairly recent United States Fourth Circuit Court of Appeals case--supports our holding. In *BTU,* Baltimore City implemented one-percent salary reductions for city employees, including public school teachers, in response to budgetary shortfalls. *BTU,* 6 F.3d at 1014. The Baltimore Teachers Union (union) filed suit under the Contract Clause of the U.S. Constitution against the City in the United States District Court for the District of Maryland, alleging that the pay cuts were an impermissible impairment of their employment contracts with the City. *Id.* The District Court ruled in the union's favor, and the City appealed. *Id.* The Court of Appeals for the Fourth Circuit agreed "that the City substantially impaired an extant contract with its teachers ...", but concluded that, "affording the requisite degree of deference to the City's legislature ... the impairment was in exercise of the City's legitimate powers and thus permissible under the Contract Clause." *Id.* at 1015. In so doing, the Fourth Circuit Court of Appeals made certain observations that support appellee's position.

First, the Court stated:

> We have little trouble concluding, as did the district court, that Baltimore intended to and did enter into contractual relationships with its teachers and police, *at least upon enactment into law of the Ordinance of Estimates. Upon* ****201*** *enactment of the Ordinance [of Estimates], the City Council formally ratified the essential agreement between the City and its employees embodied in the memoranda of understanding and authorized funding for the City's obligations under those memoranda.*

Id. (citations omitted) (emphasis added). In addition, the Fourth Circuit Court of Appeals explained:

> [T]he Contract Clause does not ... require the courts--even where public contracts have been impaired--to sit as superlegislatures, determining, for example, whether it would have been more appropriate instead for Baltimore to close its schools for a week, an option actually considered but rejected, or to reduce funding to the arts, as [the union] argue[s] should have been [671 A.2d 97] done. Not only are we ill-equipped even to consider the evidence that would be relevant to such conflicting policy alternatives; we have no objective standards against which to assess the merit of the multitude of alternatives.

Id. at 1021-22.

[14] As the above-italicized language plainly indicates, it is not until the enactment of the Ordinance of Estimates that the City Council formally ratifies an agreement between the City and its employees. In other words, the above language makes clear that the City enters into contractual relationships with its teachers only upon enactment into law of the Ordinance of Estimates. Thus, because the Ordinance of Estimates in the instant dispute did not contain appropriations for the parity increase, there was not a final and binding agreement to increase the teachers' pay in this regard. Although we recognize that *BTU* deals with the constitutional issue of whether the City impaired various employment contracts under the Contract Clause--an entirely different analysis than a breach of contract claim (FN11)--much of the language in *BTU* is instructive here.

***202** Appellant, however, argues as follows that

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reliance on *BTU* is inappropriate:

> [Appellee] also argues that an arbitrator or court must not act as a super legislature. ... That concern is not at issue here where the relevant legislative body blessed the contractual instrument and it [sic] content. In [*BTU*], the Union was challenging a wage *cut* approved by the Board of Estimates. Here, [appellant] seeks to *enforce* an instrument approved by the Board of Estimates. *Accord Baker v. Mayor and City Council of Baltimore,* 894 F.2d 679, 682 (4th Cir.1990) (cited for the proposition that the Board has broad discretionary powers whether or not to adopt fiscal policy--not whether a policy once adopted must be enforced). [Appellant] seeks simply to enforce an official action taken by the Board of Estimates, an action never rescinded, altered or rejected later by the Board of Estimates.

The obvious retort to this assertion, of course, is that it is only "[u]pon enactment of the Ordinance [of Estimates], [that] the City Council formally ratifie[s] the essential agreement between the City and its employees embodied in the memoranda of understanding and authoriz[es] funding for the City's obligations under those memoranda." *Id.* at 1015.

In addition, in its reply brief and during oral argument, appellant strenuously argued that *Fraternal Order of Police v. Baltimore County,* 340 Md. 157, 665 A.2d 1029 (1995) (*FOP*)--a very recently decided case from the Court of Appeals--supports its position that a contract existed between the parties and that appellant is entitled to a remedy. We, however, find *FOP* to directly cut against appellant's position.

In *FOP,* Baltimore County entered into a collective bargaining agreement with its police officers' union for fiscal year ***203** 1992. *Id.* at 160, 665 A.2d 1029. This agreement contained a provision prohibiting the furlough of police officers during that year. *Id.* Subsequent to the County Executive's signing of the agreement, the County Executive submitted the budget for fiscal year 1992 to the Baltimore County Council, which enacted the budget. *Id.* at 161, 665 A.2d 1029. Included in the 1992 budget were appropriations for the full wages and benefits of the police officers as provided in the agreement. *Id.* In January 1992, despite the agreement's furlough prohibition provision, the County enacted a five-day furlough plan for all County employees, including police officers. *Id.* The police officers' union objected and the matter ultimately proceeded to arbitration, where the union sought reimbursement of lost wages resulting from the furlough plan. *Id.* Finding that the County breached the agreement, the arbitrator ordered that the police officers be reimbursed for lost wages. *Id.* at 162, 665 A.2d 1029. The County filed a petition in circuit court to vacate the arbitrator's[671 A.2d 98] award. *Id.* Among other things, the circuit court ruled that the County had impermissibly delegated its budget-making authority (including compensation-setting authority) by submitting to an arbitrator the issue of whether the County breached the agreement. *Id.* at 163, 665 A.2d 1029. The Court of Appeals granted certiorari before this Court heard the matter. *Id.* at 163-64, 665 A.2d 1029.

The Court of Appeals reversed the circuit court, holding that the arbitrator correctly determined that the County breached its contract. *Id.* at 164, 171, 665 A.2d 1029. In so doing, the Court recognized that the County works under an "executive budget system." *Id.* In many respects, the County's budget system is very similar to the City's. Under the County system, the County Executive must submit the budget to the Council for approval or disapproval of the appropriations made therein. *Id.* at 165, 665 A.2d 1029. Agreements between the County and its employees are made in advance of that submission and appropriations are fully subject to the County's annual budget process. *Id.* at 166, 665 A.2d 1029.

***204** The following portion of *FOP* 's holding speaks directly to the central issue of the instant case:

> Simply put, there was no violation of the Charter in this case [when the arbitrator determined that the County breached its agreement and was liable to the police officers]. The County Executive and County Council exercised their appropriation function under the Charter. *The annual budget enacted by the Executive and Council could have appropriated less money for police officers than the collective bargaining agreement called for and could have provided that the shortfall be made up by furloughs of police officers. If the enacted annual budget had done this, the budget provisions, and not the collective bargaining agreement's terms, would prevail under our [prior] opinions.... But the enacted annual budget for fiscal 1992 did not appropriate less money for police officers' compensation than contemplated by the collective bargaining agreement. The arbitrator's decision did not alter the amount of compensation set forth*

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in the budget. Rather, the arbitrator determined only that the County had violated the terms of the contract which it had made, and that the County should pay to the police officers the compensation that had already been appropriated in the annual budget pursuant to the County Charter.

Id. at 171, 665 A.2d 1029 (emphasis added). The obvious import of the Court's teaching in *FOP* can be summed up as follows: If the final enacted budget contains the agreed upon appropriations from which compensation should have been paid, then the County or City is obligated to pay; but, if the final enacted budget contains less appropriations than were previously agreed upon, then the budget controls and the County or City is only liable up to the amount actually appropriated. In our case, appellant and appellee entered into an agreement for a wage increase, but the money to cover the wage increase was not specifically appropriated in the final enacted budget. Therefore, under *FOP,* there was not a final binding contract under which appellee is liable.

***205** [15] Before concluding, we shall address appellant's suggestion that Section 65(b) of Article VII of the Baltimore City Charter somehow renders the wage parity agreement for fiscal year 1993 final and binding upon appellee. This provision reads, in pertinent part, as follows:

> The salaries of superintendents, assistant superintendents, directors, supervisors, assistant supervisors, principals, assistant principals, *teachers,* secretaries, clerks and employees shall be fixed by the Board [of School Commissioners], not to exceed in the aggregate the amount appropriated for such personnel in the Ordinance of Estimates; ... The Board [of School Commissioners], in submitting its budget each year, shall also include a maximum compensation scale for superintendents, assistant superintendents, directors, supervisors, assistant supervisors, principals, assistant principals, *teachers,* and all other employees ... and no increase above the maximum scale shall be made during the ensuing year without the approval of the Board of Estimates.

[671 A.2d 99] BALTIMORE CITY CHARTER, Art. VII, § 65(b) (1994) (emphasis added). (FN12) We do not believe that this provision operates in the manner in which appellant suggests. Rather, we find § 65(b) to be completely supportive of our holding. Section 65(b) makes clear that no increase in teacher salaries above the maximum scale shall be made during the ensuing fiscal year without the Board of Estimate's approval. Under *AFSCME* and *BTU,* "approval" occurs when the Board of Estimates actually includes the pay increase in the Ordinance of Estimates. Thus, because the pay increase was not included in the Ordinance of Estimates in the instant case, the Board of Estimates never formally gave its "approval" as was required under § 65(b).

Based on the foregoing, we hold that the fiscal year 1993 wage parity agreement, as embodied in the Side Letters, was ***206.** not a final and binding agreement. As a result, the arbitrator erred in determining that a binding and valid agreement existed between the parties. The consequence of this mistake is extremely severe. It results in the subversion of the internal governmental and political operations and procedures of appellee as set forth in the City Charter. In our opinion, this is a mistake so gross as to work manifest injustice. Consequently, the circuit court correctly determined, based on the second alternative ground, that summary judgment should be granted in favor of appellee and against appellant. We therefore affirm the circuit court's ruling in this regard.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

FN1. According to appellant, "APEX (the 'State and Federal Aid to Education' statute) is codified at [MD.CODE ANN., EDUC. § 5-201]. Each year the City receives hundreds of millions of dollars in APEX monies according to the requirements set forth in the Education article. Sec[tion] 5-401(a)(2)(i) authorizes local government expenditure of 'compensatory education funds' (discretionary APEX money) in any of seven expense categories, one of them being teacher salaries."

FN2. The comparability formula was a formula by which the wages of appellee's teachers and teachers in other jurisdictions could be effectively and accurately compared.

FN3. The Opinion and Award initially states that the Agreement covered years 1988 through 1991. This, however, appears to be a mistake. The record reflects that the correct date of the Agreement is 1989-1992. The parties refer in their briefs to the 1989-1992 Agreement, and the date of the Agreement in the Record Extract is 1989-1992.

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In addition, farther into the Opinion and Award, the arbitrator refers to the 1989-1992 Agreement.

FN4. Appellant points out that a one-percent pay increase would have cost appellee $2.5 million. The arbitrator recognized this when he wrote in his Opinion and Award that in a budget of $460 million for the Department of Education, "184 $2.5 million 'chunks' " may have been found to cover the pay increase.

FN5. In the event of contract disagreements between the parties, dispute resolution procedures are provided for in Article IV of the Agreement. These procedures culminate in final and binding arbitration. Apparently, it was under these provisions that appellant demanded arbitration of the matter.

FN6. We note that the "completely irrational" standard discussed in *O.S. Corp.* has neither been accepted nor rejected by the Court of Appeals. *See Stephen L. Messersmith, Inc. v. Barclay Townhouse Assocs.*, 313 Md. 652, 659, 547 A.2d 1048 (1988).

FN7. Whether an arbitration award under the MUAA may be vacated for a "mistake so gross as to work manifest injustice" or for a "manifest disregard" of the law remains an open question. *See Prince George's County Educators' Ass'n,* 309 Md. at 105, 522 A.2d 931. *See also Stephen L. Messersmith, Inc.*, 313 Md. at 659 n. 2, 547 A.2d 1048.

FN8. As one of many examples, the Opinion and Award reads at pages 26-27, as follows:

> As indicated, I am persuaded that the Side Letters amended a contract between the Parties. By their terms, the Side Letters constitute valid amendments. They are possessed of all the elements and formalities of a contract; and [appellee] represented to [appellant], and led it to believe, that there was a contract. I am persuaded that [appellant] had every right to require [appellee] to perform its obligations under the resulting contract. I reject [appellee's] intimations that Paragraph 3 of the [first Side Letter] did not bind the Parties to do anything. The question for interpretation is what the Side Letters obligated [appellee] to do.

FN9. When it raised the argument before the circuit court that a valid and binding contract never existed between the parties, appellee was not challenging the validity of the arbitrator's findings, even though, as we explained above, the Opinion and Award clearly reflects that the arbitrator found a valid and binding contract. Rather, appellee maintained that the arbitrator "reached the opposite conclusion" and determined that a valid and binding contract did not exist. Most probably because appellee was under this mistaken belief, appellee did not cross-appeal from the Opinion and Award, challenging the finding of a valid contract, but maintaining that the arbitrator ultimately reached the correct outcome. Nonetheless, it was within the circuit court's power to render a determination in this regard. *See, e.g., C.W. Jackson & Assocs., Inc. v. Brooks,* 289 Md. 658, 666-67, 426 A.2d 378 (1981) (Under the MUAA, the circuit court is an equity court empowered to adjust and determine all rights of the parties, and will ordinarily retain such power for all purposes, deciding all issues raised by the subject matter of the dispute, and awarding complete relief, even as to matters over which it would not have taken jurisdiction originally) (citing non-Uniform Arbitration Act cases). *Cf., Chillum-Adelphi Volunteer Fire Dep't,* 242 Md. at 517, 219 A.2d 801 ("A court does not act in an appellate capacity in reviewing the arbitration award, but enters judgment on what may be considered a contract of the parties, after it has made an *independent determination* that the contract should be enforced.... The trial court was exercising common law jurisdiction....") (emphasis added) (non-MUAA case).

***206** FN10. The Ordinance of Estimates and the budget process is more fully explained below.

FN11. To determine whether the government has violated the Contract Clause of the U.S. Constitution, the following must be determined: (1) whether there has been an impairment of a contract; (2) whether state law has actually operated to substantially impair a contractual relationship; and (3) whether, assuming a substantial impairment, that impairment is permissible as a legitimate exercise of the government's sovereign powers. *BTU,* 6 F.3d at 1015.

FN12. Section 65(b) was formerly codified as § 59(b) in the 1964 version of the Baltimore City Charter. The 1994 codification is nearly identical to the 1964 version.

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for injunctive relief is denied.[10] In all other respects, plaintiff's claims for relief are denied. Plaintiff's counsel will prepare a proposed form of judgment, to be approved as to form by defendant's counsel and submitted for entry by the Court.

IT IS SO ORDERED.

CITY OF BELOIT v. WERC

Wisconsin Supreme Court

CITY OF BELOIT, etc. v. WISCONSIN EMPLOYMENT RELATIONS COMMISSION; BELOIT EDUCATION ASSOCIATION and WISCONSIN EDUCATION ASSOCIATION COUNCIL v. Same, Nos. 75-105 and 75-106, June 2, 1976

STATE PUBLIC EMPLOYMENT RELATIONS ACTS

—Teachers — Evaluation procedures—Subject for bargaining—Wisconsin Act ▶ 100.02

Teacher evaluation procedures is mandatory subject of bargaining between teachers association and board of education under Wisconsin Municipal Employment Relations Act (SLL 60:243), since procedures relate to teachers' rights to have notice of and input into procedures that affect their job security.

—Teachers — Files and records — Subjects for bargaining — Wisconsin Act ▶ 100.02

Scope of teachers' files and records kept for purposes of teacher evaluation or continued employment and right of teacher access to files and records are mandatory subjects of bargaining between teachers association and board of education under Wisconsin Municipal Employment Relations Act (SLL 60:243), since such matters relate primarily to teachers' wages, hours, and conditions of employment.

—Teachers — Non-renewal of contract—'Just cause'—Subjects for bargaining—Wisconsin Act ▶ 100.02

Establishment of "just cause" standard for non-renewal of teachers' contracts is mandatory subject of bargaining between teachers association and board of education under Wisconsin Municipal Employment Relations Act (SLL 60:243), despite board's contention that Wisconsin statute requiring board to give teachers annual notice of renewal or nonrenewal of contracts is inconsistent with requirement of mandatory bargaining; setting of minimum procedure for notice and hearing before board may decide not to rehire teacher does not limit or negate right of teachers to bargain collectively on matters primarily related to teachers' wages, hours, and conditions of employment.

—Teachers — Layoffs — Subjects for bargaining — Wisconsin Act ▶ 100.02

Teacher layoffs in inverse order of appointment of teachers as result of decrease in student population is mandatory subject of bargaining between teachers association and board of education under Wisconsin Municipal Employment Relations Act (SLL 60:243), since such matters primarily relate to teachers' wages, hours, and conditions of employment and do not invade board's right to determine curriculum and to retain, in case of layoff, teachers qualified to teach particular subjects in curriculum.

—Teachers — 'Problem students' — Subjects for bargaining — Wisconsin Act ▶ 100.02

Misbehavior of "problem students" that presents physical threat to teacher safety is mandatory subject of bargaining between teachers association and board of education under Wisconsin Municipal Employment Relations Act (SLL 60:243), since such matter primarily relates to teachers' wages, hours, and conditions of employment. However, referral of problem students for counseling is not mandatory subject of bargaining.

—Teachers — School calendar — In-service training — Subjects for bargaining—Wisconsin Act ▶ 100.02

School calendar and number of in-service training days during school year are mandatory subjects of bargaining between teachers association and board of education under Wisconsin Municipal Employment Relations Act (SLL 60:243), since such matters primarily relate to teachers' wages, hours, and conditions of employment. Board need only bargain in good faith with respect to proposals and need not reach agreement with respect to particular proposal.

—Teachers — Impact of class size —Subjects for bargaining—Wisconsin Act ▶ 100.02

Impact of class size is mandatory

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10 If specific performance is required at some future date, the Union may apply for that relief at that time. Cf. Bird v. Computer Technology, Inc., supra, 364 F.Supp. at 1345.

subject of bargaining between teachers association and board of education under Wisconsin Municipal Employment Relations Act (SLL 60:243), since class size has impact upon teachers' wages, hours, and conditions of employment.

—Assistance to teachers having professional problems — Subjects for bargaining—Wisconsin Act ▶ 100.02

Teachers association's proposal for training assistance to teachers having professional problems is not mandatory subject of bargaining under Wisconsin Municipal Employment Relations Act (SLL 60:243), even though such assistance is related to teachers' continued employment or promotion, since it primarily relates to "management and direction" of school system.

Appeal from the Wisconsin Circuit Court, Dane County (89 LRRM 2052). Affirmed.

Robert J. Arnot (John C. Carlson and Lawton & Cates, on brief), Madison, Wis., for teachers association.

Charles D. Hoornstra, Assistant Attorney General of Wisconsin (Bronson C. La Follette, Attorney General of Wisconsin, on brief), for Wisconsin Employment Relations Commission.

Herbert P. Wiedemann, Milwaukee, Wis. (Foley & Lardner, Milwaukee, Wis., and George Blakely, Beloit, Wis., on brief), for City of Beloit.

Henry A. Gempeler, City Attorney, and Gerald C. Kops, Deputy City Attorney, amicus curiae, for the City of Madison Joint School District No. 8 in support of the City of Beloit.

Text of Statement of Facts

The Beloit Education Association, the exclusive collective bargaining agent for school teachers in the Beloit city school system, and the Beloit City School Board were parties to a collective bargaining agreement which expired on August 24, 1973. On February 8, 1973, the parties began negotiating a successor contract. The negotiations continued until April 25, 1973. On that date the board filed a petition with the Wisconsin Employment Relations Commission, seeking a declaratory ruling under sec. 111.70(4)(b), Stats., as to whether certain proposals submitted by the Beloit Education association were mandatory subjects of collective bargaining under sec. 111.70(1)(d)., Stats. The subjects on which such declaratory ruling was sought were as follows:

(1) the manner in which supervision and evaluation of teachers will be conducted.

(2) the structure and maintenance and availability to teachers of school district files and records,

(3) right of representation prior to reprimand, warning or discipline,

(4) whether or not "just cause" shall be the standard applied in ilmitation of the Board's actions with respect to renewal of individual teachers contracts,

(5) the procedure and order of preference to be utilized in event of teacher layoffs,

(6) the treatment and disposition of problem students.

(7) class size,

(8) type and extent of in-service training to be conducted,

(9) the type and extent of reading program to be utilized,

(10) the establishment and structure of summer programs,

(11) the school calendar.

On September 11, 1974, following a hearing, the Wisconsin Employment Relations Commission issued a declaratory ruling finding certain subject matters to be matters for mandatory collective bargaining, and certain others not to be such. On September 23, 1974, the Beloit Education Association moved for reconsideration of the ruling, and, in response thereto, certain changes were made in the commission's ruling. Both parties filed petitions for review with the circuit court. On March 31, 1975, 89 LRRM 2052, the circuit court modified the ruling of the commission and affirmed the ruling, as modified. From this judgment both parties have appealed.

Full Text of Opinion

ROBERT W. HANSEN, Justice:— This is an appeal by a school board and by a teachers' association from a circuit court judgment. That judgment modified and affirmed a ruling of the state employment relations commission. That ruling declared the rights of the school board as employer and of the teachers' association as collective bargaining agent under sec. 111.70(1)(d), Stats.

THE STATUTE. This statute (sec. 111.70(1)(d), Stats.), establishing the right of "collective bargaining" in the public sector in this state, provides as follows:

"(d) *'Collective bargaining'* means the performance of *the mutual obligation* of a municipal employer, through its officers and agents, and the representatives of its employes, *to meet and confer* at reasonable times, *in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement,* or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes *the reduction of any agreement reached to a written and signed document. The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employees.* In creating this subchapter the legislature recognizes that *the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employes by the constitutions of this state and of the United States and by this subchapter.*" [Emphasis supplied.]

THE LIMITS. As to collective bargaining in the public sector, the italicized portions of the statute establish three categories: (1) Where collective bargaining is required; (2) where collective bargaining is permitted, but not required; and (3) where collective bargaining agreements are prohibited.[1] The obligation of the public employer to "meet and confer" and its right to agree to a policy in a "written and signed document" extends only to matters of "wages, hours and conditions of employment." Beyond such limit is the area of "subjects reserved to management and direction of the governmental unit," where the public employer may, but is not required, to "meet and confer" and may, but is not required, to agree in a "written and signed document." Beyond such limit of voluntary bargaining is the area involving the exercise of the public employer's "powers and responsibilities to act for the . . . good order of the municipality, its commercial benefit and the health, safety and welfare of the public." Here the proper forum for the determination of the appropriate public policy is not the closed session at the bargaining table. More than the bilateral input of the public employer and the employees' bargaining agent is required for deciding the appropriate public policy. Here the multilateral input of employer, employees, taxpayers, citizen groups and individual citizens is an integral part of the decision-reaching process, and bargaining sessions are not to replace public meetings of public bodies in the determination of the appropriate policy.

THE PARTIES. Here we deal with collective bargaining between a local school board and a teachers' association. Both board and association are involved, not only in the collective bargaining process as statutorily defined,[2] but also in the political process as constitutionally assured.[3] The school board is an employer under the statute,[4] and it is also a public body of elected officials with powers and duties for the operation of the school system in the public interest.[5] As such employer, it must bilaterally "meet and confer" and may agree in a "written and signed document" as to matters involving "wages, hours and conditions of employment." As such public body and as to matters of school management and educational policy, it cannot be required to collectively bargain with the collective bargaining agent for its employees. The teachers' association here is a collective bargaining agent under the statute,[6] and also a professional association of teachers concerned with matters of school system management and educational policy.[7] As such bargaining agent the association can collectively bargain with the board as to matters of "wages, hour and conditions of employment." As professional association it may also be heard as to matters of school and educational policies, but it makes such contribution or input along with

1 Compare: National Labor Relations Board v. Borg-Warner Corp. (1958), 356 U.S. 342, 348, 349, 78 S.Ct. 718, 2 L.Ed.2d 823, 42 LRRM 2034.

2 Sec. 111.70(1)(d), Stats.

3 Art. X, sec. 1, Wis.Const., providing: "The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct; and their qualifications, powers, duties and compensation shall be prescribed by law. . . ."

4 Sec. 111.70(1)(a), Stats.

5 Sec. 120.001 to sec. 120.61, Stats.

6 Sec. 111.70(1)(g), Stats.

7 See: Smith, Edwards and Clark, Labor Relations Law in the Public Sector (Bobbs-Merrill 1974) at page 366; quoting Wellington and Winters, The Unions and the Cities (1971) at pages 21-30, the authors stating: ". . . [S]ome of the services government provides are performed by professionals—teachers, social workers, and so forth—who are keenly interested in the underlying philosophy that informs their work. . . .

" 'The issue is not a threshold one of whether professional public employees should participate in decisions about the nature of the services they provide. . . . The issue rather is the method of that participation.' "

(82)

other groups and individuals similarly concerned.[8]

THE PROBLEM. The difficulty encountered in interpreting and applying sec. 111.70(1)(d), Stats., is that many subject areas relate to "wages, hours and conditions of employment," but not only to such area of concern. Many such subjects also have a relatedness to matters of educational policy and school management and operation. What then is the result if a matter involving "wages, hours and conditions of employment" also relates to educational policy or school administration? An illustration is the matter of classroom size, subsequently discussed. The number of pupils in a classroom has an obvious relatedness to a "condition of employment" for the teacher in such classroom. But the question of optimum classroom size can also be a matter of educational policy. And if a demand for lowered classroom size were to require the construction of a new school building for the reduced-in-size classes, relatedness to management and direction of the school system is obvious. Would such required result of a new building not be a matter on which groups involved, beyond school board and teachers' association, are entitled to have their say and input? Other courts have faced this same problem. Some limit required bargaining to matters "directly" related to "wages, hours and conditions of employment."[9] Some make the test whether the subject matter is "significantly" related to "wages, hours and conditions of employment."[10] Some make the test whether the subject "materially" affects the working conditions.[11] Commentators appear to agree that drawing the line or making the distinction is not easy.[12]

THE CONSTRUCTION. The state employment relations commission was petitioned to determine by declaratory ruling which of various proposals for bargaining were mandatorily bargainable. It responded by initially concluding that only subject matters that were *primarily* related to wages or hours or conditions of employment were mandatorily bargainable.[13] As to such matters, the school board was *required* to "meet and confer" and collectively bargain as to demands of the teachers' association. This construction of the statute was upheld as reasonable by the reviewing court. We agree. The dictionary defines "primarily" as meaning "fundamentally."[14] It is in this sense of the word that "primarily" is here used. What is fundamentally or basically or essentially a matter involving "wages, hours and conditions of employment" is, under the statute, a matter that is required to be bargained. The commission construed the statute to require mandatory bargaining as to (1) matters which are *primarily* related to "wages, hours and

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8 Summers, Public Employee Bargaining: A Political Perspective, 83 Yale L.J. (1974), 1156, 1195, the author stating: "To say that curriculum content is not a proper subject of bargaining does not mean that teachers have no legitimate interest in that subject or that they should not participate in curriculum decisions. It means only that the bargaining table is the wrong forum and the collective agreement is the wrong instrument. . . . [N]o organization should purport to act as an exclusive representative; the discussions should not be closed; and the decision should not be bargained for or solidified as an agreement. In addition, all of the ordinary political processes should remain open for individuals or groups of teachers to make their views known to the politically responsible officials and thus to infuence the decision."

9 See: National Education Association v. Board of Education (1973), 212 Kan. 741, 753, 512 P.2d 426, 435, 84 LRRM 2223, the court holding: "The key, as we see it, is how direct the impact of an issue is on the well-being of the individual teacher, as opposed to its effect on the operation of the school system as a whole." See also: School Dist. of Seward Education Ass'n v. School Dist. of Seward (1972), 188 Neb. 772, 784, 199 N.W.2d 752, 759, 80 LRRM 3393.

10 See Clark County School Dist. v. Local Government Employee Management Rel. Bd. (Nev. 1974), 530 P.2d 114, 118, 88 LRRM 2774, the court holding: "[C]lass size is significantly related to wages, hours, and working conditions. . . ."

11 See: Aberdeen Education Ass'n v. Aberdeen Bd. of Education, Ind. School Dist. (S.D. 1974), 215 N.W.2d 837, 841, 85 LRRM 2801, the court holding: "It is our opinion that the term 'other conditions of employment' as used in SDCL 3-18-3 means conditions of employment which materially affect rates of pay, wages, hours of employment and working conditions. . . ."

12 Smith, Edwards and Clark, supra, footnote 7, 379, quoting Perry and Wildman. The Impact of Negotiations in Public Education: The Evidence from the Schools (1970), 165-171, the authors stating: " 'First, it should be noted that it is exceedingly difficult to distinguish between "educational policy" and "salaries and working conditions" where teacher bargaining is concerned.' "

13 The exact language of the "WERC holding being: "3. That matters primarily relating to wages, hours and conditions of employment of teachers are not reserved to the management and direction of the school system of the City of Beloit, by its duly elected officials and other agents, within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, and, therefore, the City of Beloit, and its agent, the Beloit City School Board, and other agents are required to engage in collective bargaining, as defined in said section of the Act, on such matters, with the Beloit Education Association."

14 Webster's New International Dictionary (3d ed., unabridged), page 1800.

conditions of employment," and (2) the impact of the "establishment of educational policy" affecting the "wages, hours and conditions of employment." We agree with that construction.

THE APPLICATION. Having adopted the "primarily so" test as to the matters where mandatory bargaining is required by the statute, the commission proceeded to apply that test to a variety of the teachers' association demands submitted to the commission for testing. That was correct for we have here a case-by-case approach to specific situations. There was no attempt by the commission and there is none by this court to develop broad and sweeping rules that are to apply across the board to all situations.[15] As did the commission and the reviewing court, we will now proceed to discuss the application of the "primarily so" test to each of the subject areas claimed by the teachers' association to be appropriate subjects for required bargaining.

(A) TEACHER EVALUATION. A series of proposals relating to teacher evaluation were submitted to the school board by the teachers' association as appropriate subjects for required bargaining. As to two of them, (1) who were to evaluate teacher performance, and (2) assistance to teachers whose evaluations were poor, the commission held that they did not primarily involve "wages, hours and conditions of employment." As to the others,[16] involving procedures to be used in evaluation, the commission held that they did primarily relate to "wages, hours and conditions of employment." The circuit court affirmed these holdings. Obviously the area of teacher evaluation relates to "management and direction" as well as to "wages, hours and conditions of employment." However, as to the procedures followed, these matters go to the right of teachers to have notice and input into procedures that affect their job security. On the record that was before it, we uphold the conclusions reached by the commission as to teacher evaluation procedures being mandatorily bargainable.[17]

(B) TEACHER FILES. The teachers' association suggested as required bargaining matters certain proposals concerning teacher files and records.[18] The commission found these proposals to relate primarily to "wages, hours and conditions of employment," with bargaining required. The commission incorporated the rationale of its holding as to teacher evaluation, and the reviewing court affirmed, holding the purpose of keeping teacher files to be "for the purpose of evaluating teachers and may well affect their continued employment." Once again it is clear that the proposals relate to "management and direction" as well as to "wages, hours and conditions of employment." However, the trial court noted that the proposals go only to those complaints or files which have effect on evaluation or continued employment. So limited, the scope of a teacher's personnel file and the right of teacher access to it would appear to relate primarily to "wages, hours and conditions of employment." At least, on the record before us, we affirm the commission holding as to teacher files and records.

(C) JUST CAUSE STANDARD. The

15 See: Pennsylvania Labor Rel. Bd. v. State College Area School Dist. (1975), 461 Pa. 494, 337 A.2d 262, 265, 90 LRRM 2081, the court holding: "We also recognize the wisdom of refraining from attempting to fashion broad and general rules that would serve as a panacea. The obviously wiser course is to resolve disputes on a case-by-case basis until we develop, through experience in the area, a sound basis for developing overall principles."

16 The proposals can be summarized as follows: "Teacher Supervision and Evaluation (1) Orientation of new teachers as to evaluative procedures and techniques, (2) Length of observation period and openness of observation, (3) Number and frequency of observations, (4) Copies of observation reports and conferences regarding same, and teachers' objections to evaluations, and (5) Notification of complaints made by parents, students and others."

17 Clark County School Dist. v. Local Government Employee Management Rel Bd., supra, footnote 10, using the "significantly related" test, stating: ". . . the evaluation of a teacher's performance is significantly related to a teacher's working conditions inasmuch as the evaluation affects transfer, retention, promotion and the compensation scale."

18 The proposals can be summarized as follows: "Teacher Files and Records (1) Review of personal files and copies of contents therein, and entitlement to representation at such review, (2) Identification of obsolete matters in teacher files, and if obsolete, or otherwise inappropriate to retain, the same shall be destroyed, (3) Prior review of derogatory material and right to submit written answer thereto, the latter to be included in personal file, (4) Conclusion of final evaluation prior to severance, and exclusion of material, received after severance or following receipt of notice or resignation or notice of 'consideration of nonrenewal' from teacher files, (5) Limitation on establishment of more than one file per teacher, and (6) Notification, in writing, to teacher of alleged delinquencies, indication of expected correction, and time period therefor, as well as notification of breaches of discipline, and, where possibility of termination exists, notification thereof to Beloit Education Association."

(84)

teachers' association claimed bargaining was required under the statute as to its proposals regarding the "just cause standard" for disciplinary action against teachers.[19] The commission held that these "just cause" proposals primarily relate to "wages, hours and conditions of employment," and mandated bargaining. The trial court affirmed this holding. As to this holding the school board does not challenge the requirement of bargaining as to a just cause for dismissal. Instead it challenges the bargainability of renewal or nonrenewal of a teacher's contract. Outside of Milwaukee county where teachers have tenure,[20] the state statute provides that, on or before March 15 of each year, the school board "shall give the teacher written notice of renewal or refusal to renew his contract."[21] While there are restrictions on the right to renew,[22] the school board contends that this statute is not consistent with required bargaining as to renewal or nonrenewal of teacher contracts. The trial court found no conflict, finding the only effect of the "written notice" statute to be that "no labor agreement can alter the dates on which notice of nonrenewal is to be given, or any of its other terms." (Absent notice of nonrenewal, the contract renews itself.) We agree that such setting of a minimum procedure for notice and hearing, before a school board can decide not to rehire a teacher, does not limit or negative the right, also granted by the legislature, to teachers to collectively bargain in areas primarily related to "wages, hours and conditions of employment."[23] On the facts before it the commission was entitled to hold that the proposals relating to the "just cause standard" were mandatorily bargainable.

(D) TEACHER LAYOFFS. The teachers' association submitted certain proposals in the field of teacher layoffs as mandatorily bargainable items.[24] As to a decrease in the number of teachers "by reason of a substantial decrease of pupil population," the association's proposal was that such layoffs be "only in the inverse order of the appointment of such teachers."[25] While the commission held all of the teacher layoff proposals to primarily relate to "wages, hours and conditions of employment," it is the proposal for seniority in case of layoffs that was challenged on review and is challenged on this appeal. The school board claims an impingement on the right of the board to determine what programs will be reduced and what staff qualifications are needed. The trial court held that nothing in the association proposal, as worded, went to what school programs were to be reduced or eliminated in case of layoff due to a decrease in pupil population. To the suggestion that "a more senior Fourth Grade athletic teacher must displace a less senior Twelfth Grade physics teacher," the trial court responded that "such an absurd result was not required." While terming it a clarification, it then modified the commission holding to require that "a reasonable clarification to that effect be inserted in the collective bargaining agreement if proposed by the School Board." As so clarified and modified, the proposals stop well short of invading the school board's

19 The "just cause" proposals can be summarized as follows: "*Just Cause Standard* (1) A just cause basis prior to discharge, nonrenewal, suspension, discipline, reprimand, reduction in rank or compensation, or deprivation of any professional advantage, (2) Permissible suspension with pay, (3) Charges forwarded to School Board, and copies thereof to suspended teacher, Association president, and chairman of Grievance Committee, by certified mail, and (4) Hearing on charges, together with appeal procedures."

20 See: Sec. 118.23, Stats.

21 Sec. 118.22(2), Stats.

22 See: Muskego-Norway C.S.J.S.D. No. 9 v. WERB (1967), 35 Wis.2d 540, 151 N.W.2d 617. See also: Miller v. Joint School Dist. (1957), 2 Wis.2d 303, 312, 86 N.W.2d 455, requiring dismissal of a teacher under contract to be for "good and sufficient cause."

23 See: Richards v. Board of Education (1973), 58 Wis.2d 444, 460a, 460b, 206 N.W.2d 597, 606, holding on motion for rehearing: "Under the act, a school district is considered to be a 'municipal employer,' Sec. 111.70(1)(a), Stats. and this court has no difficulty in concluding that a grievance procedure established by a collective bargaining agreement, and relating to dismissals falls within the embrace of "wages, hours and conditions of such an agreement are binding on the parties." Distinguishing Adamczyk v. Caledonia (1971), 52 Wis.2d 270, 190 N.W.2d 137, handed down prior to the enactment of sec. 111.70(1)(d), Stats., and involving "a personal employment contract rather than a collective bargaining agreement enacted in accordance with sec. 111.70, Stats."

24 The teacher layoff proposals can be summarized as follows: "*Teacher Layoffs* (1) The basis for layoffs, (1) Order of recall, (3) Qualification for recall, (4) Non-loss of previous service credits, and (5) No new or substitute appointments while qualified teachers are in layoff status."

25 The actual proposal states in part: "If necessary to decrease the number of teachers by reason of a substantial decrease of pupil population . . . [the employer] may lay off the necessary number of teachers, but only in the inverse order of the appointment of such teachers."

(85)

right to determine the curriculum,[26] and to retain, in case of layoff, teachers qualified to teach particular subjects in such curriculum. As so limited and modified, the proposal, we hold, is one primarily related to "wages, hours and conditions of employment," and hence required to be bargained.

(E) PROBLEM STUDENTS. The teachers association submitted as proper subjects for mandated bargaining a number of proposals involving "problem students."[27] The commission found the proposals to be "ambiguous" and divided them into two categories of student misbehavior: (1) Misbehavior that does not involve threats to physical safety (of the teachers); and (2) misbehavior of students that presents a physical threat to the teacher's safety. It then held that the first category was not mandatorily bargainable, and that the second was. The reviewing court continued this sharp distinction, upholding the commission ruling that held the portions of the association's proposals that were required bargaining subjects to be confined "strictly to student misbehavior involving physical threats to the teacher's safety." The trial court also noted a particular association proposal dealing with referral of problem students for needed counseling.[28] The trial court held that this proposal did not primarily relate to "wages, hours and conditions of employment," and held it not to be mandatorily bargainable. With the limitations set by the commission and the modification made by the reviewing court, we affirm the holding that the proposals as to the problem students who present a physical threat to teacher safety are primarily related to "wages, hours and conditions of employment," and are required by the statute to be bargained.

(F) SCHOOL CALENDAR. The teachers' association suggested the school calendar as a required bargaining topic.[29] The commission ruled that "all aspects of the school calendar" were mandatorily bargainable. The reviewing court affirmed this holding, adding that "all that is required of the employer in collective bargaining is to bargain in good faith with respect to proposals submitted by the collective bargaining agent of the employees. An agreement with respect to a particular proposal is not required." The school board challenges this finding of bargainability, relying heavily upon the case, decided prior to the enactment of sec. 111.70(1)(d), Stats., in which our court held that a school board ". . . need neither surrender its discretion in determining calendar policy nor come to an agreement in the collective-bargaining sense."[30] However, subsequently, our court has held: "The school calendar and in-service days are subject to negotiation with the bargaining agent under sec. 111.70(2), Stats."[31] Given this applicable ruling by this court, we affirm the trial court holding that, while the school board cannot be required to agree or concede to an association demand as to calendar days, it is required to meet, confer and bargain as to any calendaring proposal that is primarily related to "wages, hours and conditions of employment."

(G) IN-SERVICE TRAINING. A variety of proposals regarding teach-

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26 See: Joint School Dist. No. 8 v. Wis. E. R. Board (1967), 37 Wis.2d 483, 493, 155 N.W.2d 78, 82, this court holding: "The contents of the curriculum would be a different matter. Subjects to study are within the scope of basic educational policy and additionally are not related to wages, hours and conditions of employment."

27 The proposals as to problem students can be summarized as follows: "*Problem Students* (1) Referral of problem students to specialized personnel and others, (2) Relief of teacher responsibility with respect to problem students, (3) Consent of teacher to whom problem student is assigned, (4) Exclusion of problem student from classroom, report thereof, and consultation prior to return to classroom, (5) Teacher self-protection and report of action taken, and (6) Liability insurance coverage and compensation resulting in absence from duty from injuries in performance of teaching and related duties, with no deduction from accumulated sick leave."

28 The particular proposal was as follows: ". . . . Whenever it appears that a particular pupil requires the attention of special counselors, special teachers, social workers, law enforcement personnel, physicians or other professional persons, such students shall be referred to that particular person."

29 The association's original proposals raised the subject of school calendar, but no specific proposal was made.

30 Joint School Dist. No. 8 v. Wis. E. R. Board, supra, footnote 26, at page 494, 155 N.W.2d at page 83, this court also stating: "If the school calendar was subject to collective bargaining in the conventional sense in which that term is used in industrial labor relations under sec. 111.02(5), Stats., there would be merit to the argument of the school board that its legislative function is being delegated or surrendered and thus the calendar could not constitutionally be a subject of negotiation although it fell within the broad terms of the statute."

31 Board of Education v. WERC (1971), 52 Wis.2d 625, 633, 634, 191 N.W.2d 242, 246, 78 LRRM 3040, 3042, this court also holding: "Likewise educational conventions, and whether they are to be considered in-service or school days, and questions of compensation for such days are, we believe, within the statutorily defined area of negotiation on 'wages, hours and conditions of employment.'"

er in-service training were submitted by the teachers' association as proper subjects for required bargaining.[32] With a single exception all such proposals were held by the commission not to primarily relate to "wages, hours and conditions of employment," and, therefore, not to be subject matters where bargaining is required.[33] The single exception and the only proposal in this area held to be mandatorily bargainable was the one regarding: "The number of in-service days during the school year and the day of the week such days will fall." The trial court held this proposal to be a matter of calendaring, and to be governed by the holding, heretofore upheld, as to calendar day proposals being mandatorily bargainable. We agree, noting that the decision of this court making the school calendar subject to negotiation included "in-service days" in its holding.[34] On the record before it the commission was entitled to hold the "in-service days" proposal mandatorily bargainable.

(H) CLASSROOM SIZE. The teachers' association submitted to the commission as a subject matter requiring mandated bargaining a proposal concerning class size.[35] The commission, on the evidence before it, concluded that the size of a class is not primarily a matter of "wages, hours and conditions of employment" but is primarily a matter of basic educational policy.[36] Therefore, it concluded, "decisions on class size are permissive and not mandatory subjects of bargaining." The trial court affirmed this holding, stating that, on the basis of the evidence before it, the commission could conclude that a school board's prerogatives in making educational policy include the power to decide that class size does affect the quality of education and to set class size accordingly. The commission also held that the size of a class has an impact upon conditions of employment of teachers.[37] So it concluded that: "While the School Board has the right to unilaterally establish class size, it nevertheless has the duty to bargain the impact of the class size, as it affects hours, conditions of employment and salaries." The reviewing court also affirmed this commission holding that, while class size was not bargainable, the impact of class size upon "wages, hours and conditions of employment" was mandatorily bargainable. We affirm the trial court holding, agreeing that the commission was warranted in reaching the conclusions it did.

(I) READING PROGRAM. The teachers' association claimed that its proposal as to a school reading program was a matter that required bargaining.[38] The commission held that the association's proposal on "reading" related primarily to educational policy,[39] and not to "wages,

32 The in-service training proposals included: "The afternoon of the third Thursday of each month will be designated as in-service day," if the third Thursday of any given month falls on a holiday or during a vacation, another appropriate day will be substituted. The calendar for in-service days will be structured jointly by representatives of the association and the central administration. Although the in-service program will be planned to make maximum use of staff talents, outside consultants may be required. In such cases, the board agrees to pay the reasonable costs of said consultants provided that the cost does not exceed $1,000 (one thousand dollars). The time of in-service will be 12:00-4:00. Adequate time for lunch will be provided."

33 The WERC memorandum stated: "However, we conclude that the type of programs to be held on such days, and the participants therein are not subjects to mandatory bargaining, since we are satisfied that such programs and the participants therein have only a minor impact on working conditions, as compared to the impact on educational policy."

34 Board of Education v. WERC, supra, footnote 31, at page 633, 191 N.W.2d 242, 78 LRRM 3040.

35 The proposal as to class size was as follows: "Because the pupil-teacher ratio is an important aspect of an effective educational program, the Board agrees that class size should be lowered wherever possible to meet the optimum standards of one (1) to twenty-five (25). Exceptions may be allowed in traditional large group instruction or experimental classes, where the Association has agreed in writing to exceed this standard."

36 The WERC memorandum stated: "The size of a class is a matter of basic educational policy because there is very strong evidence that the student-teacher ratio is a determinant of educational quality. Therefore, decisions on class size are permissive and not mandatory subjects of bargaining."

37 Id., continuing: "On the other hand, the size of the class affects the conditions of employment of teachers. The larger the class, the greater the teacher's work load, e.g., more preparation, more papers to correct, more work projects to supervise, the probability of more disciplinary problems, etc."

38 The proposal as to a reading program was as follows: "The Board and the Association agree that each child shall have the opportunity to enhance and expand reading skills necessary to allow a child to reach his optimum reading expectancy level. Therefore the Board agrees to assess the reading achievement and the native ability of each child annually. These figures shall be made available to the Association. The necessary staff, materials, and programs shall be furnished for the child found to be one or more years below his optimum reading expectancy level, to remedy his reading deficit."

39 The WERC memorandum stated: "It is clear to the Commission that the Association's proposal on 'reading' relates primarily to basic educational policy, and therefore

hours and conditions of employment." It concluded that such proposal was subject to voluntary or permissive bargaining, but that bargaining as to it was not required. The trial court affirmed this holding. The commission further held that: "If a reading program is established, which involves teachers, the impact of the same upon their wages, hours and working conditions, is a subject of mandatory bargaining." This commission ruling was not challenged on appeal, and is here set forth in the interest of completeness. We see no basis upon which it could be successfully challenged.

(J) SUMMER SCHOOL. The teachers' association sought to have declared mandatorily bargainable its proposals for the initiation of a summer school program.[40] The commission held that such proposal for initiating a summer school program related primarily to basic educational policy, and did not primarily relate to "wages, hours and conditions of employment." Therefore it concluded the proposals for a summer school were subject to permissive, but not mandatory bargaining. However the commission also held, should the school board determine unilaterally to establish a summer school session, "matters relating to wages, hours and working conditions of teachers participating in a summer school session, are subject to mandatory bargaining." This holding by the commission is not challenged by either party on appeal, and is set forth, this being an action for declaring of rights, in the interests of completeness. We find it to be entirely correct as a conclusion of law.

(K) ASSISTANCE TO TEACHERS. The teachers' association urged that the commission find mandatorily bargainable its proposals for assistance to teachers having professional difficulties.[41] The commission declined so to do, holding instead that the proposals for teacher assistance primarily related to the management of the school system, and were not primarily or even significantly related to "wages, hours and conditions of employment." In explaining its reasons for so concluding, the commission stated in its memorandum: ". . . the proposals involving . . . assistance to teachers having professional difficulties, and the techniques to be employed in dealing with teachers found to be suffering professional difficulties, reflect efforts to determine management techniques rather than 'conditions of employment.' As such, they are not subjects of mandatory bargaining." The trial court affirmed this holding. While such assistance to teachers having professional difficulties is not unrelated to their continued employment or promotion, it is evident that the primary relatedness is to the "management and direction" of the school system. On the record before it the commission acted properly in so concluding.

THE STANDARD. As its standard of review for the commission rulings, the trial court held that standard to be ". . . whether each ruling constitutes a rational interpretation of sec. 111.70(1)(d), Stats." The trial court held that it is ". . . only when the interpretation by the administrative agency is an irrational one that a reviewing court does not defer to it."[42] It is certainly true, as the trial court observed, that the general rule in this state is that ". . . the construction and interpretation of a statute adopted by the administrative agency charged by the legislature with the duty of applying it

concerns a matter subject to permissive, but not mandatory bargaining. The need for such a program is essentially a determination of whether the District should direct itself toward certain educational goals."

40 The proposals for a summer program included in relevant part: (1) That a summer program be initiated; (2) that a maximum of ten teachers be employed for a period of one month at a total salary cost of $10,000; (3) that all other teachers involved receive six credits on the salary schedule; (4) all students participating to do so free of charge; (5) federal grants or aid be applied for when and if possible; (6) that the program be under the direction of the director of curriculum; and (7) that the summer workshop be for one month with hours of 8-12 and 1-4.

41 The teacher assistance proposals were as follows: "1. Definite positive assistance shall be immediately provided to teachers upon recognition of 'professional difficulties.' . . . 2. Beginning immediately with the conference after the classroom observation, specific appropriate direction shall be offered to guide the individual toward the solution of his particular professional problem. Suggested actions shall include at least three of the following: (a) Demonstration in an actual classroom situation (b) Direction of the teacher toward a model for emulation, allowing opportunities for observation (c) Initiation of conferences with evaluator, teacher and area coordinator or department chairmen to plan positive moves toward improvement of professional classroom performance (d) Guidance for the teacher toward professional growth workshops (e) Observation, continued and sustained, by the evaluator to note the day-to-day lessons and their interrelationships (f) Maintenance and expansion of the collection of professional literature with assigned reading, designed to suggest possible solutions to indentified problems."

42 The trial court citing Wisconsin Southern Gas Co. v. Public Service Comm. (1973), 57 Wis.2d 643, 652, 205 N.W.2d 403.

is entitled to great weight."[43] However, as this court has made clear, the rule that great weight is to be given and any rational basis will sustain the practical interpretation of the agency charged with enforcement of a statute ". . . does not apply unless the administrative practice is long continued, substantially uniform and without challenge by governmental authorities and courts."[44] In this petition for declaratory rulings, addressed to the state employment relations commission, we have very nearly questions of first impression raised concerning the areas of mandatory bargaining between a school board and a teachers' association under sec. 111.70(1)(d), Stats.[45] Given this situation, we would hold, quoting a very recent case, that ". . . this court is not bound by the interpretation given to a statute by an administrative agency. Nevertheless, that interpretation has great bearing on the determination as to what the appropriate construction should be."[46] It is such "great bearing" of "due weight" standard, not the "any rational basis" test, that we find here applicable. However we here hold that the applicability of such higher standard does not affect the validity of the reviewing court's upholding of the rulings of the commission. The commission's holdings were conclusions of law. We find that, under either standard of review, due weight or great weight, the holdings of the employment relations commission met either test on judicial review.

THE EVIDENCE. As to each ruling or conclusion of law reached by the employment relations commission, the trial court and this court have upheld each such holding as sufficiently supported by the evidence in the record before the commission. The teachers' association attacks the evidence admitted as part of that record, specifically contending that the admission and use of certain book and magazine articles offered by the school board was improper. The claim is that such evidence, admitted over objection, was (1) hearsay, (2) without foundation having been laid, (3) inadmissible as opinion evidence, (4) admitted without opportunity to cross-examine the authors of the articles, and (5) irrelevant and immaterial. The articles objected to referred to many of the subjects involved in the commission's ruling. The exhibits challenged were copies of articles that appeared in various educational journals on these subjects. We hold that they were properly admitted. The employment relations commission has broad discretion as to what evidence it can consider. The applicable statute provides that: "Agencies may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be *notified either before or during hearing or by full reference* in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice." [Emphasis supplied.][47] With notice given as to admission of the articles and that they would be considered by the commission, we would find the "notified during hearing" provisions of the statute here complied with. In any event, with this a petition for a declaring of rights under a statute, we find no error committed by the commission or prejudice established to the Beloit Education Association. Here the commission set forth the proposals of the association and, in its findings and conclusions, moved directly from such proposals to determining whether each proposal related primarily to "wages, hours and conditions of employment" so that bargaining was required. As the trial court held: "The test of whether a finding is supported by substantial evidence is whether the evidence supporting the finding is such that a reasonable man could accept the same to support the con-

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43 The trial court citing Libby, McNeill & Libby v. Wisconsin E. R. Comm. (1970), 48 Wis.2d 272, 280, 179 N.W.2d 805, 75 LRRM 2759; Chevrolet Division, G. M. C. v. Industrial Comm. (1966), 31 Wis.2d 481, 488, 143 N.W.2d 532; Cook v. Industrial Comm. (1966), 31 Wis.2d 232, 240, 142 N.W.2d 827.

44 Wood County v. Bd. of Vocational, T. & A. Ed. (1973), 60 Wis.2d 606, 618, 211 N.W. 2d 617, 623.

45 See: Whitefish Bay v. Wisconsin E. R. Board (1967), 34 Wis.2d 432, 444, 445, 149 N.W. 2d 662, 669, 65 LRRM 2302, this court holding: "In view of this poverty of administrative experience and of the recent passage of the statute giving rise to this strictly legal question of jurisdiction, perhaps the court ought to examine it afresh as a question of law not especially involving administrative expertise. For such a question the court feels free to substitute its own judgment for that of the administrative agency." Citing Pabst v. Department of Taxation (1963), 19 Wis.2d 313, 323, 120 N.W.2d 77.

46 Milwaukee v. WERC (1976), 71 Wis.2d 709, 714, 239 N.W.2d 63, 66, 91 LRRM 3019.

47 Sec. 227.10(3), Stats. Sec. 227.10(1), Stats., also provides: "Agencies shall not be bound by common law or statutory rules of evidence.

clusion made."[48] And, exactly as the trial court concluded, "[U]nder this test the questioned finding needs no evidentiary facts to support it other than the wording of the Association's proposal to which this finding relates." The state employment relations commission was asked for a declaratory ruling as to whether each or all of various proposals were subjects of mandatory bargaining. The commission examined each such proposal and ruled as to whether it was a subject of required bargaining under sec. 111.70(1)(d) Stats. Its holdings or conclusions as to each have been modified in part and, as modified, affirmed by the circuit court and again affirmed for reversal in the procedures followed by the commission and upheld on judicial review.

Judgment affirmed.

YONKERS SCHOOL DIST. v. TEACHERS

New York Court of Appeals

In the Matter of BOARD OF EDUCATION, YONKERS CITY SCHOOL DISTRICT v. YONKERS FEDERATION OF TEACHERS, et al., No. 278, July 1, 1976

ARBITRATION

—Teachers — Reduction in staff — Job-seniority clause—Financial emergency—Arbitrability ▶ 100.07 ▶ 100.35

Board of education may be compelled to arbitrate grievance of teachers federation arising from board's termination, because of city's severe financial crisis, of some teachers covered by collective bargaining contract providing that no person in bargaining unit be terminated due to budgetary reasons or abolition of programs during life of contract, despite contention that contract's job security provision is invalid as contrary to public policy. (1) Public employer is free to bargain voluntarily about job security and also free, under contractual provisions, to submit to arbitration disputes about job security; (2) provision in contract guaranteeing public employees job security for reasonable period of time is not prohibited by any statute or controlling decisional law and is not contrary to public policy; and (3) no merit is found in board's contention that New York State Financial Emergency Act evinces legislative determination of public policy that job abolition must be permitted, since Act provides that it should not be construed to impair right of employees to bargain collectively and specifies that primary recourse must be had to attrition to effect any reduction in work force.

Appeal from the New York Supreme Court, Appellate Division, Second Department (92 LRRM 2459, 51 A.D.2d 568, 379 N.Y.S.2d 109). Reversed.

James R. Sandner, David N. Stein, and Thomas C. Greble, New York, N.Y., for appellant.

Eugene J. Fox, Corporation Counsel (William N. Carroll, of counsel), Yonkers, N.Y., for respondent.

William H. Englander and Robert E. Sapir, Yonkers, N.Y., for Levittown UFSD, amicus curiae.

Full Text of Opinion

BREITEL, Chief Judge:—This appeal, in arbitration, involves a so-called "job security" clause in a collective agreement between a public employer and public employees. The Yonkers City Board of Education, because of the City's severe financial stringency, terminated the services of some teachers covered by the "job security" clause. The Yonkers City School District is not "independent" but receives its funds from the City of Yonkers.

The teachers' union demanded arbitration under the collective agreement and the board brought this proceeding to stay arbitration (CPLR art. 75). Supreme Court granted the stay and declared the job security provision invalid as contrary to public policy. The Appellate Division affirmed and the teachers' union appeals.

The issue is whether a public employer is free to bargain voluntarily about job security and also free, under the collective agreement's provisions, to submit to arbitration disputes about job security.

There should be a reversal. A provision in a collective bargaining guaranteeing public employees job security for a reasonable period of time is not prohibited by any statute or controlling decisional law and is not contrary to public policy. Hence, the board of education was free to bargain voluntarily about job security and was also, therefore, free to agree

[48] The trial court citing Robertson Transport. Co. v. Public Serv. Comm. (1968), 39 Wis.2d 653, 658, 159 N.W.2d 636.

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

MANAGEMENT AND FISCAL POLICY COMMITTEE

Thursday, February 24, 2000
2:06 P.M. to 4:30 P.M.
Council Hearing Room

PRESENT

Marilyn J. Praisner, Chair

Phil Andrews Betty Ann Krahnke

ADDITIONAL COUNCILMEMBER PRESENT

Isiah Leggett

SUBJECT: **Bill 1-00, Inspector General – Extension**

The Committee had before it the memorandum and attachments from Senior Legislative Attorney Faden, dated February 24, 2000, and a memorandum from County Executive Duncan, dated February 23, 2000.

ACTION: Recommended approval of the following technical amendments:

Insert on page ©4 of the Committee's packet, at the end of the first sentence of § 2-151(g)(1), line 62, the following sentence: The term of each employee should be coterminous with the Inspector General's term unless the Inspector General specifies a different term when appointing the employee.

Insert the following language on page ©8 of the Committee's packet, line 156, and renumber current paragraph (3): (3) The Inspector General may administer an oath or affirmation or take an affidavit from any person as necessary to perform the Inspector General's duties.

Reviewed the proposed amendments contained in the County Executive's memorandum.

Recommended on page ©2 of the Committee packet, lines 10 and 11, the addition of the word and between the words "waste" and "abuse," and the deletion of the words [[and management]]; and on page ©8, in renumbered paragraph (4), the deletion of the following words: [[or other mismanagement]]. Councilmember Praisner noted that the term "mismanagement" is subsumed in the words "fraud, waste, and abuse" which precede the word "mismanagement in both instances."

Recommended approval of the changes to the term and qualifications of the Inspector General as contained in the bill on page ©3.

Reviewed the language on page ©4, lines 69-76, concerning legal services to be provided by the County Attorney and responsibilities of the County Attorney when the Inspector General requests special counsel.

In connection with lines 108-109 of the bill, discussed the intent of the Inspector General to uphold the objective of complying with applicable generally accepted government auditing standards. Recommended the deletion on page ©6, lines 108-109, of the words [[When appropriate, the Inspector General should comply with generally accepted government auditing standards.]] Agreed to add appropriate language in another section of the bill to indicate that the goal is to comply with applicable generally accepted government auditing standards.

On page ©6, after (k)(2), agreed to insert the following language: The Inspector General may keep any report or information gathered for use in any report confidential until the report is final. Requested that Mr. Faden revise the language as appropriate to make certain that it would apply to "work plan items" as well as reports.

In connection with the issues raised in the County Executive's memorandum concerning §(l)(1) of the bill, agreed on the need to pursue at a later date issues regarding the availability of personnel information to the Inspector General, and whether the concept of Executive privilege applies to the Inspector General.

Agreed with the language on page ©7 that gives the Inspector General authority to issue subpoenas and administer oaths.

Recommended approval of Bill 1-00, as amended. Councilmember Praisner supported an amendment to the bill to extend the sunset date of the Office of the Inspector General to 2005 rather than to repeal it as will occur under the bill as introduced.

Councilmember Andrews, lead Councilmember for Personnel, in the Chair.

SUBJECT: **Bill 26-99, Collective Bargaining - Amendments**

The Committee had before it the memorandum and attachments from Mr. Faden, dated February 24, 2000.

ACTION: Received comments from a representative of the Office of Human Resources (OHR) that representatives of the Municipal and County Government Employees Organization (MCGEO) and OHR believed that the hybrid approach to binding arbitration might be confusing and therefore, opted for the total package approach (the last best offer for the entire contract).

Received comments from Councilmember Krahnke in opposition to the last best offer approach because of the focus it places on economic issues, and comments from Councilmember Andrews on his preference for a hybrid approach because the focus would be on a wider range of issues.

Received comments from Mr. Renne, MCGEO, that the last best offer approach ensures that non-economic issues will be addressed before entering into mediation.

Recommended a two package last best offer approach in which the arbitrator would review an economic package and a non-economic package and select the more reasonable of each. Councilmember Andrews indicated his preference for the original hybrid approach.

Recommended that changes in the scope of the bargaining unit not be addressed in this bill.

Instructed staff to modify the definition of "economic" so that is not narrowly drawn but retains the language requiring the mediator/arbitrator to decide any issue regarding whether a particular proposal is economic or non-economic; and to provide Committee members the opportunity to review the definition before the bill is brought before the Council.

Recommended amending the bill to require an impasse to be declared by February 1 and the arbitrator's report by February 15 rather than as contained in existing law, January 15 and February 1, respectively.

Concurred with OHR and MCGEO not to amend the current law to allow the arbitrator to go beyond the County in considering private sector wages and benefits, or to direct the arbitrator to not diminish or condition management rights in determining whether a collective bargaining item is negotiable.

Recommended against Executive Branch Staff's recommendation to lengthen the maximum term of a collective bargaining agreement with MCGEO from three to five years. Councilmember Praisner indicated her preference for a four-year maximum term.

Recommended against Bill 26-99, but indicated if the Council is inclined to adopt it, the Committee amendments would offer a reasonable approach. Councilmember Andrews voted for a positive recommendation, indicating that he supports binding arbitration for County employees.

SUBJECT: **FY 01-06 Capital Improvements Program: General Government (Continued)**

The Committee had before it the memorandum from Legislative Analyst Sherer, dated February 17, 2000.

ACTION: Approved the total cost and funding for Glen Echo Park as was approved last year; added a statement to the position description form as follows: The County will reconsider the amount of County funding if the Federal or State governments do not contribute the amount of funding assumed in the Funding Schedule. This reconsideration will occur next year when the FY 00 and 01 actual Federal and State funding amount will be known, and can be used as a basis to better forecast State and Federal funding amounts for FY 02.

Reviewed the Moneysworth Farm House Reuse Project. Councilmember Andrews recommended approval of the FY 01 request of $734,000; Councilmember Praisner recommended approval of $441,000, the amount requested two years ago; and Councilmember Krahnke recommended that the project not be funded because of her opposition to the Correctional Facility.

Deferred a decision on the Rockville Parking project until the County has further information on the State's decisions regarding the new District Court, the Rockville Library, the Rockville Core study, and the justification for the number of additional parking spaces needed. Agreed to continue discussion of this project in April.

This is an accurate account of the meeting:

_____

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Charles H. Sherer, Legislative Analyst, and
Mary A. Edgar

Bill No. 26-99
Concerning: Collective Bargaining - Amendments
Revised: 9-8-99 Draft No. 2
Introduced: September 14, 1999
Expires: March 14, 2001
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin and Silverman

AN ACT to:

(1) modify certain functions of the Labor Relations Administrator;
(2) revise the process for certifying employee organizations;
(3) revise the timetable for certain collective bargaining actions;
(4) require binding arbitration of certain collective bargaining agreements; and
(5) generally amend the law governing collective bargaining for certain County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-103, 33-106, and 33-108

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:

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:

* * *

(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.

33-106 Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

(2)

* * *

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b) * * *

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

* * *

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

(a) Collective bargaining [shall] must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and [shall] must be finished on or before [January] February 15. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]

(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 year or for more than 3 years. All agreements [become effective] take effect July 1 and end June 30.

(c) A collective bargaining agreement [becomes effective] takes effect only after ratification by the employer and [by] the certified representative. The certified representative may [provide] adopt its own [rules for] ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator [shall] must appoint a mediator/[fact-finder] arbitrator, who may be a person recommended [to her] by both parties. The mediator/[fact-finder] arbitrator [shall] must be available [during the

period] from January 2 to [February 1] June 30. Fees and expenses of the mediator/[fact-finder] arbitrator [shall] must be shared equally by the employer and the certified representative.

(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 15, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) This dispute [shall] must be submitted to the mediator/[fact-finder] arbitrator whenever an impasse has been reached, or [before that] as provided in subsection (e)(1). The mediator/[fact-finder] arbitrator [shall] must engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will [tend to bring about the] encourage settlement of the dispute.

5

(3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his] the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, [he shall implement the following fact-finding process:] or as of February 15 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

(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 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.

[(b.)] (2) [He] The mediator/arbitrator may require the parties to submit oral or written evidence [or make oral or written] and arguments in support of their proposals. [He] The mediator/arbitrator may hold a hearing for this purpose at a time, date, and place selected by [him] the mediator/arbitrator. This hearing [shall] must not be open to the public.

[(c.)] (3) [On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.]

On or before March 1, the mediator/arbitrator must select, as a whole, the more reasonable of the final economic offers submitted by the parties. With regard to the economic offers, 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 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.

[(d.)] (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:

[(i)] (A) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

[(ii)] (B) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public

employers in the Washington Metropolitan Area and in Maryland.

[(iii)](C) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

[(iv)] (D) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

[(v)] (E) The interest and welfare of the public.

[(vi)] (F) The ability of the employer to finance economic adjustments, and the effect of the adjustments [upon] on the normal standard of public services provided by the employer.

(5) The economic offer selected by the mediator/arbitrator, together with the mediator/arbitrator's conclusion on each non-economic proposal, integrated with all previously agreed on items, is the final agreement between the employer and the certified representative, need not be ratified by any party, and has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement, and any provision which requires action in the County budget must

be included in the budget which the employer submits to the County Council.

[(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator-fact-finder, the report of the mediator-fact-finder, with recommendations on agreed items deleted, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.]

(g) The budget that the employer submits to the Council [shall] must include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed term or condition submitted to the Council that requires an appropriation of funds, or the enactment[, repeal, or modification] or adoption of any County law or regulation, or which has or may have a present or future fiscal impact, may be accepted or rejected in whole or in part by the Council. [Such terms or conditions shall be identified to the

Council by either or both parties.] The employer must expressly identify any term or condition that requires Council review. The employer [shall] must make a good faith effort to have the Council take action to implement [any term or condition to which the parties have agreed] all terms of the final agreement.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement [and the recommendations for resolving bargaining disputes].

(i) On or before May 1, the Council [shall] must indicate by resolution its intention to appropriate funds for or otherwise implement the [items that have been agreed to] agreement or its intention not to do so, and [shall] must state its reasons for any intent to reject any [items of the kind specified in subsection (g) that have been agreed to] item of the final agreement. [The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]

(j) [Then] If the Council indicates its intention to reject any item of the final agreement, the Council [shall] must designate a representative to

meet with the parties and present the Council's views in the parties' further negotiation on [disputed matters and/or agreed upon] matters that the Council has indicated its intention to reject. The parties must submit the results of the negotiation, whether a complete or a partial agreement, [shall be submitted] to the Council on or before May 10.

(k) Any agreement [shall] must provide for automatic reduction or elimination of wage [and/]or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year [in which] when the agreement is in effect.

[(k)] (l) The Council [shall] must take [whatever actions it considers] any action required by the public interest with respect to [matters] any matter still in dispute between the parties. However, [those actions shall not be] any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate [them] it in the agreement.

Approved:

Isiah Leggett, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council Date

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LEGISLATIVE REQUEST REPORT

Bill 26-99

Collective Bargaining - Amendments

DESCRIPTION:	Requires binding arbitration of collective bargaining agreements for County government employees. The form of binding arbitration is last best offer for the entire economic package, and last best offer item-by-item for non-economic items. The arbitrator would decide which issues are economic or non-economic. Also revises the process for certifying employee organizations and the timetable for certain collective bargaining actions.
PROBLEM:	Need for other County government employees to have the same right to bargaining arbitration as County public safety employees now have.
GOALS AND OBJECTIVES:	To make the collective bargaining process fairer to employees.
COORDINATION:	Office of Human Resources, Office of Management and Budget
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County government.
PENALTIES:	None

(14)

Emergency Bill No. 21-96
Concerning: Collective Bargaining - Firefighters
Revised: 7-18-96 Draft No. 5
Introduced: May 14, 1996
Enacted: July 23, 1996
Executive: August 1, 1996
Effective: August 1, 1996
Sunset Date: None
Ch. 21, Laws of Mont. Co. 1996

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EMERGENCY ACT to establish a separate collective bargaining process for professional fire and rescue employees.

By amending
Montgomery County Code
Chapter 33, Personnel
Sections 33-102 and 33-105

By adding
Chapter 33, Personnel
Article X, Fire and Rescue Collective Bargaining
Sections 33-147 through 33-157

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland, approves the following Act:

Sec. 1. Sections 33-102 and 33-105 are amended, and Article X, Fire and Rescue Collective Bargaining, Sections 33-147 through 33-157, are added as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(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 [for the following]:

[a.] (A) Confidential aides to elected officials.

[b.] (B) All persons who are not covered by the County government merit system.

[c.] (C) Heads of principal departments, offices, and agencies.

[d.] (D) Deputies and assistants to heads of principal departments, offices, and agencies.

[e.] (E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

[f.] (F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

[g.] (G) Persons who work for the Office of the County Executive and the Office of the Chief Administrative Officer.

[h.] (H) Persons who work for the County Council.

[i.] (I) Persons who work for the Office of the County Attorney.

[j.] (J) Persons who work for the Office of Management and Budget.

[k.] (K) Persons who work for the [personnel office] Office of Human Resources.

[l.] (L) Persons who work for the Merit System Protection Board.

[m.] (M) Persons who work on a temporary, seasonal, or substitute basis.

[n.] (N) Newly hired persons on probationary status.

[o.] (O) Persons who work for the Police Department [who] and are represented by a certified employee organization under Article V [of this Chapter].

(P) Persons who work for the Department of Fire and Rescue Services and are represented by a certified employee organization under Article X.

[p.] (Q) Officers in the uniformed services (Corrections, Fire and Rescue, Police, Office of the Sheriff) in the rank of sergeant and above. Subject to any limitations in state law, deputy sheriffs below the rank of sergeant are employees.

[q.] (R) Persons who are members of the state merit system.

[r.] (S) Supervisors, which means persons having authority to [do any of the following]:

[1.](i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively [to] recommend any [one] of these actions;

[2.](ii) direct the activity of [three (3)] 3 or more employees; or

[3.](iii) adjust or recommend adjustment of grievances.

[s.] (T) Persons in grade 27 or above, whether or not they are supervisors.

33-105. Units for collective bargaining.

(a) There are [3] 2 units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, [excluding the categories listed as exceptions to the definition of] except any person who is not defined as an employee in Section 33-102(4) [of this Article]. The employees are divided into [3] 2 units[, in accordance with the following descriptions]:

* * *

[(3) **Fire/Rescue unit.** This unit is composed of employees who hold the positions of master firefighter/rescuer, and firefighter/rescuer I, II, and III, and who are associated with fire suppression, fire protection, fire communications, fire service training, rescue, and emergency medical services. These duties include the rescue and safety of individuals and the preservation of structures and physical property.]

* * *

ARTICLE X. FIRE AND RESCUE COLLECTIVE BARGAINING.

33-147. Declaration of policy.

The public policy of Montgomery County is to promote a harmonious, peaceful, and cooperative relationship between the County government and its fire and rescue employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the Department of Fire and Rescue

Services. Since unresolved disputes in the fire and rescue service harm the public and fire and rescue employees, adequate means should be available to prevent disputes and resolve them when they occur. To that end, it is in the public interest that fire and rescue employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, as authorized by Charter Section 510A, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of fire and rescue employees bargain collectively in good faith without interference with the orderly process of government, and that they implement any agreement reached through collective bargaining.

Fire and rescue employee organizations and the County government each possess substantial means for initiating actions on wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the fire and rescue service, once the employees voluntarily select a representative collective bargaining must be used in place of, and not in addition to, existing means to initiate government action on subjects that are appropriate for collective bargaining under this Article.

33-148. Definitions.

The following terms have the meaning indicated when used in this Article:

(1) **Agency shop** means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement must not require an employee to pay initiation fees, assessments, fines, or any similar collections as a condition of continued employment. A

collective bargaining agreement must not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the collective bargaining agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, with provision for dispute resolution if there is not agreement, and to give to the employer and the certified representative written proof of this payment. The certified representative must adhere at all times to all federal constitutional requirements in its administration of any agency shop system maintained by it.

(2) **Certified representative** means an employee organization chosen to represent the unit as the exclusive bargaining agent in accordance with this Article or Article VII.

(3) **Collective bargaining** means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this Article. This Article does not compel either party to agree to a proposal or make a concession.

(4) **Employee** means any fire and rescue employee in the classification of Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not any employee:

(A) in a probationary status, or

(B) in the classification of Fire/Rescue [[Sergeant]] Lieutenant or any equivalent or higher classification.

(5) **Employee organization** means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining. [[The organization must not admit to membership any person other than fire and rescue service personnel.]]

(6) **Employer** means the County Executive and the Executive's designee.

(7) **Lockout** means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) **Mediation** means an effort by an impasse neutral chosen under this Article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) **Strike** means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of these acts are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations

of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) **Unit** means all employees, as defined in this Section, who are associated with fire suppression, fire protection, fire communications, fire service training, rescue, and emergency medical services, and whose duties include the rescue and safety of individuals and the preservation of structures and physical property.

33-149. Labor Relations Administrator.

(a) A Labor Relations Administrator must be appointed to effectively administer this Article as it governs selection, certification and decertification procedures[[,]] and prohibited practices[[, and the choice of an impasse neutral]]. The Administrator must:

(1) periodically adopt, amend, and repeal, under method (1), regulations and procedures to carry out the Administrator's duties under this Article;

(2) request from the **employer** or **employee organization**, and the **employer** or **employee organization** may at its discretion provide, any relevant assistance, service, and data that will enable the Administrator to properly carry out duties under this Article;

(3) hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) conduct elections to certify or decertify an **employee organization** under this Article, and issue the certification or decertification;

(5) investigate and attempt to resolve or settle, as provided in this Article, charges of engaging in prohibited practices, but the Administrator must defer to the parties' grievance procedure if:

(A) the **employer** and the **certified representative** have negotiated a valid grievance procedure to resolve disputes, and

(B) deferral to the grievance procedure would not result in the application of principles repugnant to this Article;

(6) determine whether a person is properly included in or excluded from the **unit**;

(7) obtain any necessary support services and make necessary expenditures in the performance of duties to the extent the County has appropriated funds for these purposes; and

(8) exercise any other powers and perform any other duties and functions specified in this Article.

(b) The Labor Relations Administrator must be a person with experience as a neutral in labor relations, and must not be a person who, because of vocation, employment, or affiliation, can be classed as a representative of the interest of the **employer** or any **employee organization**.

(c) The County Executive must appoint the Labor Relations Administrator from a list of 5 nominees agreed on by the **certified representative** and the Chief Administrative Officer. The County

Council must confirm the appointment. If there is no **certified representative**, the County Executive must appoint an Administrator, with the confirmation of the County Council. If the County Council does not confirm an appointment, the County Executive must appoint another person from a new agreed list of 5 nominees and submit that appointee to the County Council for confirmation. The Administrator serves a term of 5 years. An incumbent Administrator is automatically reappointed for another 5-year term unless, during the period between 60 and 30 days before the term expires, the **certified representative** notifies the **employer** or the **employer** notifies the **certified representative** that it objects to the reappointment.

(d) The Labor Relations Administrator must be paid a daily fee as specified by contract with the County, and must be reimbursed for necessary expenses incurred in performing the duties of Administrator.

33-150. Employee rights.

(a) **Employees** have the right to:

(1) form, join, support, contribute to, or participate in, or refrain from forming, joining, supporting, contributing to, or participating in, any **employee organization** or its lawful activities; and

(2) be represented fairly by their **certified representative**, if any.

(b) The **employer** must extend to the **certified representative** the exclusive right to represent the **employees** for the purposes of **collective bargaining**, including the orderly processing and settlement of grievances as agreed by the parties under this Article.

(c) A **certified representative** serves as the exclusive bargaining agent for all **employees** in the **unit** and must represent fairly and without discrimination all **employees** in the **unit** without regard to whether the **employees** are members of the **employee organization**, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a **certified representative** to seek enforcement of an **agency shop** provision in a valid **collective bargaining** agreement.

(d) The right of a **certified representative** to receive voluntary dues or service fee deductions or **agency shop** provisions must be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this Article. Other than an **agency shop** provision, a **collective bargaining** agreement must not require membership in, participation in the affairs of, or contributions to an **employee organization**.

33-151. Selection, certification, and decertification procedures.

(a) Any **employee organization** seeking certification as representative of the **unit** must file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The **employee organization** must also send a copy of the petition, including a copy of the signatures of the supporting **employees** on the petition, to the **employer**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, signifying their desire to be represented by the **employee organization** for purposes of **collective bargaining**.

(b) If an **employee organization** has been certified, an **employee** in the **unit** may file a petition with the Administrator to decertify the **certified representative**. The **employee** must also send a copy of the petition to the **employer** and the **certified representative**, not including the names of the supporting **employees**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, alleging that the certified **employee organization** is no longer the choice of the majority of the **employees** in the **unit**.

(c) If a lawful **collective bargaining** agreement is not in effect, a petition may be filed under this Section in September of any year, but not sooner than 22 months after an election held under this Section.

(d) If a lawful **collective bargaining** agreement is in effect, a petition filed under this Section must not be entertained unless it is filed during September of the final year of the agreement.

(e) If the Administrator finds that a petition is properly supported and timely filed, the Administrator must hold an election of all eligible **employees** within a reasonable time, but no later than the next October 20, to determine if and by whom the **employees** wish to be represented.

(1) The election must be supervised by the Administrator and must be conducted by secret ballot at the time and place that the Administrator directs. The Administrator may retain the services of a State agency responsible for conducting labor elections, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots must contain, as choices to be made by the voter, the name of each petitioning or certified **employee organization**, the name of any other **employee organization** showing written proof at least 10 days before the election of at least 10 percent representation of the **employees** in the **unit** in the same manner as described in paragraph (a), and a choice that the **employee** does not desire to be represented by any of the named **employee organizations**.

(3) The **employer** and each party to the election may be represented by observers selected under conditions that the Administrator prescribes.

(4) Observers selected under paragraph (3) may challenge for good cause the eligibility of any person to vote in the election. All challenged ballots must be impounded until either the parties agree on the validity of each challenge or the Administrator decides the validity of each challenge. However, if the number of challenges will not determine the outcome of the election, the challenged ballots must be destroyed.

(5) After the polls have been closed, the Administrator must count all valid ballots cast in the presence of the observers.

(6) The Administrator must immediately prepare and serve on the **employer** and each party a report certifying the results of the election. If an **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must certify that **organization** as the exclusive agent.

(7) If no **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must not certify a representative. Unless a majority of the **employees** who vote choose ``no representative,'' a runoff election must be conducted. The runoff election must contain the 2 choices that received the largest and second largest number of votes in the original election.

(f) The Administrator's certification of results is final unless, within 7 days after service of the report and the certification, any party serves on all other parties and files with the Administrator objections to the election. All objections must be verified and contain a concise statement of facts constituting the grounds for each objection. The Administrator must investigate all objections and, if substantial factual issues exist, must hold a hearing. Otherwise, the Administrator may decide the matter without a hearing. The Administrator may invite, either by rule or by invitation, written or oral argument to assist in deciding the merits of the objections. If the Administrator finds that the election was conducted in substantial conformity with this Article, the Administrator must confirm the certification initially issued. If the Administrator finds that the election was not held in substantial conformity with this Article, then the Administrator must hold another election under this Section.

(g) The County must pay the cost of conducting each election.

33-152. Collective bargaining.

(a) **Duty to bargain; matters subject to bargaining.** When an **employee organization** is certified, the **employer** and the **certified representative** must bargain collectively with respect to:

(1) salary and wages, including the percentage of the increase in the salary and wages budget that is devoted to merit increments and cash awards, but salaries and wages must be uniform for all **employees** in the same classification;

(2) pension and other retirement benefits for active **employees** only;

(3) **employee** benefits such as, but not limited to, insurance, leave, holidays, and vacations;

(4) hours and working conditions;

(5) procedures for the orderly processing and settlement of grievances concerning the interpretation and implementation of any **collective bargaining** agreement, which may include:

(A) binding third party arbitration, but the arbitrator has no authority to amend, add to, or subtract from any provision of the **collective bargaining** agreement; and

(B) provisions for exclusivity of forum;

(6) matters affecting the health and safety of **employees**; and

(7) amelioration of the effect on **employees** when the exercise of **employer** rights listed in subsection (b) causes a loss of existing jobs in the **unit**.

(b) **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.

(d) The public **employer** rights specified in this Section must be incorporated by reference in every agreement reached between the **employer** and the **employee organization**.

33-153. Bargaining, impasse, and legislative procedures.

(a) **Collective bargaining** must begin no later than the November 1 before the beginning of a fiscal year for which there is no agreement between the **employer** and the **certified representative**, and must be completed on or before January 15. The resolution of a bargaining impasse must be completed by February 1. These time limits may be waived or extended by written agreement of the parties.

(b) Any provision for automatic renewal or extension of a **collective bargaining** agreement is void. An agreement is void if it extends for less than 1 year or more than 3 years. Each **collective bargaining** agreement must take effect July 1 and end June 30.

(c) A **collective bargaining** agreement takes effect only after ratification by the **employer** and the **certified representative**. The **certified representative** may adopt its own ratification procedures.

(d) Before November 10 of any year in which the **employer** and the **certified representative** bargain collectively, they must choose an impasse neutral, either by agreement or through the processes of the American Arbitration Association. The impasse neutral must be available from January 15 to February 1. The impasse neutral's fees and expenses must be shared equally by the **employer** and the **certified representative**.

(e) During the course of **collective bargaining**, either party may declare an impasse and request the services of the impasse neutral, or the

parties may jointly request those services before declaring an impasse. If the parties have not agreed on a **collective bargaining** agreement by January 15, an impasse exists by operation of law.

(f) When an impasse is reached, the parties must submit the dispute to the impasse neutral. The impasse neutral must attempt **mediation** by bringing the parties together voluntarily under conditions that will tend to bring about a settlement of the dispute.

(g) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral must require the parties to jointly submit all items previously agreed on, and each party to submit a final offer consisting of proposals not agreed upon. Neither party may change any proposal after it is submitted to the impasse neutral as a final offer, except to withdraw a proposal on which the parties have agreed.

(h) The impasse neutral may require the parties to submit evidence or present oral or written arguments in support of their proposals. The impasse neutral may hold a hearing at a time, date, and place selected by the impasse neutral. The hearing must not be open to the public.

(i) On or before February 1, unless that date is extended by written agreement of the parties, the impasse neutral must select the final offer that, as a whole, the impasse neutral judges to be the more reasonable. In determining which final offer is the more reasonable, the impasse neutral may consider only the following factors:

(1) past **collective bargaining** agreements between the parties, including the past bargaining history that led to the agreements,

or the pre-**collective bargaining** history of **employee** wages, hours, benefits, and working conditions;

(2) wages, hours, benefits and conditions of employment of similar **employees** of other public employers in the Washington Metropolitan Area and in Maryland;

(3) wages, hours, benefits, and conditions of employment of other Montgomery County employees;

(4) wages, benefits, hours, and other working conditions of similar **employees** of private employers in Montgomery County;

(5) the interest and welfare of the public; and

(6) the ability of the **employer** to finance economic adjustments, and the effect of those adjustments on the normal standard of public services provided by the **employer**.

(j) The impasse neutral must base the selection of the most reasonable offer on the contents of the offer and the integration of any previously agreed-on items with the disputed items. In making a decision, the impasse neutral must not consider or receive any evidence or argument concerning offers of settlement not contained in the offers submitted to the impasse neutral, or any other information concerning the **collective bargaining** leading to impasse. The impasse neutral must neither compromise nor alter the final offer that he or she selects.

(k) The final offer selected by the impasse neutral, integrated with any items previously agreed on, is the final agreement between the parties, need not be ratified by any party, and has the force and effect

of an agreement voluntarily entered into and ratified under subsection (c). The parties must execute that agreement.

(l) The annual operating budget which the **employer** submits to the County Council must include sufficient funds to pay for the items in the parties' final agreement. [[Either or both parties]] The **employer** must expressly identify to the Council all terms and conditions in the agreement that:

(1) require an appropriation of funds, or

(2) are inconsistent with any County law or regulation, or

(3) require the enactment[[, repeal, or modification]] or adoption of any County law or regulation, or

(4) which have or may have a present or future fiscal impact.

The **employer** must make a good faith effort to have the Council take action to implement all terms and conditions in the parties' final agreement.

(m) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

(n) The Council may accept or reject all or part of any term or condition in the agreement which:

(1) requires an appropriation of funds, or

(2) is inconsistent with any County law or regulation, or

(3) requires the enactment[[, repeal, or modification]] or adoption of any County law or regulation, or

(4) which has or may have a present or future fiscal impact.

On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the

agreement or its intention not to do so, and must state its reasons for any intention to reject any part of the parties' final agreement.

(o) If the Council indicates its intention to reject any part of the parties' final agreement, it must select a representative to meet with the parties and present the Council's views in the parties' further negotiation on matters that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so.

(p) Any agreement must provide for automatic reduction or elimination of wage or benefits adjustments if:

(1) the Council does not take action necessary to implement the agreement or a part of it; or

(2) sufficient funds are not appropriated for any fiscal year when the agreement is in effect.

33-154. Prohibited practices.

(a) The **employer** and its agents or representatives must not:

(1) interfere with, restrain, or coerce **employees** in the exercise of any rights granted to them under this Article;

(2) dominate or interfere with the formation or administration of any **employee organization** or contribute financial or other support to it, under an agreement or otherwise, but the **employer** and **certified representative** may agree to and apply an **agency shop** provision under this Article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of County facilities to communicate with **employees**;

(3) encourage or discourage membership in any **employee organization** by discriminating in hiring, tenure, wages, hours, or conditions of employment, but this Article does not preclude an agreement from containing an **agency shop** provision;

(4) discharge or discriminate against a public **employee** because the **employee** files charges, gives testimony, or otherwise lawfully aids in administering this Article;

(5) refuse to bargain collectively with the **certified representative**;

(6) refuse to reduce to writing or sign a **collective bargaining** agreement that has been agreed to in all respects;

(7) refuse to process or arbitrate a grievance if required under a grievance procedure contained in a **collective bargaining** agreement;

(8) directly or indirectly oppose the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached under this Article; or

(9) engage in a **lockout** of **employees.**

(b) **Employee organizations** and their agents, representatives, and persons who work for them, must not:

(1) interfere with, restrain, or coerce the **employer** or any **employee** in the exercise of any rights granted under this Article;

(2) restrain, coerce, or interfere with the **employer** in the selection of its representative for **collective bargaining** or the adjustment of grievances;

(3) refuse to bargain collectively with the **employer** if the **employee organization** is the **certified representative**;

(4) refuse to reduce to writing or sign a **collective bargaining** agreement which has been agreed to in all respects;

(5) hinder or prevent, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstruct or otherwise unlawfully interfere with the entrance to or exit from any place of employment, or obstruct or unlawfully interfere with any person's free and uninterrupted use of any road, railway, airport, or other mode of travel;

(6) hinder or prevent by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the **employer**;

(7) take or retain unauthorized possession of property of the **employer**, or refuse to do work or use certain goods or materials as lawfully required by the **employer**; or

(8) cause or attempt to cause the **employer** to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed nor to be performed.

(c) A charge of prohibited practice may be filed by the **employer**, an **employee organization**, or any individual **employee**. Each charge must be filed with the Labor Relations Administrator, and a copy must be sent to any person who allegedly committed a prohibited practice. Each charge must state facts sufficient to allow the Administrator to investigate the charge. The Administrator may request withdrawal of and, if necessary, summarily dismiss any charge which is insufficiently supported in fact or law to warrant a hearing.

(d) The Administrator may independently investigate any charge and may adopt rules for an independent investigation. If, after investigating, the Administrator finds that a charge is sufficiently supported to raise an issue of fact or law and is unable to settle or resolve the matter, the Administrator must hold a hearing on the charge after notifying the parties. In any hearing, the charging party must present evidence in support of the charges; and the party or parties charged may file an answer, appear in person or otherwise, and present evidence in defense against the charges.

(e) If the Administrator finds that the person charged has committed a prohibited practice, the Administrator must file findings of fact and conclusions of law, may order the person charged to cease and desist from the prohibited practice, and may take affirmative actions to

remedy any violation of this Article. Remedies available under this subsection include reinstating **employees** with or without back pay, making **employees** whole for any loss relating to County employment suffered as a result of any prohibited practice, or withdrawing or suspending an **employee organization's** authority to negotiate or continue an **agency shop** provision or a voluntary dues or service fee deduction provision. If the Administrator finds that the party charged has not committed a prohibited practice, the Administrator must file findings of fact and conclusions of law and dismiss the charges.

(f) The Administrator must summarily dismiss any charge based on an [[action which allegedly]] alleged prohibited practice which occurred more than 6 months before the charge was filed.

(g) Any party aggrieved by a final decision of the Administrator under this Section may appeal the decision to the Circuit Court for Montgomery County in accordance with the court rules governing administrative appeals. The court may affirm, reverse, or modify the decision, or remand the case for further proceedings. The filing of an appeal does not stay the Administrator's order. Any party to the proceeding in the Circuit Court may appeal the Court's decision under applicable provisions of state law and court rules.

33-155. Expression of views.

(a) Expressing or disseminating any views, argument, or opinion, orally, in writing, or otherwise:

(1) is not a prohibited practice or evidence of a prohibited practice under this Article; and

(2) is not grounds to invalidate any election conducted under this Article;

unless the expression or dissemination contains a threat of reprisal or promise of benefit.

(b) Recognizing an **employee organization** does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of those associations or particularly apply to those associations or their members.

33-156. Strikes and lockouts.

(a) An **employee** or **employee organization** must not either directly or indirectly cause, instigate, encourage, condone, or engage in any **strike**, nor the **employer** any **lockout**. An **employee** or **employee organization** must not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a **strike**.

(b) The **employer** must not pay, reimburse, make whole, or otherwise compensate any **employee** for or during the period when that **employee** is directly or indirectly engaged in a **strike**. The **employer** must not compensate an **employee** who struck for wages or benefits lost during a **strike**.

(c) If an **employee** or **employee organization** violates this Section, and after adequate notice and a fair hearing the Labor Relations Administrator finds that the violations have occurred and that any or all of the following sanctions are necessary in the public interest, the **employer** may:

(1) discipline, or dismiss from employment, any **employee** who engaged in the conduct;

(2) terminate or suspend an **employee organization's** dues deduction privilege, if any; or

(3) revoke the certification of and disqualify the **employee organization** from participation in representation elections for a period up to a maximum of 2 years.

(d) This Article does not prohibit an **employer** or a certified **employee organization** from seeking any remedy available in a court with jurisdiction.

33-157. Effect of prior laws and regulations.

(a) This Article [[does not supersede]] supersedes any law, executive order, rule, or regulation adopted by the County or any County department or agency which is [[not]] inconsistent with this Article.

(b) Any executive order, rule, or regulation of the County or any County department or agency which regulates any subject that is bargainable under this Article is not superseded or modified by a **collective bargaining** agreement negotiated under this Article, except to the extent that the application of the order, rule, or regulation is inconsistent with the **collective bargaining** agreement.

(c) However, if the inconsistent order, rule, or regulation is subject to and has received County Council approval, a **collective bargaining** agreement does not supersede or modify it unless:

(1) the order, rule, or regulation was expressly identified to the Council by the parties before the Council reviewed the **collective bargaining** agreement, as required by Section 33-

153(l)[[;]], and the Council did not reject the inconsistent term or condition of the collective bargaining agreement under Section 33-153(n); or

(2) the Council [[expressly indicates its intent to repeal or modify]] repeals or modifies the order, rule, or regulation.

Sec. 2. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

Approved:

Gail H. Ewing, President, County Council — July 24, 1996 Date

Approved:

Douglas M. Duncan, County Executive — August 1, 1996 Date

This is a correct copy of Council action.

Elda Dodson, Acting Secretary of the Council — August 2, 1996 Date

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intentionally blank.

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

MANAGEMENT AND FISCAL POLICY COMMITTEE

Monday, November 29, 1999
9:22 A.M. to 11:35 A.M.
Council Hearing Room

PRESENT

Marilyn J. Praisner, Chair

Phil Andrews

Betty Ann Krahnke

SUBJECT: **Franchise Agreement for Telecommunications System in Public Right-of-Way – KMC Telecom III. Inc.**

ACTION: Reviewed with Mr. Karp, KMC Telecom III, Inc, the language concerning in-kind compensation proposed to be incorporated in the subject franchise agreement, and recommended approval of additional language stating that KMC will provide two dark fiber optic strands throughout its telecommunications system for use by the County, and if the telecommunications system includes a cable or cables containing a total of more than 72 fiber optic strands for more than 50 percent of the length of the telecommunications system, KMC will make available to the County two additional dark fiber optic strands throughout the system where the total fiber optic strands exceeds 72. The language will also indicate that if KMC's obligation to provide two additional strands is activated, the obligation to provide a total of four strands will continue even if the system later falls below the activating circumstances.

Recommended approval of the KMC franchise agreement as revised.

Councilmember Andrews, lead Councilmember for Personnel, in the Chair.

SUBJECT: Bill 26-99, Collective Bargaining – Amendments

The Committee considered the memorandum and attachments from Senior Legislative Attorney Faden, dated November 29, 1999.

ACTION: Discussed legal issues and the retention of the County's budget authority as they relate to binding arbitration, including comments made by former Councilmember Hanna in 1984 concerning binding arbitration (page 8 of the Council meeting minutes of July 26, 1984, included in the Committee packet on page ©51).

Received a request from Councilmember Praisner for legal cases involving binding arbitration and a copy of the legislation enacted by Prince George's County on the subject.

Discussed the hybrid nature of the subject bill which provides that the economic issues would be decided on a last best offer total package basis and the arbitrator could decide each non-economic issue separately and would not be limited to the parties' offers, with Councilmember Praisner questioning who defines "economic" and "non-economic" issues, Mr. Faden expressing the view that the arbitrator defines these terms, Mr. Torgeson, Office of Human Resources (OHR), expressing the view that the Council would not be bound by the arbitrator's definitions of these terms, and Ms. Perez, Director, OHR, expressing the view that the matter should be clearly defined in the law to avoid ambiguity.

Received comments from Councilmember Praisner against the arbitrator defining "economic" and "non-economic" issues; from Councilmember Krahnke in support of the way these issues are defined in the law; and from Councilmember Andrews in support of the arbitrator making the determination.

Discussion continued concerning the determination of issues under binding arbitration, with the Committee agreeing to defer making a decision on this issue at the request of Ms. Perez who stated that she believes there is a need for management and union representatives to meet again on this issue and report back to the Committee.

Noted the amendments suggested by Montgomery County Government Employees' Organization/Local 400 (MCGEO) to the definitions of employees included in the collective bargaining units; agreed to recommend that the scope of the bargaining unit not be addressed in the subject legislation; and noted that Councilmember Subin plans to introduce separate legislation soon to expand the bargaining unit along the lines suggested by the MCGEO, with Mr. Thompson, attorney for the firm of Zwerdling, Paul, Leibig, Kahn, Thompson and Woly, and General Counsel for MCGEO, noting that on page ©38 of the Committee packet the brackets should be removed from §33-102(4)(P) and the term "lieutenant" should be double underscored.

Recommended that the deadline for the arbitrator's award be February 15, as recommended by the County Executive.

Discussed the Executive Branch proposal to amend the bill to allow the arbitrator to consider private sector wages and benefits in the entire Washington metropolitan area and the State, rather than only the County, with Councilmember Krahnke agreeing with the proposed amendment, and the Committee agreeing to defer a decision to provide for further discussion of the issue among the parties.

Discussed the Executive Branch proposal to amend the bill to direct the arbitrator to not diminish or condition management rights in determining whether a collective bargaining item is negotiable (page ©24-25 of the Committee packet), and the viewpoint of Mr. Thompson that the amendment is not necessary due to language in the existing law, §33-107(b) that reads: "Employer rights. This article and any agreement made under it shall not impair the right and responsibility of the employer to perform the following ..." (page ©35 of the Committee packet), with Councilmember Andrews expressing the view that proposed changes to current management rights should not be addressed in the subject legislation, and Councilmember Krahnke indicating her support for the Executive Branch proposal. Expressed no objection to Councilmember Praisner's suggestion that the issue be deferred to provide Executive Branch to respond to Mr. Thompson's belief that the language in the existing law is sufficient.

Discussed the advantages and disadvantages of the Executive Branch proposal to lengthen the maximum term of a collective bargaining agreement with MCGEO from three to five years; and agreed to defer a decision on the matter to obtain information on the experience of other jurisdictions on the issue.

Agreed to schedule another Committee meeting on Bill 26-99.

SUBJECT: Employees' Code of Ethics

The Committee considered the memorandum and attachments from Mr. Faden, dated November 24, 1999.

ACTION: Agreed to solicit comments from interested parties before discussing the subject issue, and instructed Council Staff to circulate the Committee packet, the Code of Ethics of the National Association of Counties (NACO), a research brief prepared by NACO on the creation of a County Code of Ethics, the City of Baltimore's Code of Ethics, and any additional material on the subject that Council Staff believes will be beneficial. Requested that comments be solicited from the Ethics Commission Task Force of the Montgomery County Civic Federation, the County Ethics Commission, the League of Women Voters, and Common Cause; and instructed staff to include a cover letter explaining that the Montgomery County Civic Federation is suggesting that the County approve a "Code of Conduct for County Government Service," and that the Committee would welcome any comments on the matter.

SUBJECT: Status Report on the Strategic Facilities Plan for County Organizations in the Rockville core area

The Committee had before it the memorandum from Legislative Analyst Sherer, dated November 22, 1999.

ACTION: Received a briefing from Mr. Mooney and Mr. White, Department of Facilities and Services; and Mr. Gibbs, the Vitetta Group.

Suggested that the Management Group consider space needs, technology, sharing of support functions, co-location for more efficiency; the needs of employees for various services such as day care, respite care, Automated Teller Machines (ATM), banking services, and dry cleaning should be considered and coordinated with the City of Rockville; and that the Courts and the City should be involved in the study.

Questioned the County Executive's intent to consider separating the Directors of various departments from the rest of the staff in the department.

Noted that the Ethics Commission was not on the survey form the Council filled out, and directed Council staff to report to the Committee on why the Board of Education has not yet transferred to the County the closed school at 401 Fleet Street.

SUBJECT: **Juvenile Assessment Center**

ACTION: Received a briefing from Dr. Luongo, Department of Health and Human Services Juvenile Justice Coordinator, on the planning for a Juvenile Assessment Center, including the work accomplished by an interagency group to determine what services could be co-located immediately to improve the juvenile justice system; and the recommendation of the work group that the long-term plan be for a Juvenile Justice Center that includes a full Circuit Court Family Division (including the Juvenile Division now in the District Court.)

Expressed support for the Juvenile Assessment Center and long-term plan; and expressed the desire to receive the co-location proposal as soon as possible, with Dr. Luongo advising that the work group determined the services can be accommodated at the 401 Fleet Street facility,

Received comments from Councilmember Praisner's that the previous agenda item, the update on the Rockville Core Plan, indicates that the Board of Education still owns 401 Fleet Street which may be against County policy. Requested staff to research this issue. Councilmember Andrews asked if there was a back-up site to 401 Fleet Street and was told there was not and a search would have to undertaken. Councilmember Krahnke's asked if mental health evaluation would be a part of the assessment center services and if the assessment would look for signs of domestic violence. Dr. Luongo responded that mental health assessment would take place and that research is showing more and more the relationship between domestic violence and juvenile delinquency.

Received comments of support for the proposed immediate co-location from Lt. Delany, Youth Services Investigation Division, Montgomery County Police Department; Ms. Harris, Circuit Court Administrator; and Mr. Fiedler, Maryland Department of Juvenile Justice.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Charles H. Sherer, Legislative Analyst,
Linda McMillan, Legislative Analyst, and
Mary A. Edgar

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

EDUCATION COMMITTEE

Monday, November 29, 1999
2:07 P.M. to 3:15 P.M.
Council Hearing Room

PRESENT

Michael L. Subin, Chair

Nancy Dacek

Isiah Leggett

SUBJECT: FY 01 State Funding Request for School Construction

The Committee had before it the memorandum from Legislative Analyst Levchenko, attaching a draft resolution and joint letter, dated November 24, 1999.

ACTION: Discussed the Board of Education's revised request for 59.1 million in school construction funding for FY 01, and noted that approximately $29 million of the request is contingent upon proposed changes in eligibility requirements. Mr. Hawes, Director of Facilities Management, and Mr. Lavorgna, Director of Planning and Capital Programming, Montgomery County Public Schools (MCPS), described the changes the Board of Education is requesting in the eligibility criteria. These changes include increasing the allowable cost per square foot for construction in FY 01 by 12.5 percent and increasing the allowable square footage per student by 20 percent. Council Staff also noted that the FY 01 request also included $3.974 million related to cost increases for modernizations going to construction in FY 00, and that the increased costs are the subject of an emergency appropriation request before the Committee.

Discussed the draft joint State aid letter, and recommended amending the letter by adding language to clarify that Montgomery County supports State wide increases in school construction funding so that the needs of all jurisdictions can be met. Councilmember Dacek suggested adding language to note that nationwide trends as well as state wide initiatives are resulting in additional square foot requirements per student.

Recommended approval of the resolution as drafted by Council Staff consistent with the Board of Education's request.

SUBJECT: **Emergency Appropriation to the FY 00 Capital Budget and Amendment to the FY 99-04 Capital Improvements Program (CIP) for MCPS in the Amount of $10.5 million for Current Replacements/Modernizations (No. 926575)**

The Committee had before it the memorandum from Mr. Levchenko, dated November 24, 1999.

ACTION: Discussed the request for an emergency appropriation, and noted that the emergency requests are not an ideal way to allocate resources, but that in this case the scope and timing of the project were not requested to change. The emergency appropriation is needed to cover construction cost increases that would otherwise require the deferral of the Wood Middle School modernization.

Recommended modifying the expenditure and funding schedule as proposed by Council Staff in order to more accurately reflect expenditures, be consistent with the FY01 State aid request previously recommended by the Committee, and stay within approved Spending Affordability Guidelines (SAG) for bond-funded expenditures. Noted that future supplemental requests should be considered on a case-by-case basis with regard to SAG.

Recommended approval of the emergency appropriation, as amended.

SUBJECT: **Update – Print Shop Consolidation**

The Committee had before it the memorandum and attachments from Senior Legislative Analyst Hughes, dated November 23, 1999.

ACTION: Received a briefing from Mr. Edwards, and Mr. Jenkins, Department of Facilities Services (DFS) and Ms. Woods and Ms. Marks, MCPS, regarding the status of the effort to consolidate the Montgomery County Government and the MCPS print shops. Mr. Jenkins discussed how the Memorandum of Understanding (MOU) is the product of intense negotiations and the problems associated with pick up and delivery.

Noted that under the MOU, DFS and MCPS Staff will meet in six months to assess the status of consolidation and determine whether the goals set by the Council are being associated.

Recommended that the MOU be amended to indicate that if a Montgomery County Government Printer II position was permanently vacated than any Printer I employee would have an opportunity for advancement, rather than only MCPS employees.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Keith Levchenko, Legislative Analyst
Jennifer A. Hughes, Senior Legislative Analyst

Minutes edited by: Elda Dodson, Deputy Clerk

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

HEALTH AND HUMAN SERVICES COMMITTEE

AND

EDUCATION COMMITTEE

Monday, November 29, 1999
2:15 P.M. to 3:00 P.M.
Council Hearing Room

Health and Human Services Committee

PRESENT

Blair G. Ewing, Chair

Marilyn J. Praisner

Steven A. Silverman

Education Committee

PRESENT

Michael L. Subin, Chair

Nancy Dacek

Isiah Leggett

SUBJECT: **Briefing: Early Childhood Initiatives**

ACTION: Received a briefing from Ms. Byrne, Co-Chair of the Early Childhood Committee of the Collaboration Council for Children, Youth, and Families and Director, Family Services at Crossway Community. Discussed issues relating to building a system of services for children and families which is easy to access and involves all stakeholders in the planning process; and the expanded November 8 meeting held by the Early Childhood Committee to develop a conceptual system of care and identify the gaps and duplication of services.

Received a briefing from Ms. Prue, Co-Chair of the Early Childhood Committee of the Collaboration Council for Children, Youth, and Families, and Director, Early Childhood Services, Montgomery County Public Schools. Discussed the next steps and follow-up to the November 8 meeting, noting that these steps are in the early stages, and that a subgroup of participants will reconvene to examine early childhood initiatives already underway and determine where the infrastructures can align for better coordination.

Noted Councilmember Praisner's comment that there is overlap between committees looking at similar issues, that improved program coordination and service delivery must remain the focus, and that a consultant should be hired to complete the information and data system tasks so that committees can focus on programs and move that work forward.

Noted Councilmembers concern regarding the timeline for completing the work of the Committees addressing children's issues, and emphasized the need to work with the network of the private sector in developing services and programs.

Noted Councilmember Ewing's comment that Ms. Rogan, Manager, Accountability and Customer Services, DHHS, briefed the Committees on the status of the Interagency Data Committee, and estimated that a complete system would take approximately two to three years to build.

Requested information about hiring a consultant to take an inventory of existing programs, identify who would be served, and develop an information system of data about both clients being served and those in need of services. Noted that Council Staff and the Early Childhood Committee Co-Chairs will follow up on the request.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Essie McGuire, Council Analyst
Edited by: Elda Dodson, Deputy Clerk

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

MANAGEMENT AND FISCAL POLICY COMMITTEE

Thursday, February 24, 2000
2:06 P.M. to 4:30 P.M.
Council Hearing Room

PRESENT

Marilyn J. Praisner, Chair

Phil Andrews Betty Ann Krahnke

ADDITIONAL COUNCILMEMBER PRESENT

Isiah Leggett

SUBJECT: **Bill 1-00, Inspector General – Extension**

The Committee had before it the memorandum and attachments from Senior Legislative Attorney Faden, dated February 24, 2000, and a memorandum from County Executive Duncan, dated February 23, 2000.

ACTION: Recommended approval of the following technical amendments:

Insert on page ©4 of the Committee's packet, at the end of the first sentence of § 2-151(g)(1), line 62, the following sentence: The term of each employee should be coterminous with the Inspector General's term unless the Inspector General specifies a different term when appointing the employee.

Insert the following language on page ©8 of the Committee's packet, line 156, and renumber current paragraph (3): (3) The Inspector General may administer an oath or affirmation or take an affidavit from any person as necessary to perform the Inspector General's duties.

Reviewed the proposed amendments contained in the County Executive's memorandum.

Recommended on page ©2 of the Committee packet, lines 10 and 11, the addition of the word and between the words "waste" and "abuse," and the deletion of the words [[and management]]; and on page ©8, in renumbered paragraph (4), the deletion of the following words: [[or other mismanagement]]. Councilmember Praisner noted that the term "mismanagement" is subsumed in the words "fraud, waste, and abuse" which precede the word "mismanagement in both instances."

Recommended approval of the changes to the term and qualifications of the Inspector General as contained in the bill on page ©3.

Reviewed the language on page ©4, lines 69-76, concerning legal services to be provided by the County Attorney and responsibilities of the County Attorney when the Inspector General requests special counsel.

In connection with lines 108-109 of the bill, discussed the intent of the Inspector General to uphold the objective of complying with applicable generally accepted government auditing standards. Recommended the deletion on page ©6, lines 108-109, of the words [[When appropriate, the Inspector General should comply with generally accepted government auditing standards.]] Agreed to add appropriate language in another section of the bill to indicate that the goal is to comply with applicable generally accepted government auditing standards.

On page ©6, after (k)(2), agreed to insert the following language: The Inspector General may keep any report or information gathered for use in any report confidential until the report is final. Requested that Mr. Faden revise the language as appropriate to make certain that it would apply to "work plan items" as well as reports.

In connection with the issues raised in the County Executive's memorandum concerning §(l)(1) of the bill, agreed on the need to pursue at a later date issues regarding the availability of personnel information to the Inspector General, and whether the concept of Executive privilege applies to the Inspector General.

Agreed with the language on page ©7 that gives the Inspector General authority to issue subpoenas and administer oaths.

Recommended approval of Bill 1-00, as amended. Councilmember Praisner supported an amendment to the bill to extend the sunset date of the Office of the Inspector General to 2005 rather than to repeal it as will occur under the bill as introduced.

Councilmember Andrews, lead Councilmember for Personnel, in the Chair.

SUBJECT: **Bill 26-99, Collective Bargaining - Amendments**

The Committee had before it the memorandum and attachments from Mr. Faden, dated February 24, 2000.

ACTION: Received comments from a representative of the Office of Human Resources (OHR) that representatives of the Municipal and County Government Employees Organization (MCGEO) and OHR believed that the hybrid approach to binding arbitration might be confusing and therefore, opted for the total package approach (the last best offer for the entire contract).

Received comments from Councilmember Krahnke in opposition to the last best offer approach because of the focus it places on economic issues, and comments from Councilmember Andrews on his preference for a hybrid approach because the focus would be on a wider range of issues.

Received comments from Mr. Renne, MCGEO, that the last best offer approach ensures that non-economic issues will be addressed before entering into mediation.

Recommended a two package last best offer approach in which the arbitrator would review an economic package and a non-economic package and select the more reasonable of each. Councilmember Andrews indicated his preference for the original hybrid approach.

Recommended that changes in the scope of the bargaining unit not be addressed in this bill.

Instructed staff to modify the definition of "economic" so that is not narrowly drawn but retains the language requiring the mediator/arbitrator to decide any issue regarding whether a particular proposal is economic or non-economic; and to provide Committee members the opportunity to review the definition before the bill is brought before the Council.

Recommended amending the bill to require an impasse to be declared by February 1 and the arbitrator's report by February 15 rather than as contained in existing law, January 15 and February 1, respectively.

Concurred with OHR and MCGEO not to amend the current law to allow the arbitrator to go beyond the County in considering private sector wages and benefits, or to direct the arbitrator to not diminish or condition management rights in determining whether a collective bargaining item is negotiable.

Recommended against Executive Branch Staff's recommendation to lengthen the maximum term of a collective bargaining agreement with MCGEO from three to five years. Councilmember Praisner indicated her preference for a four-year maximum term.

Recommended against Bill 26-99, but indicated if the Council is inclined to adopt it, the Committee amendments would offer a reasonable approach. Councilmember Andrews voted for a positive recommendation, indicating that he supports binding arbitration for County employees.

SUBJECT: **FY 01-06 Capital Improvements Program: General Government (Continued)**

The Committee had before it the memorandum from Legislative Analyst Sherer, dated February 17, 2000.

ACTION: Approved the total cost and funding for Glen Echo Park as was approved last year; added a statement to the position description form as follows: The County will reconsider the amount of County funding if the Federal or State governments do not contribute the amount of funding assumed in the Funding Schedule. This reconsideration will occur next year when the FY 00 and 01 actual Federal and State funding amount will be known, and can be used as a basis to better forecast State and Federal funding amounts for FY 02.

Reviewed the Moneysworth Farm House Reuse Project. Councilmember Andrews recommended approval of the FY 01 request of $734,000; Councilmember Praisner recommended approval of $441,000, the amount requested two years ago; and Councilmember Krahnke recommended that the project not be funded because of her opposition to the Correctional Facility.

Deferred a decision on the Rockville Parking project until the County has further information on the State's decisions regarding the new District Court, the Rockville Library, the Rockville Core study, and the justification for the number of additional parking spaces needed. Agreed to continue discussion of this project in April.

This is an accurate account of the meeting:

_____

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Charles H. Sherer, Legislative Analyst, and
Mary A. Edgar

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, March 7, 2000 Rockville, Md.

The County Council for Montgomery County, Maryland convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:05 A.M. on Tuesday, March 7, 2000.

PRESENT

Michael L. Subin, President	Blair G. Ewing, Vice President
Phil Andrews	Isiah Leggett
Nancy H. Dacek	Marilyn J. Praisner
Betty Ann Krahnke	Steven A. Silverman

ABSENT

Derick Berlage

The President in the Chair.

SUBJECT: Approval of Legislative Journal

ACTION: Approved the legislative journals of February 8 and 15, 2000, as amended.

The journals were approved by motion of Councilmember Praisner, without objection, Councilmember Berlage absent.

INTRODUCTION OF BILLS

SUBJECT: Bill 8-00. Streets and Roads – Ground Cover in Public Rights-of-Way

Councilmember Ewing, a sponsor of the legislation, stated that the bill would allow property owners to place alternative, conservation-promoting plants or other ground cover on their property in the public right-of-way. At present, residents are not allowed to grow anything in these strips of property except turf grass despite the lack of existing legislation or regulations concerning this matter. Mr. Ewing expressed the view that the bill represents a good environmental proposal.

Councilmember Praisner stated that she is sympathetic with the concerns that led to the legislation, but questions whether there are broader issues that need to be addressed such as how the right-of-way is defined and the possibility of addressing the issue through regulation rather than legislation. Ms. Praisner expressed the hope that the Council will examine this issue from a broader perspective rather than attempting to enact legislation for uses in rights-of-way.

Councilmember Dacek said that there are issues that need to be addressed such as the penalty for not applying the appropriate ground cover to rights-of-way and identifying the agency that would be responsible for enforcing the legislation. Ms. Dacek stated that she could not support the legislation as it is currently written.

President Subin said that if Councilmembers have questions concerning the bill, they should present them to the Council committee that will review the legislation.

ACTION: Introduced Draft 4 of the bill sponsored by Councilmembers Ewing and Krahnke.

SUBJECT: Bill 26-99, Collective Bargaining Amendments

Councilmember Andrews, lead Councilmember for Personnel, presented the report of the Management and Fiscal Policy (MFP) Committee, in accordance with the information contained in the memorandum from Senior Legislative Attorney Faden, dated March 7, 2000. He said that the Committee majority recommended against enactment of the bill and that the Committee majority indicated that if the Council enacts the bill the Committee amendments would offer a reasonable approach. Mr. Andrews said that he did not support the Committee's recommendation.

With respect to the type of binding arbitration, Councilmember Andrews stated that the Committee is recommending a two package approach, last best offer approach in which the arbitrator would review an economic package and a non-economic package and select the more reasonable of each. He said that in Committee, he voted against this approach, preferring instead the original "hybrid" approach: the economic issues would be decided on a last best offer total package basis. The arbitrator would decide which issues are economic and which are non-economic, could decide each non-economic item separately, and would not be bound by the parties' offers.

Councilmember Andrews moved, duly seconded, a substitute motion to amend the bill to substitute the last best offer total package approach for the two-package approach recommended by the Committee majority. He distributed to the Council a written amendment in this regard.

Councilmember Praisner discussed the Committee's review of the bill and explained the Committee majority's rationale for recommending "a two-package, last best offer approach," if the bill is enacted. She said that the majority of the Committee was concerned that without a separation of fiscal and non-fiscal issues, there would not be adequate consideration of the non-compensation issues as the arbitrators tended to focus on that one item. Furthermore the MCGEO bargaining unit, unlike police and fire, incorporated many different functions and positions which also argued for different consideration. She said that in Committee, Councilmember Andrews continued to support the hybrid approach, as originally proposed.

Councilmember Dacek commented on issues related to the types of binding arbitration, expressed concern about binding arbitration in general, and stated that she does not support the bill.

ACTION: Amended the bill to make the technical amendments recommended by Council Staff and incorporate Councilmember Andrews' amendment concerning the type of binding arbitration.

The amendments were approved by motion of Councilmember Andrews:

YEAS: Andrews, Leggett, Ewing, Subin, Silverman
NAYS: Dacek, Praisner, Krahnke
ABSENT: Berlage.

Adopted the following amendments as reflected in the bill:

AN ACT to:

(1) modify certain functions of the Labor Relations Administrator;
(2) revise the process for certifying employee organizations;
(3) revise the timetable for certain collective bargaining actions;
(4) require binding arbitration of certain collective bargaining agreements; and
(5) generally amend the law governing collective bargaining for certain County employees.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-103, 33-106, and 33-108

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:

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:

* * *

(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.

33-106. Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

* * *

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b) * * *

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

* * *

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

(a) Collective bargaining [shall] must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and [shall] must be finished on or before [January] February [[15]] 1. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]

(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 year or for more than 3 years. All agreements [become effective] take effect July 1 and end June 30.

(c) A collective bargaining agreement [becomes effective] takes effect only after ratification by the employer and [by] the certified representative. The certified representative may [provide] adopt its own [rules for] ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator [shall] must appoint a mediator/[fact-finder] arbitrator, who may be a person recommended [to her] by both parties. The mediator/[fact-finder] arbitrator [shall] must be available [during the period] from January 2 to [February 1] June 30. Fees and expenses of the mediator/[fact-finder] arbitrator [shall] must be shared equally by the employer and the certified representative.

(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 [[15]] 1, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) [[This]] Any dispute, except a dispute involving the negotiability of a bargaining proposal, [shall] must be submitted to the mediator/[fact-finder] arbitrator whenever an impasse has been reached, or [before that] as provided in subsection (e)(1). The mediator/[fact-finder] arbitrator [shall] must engage in mediation by bringing the parties together

voluntarily under such favorable circumstances as will [tend to bring about the] encourage settlement of the dispute.

(3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his] the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, [he shall implement the following fact-finding process:] or as of February [[15]] 1 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

(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 wage premiums or differentials, allowances, merit increments, and amounts allocated for cash awards), pension and other [[welfare]] retirement benefits, and employee benefits such as [[health]] insurance. The mediator/arbitrator must decide any issue regarding whether a particular proposal is economic or non-economic.]]

[(b.)] (2) [He] The mediator/arbitrator may require the parties to submit oral or written evidence [or make oral or written] and arguments in support of their proposals. [He] The mediator/arbitrator may hold a hearing for this purpose at a time, date, and place selected by [him] the mediator/arbitrator. This hearing [shall] must not be open to the public.

[(c.)] (3) [On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.]

On or before [[March 1]] February 15, the mediator/arbitrator must select, as a whole, the more reasonable of [[(A)]] the final [[economic]] offers submitted by the parties[[, and (B) the final non-economic offers 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 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.]]

[(d.)] (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:

[(i)] (A) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

[(ii)] (B) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland.

[(iii)](C) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

[(iv)] (D) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

[(v)] (E) The interest and welfare of the public.

[(vi)] (F) The ability of the employer to finance economic adjustments, and the effect of the adjustments [upon] on the normal standard of public services provided by the employer.

(5) The [[economic [[offer]] and non-economic offers]] offer selected by the mediator/arbitrator. [[together with the mediator/arbitrator's conclusion on each non-economic proposal,]] integrated with all previously agreed on

items. [[is]] [[comprise]] is the final agreement between the employer and the certified representative. need not be ratified by any party, and [[has]] [[have]] has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement. and any provision which requires action in the County budget must be included in the budget which the employer submits to the County Council.

[(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator-fact-finder, the report of the mediator-fact-finder, with recommendations on agreed items deleted, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.]

(g) The [[budget that the]] employer [[submits]] must submit to the Council [shall] [[must include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed]] any term or condition [[submitted to the Council]] of the collective bargaining agreement that requires an appropriation of funds, or the enactment[, repeal, or modification] or adoption of any County law or regulation, or which has or may have a present or future fiscal impact[[, may be accepted or rejected in whole or in part by the Council]]. [Such terms or conditions shall be identified to the Council by either

or both parties.] The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. The employer [shall] must make a good faith effort to have the Council [[take action to implement]] approve [any term or condition to which the parties have agreed] all terms of the final agreement that require Council review.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement [and the recommendations for resolving bargaining disputes].

(i) The Council may accept or reject all or part of any term or condition that requires Council review under subsection (g). On or before May 1, the Council [shall] must indicate by resolution its intention to appropriate funds for or otherwise implement the [items that have been agreed to] [[agreement]] items that require Council review or its intention not to do so, and [shall] must state its reasons for any intent to reject any [items of the kind specified in subsection (g) that have been agreed to] [[item of the final agreement]] such item. [The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]

(j) [Then] If the Council indicates its intention to reject any item [[of the final agreement]] that requires Council review, the Council [shall] must designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on [disputed matters and/or agreed upon] [[matters]] items that the Council has indicated its intention to reject. This representative

must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, [shall be submitted] to the Council on or before May 10. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement, or its intention not to do so.

(k) Any agreement [shall] must provide for automatic reduction or elimination of wage [and/]or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year [in which] when the agreement is in effect.

[(k)] (l) The Council [shall] must take [whatever actions it considers] any action required by the public interest with respect to [matters] any matter still in dispute between the parties. However, [those actions shall not be] any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate [them] it in the agreement.

Enacted Bill 26-99, as amended.

The bill was enacted as amended by a roll call vote:

YEAS: Andrews, Leggett, Ewing, Subin, Silverman
NAYS: Dacek, Praisner, Krahnke
ABSENT: Berlage.

SUBJECT: Emergency Bill 35-99, Rental Assistance Program

Councilmember Ewing, Chair, Health and Human Services Committee, presented the Committee report on Bill 35-99, in accordance with the memorandum from Senior Legislative Attorney Faden, dated March 7, 2000.

ACTION: Adopted the following amendments as reflected in the bill:

AN EMERGENCY ACT to:

(1) revise the law governing eligibility for and payment of Rental Assistance Program and Handicapped Rental Assistance Program benefits;
(2) repeal the Supplemental Rental Assistance program for families with dependent children;
(3) remove inconsistencies in the law governing the Rental Assistance Program, and make stylistic and technical changes; and
(4) generally amend the law governing rental assistance programs.

By amending

Montgomery County Code
Chapter 41A, Rental Assistance

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 41A is amended as follows:

ARTICLE I. RENTAL ASSISTANCE PROGRAM.

41A-1. Purpose of the Rental Assistance Program.

The purpose of this Article is to establish a [rental assistance program] Rental Assistance Program in the Department of Health and Human Services [that, when sufficient funds are appropriated, will provide grants that will] to assist eligible persons or households to pay the rent on dwelling units [which] that are appropriate to their needs. [It is the intent of the] The Council intends that the [rental assistance program] Rental Assistance Program be periodically modified by regulations adopted by the County Executive to meet changes in the level of appropriated funding, the anticipated number of households eligible [applicants] for [assistance] benefits, the current average costs of rental housing, and the extent to which available funding can provide a useful level of assistance to [grant] benefit recipients.

41A-2. Definitions.

In this Article, the following words have the meanings indicated:

(a) **Applicant** means a person, commonly the head-of-household, who applies for rental assistance on behalf of a household.

[(a)] (b)(1) **Asset** means any property or interest in property, including:

(A) cash;

(B) a time or demand deposit in a financial institution or money market fund;

(C) stock;

(D) a bond;

(E) a share in a mutual fund; [or]

(F) an interest in a trust; or

(G) real estate.

(2) Asset does not include:

(A) furniture and furnishings [used in the rental unit] used in the rental unit;

(B) clothing [used by a member of the family]; or

(C) one automobile for each member of the [family] household who is a licensed driver[, one automobile used only for personal transportation].

[(b)] (c)**Department** means the [Montgomery County] Department of Health and Human Services.

[(c)] (d) **Director** means the Director of the Department of Health and Human Services or the Director's designee.

[(d)] (e) **Disabled person** means any individual who:

(1) [Is receiving] receives disability benefits under the Social Security Act or the Railroad Retirement Act, or from a federal, state, or local government disability retirement system [of a municipal corporation, a county, a state, the federal government, or the District of Columbia]; or

(2) has a physical, mental, or emotional impairment that substantially limits one or more major life activities of the individual as the Department determines after the individual submits a statement of condition of disability from the individual's physician.

[(e)] (f) **Eligible household** means a household that:

(1) meets the standards of eligibility adopted in [[Executive]] regulations, and

(2) resides in an eligible rental unit.

[(f)] (g) **Eligible rental unit** means a rental unit in the County:

(1) that conforms to the standards adopted in [[Executive]] regulations; [,and]

(2) for which the household has a [written or oral lease or] rental agreement; and

(3) that maintains all licenses and permits as required by Chapter 29.

[(g)](h)(1) **Gross income** means the total household income from all sources, whether or not reported on a federal or state income tax return.

(2) **Gross income** does not include losses from business, rental, or capital transactions and certain third-party, educational, and restitution payments specified in [[Executive]] regulations.

[(h)] (i) **Household** means:

(1) two or more persons, whether or not related, who live together [as a single housekeeping unit] in an eligible rental unit[, sharing the costs of the rental unit and food];

(2) a disabled person; or

(3) a person 62 years of age or older.

All persons living in an eligible rental unit [are considered] must be treated as one household for the purposes of determining eligibility.

[(i)] (j) **Recipient** means a person who has applied for and been approved to receive a [grant] benefit under this Article. Each recipient must be at least 18 years old, a resident of the County, reside at the application rental unit, and be a member of the household.

[(j) (k) **Rental unit** means a [leased] unit occupied by not more than one household, which includes:

(1) a detached or attached [house] single family home or townhouse;

(2) an apartment in a multi-family facility;

(3) a condominium or cooperative unit in a multifamily facility;

(4) a rental mobile home in a licensed mobile home park, or a rented mobile home pad on which the applicant has placed a mobile home in a licensed mobile home park;

(5) a room or group of rooms in an attached or detached [house] single family home or townhouse, apartment, condominium or cooperative. [that is occupied by a household of 2 or more persons; and]

[(6) a room or groups of rooms leased to a disabled person or to a person 62 years of age or older.]

41A-3. Eligibility for [rental assistance] Rental Assistance Program benefits.

(a) A household is eligible [for rental assistance] to receive Rental Assistance Program benefits if the household meets the standards established in [[Executive]] regulations [adopted by the County Executive]. The standards of eligibility must consider, but are not limited to, the following elements:

(1) gross income limits for varying household sizes;

(2) the combined assets of the members of the household;

(3) appropriateness of the size of the rental unit for the number of persons in the household; and

(4) whether the actual rent paid exceeds a monthly rent limit for the size rental unit that has been set by regulation.

(b) Not more than one household in a rental unit may be approved for or receive [rental assistance payments] benefits under this Chapter during any month.

(c) A household is not eligible for [rental assistance] benefits under this Article if the [head of household] applicant is an undocumented [alien] resident. An undocumented resident applicant may receive benefits if [[children]] a child for whom the applicant receives Temporary Cash Assistance benefits [[reside]] resides in the household.

41A-4. Application for [rental assistance] benefits.

(a) Each applicant for [rental assistance] the Rental Assistance Program must submit, on a form provided by the Department, an application [which] that must contain all [the] information, documentation and certifications necessary to [ascertain] decide eligibility and [assistance] benefit levels.

(b) The [application must be signed by the applicant, and the] applicant must [also] sign the application and attest that the information provided is true and complete.

(c) Any household [which] that has received [rental assistance] Rental Assistance Program benefits [in the previous year] must reapply [and be approved for eligibility each year in order to continue to receive rental assistance] after each approval period expires to verify if the household continues to meet the applicable eligibility criteria. A recipient who moves from a rental unit for which [rental assistance has] benefits have been received must reapply to receive [rental assistance] benefits for any other unit.

41A-5. Rental assistance [grants] benefits.

The [rental assistance program] Rental Assistance Program administrator must approve or disapprove each application received in accordance with the [program criteria] applicable regulations, and must notify each applicant in writing of any approval or disapproval. The administrator may authorize the Department of Finance to make benefit payments to eligible households as follows:

(a) [The rental assistance grant payable] Benefits under this [article] Article must be [made] paid in accordance with [executive] regulation. The regulation must specify the [amounts of monthly grants] amount of the benefit, considering the actual monthly rent paid by a tenant for a rental unit [or the average rent being charged in Montgomery County for a rental unit of suitable size, whichever is less]. The regulation may also consider a maximum allowable rent cost, based on household size and other variables. Maximum [monthly benefits] benefit amounts may be established for classes of eligible households based on age, household size, and other variables specified by regulation.

(b) [Rental assistance payments] Benefits under this Article [will] must be [in the form of] paid monthly [joint payee checks payable to the recipient and the owner of the rental unit, the owner's agent, or the primary lessee of the rental unit] in a form set by regulation.

(c) [A rental assistance payment] Benefit payments below an amount specified by regulation must not be made.

(d) A household receiving [rental assistance] benefits must notify the Department of [any increase] changes in its gross income [of 10 percent or more] as required by regulation.

(d) If a recipient of [rental assistance] Rental Assistance Program benefits dies or become institutionalized during the [12 month] period for which [rental assistance has] benefits have been approved, the remaining [monthly rental assistance] benefit payments [must only] may be paid to [the] a [remaining] surviving member of the household if the household continues to reside at the application rental unit [if the Department is notified in writing and the Department finds that the surviving spouse or remaining household members are eligible for rental assistance]. At the end of the approval period, the household must reapply to see if the remaining household members continue to be eligible for Rental Assistance Program benefits.

41A-6. – 41A-8. Reserved.

ARTICLE II. HANDICAPPED RENTAL ASSISTANCE

41A-9. Purpose of rental assistance program for the handicapped.

(a) The purpose of this Article is to provide rental assistance to handicapped persons who:

(1) Are unable to live independently;

(2) Whose income meets requirements established by regulations; and

(3) Who require a supporting service.

(b) Unless specified otherwise, regulations applicable to the Rental Assistance program under Article I do not apply to the Handicapped Rental Assistance program under this Article.

41A-10. Definitions.

In this Article, the following words have the meanings indicated:

(1) **Handicapped[.** "Handicapped"] means [the] a physical, mental, or emotional impairment of any person that substantially limits one or more major life activities.

(2) **Licensee[.** "Licensee"] means a person or organization:

[a.] (A) Licensed to operate a group residential care facility under [the provisions of] Chapter 23A [of this Code]; or

[b.] (B) Whose residential care facility does not require a license under Chapter 23A, but whose program has been approved by the Director of [the] Health and Human Services [Department] under Section 23A-4.

(3) **Supporting services[.** "Supporting services"] means services available based on assessed need for:

[a.] (A) Counseling;

[b.] (B) Protective services to adults;

[c.] (C) Housing improvement services;

[d.] (D) Health-related services, including personal care;

[e.] (E) Housekeeping and shopping assistance;

[f.] (F) Social participation and chore services;

[g.] (G) Home-delivered meals; and

[h.] (H) Transportation to needed community resources or facilities.

41A-11. Eligibility for handicapped rental assistance.

(a) A handicapped individual is eligible for rental assistance under this Article if the individual:

(1) Meets the income requirements of applicable regulations [adopted by the county executive];

(2) Is accepted by a licensee for participation in its residential care program; and

(3) Has been a resident of [Montgomery] the County for [six (6)] 6 months before submitting an application for assistance or institutionalization.

(b) Residing in an institution in [Montgomery] the County does not fulfill the residency requirement.

(c) A recipient of housing assistance under this Article is not eligible for assistance under Article I.

41A-12. Application for handicapped rental assistance.

(a) An application must be filed with the Department of Health and Human Services on the application form that the Department prescribes.

(b) The County may [enter into a] contract with a licensee or organization [in order] to make monthly rental assistance payments on behalf of tenants with disabilities.

(c) The Department of Health and Human Services must certify approval of the contract to the Director of Finance, who [will] must then make the payments.

(d) An applicant whose application is not approved [has the right to] may appeal to the Chief Administrative Officer.

(e) An appeal under this Section must:

(1) Be in writing;

(2) State the reasons for the appeal; and

(3) Be filed with the Chief Administrative Officer within 30 days [from] after the date [of] the notice of the Department's decision was sent.

(f) The Chief Administrative Officer [will] or a designee must conduct an informal hearing of each appeal. Any interested party [has the right to] may submit oral or written testimony or evidence without regard to technical rules of evidence.

41A-13. Amount of handicapped rental assistance.

The County Executive annually must determine the amount of rental assistance payment under this [section] Article by regulations adopted under method (1).

[41A-14. Regulations.

The county executive must adopt regulations under method (2) to implement this article.]

[41A-15. Penalties.

(a) Any person who knowingly makes or helps a person to make a false statement or gives or helps a person to give fraudulent information in order to obtain rental assistance is subject to:

(1) Punishment for a class A violation under section 1-19 of this code;

(2) Liability for the repayment to the county of any rental assistance that may have already been paid by the county to the person; and

(3) Liability for interest on the total amount paid at the rate of two-thirds of a percent per month until the total rental assistance principal amount and interest is repaid.

(b) The county may enforce these provisions by appropriate judicial action, and the person in violation is liable for the costs of the proceedings.]

[ARTICLE III. SUPPLEMENTAL RENTAL ASSISTANCE FOR FAMILIES WITH DEPENDENT CHILDREN]

[41A-16. Definitions.

The definitions in Section 41A-2 apply to this Article.]

[41A-17. Eligibility for supplemental assistance.

An applicant is eligible for assistance under this Article if:

(a) the applicant has been certified by the Department of Social Services as eligible to receive Aid to Families with Dependent Children (AFDC) as an adult head of household;

(b) the household pays at least $150 a month for rent; and

(c) the household does not receive rental assistance or similar housing assistance under any state or federal program.

However, a household in which an adult head of household has been declared ineligible to receive AFDC benefits because the head of household is either an undocumented alien,

a caretaker relative of the dependent child or children, or is receiving disability or SSI payments from the Social Security Administration, must not be denied assistance under this Article for those reasons.]

[41A-18. Application for assistance.

(a) Every applicant who seeks assistance under this Article must:

(1) file an application with the Department on a form prescribed by the Department;

(2) provide proof of eligibility for AFDC from the Department of Social Services;

(3) submit other information that the Department finds necessary to determine eligibility; and

(4) certify that all information provided is accurate and complete.

(b) To continue receiving assistance, a recipient must annually re-certify the accuracy and completeness of all information provided or provide new information to reflect changed circumstances so that the Department may determine the recipient's eligibility to receive further assistance.]

[41A-19. Assistance payments.

(a) Assistance under this Article may be paid monthly in an amount established by Executive Regulation.

(b) The payment must take the form of a joint payee check, payable to the recipient and the owner of the rental unit, or the owner's agent, or the primary lessee of the rental unit.]

ARTICLE [IV] III. GENERAL PROVISIONS

[41A-20] 41A-14. Regulations.

The County Executive must adopt regulations under method (2) to implement this Chapter.

[41A-21] 41A-15. Report; annual review of benefit levels.

The County Executive during the budget process must report to the County Council on the Rental Assistance [program] Program and the Handicapped Rental Assistance Program. In the operating budget submitted annually to the Council, the Executive must review Rental Assistance Program and Handicapped Rental Assistance Program benefit levels and must propose any adjustment necessary to achieve the goals of each program.

[41A-22] 41A-16. Waivers.

After finding financial or other hardship, the Director may waive any eligibility requirement under this Chapter. [The report submitted under Section 41A-21 must include a summary of the waivers granted during the last calendar year and the reason for each waiver.]

[41A-23] 41A-17. Appeals.

[An applicant for or recipient of rental assistance may appeal a decision of the Department to a designee of the Chief Administrative Officer who is not an officer or employee of the Department in writing, stating the reason for the appeal, within 30 days after receiving the Department's decision. The person hearing the appeal may affirm, modify, or reverse the Department's decision as the facts and the applicable laws require.] [[The Executive must establish by regulation a case review and appeal procedure.]] An applicant for or recipient of rental assistance may appeal a decision of the Department to a designee of the Chief Administrative Officer, who is not an officer or employee of the Department, in writing, stating the reason for the appeal, within 30 days after receiving the Department's decision. The person hearing the appeal may affirm, modify, or reverse the Department's decision as the facts and the applicable laws require.

[41A-24] 41A-20. Penalties.

(a) Any person who knowingly makes, or helps another person make, a false or misleading statement [in order] to obtain assistance under this Chapter:
   (1) has committed a class A violation;
   (2) may be required to repay the County any [rental assistance] Rental Assistance Program or Handicapped Rental Assistance Program benefit improperly paid in reliance on the false or misleading statement; and
   (3) may be required to pay the County interest on the total amount improperly paid at the rate of one percent per month on the outstanding balance owed until the total [assistance] benefit improperly paid is repaid.

(b) The County may enforce this Section by appropriate legal action. Any person liable under subsection (a) is also liable for all costs of any enforcement proceeding.

(c) If the Director finds, after giving the affected household reasonable written notice and an opportunity for an impartial hearing, that any household has improperly obtained [rental assistance] Rental Assistance Program or Handicapped Rental

Assistance Program benefits or otherwise materially violated this Chapter, the Director may discontinue [rental assistance payments] benefits to that household and exclude that household from receiving future [rental assistance] Rental Assistance Program or Handicapped Rental Assistance Program benefits.

Sec. 2. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

ACTION: Enacted Emergency Bill 35-99, as amended.

The bill was enacted, as amended, by motion of the HHS Committee, by a roll call vote:

YEAS: Andrews, Leggett, Ewing, Silverman, Praisner, Krahnke, Subin
ABSENT: Berlage, Dacek (temporarily).

The meeting adjourned at 10:27 A.M.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Mary A. Edgar

Emergency Bill No. 3-93
Concerning: Collective Bargaining - Process and Deadlines
Draft No. & Date: 2 1-22-93
Introduced: January 26, 1993
Enacted: March 2, 1993
Executive: March 11, 1993
Effective: March 11, 1993
Sunset Date: None
Ch. 12, Laws of Mont. Co. 1993

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President

AN EMERGENCY ACT to:

(1) revise certain deadlines in the County collective bargaining process;
(2) make technical, stylistic, and conforming changes in certain provisions of the County collective bargaining laws, and remove obsolete provisions from those laws; and
(3) generally amend the laws governing collective bargaining with certain County employees.

By amending
Montgomery County Code
Chapter 33, Personnel
Sections 33-80 and 33-108

EXPLANATION: Boldface indicates a heading or a defined term
Underlining indicates text that is added to existing law by the original bill
[Single boldface brackets] indicate text that is deleted from existing law by the original bill
Double underlining indicates text that is added to the bill by amendment
[[Double boldface brackets]] indicate text that is deleted from existing law or the bill by amendment
* * * indicates existing law unaffected by the bill

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Sections 33-80 and 33-108 are amended as follows:

ARTICLE V. POLICE LABOR RELATIONS.

* * *

33-80. Collective bargaining.

* * *

(d) Time limits. Collective bargaining shall commence no later than November 1 preceding [the beginning of] a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded [on] by January 20. The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties.

* * *

(g) [Miscellaneous] Council review. A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer[;], and the employer shall make a good faith effort to have such term or condition implemented by Council action. On or before [April 25] May 1, the County Council shall indicate by [a majority vote] resolution its intention to appropriate funds for or otherwise implement the agreement[,] or its intention not to do so, and shall state its reasons for any

intent to reject any part [or parts] of the agreement. [In the event] If the Council indicates its intention to reject any part, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible [in an] and attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the Council on or before May 10. Any agreement shall provide either for automatic reduction or elimination of [such] conditional wage and/or benefits adjustments if the Council fails to take action necessary to implement the agreement, or if sufficient funds are not appropriated for any fiscal year in which the agreement is in effect[, or if a lesser amount is appropriated].

ARTICLE VII. COUNTY COLLECTIVE BARGAINING.

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

(a) Collective bargaining shall begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative [(except that in 1986, collective bargaining may begin as late as December 1)] and shall be finished on

or before January 15. The resolution of a bargaining impasse or fact-finding shall be finished by February 1.

* * *

(i) On or before [April 15] May 1, the Council shall indicate by [a majority vote] resolution its intention to appropriate funds for or otherwise implement the items that have been agreed to[,] or its intention not to do so, and shall state its reasons for any intent to reject any [part of the] items[,] of the kind specified in subsection (g)[,] that have been agreed to. The Council shall also indicate by [a majority vote] resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any county law or regulation, or which have present or future fiscal impact.

(j) Then the Council shall designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on disputed matters and/or agreed upon matters that the Council has indicated its intention to reject. The results of the negotiation, whether a complete or a partial agreement, shall be submitted to the Council on or before May [1] 10. [The Council may extend this deadline for no more than one (1) week.] Any agreement shall provide for automatic reduction or elimination of wage and/or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement[,] or a part of it; or

(2) [Funds] Sufficient funds are not appropriated for any

fiscal year in which the agreement is in effect.[; or]

[(3) Lesser amounts than those stated in the agreement are appropriated.]

Sec. 2. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

Approved:

Marilyn J. Praisner — Mar. 2, 1993

Marilyn J. Praisner, President, County Council — Date

Approved:

Neal Potter — 3/11/93

Neal Potter, County Executive — Date

This is a correct copy of Council action.

Kathleen A. Freedman — 3/12/93

Kathleen A. Freedman, CMC — Date

Secretary of the Council

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intentionally blank.

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Thurs., October 15, 1987 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 1:16 P.M. on Thursday, October 15, 1987.

PRESENT

Rose Crenca, President
Michael L. Gudis, President Pro Tem
Isiah Leggett
Michael L. Subin, Vice President
Neal Potter
William E. Hanna, Jr.
Bruce Adams

The President in the Chair.

The Journal of September 15, 1987 was approved as amended.

CALL OF BILLS FOR FINAL READING

SUBJECT: Emergency Bill No. 42-87, Transfer of Operational Firefighters from Corporations to the Department of Fire and Rescue Services (DFRS)

County Attorney Sorrell provided background information to the Council concerning meetings held between Executive staff and interested parties since the Council's worksession of September 21, 1987 on the subject bill.

Mr. Sorrell directed attention to a draft executive regulation included in the Council's packet, noting that it provides assurance of daily communication with fire and rescue corporations on operational issues and represents an appropriate compromise. He said the bill needs to be amended to include a reference to executive regulations.

Councilmember Gudis presented three proposed amendments for the Council's consideration, and explained that the amendments represent concepts discussed previously that he believes are needed to protect the County's volunteer firefighter system and to provide consistency and equity to all personnel in the DFRS. Mr. Gudis said that one of the amendments is similar to the executive regulation proposed by Mr. Sorrell.

Mr. Sorrell, responding to Councilmembers' questions, provided clarification concerning his proposed executive regulation, noting the need for the executive regulation to be amended to define "Director" as the Director of the Department of Fire and Rescue Services. He pointed out that this would be a Method 2 executive regulation which provides for review and approval by the Council.

The Council then considered the following amendment proposed by Councilmember Gudis:

> The board of directors of each corporation may authorize in writing one or more officers to give directions on the management of corporate activities and facilities to the senior County merit system firefighter assigned to that corporation. An authorized officer may, with the approval of the board of directors, delegate this authority to a subordinate officer. If more than one authorized corporation officer is present at a particular place and time, the direction of the senior corporation officer controls.

Mr. Gudis expressed the view that an issue as sensitive and important as the management of corporate activities and facilities should be addressed through legislation rather than executive regulation because any changes would have to be made through legislation enacted by the Council. To provide needed clarification, Mr. Gudis agreed to amend the amendment to add at the end of the first sentence, after "corporation," who is on duty at the time.

Following discussion concerning how the chain of command would operate under Mr. Gudis's proposed amendment, Mr. Sorrell suggested the need to add clarifying language that the DFRS may promulgate regulations to implement the provision.

Councilmember Gudis moved, duly seconded, to incorporate into the bill the executive regulation authorization language proposed by Mr. Sorrell, as amended by Councilmember Adams to include in the second line, after "Services," adopted after consultation with the Fire and Rescue Commission and the Fire and Rescue Corporations.

Councilmember Subin moved the question which did not receive a second.

Mr. Doolan, attorney representing some of the volunteer firefighters, expressed objection to the Council's acting on amendments without providing him the opportunity to speak concerning his proposed amendments.

In response to Mr. Doolan's comments regarding the lack of opportunity provided to review the amendments proposed by Councilmember Gudis prior to the meeting, Mr. Sorrell noted that the concepts suggested in Mr. Gudis's amendments are not new, having been discussed with Mr. Doolan and others for the past three weeks.

Councilmember Gudis, providing further clarification with respect to his proposed amendments, said that he is attempting to protect the volunteer firefighter system in the County and to alleviate inequities that paid employees have encountered in the past. Mr. Gudis said that he met with Mr. Doolan yesterday and discussed the general intent of his amendments with him; however, he was not sure of the specific wording of the amendments until early this morning. In his opinion, Mr. Doolan should be provided the opportunity to comment and to present his clients' amendments.

Councilmember Subin urged the Council to act on the previous motion and, subsequently, to consider and act on each of the amendments proposed by Mr. Gudis. He pointed out that the concepts incorporated into Mr. Gudis's proposed amendments have already been considered by the Council.

Following discussion, Mr. Doolan was provided the opportunity to present proposed amendments, as well as comment on Mr. Gudis's proposed amendments.

Mr. Doolan pointed out that the subject legislation was introduced to solve an immediate, alleged crisis in the payment of approximately $50,000 a week for overtime hours worked. However, he believes that, if the subject legislation is enacted, the costs of implementing the bill will be greater than $50,000 a week. He said that, as a result of meetings held with interested parties during the past few weeks and through legal research, a compromise has been reached that would make the corporations public agencies under the Fair Labor Standards Act. Since this approach has not received support from the Executive Branch, he believes that a solution can be reached through amendments to the subject bill proposed by himself and the Gaithersburg-Washington Grove Fire Department, Inc. In response to Councilmember Crenca's question, Mr. Doolan said that, while the public agency approach has not been withdrawn, it is felt that a solution to the overtime problem can be reached through amendments to the bill.

Following discussion and comments of Mr. Sorrell regarding the public agency option, in line with his letter to Mr. Doolan, dated October 6, 1987, the majority of the Council indicated that the public agency option should not be considered further.

Mr. Doolan said that, although he has not discussed Mr. Gudis's proposed amendments with his clients, they appear to provide partial solutions to major problems in the subject bill.

The Council then turned its attention to Mr. Doolan's proposed amendments, dated October 12, 1987 and included in the Council's packet. Mr. Doolan said that the amendments are an attempt to ensure that the County has ultimate control of the major decision making of the fire and rescue service, while maintaining specific aspects of operational control in the corporations.

With respect to the provision in Mr. Doolan's proposed amendment that staffing levels would be maintained at levels not less than those existing on September 30, 1987, Mr. Kendal, Director of the Office of Management and Budget, expressed the view that it would be inappropriate to include such a provision in the legislation because it conflicts with the budget review process. In response to Councilmember Adams' question, Mr. Kendal said that he anticipates only minimal staffing changes to be made in and among the fire and rescue corporations.

Councilmember Leggett expressed concern regarding legal loopholes that he believes exist in Mr. Doolan's proposed amendment that excludes employees' from wages, hours, or any other matter governed by the existing Fair Labor Standard Act or as it may be amended in the future providing an exception to orders issued by corporation personnel.

Following Council review and discussion with Mr. Doolan concerning his proposed amendments on discipline, assignment/reassignment, department positions, and anti-discrimination between career and volunteer officers of equal rank, Mr. Doolan requested and received concurrence from the Chair for a short recess for the purpose of meeting with Messrs. Gudis and Sorrell and other interested parties attempt to resolve the differences which exist between his proposed amendments and those proposed by Mr. Gudis.

(The Council recessed at 3:58 P.M. and reconvened at 4:23 P.M.)

The Council President requested that the results of the attempt to reach a compromise on proposed amendments to the subject bill be given to the Council.

Councilmember Gudis directed attention to his first amendment, as amended, set forth on page 2 of the subject minutes, suggesting that the following language be added:

> The corporations and any other interested person may recommend and provide information in connection with disciplinary action, including termination of employment affecting employees in the firefighter/rescuer occupational series.

Mr. Doolan expressed support for Mr. Gudis's proposed amendment, as amended.

ACTION: Adopted Councilmember Gudis's proposed amendment, as amended, and Mr. Sorrell's proposed amendment regarding executive regulation authority, as amended:

The board of directors of each corporation may authorize in writing one or more officers to give directions on the management of corporate activities and facilities to the senior County merit system firefighter assigned to that corporation who is on duty at the time. An authorized officer may, with the approval of the board of directors, delegate this authority to a subordinate officer. If more than one authorized corporation officer is present at a particular place and time, the direction of the senior corporation officer controls.

This is subject to executive regulations of the Department of Fire and Rescue Services adopted after consultation with the Fire and Rescue Commission and the fire and rescue corporations which shall provide for integration of corporation management directions into the chain of command.

by motion of Councilmember Gudis, without objection.

Councilmember Gudis moved, duly seconded, adoption of his proposed amendment allowing County employees to provide volunteer services for a corporation.

Mr. Gudis accepted Mr. Adams' proposed amendment to delete the third clause of his next amendment:

[(3) to the extent the services are prohibited by federal law or under federal law would result in the payment of overtime pay not otherwise paid]

ACTION: Adopted the following amendment, as amended:

The County must not prohibit or discourage any County employee from providing volunteer services for a corporation, except (1) a corporation to which the employee is assigned, or (2) to the extent the services are prohibited by the conflict-of-interest provisions of Chapter 19A

by motion of Councilmember Gudis, without objection.

Councilmember Gudis directed attention to his proposed amendment, as amended, in an attempt to provide language acceptable to all interested parties:

> The integrated emergency command structure must retain and encourage volunteer participation at all levels of the chain of command. Volunteers who meet the minimum requirements and standards of experience and training must be eligible to advance to all levels of the chain of command. Under the integrated chain of command, there shall be no discrimination between volunteer and career officers. As of volunteer and career officers of equal rank, seniority shall determine authority.

Councilmember Gudis accepted amendments proposed by Councilmember Hanna to add in the first sentence between "and" and "encourage" actively, and in the second sentence to substitute minimum for [applicable].

Mr. Sorrell expressed the view that the anti-discrimination concept should be defined by executive regulation.

Mr. Doolan explained the need to clarify in the law the criteria for advancing to all levels of the chain of command, and to indicate who is in charge if there are two officers of equal rank.

Councilmember Adams suggested that seniority and rank should be the determining factors, and Mr. Doolan concurred with the suggestion.

In the discussion that followed, Councilmember Adams suggested a substitute amendment to indicate that the integrated emergency command structure will continue to operate in the future as it is presently operated, and Mr. Sorrell and others presented suggested revisions to Mr. Gudis's amendment for Council consideration.

ACTION: Adopted Councilmember Gudis's proposed amendment, as amended to substitute Volunteers meeting the minimum standards and/or training will be eligible to advance to all levels of the chain of command and shall not be treated differently from merit system employees of equal rank in the integrated emergency command structure for [Under the integrated chain of command, there shall be no discrimination between volunteer and career officers. As of volunteer and career officers of equal rank, seniority shall determine authority]

by motion of Councilmember Adams, without objection.

Councilmember Gudis raised for consideration Mr. Doolan's proposed amendment regarding assignment/reassignment. Mr. Sorrell suggested the need to add Mr. Doolan's proposed amendment regarding the responsibility of the DFRS to make decisions affecting the hours worked by fire and rescue employees.

ACTION: Adopted Mr. Doolan's proposed amendment, as amended:

> The Department shall notify the corporation in advance of its intent to reassign and any such reassignment will be effected only in coordination and consultation with the local corporation with a view to ensuring adequate staffing levels for each corporation, provided, however, that this shall not impair the Department's authority to order emergency reassignments.
>
> Nothing in this subsection shall give any corporation any right or authority to affect the hours worked or to be worked by any individual in the firefighter/rescuer occupational series, it being the intent of this section that all decisions respecting such individuals' hours of work be made by the Department.
>
> by motion of Councilmember Hanna, Councilmember Leggett abstaining.

Councilmember Leggett abstained from voting on the foregoing amendment because of legal questions raised in the portion of the amendment that restricts the authority of the corporation with respect to hours of work.

Councilmember Gudis raised for consideration Mr. Doolan's proposed amendment regarding the volunteer coordinator position:

> Any volunteer coordinator appointed shall be under the direct supervision of the Fire and Rescue Commission.

Mr. Granados, Director of the Department of Fire and Rescue Services, explained that the volunteer coordinator position was recommended by the Red Ribbon Committee, a Committee appointed to study and make recommendations for improving elements of the County's fire and rescue service.

Discussion followed concerning the need for the volunteer coordinator position to be under the supervision of the Director of the DFRS. Councilmember Gudis suggested the possibility of amending the amendment to include: ... upon consultation and advice of the Fire Board.

Mr. Doolan said that the volunteer firefighters whom he represents believe it is essential that the volunteer coordinator position not be the same individual who is in charge of career personnel. It is felt that the volunteer coordinator should represent the views of the volunteer firefighters.

Councilmember Potter suggested that the language be amended to place the position under the DFRS with the advice and guidance of the Fire Board.

Councilmember Hanna suggested the title of the position be changed from [volunteer coordinator] to Director of Volunteer Recruitment and Retention.

Councilmember Leggett expressed the view that the position should be placed under the DFRS because the Director of the DFRS bears the responsibility for the Department.

Judge Cahoon, a member of the Red Ribbon Committee, said that he had understood only critical issues involving the fire and rescue services were to be considered at this time and that remaining issues would be considered later. Therefore, he is not prepared to discuss the recommendations of the Red Ribbon Committee. He noted that inherent in the recommendations of the Committee was the concept that, in the future, the Commission would make policy recommendations and the DFRS would have the administrative control. Since the Director is responsible for the operation of the department, he believes the position should be placed under the Director.

In response to Councilmember Crenca's question, Mr. Faden, Senior Legislative Attorney, said that the advertising for the subject law was sufficiently broad to cover the volunteer coordinator position.

Councilmember Adams moved, duly seconded, approval of the proposed amendment, as amended to change [Any] to <u>The</u>, and to change the title of the position from [volunteer coordinator] to Volunteer Coordinator for Recruitment and Retention. In making the motion, Councilmember Adams said that, although the logical place for the position to be placed is under the Director of the DFRS, this is an issue that the volunteer firefighters feel strongly about; also, the Executive Branch would exercise some control over the position since the County Executive appoints the members of the Fire and Rescue Commission. Mr. Adams accepted Mr. Hanna's proposed amendment to change the title of the position to Program Officer for Volunteer Recruitment and Retention.

Councilmember Potter suggested that an ombudsman position is needed in addition to the Program Officer position. He suggested that the Program Officer position be placed under the Director of the DFRS and that an ombudsman position, to be placed under the Fire and Rescue Commission, be considered as a separate issue now or later when the Red Ribbon Committee's report is reviewed.

Councilmember Gudis pointed out that the Program Officer will be a paid merit system employee and the Commission is subject to disciplinary actions by the County so it does not seem as important to him that the position be placed under the Director of the DFRS. He said that he hopes the individual filling this position will actively pursue the recruitment of volunteers in high schools, colleges, and other places. He requested that the Program Officer provide a semi-annual report on the recruitment of minorities to the County Council.

ACTION: Adopted Mr. Doolan's proposed amendment, as amended:

The Program Officer for Recruitment and Retention shall be under the direct supervision of the Fire and Rescue Commission.

by motion of Councilmember Adams

YEAS: Adams, Hanna, Gudis, Potter

NAYS: Crenca, Subin, Leggett.

Mr. Doolan expressed his gratitude to the County Executive and the County Council for working with him and his clients. He said that he believes the County government has demonstrated support for the volunteers by its actions and appreciates what has been accomplished. It is his intention to work with the County government in any way possible to make further improvements to an already excellent fire and rescue system.

ACTION: Adopted the following amendment set forth on page six of Mr. Faden's memorandum of October 15, 1987:

In Draft 2, page 9, after line 20, insert:

(C) The grade and increment level are not affected by the transfer, regardless of any changes in work hours or methods of calculating hourly rates.

(D) Fringe benefits must be paid in accordance with current County fire and rescue policies that apply to such positions.

(E) Premium pay and all other pay differentials must be paid in accordance with the duty assignment performed. Educational salary differentials are not affected by the transfer.

by motion of Councilmember Adams, without objection.

Adopted the following technical amendments:

On page 9, lines 13-14, substitute until January 15, 1988 for [For 90 days after the effective date of this law];

On page 9, line 16, substitute October for [September];

On page 9, substitute starting January 15, 1988 for [after the 90 day period];

On page 12, lines 12-13, substitute January 15, 1988 for [ninety (90) days from] and [after 90 days after the effective date of this law]

by motion of Councilmember Gudis, without objection.

Adopted the following amendment proposed by the Office of Legislative Oversight:

Within two years following the effective date of this legislation, the Office of Legislative Oversight will evaluate the validity of the goals and objectives, the effectiveness with which these goals and objectives have been accomplished, and the efficiency with which the fire, rescue and emergency services have operated under the organizational changes herein enacted.

by motion of Councilmember Gudis, without objection.

Councilmember Leggett expressed the view that the responsibility for problems which exist in the fire and rescue service with respect to the affirmative action program are the responsibility of the County Government. Although he had planned to introduce amendments to help alleviate these problems, he said he did not because he believes they may be addressed appropriately through implementation of the subject legislation. He said he will note carefully the progress made in increasing the number of minorities in the fire service, and propose changes if there is insufficient progress.

Councilmember Adams said that this is an administrative compromise that serves the public interest and all interested parties. He thanked Mr. Gudis for his effort in helping to reach a compromise and complimented the volunteers on their cooperation during this worksession.

Councilmember Gudis expressed his gratitude to all of those who helped with the bill and the amendments.

Councilmember Hanna noted that the basis for the subject legislation has been the desire of the County to maintain the present high level of fire and rescue service. He suggested that all interested parties give the legislation an opportunity for success.

ACTION: Adopted the following amendments as set forth in the subject bill:

AN EMERGENCY ACT to:

(1) authorize the Department of Fire and Rescue Services to:

[[(1)]] (a) Employ, pay and supervise all employees in the firefighter/rescuer occupational series paid by County Government revenues, including fire tax district funds;

[[(2)]] (b) allocate and assign these employees to the local fire and rescue corporations; and

[[(3)]] (c) charge personnel costs of employees to fire tax district appropriated funds for the fire district in which the employee is assigned; [[and to]]

(2) provide for lateral transfer of certain fire and rescue merit system employees to county merit system positions in the department; [[to]]

(3) authorize the levy of taxes in fire tax districts for the payment of personnel costs in the Department of Fire and Rescue Services for personnel services rendered by employees assigned to the individual or consolidated fire tax districts, and [[to provide authority for]] authorize distribution of such fire tax district [[taxes]] tax receipts to the County for payment of these personnel costs;

(4) prohibit distribution to or expenditure by the corporations of certain tax funds for certain purposes after [[ninety (90)]][[90 days]][[from the effective date of]][[after this law takes effect,]]January 15, 1988;

(5) require the fire and rescue commission to supervise the program officer for volunteer recruitment and retention;

(6) prohibit discrimination against volunteer firefighters in the integrated emergency command structure;

(7) reserve to county employees the right to volunteer their services to the fire and rescue corporations, with certain exceptions; and [[to]]

(8) make certain technical amendments to Chapter 21.

By amending
Section 2-39A. Division 5A. Department of Fire and Rescue Services. of Chapter 2, Administration, and Chapter 21, Fire and Rescue Services, Sections [[2-39A,]] 21-4A, 21-4B, 21-4C, 21-4E, 21-4M, 21-4N, 21-4O, 21-4Q, 21-4R and 21-4S[[,]] of the Montgomery County Code

By adding [[to]]
Chapter 21, Fire and Rescue Services,
Section 21-4M[[, subsection]](i)[[,]] of the Montgomery County Code

EXPLANATION: **Boldface** indicates matter that is a heading or a defined term.
Underlining indicates matter added to existing law by the original bill.
[Single boldface brackets] indicate text that is deleted from existing law by the original bill.
Double underlining indicates text that is added to the bill by amendment.
[[Double boldface brackets]] indicate matter deleted from existing law or the bill by amendment.
* * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 2-39A of Chapter 2 is amended to read as follows:

DIVISION 5A. DEPARTMENT OF FIRE AND RESCUE SERVICES

2-39A. [[Department of Fire and Rescue Services -]] Functions.

The department of fire and rescue services shall have the following functions and responsibilities, in addition to any other assigned by law or by the county executive:

(a) * * *

(b) Personnel. Consistent with the county merit system, employ, pay, terminate, discipline, assign, promote, transfer and supervise employees in the firefighter/rescuer occupational series, as it may be amended, paid in whole or in part with county government revenues of any kind. [[which shall include]] including fire tax district tax revenues[[, subject to the chain of command established by the integrated emergency command structure [[as provided in]] under section 21-4E: the]].

(1) The department may allocate and assign these employees to the corporations, and may charge all personnel costs of [[such]] assigned employees to appropriations to the fire tax district in which the employee is assigned.

(2) Employees assigned to the corporations are subject to the chain of command established by the integrated emergency command structure under section 21-4E.

(3) The department promulgates executive regulations, after consulting the Fire and Rescue Commission and the fire and rescue corporations, that must provide for integration of corporation management directions into the chain of command.

(4) (A) The board of directors of each corporation may

authorize in writing one or more officers to give directions on the management of corporate activities and facilities to the senior County merit system firefighter or rescue worker, as the case may be, assigned to that corporation who is on duty at the time.

(B) An authorized officer may, with the approval of the board of directors, delegate this authority to a subordinate officer.

(C) If more than one authorized corporation officer is present at a particular place and time, the direction of the senior corporation officer controls.

(5) (A) The department must notify the corporation to which an employee is assigned of its intent to reassign that employee.

(B) The department must consult with the corporation before reassigning the employee.

(C) The department must reassign employees in coordination with the local corporations, and with the goal of ensuring adequate staffing levels at each corporation.

(D) The department may order emergency reassignments without notice to or consultation with the corporations.

(6) (A) The department makes all decisions affecting the hours worked by any employee in the firefighter/rescuer occupational series.

(B) A local corporation must not determine the hours

worked by any such employee.

(7) Any corporation and any other interested person may recommend, or provide information in connection with, disciplinary action, including termination of employment, affecting an employee in the firefighter/rescuer occupational series.

[(b)](c) * * *

[(c)](d) * * *

[(d)](e) * * *

[(e)](f) * * *

[(f)](g) * * *

[(g)](h) * * *

[(h)](i) * * *

[(i)](j) * * *

[(j)](k) * * *

Sec. 2. Section 21-4A of Chapter 21 is amended to read as follows:

[[Sec.]] 21-4A. Statement of intent; definitions.

(a) Legislative intent. It is the legislative intent of the county council, pursuant to section 101 of the charter of Montgomery County, to provide for adequate public safety, health and welfare through a fire, rescue and emergency medical services program that is highly competent, efficiently delivered, equitably administered and which utilizes [both career] county merit system, corporation and volunteer personnel. The council believes that ultimate responsibility for public safety through fire, rescue and emergency services rests with the county government. The council further believes that this program should reflect: maximum

cost-effective performance of these services; recognition and promotion of the general, county-wide public interest; adequate accountability for service levels and resource use in a manner required of other public programs; fair representation and communication of all views regarding these services; and adequate response to past and projected growth in the county and its public safety requirements. To achieve these objectives a combined system of public and private resources is essential, including:

(1) Delivery of fire, rescue and emergency medical services through local corporations for as long as such corporations are willing and able to provide these services, and through the department when local corporations are unwilling or unable to provide these services or as otherwise provided by law;

(2) Provision of the policy and regulatory framework for the independent fire departments and rescue squads by a fire and rescue commission, deriving its authority from and acting on behalf of the county government;

(3) Policy advice to the fire and rescue commission by a fire board representing the independent fire departments and rescue squads; and

(4) Provision of support [services] by the department of fire and rescue services of the county government.

The council supports the delivery of fire, rescue and emergency services through the independent fire departments and rescue squads. Such decentralized service delivery must be done within a county-wide context and must be characterized by unity in

emergency responses and uniformity in the application of all regulations. The council recognizes and respects the contributions of volunteers over many decades which have resulted not only in the protection of life and property in the county but also vital and generous private support for an essential public activity. The council acknowledges the years of volunteer effort, risk and sacrifice; the provision of time and money towards the purchase of equipment, apparatus and facilities; and the importance attached to the opportunities for public service and fellowship. The county will vigorously support the continuation and expansion of volunteer participation as a means of providing fire, rescue and emergency medical services in the most cost-effective way and encourage citizen participation in community activities. The county council hereby declares its policy intention that all county officials and employees actively encourage, and not in any way discourage, qualified volunteer participation.

(b) Purpose. It is the purpose of this chapter to promote the achievement of the following goals with respect to the provision of fire, rescue and emergency medical services:

(1) Maximum Protection for Life and Property. Provision of maximum cost-effective, equitable and responsive services to all county citizens, including adequate maximum response times, effective fire and rescue incident supervision, adequate manning, effective distribution of personnel and apparatus and timely adaptation to changing service needs. All organizations and participants comprising the fire, rescue and emergency medical services share the

responsibility for improving their effectiveness and efficiency every year. Evidence of this improvement may be requested by the council at any time.

(2) Maximum Volunteer Participation. Maintenance and expansion of participation by volunteers in fire, rescue and emergency medical service operations and in policy-making.

(3) Optimum Personnel Practices. Promotion of equity and harmony among [both career employees] county merit system. corporation and volunteer[s] personnel; continual improvement in the capabilities of all personnel; effective personnel administration; and job performance and personal conduct of the highest caliber by [career] county merit system. corporation and volunteer personnel.

(4) Adequate Accountability. Adequate accountability to the citizens for service delivery, management practices and the use of public funds.

(5) Improved Operations and Administration. Minimizing of costs, including administrative overhead, apparatus and other expenses; and effective management of personnel, purchasing, maintenance, training and other programs.

* * *

Sec. 3. Section 21-4B(n) is added to read as follows:

21-4B. Fire and Rescue Commission.

* * *

(n) The commission must directly supervise the program officer for volunteer recruitment and retention.

Sec. [[3]]4. Section 21-4C of Chapter 21 is amended to read as follows:

21-4C. Fire board.

(a) * * *

(b) Duties, responsibilities and authority. The fire board shall have the following duties, responsibilities and authority:

(1) Submit to the County Executive a list of volunteer firefighters to be considered for appointment to the fire and rescue commission under section 21-4B(a).

(2) Actively support, on a continuing basis in coordination with the commission, the maintenance and enhancement of volunteer participation in fire, rescue and emergency medical service.

(3) Advise the commission on any matters relating to the fire, rescue and emergency medical services.

(4) Approve commission policies and programs relating to code of personal conduct and volunteer recruitment and retention, including benefits program recommendations to the county council.

(5) Adopt bylaws detailing its operating rules and regulations and establishing a method for amending its bylaws.

(6) Establish any committees needed to carry out its duties and responsibilities. Membership on these committees may include fire board members, other volunteers [or career], county merit system and corporation personnel.

(7) Within [[sixty (60)]] 60 days [[of]] after receipt, review and comment upon any proposal of the commission to adopt policies, rules, regulations, requirements or standards pertaining to the fire or rescue services.

(8) Perform such other tasks as are delegated by the commission.

* * *

Sec. [[4]]5. Section 21-4E of Chapter 21 is amended to read as follows:

[[Section]] 21-4E. Integrated emergency command structure.

(a) The commission shall adopt, upon the affirmative vote of [[five (5)]] 5 of its members, an integrated emergency command structure, applicable to all corporations and to all fire, rescue and emergency medical service personnel, [both] including volunteer, corporation and [career] county merit system, on all emergency incidents. The commission shall consult with both the fire board and the director. The chief administrative officer shall have an opportunity to comment upon the proposed structure and request modifications thereof prior to adoption; provided, however, that these provisions shall not be construed to diminish the chief administrative officer's approval responsibility for disaster plans provided for in section 21-4F. The integrated emergency command structure shall be adopted and approved within [[nine (9)]] 9 months after assignment of initial staff to the commission. The chief administrative officer shall specify in writing requests for modification. The integrated emergency command structure shall be reviewed and updated annually in the same manner as the original process. The integrated emergency command structure shall be effective immediately after adoption.

(b) * * *

(c) The integrated emergency command structure must retain and actively encourage volunteer participation at all levels of the chain of command. Volunteers who meet the minimum requirements and standards of experience and training must be eligible to

advance to all levels of the chain of command and must not be treated differently from merit system employees of equal rank in the integrated emergency command structure.

Sec. [[5]]6. Section 21-4M [[is amended and subsection]] (i) is added[[,]] to read as follows:

21-4M. Personnel administration - For career employees of corporations.

* * *

(i) Transfer of fire and rescue merit system employees in the firefighter/rescuer occupational series.

(1) [[For]][[ninety (90)]][[90 days after the effective date of this law.]] Until January 15, 1988, any fire and rescue merit system employee[[s]] in the firefighter/rescuer occupational series [[as of]] on [[September]] October 15, 1987, may laterally transfer to a vacant position in the department.

[[a.]] (A) Leave balances are not affected by the transfer.

[[b.]] (B) The probationary or disciplinary status of an employee is not affected by the transfer.

(C) The grade and increment level are not affected by the transfer, regardless of any changes in work hours or methods of calculating hourly rates.

(D) Fringe benefits must be paid in accordance with current county fire and rescue policies that apply to such positions.

(E) Premium pay and all other pay differentials must be paid in accordance with the duty assignment

performed. Educational salary differentials are not affected by the transfer.

(2) [[After the]][[ninety (90)]][[90 day period.]] Starting January 15, 1988. [[the transfer authorized in this subsection may occur]] a fire and rescue merit system employee in the firefighter/rescuer occupational series may transfer to a vacant position in the department only with the [[consent]]approval of the corporation and the director.

Sec. 7. Section 21-4N(d) is added as follows:

21-4N. Same - For volunteers.

* * *

(d) The County must not prohibit or discourage any county employee from providing volunteer services for a corporation, except (1) a corporation to which the employee is assigned, or (2) to the extent the services are prohibited by the conflict-of-interest provisions of Chapter 19A.

Sec. [[6]]8. Section 21-40 of Chapter 21 is amended to read as follows:

21-40. Training requirements and certification standards.

(a) After permitting the fire board a sixty-day period for review and comment, the commission shall adopt uniform certification standards and procedures and uniform minimum training requirements to be met by all active fire, rescue and emergency medical services personnel. Also included shall be uniform standards and procedures and uniform minimum training requirements to be met for eligibility to the various officer ranks. These standards and training requirements shall be applied similarly to volunteer, [and career] corporation and county merit system personnel

engaging in similar duties, shall be compatible with all other provisions of the personnel regulations especially those relating to positions classification, and shall be consistent with federal uniform guidelines on personnel selection. The commission shall consult with the director prior to adoption. These standards shall be adopted within [[fifteen (15)]] 15 months after assignment of initial staff.

* * *

(c) Standards and requirements adopted pursuant to this section shall apply immediately to all new fire, rescue and emergency medical services personnel [of the local corporations, both]. including volunteer, corporation and [career] county merit system personnel. Application of these standards and requirements to existing personnel[, both volunteer and career,] shall be subject to such time schedules as are promulgated under administrative regulations proposed by the commission, adopted by the county executive, and approved by the county council.

Sec. [[7]]9. Section 21-4Q of Chapter 21 is amended to read as follows:

21-4Q. Budget preparation.

* * *

(d) The county council shall appropriate funds for fire, rescue and emergency medical services for the ensuing fiscal year in the manner prescribed by the charter. No tax funds shall be encumbered or expended in excess of appropriations. All distributions to the corporations of appropriations are conditional upon the local corporations being subject to and complying with the provisions of this chapter.

distributed for payment of personnel costs for personnel employed by the corporations in the firefighter/rescuer occupational series, as it may be amended. All other fire tax funds shall be paid at least on a monthly basis by the county to the respective treasurers of the corporations within the consolidated and individual fire tax districts in accordance with a projected monthly schedule or approved budget submitted by each corporation prior to the start of the fiscal year, unless at the request of any corporation the county, as a service to that corporation, shall retain, disburse and account for any fire tax funds so authorized.

* * *

Sec. 12. Evaluation.

By October 15, 1989, the Office of Legislative Oversight must evaluate the validity of the goals and objectives of this law, the effectiveness by which those goals and objectives have been accomplished, and the efficiency with which fire, rescue and emergency services have operated under the organizational changes enacted in this law.

Sec.[[10]]13. Effective date.

The council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This Act takes effect on the date on which it becomes law.

ACTION: Authorized staff to make technical amendments.

Enacted Bill No. 42-87, as amended

by motion of Councilmember Gudis, by a roll call vote:

YEAS: Hanna, Adams, Subin, Leggett, Potter, Gudis, Crenca

The meeting adjourned at 6:42 P.M.

This is an accurate account of the meeting:

Kathleen A. Freedman, Secretary
County Council

Minutes written by: Mary A. Edgar

APPROVED

6325

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Thurs., August 13, 1987 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 2:09 P.M. on Thursday, August 13, 1987.

PRESENT

Rose Crenca, President
Michael L. Gudis, President Pro Tem
Neal Potter
William E. Hanna, Jr.
Bruce Adams

ABSENT

Michael L. Subin, Vice President
Isiah Leggett

The President in the Chair.

President Crenca announced that there was an executive session scheduled immediately following this legislative session and that the subject was land acquisition.

INTRODUCTION OF BILLS

SUBJECT: Emergency Bill No. 42-87. Transfer of Operational Firefighters from Corporations to the Department of Fire and Rescue Services (DFRS)

Introduced Bill No. 42-87.

President Crenca noted that this was an emergency bill and that it was necessary to schedule the bill for hearing as soon as possible. Mr. Spengler, Council Staff Director, said that the public hearing is tentatively scheduled for Wednesday evening, September 16, and that the Council worksession is scheduled for September 21 at 9:30 A.M.

Mr. Kramer, County Executive, apologized to the Councilmembers for asking them to interrupt their vacations to introduce the bill. He said he had planned to address the bill through the normal legislative process at the same time the other recommendations of the Red Ribbon Committee are

addressed. He noted, however, that the U. S. District Court has issued a ruling which made it necessary to address the employment status of the firefighters and rescuers on an emergency basis. The ruling requires that the career firefighters in the independent fire corporations be paid overtime for any hours worked in excess of 40 hours a week. If the firefighters were County merit system employees, they would not be eligible for overtime until they had worked 53 hours a week. He said that he has met with management personnel of the fire corporations and has asked their cooperation in arranging work schedules to minimize the impact of the overtime pending Council action. He has asked that public safety not be jeopardized and has assured them that he will seek a supplemental appropriation from the Council to fund the overtime payments until the issue is resolved. He said he has also asked Mr. Granados, Director, DFRS, to begin the process to hire a volunteer coordinator to promote volunteerism. He said he believes improvements can be made in the volunteer program and he would like to move in that direction.

Mr. Kramer said that he is asking two things of the Council: (1) that this bill be considered at the Council's earliest convenience; and (2) that the Council positively consider the proposal.

Councilmember Gudis said that he would like information available at the public hearing concerning the cost to the County if the firefighters and rescuers remain employees of the independent fire corporations and the cost if they become County merit system employees. He said he has been informed that individuals who are career employees will no longer be permitted to volunteer at other fire corporations if they are County employees.

Mr. Sorrell, Deputy County Attorney, explained the Federal Fair Labor Standards Act (FLSA) concerning overtime and the court ruling. He said there is a section of the statute concerning volunteer service which prohibits coercive activities or conspiracies between employers in an attempt to circumvent the overtime provisions. He said that in his opinion there is a greater risk of violating the intent of the law under the present system than there would be if the bill is passed. He said if the bill is enacted the County intends to remain neutral with respect to volunteer service to corporations other than the one to which the firefighters are assigned. Mr. Kramer assured the Council that he intends to do everything he can to assure that the firefighters are permitted to continue their volunteer service.

Councilmember Hanna said he cannot support the bill. He said he fears the court ruling is being used improperly to bring firefighters and rescuers under the County control. He said he does not believe the union will permit the firefighters to volunteer with other corporations and that bringing the firefighters into the County personnel system will discourage volunteerism and eventually be the demise of volunteer service. He said he believes there is room for improvement in the fire service and that these improvements can be made under the present system. He said he will do all he can to preserve the volunteer system.

Councilmember Potter said that he shares some of the concerns expressed by Councilmember Hanna, and he hopes that these concerns will be addressed at the public hearing. In response to his questions concerning the source of funds to pay the overtime, Mr. Kendal, Director, Office of Management and Budget, said that there are funds available in the fire district accounts that can be used to fund the supplemental appropriations. He said that, if the Council decides not to enact the bill, the County would advance the funds to the fire districts from the General Fund and repay the General Fund by levying a higher tax the following year.

Councilmember Adams said that he visited the Wheaton Rescue Squad Friday evening to talk to the rescuers about the bill and the issue of volunteer service. He said he spoke with Mr. Conway, President of the Career Firefighters Association, concerning the union's position on the volunteer service. He said he was assured that the union will take a position similar to the County and not prohibit the firefighters from volunteering at other departments. Councilmember Adams said he thinks it is important that the firefighters be treated in the same way the County treats other County employees.

In response to President Crenca's inquiry, Mr. Sorrell explained the provision of the bill which would not permit funds to be expended or distributed for payment of personnel costs for personnel employed by the independent corporations in the firefighter/rescuer occupational series after ninety days from the effective date of this law, if it is enacted by the Council. He said that, after the ninety-day period, the corporations will not be permitted to pay these employees with tax funds. He noted that the corporations will continue to have other employees paid by the corporations, such as clerical employees, and that this bill only applies to the operational firefighters and rescuers.

Mr. Kramer asked the Councilmembers to advise his staff of any questions that may be brought to their attention prior to the public hearing so that answers can be available at that time. He advised the Council that it will be more costly to the taxpayers if the firefighter/rescuer series is not brought under the County merit system.

(The Council recessed at 2:45 P.M. and reconvened at 2:47 P.M.)

SUBJECT: Executive Session

The County Council convened in executive session on a land acquisition matter at 2:47 P.M.

The meeting adjourned at 3:20 P.M.

This is an accurate account of the meeting:

Kathleen A. Freedman, Secretary
County Council

October 20, 1987
Agenda Item .1

MEMORANDUM

TO: County Council

FROM: MF Michael Faden, Senior Legislative Attorney

SUBJECT: Bill 48-87, Collective Bargaining - Fire/Rescue Employees

Bill 48-87 is scheduled to be introduced on October 20, 1987, by the Council President at the request of the County Executive. It creates a third collective bargaining unit, primarily for the employees in the firefighter/rescuer classification below the rank of sergeant who will transfer to County employment as a result of the enactment of Bill 42-87 last week.

If this bill is enacted, the procedures for certifying a union representative, and the subjects of and procedures for bargaining will be the same as those for the other bargaining units. We understand that bargaining would begin about November 1, 1988 for the FY90 budget.

Some of the issues this bill raises are:

1) Does this set a precedent for the creation of other new bargaining units?

2) How will the 20-odd firefighter employees of DFRS who are now members of another bargaining unit be treated? They would fall within the new unit, but how will the transfer affect their pay and benefits and their right to file grievances?

3) The Fire/Rescue Communications Technician position included within this bargaining unit is a civilian position. (Currently only 1 person holds this position.) Does this set a precedent for inclusion of other civilian positions in public safety (police and fire) bargaining units?

This packet contains:

Bill 48-87	Circle 1
Legislative Request Report	Circle 4
Memo from County Executive	Circle 6

Bill No.: 87
Concerning: Collective Bargaining-
Fire/Rescue Employees
Draft No. & Date: 1 - 10/16/87
Introduced: 10/20/87
Expires: 4/20/89
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co., FY ___

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EMERGENCY ACT to:

(1) establish a Fire/Rescue collective bargaining unit;
(2) establish a filing date for certification petitions for new bargaining units; and
(3) generally amend certain collective bargaining provisions.

By amending

Montgomery County Code
Chapter 33, Personnel
Sections 33-105 and 33-106

EXPLANATION: **Boldface** indicates a heading or a defined term.
Underlining indicates text that is added to existing law by the original bill.
[Single boldface brackets] indicate text that is deleted from existing law by the original bill.
Double underlining indicates text that is added to the bill by amendment.
[[Double boldface brackets]] indicate text that is deleted from existing law or the bill by amendment.
* * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1 Section 33-105 is amended as follows:

33-105. Units for Collective Bargaining.

(a) There are [two (2)] 3 units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, excluding the categories listed as exceptions to the definition of Employee in Section 33-102(4) of this article. The employees are divided into [two (2)] 3 units, in accordance with the following descriptions:

(1) * * *

(2) * * *

(3) Fire/Rescue Unit. This unit is composed of employees who hold the positions of Master Firefighter/Rescuer, and Firefighter/Rescuer I, II, and III, [[and Fire/Rescue Communications Technician,]] and who are associated with fire suppression, fire protection, fire communications, fire service training, rescue and emergency medical services. These duties include the rescue and safety of individuals and the preservation of structures and physical property.

(b) Specific job classes included in these units of representation, and not otherwise excluded under Section 33-102(4), shall be based on the designations made by the Chief Administrative Officer under the prior meet and confer process if the job class is not specified in this article.* * *

(1)

Sec. 2. Section 33-106 is amended as follows:

33-106. Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) * * *

(2) * * *

(3) Petitions may be filed within [thirty (30) days following the date on which this article becomes effective] 90 days after any new bargaining unit is established. Thereafter, if a lawful collective bargaining agreement is not in effect, petitions may be filed between September 1 and September 30 of any year, but not sooner than [twenty-two (22)] 22 months after an election held under this section.

(4) * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

Sec. 3. Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This Act takes effect on the date on which it becomes law.

Approved:

_____ _____

Rose Crenca, President, County Council — Date

Approved:

_____ _____

Sidney Kramer, County Executive — Date

This is a correct copy of Council action.

_____ _____

Kathleen A. Freedman, Secretary, County Council — Date

3

LEGISLATIVE REQUEST REPORT

Bill 48-87
Fire/Rescue Collective Bargaining Unit
and Certification Procedures

DESCRIPTION: This bill creates a third collective bargaining unit to be composed of Master Firefighter/Rescuer, Firefighter/ Rescuer I, II, III, and Fire/Rescue Communications Technician. It also provides for the filing of petitions for certification of an employee organization within 90 days following the date of creation of the bargaining unit.

PROBLEM: On October 15, 1987, the Montgomery County Council passed Bill 42-87 which provides for the transfer of Firefighter/ Rescuers from the independent fire corporations to the Department of Fire and Rescue Services. Montgomery County Charter Section 511 authorizes the Council to provide for collective bargaining with representatives of employees of the County government. Montgomery County Code Section 33-101 through 33-112 has established a collective bargaining procedure for County employees. The addition of a large group of firefighters to the County labor force has created a substantial group of employees with a unique community of interest.

GOALS AND OBJECTIVES: To promote a harmonious, peaceful and cooperative relationship between the County government and its employees and to protect the public by assuring at all times the responsive, orderly and efficient operation of County government and services. The County wishes to provide and orderly procedure for determining wages, hours, and certain working conditions for Fire/Rescuer employees, newly covered by collective bargaining as employees of Montgomery County, Maryland.

COORDINATION: Department of Fire and Rescue Services

FISCAL IMPACT: Requested

ECONOMIC IMPACT: Requested

EVALUATION: To be conducted by the Montgomery County Council, Office of Legislative Oversight at the request of the Montgomery County Council in coordination with the review of Bill 42-87.

EXPERIENCE ELSEWHERE:	Not applicable.
SOURCE OF INFORMATION:	Clyde H. Sorrell, County Attorney 251-2600 Robert Kendal, Director, Office of Management and Budget Sean Rogers, Chief, Division of Labor Relations/ Training
APPLICATION WITHIN MUNICIPALITIES:	Not applicable
PENALTIES:	No new or additional penalties are created by this amendment to the existing collective bargaining law.

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Montgomery County Government

ROCKVILLE, MARYLAND 20850

Sidney Kramer
County Executive
(301) 251-2500
TTY 279-1085

M E M O R A N D U M

October 16, 1987

TO: Rose Crenca, Council President

FROM: Sidney Kramer, County Executive Sidney Kramer

RE: Amendments to the County Collective Bargaining Law to establish a separate Fire/Rescue Bargaining Unit

On Thursday, October 15, 1987 the County Council unanimously voted for emergency legislation to permit the transfer of paid County firefighters into the County merit system. As a consequence of this emergency legislation, the individuals encumbering the positions of Master Firefighter/Rescuer, Firefighter/Rescuer I, II, II and Fire/Rescue Communications Technician may become members of the collective bargaining unit defined by the provisions of the County Collective Bargaining Law.

I believe it is in the best interest of the County government, the affected employees and the County's collective bargaining program to be in a separate bargaining unit. Historically, firefighter/rescuers have been recognized as sharing a unique community of interest in labor relations and collective bargaining systems. Therefore, I am submitting the attached emergency legislation to amend the provisions of section 33-105 and 106 to create a separate Fire/Rescue Unit and to permit a 90 day period following the creation of the new bargaining unit for the acceptance of petitions from interested employee organizations seeking certification as the exclusive representative for the new bargaining unit.

The legislation also limits the bargaining unit's coverage to Master Firefighter/Rescuer, Firefigther/Rescuer I, II, III and Fire/Rescue Communications Technician classes. Supervisory employees, Sergeants and above, remain outside the bargaining unit and the coverage of collective bargaining consistent with the current provisions of the County Collective Bargaining Law.

This legislation is submitted as emergency legislation to ensure that the new bargaining unit is in place before the transfer of firefighters to the merit system.

I urge the immediate passage of this emergency legislation.

MONTGOMERY COUNTY, MARYLAND
COUNTY COUNCIL

- - - - - - - - - - - - - - - - x
:
COLLECTIVE BARGAINING - :
: Emergency Bill 48-87
FIRE/RESCUE EMPLOYEES :
:
- - - - - - - - - - - - - - - - x

Seventh Floor Hearing Room
Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Thursday,
November 5, 1987

The above-entitled matter came on for hearing, pursuant to notice, at 7:35 p.m.

BEFORE: ROSE CRENCA
Board Chairman

BOARD MEMBERS:

WILLIAM E. HANNA, JR.
BRUCE ADAMS
MICHAEL L. SUBIN

ALSO PRESENT:

MARTY CROZIER
MICHAEL FADEN

87 NOV 12 P4:12

APPEARANCES:

WILLIAM GARRETT
Personnel Director, Montgomery County

NORMAN CONWAY
Montgomery County Career Firefighters Association

I N D E X

STATEMENT OF:	PAGE:
William Garrett	4
Norman Conway	12

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P R O C E E D I N G S

CHAIRMAN CRENCA: The meeting will please come to order. Good evening, ladies and gentlemen. This is a public hearing on Bill 48-87, Collective Bargaining, Fire and Rescue Employees, an emergency act to: 1) establish a Fire/Rescue collective bargaining unit; 2) establish a filing date for certification petitions for new bargaining units; and 3) generally amend certain collective bargaining provisions.

Persons wishing to submit additional information for the Council's consideration should do so by the close of business on Monday, November 9th, 1987.

Our first speaker this evening is listed as Mr. Garrett representing the County Executive, and not seeing Mr. Garrett, I suppose we have --

VOICE: Mr. Garrett just walked in.

CHAIRMAN CRENCA: Oh, Mr. Garrett is here. All right, Mr. Garrett, representing the County Executive. Good evening.

MR. GARRETT: Good evening, Madam President, members of Council. My name is William Garrett. I'm Personnel Director for Montgomery County Government. On behalf of the County Executive, I've been asked to provide testimony regarding Council Emergency Bill 48-87.

On October 15, 1987, the County Council unanimously

voted for other emergency legislation, Council Bill 42-87, to permit the transfer of certain paid firefighters to the County Merit System. That legislation provides -- excuse me -- for voluntary transfer of eligible of eligible fire corporation employees into the County Merit System by January 15, 1988.

The definition section of the County Collective Bargaining Law, Montgomery County Code, which will be applicable to these transferred firefighters provides that firefighters below the rank of Sergeant will be employees within the meaning of the statute. Upon transfer, they would become part of the existing office, professional and technical bargaining unit.

Historically there are several reasons why it is in the interest of the Government and these employees to provide a separate bargaining unit for non-supervisory Fire/Rescue workers. The occupation of firefighter and public employee was the first job category to be recognized as requiring a separate bargaining unit due to the narrow and unique community of interest of firefighters. Indeed, the first firefighter bargaining unit was formed in the City of Cincinnati in 1897.

Over the intervening years, a pattern of separate bargaining units for firefighters has become ingrained in public employment. Today, in those State, County and

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Municipal and Governmental jurisdictions in which public employees enjoy collective bargaining, it is universally recognized that the community of interest shared by firefighters requires that the local government deal with firefighter employee organizations separate and apart from other employees and employee organizations.

Many Personnel policies, practices and working conditions which control Fire/Rescue employees' day to day work life are unique, including scheduling, uniforms, equipment, safety, training, promotion and performance evaluation. No other single occupational group, other than police officers, is the size, approximately 600 employees, of the non-supervisory Fire/Rescue work force. For all of the reasons, the County Executive believes it is in the best interest of the County Government, Personnel administration and management collective bargaining goals to create a separate bargaining unit for non-supervisory Fire/Rescue employees under the current provisions of the County collective bargaining law.

Item 1) This legislation introduced by Council President at the request of the County Council is emergency legislation. It's necessary for the Council to enact these recommended technical amendments to the County collective bargaining law on an emergency basis as a consequence of the timing of the transfer opportunity afforded eligible fire

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corporation employees. Specifically, Council Bill 42-87 provides for transfer of eligible corporation employees to the County Merit System by January 15, 1988. It's essential to act quickly to avoid confusion over whether these employees will have a separate bargaining unit or be part of the existing OPT bargaining unit of Local 400 and to avoid creating conflict with the existing collective bargaining agreements. For these reasons, the separate Fire/Rescue bargaining unit must exist before eligible corporation employees enter the County Merit System under the provisions of Bill 42-87; therefore, this legislation, Council Bill 48-87, has been submitted as emergency legislation to ensure that the new Fire/Rescue bargaining unit is in place before the transfer of eligible corporation employees into the County Merit System.

Item 2) The proposed legislation constitutes technical amendments to the existing County collective bargaining law. These technical amendments create a third bargaining unit entitled "The Fire/Rescue Unit" by amending Section 33-108(a) of the County collective bargaining law. Specifically, the section's reference to two units for collective bargaining is changed to three.

Further, the bill adds a definition of the new Fire/Rescue unit and establishes that the unit will be composed of the employees of the occupational classes of

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master firefighter and firefighter rescuer one, two and three. This bill provides a technical amendment to Section 33-105(b) of the law which gives authority for the creation of the Fire/Rescue unit through legislative amendment. This technical amendment is necessary because Fire/Rescue personnel employed by independent corporations, unlike certain County employees, were never covered by meet and confer legislation which was the genesis of the unit structure currently provided for in the County collective bargaining law.

Item 3) The proposed legislation establishes a 90 day period, usually known as a filing window, after the creation of the new bargaining unit to permit employee organizations to file representational petitions with the County labor relations administrator. If the County labor relations administrator finds that the petition filed during this period has valid signatures of 30 percent or more of the bargaining unit, a question concerning representation, which is referred to as the QCR, is raised, the QCR is resolved by an election among the bargaining unit employees conducted by the Maryland State Department of Labor.

This addition to the provisions of the County collective bargaining law is largely technical since the existing language allows for representational petitions only between September 1 and September 30 of any year a collective

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bargaining agreement is not in effect. This original 30 day filing window was legislated without consideration of the addition of new collective bargaining units.

Item 4) Due to the timing of implementation of the transfer of the eligible corporation employees, no employee organization can be certified as the exclusive representative of the new Fire/Rescue bargaining unit until the spring of 1988, even assuming that such an employee organization can raise a QCR by filing a valid petition with the labor relations administrator at the 30 percent level before the 90 day filing window has run. The applicable provision of the County collective bargaining law at Section 33-108 states, "Collective bargaining shall begin no later than November 1, before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative". Therefore, the County will be under no duty to bargain a term or comprehensive collective bargaining agreement with any employee organization selected as the exclusive representative for the Fire/Rescue bargaining unit until November 1 of 1988; moreover, any such agreement would not take effect until July 1 of 1989; therefore, there will be no direct budgetary impact as a result of the creation of this bargaining unit until the fiscal year beginning July 1, 1989.

In summary, as a result of the Council's

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enactment of Bill 42-87, eligible corporation Fire/Rescue employees who choose to transfer into the County Merit System would become part of the existing OPT bargaining unit of Local 400. This bargaining unit is not an appropriate unit for Fire/Rescue workers in light of the occupation's history, community of interest and unique working conditions. To provide for the appropriate administration of the County's collective bargaining program, it is necessary to make a series of amendments to the provisions of the County collective bargaining law by emergency legislation.

These amendments create a new Fire/Rescue bargaining unit, provide authority for establishment of the unit and establish a 90 day filing window following enactment for any employee organization to file an appropriate representation petition resulting in a representation election in accordance with applicable law. To ensure the continuing successful labor relations program here in the County and to protect the interests of County management while providing a full measure of self-determination to County Fire/Rescue workers, I urge the immediate passage of Bill 48-87.

CHAIRMAN CRENCA: Thank you, Mr. Garrett. Are there any questions? Mr. Allen.

MR. ALLEN: I think Mr. Garrett has made a very

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serious omission. Isn't there someone you brought with you you want to introduce to us?

MR. GARRETT: -- not necessary. That's my youngest daughter, Lane.

MR. ALLEN: Well, Mother Crenca doesn't want her in here without the introduction --

CHAIRMAN CRENCA: That's right. Mother Crenca says that children are our greatest treasure and we want to make sure everybody knows they're here. We welcome you. We want you to know that your Daddy works hard all the time, and we're glad to have him here. He helps us out.

Are there any other comments or questions? Do any of you wish to say any additional comments? Nothing? Go ahead. Thank you very much.

MR. GARRETT: Thank you.

CHAIRMAN CRENCA: Our next speaker, Steve Hobbs, representing Montgomery County Career Firefighters' Association.

MR. CONWAY: Mr. Hobbs is going to cede his time to me.

CHAIRMAN CRENCA: Fine.

MR. SUBIN: Oh, wait a minute. Wait a minute.

MR. CONWAY: I was flying down I-95 at 65 miles an hour just to be here.

CHAIRMAN CRENCA: There is no reciprocity between

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the Fire Department and the Police Department when it comes to law breaking.

MR. CONWAY: Madam President, and I think you can hear me. Madam President and gentlemen of the Council, I thank you for this opportunity to come before you tonight and speak on behalf of Bill 48-87. Along with the copy of my short, very short testimony is the copy of a letter from Thomas McNutt of Local 400 giving us his blessings and Mr. Water Bader of the FOP of Montgomery County doing likewise.

On behalf of the Montgomery County career firefighters I'd like to thank you for this opportunity to speak on Bill 48-87 which addresses the creation of a separate bargaining unit for the County firefighters and rescue squadsmen. With the advent of County employment for fire service employees came the necessity of creating a separate bargaining unit.

Firefighters have unique working conditions and special safety concerns. These matters would most effectively be addressed by the formation of this separate unit. The citizens back in 1984 overwhelming expressed their support for collective bargaining for their County employees. I believe they would feel as spirited about Bill 48-87 as they did about that original bill.

I have confidence that you, as elected trustees

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of the public's interest, will feel likewise. The intricacies of the working conditions, safety concerns, and hours worked by fire service personnel are ones that require special considerations. With the establishment of a separate bargaining unit, these concerns most effectively will be addressed. It is for these reasons we ask for your support of Bill 48-87. Thank you very much.

CHAIRMAN CRENCA: Thank you. Are there any questions?

VOICE: You got here just in time. It's over. It's over.

CHAIRMAN CRENCA: Then do I understand, Mr. Conway, that then generally there are no real questions to be raised that you find the legislation, the proposed legislation acceptable and that the Executive does also, and it ought to be a breeze for us to go through?

MR. CONWAY: I think on all parties concerned, that we're very happy about the resolution.

CHAIRMAN CRENCA: All right. Thank you. Are there any others who wish to be heard? Then I will consider the hearing closed and look forward to the work session. Thank you.

VOICE: Thanks for stopping by, Bill.

(Whereupon, at 7:50 p.m., the hearing was adjourned.)

FMRRN TRANSCRIPT

CORBY GROUP NJ: 1-800-822-0190 NATIONWIDE: 1-800-255-5040

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Emergency Bill 48-87

Collective Bargaining - Fire/Rescue Employees

BEFORE: Montgomery County Council

DATE: November 5, 1987

PLACE: Rockville, Maryland

represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.

Cheryl L. Carter

CHERYL L. CARTER
Reporter

FMRRN TRANSCRIPT

CORBY GROUP NJ: 1-800-822-0190 NATIONWIDE: 1-800-255-5040

United Food and Commercial Workers International Union, AFL-CIO, CLC

united food & commercial workers union local 400

President
Thomas R. McNutt

Secretary-Treasurer
W. Gary Sauter

Executive Vice President
William D. Sellars

Serving members in
Maryland
Virginia
District of Columbia

November 5, 1987

Norman Conway
President
Montgomery County Firefighters
170 Rollins Avenue
Rockville, Maryland 20852

Dear Mr. Conway:

The United Food and Commercial Workers Union, Local 400 supports the Firefighters of Montgomery County in their efforts to have legislation passed allowing them to become a separate bargaining unit.

Fraternally,

Thomas R. McNutt

Thomas R. McNutt
President

TRMcN:pas

cc: Rose Crenca
Chairperson, County Council

Montgomery County Lodge 35, Inc.

November 5, 1987

Honorable Rose Crenca
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

RE: Council Bill 48-87
Collective Bargaining - Firefighters

Dear President Crenca:

I am writing to express Lodge 35's support for Council Bill 48-87. This bill, provides for a separate collective bargaining unit for certain fire/rescue employees as authorized by Charter Section 511, approved by the voters of Montgomery County in November 1986.

As you well know, most of the County's fire/rescue personnel have, until just recently, been employed by separate "quasi-public" fire departments, but are now County employees. See Council Bill 42-87.

Given the unique nature of fire/rescue work and the Council's vote to make fire/rescue personnel County employees, we honestly believe that this bill, if passed, will accomplish a legitimate purpose and that it is in the best interest of the deserving citizens of our community.

Fire/rescue employees perform jobs and have needs unique to their profession which are significantly different than those of all other County employees. Moreover, they are essential to the protection of the life, health and safety of each and every County resident.

This legislation is consistent with that of many other area governments where fire/rescue personnel are represented by a separate bargaining representative. E.g. Prince Georges County; Washington, D.C.; Baltimore City; Anne Arundel County.

19542 Club House Road, Gaithersburg, MD 20879

948-4286

In sum, fire/rescue personnel of Montgomery County have recently been made County employees. They have a community of interest and perform unique, vital lifesaving functions. Therefore, we encourage the Council to vote for Council Bill 43-87 to allow fire/rescue personnel to collectively bargain over those matters previously declared appropriate for bargaining. This right is already afforded area fire/rescue personnel and is in the best interest of the public.

Your consideration is most greatly appreciated.

Sincerely,

Walter E. Bader

Walter E. Bader
President

WEB/saw
cc: Bruce Adams
Michael Gudis
William Hanna
Isiah Leggett
Neal Potter
Michael Subin

Bill No.: 48-87
Concerning: Collective Bargaining-
Fire/Rescue Employees
Draft No. & Date: 2 - 10/20/87
Introduced: 10/20/87
Enacted: 11/17/87
Executive: November 20, 1987
Effective: November 20, 1987
Sunset Date: None
Ch. 19, Laws of Mont. Co., FY 88

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EMERGENCY ACT to:

(1) establish a Fire/Rescue collective bargaining unit;
(2) establish a filing date for certification petitions for new bargaining units; and
(3) generally amend certain collective bargaining provisions.

By amending

Montgomery County Code
Chapter 33, Personnel
Sections 33-105 and 33-106

EXPLANATION: **Boldface** indicates a heading or a defined term.
Underlining indicates text that is added to existing law by the original bill.
[Single boldface brackets] indicate text that is deleted from existing law by the original bill.
Double underlining indicates text that is added to the bill by amendment.
[[Double boldface brackets]] indicate text that is deleted from existing law or the bill by amendment.
* * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1 Section 33-105 is amended as follows:

33-105. Units for Collective Bargaining.

(a) There are [two (2)] 3 units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, excluding the categories listed as exceptions to the definition of Employee in Section 33-102(4) of this article. The employees are divided into [two (2)] 3 units, in accordance with the following descriptions:

(1) * * *

(2) * * *

(3) Fire/Rescue Unit. This unit is composed of employees who hold the positions of Master Firefighter/Rescuer, and Firefighter/Rescuer I, II, and III, [[and Fire/Rescue Communications Technician,]] and who are associated with fire suppression, fire protection, fire communications, fire service training, rescue and emergency medical services. These duties include the rescue and safety of individuals and the preservation of structures and physical property.

(b) Specific job classes included in these units of representation, and not otherwise excluded under Section 33-102(4), shall be based on the designations made by the Chief Administrative Officer under the prior meet and confer process if the job class is not specified in this article.* * *

Sec. 2. Section 33-106 is amended as follows:

33-106. Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) * * *

(2) * * *

(3) Petitions may be filed within [thirty (30) days following the date on which this article becomes effective] 90 days after any new bargaining unit is established. Thereafter, if a lawful collective bargaining agreement is not in effect, petitions may be filed between September 1 and September 30 of any year, but not sooner than [twenty-two (22)] 22 months after an election held under this section.

(4) * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

Sec. 3. Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This Act takes effect on the date on which it becomes law.

Approved:

Rose Crenca — November 20, 1987

Rose Crenca, President, County Council — Date

Approved:

Sidney Kramer — November 25, 1987

Sidney Kramer, County Executive — Date

This is a correct copy of Council action.

Kathleen A. Freedman — NOV. 23, 1987

Kathleen A. Freedman, CMC — Date

Secretary of the Council

APPROVED

6440

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, Nov. 17, 1987 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:25 A.M. on Tuesday, November 17, 1987.

PRESENT

Rose Crenca, President
Neal Potter
Isiah Leggett
Michael L. Subin, Vice President
Bruce Adams
William E. Hanna, Jr.

ABSENT

Michael L. Gudis, President Pro Tem

The President in the Chair.

The Journal of November 3, 1987 was approved.

CALL OF BILLS FOR FINAL READING

SUBJECT: Bill No. 43-87. Streets and Roads - Covered Loads

Councilmember Hanna commented on the number of years that it has taken to enact this type of legislation. He said the legislation has received an overwhelming positive response from citizens and expressed the wish that the State Legislature would enact similar legislation to replace the existing State law which is difficult to enforce.

Councilmember Potter directed attention to an amendment proposed by Senior Legislative Attorney Faden, the second page of Mr. Faden's memorandum to the Council, dated November 17, 1987, drafted in response to a concern expressed by Mr. Neumann, attorney, about the need to include in the definition of "loose material" the word "dust" and the phrase "or emit significant quantities of dust." In the discussion that followed, it was agreed that "dust" is already covered in the definition of "loose material" set forth in Section 49-21A(c)(1).

Councilmember Leggett said that he will vote in favor of enactment of the bill, commending Councilmember Hanna for his work on the legislation. He said that he is concerned that the law will be challenged on the basis that it is preempted by state law, and urged citizens to lobby the State Legislature to enact a similar law that will resolve the problems that exist.

ACTION: Approved the following amendments:

Sec. 1. Chapter 49 is amended by adding section 49-21A as follows:

49-21A. Covered Loads.

(a) A person must not carry any loose or bulky material in a motor vehicle on any County road, as defined in section 49-31, unless that part of the motor vehicle in which the load is carried is:

(1) fully enclosed on the bottom and all sides, and

(2) covered on the top by a firmly secured cover sufficient to contain all loose or bulky material, if the vehicle does not have a roof that covers the entire area in which the load is carried.

(b) A cover [[is]] and (for bulky material) sides are not required if the material is contained or secured by other means that prevent its escape.

(c) As used in this section:

(1) "loose material" includes dirt, ash, sand, pebbles, rocks, gravel, metal, glass, wood chips, and any other substance that can readily blow off or drop from a vehicle;

(2) "bulky material" includes bricks, cinder blocks, lumber, logs, gypsum board, barrels, pipes, furniture, and any other items that can readily drop from a vehicle.

(d) This section does not apply to:

(1) a government agency, or a contractor hired by a government agency, that is using a motor vehicle to:

(A) drop sand, salt or other materials to improve traction;

(B) spread water or another substance to clean a road; or

(C) collect newspapers for recycling.

(2) a vehicle transporting agricultural products [[in their natural state]] as harvested.

(3) a construction or mining vehicle only when it is:

(A) crossing a highway, or

(B) moving between construction barricades on a public works project.

(e) The County Executive may issue regulations under method 2 to implement this section.

(f) Any violation of this section is a class B violation.

by motion of Councilmember Potter, without objection.

ACTION: Enacted Bill No. 43-87, as amended

by motion of Councilmember Hanna, by a roll call vote:

YEAS: Hanna, Adams, Leggett, Potter, Crenca
ABSENT: Subin (temporarily); Gudis .

SUBJECT: Bill No. 44-87. Sutherland Agricultural Land Preservation District

Councilmember Potter said that this completes an action that the Council has looked forward to for some time. This represents part of the State procedures for establishing an agricultural easement and purchasing development rights from an owner for the purpose of preserving agricultural land for the future.

Councilmember Crenca expressed the view that the process of preserving agricultural land through the establishment of an agricultural district is a better way to preserve agricultural land than through the Transferable Development Rights process.

ACTION: Enacted Bill No. 44-87

by motion of Councilmember Potter, by a roll call vote:

YEAS: Hanna, Adams, Leggett, Potter, Crenca

ABSENT: Subin (temporarily); Gudis.

SUBJECT: Emergency Bill No. 48-87, Collective Bargaining-Fire/Rescue Employees

Councilmember Hanna asked whether the items that are negotiable by the two existing employee bargaining units will apply to the subject unit under the subject legislation. Staff Director Spengler said that the subject bill amends the collective bargaining law; therefore the new bargaining unit has the same bargaining rights as the other two units.

Councilmember Hanna moved, duly seconded, to amend the subject bill to delete pension plans from the items that can be negotiated by the Fire/Rescue collective bargaining unit.

Councilmember Potter questioned whether the motion is in order in view of the advertising for the legislation. Senior Legislative Attorney Faden said that a general clause is included in the title of the legislation to provide the Council with some flexibility to amend legislation; in this case, he believes the deletion of pension plans would fit within this phrase, but that this could be challenged.

Councilmember Hanna suggested that, if his amendment is not in order, the bill be withdrawn from the agenda. Councilmember Leggett said that if there is the possibility that Mr. Hanna's proposed amendment could be challenged, he believes the Council should defer action for a week to provide the opportunity for staff to investigate the issue and prepare a memorandum on the subject. Mr. Leggett noted that the inclusion of pensions as a negotiable item could create a heavy financial burden for the County. Councilmember Adams suggested that, if the Council does defer action on the bill, the Council receive a briefing on the issues, as well as a memorandum, and that interested parties be notified of the deferral and rescheduling of the bill on the Council's agenda. Councilmember Potter suggested the need for a new bill to be drafted to address the pension issue since it applies to all of the collective bargaining units.

Mr. Rogers, Chief, Labor/Employee Relations and Training, explained that the bargaining units represented by the Montgomery County Employees Organization (MCGEO), UFCW, Local 400, as well as the bargaining unit of the Police Department, have the right to negotiate pension benefits. He said that the subject bill is a technical amendment to the County's labor law and includes firefighters as a separate bargaining unit.

In setting forth his reasons for objecting to pensions as negotiable

items for collective bargaining, Councilmember Hanna expressed concern about the financial impact that could be placed on the County government as a result of pension negotiations, particularly since the County has a defined benefit pension plan.

Councilmember Potter suggested that the Council recess its legislative session, so that this issue could be discussed later today after the Council meets in executive session concerning contractual issues involving collective bargaining.

Mr. Rogers explained the process that the new bargaining unit would have to initiate to become a certified unit. He pointed out that bargaining under the law could not occur until November 1988 and that the contract negotiated would not become effective until July 1, 1989. He said that if the subject law is not enacted the firefighters would be part of the Office, Professional and Technical Unit which is currently engaged in collective bargaining. Mr. Rogers noted that, under the collective bargaining legislation, pensions were not negotiable for one year after the effective date of the law (September 29, 1986).

Councilmember Subin suggested that the Council enact the subject legislation and that the pension issue be given to the Personnel Committee for consideration.

Councilmember Hanna withdrew his motion to amend the subject legislation, noting that he agrees with the alternative of addressing the issue for all employees.

ACTION: Enacted Bill No. 48-87

by motion of Councilmember Leggett, by a roll call vote:

YEAS: Hanna, Adams, Leggett, Potter, Subin, Crenca

ABSENT: Gudis.

Council President Crenca assigned the issue of collective bargaining for pension and other retirement benefits to the Personnel Committee.

The meeting adjourned at 10:04 P.M.

(Secretary's Note: After adjournment, at 12:25 P.M., the Council held another legislative session which was called by the President, without objection.)

SUBJECT: Bill No. 43-87. Streets and Roads - Covered Loads

Councilmember Subin moved, duly seconded, reconsideration of Bill No. 43-87, for the purpose of supporting Councilmember Hanna's legislation, since he was completing military reserve duty at the time the bill was enacted.

ACTION: Reconsidered Bill No. 43-87

by motion of Councilmember Subin, without objection.

Adopted amendments to the bill, as set forth in the earlier legislative session;

Enacted the Bill No. 43-87

by motion of Councilmember Hanna, by a roll call vote:

YEAS: Hanna, Adams, Leggett, Potter, Subin and Crenca

ABSENT: Gudis.

The meeting adjourned at 12:28 P.M.

This is an accurate account of the meeting:

Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Mary A. Edgar,
Senior Assistant Secretary

Susan E. Bratten
President

Hilma R. Blair
Secretary

Melvin R. Banks
Member

Thomas Gikas
Substitute Member

Lorraine Rooks Hollen
Substitute Member

RECEIVED COUNCIL

94 AUG 30 A10 : 06

Carol S. Evans
Elections Administrator

Richard G. Goehler
Deputy Elections Administrator

Sara Harris
Elections Operations Manager

Betty Ann Lucey
Registration/Absentee Manager

John P. Diuguid
Counsel

Board of Supervisors of Elections
for Montgomery County, Maryland
Post Office Box 4333
Rockville, Maryland 20849-4333

August 29, 1994

027036

The Honorable Neal Potter
County Executive
101 Monroe Street
Rockville, MD 20850

Dear Mr. Potter:

The Board of Supervisors of Elections for Montgomery County has completed the petition signature verification process for the charter amendment question submitted by The Binding Arbitration for Career Fire Fighters Committee.

You are herein advised that the petition contained the requisite 10,000 valid signatures necessary to place this question on the 1994 general election ballot. In accordance with the provisions of Article 33, Section 23-1(a)(1), this question was certified to this office by the County Council pending final verification.

Please note Article X1-A, Section 5, State Constitution mandates that charter amendment questions be advertised in at least one newspaper published in this County once a week for five consecutive weeks prior to the November 8, 1994 general election.

By copy of this letter, I am also notifying the Council President, as well as other parties involved of the findings of this Board.

Please feel free to contact me should you have any questions.

Sincerely,

Carol S. Evans
Elections Administrator

CSE:smh

cc: The Honorable William E. Hanna, President
Montgomery County Council

John Sparks
The Binding Arbitration for Career Fire Fighters Committee

Erick J. Genser, Mulholland & Hickey

94ELECT3\FIREFTR.LTR

Resolution No. 12-1790
Introduced: August 15, 1994
Adopted: August 15, 1994

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: Proposed Amendments to County Charter by petition; ballot titles

Background

(1) Section 5 of Article XI-A of the Constitution of Maryland provides that amendments to the Charter of Montgomery County may be proposed by a petition signed by at least 10,000 registered voters of the County.

(2) Under Section 23-1 of Article 33 of the Annotated Code of Maryland, proposed Charter amendments must be certified to the Board of Supervisors of Elections on or before the third Monday in August in the year in which there will be a general or Congressional election at which those Charter amendments are to be submitted to the voters.

(3) A petition to amend Section 511 of the Charter and add Section 510A to the Charter has been filed with the Board of Supervisors of Elections. The Board of Supervisors of Elections has not determined whether the petition qualifies for inclusion on the 1994 general election ballot.

(4) A petition to amend Section 305 of the Charter has also been filed with the Board of Supervisors of Elections. The Board of Supervisors of Elections has not determined whether the petition qualifies for inclusion on the 1994 general election ballot.

(5) Section 16-16 of the Montgomery County Code provides that a ballot title or summary, prepared by the Council, of all proposed Charter amendments shall appear in print on the voting machine or ballot.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

(1) If the following Charter amendment qualifies for inclusion on the 1994 general election ballot, the following ballot title shall appear on the ballot as Question C.

C

By petition the voters of Montgomery County propose to amend Section 511 of the Charter of Montgomery County, and add Section 510A to the Charter of Montgomery County, to read as follows:

Section 510A **Collective Bargaining - Fire Fighters**

The Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County career fire fighters. Any law so enacted shall prohibit strikes or work stoppages by career fire fighters.

Section 511 **Collective Bargaining - County Employees**

The Montgomery County Council may provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the County government not covered by either Section 510 or Section 510A of this Charter. Any law so enacted shall prohibit strikes or work stoppages for such officers and employees.

The ballot title shall be designated and read as follows:

Question C

Collective Bargaining - Fire Fighters

Amend Section 511 of the County Charter, and add Section 510A to the County Charter, to require the County Council to enact a law providing for collective bargaining with binding arbitration with a representative of the County career fire fighters, and reaffirm the existing requirement in the Charter that collective bargaining laws include a prohibition against strikes or work stoppages by employees covered by collective bargaining.

(2) If the following Charter amendment qualifies for inclusion on the 1994 general election ballot, the following ballot title shall appear on the ballot as Question D, except that it shall appear as Question C if the Charter amendment designated as Question C above does not qualify for inclusion on the ballot.

D

By petition the voters of Montgomery County propose to amend Section 305 of the Charter of Montgomery County to read as follows:

Section 305 Approval of the Budget; Tax Levies

The Council may add to, delete from, increase or decrease any appropriation item in the operating or capital budget. The Council shall approve each budget, as amended, and appropriate the funds therefor not later than June 1 of the year in which it is submitted. An aggregate operating budget which exceeds the aggregate operating budget for the preceding fiscal year by a percentage increase greater than that of the Consumer Price Index for all urban consumers for the Washington metropolitan area for the twelve months preceding December first of each year requires the affirmative vote of six Councilmembers. For the purposes of this section, the aggregate operating budget shall exclude operating budgets for enterprise funds, the Washington Suburban Sanitary Commission, the bi-county portion of the Maryland-National Capital Park and Planning Commission, and the Washington Suburban Transit Commission. The Council, sitting as a spending affordability committee, shall annually adopt spending affordability guidelines for the capital and operating budgets, including guidelines for the aggregate capital and aggregate operating budgets. The Council shall by law establish the process and criteria for adopting spending affordability guidelines. Any aggregate capital budget or aggregate operating budget that exceeds the guidelines then in effect requires the affirmative vote of seven Councilmembers for approval.

[By June 30 each year, the Council shall make tax levies deemed necessary to finance the budgets. Unless approved by an affirmative vote of seven Councilmembers, the Council shall not levy an ad valorem tax on real property to finance the budgets that will produce total revenue that exceeds the total revenue produced by the tax on real property in the preceding fiscal year plus a percentage of the previous year's real property tax revenues that equals any increase in the Consumer Price Index as computed under this section. This limit does not apply to revenue from (1) newly constructed property, (2) newly rezoned property, (3) property that, because of a change in state law, is assessed differently than it was assessed in the previous tax year, (4) property that has undergone a change in use, and (5) any development district tax used to fund capital improvement projects.]

Before June 30 each year, the Council shall make tax levies deemed necessary to finance the budgets. The Council shall not levy an ad valorem tax on real property to finance the budgets that will produce total revenue that exceeds the total revenue produced by the tax on real property in the preceding fiscal year (Previous Year's Ad Valorem Tax) (PYAVT),

plus a percentage of the previous year's real property tax revenues that equals any increase in the Consumer Price Index as computed under this Section (Consumer Price Index Increase) (CPII),

plus any increase in revenue from (1) newly rezoned property, (2) property that, because of a change in state law, is assessed differently than it was assessed in the previous tax year and (3) property that has undergone a change in use (Property Change Increase) (PCI),

plus new revenues (1) from newly constructed property and (2) from any development district tax used to fund capital improvement projects (New Source Revenues) (NSR),

minus the previous year's County income tax revenues in excess of the 52% level of state income tax (Previous Year's Excess Piggyback Tax) (PYEPT).

The formula for the County ad valorem tax levy shall thus be: PYAVT + CPII + PCI + NSR - PYEPT.

The above provisions shall not be overriden except in the case of an emergency and then only upon the unanimous vote of all Councilmembers.

The ballot title shall be designated and read as follows:

Question D

Property Tax - Relation to Income Tax

Amend Section 305 of the County Charter to:

-- allow property and income tax rate restrictions to be overridden only in an emergency and by a unanimous vote of all Councilmembers; and

--require the County Council, when setting rates for the real property tax, to reduce the total revenue produced by that tax in any fiscal year by the amount of revenue received during the preceding fiscal year from the county income tax in excess of the revenue that would have been received if the income tax rate were 52% of the state income tax.

This is a correct copy of Council action.

Mary A. Edgar

Mary A. Edgar, CMC
Acting Secretary of the Council

AGENDA ITEM #11
May 14, 1996

MEMORANDUM

May 10, 1996

TO: County Council

FROM: Michael E. Faden, Senior Legislative Attorney

SUBJECT: **Introduction**: Emergency Bill 21-96, Collective Bargaining - Firefighters

Emergency Bill 21-96, Collective Bargaining - Firefighters, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on May 14. A public hearing is scheduled for July 2 at 1:30 p.m. A Management and Fiscal Policy Committee worksession is tentatively scheduled for July 8, at 9:00 a.m.

This bill establishes a separate collective bargaining framework for nonsupervisory professional fire and rescue employees, provides for the selection of a separate Labor Relations Administrator for the Fire/Rescue unit, and allows binding arbitration of bargaining disputes.

Emergency Bill 21-96 implements Section 510A of the County Charter, approved by the voters in 1994.

This packet contains:	Circle #
Bill 21-96	1
Legislative Request Report	30
Memo from County Executive	33

f:\law\bills\9621fcol\intro.doc

Emergency Bill No. 21-96
Concerning: Collective Bargaining - Firefighters
Revised: 5-10-96 Draft No. 3
Introduced: May 14, 1996
Expires: November 14, 1997
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EMERGENCY ACT to establish a separate collective bargaining process for professional fire and rescue employees.

By amending
Montgomery County Code
Chapter 33, Personnel
Sections 33-102 and 33-105

By adding
Chapter 33, Personnel
Article X, Fire and Rescue Collective Bargaining
Sections 33-147 through 33-157

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland, approves the following Act:

Sec. 1. Sections 33-102 and 33-105 are amended, and Article X, Fire and Rescue Collective Bargaining, Sections 33-147 through 33-157, are added as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(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 [for the following]:

[a.] (A) Confidential aides to elected officials.

[b.] (B) All persons who are not covered by the County government merit system.

[c.] (C) Heads of principal departments, offices, and agencies.

[d.] (D) Deputies and assistants to heads of principal departments, offices, and agencies.

[e.] (E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

[f.] (F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

[g.] (G) Persons who work for the Office of the County Executive and the Office of the Chief Administrative Officer.

[h.] (H) Persons who work for the County Council.

[i.] (I) Persons who work for the Office of the County Attorney.

[j.] (J) Persons who work for the Office of Management and Budget.

[k.] (K) Persons who work for the [personnel office] Office of Human Resources.

[l.] (L) Persons who work for the Merit System Protection Board.

[m.] (M) Persons who work on a temporary, seasonal, or substitute basis.

[n.] (N) Newly hired persons on probationary status.

[o.] (O) Persons who work for the Police Department [who] and are represented by a certified employee organization under Article V [of this Chapter].

(P) Persons who work for the Department of Fire and Rescue Services and are represented by a certified employee organization under Article X.

[p.] (Q) Officers in the uniformed services (Corrections, Fire and Rescue, Police, Office of the Sheriff) in the rank of sergeant and above. Subject to any limitations in state law, deputy sheriffs below the rank of sergeant are employees.

[q.] (R) Persons who are members of the state merit system.

[r.] (S) Supervisors, which means persons having authority to [do any of the following]:

[1.](i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively [to] recommend any [one] of these actions;

[2.](ii)direct the activity of [three (3)] 3 or more employees; or

[3.](iii)adjust or recommend adjustment of grievances.

[s.] (T) Persons in grade 27 or above, whether or not they are supervisors.

33-105. Units for collective bargaining.

(a) There are [3] 2 units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, [excluding the categories listed as exceptions to the definition of] except any person who is not defined as an employee in Section 33-102(4) [of this Article]. The employees are divided into [3] 2 units[, in accordance with the following descriptions]:

* * *

[(3) **Fire/Rescue unit.** This unit is composed of employees who hold the positions of master firefighter/rescuer, and firefighter/rescuer I, II, and III, and who are associated with fire suppression, fire protection, fire communications, fire service training, rescue, and emergency medical services. These duties include the rescue and safety of individuals and the preservation of structures and physical property.]

* * *

ARTICLE X. FIRE AND RESCUE COLLECTIVE BARGAINING.

33-147. Declaration of policy.

The public policy of Montgomery County is to promote a harmonious, peaceful, and cooperative relationship between the County government and its fire and rescue employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the Department of Fire and Rescue

Services. Since unresolved disputes in the fire and rescue service harm the public and fire and rescue employees, adequate means should be available to prevent disputes and resolve them when they occur. To that end, it is in the public interest that fire and rescue employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of fire and rescue employees bargain collectively in good faith without interference with the orderly process of government, and that they implement any agreement reached through collective bargaining.

Fire and rescue employee organizations and the County government each possess substantial means for initiating actions on wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the fire and rescue service, once the employees voluntarily select a representative collective bargaining must be used in place of, and not in addition to, existing means to initiate government action on subjects that are appropriate for collective bargaining under this Article.

33-148. Definitions.

The following terms have the meaning indicated when used in this Article:

(1) **Agency shop** means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement must not require an employee to pay initiation fees, assessments, fines, or any similar collections as a condition of continued employment. A

collective bargaining agreement must not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the collective bargaining agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, with provision for dispute resolution if there is not agreement, and to give to the employer and the certified representative written proof of this payment. The certified representative must adhere at all times to all federal constitutional requirements in its administration of any agency shop system maintained by it.

(2) **Certified representative** means an employee organization chosen to represent the unit as the exclusive bargaining agent in accordance with this Article or Article VII.

(3) **Collective bargaining** means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this Article. This Article does not compel either party to agree to a proposal or make a concession.

(4) **Employee** means any fire and rescue employee in the classification of Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not any employee:

(A) in a probationary status, or

(B) in the classification of Fire/Rescue Sergeant or any equivalent or higher classification.

(5) **Employee organization** means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining. The organization must not admit to membership any person other than fire and rescue service personnel.

(6) **Employer** means the County Executive and the Executive's designee.

(7) **Lockout** means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) **Mediation** means an effort by an impasse neutral chosen under this Article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) **Strike** means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of these acts are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations

of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) **Unit** means all employees, as defined in this Section, who are associated with fire suppression, fire protection, fire communications, fire service training, rescue, and emergency medical services, and whose duties include the rescue and safety of individuals and the preservation of structures and physical property.

33-149. Labor Relations Administrator.

(a) A Labor Relations Administrator must be appointed to effectively administer this Article as it governs selection, certification and decertification procedures, prohibited practices, and the choice of an impasse neutral. The Administrator must:

(1) periodically adopt, amend, and repeal, under method (1), regulations and procedures to carry out the Administrator's duties under this Article;

(2) request from the **employer** or **employee organization**, and the **employer** or **employee organization** may at its discretion provide, any relevant assistance, service, and data that will enable the Administrator to properly carry out duties under this Article;

(3) hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) conduct elections to certify or decertify an **employee organization** under this Article, and issue the certification or decertification;

(5) investigate and attempt to resolve or settle, as provided in this Article, charges of engaging in prohibited practices, but the Administrator must defer to the parties' grievance procedure if:

(A) the **employer** and the **certified representative** have negotiated a valid grievance procedure to resolve disputes, and

(B) deferral to the grievance procedure would not result in the application of principles repugnant to this Article;

(6) determine whether a person is properly included in or excluded from the **unit**;

(7) obtain any necessary support services and make necessary expenditures in the performance of duties to the extent the County has appropriated funds for these purposes; and

(8) exercise any other powers and perform any other duties and functions specified in this Article.

(b) The Labor Relations Administrator must be a person with experience as a neutral in labor relations, and must not be a person who, because of vocation, employment, or affiliation, can be classed as a representative of the interest of the **employer** or any **employee organization**.

(c) The County Executive must appoint the Labor Relations Administrator from a list of 5 nominees agreed on by the **certified representative** and the Chief Administrative Officer. The County

Council must confirm the appointment. If there is no **certified representative**, the County Executive must appoint an Administrator, with the confirmation of the County Council. If the County Council does not confirm an appointment, the County Executive must appoint another person from a new agreed list of 5 nominees and submit that appointee to the County Council for confirmation. The Administrator serves a term of 5 years. An incumbent Administrator is automatically reappointed for another 5-year term unless, during the period between 60 and 30 days before the term expires, the **certified representative** notifies the **employer** or the **employer** notifies the **certified representative** that it objects to the reappointment.

(d) The Labor Relations Administrator must be paid a daily fee as specified by contract with the County, and must be reimbursed for necessary expenses incurred in performing the duties of Administrator.

33-150. Employee rights.

(a) **Employees** have the right to:

(1) form, join, support, contribute to, or participate in, or refrain from forming, joining, supporting, contributing to, or participating in, any **employee organization** or its lawful activities; and

(2) be represented fairly by their **certified representative**, if any.

(b) The **employer** must extend to the **certified representative** the exclusive right to represent the **employees** for the purposes of **collective bargaining**, including the orderly processing and settlement of grievances as agreed by the parties under this Article.

(c) A **certified representative** serves as the exclusive bargaining agent for all **employees** in the **unit** and must represent fairly and without discrimination all **employees** in the **unit** without regard to whether the **employees** are members of the **employee organization**, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a **certified representative** to seek enforcement of an **agency shop** provision in a valid **collective bargaining** agreement.

(d) The right of a **certified representative** to receive voluntary dues or service fee deductions or **agency shop** provisions must be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this Article. Other than an **agency shop** provision, a **collective bargaining** agreement must not require membership in, participation in the affairs of, or contributions to an **employee organization**.

33-151. Selection, certification, and decertification procedures.

(a) Any **employee organization** seeking certification as representative of the **unit** must file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The **employee organization** must also send a copy of the petition, including a copy of the signatures of the supporting **employees** on the petition, to the **employer**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, signifying their desire to be represented by the **employee organization** for purposes of **collective bargaining**.

(b) If an **employee organization** has been certified, an **employee** in the **unit** may file a petition with the Administrator to decertify the **certified representative**. The **employee** must also send a copy of the petition to the **employer** and the **certified representative**, not including the names of the supporting **employees**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, alleging that the certified **employee organization** is no longer the choice of the majority of the **employees** in the **unit**.

(c) If a lawful **collective bargaining** agreement is not in effect, a petition may be filed under this Section in September of any year, but not sooner than 22 months after an election held under this Section.

(d) If a lawful **collective bargaining** agreement is in effect, a petition filed under this Section must not be entertained unless it is filed during September of the final year of the agreement.

(e) If the Administrator finds that a petition is properly supported and timely filed, the Administrator must hold an election of all eligible **employees** within a reasonable time, but no later than the next October 20, to determine if and by whom the **employees** wish to be represented.

(1) The election must be supervised by the Administrator and must be conducted by secret ballot at the time and place that the Administrator directs. The Administrator may retain the services of a State agency responsible for conducting labor elections, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots must contain, as choices to be made by the voter, the name of each petitioning or certified **employee organization**, the name of any other **employee organization** showing written proof at least 10 days before the election of at least 10 percent representation of the **employees** in the **unit** in the same manner as described in paragraph (a), and a choice that the **employee** does not desire to be represented by any of the named **employee organizations**.

(3) The **employer** and each party to the election may be represented by observers selected under conditions that the Administrator prescribes.

(4) Observers selected under paragraph (3) may challenge for good cause the eligibility of any person to vote in the election. All challenged ballots must be impounded until either the parties agree on the validity of each challenge or the Administrator decides the validity of each challenge. However, if the number of challenges will not determine the outcome of the election, the challenged ballots must be destroyed.

(5) After the polls have been closed, the Administrator must count all valid ballots cast in the presence of the observers.

(6) The Administrator must immediately prepare and serve on the **employer** and each party a report certifying the results of the election. If an **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must certify that **organization** as the exclusive agent.

(7) If no **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must not certify a representative. Unless a majority of the **employees** who vote choose ``no representative,'' a runoff election must be conducted. The runoff election must contain the 2 choices that received the largest and second largest number of votes in the original election.

(f) The Administrator's certification of results is final unless, within 7 days after service of the report and the certification, any party serves on all other parties and files with the Administrator objections to the election. All objections must be verified and contain a concise statement of facts constituting the grounds for each objection. The Administrator must investigate all objections and, if substantial factual issues exist, must hold a hearing. Otherwise, the Administrator may decide the matter without a hearing. The Administrator may invite, either by rule or by invitation, written or oral argument to assist in deciding the merits of the objections. If the Administrator finds that the election was conducted in substantial conformity with this Article, the Administrator must confirm the certification initially issued. If the Administrator finds that the election was not held in substantial conformity with this Article, then the Administrator must hold another election under this Section.

(g) The County must pay the cost of conducting each election.

33-152. Collective bargaining.

(a) **Duty to bargain; matters subject to bargaining.** When an **employee organization** is certified, the **employer** and the **certified representative** must bargain collectively with respect to:

(1) salary and wages, including the percentage of the increase in the salary and wages budget that is devoted to merit increments and cash awards, but salaries and wages must be uniform for all **employees** in the same classification;

(2) pension and other retirement benefits for active **employees** only;

(3) **employee** benefits such as, but not limited to, insurance, leave, holidays, and vacations;

(4) hours and working conditions;

(5) procedures for the orderly processing and settlement of grievances concerning the interpretation and implementation of any **collective bargaining** agreement, which may include:

(A) binding third party arbitration, but the arbitrator has no authority to amend, add to, or subtract from any provision of the **collective bargaining** agreement; and

(B) provisions for exclusivity of forum;

(6) matters affecting the health and safety of **employees**; and

(7) amelioration of the effect on **employees** when the exercise of **employer** rights listed in subsection (b) causes a loss of existing jobs in the **unit**.

(b) **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.

(d) The public **employer** rights specified in this Section must be incorporated by reference in every agreement reached between the **employer** and the **employee organization**.

33-153. Bargaining, impasse, and legislative procedures.

(a) **Collective bargaining** must begin no later than the November 1 before the beginning of a fiscal year for which there is no agreement between the **employer** and the **certified representative**, and must be completed on or before January 15. The resolution of a bargaining impasse must be completed by February 1. These time limits may be waived or extended by written agreement of the parties.

(b) Any provision for automatic renewal or extension of a **collective bargaining** agreement is void. An agreement is void if it extends for less than 1 year or more than 3 years. Each **collective bargaining** agreement must take effect July 1 and end June 30.

(c) A **collective bargaining** agreement takes effect only after ratification by the **employer** and the **certified representative**. The **certified representative** may adopt its own ratification procedures.

(d) Before November 10 of any year in which the **employer** and the **certified representative** bargain collectively, they must choose an impasse neutral, either by agreement or through the processes of the American Arbitration Association. The impasse neutral must be available from January 15 to February 1. The impasse neutral's fees and expenses must be shared equally by the **employer** and the **certified representative**.

(e) During the course of **collective bargaining**, either party may declare an impasse and request the services of the impasse neutral, or the

parties may jointly request those services before declaring an impasse. If the parties have not agreed on a **collective bargaining** agreement by January 15, an impasse exists by operation of law.

(f) When an impasse is reached, the parties must submit the dispute to the impasse neutral. The impasse neutral must attempt **mediation** by bringing the parties together voluntarily under conditions that will tend to bring about a settlement of the dispute.

(g) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral must require the parties to jointly submit all items previously agreed on, and each party to submit a final offer consisting of proposals not agreed upon. Neither party may change any proposal after it is submitted to the impasse neutral as a final offer, except to withdraw a proposal on which the parties have agreed.

(h) The impasse neutral may require the parties to submit evidence or present oral or written arguments in support of their proposals. The impasse neutral may hold a hearing at a time, date, and place selected by the impasse neutral. The hearing must not be open to the public.

(i) On or before February 1, unless that date is extended by written agreement of the parties, the impasse neutral must select the final offer that, as a whole, the impasse neutral judges to be the more reasonable. In determining which final offer is the more reasonable, the impasse neutral may consider only the following factors:

(1) past **collective bargaining** agreements between the parties, including the past bargaining history that led to the agreements,

or the pre-**collective bargaining** history of **employee** wages, hours, benefits, and working conditions;

(2) wages, hours, benefits and conditions of employment of similar **employees** of other public employers in the Washington Metropolitan Area and in Maryland;

(3) wages, hours, benefits, and conditions of employment of other Montgomery County employees;

(4) wages, benefits, hours, and other working conditions of similar **employees** of private employers in Montgomery County;

(5) the interest and welfare of the public; and

(6) the ability of the **employer** to finance economic adjustments, and the effect of those adjustments on the normal standard of public services provided by the **employer**.

(j) The impasse neutral must base the selection of the most reasonable offer on the contents of the offer and the integration of any previously agreed-on items with the disputed items. In making a decision, the impasse neutral must not consider or receive any evidence or argument concerning offers of settlement not contained in the offers submitted to the impasse neutral, or any other information concerning the **collective bargaining** leading to impasse. The impasse neutral must neither compromise nor alter the final offer that he or she selects.

(k) The final offer selected by the impasse neutral, integrated with any items previously agreed on, is the final agreement between the parties, need not be ratified by any party, and has the force and effect

of an agreement voluntarily entered into and ratified under subsection (c). The parties must execute that agreement.

(l) The annual operating budget which the **employer** submits to the County Council must include sufficient funds to pay for the items in the parties' final agreement. Either or both parties must expressly identify to the Council all terms and conditions in the agreement that require an appropriation of funds or the enactment, repeal, or modification of any County law or regulation, or which have or may have a present or future fiscal impact. The **employer** must make a good faith effort to have the Council take action to implement all terms and conditions in the final agreement.

(m) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

(n) The Council may accept or reject all or part of any term or condition in the agreement which requires an appropriation of funds or the enactment, repeal, or modification of any County law or regulation, or which has or may have a present or future fiscal impact. On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and must state its reasons for any intention to reject any part of the final agreement.

(o) If the Council indicates its intention to reject any part of the final agreement, it must select a representative to meet with the parties and present the Council's views in the parties' further negotiation on matters that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's

509 position in any ensuing impasse procedure. The parties must submit
510 the results of the negotiation, whether a complete or a partial
511 agreement, to the Council on or before May 10. Any agreement must
512 provide for automatic reduction or elimination of wage or benefits
513 adjustments if:
514 (1) the Council does not take action necessary to implement the
515 agreement or a part of it; or
516 (2) sufficient funds are not appropriated for any fiscal year when
517 the agreement is in effect.
518 **33-154. Prohibited practices.**
519 (a) The **employer** and its agents or representatives must not:
520 (1) interfere with, restrain, or coerce **employees** in the exercise of
521 any rights granted to them under this Article;
522 (2) dominate or interfere with the formation or administration of
523 any **employee organization** or contribute financial or other
524 support to it, under an agreement or otherwise, but the
525 **employer** and **certified representative** may agree to and apply
526 an **agency shop** provision under this Article and a voluntary
527 dues or service fee deduction provision, and may agree to
528 reasonable use of County facilities to communicate with
529 **employees**;
530 (3) encourage or discourage membership in any **employee**
531 **organization** by discriminating in hiring, tenure, wages, hours,
532 or conditions of employment, but this Article does not preclude
533 an agreement from containing an **agency shop** provision;

(4) discharge or discriminate against a public **employee** because the **employee** files charges, gives testimony, or otherwise lawfully aids in administering this Article;

(5) refuse to bargain collectively with the **certified representative**;

(6) refuse to reduce to writing or sign a **collective bargaining** agreement that has been agreed to in all respects;

(7) refuse to process or arbitrate a grievance if required under a grievance procedure contained in a **collective bargaining** agreement;

(8) directly or indirectly oppose the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached under this Article; or

(9) engage in a **lockout** of **employees**.

(b) **Employee organizations** and their agents, representatives, and persons who work for them, must not:

(1) interfere with, restrain, or coerce the **employer** or any **employee** in the exercise of any rights granted under this Article;

(2) restrain, coerce, or interfere with the **employer** in the selection of its representative for **collective bargaining** or the adjustment of grievances;

(3) refuse to bargain collectively with the **employer** if the **employee organization** is the **certified representative**;

(4) refuse to reduce to writing or sign a **collective bargaining** agreement which has been agreed to in all respects;

(5) hinder or prevent, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstruct or otherwise unlawfully interfere with the entrance to or exit from any place of employment, or obstruct or unlawfully interfere with any person's free and uninterrupted use of any road, railway, airport, or other mode of travel;

(6) hinder or prevent by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the **employer**;

(7) take or retain unauthorized possession of property of the **employer**, or refuse to do work or use certain goods or materials as lawfully required by the **employer**; or

(8) cause or attempt to cause the **employer** to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed nor to be performed.

(c) A charge of prohibited practice may be filed by the **employer**, an **employee organization**, or any individual **employee**. Each charge must be filed with the Labor Relations Administrator, and a copy must be sent to any person who allegedly committed a prohibited practice. Each charge must state facts sufficient to allow the Administrator to investigate the charge. The Administrator may request withdrawal of and, if necessary, summarily dismiss any charge which is insufficiently supported in fact or law to warrant a hearing.

(d) The Administrator may independently investigate any charge and may adopt rules for an independent investigation. If, after investigating, the Administrator finds that a charge is sufficiently supported to raise an issue of fact or law and is unable to settle or resolve the matter, the Administrator must hold a hearing on the charge after notifying the parties. In any hearing, the charging party must present evidence in support of the charges; and the party or parties charged may file an answer, appear in person or otherwise, and present evidence in defense against the charges.

(e) If the Administrator finds that the person charged has committed a prohibited practice, the Administrator must file findings of fact and conclusions of law, may order the person charged to cease and desist from the prohibited practice, and may take affirmative actions to remedy any violation of this Article. Remedies available under this subsection include reinstating **employees** with or without back pay, making **employees** whole for any loss relating to County employment suffered as a result of any prohibited practice, or withdrawing or suspending an **employee organization's** authority to negotiate or continue an **agency shop** provision or a voluntary dues or service fee deduction provision. If the Administrator finds that the party charged has not committed a prohibited practice, the Administrator must file findings of fact and conclusions of law and dismiss the charges.

(f) The Administrator must summarily dismiss any charge based on an action which allegedly occurred more than 6 months before the charge was filed.

(g) Any party aggrieved by a final decision of the Administrator under this Section may appeal the decision to the Circuit Court for Montgomery County in accordance with the court rules governing administrative appeals. The court may affirm, reverse, or modify the decision, or remand the case for further proceedings. The filing of an appeal does not stay the Administrator's order. Any party to the proceeding in the Circuit Court may appeal the Court's decision under applicable provisions of state law and court rules.

33-155. Expression of views.

(a) Expressing or disseminating any views, argument, or opinion, orally, in writing, or otherwise:

(1) is not a prohibited practice or evidence of a prohibited practice under this Article; and

(2) is not grounds to invalidate any election conducted under this Article;

unless the expression or dissemination contains a threat of reprisal or promise of benefit.

(b) Recognizing an **employee organization** does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of those associations or particularly apply to those associations or their members.

33-156. Strikes and lockouts.

(a) An **employee** or **employee organization** must not either directly or indirectly cause, instigate, encourage, condone, or engage in any **strike**, nor the **employer** any **lockout**. An **employee** or **employee**

organization must not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a **strike**.

(b) The **employer** must not pay, reimburse, make whole, or otherwise compensate any **employee** for or during the period when that **employee** is directly or indirectly engaged in a **strike**. The **employer** must not compensate an **employee** who struck for wages or benefits lost during a **strike**.

(c) If an **employee** or **employee organization** violates this Section, and after adequate notice and a fair hearing the Labor Relations Administrator finds that the violations have occurred and that any or all of the following sanctions are necessary in the public interest, the **employer** may:

(1) discipline, or dismiss from employment, any **employee** who engaged in the conduct;

(2) terminate or suspend an **employee organization's** dues deduction privilege, if any; or

(3) revoke the certification of and disqualify the **employee organization** from participation in representation elections for a period up to a maximum of 2 years.

(d) This Article does not prohibit an **employer** or a certified **employee organization** from seeking any remedy available in a court with jurisdiction.

33-157. Effect of prior laws and regulations.

(a) This Article does not supersede any law, executive order, rule, or regulation adopted by the County or any County department or agency which is not inconsistent with this Article.

(b) Any executive order, rule, or regulation of the County or any County department or agency which regulates any subject that is bargainable under this Article is not superseded or modified by a **collective bargaining** agreement negotiated under this Article except to the extent that the application of the order, rule, or regulation is inconsistent with the **collective bargaining** agreement.

(c) However, if the inconsistent order, rule, or regulation is subject to and has received County Council approval, a **collective bargaining** agreement does not supersede or modify it unless:

(1) the order, rule, or regulation was expressly identified to the Council by the parties before the Council reviewed the **collective bargaining** agreement, as required by Section 33-153(l); and

(2) the Council expressly indicates its intent to repeal or modify the order, rule, or regulation.

Sec. 2. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

Approved:

Gail H. Ewing, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Acting Secretary of the Council Date

LEGISLATIVE REQUEST

Emergency Bill 21-96

Fire and Rescue Collective Bargaining

DESCRIPTION:

At present, the provisions of Chapter 33, Article VII, "County Collective Bargaining" cover the Fire/Rescue bargaining unit along with the Office, Professional and Technical and Service and Labor and Trades bargaining units. This bill amends Article VII, Sections 33-102 and 33-105, and adds Article X to establish a separate collective bargaining framework for nonsupervisory professional fire and rescue employees. Article X provides for the selection of a separate Labor Relations Administrator for the Fire/Rescue unit and allows binding arbitration of bargaining disputes.

1. Section 33-102 is amended by exempting from the definition of "employee" persons who work for the Department of Fire and Rescue Services and who are represented by a certified employee organization under Article X. In Section 33-105, references to the Fire/Rescue bargaining unit are deleted. The bargaining unit is now defined in Section 33-148.

2. Article X includes Sections 147 through Section 33-157, as described below:

   (a) Section 147 is a statement of public policy in support of collective bargaining rights for fire and rescue employees;

   (b) Section 33-148 defines terms;

   (c) Section 33-149 delineates the authority and responsibilities of the Labor Relations Administrator who will be responsible for the implementation and administration of the program;

   (d) Section 33-150 describes the collective bargaining rights accorded to Fire/Rescue unit employees and their certified representative;

   (e) Section 33-151 provides the methods by which a certified representative may be selected, certified, or decertified;

   (f) Section 33-152 describes the scope of bargaining by listing those matters which are mandatory subjects for bargaining between the County and the certified representative, and also includes a list of reserved management rights;

   (g) Section 33-153 includes mandatory provisions about the bargaining process, including selection of the arbitrator who will act as the impasse neutral, impasse proceedings, submission of the final agreement to the Council, and the role of the Council with regard to the agreement;

   (h) Section 33-154 describes what constitutes a prohibited practice on the part of the employer and an employee organization;

(i) Section 33-155 states that the expression of views do not constitute a prohibited practice and that the certification of an employee organization does not preclude the County from discussing with members of religious, social professional or fraternal organizations matters which affect their members;

(j) Section 33-156 prohibits strikes and lockouts and describes how the employer may deal with them; and

(k) Section 33-157 describes the effect of the Article on prior laws, executive orders, rules or regulations of the County or any of its departments or agencies.

PROBLEM:

The Charter amendment adopted by the voters on November 8, 1994 states that the Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County career fire fighters. The certified representative of the firefighters, IAFF Local 1664, opposes legislation which would implement the Charter amendment by merely amending the County collective bargaining law. Instead, Local 1664 favors a separate collective bargaining law for firefighters in recognition of their unique interests. There is precedence for this in the existence of a separate collective bargaining law for police officers in Article V.

GOALS AND OBJECTIVES:

The objective of this legislation is to establish a separate collective bargaining law for the Fire/Rescue unit which provides for binding arbitration of bargaining impasses, and thereby implements the Charter amendment. It is also our goal to improve upon the impasse resolution procedure contained in the police labor relations law by including explicit language in Section 33-153 which prohibits either party from changing any bargaining proposal after it is submitted to the impasse neutral, except to withdraw a proposal on which the parties have reached agreement. The absence of such language caused problems in the past during impasse proceedings with the FOP. Except for the inclusion of provisions for arbitration of bargaining impasses, the remainder of the bill mirrors the language in the County collective bargaining law rather than the police labor relations law.

COORDINATION:

The Office of Human Resources has coordinated the drafting of this bill with the Department of Fire and Rescue Services and IAFF Local 1664, and will coordinate the implementation with the same parties.

FISCAL IMPACT:

Section 33-149 provides for the selection of a Labor Relations Administrator (LRA) who may periodically adopt, amend, and rescind regulations to implement and administer the Article. If the LRA adopts regulations, there will be a cost to the County for the time spent by the LRA performing this function. Additionally, if the parties cannot reach agreement, the County

will have to pay for the services of an impasse neutral to resolve impasses through binding arbitration. This would not be an additional cost, however, as the cost of such services is roughly the same as the costs of resolving bargaining impasses without binding arbitration.

ECONOMIC IMPACT:

Not applicable.

EVALUATION:

This legislation does not require evaluation.

EXPERIENCE ELSEWHERE:

Not applicable.

SOURCE OF INFORMATION:

James Torgesen, Labor/Employee Relations Manager.

APPLICATION WITHIN MUNICIPALITIES:

Not applicable.

PENALTIES:

Not applicable.

labor5\legreqff.cbl

Bill

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MF
CC
SBF
MD
LL
KF

Douglas M. Duncan
County Executive

007823

Dish to Christy

MEMORANDUM

March 15, 1996

96 MAR 18 P2:25

TO: Gail Ewing, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Emergency Bill on Fire and Rescue Collective Bargaining

I am submitting the attached emergency bill for the Council's consideration. If enacted, the bill will implement the Charter amendment adopted by the voters on November 8, 1994, by providing by law for binding arbitration of bargaining impasses with the certified representative of career fire fighters. It will also add a new article to Chapter 33 of the Code to provide a separate collective bargaining framework for professional fire and rescue employees. The Montgomery County Career Fire Fighters Association, IAFF Local 1664, was consulted in drafting the legislation.

I believe that a separate collective bargaining law is appropriate because collective bargaining for the Fire/Rescue bargaining unit is a hybrid of the features that are contained in the other two collective bargaining laws. The scope of bargaining for these employees is the same as the scope of bargaining for the OPT and SLT bargaining units under the County collective bargaining law in Article VII of Chapter 33. However, the impasse resolution procedures which provide for binding arbitration are more akin to those in the Police labor relations law in Article V, but include new language to improve the process. Also, the creation of a separate law will allow the appointment of a Labor Relations Administrator solely for this bargaining unit. The individual appointed to this position, because he or she will be concerned solely with the administration of the law for this unit, will become expert at dealing with the issues which are peculiar to this unit and which arise from the employees' working conditions and the Department's operations.

DD:cmr

Attachments

33

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, July 23, 1996 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 4:25 P.M. on Tuesday, July 23, 1996.

PRESENT

Gail H. Ewing, President
Marilyn J. Praisner, Vice President
Nancy H. Dacek
William E. Hanna, Jr.
Neal Potter
Derick Berlage
Michael L. Subin

ABSENT

Betty Ann Krahnke
Isiah Leggett

The President in the Chair.

SUBJECT: **Approval of Journal**

ACTION: Approved the Journals of March 5 and June 25, 1996, as amended

by motion of Councilmember Subin, without objection, Councilmembers Dacek and Praisner temporarily absent, and Councilmembers Leggett and Krahnke absent.

FINAL READING OF BILLS

SUBJECT: Emergency Bill 21-96, Collective Bargaining - Firefighters

The Council had before it for consideration the memorandum and attachments from Senior Legislative Attorney Faden, dated July 23, 1996, providing background information on the subject bill.

Councilmember Praisner, Chair of the Management and Fiscal Policy Committee, presented the report and recommendations of the Committee.

ACTION: Adopted the following amendments as reflected in the bill:

AN EMERGENCY ACT to establish a separate collective bargaining process for professional fire and rescue employees.

By amending
Montgomery County Code
Chapter 33, Personnel
Sections 33-102 and 33-105

By adding
Chapter 33, Personnel
Article X, Fire and Rescue Collective Bargaining
Sections 33-147 through 33-157

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland, approves the following Act:

Sec. 1. Sections 33-102 and 33-105 are amended, and Article X, Fire and Rescue Collective Bargaining, Sections 33-147 through 33-157, are added as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(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 [for the following]:

[a.] (A) Confidential aides to elected officials.

[b.] (B) All persons who are not covered by the County government merit system.

[c.] (C) Heads of principal departments, offices, and agencies.

[d.] (D) Deputies and assistants to heads of principal departments, offices, and agencies.

[e.] (E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

[f.] (F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

[g.] (G) Persons who work for the Office of the County Executive and the Office of the Chief Administrative Officer.

[h.] (H) Persons who work for the County Council.

[i.] (I) Persons who work for the Office of the County Attorney.

[j.] (J) Persons who work for the Office of Management and Budget.

[k.] (K) Persons who work for the [personnel office] Office of Human Resources.

[l.] (L) Persons who work for the Merit System Protection Board.

[m.] (M) Persons who work on a temporary, seasonal, or substitute basis.

[n.] (N) Newly hired persons on probationary status.

[o.] (O) Persons who work for the Police Department [who] and are represented by a certified employee organization under Article V [of this Chapter].

(P) Persons who work for the Department of Fire and Rescue Services and are represented by a certified employee organization under Article X.

[p.] (Q) Officers in the uniformed services (Corrections, Fire and Rescue, Police, Office of the Sheriff) in the rank of sergeant and above. Subject to any limitations in state law, deputy sheriffs below the rank of sergeant are employees.

[q.] (R) Persons who are members of the state merit system.

[r.] (S) Supervisors, which means persons having authority to [do any of the following]:

[1.](i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively [to] recommend any [one] of these actions;

[2.](ii) direct the activity of [three (3)] 3 or more employees; or

[3.](iii) adjust or recommend adjustment of grievances.

[s.] (T) Persons in grade 27 or above, whether or not they are supervisors.

33-105. Units for collective bargaining.

(a) There are [3] 2 units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, [excluding the categories listed as exceptions to the definition of] except any person who is not defined as an employee in Section 33-102(4) [of this Article]. The employees are divided into [3] 2 units[, in accordance with the following descriptions]:

* * *

[(3) **Fire/Rescue unit.** This unit is composed of employees who hold the positions of master firefighter/rescuer, and firefighter/rescuer I, II, and III, and who are associated with fire suppression, fire protection, fire

communications, fire service training, rescue, and emergency medical services. These duties include the rescue and safety of individuals and the preservation of structures and physical property.]

* * *

ARTICLE X. FIRE AND RESCUE COLLECTIVE BARGAINING.

33-147. Declaration of policy.

The public policy of Montgomery County is to promote a harmonious, peaceful, and cooperative relationship between the County government and its fire and rescue employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the Department of Fire and Rescue Services. Since unresolved disputes in the fire and rescue service harm the public and fire and rescue employees, adequate means should be available to prevent disputes and resolve them when they occur. To that end, it is in the public interest that fire and rescue employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, as authorized by Charter Section 510A, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of fire and rescue employees bargain collectively in good faith without interference with the orderly process of government, and that they implement any agreement reached through collective bargaining.

Fire and rescue employee organizations and the County government each possess substantial means for initiating actions on wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the fire and rescue service, once the employees voluntarily select a representative collective bargaining must be used in place of, and not in addition to, existing means to initiate government action on subjects that are appropriate for collective bargaining under this Article.

33-148. Definitions.

The following terms have the meaning indicated when used in this Article:

(1) **Agency shop** means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly

required by the employee organization of all of its members. An agency shop agreement must not require an employee to pay initiation fees, assessments, fines, or any similar collections as a condition of continued employment. A collective bargaining agreement must not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the collective bargaining agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, with provision for dispute resolution if there is not agreement, and to give to the employer and the certified representative written proof of this payment. The certified representative must adhere at all times to all federal constitutional requirements in its administration of any agency shop system maintained by it.

(2) **Certified representative** means an employee organization chosen to represent the unit as the exclusive bargaining agent in accordance with this Article or Article VII.

(3) **Collective bargaining** means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this Article. This Article does not compel either party to agree to a proposal or make a concession.

(4) **Employee** means any fire and rescue employee in the classification of Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not any employee:

(A) in a probationary status, or

(B) in the classification of Fire/Rescue ||Sergeant|| Lieutenant or any equivalent or higher classification.

(5) **Employee organization** means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining. [[The organization must not admit to membership any person other than fire and rescue service personnel.]]

(6) **Employer** means the County Executive and the Executive's designee.

(7) **Lockout** means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) **Mediation** means an effort by an impasse neutral chosen under this Article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) **Strike** means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of these acts are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) **Unit** means all employees, as defined in this Section, who are associated with fire suppression, fire protection, fire communications, fire service training, rescue, and emergency medical services, and whose duties include the rescue and safety of individuals and the preservation of structures and physical property.

33-149. Labor Relations Administrator.

(a) A Labor Relations Administrator must be appointed to effectively administer this Article as it governs selection, certification and decertification procedures[[.]] and prohibited practices[[, and the choice of an impasse neutral]]. The Administrator must:

(1) periodically adopt, amend, and repeal, under method (1), regulations and procedures to carry out the Administrator's duties under this Article;

(2) request from the **employer** or **employee organization**, and the **employer** or **employee organization** may at its discretion provide, any relevant assistance, service, and data that will enable the Administrator to properly carry out duties under this Article;

(3) hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) conduct elections to certify or decertify an **employee organization** under this Article, and issue the certification or decertification;

(5) investigate and attempt to resolve or settle, as provided in this Article, charges of engaging in prohibited practices, but the Administrator must defer to the parties' grievance procedure if:

(A) the **employer** and the **certified representative** have negotiated a valid grievance procedure to resolve disputes, and

(B) deferral to the grievance procedure would not result in the application of principles repugnant to this Article;

(6) determine whether a person is properly included in or excluded from the **unit**;

(7) obtain any necessary support services and make necessary expenditures in the performance of duties to the extent the County has appropriated funds for these purposes; and

(8) exercise any other powers and perform any other duties and functions specified in this Article.

(b) The Labor Relations Administrator must be a person with experience as a neutral in labor relations, and must not be a person who, because of vocation, employment, or affiliation, can be classed as a representative of the interest of the **employer** or any **employee organization**.

(c) The County Executive must appoint the Labor Relations Administrator from a list of 5 nominees agreed on by the **certified representative** and the Chief Administrative Officer. The County Council must confirm the appointment. If there is no **certified representative**, the County Executive must appoint an Administrator, with the confirmation of the County Council. If the County Council does not confirm an appointment, the County Executive must appoint another person from a new agreed list of 5 nominees and submit that appointee to the County Council for confirmation. The Administrator serves a term of 5 years. An incumbent Administrator is automatically reappointed for another 5-year term unless, during the period between 60 and 30 days before the term expires, the **certified representative** notifies the **employer** or the **employer** notifies the **certified representative** that it objects to the reappointment.

(d) The Labor Relations Administrator must be paid a daily fee as specified by contract with the County, and must be reimbursed for necessary expenses incurred in performing the duties of Administrator.

33-150. Employee rights.

(a) **Employees** have the right to:

(1) form, join, support, contribute to, or participate in, or refrain from forming, joining, supporting, contributing to, or participating in, any **employee organization** or its lawful activities; and

(2) be represented fairly by their **certified representative**, if any.

(b) The **employer** must extend to the **certified representative** the exclusive right to represent the **employees** for the purposes of **collective bargaining**, including the orderly processing and settlement of grievances as agreed by the parties under this Article.

(c) A **certified representative** serves as the exclusive bargaining agent for all **employees** in the **unit** and must represent fairly and without discrimination all **employees** in the **unit** without regard to whether the **employees** are members of the **employee organization**, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a **certified representative** to seek enforcement of an **agency shop** provision in a valid **collective bargaining** agreement.

(d) The right of a **certified representative** to receive voluntary dues or service fee deductions or **agency shop** provisions must be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this Article. Other than an **agency shop** provision, a **collective bargaining** agreement must not require membership in, participation in the affairs of, or contributions to an **employee organization**.

33-151. Selection, certification, and decertification procedures.

(a) Any **employee organization** seeking certification as representative of the **unit** must file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The **employee organization** must also send a copy of the petition, including a copy of the signatures of the supporting **employees** on the petition, to the **employer**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, signifying their desire to be represented by the **employee organization** for purposes of **collective bargaining**.

(b) If an **employee organization** has been certified, an **employee** in the **unit** may file a petition with the Administrator to decertify the **certified representative**. The **employee** must also send a copy of the petition to the **employer** and the **certified representative**. not including the names of the supporting **employees**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, alleging that the certified **employee organization** is no longer the choice of the majority of the **employees** in the **unit**.

(c) If a lawful **collective bargaining** agreement is not in effect, a petition may be filed under this Section in September of any year, but not sooner than 22 months after an election held under this Section.

(d) If a lawful **collective bargaining** agreement is in effect, a petition filed under this Section must not be entertained unless it is filed during September of the final year of the agreement.

(e) If the Administrator finds that a petition is properly supported and timely filed, the Administrator must hold an election of all eligible **employees** within a reasonable time, but no later than the next October 20, to determine if and by whom the **employees** wish to be represented.

(1) The election must be supervised by the Administrator and must be conducted by secret ballot at the time and place that the Administrator directs. The Administrator may retain the services of a State agency responsible for conducting labor elections, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots must contain, as choices to be made by the voter, the name of each petitioning or certified **employee organization**. the name of any other **employee organization** showing written proof at least 10 days before the election of at least 10 percent representation of the **employees** in the **unit** in the same manner as described in paragraph (a), and a choice that the **employee** does not desire to be represented by any of the named **employee organizations**.

(3) The **employer** and each party to the election may be represented by observers selected under conditions that the Administrator prescribes.

(4) Observers selected under paragraph (3) may challenge for good cause the eligibility of any person to vote in the election. All challenged ballots must be impounded until either the parties agree on the validity of each challenge or the Administrator decides the validity of each challenge. However, if the number of challenges will not determine the outcome of the election, the challenged ballots must be destroyed.

(5) After the polls have been closed, the Administrator must count all valid ballots cast in the presence of the observers.

(6) The Administrator must immediately prepare and serve on the **employer** and each party a report certifying the results of the election. If an **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must certify that **organization** as the exclusive agent.

(7) If no **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must not certify a representative. Unless a majority of the **employees** who vote choose ``no representative.'' a runoff election must be conducted. The runoff election must contain the 2 choices that received the largest and second largest number of votes in the original election.

(f) The Administrator's certification of results is final unless, within 7 days after service of the report and the certification. any party serves on all other parties and files with the Administrator objections to the election. All objections must be verified and contain a concise statement of facts constituting the grounds for each objection. The Administrator must investigate all objections and, if substantial factual issues exist, must hold a hearing. Otherwise, the Administrator may decide the matter without a hearing. The Administrator may invite, either by rule or by invitation. written or oral argument to assist in deciding the merits of the

objections. If the Administrator finds that the election was conducted in substantial conformity with this Article, the Administrator must confirm the certification initially issued. If the Administrator finds that the election was not held in substantial conformity with this Article, then the Administrator must hold another election under this Section.

(g) The County must pay the cost of conducting each election.

33-152. Collective bargaining.

(a) **Duty to bargain; matters subject to bargaining.** When an **employee organization** is certified, the **employer** and the **certified representative** must bargain collectively with respect to:

(1) salary and wages, including the percentage of the increase in the salary and wages budget that is devoted to merit increments and cash awards, but salaries and wages must be uniform for all **employees** in the same classification;

(2) pension and other retirement benefits for active **employees** only;

(3) **employee** benefits such as, but not limited to, insurance, leave, holidays, and vacations;

(4) hours and working conditions;

(5) procedures for the orderly processing and settlement of grievances concerning the interpretation and implementation of any **collective bargaining** agreement, which may include:

(A) binding third party arbitration, but the arbitrator has no authority to amend, add to, or subtract from any provision of the **collective bargaining** agreement; and

(B) provisions for exclusivity of forum;

(6) matters affecting the health and safety of **employees**; and

(7) amelioration of the effect on **employees** when the exercise of **employer** rights listed in subsection (b) causes a loss of existing jobs in the **unit**.

(b) **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.

(d) The public **employer** rights specified in this Section must be incorporated by reference in every agreement reached between the **employer** and the **employee organization**.

33-153. Bargaining, impasse, and legislative procedures.

(a) **Collective bargaining** must begin no later than the November 1 before the beginning of a fiscal year for which there is no agreement between the **employer** and the **certified representative**. and must be completed on or before January 15. The resolution of a bargaining impasse must be completed by February 1. These time limits may be waived or extended by written agreement of the parties.

(b) Any provision for automatic renewal or extension of a **collective bargaining** agreement is void. An agreement is void if it extends for less than 1 year or more than 3 years. Each **collective bargaining** agreement must take effect July 1 and end June 30.

(c) A **collective bargaining** agreement takes effect only after ratification by the **employer** and the **certified representative**. The **certified representative** may adopt its own ratification procedures.

(d) Before November 10 of any year in which the **employer** and the **certified representative** bargain collectively, they must choose an impasse neutral, either by agreement or through the processes of the American Arbitration Association. The impasse neutral must be available from January 15 to February 1. The impasse neutral's fees and expenses must be shared equally by the **employer** and the **certified representative**.

(e) During the course of **collective bargaining**, either party may declare an impasse and request the services of the impasse neutral, or the parties may jointly request those services before declaring an impasse. If the parties have not agreed on a **collective bargaining** agreement by January 15, an impasse exists by operation of law.

(f) When an impasse is reached, the parties must submit the dispute to the impasse neutral. The impasse neutral must attempt **mediation** by bringing the parties together voluntarily under conditions that will tend to bring about a settlement of the dispute.

(g) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral must require the parties to jointly submit all items previously agreed on, and each party to submit a final offer consisting of proposals not agreed upon. Neither party may change any proposal after it is submitted to the impasse neutral as a final offer, except to withdraw a proposal on which the parties have agreed.

(h) The impasse neutral may require the parties to submit evidence or present oral or written arguments in support of their proposals. The impasse neutral may hold a hearing at a time, date, and place selected by the impasse neutral. The hearing must not be open to the public.

(i) On or before February 1, unless that date is extended by written agreement of the parties, the impasse neutral must select the final offer that, as a whole, the impasse neutral judges to be the more reasonable. In determining which final offer is the more reasonable. the impasse neutral may consider only the following factors:

(1) past **collective bargaining** agreements between the parties, including the past bargaining history that led to the agreements. or the pre-**collective bargaining** history of **employee** wages, hours, benefits, and working conditions:

(2) wages, hours, benefits and conditions of employment of similar **employees** of other public employers in the Washington Metropolitan Area and in Marvland:

(3) wages, hours, benefits, and conditions of employment of other Montgomery County employees:

(4) wages, benefits, hours, and other working conditions of similar **employees** of private employers in Montgomery County;

(5) the interest and welfare of the public; and

(6) the ability of the **employer** to finance economic adjustments. and the effect of those adjustments on the normal standard of public services provided by the **employer**.

(j) The impasse neutral must base the selection of the most reasonable offer on the contents of the offer and the integration of any previously agreed-on items with the disputed items. In making a decision, the impasse neutral must not consider or receive any evidence or argument concerning offers of settlement not contained in the offers submitted to the impasse neutral, or any other information concerning the **collective bargaining** leading to impasse. The impasse neutral must neither compromise nor alter the final offer that he or she selects.

(k) The final offer selected by the impasse neutral, integrated with any items previously agreed on, is the final agreement between the parties, need not be ratified by any party, and has the force and effect of an agreement voluntarily entered into and ratified under subsection (c). The parties must execute that agreement.

(l) The annual operating budget which the **employer** submits to the County Council must include sufficient funds to pay for the items in the parties' final agreement. [[Either or both parties]] The **employer** must expressly identify to the Council all terms and conditions in the agreement that:

(1) require an appropriation of funds, or

(2) are inconsistent with any County law or regulation, or

(3) require the enactment[[, repeal, or modification]] or adoption of any County law or regulation, or

(4) which have or may have a present or future fiscal impact.

The **employer** must make a good faith effort to have the Council take action to implement all terms and conditions in the parties' final agreement.

(m) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

(n) The Council may accept or reject all or part of any term or condition in the agreement which:

(1) requires an appropriation of funds, or

(2) is inconsistent with any County law or regulation, or

(3) requires the enactment[[, repeal, or modification]] or adoption of any County law or regulation, or

(4) which has or may have a present or future fiscal impact.

On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and must state its reasons for any intention to reject any part of the parties' final agreement.

(o) If the Council indicates its intention to reject any part of the parties' final agreement, it must select a representative to meet with the parties and present the Council's views in the parties' further negotiation on matters that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so.

(p) Any agreement must provide for automatic reduction or elimination of wage or benefits adjustments if:

(1) the Council does not take action necessary to implement the agreement or a part of it; or

(2) sufficient funds are not appropriated for any fiscal year when the agreement is in effect.

33-154. Prohibited practices.

(a) The **employer** and its agents or representatives must not:

(1) interfere with, restrain, or coerce **employees** in the exercise of any rights granted to them under this Article;

(2) dominate or interfere with the formation or administration of any **employee organization** or contribute financial or other support to it, under an agreement or otherwise, but the **employer** and **certified representative** may agree to and apply an **agency shop** provision under this Article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of County facilities to communicate with **employees**;

(3) encourage or discourage membership in any **employee organization** by discriminating in hiring, tenure, wages, hours, or conditions of employment. but this Article does not preclude an agreement from containing an **agency shop** provision:

(4) discharge or discriminate against a public **employee** because the **employee** files charges, gives testimony. or otherwise lawfully aids in administering this Article;

(5) refuse to bargain collectively with the **certified representative**:

(6) refuse to reduce to writing or sign a **collective bargaining** agreement that has been agreed to in all respects;

(7) refuse to process or arbitrate a grievance if required under a grievance procedure contained in a **collective bargaining** agreement:

(8) directly or indirectly oppose the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached under this Article; or

(9) engage in a **lockout** of **employees**.

(b) **Employee organizations** and their agents, representatives. and persons who work for them, must not:

(1) interfere with, restrain, or coerce the **employer** or any **employee** in the exercise of any rights granted under this Article;

(2) restrain, coerce, or interfere with the **employer** in the selection of its representative for **collective bargaining** or the adjustment of grievances:

(3) refuse to bargain collectively with the **employer** if the **employee organization** is the **certified representative**:

(4) refuse to reduce to writing or sign a **collective bargaining** agreement which has been agreed to in all respects;

(5) hinder or prevent, by threats of violence, intimidation. force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstruct or otherwise unlawfully interfere with the

entrance to or exit from any place of employment, or obstruct or unlawfully interfere with any person's free and uninterrupted use of any road, railway, airport, or other mode of travel;

(6) hinder or prevent by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the **employer**;

(7) take or retain unauthorized possession of property of the **employer**, or refuse to do work or use certain goods or materials as lawfully required by the **employer**; or

(8) cause or attempt to cause the **employer** to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed nor to be performed.

(c) A charge of prohibited practice may be filed by the **employer**, an **employee organization**, or any individual **employee**. Each charge must be filed with the Labor Relations Administrator, and a copy must be sent to any person who allegedly committed a prohibited practice. Each charge must state facts sufficient to allow the Administrator to investigate the charge. The Administrator may request withdrawal of and, if necessary, summarily dismiss any charge which is insufficiently supported in fact or law to warrant a hearing.

(d) The Administrator may independently investigate any charge and may adopt rules for an independent investigation. If, after investigating, the Administrator finds that a charge is sufficiently supported to raise an issue of fact or law and is unable to settle or resolve the matter, the Administrator must hold a hearing on the charge after notifying the parties. In any hearing, the charging party must present evidence in support of the charges; and the party or parties charged may file an answer, appear in person or otherwise, and present evidence in defense against the charges.

(e) If the Administrator finds that the person charged has committed a prohibited practice, the Administrator must file findings of fact and conclusions of law, may order the person charged to cease and desist from the prohibited practice, and may take affirmative actions to remedy any violation of this Article. Remedies available under this subsection include reinstating **employees** with or without back pay, making **employees** whole for any loss relating to County employment suffered as a result of any prohibited practice, or withdrawing or suspending an **employee organization's** authority to negotiate or continue an **agency shop** provision or a voluntary dues or service fee deduction provision. If the Administrator finds that the party charged has not committed a prohibited practice, the Administrator must file findings of fact and conclusions of law and dismiss the charges.

(f) The Administrator must summarily dismiss any charge based on an [[action which allegedly]] alleged prohibited practice which occurred more than 6 months before the charge was filed.

(g) Any party aggrieved by a final decision of the Administrator under this Section may appeal the decision to the Circuit Court for Montgomery County in accordance with the court rules governing administrative appeals. The court may affirm, reverse, or modify the decision, or remand the case for further proceedings. The filing of an appeal does not stay the Administrator's order. Any party to the proceeding in the Circuit Court may appeal the Court's decision under applicable provisions of state law and court rules.

33-155. Expression of views.

(a) Expressing or disseminating any views, argument, or opinion, orally, in writing, or otherwise:

(1) is not a prohibited practice or evidence of a prohibited practice under this Article; and

(2) is not grounds to invalidate any election conducted under this Article; unless the expression or dissemination contains a threat of reprisal or promise of benefit.

(b) Recognizing an **employee organization** does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of those associations or particularly apply to those associations or their members.

33-156. Strikes and lockouts.

(a) An **employee** or **employee organization** must not either directly or indirectly cause, instigate, encourage, condone, or engage in any **strike**, nor the **employer** any **lockout**. An **employee** or **employee organization** must not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a **strike**.

(b) The **employer** must not pay, reimburse, make whole, or otherwise compensate any **employee** for or during the period when that **employee** is directly or indirectly engaged in a **strike**. The **employer** must not compensate an **employee** who struck for wages or benefits lost during a **strike**.

(c) If an **employee** or **employee organization** violates this Section, and after adequate notice and a fair hearing the Labor Relations Administrator finds that the violations have occurred and that any or all of the following sanctions are necessary in the public interest, the **employer** may:

(1) discipline, or dismiss from employment, any **employee** who engaged in the conduct;

(2) terminate or suspend an **employee organization's** dues deduction privilege, if any; or

(3) revoke the certification of and disqualify the **employee organization** from participation in representation elections for a period up to a maximum of 2 years.

(d) This Article does not prohibit an **employer** or a certified **employee organization** from seeking any remedy available in a court with jurisdiction.

33-157. Effect of prior laws and regulations.

(a) This Article [[does not supersedell supersedes any law, executive order, rule, or regulation adopted by the County or any County department or agency which is [[not]] inconsistent with this Article.

(b) Any executive order, rule, or regulation of the County or any County department or agency which regulates any subject that is bargainable under this Article is not superseded or modified by a **collective bargaining** agreement negotiated under this Article, except to the extent that the application of the order, rule, or regulation is inconsistent with the **collective bargaining** agreement.

(c) However, if the inconsistent order, rule, or regulation is subject to and has received County Council approval, a **collective bargaining** agreement does not supersede or modify it unless:

(1) the order, rule, or regulation was expressly identified to the Council by the parties before the Council reviewed the **collective bargaining** agreement, as required by Section 33-153(l)[[:]], and the Council did not reject the inconsistent term or condition of the collective bargaining agreement under Section 33-153(n); or

(2) the Council [[expressly indicates its intent to repeal or modify]] repeals or modifies the order, rule, or regulation.

Sec. 2. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

ACTION: Enacted Bill 21-96, as amended

by motion of Councilmember Hanna, by a roll call vote:

YEAS: Subin, Dacek, Berlage, Hanna, Potter, Praisner, Ewing
ABSENT: Leggett, Krahnke.

The meeting adjourned at 4:29 P.M.

This is an accurate account of the meeting:

Mary A. Edgar

Mary A. Edgar, CMC
Secretary of the Council

Minutes written by: Elda Dodson, Assistant Secretary

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

007823

MEMORANDUM

March 15, 1996

TO: Gail Ewing, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Emergency Bill on Fire and Rescue Collective Bargaining

I am submitting the attached emergency bill for the Council's consideration. If enacted, the bill will implement the Charter amendment adopted by the voters on November 8, 1994, by providing by law for binding arbitration of bargaining impasses with the certified representative of career fire fighters. It will also add a new article to Chapter 33 of the Code to provide a separate collective bargaining framework for professional fire and rescue employees. The Montgomery County Career Fire Fighters Association, IAFF Local 1664, was consulted in drafting the legislation.

I believe that a separate collective bargaining law is appropriate because collective bargaining for the Fire/Rescue bargaining unit is a hybrid of the features that are contained in the other two collective bargaining laws. The scope of bargaining for these employees is the same as the scope of bargaining for the OPT and SLT bargaining units under the County collective bargaining law in Article VII of Chapter 33. However, the impasse resolution procedures which provide for binding arbitration are more akin to those in the Police labor relations law in Article V, but include new language to improve the process. Also, the creation of a separate law will allow the appointment of a Labor Relations Administrator solely for this bargaining unit. The individual appointed to this position, because he or she will be concerned solely with the administration of the law for this unit, will become expert at dealing with the issues which are peculiar to this unit and which arise from the employees' working conditions and the Department's operations.

DD:cmr

Attachments

MFP ITEM 1
July 11, 1996

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Emergency Bill 21-96, Collective Bargaining - Firefighters

Emergency Bill 21-96, Collective Bargaining - Firefighters, sponsored by the Council President at the request of the County Executive, was introduced on May 14. A public hearing was held on July 2, at which the only speakers were James Torgesen, County Labor/Employee Relations Manager, and John Sparks, President, Local 1664, Montgomery County Career Firefighters Association, who both urged enactment of Bill 21-96 with certain amendments.

Emergency Bill 21-96 implements Section 510A of the County Charter, approved by the voters in 1994. This bill establishes a separate collective bargaining framework for nonsupervisory professional fire and rescue employees, provides for the selection of a separate Labor Relations Administrator for the Fire/Rescue unit, and allows binding arbitration of bargaining disputes. The form of binding arbitration is last best offer for the entire contract ("total package"), as in the police collective bargaining unit, rather than last best offer issue-by-issue ("line item") or conventional (arbitrator's discretion or "split the difference") arbitration. Generally the impasse procedure in this bill is modeled on the police bargaining law, while the matters subject to bargaining and not subject to bargaining ("employer rights") are modeled on the County employees bargaining law.

Staff agrees that all except one of the amendments jointly proposed by Mr. Torgesen and Mr. Sparks (see ©34-35) are appropriate and recommends that the Committee adopt them. The exception is item 7, where staff is continuing to discuss the language with Mr. Torgesen.

Several issues that are not unique to this bargaining unit have been mentioned. These include potential changes in the law to clarify the extent to which retiree health and life insurance benefits are bargainable; to modify the timetable for collective bargaining and Council review of collective bargaining agreements; to require that all legislation and regulations necessary to implement a collective bargaining agreement be submitted to the Council with the agreement; and to require each collective bargaining agreement to show all changes from the previous agreement by brackets and underlines. Staff recommends that, to preserve consistency and

uniformity in the County collective bargaining laws, these issues be considered for all bargaining units in one bill, rather than implemented in piecemeal fashion, unit by unit.

This packet contains:	Circle #
Bill 21-96	1
Legislative Request Report	30
Memo from County Executive	33
Proposed amendments from Executive Staff and IAFF	34
IAFF Testimony	36

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Emergency Bill No. 21-96
Concerning: Collective Bargaining - Firefighters
Revised: 5-10-96 Draft No. 3
Introduced: May 14, 1996
Expires: November 14, 1997
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EMERGENCY ACT to establish a separate collective bargaining process for professional fire and rescue employees.

By amending
Montgomery County Code
Chapter 33, Personnel
Sections 33-102 and 33-105

By adding
Chapter 33, Personnel
Article X, Fire and Rescue Collective Bargaining
Sections 33-147 through 33-157

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland, approves the following Act:

Sec. 1. Sections 33-102 and 33-105 are amended, and Article X, Fire and Rescue Collective Bargaining, Sections 33-147 through 33-157, are added as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(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 [for the following]:

[a.] (A) Confidential aides to elected officials.

[b.] (B) All persons who are not covered by the County government merit system.

[c.] (C) Heads of principal departments, offices, and agencies.

[d.] (D) Deputies and assistants to heads of principal departments, offices, and agencies.

[e.] (E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

[f.] (F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

[g.] (G) Persons who work for the Office of the County Executive and the Office of the Chief Administrative Officer.

[h.] (H) Persons who work for the County Council.

[i.] (I) Persons who work for the Office of the County Attorney.

[j.] (J) Persons who work for the Office of Management and Budget.

[k.] (K) Persons who work for the [personnel office] Office of Human Resources.

[l.] (L) Persons who work for the Merit System Protection Board.

[m.] (M) Persons who work on a temporary, seasonal, or substitute basis.

[n.] (N) Newly hired persons on probationary status.

[o.] (O) Persons who work for the Police Department [who] and are represented by a certified employee organization under Article V [of this Chapter].

(P) Persons who work for the Department of Fire and Rescue Services and are represented by a certified employee organization under Article X.

[p.] (Q) Officers in the uniformed services (Corrections, Fire and Rescue, Police, Office of the Sheriff) in the rank of sergeant and above. Subject to any limitations in state law, deputy sheriffs below the rank of sergeant are employees.

[q.] (R) Persons who are members of the state merit system.

[r.] (S) Supervisors, which means persons having authority to [do any of the following]:

[1.](i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively [to] recommend any [one] of these actions;

[2.](ii) direct the activity of [three (3)] 3 or more employees; or

[3.](iii) adjust or recommend adjustment of grievances.

[s.] (T) Persons in grade 27 or above, whether or not they are supervisors.

33-105. Units for collective bargaining.

(a) There are [3] 2 units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, [excluding the categories listed as exceptions to the definition of] except any person who is not defined as an employee in Section 33-102(4) [of this Article]. The employees are divided into [3] 2 units[, in accordance with the following descriptions]:

* * *

[(3) **Fire/Rescue unit.** This unit is composed of employees who hold the positions of master firefighter/rescuer, and firefighter/rescuer I, II, and III, and who are associated with fire suppression, fire protection, fire communications, fire service training, rescue, and emergency medical services. These duties include the rescue and safety of individuals and the preservation of structures and physical property.]

* * *

ARTICLE X. FIRE AND RESCUE COLLECTIVE BARGAINING.

33-147. Declaration of policy.

The public policy of Montgomery County is to promote a harmonious, peaceful, and cooperative relationship between the County government and its fire and rescue employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the Department of Fire and Rescue

Services. Since unresolved disputes in the fire and rescue service harm the public and fire and rescue employees, adequate means should be available to prevent disputes and resolve them when they occur. To that end, it is in the public interest that fire and rescue employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of fire and rescue employees bargain collectively in good faith without interference with the orderly process of government, and that they implement any agreement reached through collective bargaining.

Fire and rescue employee organizations and the County government each possess substantial means for initiating actions on wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the fire and rescue service, once the employees voluntarily select a representative collective bargaining must be used in place of, and not in addition to, existing means to initiate government action on subjects that are appropriate for collective bargaining under this Article.

33-148. Definitions.

The following terms have the meaning indicated when used in this Article:

(1) **Agency shop** means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement must not require an employee to pay initiation fees, assessments, fines, or any similar collections as a condition of continued employment. A

collective bargaining agreement must not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the collective bargaining agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, with provision for dispute resolution if there is not agreement, and to give to the employer and the certified representative written proof of this payment. The certified representative must adhere at all times to all federal constitutional requirements in its administration of any agency shop system maintained by it.

(2) **Certified representative** means an employee organization chosen to represent the unit as the exclusive bargaining agent in accordance with this Article or Article VII.

(3) **Collective bargaining** means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this Article. This Article does not compel either party to agree to a proposal or make a concession.

(4) **Employee** means any fire and rescue employee in the classification of Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not any employee:

(A) in a probationary status, or

(B) in the classification of Fire/Rescue Sergeant or any equivalent or higher classification.

(5) **Employee organization** means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining. The organization must not admit to membership any person other than fire and rescue service personnel.

(6) **Employer** means the County Executive and the Executive's designee.

(7) **Lockout** means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) **Mediation** means an effort by an impasse neutral chosen under this Article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) **Strike** means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of these acts are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations

of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) **Unit** means all employees, as defined in this Section, who are associated with fire suppression, fire protection, fire communications, fire service training, rescue, and emergency medical services, and whose duties include the rescue and safety of individuals and the preservation of structures and physical property.

33-149. Labor Relations Administrator.

(a) A Labor Relations Administrator must be appointed to effectively administer this Article as it governs selection, certification and decertification procedures, prohibited practices, and the choice of an impasse neutral. The Administrator must:

(1) periodically adopt, amend, and repeal, under method (1), regulations and procedures to carry out the Administrator's duties under this Article;

(2) request from the **employer** or **employee organization**, and the **employer** or **employee organization** may at its discretion provide, any relevant assistance, service, and data that will enable the Administrator to properly carry out duties under this Article;

(3) hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) conduct elections to certify or decertify an **employee organization** under this Article, and issue the certification or decertification;

(5) investigate and attempt to resolve or settle, as provided in this Article, charges of engaging in prohibited practices, but the Administrator must defer to the parties' grievance procedure if:

(A) the **employer** and the **certified representative** have negotiated a valid grievance procedure to resolve disputes, and

(B) deferral to the grievance procedure would not result in the application of principles repugnant to this Article;

(6) determine whether a person is properly included in or excluded from the **unit**;

(7) obtain any necessary support services and make necessary expenditures in the performance of duties to the extent the County has appropriated funds for these purposes; and

(8) exercise any other powers and perform any other duties and functions specified in this Article.

(b) The Labor Relations Administrator must be a person with experience as a neutral in labor relations, and must not be a person who, because of vocation, employment, or affiliation, can be classed as a representative of the interest of the **employer** or any **employee organization**.

(c) The County Executive must appoint the Labor Relations Administrator from a list of 5 nominees agreed on by the **certified representative** and the Chief Administrative Officer. The County

Council must confirm the appointment. If there is no **certified representative**, the County Executive must appoint an Administrator, with the confirmation of the County Council. If the County Council does not confirm an appointment, the County Executive must appoint another person from a new agreed list of 5 nominees and submit that appointee to the County Council for confirmation. The Administrator serves a term of 5 years. An incumbent Administrator is automatically reappointed for another 5-year term unless, during the period between 60 and 30 days before the term expires, the **certified representative** notifies the **employer** or the **employer** notifies the **certified representative** that it objects to the reappointment.

(d) The Labor Relations Administrator must be paid a daily fee as specified by contract with the County, and must be reimbursed for necessary expenses incurred in performing the duties of Administrator.

33-150. Employee rights.

(a) **Employees** have the right to:

(1) form, join, support, contribute to, or participate in, or refrain from forming, joining, supporting, contributing to, or participating in, any **employee organization** or its lawful activities; and

(2) be represented fairly by their **certified representative**, if any.

(b) The **employer** must extend to the **certified representative** the exclusive right to represent the **employees** for the purposes of **collective bargaining**, including the orderly processing and settlement of grievances as agreed by the parties under this Article.

(c) A **certified representative** serves as the exclusive bargaining agent for all **employees** in the **unit** and must represent fairly and without discrimination all **employees** in the **unit** without regard to whether the **employees** are members of the **employee organization**, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a **certified representative** to seek enforcement of an **agency shop** provision in a valid **collective bargaining** agreement.

(d) The right of a **certified representative** to receive voluntary dues or service fee deductions or **agency shop** provisions must be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this Article. Other than an **agency shop** provision, a **collective bargaining** agreement must not require membership in, participation in the affairs of, or contributions to an **employee organization**.

33-151. Selection, certification, and decertification procedures.

(a) Any **employee organization** seeking certification as representative of the **unit** must file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The **employee organization** must also send a copy of the petition, including a copy of the signatures of the supporting **employees** on the petition, to the **employer**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, signifying their desire to be represented by the **employee organization** for purposes of **collective bargaining**.

(b) If an **employee organization** has been certified, an **employee** in the **unit** may file a petition with the Administrator to decertify the **certified representative**. The **employee** must also send a copy of the petition to the **employer** and the **certified representative**, not including the names of the supporting **employees**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, alleging that the certified **employee organization** is no longer the choice of the majority of the **employees** in the **unit**.

(c) If a lawful **collective bargaining** agreement is not in effect, a petition may be filed under this Section in September of any year, but not sooner than 22 months after an election held under this Section.

(d) If a lawful **collective bargaining** agreement is in effect, a petition filed under this Section must not be entertained unless it is filed during September of the final year of the agreement.

(e) If the Administrator finds that a petition is properly supported and timely filed, the Administrator must hold an election of all eligible **employees** within a reasonable time, but no later than the next October 20, to determine if and by whom the **employees** wish to be represented.

(1) The election must be supervised by the Administrator and must be conducted by secret ballot at the time and place that the Administrator directs. The Administrator may retain the services of a State agency responsible for conducting labor elections, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots must contain, as choices to be made by the voter, the name of each petitioning or certified **employee organization**, the name of any other **employee organization** showing written proof at least 10 days before the election of at least 10 percent representation of the **employees** in the **unit** in the same manner as described in paragraph (a), and a choice that the **employee** does not desire to be represented by any of the named **employee organizations**.

(3) The **employer** and each party to the election may be represented by observers selected under conditions that the Administrator prescribes.

(4) Observers selected under paragraph (3) may challenge for good cause the eligibility of any person to vote in the election. All challenged ballots must be impounded until either the parties agree on the validity of each challenge or the Administrator decides the validity of each challenge. However, if the number of challenges will not determine the outcome of the election, the challenged ballots must be destroyed.

(5) After the polls have been closed, the Administrator must count all valid ballots cast in the presence of the observers.

(6) The Administrator must immediately prepare and serve on the **employer** and each party a report certifying the results of the election. If an **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must certify that **organization** as the exclusive agent.

(7) If no **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must not certify a representative. Unless a majority of the **employees** who vote choose ``no representative,'' a runoff election must be conducted. The runoff election must contain the 2 choices that received the largest and second largest number of votes in the original election.

(f) The Administrator's certification of results is final unless, within 7 days after service of the report and the certification, any party serves on all other parties and files with the Administrator objections to the election. All objections must be verified and contain a concise statement of facts constituting the grounds for each objection. The Administrator must investigate all objections and, if substantial factual issues exist, must hold a hearing. Otherwise, the Administrator may decide the matter without a hearing. The Administrator may invite, either by rule or by invitation, written or oral argument to assist in deciding the merits of the objections. If the Administrator finds that the election was conducted in substantial conformity with this Article, the Administrator must confirm the certification initially issued. If the Administrator finds that the election was not held in substantial conformity with this Article, then the Administrator must hold another election under this Section.

(g) The County must pay the cost of conducting each election.

33-152. Collective bargaining.

(a) **Duty to bargain; matters subject to bargaining.** When an **employee organization** is certified, the **employer** and the **certified representative** must bargain collectively with respect to:

(1) salary and wages, including the percentage of the increase in the salary and wages budget that is devoted to merit increments and cash awards, but salaries and wages must be uniform for all **employees** in the same classification;

(2) pension and other retirement benefits for active **employees** only;

(3) **employee** benefits such as, but not limited to, insurance, leave, holidays, and vacations;

(4) hours and working conditions;

(5) procedures for the orderly processing and settlement of grievances concerning the interpretation and implementation of any **collective bargaining** agreement, which may include:

(A) binding third party arbitration, but the arbitrator has no authority to amend, add to, or subtract from any provision of the **collective bargaining** agreement; and

(B) provisions for exclusivity of forum;

(6) matters affecting the health and safety of **employees**; and

(7) amelioration of the effect on **employees** when the exercise of **employer** rights listed in subsection (b) causes a loss of existing jobs in the **unit**.

(b) **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.

(d) The public **employer** rights specified in this Section must be incorporated by reference in every agreement reached between the **employer** and the **employee organization**.

33-153. Bargaining, impasse, and legislative procedures.

(a) **Collective bargaining** must begin no later than the November 1 before the beginning of a fiscal year for which there is no agreement between the **employer** and the **certified representative**, and must be completed on or before January 15. The resolution of a bargaining impasse must be completed by February 1. These time limits may be waived or extended by written agreement of the parties.

(b) Any provision for automatic renewal or extension of a **collective bargaining** agreement is void. An agreement is void if it extends for less than 1 year or more than 3 years. Each **collective bargaining** agreement must take effect July 1 and end June 30.

(c) A **collective bargaining** agreement takes effect only after ratification by the **employer** and the **certified representative**. The **certified representative** may adopt its own ratification procedures.

(d) Before November 10 of any year in which the **employer** and the **certified representative** bargain collectively, they must choose an impasse neutral, either by agreement or through the processes of the American Arbitration Association. The impasse neutral must be available from January 15 to February 1. The impasse neutral's fees and expenses must be shared equally by the **employer** and the **certified representative**.

(e) During the course of **collective bargaining**, either party may declare an impasse and request the services of the impasse neutral, or the

parties may jointly request those services before declaring an impasse. If the parties have not agreed on a **collective bargaining** agreement by January 15, an impasse exists by operation of law.

(f) When an impasse is reached, the parties must submit the dispute to the impasse neutral. The impasse neutral must attempt **mediation** by bringing the parties together voluntarily under conditions that will tend to bring about a settlement of the dispute.

(g) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral must require the parties to jointly submit all items previously agreed on, and each party to submit a final offer consisting of proposals not agreed upon. Neither party may change any proposal after it is submitted to the impasse neutral as a final offer, except to withdraw a proposal on which the parties have agreed.

(h) The impasse neutral may require the parties to submit evidence or present oral or written arguments in support of their proposals. The impasse neutral may hold a hearing at a time, date, and place selected by the impasse neutral. The hearing must not be open to the public.

(i) On or before February 1, unless that date is extended by written agreement of the parties, the impasse neutral must select the final offer that, as a whole, the impasse neutral judges to be the more reasonable. In determining which final offer is the more reasonable, the impasse neutral may consider only the following factors:

(1) past **collective bargaining** agreements between the parties, including the past bargaining history that led to the agreements,

or the pre-**collective bargaining** history of **employee** wages, hours, benefits, and working conditions;

(2) wages, hours, benefits and conditions of employment of similar **employees** of other public employers in the Washington Metropolitan Area and in Maryland;

(3) wages, hours, benefits, and conditions of employment of other Montgomery County employees;

(4) wages, benefits, hours, and other working conditions of similar **employees** of private employers in Montgomery County;

(5) the interest and welfare of the public; and

(6) the ability of the **employer** to finance economic adjustments, and the effect of those adjustments on the normal standard of public services provided by the **employer**.

(j) The impasse neutral must base the selection of the most reasonable offer on the contents of the offer and the integration of any previously agreed-on items with the disputed items. In making a decision, the impasse neutral must not consider or receive any evidence or argument concerning offers of settlement not contained in the offers submitted to the impasse neutral, or any other information concerning the **collective bargaining** leading to impasse. The impasse neutral must neither compromise nor alter the final offer that he or she selects.

(k) The final offer selected by the impasse neutral, integrated with any items previously agreed on, is the final agreement between the parties, need not be ratified by any party, and has the force and effect

of an agreement voluntarily entered into and ratified under subsection (c). The parties must execute that agreement.

(l) The annual operating budget which the **employer** submits to the County Council must include sufficient funds to pay for the items in the parties' final agreement. Either or both parties must expressly identify to the Council all terms and conditions in the agreement that require an appropriation of funds or the enactment, repeal, or modification of any County law or regulation, or which have or may have a present or future fiscal impact. The **employer** must make a good faith effort to have the Council take action to implement all terms and conditions in the final agreement.

(m) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

(n) The Council may accept or reject all or part of any term or condition in the agreement which requires an appropriation of funds or the enactment, repeal, or modification of any County law or regulation, or which has or may have a present or future fiscal impact. On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and must state its reasons for any intention to reject any part of the final agreement.

(o) If the Council indicates its intention to reject any part of the final agreement, it must select a representative to meet with the parties and present the Council's views in the parties' further negotiation on matters that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's

position in any ensuing impasse procedure. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. Any agreement must provide for automatic reduction or elimination of wage or benefits adjustments if:

(1) the Council does not take action necessary to implement the agreement or a part of it; or

(2) sufficient funds are not appropriated for any fiscal year when the agreement is in effect.

33-154. Prohibited practices.

(a) The **employer** and its agents or representatives must not:

(1) interfere with, restrain, or coerce **employees** in the exercise of any rights granted to them under this Article;

(2) dominate or interfere with the formation or administration of any **employee organization** or contribute financial or other support to it, under an agreement or otherwise, but the **employer** and **certified representative** may agree to and apply an **agency shop** provision under this Article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of County facilities to communicate with **employees**;

(3) encourage or discourage membership in any **employee organization** by discriminating in hiring, tenure, wages, hours, or conditions of employment, but this Article does not preclude an agreement from containing an **agency shop** provision;

(4) discharge or discriminate against a public **employee** because the **employee** files charges, gives testimony, or otherwise lawfully aids in administering this Article;

(5) refuse to bargain collectively with the **certified representative**;

(6) refuse to reduce to writing or sign a **collective bargaining** agreement that has been agreed to in all respects;

(7) refuse to process or arbitrate a grievance if required under a grievance procedure contained in a **collective bargaining** agreement;

(8) directly or indirectly oppose the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached under this Article; or

(9) engage in a **lockout** of **employees**.

(b) **Employee organizations** and their agents, representatives, and persons who work for them, must not:

(1) interfere with, restrain, or coerce the **employer** or any **employee** in the exercise of any rights granted under this Article;

(2) restrain, coerce, or interfere with the **employer** in the selection of its representative for **collective bargaining** or the adjustment of grievances;

(3) refuse to bargain collectively with the **employer** if the **employee organization** is the **certified representative**;

(4) refuse to reduce to writing or sign a **collective bargaining** agreement which has been agreed to in all respects;

(5) hinder or prevent, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstruct or otherwise unlawfully interfere with the entrance to or exit from any place of employment, or obstruct or unlawfully interfere with any person's free and uninterrupted use of any road, railway, airport, or other mode of travel;

(6) hinder or prevent by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the **employer**;

(7) take or retain unauthorized possession of property of the **employer**, or refuse to do work or use certain goods or materials as lawfully required by the **employer**; or

(8) cause or attempt to cause the **employer** to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed nor to be performed.

(c) A charge of prohibited practice may be filed by the **employer**, an **employee organization**, or any individual **employee**. Each charge must be filed with the Labor Relations Administrator, and a copy must be sent to any person who allegedly committed a prohibited practice. Each charge must state facts sufficient to allow the Administrator to investigate the charge. The Administrator may request withdrawal of and, if necessary, summarily dismiss any charge which is insufficiently supported in fact or law to warrant a hearing.

(d) The Administrator may independently investigate any charge and may adopt rules for an independent investigation. If, after investigating, the Administrator finds that a charge is sufficiently supported to raise an issue of fact or law and is unable to settle or resolve the matter, the Administrator must hold a hearing on the charge after notifying the parties. In any hearing, the charging party must present evidence in support of the charges; and the party or parties charged may file an answer, appear in person or otherwise, and present evidence in defense against the charges.

(e) If the Administrator finds that the person charged has committed a prohibited practice, the Administrator must file findings of fact and conclusions of law, may order the person charged to cease and desist from the prohibited practice, and may take affirmative actions to remedy any violation of this Article. Remedies available under this subsection include reinstating **employees** with or without back pay, making **employees** whole for any loss relating to County employment suffered as a result of any prohibited practice, or withdrawing or suspending an **employee organization's** authority to negotiate or continue an **agency shop** provision or a voluntary dues or service fee deduction provision. If the Administrator finds that the party charged has not committed a prohibited practice, the Administrator must file findings of fact and conclusions of law and dismiss the charges.

(f) The Administrator must summarily dismiss any charge based on an action which allegedly occurred more than 6 months before the charge was filed.

(g) Any party aggrieved by a final decision of the Administrator under this Section may appeal the decision to the Circuit Court for Montgomery County in accordance with the court rules governing administrative appeals. The court may affirm, reverse, or modify the decision, or remand the case for further proceedings. The filing of an appeal does not stay the Administrator's order. Any party to the proceeding in the Circuit Court may appeal the Court's decision under applicable provisions of state law and court rules.

33-155. Expression of views.

(a) Expressing or disseminating any views, argument, or opinion, orally, in writing, or otherwise:

(1) is not a prohibited practice or evidence of a prohibited practice under this Article; and

(2) is not grounds to invalidate any election conducted under this Article;

unless the expression or dissemination contains a threat of reprisal or promise of benefit.

(b) Recognizing an **employee organization** does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of those associations or particularly apply to those associations or their members.

33-156. Strikes and lockouts.

(a) An **employee** or **employee organization** must not either directly or indirectly cause, instigate, encourage, condone, or engage in any **strike**, nor the **employer** any **lockout**. An **employee** or **employee**

organization must not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a **strike**.

(b) The **employer** must not pay, reimburse, make whole, or otherwise compensate any **employee** for or during the period when that **employee** is directly or indirectly engaged in a **strike**. The **employer** must not compensate an **employee** who struck for wages or benefits lost during a **strike**.

(c) If an **employee** or **employee organization** violates this Section, and after adequate notice and a fair hearing the Labor Relations Administrator finds that the violations have occurred and that any or all of the following sanctions are necessary in the public interest, the **employer** may:

(1) discipline, or dismiss from employment, any **employee** who engaged in the conduct;

(2) terminate or suspend an **employee organization's** dues deduction privilege, if any; or

(3) revoke the certification of and disqualify the **employee organization** from participation in representation elections for a period up to a maximum of 2 years.

(d) This Article does not prohibit an **employer** or a certified **employee organization** from seeking any remedy available in a court with jurisdiction.

33-157. Effect of prior laws and regulations.

(a) This Article does not supersede any law, executive order, rule, or regulation adopted by the County or any County department or agency which is not inconsistent with this Article.

(b) Any executive order, rule, or regulation of the County or any County department or agency which regulates any subject that is bargainable under this Article is not superseded or modified by a **collective bargaining** agreement negotiated under this Article except to the extent that the application of the order, rule, or regulation is inconsistent with the **collective bargaining** agreement.

(c) However, if the inconsistent order, rule, or regulation is subject to and has received County Council approval, a **collective bargaining** agreement does not supersede or modify it unless:

(1) the order, rule, or regulation was expressly identified to the Council by the parties before the Council reviewed the **collective bargaining** agreement, as required by Section 33-153(l); and

(2) the Council expressly indicates its intent to repeal or modify the order, rule, or regulation.

Sec. 2. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

Approved:

Gail H. Ewing, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Acting Secretary of the Council Date

LEGISLATIVE REQUEST

Emergency Bill 21-96

Fire and Rescue Collective Bargaining

DESCRIPTION:

At present, the provisions of Chapter 33, Article VII, "County Collective Bargaining" cover the Fire/Rescue bargaining unit along with the Office, Professional and Technical and Service and Labor and Trades bargaining units. This bill amends Article VII, Sections 33-102 and 33-105, and adds Article X to establish a separate collective bargaining framework for nonsupervisory professional fire and rescue employees. Article X provides for the selection of a separate Labor Relations Administrator for the Fire/Rescue unit and allows binding arbitration of bargaining disputes.

1. Section 33-102 is amended by exempting from the definition of "employee" persons who work for the Department of Fire and Rescue Services and who are represented by a certified employee organization under Article X. In Section 33-105, references to the Fire/Rescue bargaining unit are deleted. The bargaining unit is now defined in Section 33-148.

2. Article X includes Sections 147 through Section 33-157, as described below:

   (a) Section 147 is a statement of public policy in support of collective bargaining rights for fire and rescue employees;

   (b) Section 33-148 defines terms;

   (c) Section 33-149 delineates the authority and responsibilities of the Labor Relations Administrator who will be responsible for the implementation and administration of the program;

   (d) Section 33-150 describes the collective bargaining rights accorded to Fire/Rescue unit employees and their certified representative;

   (e) Section 33-151 provides the methods by which a certified representative may be selected, certified, or decertified;

   (f) Section 33-152 describes the scope of bargaining by listing those matters which are mandatory subjects for bargaining between the County and the certified representative, and also includes a list of reserved management rights;

   (g) Section 33-153 includes mandatory provisions about the bargaining process, including selection of the arbitrator who will act as the impasse neutral, impasse proceedings, submission of the final agreement to the Council, and the role of the Council with regard to the agreement;

   (h) Section 33-154 describes what constitutes a prohibited practice on the part of the employer and an employee organization;

(i) Section 33-155 states that the expression of views do not constitute a prohibited practice and that the certification of an employee organization does not preclude the County from discussing with members of religious, social professional or fraternal organizations matters which affect their members;

(j) Section 33-156 prohibits strikes and lockouts and describes how the employer may deal with them; and

(k) Section 33-157 describes the effect of the Article on prior laws, executive orders, rules or regulations of the County or any of its departments or agencies.

PROBLEM:

The Charter amendment adopted by the voters on November 8, 1994 states that the Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County career fire fighters. The certified representative of the firefighters, IAFF Local 1664, opposes legislation which would implement the Charter amendment by merely amending the County collective bargaining law. Instead, Local 1664 favors a separate collective bargaining law for firefighters in recognition of their unique interests. There is precedence for this in the existence of a separate collective bargaining law for police officers in Article V.

GOALS AND OBJECTIVES:

The objective of this legislation is to establish a separate collective bargaining law for the Fire/Rescue unit which provides for binding arbitration of bargaining impasses, and thereby implements the Charter amendment. It is also our goal to improve upon the impasse resolution procedure contained in the police labor relations law by including explicit language in Section 33-153 which prohibits either party from changing any bargaining proposal after it is submitted to the impasse neutral, except to withdraw a proposal on which the parties have reached agreement. The absence of such language caused problems in the past during impasse proceedings with the FOP. Except for the inclusion of provisions for arbitration of bargaining impasses, the remainder of the bill mirrors the language in the County collective bargaining law rather than the police labor relations law.

COORDINATION:

The Office of Human Resources has coordinated the drafting of this bill with the Department of Fire and Rescue Services and IAFF Local 1664, and will coordinate the implementation with the same parties.

FISCAL IMPACT:

Section 33-149 provides for the selection of a Labor Relations Administrator (LRA) who may periodically adopt, amend, and rescind regulations to implement and administer the Article. If the LRA adopts regulations, there will be a cost to the County for the time spent by the LRA performing this function. Additionally, if the parties cannot reach agreement, the County

will have to pay for the services of an impasse neutral to resolve impasses through binding arbitration. This would not be an additional cost, however, as the cost of such services is roughly the same as the costs of resolving bargaining impasses without binding arbitration.

ECONOMIC IMPACT:

Not applicable.

EVALUATION:

This legislation does not require evaluation.

EXPERIENCE ELSEWHERE:

Not applicable.

SOURCE OF INFORMATION:

James Torgesen, Labor/Employee Relations Manager.

APPLICATION WITHIN MUNICIPALITIES:

Not applicable.

PENALTIES:

Not applicable.

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Bill

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

007823

Disk to Christy

MEMORANDUM

March 15, 1996

96 MAR 18 P2:25

TO: Gail Ewing, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Emergency Bill on Fire and Rescue Collective Bargaining

I am submitting the attached emergency bill for the Council's consideration. If enacted, the bill will implement the Charter amendment adopted by the voters on November 8, 1994, by providing by law for binding arbitration of bargaining impasses with the certified representative of career fire fighters. It will also add a new article to Chapter 33 of the Code to provide a separate collective bargaining framework for professional fire and rescue employees. The Montgomery County Career Fire Fighters Association, IAFF Local 1664, was consulted in drafting the legislation.

I believe that a separate collective bargaining law is appropriate because collective bargaining for the Fire/Rescue bargaining unit is a hybrid of the features that are contained in the other two collective bargaining laws. The scope of bargaining for these employees is the same as the scope of bargaining for the OPT and SLT bargaining units under the County collective bargaining law in Article VII of Chapter 33. However, the impasse resolution procedures which provide for binding arbitration are more akin to those in the Police labor relations law in Article V, but include new language to improve the process. Also, the creation of a separate law will allow the appointment of a Labor Relations Administrator solely for this bargaining unit. The individual appointed to this position, because he or she will be concerned solely with the administration of the law for this unit, will become expert at dealing with the issues which are peculiar to this unit and which arise from the employees' working conditions and the Department's operations.

DD:cmr

Attachments

(33)

OFFICE OF HUMAN RESOURCES

Douglas M. Duncan
County Executive

M E M O R A N D U M

June 14, 1996

TO: Michael E. Faden, Legislative Counsel

FROM: James Torgesen, Labor/Employee Relations Manager

cc: John Sparks, President, Montgomery County Career Fire Fighters Association, IAFF Local 1664

SUBJECT: Proposed Revisions to Emergency Bill No. 21-96, Collective Bargaining - Firefighters

After reviewing Bill No. 21-96, we propose that the bill be revised as discussed below. (Double brackets indicate deleted text, and double underlining indicates added text.)

1. Sec. 33-147, Declaration of policy, line 81:
   wages, hours, and other terms and conditions of employment, as authorized by Charter Section 510A, through a

Reason: Comparable language is in both of the other collective bargaining laws.

2. Sec. 33-148, Definitions, line 127:
   (B) in the classification of [[Fire/Rescue Sergeant]] Fire/Rescue Lieutenant or any equivalent

Reason: In July of 1996, the classification of Fire/Rescue Sergeant will be abolished, and all personnel in that classification will become Fire/Rescue Lieutenants.

3. Sec. 33-148, Definitions, lines 131-132:
   representation of employees in collective bargaining. [[The organization must not admit to membership any person other than fire and rescue service personnel.]]

Reason: Although comparable language is in the definition of "Employee Organization" in Sec. 33-76 of Article V, Police Labor Relations, the language is probably unconstitutional, as it restricts freedom of association. In fact, IAFF Local 1664 has associate members and honorary members who are not current fire and rescue personnel, as well as members who are retired from the profession.

4. Sec. 33-149, Labor Relations Administrator, lines 164-165:
   decertification procedures[[,]] and prohibited practices[[, and the choice of an impasse neutral]].

(34)

Reason: The deleted language conflicts with Sec. 33-153(d), which states that the employer and certified representative must choose the impasse neutral. The LRA has no role in the selection.

5. Sec. 33-153, Bargaining, impasse, and legislative procedures, line 509:

position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may initiate impasse proceedings as set forth in this Section. The parties must submit

Reason: The added language above gives more detail about the duties of the parties in the face of Council rejection of all or part of the agreement. It is comparable to language in Sec. 33-80(g) of the Police labor law.

6. Sec. 33-154, Prohibited practices, line 609:

[[action which allegedly]] alleged prohibited practice which occurred more than 6 months before the

Reason: This is the language used in the other County collective bargaining laws, and is more exact than the use of the broader term "actions". A prohibited practice may encompass a series of acts or actions occurring over a period of time. The prohibited practice would be said to occur on the date of the last action.

7. Sec. 33-157, Effect of prior laws and regulations, line 675:

153(l); [[and]] or

Reason: If the parties expressly identified to the Council an order, rule or regulation which is inconsistent with the proposed collective bargaining agreement, there is no requirement that the Council repeal or modify the order, rule or regulation. For example, if a proposed collective bargaining agreement contains a provision which is inconsistent with the Personnel Regulations, and the Council is notified of the inconsistency, Council approval of the agreement simply means that the agreement becomes the relevant regulation for bargaining unit employees. Other employees are still covered by the Personnel Regulations, and the Personnel Regulations themselves are neither repealed nor modified. Sec. 33-112 of the County collective bargaining law, which is comparable to this Section, contains the word "or".

If you have any questions concerning any of these issues, please contact either of us. James Torgesen may be reached at 217-2287, and John Sparks at 762-6611.

cc: Deborah Snead, Asst. Chief Administrative Officer
Marta Perez, Director, Office of Human Resources
Jon Grover, Director, Dept. of Fire & Rescue Services

#4/2

Montgomery County Career
Fire Fighters Ass'n., Inc.

LOCAL 1664

TESTIMONY BY JOHN J. SPARKS, PRESIDENT, LOCAL 1664
COLLECTIVE BARGAINING - FIRE FIGHTERS
PUBLIC HEARING - EMERGENCY BILL 21-96
JULY 2, 1996

Madam President, Council Members - my name is John Sparks and I am President of the Montgomery County Career Fire Fighters Assn. I represent over 600 career fire fighters and paramedics who are affected by this legislation.

As you are aware, in 1994, the citizens of Montgomery County voted favorably in a referendum which instructed the County Council to provide binding arbitration to cover career fire fighters and paramedics in the bargaining unit. For the past several months, we have been working with the County Executive in developing legislation that is fair to the County Government and our Association and meets the electoral mandate of the citizens of Montgomery County. While this legislation does create a separate law for us, we feel it is necessary not only because of the uniqueness of our work but because this legislation combines some of the Police law and some of the current Collective Bargaining Law which now pertains to us.

Additionally, important to the County Council is that this legislation does <u>not</u> broaden our negotiable subjects nor does it restrict or change any of the many current management rights.

As always, our Local asks only to be treated equitably and fairly in comparison to other County public safety bargaining unit employees. We believe this legislation brings us closer to that goal and we ask the Council to approve this legislation with the agreed upon amendments.

Thank you, and I will be happy to answer any questions which you may have.

(36)

932 Hungerford Drive, Suite 33A, Rockville, MD 20850-1713 • Telephone: (301) 762-6611 • FAX: (301) 762-7390

LOCAL 1664

Montgomery County Career Fire Fighters Ass'n., Inc.

TESTIMONY BY JOHN J. SPARKS, PRESIDENT, LOCAL 1664
COLLECTIVE BARGAINING - FIRE FIGHTERS
PUBLIC HEARING - EMERGENCY BILL 21-96
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APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

MANAGEMENT AND FISCAL POLICY COMMITTEE

Thursday, July 11, 1996
10:15 A.M. to 11:45 A.M.
Council Conference Room

PRESENT

Marilyn J. Praisner, Chair

William E. Hanna, Jr. Neal Potter

SUBJECT: **Emergency Bill 21-96, Collective Bargaining - Firefighters**

Mr. Faden, Senior Legislative Attorney, reviewed for the Committee the issues contained in his memorandum and attachments, dated July 11, 1996.

ACTION: Recommended enactment of Bill 21-96 with amendments jointly proposed by the Office of Human Resources and the International Association of Firefighters Local 1664, as modified by the Committee; deferred other issues not unique to this bargaining unit for future legislation.

SUBJECT: **Review of Procurement Law and Executive Regulations**

ACTION: Reviewed information and recommendations provided in the Council Staff memorandum, dated July 10, 1996.

Requested that a letter be sent to those persons who testified in 1994 on the comprehensive provisions to the procurement law and regulations to solicit their comments on how the county's procurement system is working.

Requested Council staff review the law regarding the procurement of recycled materials and the recommendations included in the Office of Procurement's FY 95 report and return to the Committee with recommendations for any necessary changes.

Noted that the Council will continue to separately review the Minority, Female, and Disabled procurement law, and requested that the Executive submit or Council staff prepare legislation on behalf of the Committee to extend the sunset date for the MFD program to allow for an appropriate amount of time to review the evaluation report being prepared by the Executive's consultant.

Stated that the Committee would consider the Office of Procurement's recommended changes to the cost and price analysis law during its review of cost and price analysis in the FY 98 operating budget.

This is an accurate account of the meeting:

Mary A. Edgar

Mary A. Edgar, CMC
Secretary of the Council

Minutes written by: Michael Faden, Senior Legislative Attorney
Linda McMillan, Legislative Analyst

Minutes edited by: Mary A. Edgar

OFFICE OF HUMAN RESOURCES

Douglas M. Duncan
County Executive

MEMORANDUM

June 14, 1996

TO: Michael E. Faden, Legislative Counsel

FROM: James Torgesen, Labor/Employee Relations Manager

cc: John Sparks, President, Montgomery County Career Fire Fighters Association, IAFF Local 1664

SUBJECT: Proposed Revisions to Emergency Bill No. 21-96, Collective Bargaining - Firefighters

After reviewing Bill No. 21-96, we propose that the bill be revised as discussed below. (Double brackets indicate deleted text, and double underlining indicates added text.)

1. Sec. 33-147, Declaration of policy, line 81:
   wages, hours, and other terms and conditions of employment, as authorized by Charter Section 510A, through a

Reason: Comparable language is in both of the other collective bargaining laws.

2. Sec. 33-148, Definitions, line 127:
   (B) in the classification of [[Fire/Rescue Sergeant]] Fire/Rescue Lieutenant or any equivalent

Reason: In July of 1996, the classification of Fire/Rescue Sergeant will be abolished, and all personnel in that classification will become Fire/Rescue Lieutenants.

3. Sec. 33-148, Definitions, lines 131-132:
   representation of employees in collective bargaining. [[The organization must not admit to membership any person other than fire and rescue service personnel.]]

Reason: Although comparable language is in the definition of "Employee Organization" in Sec. 33-76 of Article V, Police Labor Relations, the language is probably unconstitutional, as it restricts freedom of association. In fact, IAFF Local 1664 has associate members and honorary members who are not current fire and rescue personnel, as well as members who are retired from the profession.

4. Sec. 33-149, Labor Relations Administrator, lines 164-165:
   decertification procedures[[,]] and prohibited practices[[, and the choice of an impasse neutral]].

(34)

Reason: The deleted language conflicts with Sec. 33-153(d), which states that the employer and certified representative must choose the impasse neutral. The LRA has no role in the selection.

5. Sec. 33-153, Bargaining, impasse, and legislative procedures, line 509:

position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may initiate impasse proceedings as set forth in this Section. The parties must submit

Reason: The added language above gives more detail about the duties of the parties in the face of Council rejection of all or part of the agreement. It is comparable to language in Sec. 33-80(g) of the Police labor law.

6. Sec. 33-154, Prohibited practices, line 609:

[[action which allegedly]] alleged prohibited practice which occurred more than 6 months before the

Reason: This is the language used in the other County collective bargaining laws, and is more exact than the use of the broader term "actions". A prohibited practice may encompass a series of acts or actions occurring over a period of time. The prohibited practice would be said to occur on the date of the last action.

7. Sec. 33-157, Effect of prior laws and regulations, line 675:

153(l); [[and]] or

Reason: If the parties expressly identified to the Council an order, rule or regulation which is inconsistent with the proposed collective bargaining agreement, there is no requirement that the Council repeal or modify the order, rule or regulation. For example, if a proposed collective bargaining agreement contains a provision which is inconsistent with the Personnel Regulations, and the Council is notified of the inconsistency, Council approval of the agreement simply means that the agreement becomes the relevant regulation for bargaining unit employees. Other employees are still covered by the Personnel Regulations, and the Personnel Regulations themselves are neither repealed nor modified. Sec. 33-112 of the County collective bargaining law, which is comparable to this Section, contains the word "or".

If you have any questions concerning any of these issues, please contact either of us. James Torgesen may be reached at 217-2287, and John Sparks at 762-6611.

cc: Deborah Snead, Asst. Chief Administrative Officer
Marta Perez, Director, Office of Human Resources
Jon Grover, Director, Dept. of Fire & Rescue Services

Emergency Bill No. 21-96
Concerning: Collective Bargaining - Firefighters
Revised: 7-18-96 Draft No. 5
Introduced: May 14, 1996
Enacted: July 23, 1996
Executive: August 1, 1996
Effective: August 1, 1996
Sunset Date: None
Ch. 21, Laws of Mont. Co. 1996

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EMERGENCY ACT to establish a separate collective bargaining process for professional fire and rescue employees.

By amending
Montgomery County Code
Chapter 33, Personnel
Sections 33-102 and 33-105

By adding
Chapter 33, Personnel
Article X, Fire and Rescue Collective Bargaining
Sections 33-147 through 33-157

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland, approves the following Act:

Sec. 1. Sections 33-102 and 33-105 are amended, and Article X, Fire and Rescue Collective Bargaining, Sections 33-147 through 33-157, are added as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(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 [for the following]:

[a.] (A) Confidential aides to elected officials.

[b.] (B) All persons who are not covered by the County government merit system.

[c.] (C) Heads of principal departments, offices, and agencies.

[d.] (D) Deputies and assistants to heads of principal departments, offices, and agencies.

[e.] (E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

[f.] (F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

[g.] (G) Persons who work for the Office of the County Executive and the Office of the Chief Administrative Officer.

[h.] (H) Persons who work for the County Council.

[i.] (I) Persons who work for the Office of the County Attorney.

[j.] (J) Persons who work for the Office of Management and Budget.

[k.] (K) Persons who work for the [personnel office] Office of Human Resources.

[l.] (L) Persons who work for the Merit System Protection Board.

[m.] (M) Persons who work on a temporary, seasonal, or substitute basis.

[n.] (N) Newly hired persons on probationary status.

[o.] (O) Persons who work for the Police Department [who] and are represented by a certified employee organization under Article V [of this Chapter].

(P) Persons who work for the Department of Fire and Rescue Services and are represented by a certified employee organization under Article X.

[p.] (Q) Officers in the uniformed services (Corrections, Fire and Rescue, Police, Office of the Sheriff) in the rank of sergeant and above. Subject to any limitations in state law, deputy sheriffs below the rank of sergeant are employees.

[q.] (R) Persons who are members of the state merit system.

[r.] (S) Supervisors, which means persons having authority to [do any of the following]:

[1.](i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively [to] recommend any [one] of these actions;

[2.](ii) direct the activity of [three (3)] 3 or more employees; or

[3.](iii) adjust or recommend adjustment of grievances.

[s.] (T) Persons in grade 27 or above, whether or not they are supervisors.

33-105. Units for collective bargaining.

(a) There are [3] 2 units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, [excluding the categories listed as exceptions to the definition of] except any person who is not defined as an employee in Section 33-102(4) [of this Article]. The employees are divided into [3] 2 units[, in accordance with the following descriptions]:

* * *

[(3) **Fire/Rescue unit.** This unit is composed of employees who hold the positions of master firefighter/rescuer, and firefighter/rescuer I, II, and III, and who are associated with fire suppression, fire protection, fire communications, fire service training, rescue, and emergency medical services. These duties include the rescue and safety of individuals and the preservation of structures and physical property.]

* * *

ARTICLE X. FIRE AND RESCUE COLLECTIVE BARGAINING.

33-147. Declaration of policy.

The public policy of Montgomery County is to promote a harmonious, peaceful, and cooperative relationship between the County government and its fire and rescue employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the Department of Fire and Rescue

Services. Since unresolved disputes in the fire and rescue service harm the public and fire and rescue employees, adequate means should be available to prevent disputes and resolve them when they occur. To that end, it is in the public interest that fire and rescue employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, as authorized by Charter Section 510A, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of fire and rescue employees bargain collectively in good faith without interference with the orderly process of government, and that they implement any agreement reached through collective bargaining.

Fire and rescue employee organizations and the County government each possess substantial means for initiating actions on wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the fire and rescue service, once the employees voluntarily select a representative collective bargaining must be used in place of, and not in addition to, existing means to initiate government action on subjects that are appropriate for collective bargaining under this Article.

33-148. Definitions.

The following terms have the meaning indicated when used in this Article:

(1) **Agency shop** means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement must not require an employee to pay initiation fees, assessments, fines, or any similar collections as a condition of continued employment. A

collective bargaining agreement must not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the collective bargaining agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, with provision for dispute resolution if there is not agreement, and to give to the employer and the certified representative written proof of this payment. The certified representative must adhere at all times to all federal constitutional requirements in its administration of any agency shop system maintained by it.

(2) **Certified representative** means an employee organization chosen to represent the unit as the exclusive bargaining agent in accordance with this Article or Article VII.

(3) **Collective bargaining** means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this Article. This Article does not compel either party to agree to a proposal or make a concession.

(4) **Employee** means any fire and rescue employee in the classification of Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not any employee:

(A) in a probationary status, or

(B) in the classification of Fire/Rescue [[Sergeant]] Lieutenant or any equivalent or higher classification.

(5) **Employee organization** means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining. [[The organization must not admit to membership any person other than fire and rescue service personnel.]]

(6) **Employer** means the County Executive and the Executive's designee.

(7) **Lockout** means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) **Mediation** means an effort by an impasse neutral chosen under this Article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) **Strike** means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of these acts are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations

of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) **Unit** means all employees, as defined in this Section, who are associated with fire suppression, fire protection, fire communications, fire service training, rescue, and emergency medical services, and whose duties include the rescue and safety of individuals and the preservation of structures and physical property.

33-149. Labor Relations Administrator.

(a) A Labor Relations Administrator must be appointed to effectively administer this Article as it governs selection, certification and decertification procedures[[,]] and prohibited practices[[, and the choice of an impasse neutral]]. The Administrator must:

(1) periodically adopt, amend, and repeal, under method (1), regulations and procedures to carry out the Administrator's duties under this Article;

(2) request from the **employer** or **employee organization**, and the **employer** or **employee organization** may at its discretion provide, any relevant assistance, service, and data that will enable the Administrator to properly carry out duties under this Article;

(3) hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) conduct elections to certify or decertify an **employee organization** under this Article, and issue the certification or decertification;

(5) investigate and attempt to resolve or settle, as provided in this Article, charges of engaging in prohibited practices, but the Administrator must defer to the parties' grievance procedure if:

(A) the **employer** and the **certified representative** have negotiated a valid grievance procedure to resolve disputes, and

(B) deferral to the grievance procedure would not result in the application of principles repugnant to this Article;

(6) determine whether a person is properly included in or excluded from the **unit**;

(7) obtain any necessary support services and make necessary expenditures in the performance of duties to the extent the County has appropriated funds for these purposes; and

(8) exercise any other powers and perform any other duties and functions specified in this Article.

(b) The Labor Relations Administrator must be a person with experience as a neutral in labor relations, and must not be a person who, because of vocation, employment, or affiliation, can be classed as a representative of the interest of the **employer** or any **employee organization**.

(c) The County Executive must appoint the Labor Relations Administrator from a list of 5 nominees agreed on by the **certified representative** and the Chief Administrative Officer. The County

Council must confirm the appointment. If there is no **certified representative**, the County Executive must appoint an Administrator, with the confirmation of the County Council. If the County Council does not confirm an appointment, the County Executive must appoint another person from a new agreed list of 5 nominees and submit that appointee to the County Council for confirmation. The Administrator serves a term of 5 years. An incumbent Administrator is automatically reappointed for another 5-year term unless, during the period between 60 and 30 days before the term expires, the **certified representative** notifies the **employer** or the **employer** notifies the **certified representative** that it objects to the reappointment.

(d) The Labor Relations Administrator must be paid a daily fee as specified by contract with the County, and must be reimbursed for necessary expenses incurred in performing the duties of Administrator.

33-150. Employee rights.

(a) **Employees** have the right to:

(1) form, join, support, contribute to, or participate in, or refrain from forming, joining, supporting, contributing to, or participating in, any **employee organization** or its lawful activities; and

(2) be represented fairly by their **certified representative**, if any.

(b) The **employer** must extend to the **certified representative** the exclusive right to represent the **employees** for the purposes of **collective bargaining**, including the orderly processing and settlement of grievances as agreed by the parties under this Article.

(c) A **certified representative** serves as the exclusive bargaining agent for all **employees** in the **unit** and must represent fairly and without discrimination all **employees** in the **unit** without regard to whether the **employees** are members of the **employee organization**, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a **certified representative** to seek enforcement of an **agency shop** provision in a valid **collective bargaining** agreement.

(d) The right of a **certified representative** to receive voluntary dues or service fee deductions or **agency shop** provisions must be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this Article. Other than an **agency shop** provision, a **collective bargaining** agreement must not require membership in, participation in the affairs of, or contributions to an **employee organization**.

33-151. Selection, certification, and decertification procedures.

(a) Any **employee organization** seeking certification as representative of the **unit** must file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The **employee organization** must also send a copy of the petition, including a copy of the signatures of the supporting **employees** on the petition, to the **employer**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, signifying their desire to be represented by the **employee organization** for purposes of **collective bargaining**.

(b) If an **employee organization** has been certified, an **employee** in the **unit** may file a petition with the Administrator to decertify the **certified representative**. The **employee** must also send a copy of the petition to the **employer** and the **certified representative**, not including the names of the supporting **employees**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, alleging that the certified **employee organization** is no longer the choice of the majority of the **employees** in the **unit**.

(c) If a lawful **collective bargaining** agreement is not in effect, a petition may be filed under this Section in September of any year, but not sooner than 22 months after an election held under this Section.

(d) If a lawful **collective bargaining** agreement is in effect, a petition filed under this Section must not be entertained unless it is filed during September of the final year of the agreement.

(e) If the Administrator finds that a petition is properly supported and timely filed, the Administrator must hold an election of all eligible **employees** within a reasonable time, but no later than the next October 20, to determine if and by whom the **employees** wish to be represented.

(1) The election must be supervised by the Administrator and must be conducted by secret ballot at the time and place that the Administrator directs. The Administrator may retain the services of a State agency responsible for conducting labor elections, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots must contain, as choices to be made by the voter, the name of each petitioning or certified **employee organization**, the name of any other **employee organization** showing written proof at least 10 days before the election of at least 10 percent representation of the **employees** in the **unit** in the same manner as described in paragraph (a), and a choice that the **employee** does not desire to be represented by any of the named **employee organizations**.

(3) The **employer** and each party to the election may be represented by observers selected under conditions that the Administrator prescribes.

(4) Observers selected under paragraph (3) may challenge for good cause the eligibility of any person to vote in the election. All challenged ballots must be impounded until either the parties agree on the validity of each challenge or the Administrator decides the validity of each challenge. However, if the number of challenges will not determine the outcome of the election, the challenged ballots must be destroyed.

(5) After the polls have been closed, the Administrator must count all valid ballots cast in the presence of the observers.

(6) The Administrator must immediately prepare and serve on the **employer** and each party a report certifying the results of the election. If an **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must certify that **organization** as the exclusive agent.

(7) If no **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must not certify a representative. Unless a majority of the **employees** who vote choose ``no representative,'' a runoff election must be conducted. The runoff election must contain the 2 choices that received the largest and second largest number of votes in the original election.

(f) The Administrator's certification of results is final unless, within 7 days after service of the report and the certification, any party serves on all other parties and files with the Administrator objections to the election. All objections must be verified and contain a concise statement of facts constituting the grounds for each objection. The Administrator must investigate all objections and, if substantial factual issues exist, must hold a hearing. Otherwise, the Administrator may decide the matter without a hearing. The Administrator may invite, either by rule or by invitation, written or oral argument to assist in deciding the merits of the objections. If the Administrator finds that the election was conducted in substantial conformity with this Article, the Administrator must confirm the certification initially issued. If the Administrator finds that the election was not held in substantial conformity with this Article, then the Administrator must hold another election under this Section.

(g) The County must pay the cost of conducting each election.

33-152. Collective bargaining.

(a) **Duty to bargain; matters subject to bargaining.** When an **employee organization** is certified, the **employer** and the **certified representative** must bargain collectively with respect to:

(1) salary and wages, including the percentage of the increase in the salary and wages budget that is devoted to merit increments and cash awards, but salaries and wages must be uniform for all **employees** in the same classification;

(2) pension and other retirement benefits for active **employees** only;

(3) **employee** benefits such as, but not limited to, insurance, leave, holidays, and vacations;

(4) hours and working conditions;

(5) procedures for the orderly processing and settlement of grievances concerning the interpretation and implementation of any **collective bargaining** agreement, which may include:

(A) binding third party arbitration, but the arbitrator has no authority to amend, add to, or subtract from any provision of the **collective bargaining** agreement; and

(B) provisions for exclusivity of forum;

(6) matters affecting the health and safety of **employees**; and

(7) amelioration of the effect on **employees** when the exercise of **employer** rights listed in subsection (b) causes a loss of existing jobs in the **unit**.

(b) **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.

(d) The public **employer** rights specified in this Section must be incorporated by reference in every agreement reached between the **employer** and the **employee organization**.

33-153. Bargaining, impasse, and legislative procedures.

(a) **Collective bargaining** must begin no later than the November 1 before the beginning of a fiscal year for which there is no agreement between the **employer** and the **certified representative**, and must be completed on or before January 15. The resolution of a bargaining impasse must be completed by February 1. These time limits may be waived or extended by written agreement of the parties.

(b) Any provision for automatic renewal or extension of a **collective bargaining** agreement is void. An agreement is void if it extends for less than 1 year or more than 3 years. Each **collective bargaining** agreement must take effect July 1 and end June 30.

(c) A **collective bargaining** agreement takes effect only after ratification by the **employer** and the **certified representative**. The **certified representative** may adopt its own ratification procedures.

(d) Before November 10 of any year in which the **employer** and the **certified representative** bargain collectively, they must choose an impasse neutral, either by agreement or through the processes of the American Arbitration Association. The impasse neutral must be available from January 15 to February 1. The impasse neutral's fees and expenses must be shared equally by the **employer** and the **certified representative**.

(e) During the course of **collective bargaining**, either party may declare an impasse and request the services of the impasse neutral, or the

parties may jointly request those services before declaring an impasse. If the parties have not agreed on a **collective bargaining** agreement by January 15, an impasse exists by operation of law.

(f) When an impasse is reached, the parties must submit the dispute to the impasse neutral. The impasse neutral must attempt **mediation** by bringing the parties together voluntarily under conditions that will tend to bring about a settlement of the dispute.

(g) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral must require the parties to jointly submit all items previously agreed on, and each party to submit a final offer consisting of proposals not agreed upon. Neither party may change any proposal after it is submitted to the impasse neutral as a final offer, except to withdraw a proposal on which the parties have agreed.

(h) The impasse neutral may require the parties to submit evidence or present oral or written arguments in support of their proposals. The impasse neutral may hold a hearing at a time, date, and place selected by the impasse neutral. The hearing must not be open to the public.

(i) On or before February 1, unless that date is extended by written agreement of the parties, the impasse neutral must select the final offer that, as a whole, the impasse neutral judges to be the more reasonable. In determining which final offer is the more reasonable, the impasse neutral may consider only the following factors:

(1) past **collective bargaining** agreements between the parties, including the past bargaining history that led to the agreements,

or the pre-**collective bargaining** history of **employee** wages, hours, benefits, and working conditions;

(2) wages, hours, benefits and conditions of employment of similar **employees** of other public employers in the Washington Metropolitan Area and in Maryland;

(3) wages, hours, benefits, and conditions of employment of other Montgomery County employees;

(4) wages, benefits, hours, and other working conditions of similar **employees** of private employers in Montgomery County;

(5) the interest and welfare of the public; and

(6) the ability of the **employer** to finance economic adjustments, and the effect of those adjustments on the normal standard of public services provided by the **employer**.

(j) The impasse neutral must base the selection of the most reasonable offer on the contents of the offer and the integration of any previously agreed-on items with the disputed items. In making a decision, the impasse neutral must not consider or receive any evidence or argument concerning offers of settlement not contained in the offers submitted to the impasse neutral, or any other information concerning the **collective bargaining** leading to impasse. The impasse neutral must neither compromise nor alter the final offer that he or she selects.

(k) The final offer selected by the impasse neutral, integrated with any items previously agreed on, is the final agreement between the parties, need not be ratified by any party, and has the force and effect

of an agreement voluntarily entered into and ratified under subsection (c). The parties must execute that agreement.

(l) The annual operating budget which the **employer** submits to the County Council must include sufficient funds to pay for the items in the parties' final agreement. [[Either or both parties]] The **employer** must expressly identify to the Council all terms and conditions in the agreement that:

(1) require an appropriation of funds, or

(2) are inconsistent with any County law or regulation, or

(3) require the enactment[[, repeal, or modification]] or adoption of any County law or regulation, or

(4) which have or may have a present or future fiscal impact.

The **employer** must make a good faith effort to have the Council take action to implement all terms and conditions in the parties' final agreement.

(m) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

(n) The Council may accept or reject all or part of any term or condition in the agreement which:

(1) requires an appropriation of funds, or

(2) is inconsistent with any County law or regulation, or

(3) requires the enactment[[, repeal, or modification]] or adoption of any County law or regulation, or

(4) which has or may have a present or future fiscal impact.

On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the

agreement or its intention not to do so, and must state its reasons for any intention to reject any part of the parties' final agreement.

(o) If the Council indicates its intention to reject any part of the parties' final agreement, it must select a representative to meet with the parties and present the Council's views in the parties' further negotiation on matters that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so.

(p) Any agreement must provide for automatic reduction or elimination of wage or benefits adjustments if:

(1) the Council does not take action necessary to implement the agreement or a part of it; or

(2) sufficient funds are not appropriated for any fiscal year when the agreement is in effect.

33-154. Prohibited practices.

(a) The **employer** and its agents or representatives must not:

(1) interfere with, restrain, or coerce **employees** in the exercise of any rights granted to them under this Article;

(2) dominate or interfere with the formation or administration of any **employee organization** or contribute financial or other support to it, under an agreement or otherwise, but the **employer** and **certified representative** may agree to and apply an **agency shop** provision under this Article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of County facilities to communicate with **employees**;

(3) encourage or discourage membership in any **employee organization** by discriminating in hiring, tenure, wages, hours, or conditions of employment, but this Article does not preclude an agreement from containing an **agency shop** provision;

(4) discharge or discriminate against a public **employee** because the **employee** files charges, gives testimony, or otherwise lawfully aids in administering this Article;

(5) refuse to bargain collectively with the **certified representative**;

(6) refuse to reduce to writing or sign a **collective bargaining** agreement that has been agreed to in all respects;

(7) refuse to process or arbitrate a grievance if required under a grievance procedure contained in a **collective bargaining** agreement;

(8) directly or indirectly oppose the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached under this Article; or

(9) engage in a **lockout** of **employees**.

(b) **Employee organizations** and their agents, representatives, and persons who work for them, must not:

(1) interfere with, restrain, or coerce the **employer** or any **employee** in the exercise of any rights granted under this Article;

(2) restrain, coerce, or interfere with the **employer** in the selection of its representative for **collective bargaining** or the adjustment of grievances;

(3) refuse to bargain collectively with the **employer** if the **employee organization** is the **certified representative**;

(4) refuse to reduce to writing or sign a **collective bargaining** agreement which has been agreed to in all respects;

(5) hinder or prevent, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstruct or otherwise unlawfully interfere with the entrance to or exit from any place of employment, or obstruct or unlawfully interfere with any person's free and uninterrupted use of any road, railway, airport, or other mode of travel;

(6) hinder or prevent by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the **employer**;

(7) take or retain unauthorized possession of property of the **employer**, or refuse to do work or use certain goods or materials as lawfully required by the **employer**; or

(8) cause or attempt to cause the **employer** to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed nor to be performed.

(c) A charge of prohibited practice may be filed by the **employer**, an **employee organization**, or any individual **employee**. Each charge must be filed with the Labor Relations Administrator, and a copy must be sent to any person who allegedly committed a prohibited practice. Each charge must state facts sufficient to allow the Administrator to investigate the charge. The Administrator may request withdrawal of and, if necessary, summarily dismiss any charge which is insufficiently supported in fact or law to warrant a hearing.

(d) The Administrator may independently investigate any charge and may adopt rules for an independent investigation. If, after investigating, the Administrator finds that a charge is sufficiently supported to raise an issue of fact or law and is unable to settle or resolve the matter, the Administrator must hold a hearing on the charge after notifying the parties. In any hearing, the charging party must present evidence in support of the charges; and the party or parties charged may file an answer, appear in person or otherwise, and present evidence in defense against the charges.

(e) If the Administrator finds that the person charged has committed a prohibited practice, the Administrator must file findings of fact and conclusions of law, may order the person charged to cease and desist from the prohibited practice, and may take affirmative actions to

remedy any violation of this Article. Remedies available under this subsection include reinstating **employees** with or without back pay, making **employees** whole for any loss relating to County employment suffered as a result of any prohibited practice, or withdrawing or suspending an **employee organization's** authority to negotiate or continue an **agency shop** provision or a voluntary dues or service fee deduction provision. If the Administrator finds that the party charged has not committed a prohibited practice, the Administrator must file findings of fact and conclusions of law and dismiss the charges.

(f) The Administrator must summarily dismiss any charge based on an [[action which allegedly]] alleged prohibited practice which occurred more than 6 months before the charge was filed.

(g) Any party aggrieved by a final decision of the Administrator under this Section may appeal the decision to the Circuit Court for Montgomery County in accordance with the court rules governing administrative appeals. The court may affirm, reverse, or modify the decision, or remand the case for further proceedings. The filing of an appeal does not stay the Administrator's order. Any party to the proceeding in the Circuit Court may appeal the Court's decision under applicable provisions of state law and court rules.

33-155. Expression of views.

(a) Expressing or disseminating any views, argument, or opinion, orally, in writing, or otherwise:

(1) is not a prohibited practice or evidence of a prohibited practice under this Article; and

(2) is not grounds to invalidate any election conducted under this Article;

unless the expression or dissemination contains a threat of reprisal or promise of benefit.

(b) Recognizing an **employee organization** does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of those associations or particularly apply to those associations or their members.

33-156. Strikes and lockouts.

(a) An **employee** or **employee organization** must not either directly or indirectly cause, instigate, encourage, condone, or engage in any **strike**, nor the **employer** any **lockout**. An **employee** or **employee organization** must not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a **strike**.

(b) The **employer** must not pay, reimburse, make whole, or otherwise compensate any **employee** for or during the period when that **employee** is directly or indirectly engaged in a **strike**. The **employer** must not compensate an **employee** who struck for wages or benefits lost during a **strike**.

(c) If an **employee** or **employee organization** violates this Section, and after adequate notice and a fair hearing the Labor Relations Administrator finds that the violations have occurred and that any or all of the following sanctions are necessary in the public interest, the **employer** may:

(1) discipline, or dismiss from employment, any **employee** who engaged in the conduct;

(2) terminate or suspend an **employee organization's** dues deduction privilege, if any; or

(3) revoke the certification of and disqualify the **employee organization** from participation in representation elections for a period up to a maximum of 2 years.

(d) This Article does not prohibit an **employer** or a certified **employee organization** from seeking any remedy available in a court with jurisdiction.

33-157. Effect of prior laws and regulations.

(a) This Article [[does not supersede]] supersedes any law, executive order, rule, or regulation adopted by the County or any County department or agency which is [[not]] inconsistent with this Article.

(b) Any executive order, rule, or regulation of the County or any County department or agency which regulates any subject that is bargainable under this Article is not superseded or modified by a **collective bargaining** agreement negotiated under this Article, except to the extent that the application of the order, rule, or regulation is inconsistent with the **collective bargaining** agreement.

(c) However, if the inconsistent order, rule, or regulation is subject to and has received County Council approval, a **collective bargaining** agreement does not supersede or modify it unless:

(1) the order, rule, or regulation was expressly identified to the Council by the parties before the Council reviewed the **collective bargaining** agreement, as required by Section 33-

153(l)[[;]], and the Council did not reject the inconsistent term or condition of the collective bargaining agreement under Section 33-153(n); or

(2) the Council [[expressly indicates its intent to repeal or modify]] repeals or modifies the order, rule, or regulation.

Sec. 2. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

Approved:

Gail H. Ewing, President, County Council — July 24, 1996 Date

Approved:

Douglas M. Duncan, County Executive — August 1, 1996 Date

This is a correct copy of Council action.

Elda Dodson, Acting Secretary of the Council — August 2, 1996 Date

AGENDA ITEM 11.2
March 14, 2000
Introduction

MEMORANDUM

March 9, 2000

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 10-00, Collective Bargaining - Police - Sergeants

Bill 10-00, Collective Bargaining - Police - Sergeants, sponsored by Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing, is scheduled to be introduced on March 14, 2000. The public hearing is tentatively scheduled for April 4 at 1:30 p.m.

Bill 10-00 would bring police sergeants within the scope of collective bargaining in a separate bargaining unit. The bill is titled and will be advertised broadly so that the Council may consider other changes to the police collective bargaining process.

This packet contains:	Circle #
Bill 4-00	1
Legislative Request Report	5

F:\BILLS\0010 Sergeants Bargunit\Intromemo0314.Doc

Bill No. 10-00
Concerning: Collective Bargaining - Police - Sergeants
Revised: 2-2-00 Draft No. 1
Introduced: March 14, 2000
Expires: September 14, 2001
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing

AN ACT to:

(1) bring police sergeants within the scope of collective bargaining;
(2) divide the police collective bargaining unit into two bargaining units; and
(3) generally amend the law regarding collective bargaining with County police officers.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resource
Sections 33-76 and 33-78

By adding
Chapter 33, Personnel and Human Resource
Section 33-78A

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-76 and 33-78 are amended, and Section 33-78A is added, as follows:

33-76. Definitions.

When used in this Article:

* * *

Certified representative means an employee organization selected in accordance with [the procedures of] this Chapter to represent [the] a unit.

Employee means any police officer [in the classification of] classified as a sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, [and] or police officer candidate, or an equivalent nonsupervisory classification[s], but not [those] a police officer in [the classification of police sergeant or] any [equivalent or] higher classification.

Employer means the County Executive and [his] the Executive's designees.

* * *

Unit means [all employees] either of the units defined in Section 33-78A.

33-78. Employee rights.

* * *

(b) The employer [shall have the duty to] must extend to the certified representative the exclusive right to represent the employees in that

bargaining unit for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative [shall] must serve as the bargaining agent for all employees in the unit for which it is certified and [shall have the duty to] must represent fairly and without discrimination all employees in that unit without regard to whether the employees are [or are not] members of the employee organization, [or are paying] pay dues or other contributions to it, or [participating] participate in its affairs. [; provided, however, that it shall not be deemed] However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

33-78A. Bargaining units.

For purposes of certification and collective bargaining, employees subject to this Article must be divided into 2 bargaining units, composed of the following employees:

(1) sergeants;

(2) all other covered employees.

Approved:

Michael L. Subin, President, County Council — Date

Approved:

Douglas M. Duncan, County Executive — Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council — Date

LEGISLATIVE REQUEST REPORT

Bill 10-00

Collective Bargaining - Police - Sergeants

DESCRIPTION:	Adds sergeants to the list of Police Department employees subject to collective bargaining. Creates a second police bargaining unit for sergeants.
PROBLEM:	Police sergeants do not have collective bargaining rights, unlike all ranks below them, but also are not treated as upper management.
GOALS AND OBJECTIVES:	To give police sergeants full collective bargaining rights, in a separate bargaining unit.
COORDINATION:	Police Department, Office of Human Resources
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County Police Department..
PENALTIES:	Not applicable

Bill 10-00

RECEIVED COUNCIL

HF
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Montgomery County Lodge 35, Inc. 00 MAR 1 A11 : 10

February 29, 2000

030439

Honorable Michael Subin
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Mr. Subin:

We are in receipt of the draft bill to be sponsored by Councilmembers Berlage, Andrews, and Silverman extending collective bargaining rights to police sergeants. Fraternal Order of Police, Lodge 35 appreciates the support of members of the Council in this initiative, and our Supervisors' Committee looks forward to working with you in this regard.

The current draft of the proposed bill would provide for two bargaining units for sworn police officers: the present collective bargaining unit, and a second unit for sergeants. We suggest that the proposed bill be amended to add sergeants to the existing bargaining unit if a majority of all sergeants indicate a desire to be included in the existing collective bargaining unit.

Our suggestion is prompted by the desire that the collective bargaining process avoid needless duplication of effort, and possible contradictory working conditions. Unlike the ranks included in the Department's "executive staff"-lieutenants, captains and majors-almost all of the working conditions for sergeants are identical to those of the officers in lower ranks already part of the existing collective bargaining unit. Separating the sergeants into a second, "mini" bargaining unit requires a second bargaining process, including a separate interest arbitration if the parties are unable to reach a voluntary agreement on a collective bargaining agreement. At present, sergeants generally receive the same working condition adjustments which exist in the FOP collective bargaining agreement. Consequently, we suggest that a separate bargaining unit for this rank will just complicate the bargaining and personnel management process in the Department.

Inclusion of sergeants in the existing bargaining unit will not create any significant "conflict of interest." Disciplinary procedures for police officers are largely outside the parameters of collective bargaining, and are regulated by state law-the Law Enforcement Officers' Bill of Rights (Art. 27, §727, et seq, Md. Anno. Code.) The FOP has for many

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(301) 948-4286 • FAX (301) 590-0317

years provided representation to sergeants in disciplinary proceedings, as well as in merit system grievances regarding working condition issues. Consequently, adding sergeants to the existing bargaining unit will not dramatically change the role of the FOP in representing sergeants. Neither is this suggestion unprecedented. Nearby jurisdictions in which sergeants are included in rank-and-file collective bargaining units include the D.C. Metropolitan Police, Prince George's County, and Frederick City.

Attached is a draft of statutory language which would accomplish our suggestion.

We invite your comments and questions, and will be happy to meet at your convenience.

Sincerely,

Walter E. Bader

Walter E. Bader
President

Attachment
cc: Chief Moose
Kirk Holub

PROPOSED BILL TO ADD POLICE SERGEANTS
TO EXISTING BARGAINING UNIT

33-76 Definitions

****

Employee means any police officer in the classification of sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, and police officer candidate, or an equivalent [nonsupervisory] classification, but not a police officer [those in the classification of police sergeant or any equivalent or] in any higher classification.

Section 33-79 Selection, certification and decertification procedures.

(a) ****

(7) If, during the period of July 1 to July 31, 2000, a petition is filed by the incumbent representative of unit employees certified under this article, together with evidence, acceptable to the permanent umpire, that a majority of all sergeants employed by the employer as of July 1, 2000, have authorized the incumbent representative to represent them, employees in the rank of sergeant or its equivalent shall thenceforth be included in the collective bargaining unit for all purposes under this article, except that wages, hours, and other terms and conditions of employment for sergeants shall be regulated pursuant to the collectively bargained agreement no sooner than July 1, 2001.

***

(e) Voluntary recognition is prohibited under this article, and no certification may be issued without an election except as provided for in subsections 33-79 (a) (6) and (7).

Bill No. 10-00
Concerning: Collective Bargaining - Police - Sergeants
Revised: 2-2-00 Draft No. 1
Introduced: March 14, 2000
Expires: September 14, 2001
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing

AN ACT to:

(1) bring police sergeants within the scope of collective bargaining;
(2) divide the police collective bargaining unit into two bargaining units; and
(3) generally amend the law regarding collective bargaining with County police officers.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resource
Sections 33-76 and 33-78

By adding
Chapter 33, Personnel and Human Resource
Section 33-78A

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

(1)

Sec. 1. Sections 33-76 and 33-78 are amended, and Section 33-78A is added, as follows:

33-76. Definitions.

When used in this Article:

* * *

Certified representative means an employee organization selected in accordance with [the procedures of] this Chapter to represent [the] a unit.

Employee means any police officer [in the classification of] classified as a sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, [and] or police officer candidate, or an equivalent nonsupervisory classification[s], but not [those] a police officer in [the classification of police sergeant or] any [equivalent or] higher classification.

Employer means the County Executive and [his] the Executive's designees.

* * *

Unit means [all employees] either of the units defined in Section 33-78A.

33-78. Employee rights.

* * *

(b) The employer [shall have the duty to] must extend to the certified representative the exclusive right to represent the employees in that

bargaining unit for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative [shall] must serve as the bargaining agent for all employees in the unit for which it is certified and [shall have the duty to] must represent fairly and without discrimination all employees in that unit without regard to whether the employees are [or are not] members of the employee organization, [or are paying] pay dues or other contributions to it, or [participating] participate in its affairs. [; provided, however, that it shall not be deemed] However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

33-78A. Bargaining units.

For purposes of certification and collective bargaining, employees subject to this Article must be divided into 2 bargaining units, composed of the following employees:

(1) sergeants;

(2) all other covered employees.

Approved:

Michael L. Subin, President, County Council — Date

Approved:

Douglas M. Duncan, County Executive — Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council — Date

LEGISLATIVE REQUEST REPORT

Bill 10-00

Collective Bargaining - Police - Sergeants

DESCRIPTION:	Adds sergeants to the list of Police Department employees subject to collective bargaining. Creates a second police bargaining unit for sergeants.
PROBLEM:	Police sergeants do not have collective bargaining rights, unlike all ranks below them, but also are not treated as upper management.
GOALS AND OBJECTIVES:	To give police sergeants full collective bargaining rights, in a separate bargaining unit.
COORDINATION:	Police Department, Office of Human Resources
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County Police Department..
PENALTIES:	Not applicable

10-00

RECEIVED COUNCIL

00 APR 3 P12 : 18

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cc
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ME

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

MEMORANDUM

April 3, 2000

031109

TO: Michael L. Subin, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Bill No. 10-00, Collective Bargaining for Police Sergeants

I support the efforts of Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing in proposing legislation to extend collective bargaining rights to police sergeants. For some time now, police supervisors have expressed an interest in having a more active role in determining what their salaries, benefits, hours of work, and other working conditions will be. In response to their wishes and in consultation with the Chief of Police, I am requesting that Bill No. 10-00 be amended to provide collective bargaining rights to police lieutenants and captains in addition to sergeants.

I endorse the view of the sponsors of the bill that there should be a separate bargaining unit for police supervisors. This will insure that the identity of police sergeants, lieutenants, and captains as supervisors is maintained in the collective bargaining process. I also propose an amendment that would reserve to the unit of non-supervisory police officers the right to bargain over the effect of the exercise of a management right. I believe that we should not have to bargain with police supervisors over the impact of management decisions effecting supervisory employees.

I have attached a copy of Bill No. 10-00 with the amendments. I thank the Council for considering this request.

DMD:cmr

Attachments

Bill No. 10-00
Concerning: Collective Bargaining – Police - [[Sergeants]] Supervisors
Revised: _____ Draft No. ___
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing

AN ACT to:

(1) bring police sergeants, lieutenants, and captains within the scope of collective bargaining;
(2) divide the police collective bargaining unit into two bargaining units; [[and]]
(3) limit the scope of bargaining for the police supervisors bargaining unit; and [[(3)]]
(4) generally amend the law regarding collective bargaining with County police officers.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-76, [[and]] 33-78, and 33-80

By adding
Chapter 33, Personnel and Human Resources
Section 33-78A

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-76, [[and]] 33-78, and 33-80 are amended, and Section 33-78A is added, as follows:

33-76. Definitions.

When used in this Article:

* * *

Certified representative means an **employee** organization selected [[in accordance with the procedures of]] under this Chapter to represent [the] a **unit**.

Employee means [[any]] a police officer [in the classification of] classified as a captain, lieutenant, sergeant, master police officer[[I, master police officer II]], police officer I, police officer II, police officer III, [and] [[or]] police officer candidate, or an equivalent [[nonsupervisory classification[s], but not [those] a police officer in [the classification of police sergeant or] any [equivalent] or higher]] classification. **Employee** does not include an individual in a position classified higher than a police captain or a police lieutenant or captain assigned to one of the following work units and whose primary duties involve:

(a) Human resources;

(b) Internal affairs;

(c) Legal;

(d) Labor relations; or

(e) Policy development and compliance.

Employer means the County Executive and [his] the Executive's designees.

* * *

Unit means [all **employees**] either of the bargaining **units** defined in Section 33-78A.

33-78. Employee rights.

* * *

(b) The **employer** [shall have the duty to] must extend to the **certified representative** the exclusive right to represent the **employees** in that bargaining **unit** for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative [shall] must serve as the bargaining agent for all **employees** in the **unit** for which it is certified and [shall have the duty to] must represent fairly and without discrimination all **employees** in that **unit** without regard to whether the **employees** are [or are not] members of the **employee** organization, [or are paying] pay dues or other contributions to it, or [participating] participate in its affairs. [; provided, however, that it shall not be deemed] However, it is not a violation of this duty for a **certified representative** to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

33-78A. Bargaining units.

For purposes of certification and collective bargaining, [[**employees**]] an **employee** subject to this Article must be [[divided into 2 bargaining **units**, composed of the following employees]] a member of one of the following bargaining **units**:

(a) [[sergeants]] police supervisors **unit** that includes police sergeants, lieutenants, and captains; or

(b) police non-supervisors **unit** that includes all other covered **employees**.

33-80. Collective bargaining.

(a) **Duty to bargain; matters subject to bargaining.** [[Upon certification of an]] An **employee** organization [[, as provided in]]

certified under Section 33-79[[, the **employer** and the said **certified representative** shall have the duty, through their designees, to]] and the **employer** must bargain collectively [[with respect to those]] on the following subjects [[as follows]]:

* * *

(7) [[the effect on **employees** of the **employer's** exercise of rights enumerated in subsection (b) hereof]] the effect of the **employer's** exercise of **employer** rights listed in subsection (c) with the **certified representative** of the police non-supervisors bargaining **unit**. The **employer** must not bargain collectively on the effect of the **employer's** exercise of **employer** rights listed in subsection (c) with the **certified representative** of the police supervisors bargaining **unit**.

* * *

Approved:

Michael L. Subin, President, County Council — Date

Douglas M. Duncan, County Executive — Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council — Date

Montgomery County Lodge 35, Inc.

MONTGOMERY COUNTY COUNCIL

TESTIMONY OF FRATERNAL ORDER OF POLICE, MONTGOMERY COUNTY LODGE 35, INC. CONCERNING BILL No. 10-00 COLLECTIVE BARGAINING - POLICE SERGEANTS

April 4, 2000

Good Afternoon. I am Walter E. Bader, President, Fraternal Order of Police, Montgomery County Lodge 35 and am here to testify in support of Bill 10-00 with amendments.

Before you is a proposal to allow sergeants to bargain collectively. Unlike many of their counterparts is other jurisdictions, including neighboring Prince George's County and Washington, DC. Montgomery County sergeants do not have this right.

What we strongly urge is that sergeants included in the current law with a special provision that, as a sub-unit, they be allowed to vote for either union representation or no union representation. If they vote for union representation, we believe that they should be in the existing bargaining unit. If they are in the same unit, as we propose, they should have the right to vote in any representation election. Kirk Holub will give you reasons.

Lodge 35 does not want a legislated right to represent sergeants. We want them to have the opportunity to decide whether any union will represent them and if they vote for union representation, they would, under existing law, have the right to vote in any subsequent union representation election.

It is essential that it be made clear that the right to bargain collectively is not the same as the right to representation. While collective bargaining involves union representation, a union may represent its members, including sergeants, even without collective bargaining. Employees have a right to representation under several sources of law, including the United States and Maryland Constitutions in some matters, Maryland law in other matters, and the Merit System Law.

Simply defined, collective bargaining is a continuous relationship between a group of employees and their employer. The employees elect their own representative in a democratic manner. Once elected and certified, the representative negotiates and administers a contract setting forth wages, benefits, and other terms and conditions of employment.

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Collective bargaining is not new. It has been with us for over a century. Contracts have been with us long before the creation of this Nation. Indeed, the United States Constitution protects private contracts from government impairment. Yet, for some irrational reason, the concept of union contracts is a causes of controversy.

In 1980, under the leadership of President Larry Desmond, a Montgomery County police sergeant, members of FOP Lodge 35 twice obtained the necessary signatures to put the issue of collective bargaining to referendum. The voters of Montgomery County overwhelmingly approved a citizen initiative granting police officers the right to collective bargaining with binding arbitration. Enabling legislation was enacted in April 1982. Sergeants were excluded, primarily because they had been excluded under the 1976 meet and confer law.

Meet and confer resulted in three agreements or "Position Papers." And, although the bargaining unit consisted of only officers below the rank of sergeant, in 1980 when Sergeant Larry Desmond was elected President, the County and police department recognized his role and position and he was afforded administrative leave to conduct union business under the provisions of "Position Paper III."

While sergeants do not have collective bargaining rights, many currently are, and in the past, have been represented by FOP Lodge 35. Since 1969 when FOP Lodge 35 was chartered, we have represented numerous sergeants in grievances and appeals, hearing boards, matters before the Grand Jury, at the scenes of police shootings, and other matters. At practically any given time, we are representing one or more supervisors. We do not, however, provide this representation with bargaining unit fees or dues, and carefully segregate our finances as required by the United States Supreme Court.

After the current police labor relations law was passed, dues for sergeants were deducted during the first two collectively bargained agreements - 1983-85 and 1985-88. Then, suddenly when negotiations commenced for a new agreement, the County first threatened, then filed, but later withdrew, a Charge of Prohibited Labor Practice because we were representing sergeants. What brought this about was that the County hired a labor relations manager who had worked for the union that challenged Lodge 35 for representation rights under meet and confer. That individual decided that he could make an issue of our representation of sergeants and he did. In discussing this matter with former Chief Bernie Crooke, I was told that he had no advance knowledge of the action and that he had no problem with our representation of police sergeants. At that point, he was speaking with five years of experience as police chief.

Considerable litigation and dispute ensued. In the end, the County unilaterally discontinued voluntary dues deductions for non-unit police officers and the grievance procedure [AP 4-4] was amended to prohibit either Lodge 35 or its President from representing sergeants in grievances. We have since resolved this issue to some degree.

None of this came as a real surprise, because in 1985, the County Attorney, despite a contract provision against it, unsuccessfully caused a suit to go to the Maryland Court of Special Appeals challenging my right to represent a Police Officer III before the Merit System Protection Board. Though we prevailed, the lesson learned was that as of 1985, Montgomery County remained anti-union.

On three occasions since 1982, a majority of sergeants have signed petitions with Lodge 35 for full collective bargaining rights.

Our bargaining unit members work with sergeants and perform much of the same work under identical conditions. Sergeants are the only unrepresented group of employees who share our working conditions. They should participate in the negotiation of contracts to address our concerns and in the administration of those contracts within a democratic union.

Now the Duncan Administration which for over five years has not supported collective bargaining rights for sergeants, suddenly proposes that sergeants, lieutenants, and captains should have these rights. Clearly, this is not an initiative, but a very shallow response to this bill and a 20 year effort by sergeants to obtain collective bargaining rights.

This is a ploy conceived only after the department got an earlier draft of this bill. Their plan is to expand bargaining to a larger group of employees, create a new unit, and have the unit be represented by a company union.

This attempt to create a company union demonstrates a disrespect for employees' right to organize and is regressive. This is a sad commentary on the administration. Seeking a company union a century after most such unions were abolished in this country is outrageous. They have them in Mexico, in third world countries, and some chicken producers might like to bring them back. Yet, in the year 2000 the Duncan administration seeks one and asks you to help them do it. The only thing they haven't yet proposed is the company store.

The administration has taken the reactionary, short view. The long term effect of their intent would be to drive a wedge between the bargaining unit and sergeants. Sergeants and current unit members must work together. We depend upon each other for mutual protection and safety. Indeed, their lives depend upon one another.

We ask that you reject the administration's proposal and enact support legislation to give sergeants the right to bargain as we propose.

Finally, we notice that this hearing has been advertised rather broadly. While we are here this day supporting our sergeants, we vigorously oppose any attempt to diminish our exiasting rights under the existing Police Labor Relations Law and would like fair opportunity to address any proposal to do so.

We are available to provide any information or assistance that any councilmember may desire.

Thank you for your careful consideration of this bill and the amendment we propose.

13/#3

FRATERNAL ORDER OF POLICE
Montgomery County Lodge 35, Inc.

Supervisors Committee

18512 Office Park Drive
Gaithersburg, Maryland 20879
Phone (301) 948-4286 Fax (301) 590-0317

BEFORE THE MONTGOMERY COUNTY COUNCIL

TESTIMONY OF KIRK HOLUB, CHAIR, SUPERVISORS COMMITTEE,

FRATERNAL ORDER OF POLICE, MONTGOMERY COUNTY LODGE 35

Bill 10-00

April 4, 2000

Good afternoon. I am Kirk Holub, a police sergeant and Chairman of the FOP Lodge 35 Supervisors Committee. Lodge 35 is also the elected representative of nonsupervisory police officers.

The Lodge 35 Supervisors Committee is a functional unit of Lodge 35 and was first created in 1982, then rechartered in 1996 for three basic purposes: 1. To recognize the importance of supervisors within the FOP; 2. To coordinate FOP representation of police supervisors; and 3. To pursue collective bargaining rights for police sergeants.

Currently, 91 (87%) of 105 sergeants are active dues-paying members of FOP Lodge 35. Of these sergeants, excluding the Supervisors Committee, one is on our Board of Directors, one is treasurer of a committee, one is a steward, and one is a committee member. Since the 1980 Charter amendment requiring collective bargaining for police officers, sergeants have served as President, Vice-President, Treasurer, and in other Lodge positions.

Lodge 35 has represented sergeants in employment matters since 1969. In the past year alone, we have represented sergeants in internal affairs matters under the Law Enforcement Officers' Bill of Rights, and others in grievances. A case involving a sergeant is pending before the Court of Special Appeals.

During recent negotiations with the Department of Justice, Lodge 35 protected the interests of police sergeants and allowed non-represented officers, of all ranks, to vote during the ratification process. The agreement was accepted and litigation, as is occurring in Columbus, Ohio and Pittsburgh was avoided.

Lodge 35 has a history of representation of sergeants. Significantly, there is no history of conflict.

We strongly urge that sergeants be allowed, according to procedures that we will outline, to vote for either representation or no representation. If we vote for representation, we believe that sergeants should be in the existing bargaining unit. There are several reasons for this.

1. We have a community of interest with the existing unit;
2. We are the only unrepresented sworn employees who have identical working conditions to existing unit members;
3. Like the bargaining unit, many of us work shift work;
4. We share the same job risks and dangers as existing unit members;
5. We perform much of the same work as unit members, e.g. making arrests, issuing traffic citations, responding to emergencies, and patrolling neighborhoods.
6. The nature of our job requires a certain closeness and ability to think and respond like others engaged in the same activities, often under dangerous circumstances;
7. We are subject to the same operating procedures as the existing unit.

It is for most of these reasons that, in other jurisdictions, first-line supervisors, such as sergeants, have traditionally been included in the same unit as non-supervisory officers.

Our primary goal is to serve our community on the front-lines and to protect life and property. We do our jobs well by working with those we supervise.

Talk of conflict and concern that there is a need to segregate supervisors from those they supervise defies history, tradition, and the realities of police work. If there is anything to fear, it is perpetuation of the theory that a government employer should drive a wedge between people who the community rely upon to protect their lives and property.

When a person is trapped in a car, we work together to save a life. When a suspect pulls a gun on a police officer, we do not concern ourselves with rank. When a citizen is in need of immediate police assistance, we don't pause to consult. We work together and we get the job done.

In our personal lives, we have close friends who are unit members. Non-represented employees are married to represented officers.

From a bargaining perspective, a unit of 105 officers is relatively small. If segregated by statute, we would be forced to bargain our interests without consideration of the existing unit members' interests and *vice versa*. Instead of working together through bargaining as we work together on the street, we would be forced to work against each other. This is not in the public's best interest.

Moreover, the County would have to negotiate with an additional union. And, if bargaining came to impasse, arbitration could produce very different results. For instance, supervisors could end up with a larger pay increase than those they supervise. This would destroy morale.

The Maryland police departments that have two units for supervisors and non-supervisory officers are Baltimore City which has an officers unit and a sergeants and lieutenants unit, both represented by the same FOP; and Anne Arundel County which has two units, represented by two different unions. Neither Baltimore City nor A.A. County have binding arbitration. A.A. County has had considerable internal chaos. In contrast, Prince George's County where there is binding arbitration, has one unit that includes non-supervisory employees, sergeants and lieutenants. Upon impasse in P.G. County, there is one arbitration, and one result.

In closing, we support collective bargaining with binding arbitration for police sergeants under the same law that currently exists for non-supervisory police officers. Many sergeants are now represented individually by the same union that represents other officers.

We ask that the bill be amended and passed to allow sergeants to vote for representation in August of each year immediately preceding expiration of a contract. If sergeants vote for representation, we would be included in the same unit as nonsupervisory officers and accorded full rights under existing certification procedures. If we vote no representation, we would be excluded.

We feel that this is a reasonable compromise proposal that takes into account the major concerns we have heard.

We look forward to working with you in this important matter.

#13/4

Statement in Support of Bill 10-00

Collective Bargaining for Police Sergeants

My name is Fergus Sugrue. I also am a Montgomery County police sergeant and a member of FOP Montgomery County Lodge 35.

I join Sergeants Holub and Hamill in supporting Bill 10-00 with the amendment they propose.

In 1980, the voters of Montgomery County gave police officers the right to collective bargaining with binding arbitration. When the law was passed, we were excluded. The time has come for us to be afforded this important right within the same bargaining unit as the only other group of employees who work under identical conditions as do we.

I, too, will address the apparent concern of conflict. There should be less concern over imaginary conflict and more concern about potential divisiveness. In Prince George's County and Washington, D.C., the only area jurisdictions with collective bargaining and binding arbitration, sergeants are included in the police bargaining unit under one contract with non-supervisory police officers.

I see no conflict if an organization that represents non-supervisory police officers also represents first-line supervisors at the bargaining table, especially when that bargaining committee includes first-line supervisors.

As sergeants, we are now caught in the middle between management and unit police officers. It would seem to me that there would be less conflict if sergeants and non-supervisory police officers could sit at the bargaining table and work out potential problems and memorialize solutions in a collective bargaining agreement.

Currently, FOP Lodge 35 represents most sergeants under the Law Enforcement Officers' Bill of Rights and the County's own grievance procedure. Collective bargaining with one bargaining unit would merely result in a comprehensive contract with uniform, formalized rights, conditions, and responsibilities under the same agreement with uniform conflict resolution procedures.

Any responsible representative of police officers, like Lodge 35, will avoid against conflict. Lodge 35 has been very successful in doing just that.

As police officers, we are faced with far more serious conflicts and we have a record of resolving them. In our private lives, we deal with neighborhood problems that call upon balancing our private and professional responsibilities; we have personal family interests that can test us; or we could stop a friend, relative, or political official for a traffic offense.

Should some future police chief be suspected of criminal activity, I have every confidence in my brother and sister officers to enforce the law.

Non-supervisory police officers investigate internal complaints against non-supervisory officers and sergeants. Sergeants investigate complaints against sergeants and lieutenants. Friends and relatives of officers supervise investigations of other officers as well as those of friends and relatives of officers, yet there has never been any a concern because we are professional in our dealings.

The County Attorney's office "prosecutes" police officers, including, sergeants, at administrative hearings, and defends the same officers in civil cases arising from the same incident, but no one complains of conflict.

In contrast, collective bargaining must be viewed in the employer-employee context, not the criminal context. I would think there is less potential for conflict if the parties are accorded the opportunity to present their interests at the table.

The public and government interests of Montgomery County and its sergeants (first-line supervisors) would be well served through legislation as we have proposed.

We ask for your support.

Bill 10-00

Collective Bargaining for Police Sergeants

Good afternoon. I am Russell E. Hamill, III and am a Montgomery County police sergeant, a member of FOP Montgomery County Lodge 35, and an attorney admitted to the Maryland Bar. My wife is a member of the police collective bargaining unit.

I support collective bargaining for police sergeants with a provision that we vote for representation or no representation. And that when represented, we be represented by the same union that represents non-supervisory officers.

Typically, opponents will say that representation by the same union creates conflicts. In our case, I disagree. I will explain the process and facts to put the issue in its proper perspective.

When I began my employment in Montgomery County, I was a member of the police bargaining unit. In 1994 when I was promoted to sergeant, I remained an active member of FOP Lodge 35, but was no longer a member of the bargaining unit.

Promotion meant that I was no longer covered by the collective bargaining agreement, but I remained a merit system employee covered by Personnel Regulations. In essence, I traded a book called "Collective Bargaining Agreement" for another book entitled "Personnel Regulations for Merit System Employees".

The contract was negotiated between the County and my elected representative in a business-like manner under law. The Personnel Regulations were implemented through government processes. In effect, the Personnel Regulations became my contract.

Both the collective bargaining agreement and the contract have grievance procedures. Currently, when a unit member has a grievance, s/he notifies the FOP. Similarly, when a sergeant has a grievance, s/he usually contacts the FOP.

Under the contract grievance procedure, immediate supervisors do not adjust grievances. However, under the County's own grievance procedure, which is available to current bargaining unit members in some situations, supervisors can resolve grievances. Hence, there is less potential for conflict under the contract than under the County's own unilaterally implemented grievance procedure.

Representation during disciplinary interviews is governed by state law and, in most cases, the FOP represents sergeants in procedures under this law. Workers' Compensation is governed by state law and many sergeants use FOP endorsed attorneys for those hearings.

All police-involved shootings are reviewed by the Grand Jury. Under the Constitution, even the innocent have a right to representation in these matters. Most sergeants call upon the FOP for such representation.

Typically, conflict is perceived to occur through contract administration, not contract negotiation.

I have not seen any conflict with FOP representation and know that we, supervisory and non-supervisory officers alike, are professional enough to prevent conflict from interfering with our jobs. The FOP is an organization of police officers and has been very responsible and professional in avoiding conflict.

Policing is different than most other occupations and professions. We are a brother and sisterhood of citizens dedicated to preservation of community peace and security. This is a tough job, but we can do it only through unity without artificial government-created barriers.

Next month, the National FOP will host annual ceremonies honoring all law enforcement officers who have died in service to their communities. New names will be added to the National Law Enforcement Officers' Memorial in D.C.

This Council owes it to its law enforcement officers to visit that memorial. There you will see that heroes' names are not segregated by bargaining unit or rank.

You support for the bill with the proposed amendments will be appreciated.

MFP ITEM 1
June 5, 2000
Worksession

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 10-00, *Collective Bargaining - Police - Sergeants*

Previous Management and Fiscal Policy Committee recommendation: no recommendation on enactment. Recommend certain amendments if enacted. At a worksession on April 11 Councilmember Andrews, then lead member for personnel issues, supported enactment with amendments. Then-Councilmember Krahnke opposed enactment. Committee Chair Praisner declined to state a position on the bill after hearing that two Councilmembers already had amendments which they plan to introduce when the bill is before the Council; she commented that it would have been useful to have had the amendments' language for Committee consideration. All Committee members supported certain amendments if the bill is enacted, which are described below and included in the bill on ©1-4.

Previous Council action: remand to Committee. At a legislative session on May 2, the Council discussed Bill 10-00 but did not vote on the bill or any amendments. Instead the Council returned the bill to Committee to review issues raised by Councilmembers and decide whether certain proposed amendments could be adopted consistently.

Combined amendment: After the May 2 Council session, Council staff prepared and circulated a combined amendment (see ©59-63) which attempts to incorporate and harmonize amendments offered by various Councilmembers. To reduce confusion, the Committee may want to use this amendment as your markup vehicle. This combined amendment would:

- Absorb the sergeants into the current police bargaining unit if they vote, in a secret ballot election held in October, to join that unit. If a majority of sergeants do not vote to join the existing unit, the sergeants would not have any right to bargain;
- Create a second police bargaining unit for lieutenants and captains;
- Exclude certain lieutenants and captains who hold sensitive positions from the bargaining unit, but not exclude any sergeants; and
- Exclude effects bargaining from the scope of bargaining for the sergeants in the current bargaining unit as well as the new lieutenant/captain unit.

One further amendment the Committee could consider is to allow the sergeants to vote on several options for representation, rather than the single option in this amendment. Those options could include:

- Inclusion in the current bargaining unit;
- A stand-alone bargaining unit;
- A supervisors' bargaining unit, including sergeants, lieutenants, and captains, or only sergeants and lieutenants.

If either of the latter two are chosen, the new bargaining unit would then hold another election to select a bargaining agent.

Background/Summary

Bill 10-00, Collective Bargaining - Police - Sergeants, sponsored by Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing, was introduced on March 14, 2000. Bill 10-00 would bring police sergeants within the scope of collective bargaining in a separate bargaining unit. The bill is titled and was advertised broadly so that the Council may consider other changes to the police and fire collective bargaining processes (see advertisement, ©6).

At the public hearing, held on April 4, Police Chief Charles Moose urged adoption of the amendments submitted by the County Executive (see Executive memo and amendments, ©7-11). Walter Bader, President of Montgomery County Lodge 35, Fraternal Order of Police (FOP), and three police sergeants urged that the bill be amended to allow the sergeants to vote whether to include themselves in the current police bargaining unit, rather than create a separate unit (see testimony, ©12-22). Mr. Bader's testimony on ©13-14 offers a detailed history of attempts to gain collective bargaining representation for County police sergeants. For a further statement of FOP's position, see their April letter on ©32.

Issues/Committee Amendments

1) Right to bargain: Should police sergeants be able to bargain collectively?

Bill 10-00 extends collective bargaining to sergeants, who are first-line supervisors. Under all of the current County collective bargaining laws (police, fire, general County employees), supervisors are not included in any bargaining unit.[1] If police sergeants are given collective bargaining rights, fire lieutenants and County government middle management are likely to seek similar treatment.

On the merits, *any* group of employees (except the highest management ranks) has a strong argument for gaining the right to bargain collectively to have a mechanism for management to recognize and respond to their unique problems. (County policy has traditionally

[1]See the definition of "employee" in Code §33-102(4) for County employees, especially §33-102(4)(S), which defines and excludes "supervisors"; the definition of "employee" in Code §33-148(4) for firefighters, which excludes Fire/Rescue Lieutenants and higher ranks.

been to pass through wage and benefit settlements to unrepresented employees, so supervisors' primary need for collective bargaining is not economic.) The central question then becomes: at what level of management is collective bargaining inappropriate because of the fundamental difference of roles between managers and line employees? In the police context, the County Executive in his proposed amendments supported some form of collective bargaining for police management employees, but not for sergeants alone, implicitly answering this question broadly.

Councilmember Andrews supported the extension of collective bargaining to police sergeants. Then-Councilmember Krahnke opposed it. Committee Chair Praisner reserved judgment on this issue.

2) Nature of bargaining unit: What kind of bargaining unit should sergeants be placed in?

If police sergeants are covered by collective bargaining, what bargaining unit is most suitable? The following options have been proposed:

Sergeants only unit As introduced, Bill 10-00 establishes a sergeants-only unit in addition to the current bargaining unit, which includes ranks up to master police officer as well as police trainees. The Executive and Police Chief objected to this limited unit. Under this approach, unit members would elect a bargaining agent, which could be the bargaining agent for the current unit (the FOP) or a different agent. (Council staff was told that some jurisdictions prohibit the same bargaining agent from representing both supervisors and supervisees, but has not found an example of this restriction. However, the current County personnel regulations (§29-1), which doe not apply to a bargaining unit, prohibit a supervisor from being represented in a grievance proceeding by a labor organization that represents employees that the supervisor supervises.)

"Rank and file" unit The FOP and 3 individual police sergeants, in their testimony, urged that the sergeants be given the opportunity to vote for representation or no representation for collective bargaining purposes and, if representation were approved, they would automatically be included in the current bargaining unit.[2] For the rationale for this option, see Sgt. Holub's testimony on ©15-17; he particularly emphasized the need for a single collective bargaining agreement, or at least the need to avoid inconsistent agreements. This structure has been criticized because it places the first-line supervisors, who administer discipline and otherwise direct employee conduct, in the same unit as those they direct. For a response to this criticism, see Sgt. Sugrue's testimony on ©18-19. See also the latest FOP letter on ©32.

Management unit The County Executive, in his amendments, proposed a management unit composed of sergeants, lieutenants, and captains. (For the Executive's rationale, see OHR memo on ©23-25. For bargaining unit structures in other area jurisdictions, see OHR table on ©26.) Mr. Bader characterized this as a "company union". After surveying the sergeants, the Alliance of Police Supervisors (see letter, ©22) reported that 60% of the sergeants who

[2]Sgt. Holub proposed that a representation election be conducted each time the collective bargaining agreement expires. This would be inconsistent with the existing law, which only requires an election when 30% of the employees petition to decertify the current representative. See Code §33-79(a)(2).

responded wanted the Alliance to represent them, presumably in a broader bargaining unit. FOP disputes this; see letter on ©32.

Separate management units Councilmember Berlage, lead sponsor of Bill 10-00, still supports the bill as introduced but would extend collective bargaining to police lieutenants and captains by creating a third bargaining unit for them, not including sergeants. (See Councilmember Berlage's memo, ©28.)

Councilmember Andrews supported creating a sergeants-only unit. Then-Councilmember Krahnke supported including sergeants in a broader supervisors unit if a new unit is created. Committee Chair Praisner reserved judgment on this issue.

3) Scope of bargaining unit: If a management unit is created, who should be excluded from it?

After proposing a broader management unit, the Executive's amendments on ©9, lines 13-20, list those management personnel who should *not* be in any bargaining unit: employees above the rank of captain, and those captains and lieutenants whose primary duties involve sensitive issues such as labor relations, personnel, internal affairs, legal issues, and policy development. **If a management unit is created, the Committee unanimously concurred with this list of excluded employees**; see ©2, lines 12-14 (this provision will finally be drafted to cover whatever ranks are ultimately included in a new bargaining unit).

4) Scope of bargaining: Should effects bargaining be extended to a sergeants or management bargaining unit?

Employees in the current police bargaining unit, *but no other County collective bargaining unit,* can bargain the effect of the employer's exercise of the rights reserved to the employer (commonly termed "management rights").[3] This provision is generally known as "effects bargaining". (See Code §33-80(b) on ©28 for the list of 10 categories of management rights subject to effects bargaining.)

The Executive's amendments (see ©11) would expressly restrict effects bargaining to the current "rank and file" unit.[4] For the Executive's reasons why the supervisors' unit should not have effects bargaining, see the OHR memo on ©25. Council staff generally concurs with this rationale. Councilmembers may recall that the Office of Legislative Oversight, in OLO Report 99-2 on the Police Department's Complaint Handling System, recommended that the Council "look at how the 'effects bargaining' provision in the (police labor relations) law has, in practice, affected police management's ability to manage conduct issues."[5] The Police Department's

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[3]The County government employees' bargaining law (Code §33-107(a)(7)) and the firefighters' bargaining law (Code §33-152(a)(7)) both give employees the right to bargain "amelioration of the effect on employees when the exercise of employer rights...causes a loss of existing jobs in the unit." This is a much narrower provision than the one in the police bargaining law.

[4]Although the Executive did not propose it, the bill was advertised broadly enough to allow the Council to modify or repeal effects bargaining as it applies to the current bargaining unit as well as any new unit.

[5]Recommendation #5, page 93. See also OLO's finding #3 on page 65 regarding "the need to proactively manage officer conduct and promote accountability, rather than rely solely on disciplinary measures."

response[6] expressed the Department's concern about the impact of effects bargaining "on its ability to govern employee conduct and manage discipline issues...Effects bargaining renders (timely steps to remedy shortcomings) very difficult if not impossible...management's ability to lead the Department and ensure proper conduct has been eroded."

Not surprisingly, the FOP fundamentally disagrees on this issue. See FOP June letter on ©51-58. They also argue that members of the same bargaining unit should not bargain under different rules. OHR agrees with that point, but would instead conclude that the sergeants should thus be placed in a different bargaining unit.

Among the effects bargaining options available are to either allow or not allow any new unit the right to effects bargaining, or to permit effects bargaining on only certain management rights. In Council staff's view, the most questionable management rights subject to effects bargaining may be paragraphs (4), (5), and (9), although the Police Department may cite others that have caused past problems.

The Committee unanimously decided that effects bargaining would not apply to any new police bargaining unit.

This packet contains:

	Circle #
Bill 10-00 with Committee amendments	1
Legislative Request Report	5
Advertisement for public hearing	6
Memo from County Executive with proposed amendments	7
Testimony from public hearing	12
Letter from Alliance of Police Supervisors	22
Memo from OHR responding to hearing testimony	23
Scope of collective bargaining -- excerpt from current law	27
Memo from Councilmember Berlage suggesting amendment	28
OMB fiscal impact statement	29
Letter from FOP (April 27, 2000)	32
Letter from FOP (June 2, 2000) without attachments	51
Combined amendment	59

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[6]See page 10-11 of attachment to Chief Administrative Officer's memo in OLO report.

Bill No. 10-00
Concerning: Collective Bargaining - Police - Sergeants
Revised: 4-28-00 Draft No. 2
Introduced: March 14, 2000
Expires: September 14, 2001
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing

AN ACT to:

(1) bring police sergeants within the scope of collective bargaining;
(2) divide the police collective bargaining unit into two bargaining units; and
(3) generally amend the law regarding collective bargaining with County police officers.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resource
Sections 33-76, [[and]] 33-78, and 33-80

By adding
Chapter 33, Personnel and Human Resource
Section 33-78A

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

(1)

Sec. 1. Sections 33-76, [[and]] 33-78, and 33-80 are amended, and Section 33-78A is added, as follows:

33-76. Definitions.

When used in this Article:

* * *

Certified representative means an employee organization selected in accordance with [the procedures of] this Chapter to represent [the] a unit.

Employee means any police officer [in the classification of] classified as a sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, [and] or police officer candidate, or an equivalent nonsupervisory classification[s], but not [those] a police officer in [the classification of police sergeant or] any [equivalent or] higher classification. *Employee* does not include a sergeant whose primary duties involve human resources, internal affairs, legal matters, labor relations, or policy development and compliance.

Employer means the County Executive and [his] the Executive's designees.

* * *

Unit means [all employees] either of the units defined in Section 33-78A.

33-78. Employee rights.

* * *

(b) The employer [shall have the duty to] must extend to the certified representative the exclusive right to represent the employees in that bargaining unit for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative [shall] must serve as the bargaining agent for all employees in the unit for which it is certified and [shall have the duty to] must represent fairly and without discrimination all employees in that unit without regard to whether the employees are [or are not] members of the employee organization, [or are paying] pay dues or other contributions to it, or [participating] participate in its affairs. [; provided, however, that it shall not be deemed] However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

33-78A. Bargaining units.

For purposes of certification and collective bargaining, employees subject to this Article must be divided into 2 bargaining units, composed of the following employees:

(1) sergeants;

(2) all other covered employees.

33-80. Collective Bargaining.

(a) **Duty to bargain; matters subject to bargaining.** [[Upon certification of an]] A certified employee organization[[, as provided in section 33-79,]] and the employer [[and the said certified representative shall have the duty, through their designees, to]] must bargain collectively [[with respect to those]] on the following subjects [[as follows]]:

* * *

(7) The effect on employees of the employer's exercise of rights [[enumerated]] listed in subsection (b) [[hereof]], but this paragraph does not apply to the bargaining unit composed of sergeants.

* * *

Approved:

Michael L. Subin, President, County Council — Date

Approved:

Douglas M. Duncan, County Executive — Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council — Date

LEGISLATIVE REQUEST REPORT

Bill 10-00

Collective Bargaining - Police - Sergeants

DESCRIPTION:	Adds sergeants to the list of Police Department employees subject to collective bargaining. Creates a second police bargaining unit for sergeants.
PROBLEM:	Police sergeants do not have collective bargaining rights, unlike all ranks below them, but also are not treated as upper management.
GOALS AND OBJECTIVES:	To give police sergeants full collective bargaining rights, in a separate bargaining unit.
COORDINATION:	Police Department, Office of Human Resources
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County Police Department..
PENALTIES:	Not applicable

REQUEST FOR ADVERTISING

Ad No. 3745

From: Office of the Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

PLEASE INSERT THE FOLLOWING ADVERTISEMENT IN THE LEGAL CLASSIFIED SECTION OF THE FOLLOWING NEWSPAPER(S) ON THE DATE INDICATED:

Journal –Friday, March 17 and 24, 2000

ORDER AD W/2 PT. RULE

7 pt. bf. MONTGOMERY COUNTY
COUNCIL
8 pt. bf. PUBLIC HEARINGS [SEAL]
#

7 pt. bf. **April 11, 2000 – 1:30 P.M.**

body copy 7 pt. (1) **Bill 9-00** would authorize the planning, design, renovation and construction of the Parking Bethesda Del. Ray/Auburn Garage No. 36, Project No. 509930, in the Bethesda-Chevy Chase Policy area.

April 4, 2000 – 1:30 P.M.

(2) **Bill 10-00** would bring police sergeants within the scope of collective bargaining; divide the police collective bargaining unit into two bargaining units; and generally amend the law regarding collective bargaining with County police officers. The Council may consider other amendments to the collective bargaining process for County police officers and firefighters, including amendments that affect the scope of the bargaining units and the items that are subject to bargaining.

7 pt. bf. The hearings will be held in the Council Office Building, 100 Maryland Avenue, Rockville. To testify or to obtain copies call the Council Office at (240)777-7931. If persons with disabilities need any services or aids to participate in this activity, please call the Council Office at (240)777-7931 seven days in advance (TTY (240)777-7914).

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Prepared by:_____ Approved by:_____

Final Approval:_____ County Attorney:_____

(6)

010-00

RECEIVED COUNCIL

OFFICE OF THE COUNTY EXECUTIVE 00 APR 3 P12 : 18

ROCKVILLE, MARYLAND 20850

MF
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SPF
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ME

Douglas M. Duncan
County Executive

MEMORANDUM

April 3, 2000

031109

TO: Michael L. Subin, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Bill No. 10-00, Collective Bargaining for Police Sergeants

I support the efforts of Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing in proposing legislation to extend collective bargaining rights to police sergeants. For some time now, police supervisors have expressed an interest in having a more active role in determining what their salaries, benefits, hours of work, and other working conditions will be. In response to their wishes and in consultation with the Chief of Police, I am requesting that Bill No. 10-00 be amended to provide collective bargaining rights to police lieutenants and captains in addition to sergeants.

I endorse the view of the sponsors of the bill that there should be a separate bargaining unit for police supervisors. This will insure that the identity of police sergeants, lieutenants, and captains as supervisors is maintained in the collective bargaining process. I also propose an amendment that would reserve to the unit of non-supervisory police officers the right to bargain over the effect of the exercise of a management right. I believe that we should not have to bargain with police supervisors over the impact of management decisions effecting supervisory employees.

I have attached a copy of Bill No. 10-00 with the amendments. I thank the Council for considering this request.

DMD:cmr

Attachments

(7)

Bill No. 10-00
Concerning: Collective Bargaining – Police - [[Sergeants]] Supervisors
Revised: _____ Draft No. ___
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing

AN ACT to:

(1) bring police sergeants, lieutenants, and captains within the scope of collective bargaining;
(2) divide the police collective bargaining unit into two bargaining units; [[and]]
(3) limit the scope of bargaining for the police supervisors bargaining unit; and [[(3)]]
(4) generally amend the law regarding collective bargaining with County police officers.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-76, [[and]] 33-78, and 33-80

By adding
Chapter 33, Personnel and Human Resources
Section 33-78A

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-76, [[and]] 33-78, and 33-80 are amended, and Section 33-78A is added, as follows:

33-76. Definitions.

When used in this Article:

* * *

Certified representative means an **employee** organization selected [[in accordance with the procedures of]] under this Chapter to represent [the] a **unit**.

Employee means [[any]] a police officer [in the classification of] classified as a captain, lieutenant, sergeant, master police officer[[I, master police officer II]], police officer I, police officer II, police officer III, [and] [[or]] police officer candidate, or an equivalent [[nonsupervisory classification[s], but not [those] a police officer in [the classification of police sergeant or] any [equivalent] or higher]] classification. **Employee** does not include an individual in a position classified higher than a police captain or a police lieutenant or captain assigned to one of the following work units and whose primary duties involve:

(a) Human resources;

(b) Internal affairs;

(c) Legal;

(d) Labor relations; or

(e) Policy development and compliance.

Employer means the County Executive and [his] the Executive's designees.

* * *

Unit means [all **employees**] either of the bargaining **units** defined in Section 33-78A.

33-78. Employee rights.

* * *

(b) The **employer** [shall have the duty to] must extend to the **certified representative** the exclusive right to represent the **employees** in that bargaining **unit** for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative [shall] must serve as the bargaining agent for all **employees** in the **unit** for which it is certified and [shall have the duty to] must represent fairly and without discrimination all **employees** in that **unit** without regard to whether the **employees** are [or are not] members of the **employee** organization, [or are paying] pay dues or other contributions to it, or [participating] participate in its affairs. [; provided, however, that it shall not be deemed] However, it is not a violation of this duty for a **certified representative** to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

33-78A. Bargaining units.

For purposes of certification and collective bargaining, [[**employees**]] an **employee** subject to this Article must be [[divided into 2 bargaining **units**, composed of the following employees]] a member of one of the following bargaining **units**:

(a) [[sergeants]] police supervisors **unit** that includes police sergeants, lieutenants, and captains; or

(b) police non-supervisors **unit** that includes all other covered **employees**.

33-80. Collective bargaining.

(a) **Duty to bargain; matters subject to bargaining.** [[Upon certification of an]] An **employee** organization[[, as provided in]]

(10)

certified under Section 33-79[[, the **employer** and the said **certified representative** shall have the duty, through their designees, to]] and the **employer** must bargain collectively [[with respect to those]] on the following subjects [[as follows]]:

* * *

(7) [[the effect on **employees** of the **employer's** exercise of rights enumerated in subsection (b) hereof]] the effect of the **employer's** exercise of **employer** rights listed in subsection (c) with the **certified representative** of the police non-supervisors bargaining **unit**. The **employer** must not bargain collectively on the effect of the **employer's** exercise of **employer** rights listed in subsection (c) with the **certified representative** of the police supervisors bargaining **unit**.

* * *

Approved:

Michael L. Subin, President, County Council Date

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council Date

(11)

Montgomery County Lodge 35, Inc.

MONTGOMERY COUNTY COUNCIL

TESTIMONY OF FRATERNAL ORDER OF POLICE, MONTGOMERY COUNTY LODGE 35, INC. CONCERNING BILL No. 10-00 COLLECTIVE BARGAINING - POLICE SERGEANTS

April 4, 2000

Good Afternoon. I am Walter E. Bader, President, Fraternal Order of Police, Montgomery County Lodge 35 and am here to testify in support of Bill 10-00 with amendments.

Before you is a proposal to allow sergeants to bargain collectively. Unlike many of their counterparts is other jurisdictions, including neighboring Prince George's County and Washington, DC. Montgomery County sergeants do not have this right.

What we strongly urge is that sergeants included in the current law with a special provision that, as a sub-unit, they be allowed to vote for either union representation or no union representation. If they vote for union representation, we believe that they should be in the existing bargaining unit. If they are in the same unit, as we propose, they should have the right to vote in any representation election. Kirk Holub will give you reasons.

Lodge 35 does not want a legislated right to represent sergeants. We want them to have the opportunity to decide whether any union will represent them and if they vote for union representation, they would, under existing law, have the right to vote in any subsequent union representation election.

It is essential that it be made clear that the right to bargain collectively is not the same as the right to representation. While collective bargaining involves union representation, a union may represent its members, including sergeants, even without collective bargaining. Employees have a right to representation under several sources of law, including the United States and Maryland Constitutions in some matters, Maryland law in other matters, and the Merit System Law.

Simply defined, collective bargaining is a continuous relationship between a group of employees and their employer. The employees elect their own representative in a democratic manner. Once elected and certified, the representative negotiates and administers a contract setting forth wages, benefits, and other terms and conditions of employment.

18512 Office Park Drive Montgomery Village, MD 20886

(301) 948-4286 • FAX (301) 590-0317

Collective bargaining is not new. It has been with us for over a century. Contracts have been with us long before the creation of this Nation. Indeed, the United States Constitution protects private contracts from government impairment. Yet, for some irrational reason, the concept of union contracts is a causes of controversy.

In 1980, under the leadership of President Larry Desmond, a Montgomery County police sergeant, members of FOP Lodge 35 twice obtained the necessary signatures to put the issue of collective bargaining to referendum. The voters of Montgomery County overwhelmingly approved a citizen initiative granting police officers the right to collective bargaining with binding arbitration. Enabling legislation was enacted in April 1982. Sergeants were excluded, primarily because they had been excluded under the 1976 meet and confer law.

Meet and confer resulted in three agreements or "Position Papers." And, although the bargaining unit consisted of only officers below the rank of sergeant, in 1980 when Sergeant Larry Desmond was elected President, the County and police department recognized his role and position and he was afforded administrative leave to conduct union business under the provisions of "Position Paper III."

While sergeants do not have collective bargaining rights, many currently are, and in the past, have been represented by FOP Lodge 35. Since 1969 when FOP Lodge 35 was chartered, we have represented numerous sergeants in grievances and appeals, hearing boards, matters before the Grand Jury, at the scenes of police shootings, and other matters. At practically any given time, we are representing one or more supervisors. We do not, however, provide this representation with bargaining unit fees or dues, and carefully segregate our finances as required by the United States Supreme Court.

After the current police labor relations law was passed, dues for sergeants were deducted during the first two collectively bargained agreements - 1983-85 and 1985-88. Then, suddenly when negotiations commenced for a new agreement, the County first threatened, then filed, but later withdrew, a Charge of Prohibited Labor Practice because we were representing sergeants. What brought this about was that the County hired a labor relations manager who had worked for the union that challenged Lodge 35 for representation rights under meet and confer. That individual decided that he could make an issue of our representation of sergeants and he did. In discussing this matter with former Chief Bernie Crooke, I was told that he had no advance knowledge of the action and that he had no problem with our representation of police sergeants. At that point, he was speaking with five years of experience as police chief.

Considerable litigation and dispute ensued. In the end, the County unilaterally discontinued voluntary dues deductions for non-unit police officers and the grievance procedure [AP 4-4] was amended to prohibit either Lodge 35 or its President from representing sergeants in grievances. We have since resolved this issue to some degree.

None of this came as a real surprise, because in 1985, the County Attorney, despite a contract provision against it, unsuccessfully caused a suit to go to the Maryland Court of Special Appeals challenging my right to represent a Police Officer III before the Merit System Protection Board. Though we prevailed, the lesson learned was that as of 1985, Montgomery County remained anti-union.

On three occasions since 1982, a majority of sergeants have signed petitions with Lodge 35 for full collective bargaining rights.

Our bargaining unit members work with sergeants and perform much of the same work under identical conditions. Sergeants are the only unrepresented group of employees who share our working conditions. They should participate in the negotiation of contracts to address our concerns and in the administration of those contracts within a democratic union.

Now the Duncan Administration which for over five years has not supported collective bargaining rights for sergeants, suddenly proposes that sergeants, lieutenants, and captains should have these rights. Clearly, this is not an initiative, but a very shallow response to this bill and a 20 year effort by sergeants to obtain collective bargaining rights.

This is a ploy conceived only after the department got an earlier draft of this bill. Their plan is to expand bargaining to a larger group of employees, create a new unit, and have the unit be represented by a company union.

This attempt to create a company union demonstrates a disrespect for employees' right to organize and is regressive. This is a sad commentary on the administration. Seeking a company union a century after most such unions were abolished in this country is outrageous. They have them in Mexico, in third world countries, and some chicken producers might like to bring them back. Yet, in the year 2000 the Duncan administration seeks one and asks you to help them do it. The only thing they haven't yet proposed is the company store.

The administration has taken the reactionary, short view. The long term effect of their intent would be to drive a wedge between the bargaining unit and sergeants. Sergeants and current unit members must work together. We depend upon each other for mutual protection and safety. Indeed, their lives depend upon one another.

We ask that you reject the administration's proposal and enact support legislation to give sergeants the right to bargain as we propose.

Finally, we notice that this hearing has been advertised rather broadly. While we are here this day supporting our sergeants, we vigorously oppose any attempt to diminish our exiasting rights under the existing Police Labor Relations Law and would like fair opportunity to address any proposal to do so.

We are available to provide any information or assistance that any councilmember may desire.

Thank you for your careful consideration of this bill and the amendment we propose.

FRATERNAL ORDER OF POLICE
Montgomery County Lodge 35, Inc.

Supervisors Committee

18512 Office Park Drive
Gaithersburg, Maryland 20879
Phone (301) 948-4286 Fax (301) 590-0317

BEFORE THE MONTGOMERY COUNTY COUNCIL

TESTIMONY OF KIRK HOLUB, CHAIR, SUPERVISORS COMMITTEE, FRATERNAL ORDER OF POLICE, MONTGOMERY COUNTY LODGE 35

Bill 10-00

April 4, 2000

Good afternoon. I am Kirk Holub, a police sergeant and Chairman of the FOP Lodge 35 Supervisors Committee. Lodge 35 is also the elected representative of nonsupervisory police officers.

The Lodge 35 Supervisors Committee is a functional unit of Lodge 35 and was first created in 1982, then rechartered in 1996 for three basic purposes: 1. To recognize the importance of supervisors within the FOP; 2. To coordinate FOP representation of police supervisors; and 3. To pursue collective bargaining rights for police sergeants.

Currently, 91 (87%) of 105 sergeants are active dues-paying members of FOP Lodge 35. Of these sergeants, excluding the Supervisors Committee, one is on our Board of Directors, one is treasurer of a committee, one is a steward, and one is a committee member. Since the 1980 Charter amendment requiring collective bargaining for police officers, sergeants have served as President, Vice-President, Treasurer, and in other Lodge positions.

Lodge 35 has represented sergeants in employment matters since 1969. In the past year alone, we have represented sergeants in internal affairs matters under the Law Enforcement Officers' Bill of Rights, and others in grievances. A case involving a sergeant is pending before the Court of Special Appeals.

During recent negotiations with the Department of Justice, Lodge 35 protected the interests of police sergeants and allowed non-represented officers, of all ranks, to vote during the ratification process. The agreement was accepted and litigation, as is occurring in Columbus, Ohio and Pittsburgh was avoided.

Lodge 35 has a history of representation of sergeants. Significantly, there is no history of conflict.

We strongly urge that sergeants be allowed, according to procedures that we will outline, to vote for either representation or no representation. If we vote for representation, we believe that sergeants should be in the existing bargaining unit. There are several reasons for this.

1. We have a community of interest with the existing unit;

2. We are the only unrepresented sworn employees who have identical working conditions to existing unit members;

3. Like the bargaining unit, many of us work shift work;

4. We share the same job risks and dangers as existing unit members;

5. We perform much of the same work as unit members, e.g. making arrests, issuing traffic citations, responding to emergencies, and patrolling neighborhoods.

6. The nature of our job requires a certain closeness and ability to think and respond like others engaged in the same activities, often under dangerous circumstances;

7. We are subject to the same operating procedures as the existing unit.

It is for most of these reasons that, in other jurisdictions, first-line supervisors, such as sergeants, have traditionally been included in the same unit as non-supervisory officers.

Our primary goal is to serve our community on the front-lines and to protect life and property. We do our jobs well by working with those we supervise.

Talk of conflict and concern that there is a need to segregate supervisors from those they supervise defies history, tradition, and the realities of police work. If there is anything to fear, it is perpetuation of the theory that a government employer should drive a wedge between people who the community rely upon to protect their lives and property.

When a person is trapped in a car, we work together to save a life. When a suspect pulls a gun on a police officer, we do not concern ourselves with rank. When a citizen is in need of immediate police assistance, we don't pause to consult. We work together and we get the job done.

In our personal lives, we have close friends who are unit members. Non-represented employees are married to represented officers.

From a bargaining perspective, a unit of 105 officers is relatively small. If segregated by statute, we would be forced to bargain our interests without consideration of the existing unit members' interests and *vice versa*. Instead of working together through bargaining as we work together on the street, we would be forced to work against each other. This is not in the public's best interest.

Moreover, the County would have to negotiate with an additional union. And, if bargaining came to impasse, arbitration could produce very different results. For instance, supervisors could end up with a larger pay increase than those they supervise. This would destroy morale.

The Maryland police departments that have two units for supervisors and non-supervisory officers are Baltimore City which has an officers unit and a sergeants and lieutenants unit, both represented by the same FOP; and Anne Arundel County which has two units, represented by two different unions. Neither Baltimore City nor A.A. County have binding arbitration. A.A. County has had considerable internal chaos. In contrast, Prince George's County where there is binding arbitration, has one unit that includes non-supervisory employees, sergeants and lieutenants. Upon impasse in P.G. County, there is one arbitration, and one result.

In closing, we support collective bargaining with binding arbitration for police sergeants under the same law that currently exists for non-supervisory police officers. Many sergeants are now represented individually by the same union that represents other officers.

We ask that the bill be amended and passed to allow sergeants to vote for representation in August of each year immediately preceding expiration of a contract. If sergeants vote for representation, we would be included in the same unit as nonsupervisory officers and accorded full rights under existing certification procedures. If we vote no representation, we would be excluded.

We feel that this is a reasonable compromise proposal that takes into account the major concerns we have heard.

We look forward to working with you in this important matter.

Statement in Support of Bill 10-00

Collective Bargaining for Police Sergeants

My name is Fergus Sugrue. I also am a Montgomery County police sergeant and a member of FOP Montgomery County Lodge 35.

I join Sergeants Holub and Hamill in supporting Bill 10-00 with the amendment they propose.

In 1980, the voters of Montgomery County gave police officers the right to collective bargaining with binding arbitration. When the law was passed, we were excluded. The time has come for us to be afforded this important right within the same bargaining unit as the only other group of employees who work under identical conditions as do we.

I, too, will address the apparent concern of conflict. There should be less concern over imaginary conflict and more concern about potential divisiveness. In Prince George's County and Washington, D.C., the only area jurisdictions with collective bargaining and binding arbitration, sergeants are included in the police bargaining unit under one contract with non-supervisory police officers.

I see no conflict if an organization that represents non-supervisory police officers also represents first-line supervisors at the bargaining table, especially when that bargaining committee includes first-line supervisors.

As sergeants, we are now caught in the middle between management and unit police officers. It would seem to me that there would be less conflict if sergeants and non-supervisory police officers could sit at the bargaining table and work out potential problems and memorialize solutions in a collective bargaining agreement.

Currently, FOP Lodge 35 represents most sergeants under the Law Enforcement Officers' Bill of Rights and the County's own grievance procedure. Collective bargaining with one bargaining unit would merely result in a comprehensive contract with uniform, formalized rights, conditions, and responsibilities under the same agreement with uniform conflict resolution procedures.

Any responsible representative of police officers, like Lodge 35, will avoid against conflict. Lodge 35 has been very successful in doing just that.

As police officers, we are faced with far more serious conflicts and we have a record of resolving them. In our private lives, we deal with neighborhood problems that call upon balancing our private and professional responsibilities; we have personal family interests that can test us; or we could stop a friend, relative, or political official for a traffic offense.

Should some future police chief be suspected of criminal activity, I have every confidence in my brother and sister officers to enforce the law.

Non-supervisory police officers investigate internal complaints against non-supervisory officers and sergeants. Sergeants investigate complaints against sergeants and lieutenants. Friends and relatives of officers supervise investigations of other officers as well as those of friends and relatives of officers, yet there has never been any a concern because we are professional in our dealings.

The County Attorney's office "prosecutes" police officers, including, sergeants, at administrative hearings, and defends the same officers in civil cases arising from the same incident, but no one complains of conflict.

In contrast, collective bargaining must be viewed in the employer-employee context, not the criminal context. I would think there is less potential for conflict if the parties are accorded the opportunity to present their interests at the table.

The public and government interests of Montgomery County and its sergeants (first-line supervisors) would be well served through legislation as we have proposed.

We ask for your support.

Bill 10-00

Collective Bargaining for Police Sergeants

Good afternoon. I am Russell E. Hamill, III and am a Montgomery County police sergeant, a member of FOP Montgomery County Lodge 35, and an attorney admitted to the Maryland Bar. My wife is a member of the police collective bargaining unit.

I support collective bargaining for police sergeants with a provision that we vote for representation or no representation. And that when represented, we be represented by the same union that represents non-supervisory officers.

Typically, opponents will say that representation by the same union creates conflicts. In our case, I disagree. I will explain the process and facts to put the issue in its proper perspective.

When I began my employment in Montgomery County, I was a member of the police bargaining unit. In 1994 when I was promoted to sergeant, I remained an active member of FOP Lodge 35, but was no longer a member of the bargaining unit.

Promotion meant that I was no longer covered by the collective bargaining agreement, but I remained a merit system employee covered by Personnel Regulations. In essence, I traded a book called "Collective Bargaining Agreement" for another book entitled "Personnel Regulations for Merit System Employees".

The contract was negotiated between the County and my elected representative in a business-like manner under law. The Personnel Regulations were implemented through government processes. In effect, the Personnel Regulations became my contract.

Both the collective bargaining agreement and the contract have grievance procedures. Currently, when a unit member has a grievance, s/he notifies the FOP. Similarly, when a sergeant has a grievance, s/he usually contacts the FOP.

Under the contract grievance procedure, immediate supervisors do not adjust grievances. However, under the County's own grievance procedure, which is available to current bargaining unit members in some situations, supervisors can resolve grievances. Hence, there is less potential for conflict under the contract than under the County's own unilaterally implemented grievance procedure.

Representation during disciplinary interviews is governed by state law and, in most cases, the FOP represents sergeants in procedures under this law. Workers' Compensation is governed by state law and many sergeants use FOP endorsed attorneys for those hearings.

All police-involved shootings are reviewed by the Grand Jury. Under the Constitution, even the innocent have a right to representation in these matters. Most sergeants call upon the FOP for such representation.

Typically, conflict is perceived to occur through contract administration, not contract negotiation.

I have not seen any conflict with FOP representation and know that we, supervisory and non-supervisory officers alike, are professional enough to prevent conflict from interfering with our jobs. The FOP is an organization of police officers and has been very responsible and professional in avoiding conflict.

Policing is different than most other occupations and professions. We are a brother and sisterhood of citizens dedicated to preservation of community peace and security. This is a tough job, but we can do it only through unity without artificial government-created barriers.

Next month, the National FOP will host annual ceremonies honoring all law enforcement officers who have died in service to their communities. New names will be added to the National Law Enforcement Officers' Memorial in D.C.

This Council owes it to its law enforcement officers to visit that memorial. There you will see that heroes' names are not segregated by bargaining unit or rank.

You support for the bill with the proposed amendments will be appreciated.

ALLIANCE OF POLICE SUPERVISORS

P.O. Box 1036, Germantown, Maryland 20875

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CC
L Ann

March 16, 2000

Mr. Derick Berlage
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

030895

Dear Mr. Berlage:

The issue of Collective Bargaining for the rank of Sergeant for the Montgomery County Police has recently resurfaced with Legislation that you have presented. The Alliance of Police Supervisors strongly supports Collective Bargaining for Sergeants, Lieutenants and Captains represented by our organization. Chief Moose is also in support of this unified proposal.

The Alliance of Police Supervisors distributed a questionnaire on April 16, 1998 to supervisors of the rank of Sergeant to determine their interest in having one of the following:

- Interest in the Alliance of Police Supervisors representing Sergeants, Lieutenants and Captains to attain Collective Bargaining
- Sergeants should have their own bargaining unit or join an existing bargaining unit to attain Collective Bargaining

The results of this survey indicated that 60% of the Sergeants wanted the Alliance of Police Supervisors to represent them.

We request that you extend your legislation to include Lieutenants and Captains. It is important that management have a voice in their future. Historically, management has not had any input and has relied on the pass through benefits that were bargained by the Fraternal Order of Police. This fact has limited many talented officers from participating in the promotional process above the rank of Corporal. Collective Bargaining for members of the Alliance of Police Supervisors will provide representation for all of our membership and encourage officers to become supervisors. We are only interested in the advancement of our Department and keeping our agency in the forefront of law enforcement initiatives. Thank you for your attention to this matter of importance.

Sincerely,

Drew J. Tracy, President
David F. Buchanan, Vice President DFB
Michael E. Buchan, Treasurer MEB

Cc: Charles A. Moose Ph.D.
County Council Members

(22)

OFFICE OF HUMAN RESOURCES

Douglas M. Duncan
County Executive

Marta Brito Perez
Director

MEMORANDUM

April 7, 2000

TO: Michael Faden, Senior Legislative Attorney

VIA: Marta Brito Perez, Director, Office of Human Resources

FROM: James E. Torgesen, Labor/Employee Relations Manager

SUBJECT: Bill No. 10-00 - Collective Bargaining -Police Supervisors

You have requested additional explanation and comments from the Executive Branch concerning the amendments affecting collective bargaining rights for police supervisors as proposed by the County Executive. The following is an explanation of the rationale for these amendments addressing the three areas affected; unit structure, position exemptions and scope of bargaining.

Unit Structure

The Police Labor Relations Law, as in each of the other County labor laws, includes as a critical component of the law the definition of a unit of representation for the purpose of collective bargaining. In determining an appropriate unit of representation, labor relations criteria that are commonly used include an evaluation of: the desires of employees, the history of representation, the extent of union organization and community of interest. While all four elements may have impact on unit determination, community of interest is of prime importance. Community of interest generally includes similarities in duties, skills and working conditions.

Desires of employees. To formulate a position on this matter, the Chief of Police met with all supervisors within the Department. Two separate meetings were held, one with sergeants and one with all other supervisors. The Chief concluded from those two meetings that employees in the ranks of sergeant, lieutenant, and captain were interested in having their wages, benefits, and working conditions established through the collective bargaining process.

History of representation. Over the years, various police organizations have represented the interests of police supervisors at all ranks. In the public testimony on the bill, the Fraternal Order of Police (FOP) emphasized its history of individual representation of sergeants. In fact, the FOP has been active in the individual representation of supervisors at all levels. Likewise, the Alliance of Police Supervisors has represented supervisors of all ranks in various capacities.

In the public testimony, the FOP contended that the structure of a separate unit including all three supervisory ranks will have the "unit be represented by a company union." The proposed amendments do nothing to alter the manner in which bargaining unit employees select their chosen representative. The FOP or any other labor organization is free to compete for the representation rights of the bargaining unit. The representative will be determined by a majority of the eligible employees voting. If unit members do not approve of the representation, the law provides a means to change the representative. To suggest that employees would somehow permit an employer-sponsored organization sorely underestimates the intelligence and desire for self determination of the employees involved.

Extent of union organization. Throughout the metropolitan area and Maryland, police supervisors have organized for the purpose of collective bargaining in a number of jurisdictions. The unit structure is mixed. Attached is a chart which provides the jurisdiction, labor organization, unit status, and ranks involved. The public testimony indicated that Prince George's County had one unit that included all police officers through lieutenant. The unit structure in Prince George's County actually provides for a separate unit for supervisors, but for bargaining purposes the supervisors are included under the same labor agreement as the non-supervisory personnel.

Community of interest. The County Executive proposed amendments create a separate supervisory bargaining unit to include sergeants, lieutenants and captains. These three ranks share a primary and common job duty: the responsibility for supervision of police employees and resources. The sergeant has day-to-day responsibility for shift supervision including assigning work, reviewing performance, approving leave, and recommending and approving training. The lieutenant is the principal supervisor of all police patrol shifts and special assignment teams. The captain is the principal supervisor of an operational unit. Included in the supervision at all levels is the responsibility for the administration and enforcement of labor agreements on behalf of the County as the employer. A separate supervisory unit preserves the identity of the supervisory structure.

Although compensation and benefits are similar to the existing police bargaining unit as the result of "pass through," supervisors have their own salary schedule. Also, although sergeants do work the same shift structure as those whom they supervise, as noted earlier their primary role is one of supervision.

Creating a separate supervisory unit also helps eliminate conflicts of interest that arise when supervisors are placed in the same unit as non-supervisory employees. Supervisors must apply the many provisions of the contract to the employees they supervise. As disagreements arise concerning the application of the contract the interests of the supervisor are blurred if they are covered by the same agreement that they are being required to enforce. For example, in a grievance proceeding, subordinate employees might expect supervisors to act more like employee advocates than representatives of management if both are part of the same unit.

The public testimony stated that the County Executive's proposed amendments are seeking to "drive a wedge" between supervisory and non-supervisory employees. The focus of

the proposed amendments is on the supervisory community of interest. It is the County's position that the proposed unit structure will further identify and preserve this important element within the Police Department.

Position Exemptions

The Executive Branch amendments seek to exempt from coverage employees who perform certain critical functions within the police department impacting labor relations. Supervisory employees in human resources, legal, labor relations, internal affairs, policy development and compliance should be excluded from the bargaining unit. Supervisory personnel in these work units are actively engaged in representing Departmental management interests and or assisting in the formulation of policies which impact areas affecting labor relations.

Scope of Bargaining

The requested amendments preclude bargaining on the "effects" of the Employer's exercise of a management right for the proposed supervisory unit. The duty to bargain the "effects" of an exercise of any of the statutorily defined Employer rights creates restrictions and delays on the Employer's ability to act in the management arena. An example of "effects" bargaining may be seen through the impact on frequently utilized management prerogatives such as the transfer, assignment and scheduling of employees. The use of these management rights is critical to the ability of the Police Department to operate in an efficient and effective manner in the delivery of police services. Before management may proceed to initiate a change in how employees are transferred, scheduled or assigned, the effect of the changes on employees may be subject to bargaining. Consequently, appropriate notice and opportunity to bargain must be extended to the exclusive representative. The result of any "effects" bargaining may place other limitations on management's ability to act such as a notice requirement, waiting period, opportunity for comment, compensation, etc. before a schedule change or transfer may occur. The requested amendments retain the status quo for the non-supervisory bargaining unit and provide, in essence, a scope of bargaining for supervisory employees which is consistent with bargaining rights extended to all other County employees.

In summary, the Executive's proposed amendments provide a reasoned approach to establishing the appropriate collective bargaining unit for supervisors. In particular, we believe that the proposed unit structure will preserve the supervisory community of interest. We look forward to addressing these issues with the Council and employee representatives.

cc: Charles A. Moose, Chief of Police
Bruce Romer, Chief Administrative Officer

Representational Treatment of Police Supervisors for Local Jurisdictions

Jurisdiction	Group	Separate Unit	Rank
Anne Arundel	Police Sergeants Association	Yes	Sergeants (68)
Baltimore City	FOP Lodge #3	Yes	Sergeants and Lieutenants (446)
Baltimore County	FOP Lodge #4	No	Lieutenant and below
D.C. Government	FOP	No	Sergeants and below
Howard	None	N/A	N/A
Prince George's	FOP Lodge # 89	Yes	Lieutenants and Sergeants
MD National Cap PK & Planning	FOP Lodge #30	No	Sergeants

Sec. 33-80. Collective bargaini

(a) *Duty to bargain; matters subject to bargaining.* Upon certification of an employee organization, as provided in section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;

(2) Pension and retirement benefits for active employees only;

(3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;

(4) Hours and working conditions, including the availability and use of personal patrol vehicles;

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;

(6) Matters affecting the health and safety of employees; and

(7) The effect on employees of the employer's exercise of rights enumerated in subsection (b) hereof.

(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.

MONTGOMERY COUNTY COUNCIL

Derick Berlage
Councilmember - District 5

MEMORANDUM

April 5, 2000

TO: Phil Andrews, Lead Councilmember for Personnel Matters Management and Fiscal Policy Committee

FROM: Derick P. Berlage, Councilmember

SUBJECT: Amendments to Bill 10-00

I continue to support the above-captioned bill essentially as introduced. At the same time, as you know, several amendments and changes to the legislation have been requested. I would like to address one of these issues with an amendment to the bill.

While I do not support the County Executive's proposed amendments, I do support offering Police Lieutenants and Captains the opportunity to bargain collectively. I propose that this be accomplished by creating a separate bargaining unit for Lieutenants and Captains. Members of that bargaining unit could then decide whether and by what organization they wish to be represented, according to the provisions of Montgomery County Code Section 33-79.

I appreciate the Committee's consideration of this amendment.

cc: Councilmembers
Mike Faden

100 Maryland Avenue, 6th Floor ▪ Rockville, Maryland 20850
(240) 777-7967 ▪ FAX: (240) 777-7989 ▪ TDD 240/777-7914 ▪ e-mail: berlage@co.mo.md.us
Printed on Recycled Paper

OFFICE OF MANAGEMENT AND BUDGET

Douglas M. Duncan
County Executive

Robert K. Kendal
Director

MEMORANDUM

April 11, 2000

TO: Michael L. Subin, President
Montgomery County Council

VIA: Bruce Romer
Chief Administrative Officer

FROM: Robert K. Kendal, Director
Office of Management and Budget

SUBJECT: Amendment to Council Bill 10-00: Collective Bargaining – Police Sergeants

The purpose of this memorandum is to transmit a fiscal impact statement to the Council President based upon the County Executive's requested amendments to Council Bill 10-00.

SUMMARY

The County Council proposed Bill 10-00 amends Chapter 33 of the Montgomery County Code, Personnel and Human Resources. The proposed amendments would add Police employees classified as Sergeants in a bargaining unit for the purpose of collective bargaining. This bargaining unit would be separate from the existing non-supervisory, uniformed bargaining unit for Police employees.

The County Executive supports the proposed Council Bill. However, the County Executive, in consultation with the Chief of Police, has proposed to amend Council Bill 10-00 to bring Sergeants, Lieutenants, and Captains within the scope of collective bargaining.

POLICE SERGEANTS, LIEUTENANTS, AND CAPTAINS - FISCAL SUMMARY

The Office of Human Resources anticipates additional operating costs associated with collective bargaining in the years that new agreements are negotiated with the County as a result of this legislation. During FY01, County labor negotiations would begin with the new supervisor's bargaining unit chosen by the employee organization. The projected operating cost

impact in FY01 is estimated at $39,000. These costs are related to operating expenses which would support the collective bargaining process. No additional operating expenses are projected for the FY00 approved budget as a result of the County Executive's amendments to Council Bill 10-00.

		FY 01
Personnel Cost	None	$0
Operating Expenses		$39,000
Total		$39,000

Jim Torgesen, Office of Human Resources, contributed and concurred with this analysis.

RKK: db

cc: Marta Brito Perez, Director, Office of Human Resources

m:\fis\CB 10-00 Police Sergeants Memo (CE Amend).doc

Issuing Department: Office of Human Resources

Contact Person: Jim Torgesen 240-777-5050

Council Bill No.: 10-00 (CE Amend) .

FISCAL IMPACT STATEMENT

Collective Bargaining – Police Supervisors

FISCAL SUMMARY: Presentation of the incremental increase or decrease in expenditures and revenues for the current and next fiscal years.

	Current Fiscal Year FY 00	Next Fiscal Year FY 01
1. Revenues:	0	0
2. Personnel Costs:		
Salaries and Wages:	0	0
Fringe Benefits:	0	0
Total Personnel Costs:	0	0
3. Operating Expenses:		
List Items:		
Total Operating Expenses:	0	39,000
Capital Outlay :	0	0
Total Expenses (2 + 3):	*$0*	*$39,000*
4. Positions Affected:		
Positions:		
Part-Time:	0	0
Full-time:	0	0
Workyears:		
Part-Time:	0.0	0.0
Full-time:	0.0	0.0

5. Assumptions and Explanations: See attachment memorandum

6. Economic Effect on Private Sector: N/A

OMB REVIEW

✓ Fiscal Impact Statement approved R Hendel 4/10/00
OMB Director

_____ Fiscal Impact Statement not approved, OMB will contact department to remedy.

Montgomery County Lodge 35, Inc.

April 27, 2000

Honorable Michael Subin
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

RE: Bill 10-00, *Collective Bargaining - Police Sergeants*

Dear President Subin:

In advance of Council's consideration of Bill 10-00 and amendments, Lodge 35 and its Supervisors Committee [1] strongly urges the following:

- That the existing bargaining unit be expanded to include sergeants subject to a vote by sergeants to determine if they want to be represented. Thereafter, they would be eligible to participate in any representation election.

- That sergeants have the right to bargain "effects" of the exercise of existing management rights.

At a meeting of sergeants held on April 25, 2000, all but one sergeant in attendance voted to support the above. The one who did not vote for these provisions was undecided. None was opposed.

In a memorandum dated April 7, 2000 [MFP 1, 4/11/00, C. 23-26] Jim Torgesen, Labor/Employee Relations Manager, OHR, correctly identified four criteria commonly applied in determining unit composition. These include: Desires of Employees, History of Representation, Extent of Union Organization, and Community of Interest.

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[1] The Lodge 35 Supervisors Committee is a functional unit of FOP Lodge 35 and was first created in 1982, then rechartered in 1996 for three basic purposes: 1. To recognize the importance of supervisors within the FOP; 2. To coordinate FOP representation of police supervisors; and 3. To pursue collective bargaining rights for police sergeants. The committee is chaired by a police sergeant and all of its members are Montgomery County police sergeants. In accord with Lodge 35 Bylaws, the president is an *ex officio* member of all committees.

18512 Office Park Drive Montgomery Village, MD 20886
(301) 948-4286 • FAX (301) 590-0317

Desires of Employees At a Supervisors Committee meeting called and chaired by their peers, MCP sergeants voted their desire in detail, *supra*. In stark contrast, the OHR memorandum relates that the chief of police [management] held **separate** meetings - one with sergeants (where attendance was "mandatory", Attachment 1) and another with lieutenants and captains. OHR says that the police "chief concluded from these two meetings that employees in the ranks of sergeant, lieutenant, and captain were interested in . . . collective bargaining." Significantly, OHR **does not** state that it was the desire of sergeants to be in a bargaining unit with lieutenants and captains. Indeed, any such conclusion would be inaccurate. Moreover, employees should be allowed to express their desire directly or as a group, without management involvement, such as the Sergeants Committee, and not through management. (87% of current sergeants are active, dues-paying members of FOP Lodge 35.) [2]

History of Representation As stated in our public testimony, Lodge 35, which is the certified representative of non-supervisory police officers, has a long, proud tradition in representation of all members, including sergeants. While one or another organization may have represented a few sergeants in the past, the fact remains that the organization representing the current unit has provided more extensive representation to the vast majority of individual sergeants represented in the past 19 or more years.

The Immediate Past President of Lodge 35 was a police sergeant.

From July 1, 1983, the effective date of our first contract, to June 30, 1988, the expiration date of our second contract, FOP dues for sergeants were deducted pursuant to those contracts. Effective July 1, 1988, the County unilaterally, and for political reasons only, discontinued FOP dues check-off for sergeants. And, as stated in our public hearing testimony, the County, through OHR, filed a Charge of Prohibited Labor Practice against Lodge 35 for representing sergeants. The Charge was later withdrawn, but stands as a monument to the history of our representation of sergeants.

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[2] In a March 16, 2000 letter to Mr. Berlage [MFP 1, 4/11/00, C. 22], the Alliance of Police Supervisors said that, on April 16, 1998, they surveyed sergeants to determine their interest and stated: "The results of this survey indicated that 60% of the sergeants wanted the Alliance of Police Supervisors to represent them." Choice of representative is a decision to be made by all sergeants, by secret ballot, not by survey. However, on April 7, 1998, nine days earlier, lieutenants and captains were surveyed by the Alliance of Police Supervisors via a memorandum addressed to "Alliance of Police Supervisor Members." That survey presented two choices: _____ *Yes, I am interested in one organization to attain collective bargaining* or _____ *No. I believe the Sergeants should have a separate bargaining organization.* (Attachment 2.) The options were limited and, while it is not our intention to involve Council in a representation debate, we present this issue for the sole purposes of 1. pointing out that the stated result is not consistent with the action taken at our meeting of last Tuesday and 2. demonstrating that the referenced survey is not a valid indicator of the desire of employees.

Extent of Union Organization OHR correctly notes that the unit structure in the metropolitan area and Maryland is mixed. North of the Mason-Dixon Line, union representation isn't treated as such a major threat. However, here, south of that Line, Prince George's County, the only other Maryland jurisdiction with binding arbitration, has a single contract covering all officers through the rank of lieutenant, negotiated by FOP Lodge 89. [3] Washington, D.C., which also has binding arbitration, is a single unit that includes sergeants. The MNCPPC police, which is partly Montgomery County funded, has a single unit that includes police sergeants.

Baltimore County has a single unit that includes all officers through the rank of lieutenant, represented by FOP Lodge 4. Baltimore City has a separate unit for sergeants and lieutenants represented by FOP Lodge 3. Anne Arundel has a separate unit for sergeants, represented by a different union. (There has been considerable turmoil in AA County over the years, including two representation elections between the Teamsters and FOP Lodge 70 which represents non-supervisory officers.) Howard County sergeants do not have bargaining rights. However, in several smaller jurisdictions, sergeants are in the same unit as non-supervisory officers. [4]

In the two area jurisdictions with binding arbitration, sergeants are represented by the same union and covered by the same contract.

As noted, the MNCPPC police have a unit that includes sergeants. In the Montgomery County school system, certain non-certificated supervisory employees are in the same unit as nonsupervisory employees and represented by SEIU Local 500. Certificated employees are in two units, one represented by MCEA and the other represented by MCAASP. MCEA represents Resource Teachers and Teacher Specialists. [5] For budgetary and political reasons, care has been taken to avoid labeling these teacher positions as "supervisors," but the fact remains that, in practice, they perform jobs comparable to those of police sergeant. While the Executive may want to dispute the comparison, we suggest that it is merely a matter of semantics on his part. Attachment 3.

Moreover, State law which governs school employee collective bargaining, <u>does not</u> exclude supervisory employees from non-supervisory unions.

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[3] Mr. Torgesen is correct that PG County technically has separate units - one for non-supervisory employees and another for sergeants and lieutenants. However, one union is recognized and certified for both units and one contract covers both units. It was not the intent of Lodge 35 to mislead Council on this most technical issue. Knowing that FOP 89 has, for many years, had but one contract, we were simply mistaken.

[4] Of the Chartered Maryland counties (including Baltimore City) with separate County (City) police departments, all but two (Howard and Montgomery) provide collective bargaining rights for sergeants. In Harford County, the Sheriff's Office provides police services.

[5] In the early 1970s, school administrators were represented by MCEA. Later, <u>at the request of MCEA</u>, a separate unit was created for school administrators who are represented by another organization.

Community of Interest OHR says that "community of interest is of prime importance." And, says OHR: "Community of interest generally includes similarities in duties, skills and working conditions." We agree. However, OHR and the County Executive seek to set parameters that seem to fit their goal, i.e. one unit to include captains. They further resort to the "conflict of interest" scare tactic. In response, we submit that if there is a conflict of interest with a sergeant and a police officer whom s/he supervises being in the same bargaining unit, surely, there must be a conflict of interest between a captain and a sergeant being in the same unit.

It seems contradictory to the Executive's position that he proposes captains, who are two ranks above sergeants, be in the same unit with sergeants and involved in interpreting and administering the same contract that would cover both sergeants and captains.

It is curious that when the executive branch and OHR were opposing the current collective bargaining charter provision that there was no concern that the "interests of the supervisor [may have been] blurred [when both supervisors and non-supervisory officers were] covered by the same [rules, policies, and personnel regulations] that they [were] required to enforce."

We are puzzled that OHR and the Executive are concerned about how a sergeant might be expected to behave in a grievance proceeding if s/he were a member of the same unit as those s/he supervises when, since 1983, contract grievances are submitted directly to the police chief for initial resolution while **the County's unilaterally implemented grievance procedure [AP 4-4], applicable to non-supervisory officers in a few matters, provides for first step review by the immediate supervisor.**

More importantly, Lodge 35 credits police sergeants with the honor and integrity to do their jobs without evil intent or misconduct. They have demonstrated their integrity over the years of FOP representation and the history of that representation is proof that the alleged concerns of OHR and the Executive are without factual basis. We challenge the Executive to give us evidence of actual conflict that has occurred since Lodge 35 was chartered in 1969.

We could argue this matter for weeks, however, area jurisdictions, particularly those with binding arbitration, include sergeants in the same unit or under the same contract as non-supervisory officers.

Hence, this is purely a political decision. Politics, not facts, are the driving force behind the Executive's proposal.

Community of interest involves other factors not addressed by the executive. Working conditions between most sergeants and the existing unit are nearly **identical.** This is not true of sergeants and lieutenants or captains. Sergeants are assigned to shifts, they work shift work, they routinely respond to calls for service and make arrests. They make traffic stops, and they patrol. Simply put, they are field supervisors. Lieutenants and captains are not "field" supervisors, rather, by the department's own definition, they are "executive" officers.

The department holds executive-level meetings with its "executive" officers and, in a recent training offering, a course has a separate session for lieutenants and above.

Lieutenants and above even wear slightly different uniforms. [6]

Clearly, the working conditions of sergeants are more similar to those of nonsupervisory officers.

Other Factors In the private sector, supervisors are precluded from bargaining. In the private sector, employees have the right to strike and have a broader scope of bargaining than their public sector counterparts. Traditionally, due to the nature of the job, police supervisors have been afforded bargaining rights and it is not uncommon for them to be included in the same unit as non-supervisory employees. [7]

Unlike many other County positions and the private sector, every incumbent police sergeant was promoted from a non-supervisory Montgomery County police officer position. This is significant. Furthermore, all sworn police officers below the rank of police chief are in a common retirement system (Group F).

EFFECTS BARGAINING Effects bargaining is but another distraction. OLO Report 99-2 commented on effects bargaining without ever affording Lodge 35 an opportunity to comment. A Council Resource Committee, consisting of a diverse group of County residents (including the president of Lodge 35), was created to look into the police complaint system. OLO's charge was to address the complaint system.

After input from the Executive, OLO, without consultation with either the Resource Committee or Lodge 35, raised this issue. Effects bargaining is fairly common in the public sector in recognition that public sector bargaining rights are more limited than in the private sector.

We are disappointed that OLO denied Lodge 35 a fair opportunity to comment and explain this issue before it was raised in a formal report. (We did not see the final report until the late on the evening before it was publicly presented.) Notwithstanding the influence Council staff has within the institution of the County Council as a "part-time" body, fairness dictates that we be heard on matters affecting our interests. Council staff's perspective is frequently distorted and they seldom seek our views on issues within our expertise. (We do not refer here to individual Councilmembers' staff and aides.)

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[6] We express no opinion about lieutenants having bargaining rights or being included in our bargaining unit. The bill before you pertains only to sergeants.

[7] All sworn police officers, regardless of rank, are constitutional officers. *Bradshaw v. Prince George's County*, 284 Md. 294, 396 A.2d 255 (1979). See also 72 Op. Atty Gen. Md. 271, January 13, 1987) A police officer may not serve as a member of the Maryland House of Delegates because both are constitutional "office[s] of profit." (In the General Election of 1996, the Maryland Declaration of Rights was amended to permit police officers and certain other public officials to simultaneously hold additional offices. This amendment did not, however, change the "public official" status of police officers.)

We would have welcomed an opportunity for full and open discussion of "effects bargaining" as well as the arguments put forth by the County in formal court pleadings, never considered or known to staff, which relate to the concerns the Executive claims he has in this important matter.

Even at this point, we invite that discussion, and point out that the recent Department of Justice findings were critical only of management's exercise of its rights, not of those matters that were collectively bargained.

Of considerable import, is the additional fact that it was only through the cooperation and leadership of FOP Lodge 35 that an agreement was reached between the County, DoJ, and Lodge 35 to improve police services and the complaint process, thereby avoiding litigation. In Pittsburgh, PA litigation continues despite a consent decree and in Columbus, Ohio, litigation has been initiated. [8]

It is no coincidence that here, in Montgomery County, we resolved important issues without litigation and that Lodge 35 has been overwhelmed with calls for assistance and requests to share its DoJ experiences with other unions throughout the Nation. [9]

We should be proud that DoJ, the County, and the police union have come together to enter into an agreement that serves as model for a collective bargaining law that enables cooperation and flexibility to resolve the effects of management rights short of full blown, disruptive federal litigation. It is unfortunate that the Executive has asked Council to dilute the law that enabled such cooperation.

Under the law, management has certain rights, i.e. the right to assign, transfer, lay-off due to lack of funds or work, determine methods of operation, and the union may bargain the effects of management's exercise of those rights upon employees. Effects bargaining does not prevent management from exercising its rights. For example, under the current contract, management may schedule employees. However, if it schedules employees without sufficient advance notice, it must compensate and make whole employees affected by the change. Unit members and sergeants have family and child care concerns and it is out of sensitivity for those concerns that effects have been bargained. Without effects bargaining, a schedule could be changed and an employee would be immediately (or on short notice) required to find care for an infant or young child and report for work without additional consideration. This is contrary to a County that talks of "Family Friendly Work Policies."

"Effects bargaining" does not prevent management from exercising its rights. It merely balances the interests of the employer and employee and, at best (or worst, depending on one's perspective) requires the employer to think about the effects of its intentions before it acts.

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[8] In Pittsburgh, DoJ and the City entered into an agreement over the objections of FOP Lodge 1. Thereafter, FOP Lodge 1 arbitrated changes that "effected" the consent decree. The City sued and the matter is pending in Federal court. In Columbus, the City and DoJ entered into a proposed consent decree. The FOP refused to agree and DoJ sued the City. Both suits are pending.

It is notable that every single Montgomery County police officer was furloughed several years ago despite effects bargaining, which did occur. And that crime has decreased in recent years, that the Cuban Interest Section residence was recently protected, and that we were prepared to go into Washington, D.C. to assist in the event of major civil disturbance during the recent World Bank/International Monetary Fund meetings without any "effects" problems.

Effects bargaining is especially important in police work because of the toll such work takes on the individual and family.

Since September 1999, two examples of "effects bargaining" have been raised before Council. One concerned pornography on the internet and the other was qualification of weapons. We will briefly comment on each.

Management submitted a proposal to Lodge 35 concerning use of County computers. That proposal was submitted pursuant to Article 61 of our contract. There was never any dispute over the issue of pornography on the internet. There was, however, considerable discussion about e-mail confidentiality, disciplining officers for sending their mothers birthday or Mother's Day greetings, and playing computer games such as "Hearts" or "Solitaire" on County computers. As we discussed these matters, the police department's representative was playing a computer game on a County computer. We asked if there was a County-wide policy on the use of e-mail. After discussions, the County withdrew its proposal. More recently, they indicated a desire to discuss it again, but have not followed through.

Over the years a very few officers have had difficulty qualifying with firearms. Through additional training and practice, all have qualified. Last year, three officers had difficulty. One qualified on the second round; one involved a disabled officer who was able to qualify; and the third was a non-bargaining unit member.

The State of Maryland has established firearms qualification standards. No Montgomery County police officer has carried a firearm in violation of those standards.

In neither of these matters has management implemented rules or procedures for non-unit members as it has the authority to do.

Additionally, much of what has been touted as "effects bargaining" is actually direct bargaining over working conditions. (In a Gazette article, former chief Thomas Evans mentioned the quality of toilet paper as being an example of "effects bargaining." We have never engaged in a controversy over quality of toilet paper, but if we did, it would fall under working conditions, not effects bargaining.) [9]

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[9] Under normal circumstances, Lodge 35 would not comment on petty issues like toilet paper, but since the recently retired deputy police chief raised the issue in a news article, we feel compelled to respond. Under our contracts, dating to 1983, there has never been a grievance over toilet paper. However, prior to legislation granting other County employees the right to bargain collectively, a police dispatcher did file a County grievance over lack of toilet paper in the women's rest room at ECC. That grievance was resolved.

Topics such as "pornography" and "guns" make for great sensationalism and political fodder for anti-unionists, but the facts defy the rhetoric. Scare tactics frequently are effective means of depriving others of their rights. Senator Joseph McCarthy was a master at the game.

Such tactics currently are being employed to bully Council into funding "School Resource Officers" and it makes for great press, but does the Executive really believe that a single "School Resource Officer" in a school, armed with a 9 mm handgun, will save lives of students if two suicidal, heavily armed students open fire in a school cafeteria or library?

We urge Council to deal with facts, not respond to shallow tactics.

As with unit designation, effects bargaining is purely a political decision and does not adversely affect public safety.

Position Exemptions The Executive asks that you exempt certain positions from bargaining. The rationale for such exemptions could extend to all captains and above.

Since 1982, unit members have held positions in internal affairs, personnel (human resources), policy development, and others. In 18 years there has not been a conflict. In addition, current unit members have held supervisory positions on an acting basis without conflict.

The exclusion of certain employees whose counterparts have collectively bargained benefits and wages does not work in the field of policing. The Executive's proposal requires two pay scales -- one for represented supervisors and another for unrepresented. It creates conflict and confusion within an occupational classification -- especially at the sergeant level.

Other Considerations Inclusion of sergeants in the existing unit, after democratic vote, will have minimal impact upon the Executive and his staff. On the other hand, creation of a new unit will require separate bargaining and separate mediation and arbitration despite union certification. If a separate unit is created for sergeants, whether Lodge 35 or any other union is elected representative, negotiations will take place at different times, and arbitration will be conducted, possibly with a different arbitrator, separate from the existing unit. Two contracts will be produced.

The Executive will be bound to the outcomes of both agreements, both arbitrated and non-arbitrated. The Executive must provide for both agreements in his/her recommended budget. And, the representative(s) of each unit will appear before Council in support of each agreement notwithstanding any differences.

In conclusion, there is ample evidence that sergeants can be included in the same unit and/or under the same contract as non-supervisory employees without conflict. It has worked elsewhere and can work here. There is no valid reason why effects bargaining should not apply to sergeants.

Your consideration is appreciated and we ask for Council's support.

Sincerely,

Walter E. Bader
President

Kirk Holub
Chair, Supervisors Committee

cc: Mr. Andrews, Lead, MFP
Mr. Berlage
Mrs. Dacek
Mr. Denis
Mr. Ewing
Mr. Leggett
Mrs. Praisner, Chair, MFP Committee
Mr. Silverman

JUVN: RDET: BDET: SDET: WDET:

MONTGOMERY COUNTY POLICE MESSAGE ROUTING 16:05:16 02/23/00

FROM: HDQ31	TO: PDAL: X	PDPT:	ROCK:	BETH:	SILS:	GLEN:	GERM:
		JUVN:	RDET:	BDET:	SDET:	WDET:	GDET:
		SID :	GENA:	OPER:	ECC1:	RECS:	WARR:
		HSEX:	PSTA:	CSS :	AUTO:		CCPD:
		RCPD:	GCPD:	PARK:	SHER:	JAIL:	FIRE:

TO: ALL SERGEANTS #

ALL POLICE SERGEANTS ARE REQUIRED TO ATTEND A MANDATORY MEETING WITH CHIEF MOOSE ON WEDNESDAY MARCH 1, 2000, AT THE PSTA, ROOM 5 AND 6, FROM 7-9 PM. THOSE WHO CAN'T ATTEND DUE TO EXTRAORDINARY CIRCUMSTANCES SHOULD NOTIFY THEIR DIVISION DIRECTOR. OVERTIME IS AUTHORIZED. THANK YOU.

LOG NO 356

SENDER: SERGEANT DARIN MAGEE

AUTHORITY: CHIEF MOOSE

FEB 2 5 2000

MONTGOMERY COUNTY LODGE 35 FOP

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(41)

FEB 2 5 2000

MONTGOMERY COUNTY LODGE 35 FOP

TO ALL SGTS

THE CHIEF HAS SCHEDULED A MANDATORY MEETING FOR ALL SGTS ON 03/01/00. YOU MUST HAVE MY PERMISSION TO MISS THIS MEETING. (ONLY ACTS OF GOD WILL BE ACCEPTABLE REASONS FOR NOT ATTENDING) THIS IS TO DISCUSS COLLECTIVE BARGAINING FOR SGTS - NOW IS YOUR CHANCE TO EXPRESS YOUR THOUGHTS ON THE MATTER

GOOD LUCK

CAPT RHODES

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1B

(42)

TO: ALLIANCE OF POLICE SUPERVISOR MEMBERS

FROM: DREW J. TRACY

SUBJECT: COLLECTIVE BARGAINING

DATE: APRIL 7, 1998

Recently an effort has been initiated to start a new organization for Sergeants with the goal of collective bargaining under a union type structure. This initiative has support for the concept by the majority of Sergeants. I personally believe that Sergeants, Lieutenants and Captains should all be included in this new organization. Presently a few individuals want an organization only for Sergeants but other individuals believe it will serve us better to have executive officers also represented.

I am sending this memorandum to all Lieutenants and Captains asking if they are interested in our organization combining with Sergeants with the goal of attaining collective bargaining. I am not familiar with the structure of creating a bargaining unit organization but I believe we may remain as the Alliance of Police Supervisors with a few legal changes to allow collective bargaining.

Please take the time to answer this survey and forward your return to me at FSB in Headquarters.

____ Yes, I am interested in one organization to attain collective bargaining.

____ No, I believe the Sergeants should have a separate bargaining organization.

2.

Division of Employment Standards and Operations

ROLE OF THE RESOURCE TEACHER

This document is a job description for resource teachers. As such, it provides necessary clarification of the role for purposes of recruitment. In addition, it is a checklist of accountability both for the resource teacher in the performance of duties and for the administrator in providing supports so that the resource teacher can function as an instructional leader. Finally, it constitutes the substantive basis for the yearly evaluation of persons serving in this leadership role. With two minor clarifications (note underlining) in sections III.A. and IV., it is the statement which was discussed with the Board of Education on October 13, 1970, and which, in turn, was a clarification of the job description appearing in Evaluative Criteria--Secondary (1967).

I. Duties and Responsibilities

A. Liaison Function

1. Serves as liaison between department members and school administration and between department members and appropriate coordinators in matters pertaining to curriculum and instruction

2. Meets regularly with subject coordinator

3. Meets with principal and appropriate associate superintendent or cluster director

4. Keeps principal informed in matters pertaining to the program and the department

B. Instructional Leadership

1. Works with the department, administration, and counselors in the development of the schedule and the placement of students in appropriate classes

2. Assists classroom teachers in the following:

a. Classroom organization and management

b. Selecting, locating, and securing instructional materials and other aids

c. Developing skills and techniques of instruction

d. Interpreting test results to identify abilities of each student

e. Seeking ways to involve students meaningfully in their educational program

f. Adapting the county program to the needs of the local school community

g. Helping to plan the best program for each instructional group by adapting the curriculum to the needs of individuals

h. Planning for the most productive use of aides and volunteers

i. Using and caring for equipment

j. Developing plans for daily work as well as in long-range planning

k. Self-evaluation, self-improvement, and evaluation of program

3. Assumes leadership role in selection, location, and purchase of instructional materials

4. Holds departmental meetings on matters that are the appropriate instructional concern of the department and the total school

5. Helps foster cohesive, cooperative pattern of interpersonal relationships within the department

6. Meets periodically with principal and appropriate associate superintendent or cluster director to confer on matters of program and instruction

7. Gives aid and support to substitute teachers (checks emergency plans, etc.)

I. **Duties and Responsibilities (continued)**

C. Program and Teacher Growth and Development

1. Participates in interviewing and selecting prospective teachers for department

2. Assists principal in latter's evaluation of teachers and may, at the teachers' option, participate in the teacher's evaluation conference

3. Visits classes to appraise program quality and confers with teachers about observations

4. Confers frequently with the members of the department on an informal basis

5. Participates in the planning of school staff development activities and assumes a leadership role in planning those of the department

6. Provides leadership in developing department goals consistent with area and county goals

7. Assists teachers in the development of long-range plans

8. Provides leadership in the utilization of student records and test results

9. Stimulates an awareness of research and curricular development in subject fields

10. Plans with teachers most effective ways of using courses of study and instructional materials

D. Curriculum Development

1. Keeps informed of new trends and programs in fields of responsibility

2. Participates in in-service activities related to duties

3. Is a permanent member of appropriate review and evaluation committees

4. Assists in the summer and at other appropriate items in writing of curriculum materials

E. Departmental Administration

1. Assists principal in providing overall leadership in instructional program of the school

2. Supervises the use of clerical aide(s) assigned to the department

II. Qualifications

A. Education

1. Holds, from an accredited institution, a master's degree or its equivalent in semester hours of credit or is within one year of fulfilling this requirement

2. Has successfully completed appropriate hours of work in subject areas in which responsibility will be borne

3. Demonstrates evidence of continuing professional study and work-related growth

B. Experience

1. Has had a minimum of three years of outstanding teaching experience

2. Has had appropriate teaching experience within subject fields of the department

C. Human Relations

1. Demonstrates skill in working effectively with people

2. Shows deep concern for individual students

III. Selection and Continuance of Service

A. Shall be selected by the principal and the appropriate associate superintendent in consultation with the subject coordinator and the members of the department or members chosen by the department to represent them

B. Shall not have guaranteed tenure in the position

IV. Evaluation

Shall be evaluated yearly in terms of this job description by the principal in consultation with the department, the subject coordinator and the appropriate associate superintendent. The evaluation shall be conducted in accordance with Article 16 of the MCEA-BOE Negotiated Agreement.

8/93

3.A.4 (4)

OFFICIAL TITLE: Teacher Specialist	CODE: 1602
WORKING TITLE: Teacher Specialist, Transition Demonstration Project	GRADE: C-D

SUMMARY DESCRIPTION OF CLASSIFICATION:

Under direction, assists the project manager and division director in planning and implementing the project components of the Head Start/Public School Early Childhood Transition Demonstration Project. Provides support to demonstration classroom teachers and aides; develops, coordinates, and implements in-service programs and conducts training sessions for parents.

MINIMUM QUALIFICATION STANDARDS

KNOWLEDGE, ABILITIES, AND SKILLS:

Thorough knowledge of administration of large federal grants. Knowledge of current research and trends in early childhood education with special emphasis on developmentally appropriate curriculum, instructional practices, and assessment. Knowledge of instructional uses of technology. Ability to work effectively with administrators, principals and teachers in providing schools assistance in the implementation of the educational component of large federal grants (e.g., Head Start and/or Title I). Ability to plan and develop training sessions and collaborate with other departments and units to design staff development opportunities. Excellent written and oral communications and human relations skills.

EDUCATION, TRAINING, AND EXPERIENCE:

Master's degree from an accredited college or university in early childhood or elementary education with course work in early childhood education. Course work in staff development, supervision, curriculum development and instruction desirable. Five years successful teaching experience at the nursery to Grade 3 level required with children across all instructional and economic levels. Experience conducting training for a variety of audiences preferred. Other combinations of applicable education, training, and experience which provide the knowledge, abilities, and skills necessary to perform in the position may be considered.

CERTIFICATE AND LICENSE REQUIREMENTS:

Meets Maryland state certification requirements for an Advanced Professional Certificate in early childhood or elementary education field.

3.B. (48)

PHYSICAL DEMANDS: (Special requirements such as lifting heavy objects and frequent climbing.)

Must be able to move materials/equipment to and from different sites on a regular basis.

SPECIAL REQUIREMENTS: (Frequent overtime or night work required, etc.)

May be required to work evenings to meet deadlines or to attend BOE, committee, PTSA or other meetings.

PAID OVERTIME:

No

EXAMPLES OF DUTIES AND RESPONSIBILITIES:

Working with the project manager and division director, the Transition Demonstration Project teacher specialist:

Plans and implements the dissemination of project components

Coordinates all staff development and instructional activities with project staff in four

Transition Demonstration schools. Develops, coordinates and conducts professional and support staff training.

Assesses program as well as needs of individual teachers and teaching teams and develops short and long range plans.

Works with principals to achieve coordination of school-based program initiatives.

Chairs the Transition Demonstration Project Education Committee.

Visits and supports teachers in implementing subject matter curriculum and interdisciplinary applications. Provides in-classroom assistance to teacher/instructional assistant teams. May assist classroom teachers in observing, diagnosing, and prescribing instructional activities/processes to facilitate students acquisition of skills and strategies, including activities for special needs. May provide input to teachers and classroom aides by observing in classroom settings, offering technical assistance, and conferring with staff to discuss suggestions/recommendations regarding teaching techniques and other matters relative to more enhanced performance.

Plans for and integrates the use of appropriate technology, such as microcomputers, into the academic instructional program in cooperation with staff of the Office for Global Access and Office of Instruction and Program Development.

Identifies, evaluates, and selects instructional materials to support MCPS early childhood education

efforts.

Works with staff to monitor student performance and assists with Transition Demonstration Project evaluation component where appropriate.

Plans and monitors implementation of the MCPS Early Childhood Education and Parent Involvement policies.

Participates in systemwide and community presentations to describe and clarify Transition Demonstration Project and school programs.

Performs related tasks as required.

Class Established: 9/95

Date(s) Revised:

[illegible]

Note: *A general guide to class description, which includes definitions of standard terms used, is considered an integral part of this description and is available from the Department of Personnel Services.*



3.B.3 (50)

Montgomery County Lodge 35, Inc.

June 2, 2000

00 JUN 2 AM 10:13

RECEIVED COUNCIL

Honorable Derick Berlage
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Bill 10-00 *Collective Bargaining - Police Sergeants*

Dear Mr. Berlage:

Again, on behalf of Lodge 35 and its members, including police sergeants, I want to thank you and the co-sponsors of Bill 10-00 for supporting the sergeants collective bargaining bill, legislation which you appropriately indicated is long overdue.

As stated in prior correspondence and statements before the MFP Committee, police sergeant collective bargaining is very common in Maryland and throughout the country. Similarly, the inclusion of police sergeants and even lieutenants within the same bargaining unit, or under the same collective bargaining agreement, is an established practice.

Unfortunately, the major issues are being distorted by the irrational objection of the administration to so-called "effects bargaining." This distraction must, we feel, be addressed head-on to avoid future controversy, litigation, and misperception. Moreover, "effects bargaining" has been used as a red herring by our opponents.

The stated purpose of the Police Labor Relations Act ["PLRA"] is "to promote a harmonious, peaceful and cooperative relationship between the county government and its police employees and to protect the public by assuring, at all times, the responsive, orderly and efficient operation of the police department." The law further recognizes that "[s]ince unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur." PLRA § 33-75.

We have honored this public policy and, indeed, since April 1982 when the current law was enacted, there have been no job actions by police officers; no picketing; no slowdowns; and no other actions that impaired our ability to serve the public. This is a significant tribute to a thoughtfully crafted law that was the result of hard work by the County Council, the Gilchrist Administration, and Lodge 35.

18512 Office Park Drive Montgomery Village, MD 20886

(301) 948-4286 • FAX (301) 590-0317

(5h)

Our law was the first collective bargaining law enacted in Montgomery County. It includes specific reference to "effects bargaining." On the other hand, the County Employees and Firefighter laws do not make such specific reference, but those laws do indeed require "effects bargaining."

It is because the older Police law makes specific statutory reference to "effects" that there is been very little litigation or dispute over the issue. In contrast, the newer County Employees law has been clarified through dispute and litigation. Indeed, MCGEO has had to file more Unfair Labor Practices Charges since their law was enacted in 1986 than has the FOP under the PLRA enacted in 1982.

It is in the spirit of resolving this issue here and now, rather than later, that we present the following for Council review and consideration.

EFFECTS BARGAINING

One of the bedrock concepts in American labor relations jurisprudence is "effects bargaining." Effects bargaining is basic to the practice of collective bargaining in practically every jurisdiction. It is a necessary component of the exercise of "management rights" both in the public and private sectors.

The National Labor Relations Board [NLRB] in its landmark decision *Ozark Trailers, Inc.*, 161 NLRB 561, 63 LRRM 1264, 1266 (1966) cited to earlier precedent in defining this concept, and explained that even when an employer is undertaking a managerial decision, such as the decision to completely shut down operations - perhaps the most fundamental management right of all:

> an employer is still under the obligation to notify the union of its intentions so that the union may be given an opportunity to bargain over the rights of the employees whose employment status will be altered by the managerial decision.

This duty cannot be neatly limited to a specified list of subject areas or scenarios. As Hill and Sinicropi explain in their often-cited text *Management Rights*, (BNA Books, 1989) at p. 412:

> The courts have not limited the scope of effects bargaining to a specific list of subjects. All aspects related to that decision may be encompassed in the broad scope of effects bargaining.

Indeed, as the NLRB has often recognized:

> The effects are so inextricably interwoven with the decision itself that bargaining limited to effects will not be meaningful if it must be carried on within a framework of a [management] decision which cannot be revised. An interpretation of the law which carries the obligations to 'effects,' therefore, cannot well stop short of the decision itself which directly affects 'terms and conditions of employment.'

Ozark Trailers, *supra*, at p. 1269. This iron link between the exercise of any management right and the duty to bargain how that exercise is to be effectuated is not set out in the text of the Federal Labor Management Relations Act, 29 U.S.C. §151 *et seq.* (LMRA). The LMRA merely requires that private sector employers "meet at reasonable times and c&a2661H"management rights" and "effects bargaining"

arise inexorably from the process of defining the frontier between what constitutes "wages, hours, and other terms and conditions of employment," and what subjects lie outside the duty to bargain.

The propriety of the concept of "effects bargaining" was approved by the U. S. Supreme Court in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). There, the Court said:

> [B]argaining over the effects of a [managerial] decision must be conducted in a meaningful manner and at a meaningful time....[The union] has some control over the effects of the decision and indirectly may ensure that the decision itself is deliberately considered.

452 U.S. at 682.

The twin concepts of "management rights" and "effects bargaining" have continued to be applied in public sector collective bargaining throughout the United States. Pursuant to the Civil Service Reform Act of 1978, employees of the Federal Government were granted collective bargaining rights. While the parameters of those rights are somewhat different than for the private sector (e.g. Federal employees are not permitted to strike), the basic concepts remain the same. As the U.S. Court of Appeals for the District of Columbia observed in *Dept. of Defense v. FLRA*, 659 F.2d 1140 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 945 (1982):

> Even with regard to reserved management rights, the Act authorizes collective bargaining over the 'procedures which management officials of the agency will observe in exercising [their] authority....'

Thus, "effects bargaining" is also described as the duty to bargain over the procedures for implementing a managerial decision.

The same concepts have also been applied in Montgomery County collective bargaining laws, whether or not the County statute specifically includes a detailed guide to effects bargaining. The County Collective Bargaining Law, § 33-101, *et seq.*, Mont. Co. Code, 1994, and the Fire and Rescue Collective Bargaining Law, § 33-147, *et seq.*, Mont. Co. Code, 1994, do not include the general reference to effects bargaining found in the County's Police Labor Relations Act at § 33-80(a)(6). Nevertheless, "effects" or "procedural implementation" bargaining have been determined to be a necessary concomitant to the subjects of bargaining outlined in the County Collective Bargaining Law at § 33-107(a).

In *Montgomery County Government v. MCGEO-UFCW Local 400*, Case 90-1, the Montgomery County Labor Relations Administrator (LRA) determined that four bargaining proposals by MCGEO regarding contractual procedural regulation (by the use of seniority) of the County's implementation of the management rights to transfer, promote, fill vacancies, and assign overtime are "legal" proposals under County law. In reaching that decision, the LRA reviewed major precedents in state and local public sector bargaining affirming the concepts of effects bargaining. In that case, even the County conceded some of the basic premises of effects bargaining. The LRA noted:

> In any event, the County's position throughout has been that it is legal and appropriate to entertain and discuss 'seniority' proposals, and to agree to same, when it is 'post-decisional' i.e. after the County decides that services and operating efficiencies are not substantially impaired....
>
> The four proposals as written do not violate the County's prerogatives. The County concedes that the proposals fall within the general definition of 'conditions of employment' under [the statute] ... and since seniority matters are of fundamental concern to employees, the County violated the statute by failing to bargain.

This decision brings us full circle to the premise enunciated by the Supreme Court in *First National Maintenance, supra*: "[The union] has some control over the [managerial] decision...."

As we have referenced, the Police Labor Relations Law includes at Section 33-80(a)(7) the duty to bargain:

> The effect on employees of the employer's exercise of rights enumerated in subsection (b) hereof.

Section 80(b) lists management rights under the PLRA.

Whether or not such a provision were to be included in any collective bargaining legislation covering police supervisors or other County employees not presently covered by a collective bargaining unit, the concept of "effects bargaining" is so deeply ingrained in American labor relations jurisprudence, that any statute directing collective bargaining regarding any subjects traditionally included within the concept "wages, hours, and other terms and conditions of employment" necessarily includes effects bargaining.

During the 18 years of the parties' experience with the PLRA, there have been few if any formal controversies regarding the scope of proper subjects of bargaining. This excellent experience has been fostered by the detailed clarity of the bargaining duty under the PLRA. Removal of the specific reference to effects bargaining from any future law would simply raise the possibility that sergeants, through their union, will have to clarify that such bargaining is required through litigation, such as occurred shortly after the promulgation of the County Collective Bargaining Law in 1996.

LAW SHOULD BE CONSISTENT

A problem with exclusions of specific reference to "effects bargaining" is that two groups of police employees will be bargaining under different statutes. This is akin to a football game where one team plays under NFL rules and the other plays under Canadian Football League [CFL] rules. Clearly, confusion and disputes will result.

Moreover, established legislative terms and understandings will be disputed and a new law will need to be defined through dispute resolution mechanisms and litigation. This is not in the larger interest of the sound public policy articulated at § 33-75.

The PLRA represents a balance of the interests between Management and the Union. American labor law has evolved over scores of years as a result of the struggles of employees to achieve democracy in the workplace on the one hand, and management to hold onto what it perceives as its "prerogatives."

It is out of respect for the manner in which the PLRA was drafted in response to a Citizen Initiative that Lodge 35 has not sought to expand the scope or parameters of the PLRA beyond the inclusion of sergeants under the same law. (We were honest and open with the 1982 Council and Executive, as well as political candidates since that time, that we intended to continue to push for inclusion of sergeants.) Unfortunately, the Duncan Administration has exploited this legislation and the OLO study of the police complaint system to attack an established law.

"EFFECTS BARGAINING" IS WIDELY MISUNDERSTOOD

"Effects bargaining" has been blamed for all sorts of perceived evils unrelated to the concept. Interestingly, the department issues internal directives regularly. Very few of those directives involve bargaining. Those that do, generally address mandatory bargaining, not effects. For instance, directives and policies on arrest procedures, enforcement priorities, district boundaries, crime reporting, selective enforcement, issuance of citations, jurisdiction, department organization, search and seizure, prisoners and fugitives, community services, and public relations rarely result in bargaining of any kind. And when they do, bargaining is limited to small and specific portions that involve working conditions.

Part of the confusion has been the result of Contract Article 61 *Directives and Administrative Procedures*. That Article requires that "[n]egotiable matters pertaining to administrative procedures, department directives, and rules referenced in this agreement . . . are subject to addition, change, amendment, or modification, only after specific notice is provided to the union with an opportunity to bargain and after the parties reach agreement. If no agreement is reached, the addition, change, amendment, or modification shall not be implemented." The Article further provides that

"[c]hanges to directives, rules and procedures not enumerated in th[e] agreement, or the effects on employees of the employer's exercise of a management right as enumerated in Article 42 § A, which involve matters appropriate for collective bargaining will be proposed by the County to the Union for bargaining. Thereafter, and before implementation, bargaining and agreement shall occur. Failing agreement, the dispute will be resolved pursuant to the impasse procedures . . . of Chapter 33, § 33-81(b) of the Montgomery County Code."

This Contract Article simply affords the County flexibility to seek change without waiting for bargaining on a successor (or term) contract. An analogy to the County's budget process might be appropriate.

In March of each year the Executive submits a recommended budget to Council. Council spends considerable time analyzing and questioning the recommendation. By law, a date is set for approval of the budget that becomes effective on July 1.

Should the Executive desire to amend or supplement the budget after July 1, s/he must follow certain procedures and submit the request to Council. As you well know, certain requests are barred until after January 1. Charter § 307. Emergency appropriations to meet specific circumstances can be made at any time. Charter § 308. In both cases, public notice is required. These charter provisions apply to all county agencies, including public safety.

Council will deliberate and discuss these supplemental budget requests. Year after year, we read of the Executive's expressed frustration with Council for doing its job. Executives have accused Council of micro-managing, interfering, endangering public safety, etc. The rhetoric goes on year after year, budget after budget. Such is the nature of our democratic form of government.

Like the budget process, the term bargaining process takes place at certain times. Contracts last for not less than one, nor more than three years. In November, we commence the process. If no resolution is reached by January 20, impasse reached. All issues must be resolved by February 1 and portions of the Agreement requiring Council action must be submitted as part of the Executive's Recommended Budget. By May 1, the Council must indicate its intent to accept or reject all or any portion of the agreement. If any portion is rejected, the parties enter into a process for resolution. The contract becomes effective on July 1.

Therefore, for purposes of our analogy, term bargaining is like the annual budget process. Interim bargaining under Article 61 and "effects bargaining" is like supplemental budget requests.

Both the budget and bargaining processes require deliberation and review by the parties, neither interferes with the efficient and effective delivery of essential public services. Both are subject to complaints by the Executive!

In this regard, management is critical of Lodge 35 for its thorough analysis of issues submitted for bargaining, saying this is time-consuming. Like legislatures and good business in all segments of our society, all parties have a duty to be thorough. We do not take our obligations lightly.

Another recent management complaint has been the delay in bargaining "effects" and non-effects issues midterm in the contract. Both sides have been responsible for delay in various matters. If this is a concern of either management or the union, either is free to require the other to bargain through established procedures, e.g. Charge of Prohibited Labor Practice.

Penultimately, it must be restated that the Police Complaint Process study that brought this issue to the forefront of attention is mostly unrelated to any collective bargaining. The investigation of most complaints against police officers, and all complaints alleging excessive use of force, is governed by the Law Enforcement Officers' Bill of Rights. Article 27, § 727, *et seq.* of the Annotated Code of Maryland.

That law affords police officers certain procedural rights in investigations, including the right to ten (10) days to obtain representation before being subjected to questioning of the officer concerning his/her conduct. Hence, no matter how serious the allegation, the officer has ten days after notification to make a statement, but management frequently postpones asking for that statement, thereby delaying the process. But, as stated, this is state law, not collective bargaining.

Management complains of this law and says, that because of "effects bargaining" it can't engage in corrective action to prevent inappropriate conduct. Our response is simple: In the very few cases where this has been at issue, we demanded due process for our members and management tried to deny that due process notwithstanding the constitution and Personnel Regulations Section 3.2 *Due Process.* Management can submit a proposal to bargain, but hasn't. To say that "effects bargaining" is at the root of all evil is disingenuous at best. (Even management touts the low number of complaints relative to the amount of police activity.)

I further note that it has been those areas where the LEOBR or an unfettered management right applies that have been the subject of most criticism. The Department of Justice was falsely told by police management that FOP Lodge 35 delayed the disciplinary process and Lodge 35 provided proof that it did not. DoJ found many management, not FOP, deficiencies and the recently signed Agreement with DoJ preserved all contract and PLRA rights while requiring changes in certain management (not FOP) practices.

In sum, this 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.

Our law, unlike the other County bargaining laws, sets forth by statute what others have had to define through litigation. Our job as police officers is a tough one. The public is better served when we negotiate according to statute than when we litigate over it.

Our goal is to avoid continuing controversy, not to create it. We therefore urge Council to include sergeants in the bargaining unit under the law that has existed for 18 years.

We look forward to working with you, the MFP Committee, and full Council on this most important legislation.

Sincerely,

Walter E. Bader
President

Enclosures (Reference material; MCGEO ULP Case 90-1)

cc: Mr. Andrews, Lead, MFP
Mrs. Dacek
Mr. Denis
Mr. Ewing
Mr. Leggett
Mrs. Praisner, Chair, MFP Committee
Mr. Silverman
Mr. Subin, President

Bill No. 10-00
Concerning: Collective Bargaining - Police - Sergeants
Revised: 6-2-00 Draft No. 4
Introduced: March 14, 2000
Expires: September 14, 2001
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing

AN ACT to:

(1) bring police sergeants within the scope of the existing police collective bargaining unit if a majority of sergeants elect to be represented;
(2) [[divide the]] establish a second police collective bargaining unit [[into two bargaining units]] composed of captains and lieutenants; [[and]]
(3) limit the scope of collective bargaining for certain members of police bargaining units; and
(4) generally amend the law regarding collective bargaining with County police officers.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resource
Sections 33-76, [[and]] 33-78, and 33-80

By adding
Chapter 33, Personnel and Human Resource
Section 33-78A

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-76, [[and]] 33-78, and 33-80 are amended, and Section 33-78A is added, as follows:

33-76. Definitions.

When used in this Article:

* * *

Certified representative means an employee organization selected in accordance with [the procedures of] this [[Chapter]] Article to represent [the] a unit.

Employee means any police officer [in the classification of] classified as a captain, lieutenant, sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, [and] or police officer candidate, or an equivalent nonsupervisory classification[s], but not [those] a police officer in [the classification of police sergeant or] any [equivalent or] higher classification. *Employee* does not include a captain or lieutenant whose primary duties involve human resources, internal affairs, legal matters, labor relations, or policy development and compliance.

Employer means the County Executive and [his] the Executive's designees.

* * *

Unit means [all employees] either of the bargaining units defined in Section 33-78A.

33-78. Employee rights.

* * *

(b) The employer [shall have the duty to] must extend to the certified representative the exclusive right to represent the employees in that bargaining unit for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative [shall] must serve as the bargaining agent for all employees in the unit for which it is certified and [shall have the duty to] must represent fairly and without discrimination all employees in that unit without regard to whether the employees are [or are not] members of the employee organization, [or are paying] pay dues or other contributions to it, or [participating] participate in its affairs. [; provided, however, that it shall not be deemed] However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

33-78A. Bargaining units.

For purposes of certification and collective bargaining, employees subject to this Article must be divided into 2 bargaining units, composed of the following employees:

(1) [[sergeants]] captains and lieutenants;

(61)

(2) all other covered employees.

33-80. Collective Bargaining.

(a) **Duty to bargain; matters subject to bargaining.** [[Upon certification of an]] A certified employee organization[[, as provided in section 33-79,]] and the employer [[and the said certified representative shall have the duty, through their designees, to]] must bargain collectively [[with respect to those]] on the following subjects [[as follows]]:

* * *

(7) The effect on employees of the employer's exercise of rights [[enumerated]] listed in subsection (b) [[hereof]], but this paragraph does not apply to:

(A) the bargaining unit composed of captains and lieutenants; and

(B) those sergeants who are members of a bargaining unit.

* * *

Sec. 2. Certification Process.

If the permanent umpire appointed under Section 33-77 finds, not later than October 31, 2000, that a majority of all sergeants employed by the Police Department on September 1, 2000, have voted, in an election held as provided in Section 33-79(b)-(d), to authorize the certified representative of the police bargaining unit to represent them, then those provisions of Sections 33-76 and 33-80, as amended by Section 1 of this Act, which expressly apply to police sergeants, take effect on November 1, 2000. A petition is not necessary for the election to be held under this provision, and Section 33-79(b)(2) does not apply to this election. If the permanent umpire does not so find, then those provisions of Sections 33-76 and 33-80 do not take effect.

Sec. 3. Applicability. This Act does not affect any collective bargaining agreement in effect on October 1, 2000. Any change to an existing bargaining unit takes effect, for purposes of applying and administering a collective bargaining agreement, on July 1, 2001.

Approved:

Michael L. Subin, President, County Council — Date

Approved:

Douglas M. Duncan, County Executive — Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council — Date

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RECEIVED COUNCIL
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Montgomery County Lodge 35, Inc.

April 27, 2000

031866

Honorable Michael Subin
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

RE: Bill 10-00, *Collective Bargaining - Police Sergeants*

Dear President Subin:

In advance of Council's consideration of Bill 10-00 and amendments, Lodge 35 and its Supervisors Committee [1] strongly urges the following:

- That the existing bargaining unit be expanded to include sergeants subject to a vote by sergeants to determine if they want to be represented. Thereafter, they would be eligible to participate in any representation election.

- That sergeants have the right to bargain "effects" of the exercise of existing management rights.

At a meeting of sergeants held on April 25, 2000, all but one sergeant in attendance voted to support the above. The one who did not vote for these provisions was undecided. None was opposed.

In a memorandum dated April 7, 2000 [MFP 1, 4/11/00, C. 23-26] Jim Torgesen, Labor/Employee Relations Manager, OHR, correctly identified four criteria commonly applied in determining unit composition. These include: Desires of Employees, History of Representation, Extent of Union Organization, and Community of Interest.

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[1] The Lodge 35 Supervisors Committee is a functional unit of FOP Lodge 35 and was first created in 1982, then rechartered in 1996 for three basic purposes: 1. To recognize the importance of supervisors within the FOP; 2. To coordinate FOP representation of police supervisors; and 3. To pursue collective bargaining rights for police sergeants. The committee is chaired by a police sergeant and all of its members are Montgomery County police sergeants. In accord with Lodge 35 Bylaws, the president is an *ex officio* member of all committees.

18512 Office Park Drive Montgomery Village, MD 20886
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Desires of Employees At a Supervisors Committee meeting called and chaired by their peers, MCP sergeants voted their desire in detail, *supra*. In stark contrast, the OHR memorandum relates that the chief of police [management] held **separate** meetings - one with sergeants (where attendance was "mandatory", Attachment 1) and another with lieutenants and captains. OHR says that the police "chief concluded from these two meetings that employees in the ranks of sergeant, lieutenant, and captain were interested in . . . collective bargaining." Significantly, OHR **does not** state that it was the desire of sergeants to be in a bargaining unit with lieutenants and captains. Indeed, any such conclusion would be inaccurate. Moreover, employees should be allowed to express their desire directly or as a group, without management involvement, such as the Sergeants Committee, and not through management. (87% of current sergeants are active, dues-paying members of FOP Lodge 35.) [2]

History of Representation As stated in our public testimony, Lodge 35, which is the certified representative of non-supervisory police officers, has a long, proud tradition in representation of all members, including sergeants. While one or another organization may have represented a few sergeants in the past, the fact remains that the organization representing the current unit has provided more extensive representation to the vast majority of individual sergeants represented in the past 19 or more years.

The Immediate Past President of Lodge 35 was a police sergeant.

From July 1, 1983, the effective date of our first contract, to June 30, 1988, the expiration date of our second contract, FOP dues for sergeants were deducted pursuant to those contracts. Effective July 1, 1988, the County unilaterally, and for political reasons only, discontinued FOP dues check-off for sergeants. And, as stated in our public hearing testimony, the County, through OHR, filed a Charge of Prohibited Labor Practice against Lodge 35 for representing sergeants. The Charge was later withdrawn, but stands as a monument to the history of our representation of sergeants.

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[2] In a March 16, 2000 letter to Mr. Berlage [MFP 1, 4/11/00, C. 22], the Alliance of Police Supervisors said that, on April 16, 1998, they surveyed sergeants to determine their interest and stated: "The results of this survey indicated that 60% of the sergeants wanted the Alliance of Police Supervisors to represent them." Choice of representative is a decision to be made by all sergeants, by secret ballot, not by survey. However, on April 7, 1998, nine days earlier, lieutenants and captains were surveyed by the Alliance of Police Supervisors via a memorandum addressed to "Alliance of Police Supervisor Members." That survey presented two choices: _____ *Yes, I am interested in one organization to attain collective bargaining* or _____ *No, I believe the Sergeants should have a separate bargaining organization.* (Attachment 2.) The options were limited and, while it is not our intention to involve Council in a representation debate, we present this issue for the sole purposes of 1. pointing out that the stated result is not consistent with the action taken at our meeting of last Tuesday and 2. demonstrating that the referenced survey is not a valid indicator of the desire of employees.

Extent of Union Organization OHR correctly notes that the unit structure in the metropolitan area and Maryland is mixed. North of the Mason-Dixon Line, union representation isn't treated as such a major threat. However, here, south of that Line, Prince George's County, the only other Maryland jurisdiction with binding arbitration, has a single contract covering all officers through the rank of lieutenant, negotiated by FOP Lodge 89. [3] Washington, D.C., which also has binding arbitration, is a single unit that includes sergeants. The MNCPPC police, which is partly Montgomery County funded, has a single unit that includes police sergeants.

Baltimore County has a single unit that includes all officers through the rank of lieutenant, represented by FOP Lodge 4. Baltimore City has a separate unit for sergeants and lieutenants represented by FOP Lodge 3. Anne Arundel has a separate unit for sergeants, represented by a different union. (There has been considerable turmoil in AA County over the years, including two representation elections between the Teamsters and FOP Lodge 70 which represents non-supervisory officers.) Howard County sergeants do not have bargaining rights. However, in several smaller jurisdictions, sergeants are in the same unit as non-supervisory officers. [4]

In the two area jurisdictions with binding arbitration, sergeants are represented by the same union and covered by the same contract.

As noted, the MNCPPC police have a unit that includes sergeants. In the Montgomery County school system, certain non-certificated supervisory employees are in the same unit as nonsupervisory employees and represented by SEIU Local 500. Certificated employees are in two units, one represented by MCEA and the other represented by MCAASP. MCEA represents Resource Teachers and Teacher Specialists. [5] For budgetary and political reasons, care has been taken to avoid labeling these teacher positions as "supervisors," but the fact remains that, in practice, they perform jobs comparable to those of police sergeant. While the Executive may want to dispute the comparison, we suggest that it is merely a matter of semantics on his part. Attachment 3.

Moreover, State law which governs school employee collective bargaining, does not exclude supervisory employees from non-supervisory unions.

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[3] Mr. Torgesen is correct that PG County technically has separate units - one for non-supervisory employees and another for sergeants and lieutenants. However, one union is recognized and certified for both units and one contract covers both units. It was not the intent of Lodge 35 to mislead Council on this most technical issue. Knowing that FOP 89 has, for many years, had but one contract, we were simply mistaken.

[4] Of the Chartered Maryland counties (including Baltimore City) with separate County (City) police departments, all but two (Howard and Montgomery) provide collective bargaining rights for sergeants. In Harford County, the Sheriff's Office provides police services.

[5] In the early 1970s, school administrators were represented by MCEA. Later, at the request of MCEA, a separate unit was created for school administrators who are represented by another organization.

Community of Interest OHR says that "community of interest is of prime importance." And, says OHR: "Community of interest generally includes similarities in duties, skills and working conditions." We agree. However, OHR and the County Executive seek to set parameters that seem to fit their goal, i.e. one unit to include captains. They further resort to the "conflict of interest" scare tactic. In response, we submit that if there is a conflict of interest with a sergeant and a police officer whom s/he supervises being in the same bargaining unit, surely, there must be a conflict of interest between a captain and a sergeant being in the same unit.

It seems contradictory to the Executive's position that he proposes captains, who are two ranks above sergeants, be in the same unit with sergeants and involved in interpreting and administering the same contract that would cover both sergeants and captains.

It is curious that when the executive branch and OHR were opposing the current collective bargaining charter provision that there was no concern that the "interests of the supervisor [may have been] blurred [when both supervisors and non-supervisory officers were] covered by the same [rules, policies, and personnel regulations] that they [were] required to enforce."

We are puzzled that OHR and the Executive are concerned about how a sergeant might be expected to behave in a grievance proceeding if s/he were a member of the same unit as those s/he supervises when, since 1983, contract grievances are submitted directly to the police chief for initial resolution while **the County's unilaterally implemented grievance procedure [AP 4-4], applicable to non-supervisory officers in a few matters, provides for first step review by the immediate supervisor.**

More importantly, Lodge 35 credits police sergeants with the honor and integrity to do their jobs without evil intent or misconduct. They have demonstrated their integrity over the years of FOP representation and the history of that representation is proof that the alleged concerns of OHR and the Executive are without factual basis. We challenge the Executive to give us evidence of actual conflict that has occurred since Lodge 35 was chartered in 1969.

We could argue this matter for weeks, however, area jurisdictions, particularly those with binding arbitration, include sergeants in the same unit or under the same contract as non-supervisory officers.

Hence, this is purely a political decision. Politics, not facts, are the driving force behind the Executive's proposal.

Community of interest involves other factors not addressed by the executive. Working conditions between most sergeants and the existing unit are nearly **identical.** This is not true of sergeants and lieutenants or captains. Sergeants are assigned to shifts, they work shift work, they routinely respond to calls for service and make arrests. They make traffic stops, and they patrol. Simply put, they are field supervisors. Lieutenants and captains are not "field" supervisors, rather, by the department's own definition, they are "executive" officers.

The department holds executive-level meetings with its "executive" officers and, in a recent training offering, a course has a separate session for lieutenants and above.

Lieutenants and above even wear slightly different uniforms. [6]

Clearly, the working conditions of sergeants are more similar to those of nonsupervisory officers.

Other Factors In the private sector, supervisors are precluded from bargaining. In the private sector, employees have the right to strike and have a broader scope of bargaining than their public sector counterparts. Traditionally, due to the nature of the job, police supervisors have been afforded bargaining rights and it is not uncommon for them to be included in the same unit as non-supervisory employees. [7]

Unlike many other County positions and the private sector, every incumbent police sergeant was promoted from a non-supervisory Montgomery County police officer position. This is significant. Furthermore, all sworn police officers below the rank of police chief are in a common retirement system (Group F).

EFFECTS BARGAINING Effects bargaining is but another distraction. OLO Report 99-2 commented on effects bargaining without ever affording Lodge 35 an opportunity to comment. A Council Resource Committee, consisting of a diverse group of County residents (including the president of Lodge 35), was created to look into the police complaint system. OLO's charge was to address the complaint system.

After input from the Executive, OLO, without consultation with either the Resource Committee or Lodge 35, raised this issue. Effects bargaining is fairly common in the public sector in recognition that public sector bargaining rights are more limited than in the private sector.

We are disappointed that OLO denied Lodge 35 a fair opportunity to comment and explain this issue before it was raised in a formal report. (We did not see the final report until the late on the evening before it was publicly presented.) Notwithstanding the influence Council staff has within the institution of the County Council as a "part-time" body, fairness dictates that we be heard on matters affecting our interests. Council staff's perspective is frequently distorted and they seldom seek our views on issues within our expertise. (We do not refer here to individual Councilmembers' staff and aides.)

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[6] We express no opinion about lieutenants having bargaining rights or being included in our bargaining unit. The bill before you pertains only to sergeants.

[7] All sworn police officers, regardless of rank, are constitutional officers. *Bradshaw v. Prince George's County*, 284 Md. 294, 396 A.2d 255 (1979). See also 72 Op. Atty Gen. Md. 271, January 13, 1987) A police officer may not serve as a member of the Maryland House of Delegates because both are constitutional "office[s] of profit." (In the General Election of 1996, the Maryland Declaration of Rights was amended to permit police officers and certain other public officials to simultaneously hold additional offices. This amendment did not, however, change the "public official" status of police officers.)

We would have welcomed an opportunity for full and open discussion of "effects bargaining" as well as the arguments put forth by the County in formal court pleadings, never considered or known to staff, which relate to the concerns the Executive claims he has in this important matter.

Even at this point, we invite that discussion, and point out that the recent Department of Justice findings were critical only of management's exercise of its rights, not of those matters that were collectively bargained.

Of considerable import, is the additional fact that it was only through the cooperation and leadership of FOP Lodge 35 that an agreement was reached between the County, DoJ, and Lodge 35 to improve police services and the complaint process, thereby avoiding litigation. In Pittsburgh, PA litigation continues despite a consent decree and in Columbus, Ohio, litigation has been initiated. [8]

It is no coincidence that here, in Montgomery County, we resolved important issues without litigation and that Lodge 35 has been overwhelmed with calls for assistance and requests to share its DoJ experiences with other unions throughout the Nation. [9]

We should be proud that DoJ, the County, and the police union have come together to enter into an agreement that serves as model for a collective bargaining law that enables cooperation and flexibility to resolve the effects of management rights short of full blown, disruptive federal litigation. It is unfortunate that the Executive has asked Council to dilute the law that enabled such cooperation.

Under the law, management has certain rights, i.e. the right to assign, transfer, lay-off due to lack of funds or work, determine methods of operation, and the union may bargain the effects of management's exercise of those rights upon employees. Effects bargaining does not prevent management from exercising its rights. For example, under the current contract, management may schedule employees. However, if it schedules employees without sufficient advance notice, it must compensate and make whole employees affected by the change. Unit members and sergeants have family and child care concerns and it is out of sensitivity for those concerns that effects have been bargained. Without effects bargaining, a schedule could be changed and an employee would be immediately (or on short notice) required to find care for an infant or young child and report for work without additional consideration. This is contrary to a County that talks of "Family Friendly Work Policies."

"Effects bargaining" does not prevent management from exercising its rights. It merely balances the interests of the employer and employee and, at best (or worst, depending on one's perspective) requires the employer to think about the effects of its intentions before it acts.

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[8] In Pittsburgh, DoJ and the City entered into an agreement over the objections of FOP Lodge 1. Thereafter, FOP Lodge 1 arbitrated changes that "effected" the consent decree. The City sued and the matter is pending in Federal court. In Columbus, the City and DoJ entered into a proposed consent decree. The FOP refused to agree and DoJ sued the City. Both suits are pending.

It is notable that every single Montgomery County police officer was furloughed several years ago despite effects bargaining, which did occur. And that crime has decreased in recent years, that the Cuban Interest Section residence was recently protected, and that we were prepared to go into Washington, D.C. to assist in the event of major civil disturbance during the recent World Bank/International Monetary Fund meetings without any "effects" problems.

Effects bargaining is especially important in police work because of the toll such work takes on the individual and family.

Since September 1999, two examples of "effects bargaining" have been raised before Council. One concerned pornography on the internet and the other was qualification of weapons. We will briefly comment on each.

Management submitted a proposal to Lodge 35 concerning use of County computers. That proposal was submitted pursuant to Article 61 of our contract. There was never any dispute over the issue of pornography on the internet. There was, however, considerable discussion about e-mail confidentiality, disciplining officers for sending their mothers birthday or Mother's Day greetings, and playing computer games such as "Hearts" or "Solitaire" on County computers. As we discussed these matters, the police department's representative was playing a computer game on a County computer. We asked if there was a County-wide policy on the use of e-mail. After discussions, the County withdrew its proposal. More recently, they indicated a desire to discuss it again, but have not followed through.

Over the years a very few officers have had difficulty qualifying with firearms. Through additional training and practice, all have qualified. Last year, three officers had difficulty. One qualified on the second round; one involved a disabled officer who was able to qualify; and the third was a non-bargaining unit member.

The State of Maryland has established firearms qualification standards. No Montgomery County police officer has carried a firearm in violation of those standards.

In neither of these matters has management implemented rules or procedures for non-unit members as it has the authority to do.

Additionally, much of what has been touted as "effects bargaining" is actually direct bargaining over working conditions. (In a Gazette article, former chief Thomas Evans mentioned the quality of toilet paper as being an example of "effects bargaining." We have never engaged in a controversy over quality of toilet paper, but if we did, it would fall under working conditions, not effects bargaining.) [9]

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[9] Under normal circumstances, Lodge 35 would not comment on petty issues like toilet paper, but since the recently retired deputy police chief raised the issue in a news article, we feel compelled to respond. Under our contracts, dating to 1983, there has never been a grievance over toilet paper. However, prior to legislation granting other County employees the right to bargain collectively, a police dispatcher did file a County grievance over lack of toilet paper in the women's rest room at ECC. That grievance was resolved.

Topics such as "pornography" and "guns" make for great sensationalism and political fodder for anti-unionists, but the facts defy the rhetoric. Scare tactics frequently are effective means of depriving others of their rights. Senator Joseph McCarthy was a master at the game.

Such tactics currently are being employed to bully Council into funding "School Resource Officers" and it makes for great press, but does the Executive really believe that a single "School Resource Officer" in a school, armed with a 9 mm handgun, will save lives of students if two suicidal, heavily armed students open fire in a school cafeteria or library?

We urge Council to deal with facts, not respond to shallow tactics.

As with unit designation, effects bargaining is purely a political decision and does not adversely affect public safety.

Position Exemptions The Executive asks that you exempt certain positions from bargaining. The rationale for such exemptions could extend to all captains and above.

Since 1982, unit members have held positions in internal affairs, personnel (human resources), policy development, and others. In 18 years there has not been a conflict. In addition, current unit members have held supervisory positions on an acting basis without conflict.

The exclusion of certain employees whose counterparts have collectively bargained benefits and wages does not work in the field of policing. The Executive's proposal requires two pay scales -- one for represented supervisors and another for unrepresented. It creates conflict and confusion within an occupational classification -- especially at the sergeant level.

Other Considerations Inclusion of sergeants in the existing unit, after democratic vote, will have minimal impact upon the Executive and his staff. On the other hand, creation of a new unit will require separate bargaining and separate mediation and arbitration despite union certification. If a separate unit is created for sergeants, whether Lodge 35 or any other union is elected representative, negotiations will take place at different times, and arbitration will be conducted, possibly with a different arbitrator, separate from the existing unit. Two contracts will be produced.

The Executive will be bound to the outcomes of both agreements, both arbitrated and non-arbitrated. The Executive must provide for both agreements in his/her recommended budget. And, the representative(s) of each unit will appear before Council in support of each agreement notwithstanding any differences.

In conclusion, there is ample evidence that sergeants can be included in the same unit and/or under the same contract as non-supervisory employees without conflict. It has worked elsewhere and can work here. There is no valid reason why effects bargaining should not apply to sergeants.

Your consideration is appreciated and we ask for Council's support.

Sincerely,

Walter E. Bader
President

Kirk Holub
Chair, Supervisors Committee

cc: Mr. Andrews, Lead, MFP
Mr. Berlage
Mrs. Dacek
Mr. Denis
Mr. Ewing
Mr. Leggett
Mrs. Praisner, Chair, MFP Committee
Mr. Silverman

ALLIANCE OF POLICE SUPERVISORS

P.O. Box 1036, Germantown, Maryland 20875

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CC
L Ann

March 16, 2000

Mr. Derick Berlage
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

J30895

Dear Mr. Berlage:

The issue of Collective Bargaining for the rank of Sergeant for the Montgomery County Police has recently resurfaced with Legislation that you have presented. The Alliance of Police Supervisors strongly supports Collective Bargaining for Sergeants, Lieutenants and Captains represented by our organization. Chief Moose is also in support of this unified proposal.

The Alliance of Police Supervisors distributed a questionnaire on April 16, 1998 to supervisors of the rank of Sergeant to determine their interest in having one of the following:

- Interest in the Alliance of Police Supervisors representing Sergeants, Lieutenants and Captains to attain Collective Bargaining
- Sergeants should have their own bargaining unit or join an existing bargaining unit to attain Collective Bargaining

The results of this survey indicated that 60% of the Sergeants wanted the Alliance of Police Supervisors to represent them.

We request that you extend your legislation to include Lieutenants and Captains. It is important that management have a voice in their future. Historically, management has not had any input and has relied on the pass through benefits that were bargained by the Fraternal Order of Police. This fact has limited many talented officers from participating in the promotional process above the rank of Corporal. Collective Bargaining for members of the Alliance of Police Supervisors will provide representation for all of our membership and encourage officers to become supervisors. We are only interested in the advancement of our Department and keeping our agency in the forefront of law enforcement initiatives. Thank you for your attention to this matter of importance.

Sincerely,

Drew J. Tracy, President
David F. Buchanan, Vice President
Michael E. Buchan, Treasurer

Cc: Charles A. Moose Ph.D.
County Council Members

(22)

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

MANAGEMENT AND FISCAL POLICY COMMITTEE

Tuesday, April 11, 2000
3:00 P.M. to 3:25 P.M.
Council Hearing Room

PRESENT

Marilyn J. Praisner, Chair

Phil Andrews Betty Ann Krahnke

Councilmember Andrews, Lead Councilmember for Personnel, in the Chair.

SUBJECT: **Bill 10-00, Collective Bargaining – Police Sergeants**

Senior Legislative Attorney Faden led the Committee in a discussion of the bill, beginning with the second issue, the type of bargaining unit sergeants should be placed in, as set forth on page 2 of his memorandum, dated April 11, 2000.

ACTION: Received comments from Councilmember Praisner concerning her view that Councilmembers Berlage and Silverman, who have indicated that they will present amendments to the bill when it is before the Council, should have made the amendments available for the Committee's meeting. Ms. Praisner said that she is inclined to reserve judgment on the bill until she has had an opportunity to review the amendments.

Discussed the nature of the bargaining unit and took the following positions: Councilmember Andrews supported the creation of a sergeants-only unit; Councilmember Krahnke supported the inclusion of sergeants in a broader supervisors unit, if a new unit is created; and Councilmember Praisner reserved judgment on this issue.

Discussed the scope of the bargaining unit if a management unit is created, and agreed to exclude police lieutenants and police captains assigned to one of the following work units: Human resources; internal affairs; legal; labor relations; or policy development and compliance.

Recommended that effects bargaining not be extended beyond those ranks currently covered.

Councilmember Andrews supported enactment of the bill with amendments;
Councilmember Krahnke opposed enactment of the bill; and
Councilmember Praisner declined to state a position on the bill since the Committee did not have an opportunity to review amendments to the bill anticipated to be received from other Councilmembers.

This is an accurate account of the meeting:

_____

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Mary A. Edgar

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, May 2, 2000 Rockville, Md.

The County Council for Montgomery County, Maryland convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:26 A.M. on Tuesday, May 2, 2000.

PRESENT

Michael L. Subin, President	Blair G. Ewing, Vice President
Phil Andrews	Howard A. Denis
Derick Berlage	Isiah Leggett
Nancy H. Dacek	Marilyn J. Praisner

Steven A. Silverman

The President in the Chair.

INTRODUCTION OF BILLS

SUBJECT: **Emergency Bill 14-00, Tenant Displacement - Extension**

ACTION: Introduced Draft 2 sponsored by the Council President at the request of the County Executive.

CALL OF BILLS FOR FINAL READING

SUBJECT: **Bill 31-99, Special Taxing Districts – Enforcement of Regulations**

Councilmember Praisner, Chair of the Management and Fiscal Policy (MFP) Committee, presented the Committee report in accordance with the memorandum from Senior Legislative Attorney Faden, dated May 2, 2000. Ms. Praisner explained that the bill before the Council incorporates amendments recommended by the MFP Committee that preserve the central thrust of the bill and narrow its scope.

Mayor Muller, Village of Friendship Heights, expressed the Village's willingness to undertake a review and rewrite in plain language of the Village's regulations as recommended by Council Staff, subject to the retention of the intent of the regulations. Mr. Muller requested that the Council's attorneys work with the Village's attorneys in rewriting the regulations.

Councilmember Praisner stated that the Council's legal staff has been implementing over time the Council's initiative of the plain language rewrite of the County Code. She said that as amendments to the County Code are enacted, Staff has been using this opportunity to write the amendments in plain language and at the same time, revise in plain language that portion of the County Code in which the amendments are being incorporated. She said the plain language rewrite does not change the substance of the law, but rather makes the law easier to understand. Ms. Praisner said that, as Mr. Muller noted, the revised regulations would have to come to the Council for its approval , but that it is unlikely any issues will be raised concerning the regulations.

Mr. Faden expressed his willingness to work with the Village's attorneys in the rewrite of the regulations.

Ms. Tavani, President, Friendship Heights Village Civic Association, questioned the need for the six-month deadline suggested by Council Staff for rewriting the regulations, noting the likelihood that the process could be delayed if the County Attorney's advice is sought.

Councilmember Praisner stated that she believes a deadline is needed to ensure that the work will proceed in a timely manner, and that the six-month deadline proposed by Mr. Faden is appropriate. Ms. Praisner assured Ms. Tavani that Mr. Faden will work with the County Attorney and the Village's attorneys in the rewrite of the regulations in a timely manner.

ACTION: Adopted the following amendments as reflected in the bill:

AN ACT to:

(1) allow the County to enforce certain regulations adopted by special taxing districts;
(2) allow the County to delegate certain enforcement functions to agents of certain special taxing districts **[[**to enforce certain County laws**]]**; and
(3) generally amend County laws relating to enforcement of special taxing district regulations.

By amending

Montgomery County Code
Chapter 1, General Provisions
Section 1-18

Chapter 2, Administration
Section 2-96

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 1-18 and 2-96 are amended as follows:

1-18. Enforcement procedures.

(a) *Definitions.* In Sections 1-18, 1-19 and 1-20:

(1) *Citation* means a document charging a person with a violation of County law. A civil citation seeks the imposition of a civil penalty. A criminal citation seeks the imposition of a criminal sanction.

(2) *County law* means any provision of:

(A) a law enacted by the County Council;

(B) a public local law adopted by the General Assembly which applies in Montgomery County;

(C) an ordinance or subdivision regulation enacted under the Regional District Act;

(D) a health regulation adopted by the County Council sitting as the County Board of Health; [or] or

(E) a regulation adopted under authority of the County Code[.] [[; or

[[(F) a regulation of a special taxing district that the Council has approved]].

(3) *Enforcement officer* means a police officer or other agent of Montgomery County, the State of Maryland, or any agency created under State or County law, whose job includes the issuance of a citation. Enforcement officer also means a police officer or other agent of any municipality [[or special taxing district]] that the County Executive has authorized under Section 2-96(b) to enforce any specified County law in that municipality [[or special taxing district]], whose job includes the issuance of a citation. Enforcement officer also means an agent of a special taxing district who is authorized to act as an agent of the County under an agreement adopted under Section 2-96(a).

* * *

2-96. Administration and enforcement of legislation in municipal corporations and special taxing districts.

(a) *[Administration or] County enforcement of municipal [legislation] laws and special taxing district regulations.*

(1) Any municipal corporation, by ordinance, or any special taxing district, by regulation, may request and authorize the County to administer or enforce any municipal [[legislation]] law or special taxing district regulation. The County may administer or enforce the municipal [[legislation]] law or special taxing district regulation on the terms and conditions as may mutually be agreed.

(2) The County Executive [is authorized to enter into agreements] may agree with [the] a municipal corporation[s] [and] or special taxing district[s] to enforce and administer [the] any municipal [[legislation]] law or special

taxing district regulation. That agreement may authorize an agent of the municipal corporation or special taxing district to issue a citation, as an agent of the County, for a violation of any municipal law or special taxing district regulation.

(3) [[Without further action,]] After an agreement under this subsection takes effect, the County may treat a violation of any regulation of a special taxing district that the Council has approved (including a regulation adopted under Section 49-4) as a violation of the [[Montgomery]] County Code under Section 1-18. [[Unless otherwise]] In addition to any other remedy or penalty specified in the regulation, each violation of any regulation of a special taxing district [[is]] may be treated as a Class B civil violation unless another class of violation is cited in the regulation.

(b) *Enforcement [and administration] of county [legislations] laws by municipal corporations [[and special taxing districts]].*

(1) If requested by [the] any municipal corporation [[or special taxing district]], the County Executive may delegate the administration or enforcement [[powers]] of any county [[legislation]] law that [is applicable within] applies in a municipal corporation [[or special taxing district]] to the chief administrative officer of the municipal corporation [[or special taxing district]].

(2) The County Executive [is authorized to enter into agreements] may agree with the municipal corporation [[or special taxing district]] to regulate the delegation of the County's administration and enforcement powers to the municipal corporation's [[or special taxing district's]] chief administrative officer.

ACTION: Enacted Bill 31-99, as amended.

The motion was made by the MFP Committee, and the bill was enacted by a roll call vote:

YEAS: Andrews, Dacek, Berlage, Leggett, Silverman, Praisner, Denis, Ewing, Subin.

SUBJECT: Bill 10-00, Collective Bargaining – Police - Sergeants

Councilmember Andrews, Lead Councilmember for Personnel issues on the MFP Committee, welcomed to the meeting newly-elected Councilmember Denis, Chief of Police Moose, and other police officers in attendance. Mr. Andrews expressed the view that the County has an excellent Police Department, and commented on the additional growth in the Department that can be achieved through Chief Moose's leadership.

Councilmember Andrews presented the report of the MFP Committee in accordance with the information contained in the memorandum from Mr. Faden, dated May 2, 2000. Mr. Andrews said that he supported enactment of the bill with amendments, former Councilmember Krahnke opposed enactment, and Councilmember Praisner declined to state a position on the bill because of her belief that amendments being proposed by two Councilmembers should have been made available to the Committee for its review rather than being introduced when the bill is before the Council for action. Mr. Andrews noted that should the Council enact the bill, certain amendments described in Mr. Faden's memorandum were supported by all of the Committee members.

Councilmember Praisner expressed the view that it is always appropriate for Councilmembers to introduce amendments to legislation, but she believes it does not serve the Council well for Councilmembers who know that they will introduce amendments to legislation to not make the amendments available when the Committee reviews the legislation. She pointed out that this provides the Committee the opportunity to make certain that the language in the amendment reflects its intent and to determine whether more work is needed on the legislation. Ms. Praisner suggested in the future, when possible, Councilmembers make any written amendments available to Council Staff for further refinement and for inclusion in the Committee's meeting packet. Councilmember Praisner said that she believes by doing this, Councilmembers will help the process and the Committees to arrive at well-reasoned decisions.

Councilmember Andrews stated that the MFP Committee considered the amendments recommended by the County Executive and supported by Chief of Police Moose, and the effects bargaining issue (the ability to bargain the effect of the employer's exercise of the rights reserved to the employer). He said that the Committee recommended that effects bargaining not be extended beyond where it is now. Mr. Andrews said that Councilmember Berlage's proposed amendment addresses another issue raised by Chief Moose and the Alliance of Police Supervisors regarding the extension of collective bargaining to Police lieutenants and captains.

Councilmember Silverman stated that he agrees amendments to legislation should be available in time for the Committee's worksession on the legislation; however, his amendment was not available at that time. Councilmember Silverman moved, duly seconded, the following amendment:

> Beginning on page 2, line 17, delete all provisions. Add the following at the end of the bill:
>
> Section 2. If, during the first 90 days after this Act becomes law, the permanent umpire appointed under Section 33-77 finds that a majority of all sergeants then employed by the Police Department have authorized the certified representative of the police bargaining unit to represent them, then this Act takes effect on October 1, 2000. If the permanent umpire does not so find during the specified time period, then this Act does not take effect.

In explaining his amendment, Councilmember Silverman stated that the primary focus of the amendment is to create one bargaining unit. He said that the Council received testimony and correspondence from a variety of individuals indicating some rational basis for one bargaining unit if collective bargaining is established for sergeants. In his opinion one bargaining unit would avoid potential inconsistencies in arbitration decisions; create a more effective and efficient uniform mechanism for both the employer and employee, and would be based on the experience of other jurisdictions.

Councilmember Silverman responded to questions raised by Councilmember Dacek concerning his amendment, stating that his amendment would allow sergeants to join the existing police bargaining unit if they vote to do so, and that while he agrees with the Committee's position on effects bargaining, police sergeants could bargain for this right under his proposed amendment.

Councilmember Dacek stated that she has been aware of the police sergeants' concerns about being excluded from collective bargaining. Because she has always considered sergeants to be part of the supervisory structure of the Police Department, she has not supported bringing police sergeants within the scope of collective bargaining. However, police sergeants have indicated that they are not treated as part of the supervisory structure, and the bill is an attempt to address some of these issues. Ms. Dacek stated that the impression she has received from Chief Moose is that he would like to strengthen the supervisory structure for sergeants. With respect to whether sergeants should be included in the current bargaining unit or a separate bargaining unit as specified in the bill, Ms. Dacek expressed the view that if sergeants are included in collective bargaining, she would prefer that they be part of a separate bargaining unit.

Chief Moose urged the Council to support the County Executive's proposed amendment to the bill that would provide collective bargaining rights to police sergeants, lieutenants, and captains in a separate collective bargaining unit. He emphasized the need for sergeants to have a close working relationship with lieutenants and captains.

Councilmember Berlage stated that he introduced the bill because he believes sergeants should have collective bargaining rights. He pointed out that sergeants are supervisors, but there is a difference in the responsibilities of a line supervisor and management. He said that there are many examples, both in the public and private sectors, of line supervisors that have been provided collective bargaining rights. Mr. Berlage stated that sergeants do not control the work place in the same way that managers do, and they have not been able to exercise their influence over wages and conditions. Mr. Berlage expressed the view that the County cannot afford to have a morale problem in public safety, and that it is necessary to make certain that every part of the organization has the right amount of control over their mission that is appropriate within the organization. With respect to including lieutenants and captains within the scope of the bill, Councilmember Berlage expressed his support. He said that when he introduced the bill he had only sergeants in mind, but upon reflection believes lieutenants and captains should be included along with sergeants in a separate bargaining unit. Mr. Berlage indicated his support for Councilmember Silverman's proposed amendment and stated that if it is approved, he will propose his amendment with revisions that would include the exclusion of certain captain and lieutenant positions.

Discussion was held concerning issues involving the exclusion of certain positions from collective bargaining rights, whether this exclusion would apply to sergeant positions as well as captain and lieutenant positions, possible conflicts between the bill and the proposed amendments concerning effects bargaining, and possible inconsistencies between the bill and revised personnel regulations that the Council will review in the near future. There was no vote taken on Councilmember Silverman's proposed amendment.

President Subin ruled that Bill 10-00 be returned to the Committee to address issues raised at this meeting. He expressed the hope that the Committee would address the issues soon, but advised interested parties that it is likely to be early June before the Committee can schedule another worksession on the bill due to the Council's review of the operating budget.

ACTION: Returned Bill 10-00 to the MFP Committee to address issues raised at this meeting.

The Council agreed with the President's ruling by consensus.

The Council recessed its legislative session at 11:10 A.M. and reconvened at 1:57 P.M.

SUBJECT: Emergency Bill 13-00, Lifeguards – CPR Training

The Council had before it the memorandum and attachments from Mr. Faden, dated April 28, 2000.

Councilmember Praisner moved, duly seconded, the following amendment to the bill: On line 8, delete the word [[or]] between the words "American Red Cross" and "the American Heart Association," and add after the words "American Heart Association," the words the National Safety Council: on line 9, before the word "Department," add the word State, and after the word "Department," add the words Health and Mental Hygiene.

ACTION: Enacted the bill, as amended.

The motion was made by Councilmember Praisner, and the bill was enacted by a roll call vote:

YEAS: Andrews, Dacek, Silverman, Praisner, Denis, Ewing, Subin
ABSENT: Leggett, Berlage (temporarily).

The Council adjourned its legislative session at 1:57 P.M.

This is an accurate account of the meeting:

Mary A. Edgar

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Mary A. Edgar

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, June 6, 2000 Rockville, Md.

The County Council for Montgomery County, Maryland convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:13 A.M. on Tuesday, June 6, 2000.

PRESENT

Michael L. Subin, President	Blair G. Ewing, Vice President
Phil Andrews	Howard A. Denis
Derick Berlage	Isiah Leggett
Marilyn J. Praisner	Steven A. Silverman

ABSENT

Nancy Dacek

The Vice President in the Chair.

SUBJECT: **Approval of Journal**

ACTION: Approved the Journals of April 4, 25, and May 2, 2000.

The motion was made by Councilmember Praisner. Councilmember Dacek was absent and Councilmembers Leggett and Subin were temporarily absent.

INTRODUCTION OF BILLS

SUBJECT: **Emergency Bill 15-00, Hearing Examiner - Amendments**

ACTION: Introduced Draft 3 of the subject bill sponsored by the Council President.

In response to questions raised by Councilmember Praisner, Mr. Faden clarified the differences between Draft 2 and Draft 3, the corrected version, of the bill.

CALL OF BILLS FOR FINAL READING

SUBJECT: Bill 3-00, Property Tax – Credit – Fire Sprinkler Systems

The Council had before it the memorandum and attachments from Senior Legislative Attorney Faden, dated June 6, 2000, on the subject bill.

Councilmember Praisner, Chair of the Management and Fiscal Policy (MFP) Committee, presented the report and recommendation of the Committee.

ACTION: Adopted the following amendments as reflected in the bill:

AN ACT to:

(1) allow a property tax credit for installation of certain fire sprinkler systems; and
(2) generally amend the law governing property tax credits for fire protection systems.

By adding

Montgomery County Code
Chapter 52, Taxation
Section 52-18J

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Chapter 52 is amended by adding Section 52-18J:

52-18J. Property Tax Credit - Fire Sprinkler Systems.

(a) A taxpayer may receive a one-time property tax credit against the general county tax for [[an improvement to residential real property]] any detached single-family dwelling unit and any attached dwelling unit or multi-family building in which a fire sprinkler system was not legally required to be installed, if an approved complete automatic sprinkler system that is used for fire protection is installed [[in the improvement and the installation is completed]] on or after July 1, 2000.

(b) For each [[improvement]] dwelling unit or multi-family building where a sprinkler system is installed, the credit must not exceed the lower of:

(1) the total cost of installing the sprinkler system; or

(2) 50% of the general county property tax attributable to the [[improvement]] dwelling unit or building [[where the sprinkler system is installed]].

(c) The Department of Finance must administer this credit.

(d) A taxpayer must apply for the tax credit in the year the sprinkler system is installed to receive the credit in that tax year or the next tax year. The taxpayer must:

(1) show that [[a complete automatic fire protection]] the installed sprinkler system [[was installed that]] complies with codes and standards established by the State Fire Prevention Commission and any applicable County building and fire safety codes, and

(2) document the cost to the taxpayer of the sprinkler system.

(e) The County Executive may adopt regulations under method (2) to implement this Section.

(f) The Executive must report annually to the County Council on the use of [[the fire sprinkler system property]] this tax credit.

ACTION: Enacted Bill 3-00, by a roll call vote.

The motion was made by the MFP Committee:

YEAS: Andrews, Berlage, Leggett, Silverman, Praisner, Denis, Ewing.
ABSENT: Dacek; Subin (temporarily) .

The Council recessed its Legislative Session at 10:21 A.M. and reconvened at 3:00 P.M.

SUBJECT: Emergency Bill 14-00. Landlord-Tenant Displacement Law – Extension

The Council had before it the memorandum and attachments from Mr. Faden, dated June 1, 2000, on the subject bill.

ACTION: Enacted Emergency Bill 14-00, by a roll call vote.

The motion was made by Councilmember Praisner:

YEAS: Andrews, Berlage, Silverman, Praisner, Denis, Ewing, Subin
ABSENT: Dacek; Leggett (temporarily).

SUBJECT: Bill 10-00. Collective Bargaining - Police – Sergeants

The Council had before it the memoranda and attachments from Mr. Faden, dated June 5 and 6, 2000.

Councilmember Andrews, presented the report and recommendation of the Committee.

Councilmember Silverman questioned whether the Committee had discussed the issue of effects bargaining, received any recommendations from Executive Branch Staff, or considered the statement in the Office of Legislative Oversight (OLO) Report 99-2 on the Police Department's Complaint Handling System that the Council look only at the effects bargaining provision in the law. Councilmember Andrews said that the Committee did discuss the options that were available but did not have a detailed discussion of effects bargaining.

Councilmember Silverman requested and received clarification from Mr. Faden on the Committee's recommendation to remove, as a mandatory subject of collective bargaining for the sergeants unit only, the effect on unit members of the exercise of management rights. Councilmember Silverman moved, duly seconded, a substitute motion to adopt the original intent of the bill as it relates to effects bargaining by incorporating the sergeants into the existing collective bargaining unit. The motion would create one police collective bargaining unit and give the sergeants the same rights as other officers equal in relation to effects bargaining. He said that there has been no information provided from Executive Branch Staff that suggests the effects bargaining currently in place for over fifteen years has created any significant impediments to the operation of public safety in the County. Referring to the OLO Report, he said that there is a recommendation that the Council should look at effects bargaining without any additional reference made on the issue. With respect to whether there should be one or two bargaining units, Mr. Silverman said that other surrounding jurisdictions have had one bargaining unit that includes sergeants and the "rank and file" and there is no evidence of any problems. He said that he believes his motion would create a more effective system by extending the existing bargaining rights to the sergeants in the Police Department.

In response to Councilmember Subin's request, Councilmember Silverman said that he would not amend his motion to divide the police collective bargaining unit into two separate units with effects bargaining. Mr. Subin spoke in opposition to the substitute motion but said that he could support two bargaining units with effects bargaining.

Councilmember Ewing spoke in support of Councilmember Silverman's substitute motion. With respect to the issue of one bargaining unit versus two, he said he could support either option if both units had effects bargaining. With respect to his question related to the Committee recommendation to not authorize collective bargaining by other police supervision (lieutenants and captains), Councilmember Andrews said that the intent of the original bill was to expand bargaining rights to sergeants. He said that the Executive Branch changed its position on authorizing collective bargaining for captains, and this influenced the Committee's decisions to not expand collective bargaining rights beyond sergeants at this time.

Councilmember Praisner spoke in support of the Committee recommendations. She said that the legislation as recommended does not prohibit nor mandate effects bargaining but does allow the option for latitude which she believes is a more equitable approach than the substitute motion which requires effects bargaining.

ACTION: Agreed to amend the bill by adopting the original intent as it relates to effects bargaining by incorporating the sergeants into the existing collective bargaining unit.

The substitute motion was made by Councilmember Silverman:

YEAS: Berlage, Silverman, Denis, Ewing.
NAYS: Andrews, Praisner, Subin.
ABSENT: Dacek; Leggett (temporarily).

Councilmember Berlage expressed appreciation to the Committee for its work on the legislation and spoke in support of the bill as amended. He said that the sergeants did not have collective bargaining rights and the bill as amended will provide the sergeants the opportunity to have their issues addressed during collective bargaining.

Councilmember Subin said that he does not support the bill as amended and spoke in support of dividing the police collective bargaining unit into two units.

ACTION: Adopted the following amendments as reflected in the bill:

AN ACT to:

(1) bring police sergeants within the scope of collective bargaining;
[[(2) divide the police collective bargaining unit into two bargaining units;]] [[and]]
[[(3) limit the scope of collective bargaining for members of the police sergeants bargaining unit;]] and
[[(4)]] (2) generally amend the law regarding collective bargaining with County police officers.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resource
Sections 33-76, [[and]] 33-78, and 33-80

[[By adding

Chapter 33, Personnel and Human Resource
Section 33-78A]]

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-76, [[and]] 33-78, and 33-80 are amended[[, and Section 33-78A is added,]] as follows:

33-76. Definitions.

When used in this Article:

* * *

Certified representative means an employee organization selected in accordance with [the procedures of] this Chapter to represent [the] a unit.

Employee means any police officer [in the classification of] classified as a sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, [and] or police officer candidate, or an equivalent nonsupervisory classification[s], but not [those] a police officer in [the classification of police sergeant or] any [equivalent or] higher classification. [[*Employee* does not include a sergeant whose primary duties involve human resources, internal affairs, legal matters, labor relations, or policy development and compliance.]]

Employer means the County Executive and [his] the Executive's designees.

* * *

Unit means [all employees] [[either of the units defined in Section 33-78A]] all employees.

33-78. Employee rights.

* * *

(b) The employer [shall have the duty to] must extend to the certified representative the exclusive right to represent the employees [[in that bargaining unit]] for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative [shall] must serve as the bargaining agent for all employees [[in the unit for which it is certified]] and [shall have the duty to] must represent fairly and without discrimination all employees [[in that unit]] without regard to whether the employees are [or are not] members of the employee

organization, [or are paying] pay dues or other contributions to it, or [participating] participate in its affairs. [; provided, however, that it shall not be deemed] However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

[[33-78A. Bargaining units.]]

[[For purposes of certification and collective bargaining, employees subject to this Article must be divided into 2 bargaining units, composed of the following employees:

(1) sergeants:

(2) all other covered employees.]]

33-80. Collective Bargaining.

(a) **Duty to bargain; matters subject to bargaining.** [[Upon certification of an]] A certified employee organization[[, as provided in section 33-79,]] and the employer [[and the said certified representative shall have the duty, through their designees, to]] must bargain collectively [[with respect to those]] on the following subjects [[as follows]]:

* * *

(7) The effect on employees of the employer's exercise of rights [[enumerated]] listed in subsection (b) [[hereof]][[, but this paragraph does not apply to the bargaining unit composed of sergeants]].

* * *

ACTION: Enacted Bill 10-00, as amended, by a roll call vote.

The motion was made by the MFP Committee, as amended:

YEAS: Andrews, Berlage, Leggett, Silverman, Denis, Ewing
ABSTAIN: Praisner
NAYS: Subin
ABSENT: Dacek.

The meeting adjourned at 3:25 P.M.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Elda Dodson, Deputy Clerk

Bill No. 10-00
Concerning: Collective Bargaining - Police - Sergeants
Revised: 6-6-00 Draft No. 6
Introduced: March 14, 2000
Enacted: June 6, 2000
Executive: June 19, 2000
Effective: September 18, 2000
Sunset Date: None
Ch. 16, Laws of Mont. Co. 2000

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing

AN ACT to:

(1) bring police sergeants within the scope of collective bargaining;
[[(2) divide the police collective bargaining unit into two bargaining units;**]] [[**and**]]**
[[(3) limit the scope of collective bargaining for members of the police sergeants bargaining unit;**]]** and
[[(4)**]]** (2) generally amend the law regarding collective bargaining with County police officers.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resource
Sections 33-76**, [[**and**]]** 33-78**,** and 33-80

[[By adding
Chapter 33, Personnel and Human Resource
Section 33-78A**]]**

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When used in this Article:

* * *

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Employee means any police officer **[**in the classification of**]** classified as a sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, **[**and**]** or police officer candidate, or an equivalent nonsupervisory classification**[**s**]**, but not **[**those**]** a police officer in **[**the classification of police sergeant or**]** any **[**equivalent or**]** higher classification. **[[***Employee* does not include a sergeant whose primary duties involve human resources, internal affairs, legal matters, labor relations, or policy development and compliance.**]]**

Employer means the County Executive and **[**his**]** the Executive's designees.

* * *

Unit means **[**all employees**] [[**either of the units defined in Section 33-78A**]]** all employees.

33-78. Employee rights.

* * *

(b) The employer **[**shall have the duty to**]** must extend to the certified representative the exclusive right to represent the employees **[[**in that bargaining unit**]]** for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative **[**shall**]** must serve as the bargaining agent for all employees **[[**in the unit for which it is certified**]]** and **[**shall have the duty to**]** must represent fairly and without discrimination all employees **[[**in that unit**]]** without regard to whether the employees are **[**or are not**]** members of the employee organization**, [**or are paying**]** pay dues or other contributions to it**,** or **[**participating**]** participate in its affairs**. [**; provided, however, that it shall not be deemed**]** However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

[[33-78A. Bargaining units.]]

[[For purposes of certification and collective bargaining, employees subject to this Article must be divided into 2 bargaining units, composed of the following employees:

(1) sergeants;

(2) all other covered employees.**]]**

33-80. Collective Bargaining.

(a) **Duty to bargain; matters subject to bargaining. [[**Upon certification of an**]]** A certified employee organization**[[**, as provided in section 33-79,**]]** and the employer **[[**and the said certified representative shall have the duty, through their designees, to**]]** must bargain collectively **[[**with respect to those**]]** on the following subjects **[[**as follows**]]**:

* * *

(7) The effect on employees of the employer's exercise of rights **[[**enumerated**]]** listed in subsection (b) **[[**hereof**]][[**, but this paragraph does not apply to the bargaining unit composed of sergeants**]]**.

* * *

Approved:

/S/ 6/7/00

Michael L. Subin, President, County Council — Date

Approved:

/S/ 6/19/00

Douglas M. Duncan, County Executive — Date

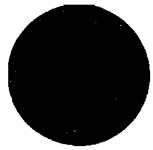
This is a correct copy of Council action.

/S/ 6/19/00

Mary A. Edgar, CMC, Clerk of the Council — Date

Bill 10-00





FRATERNAL ORDER OF POLICE

Montgomery County Lodge 35, Inc.

032559

June 2, 2000

End in file

00 JUN 2 A10 : 13

RECEIVED COUNCIL

Honorable Derick Berlage
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Bill 10-00 *Collective Bargaining - Police Sergeants*

Dear Mr. Berlage:

Again, on behalf of Lodge 35 and its members, including police sergeants, I want to thank you and the co-sponsors of Bill 10-00 for supporting the sergeants collective bargaining bill, legislation which you appropriately indicated is long overdue.

As stated in prior correspondence and statements before the MFP Committee, police sergeant collective bargaining is very common in Maryland and throughout the country. Similarly, the inclusion of police sergeants and even lieutenants within the same bargaining unit, or under the same collective bargaining agreement, is an established practice.

Unfortunately, the major issues are being distorted by the irrational objection of the administration to so-called "effects bargaining." This distraction must, we feel, be addressed head-on to avoid future controversy, litigation, and misperception. Moreover, "effects bargaining" has been used as a red herring by our opponents.

The stated purpose of the Police Labor Relations Act ["PLRA"] is "to promote a harmonious, peaceful and cooperative relationship between the county government and its police employees and to protect the public by assuring, at all times, the responsive, orderly and efficient operation of the police department." The law further recognizes that "[s]ince unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur." PLRA § 33-75.

We have honored this public policy and, indeed, since April 1982 when the current law was enacted, there have been no job actions by police officers; no picketing; no slowdowns; and no other actions that impaired our ability to serve the public. This is a significant tribute to a thoughtfully crafted law that was the result of hard work by the County Council, the Gilchrist Administration, and Lodge 35.

18512 Office Park Drive Montgomery Village, MD 20886

(301) 948-4286 • FAX (301) 590-0317

Our law was the first collective bargaining law enacted in Montgomery County. It includes specific reference to "effects bargaining." On the other hand, the County Employees and Firefighter laws do not make such specific reference, but those laws do indeed require "effects bargaining."

It is because the older Police law makes specific statutory reference to "effects" that there is been very little litigation or dispute over the issue. In contrast, the newer County Employees law has been clarified through dispute and litigation. Indeed, MCGEO has had to file more Unfair Labor Practices Charges since their law was enacted in 1986 than has the FOP under the PLRA enacted in 1982.

It is in the spirit of resolving this issue here and now, rather than later, that we present the following for Council review and consideration.

EFFECTS BARGAINING

One of the bedrock concepts in American labor relations jurisprudence is "effects bargaining." Effects bargaining is basic to the practice of collective bargaining in practically every jurisdiction. It is a necessary component of the exercise of "management rights" both in the public and private sectors.

The National Labor Relations Board [NLRB] in its landmark decision *Ozark Trailers, Inc.*, 161 NLRB 561, 63 LRRM 1264, 1266 (1966) cited to earlier precedent in defining this concept, and explained that even when an employer is undertaking a managerial decision, such as the decision to completely shut down operations - perhaps the most fundamental management right of all:

> an employer is still under the obligation to notify the union of its intentions so that the union may be given an opportunity to bargain over the rights of the employees whose employment status will be altered by the managerial decision.

This duty cannot be neatly limited to a specified list of subject areas or scenarios. As Hill and Sinicropi explain in their often-cited text *Management Rights*, (BNA Books, 1989) at p. 412:

> The courts have not limited the scope of effects bargaining to a specific list of subjects. All aspects related to that decision may be encompassed in the broad scope of effects bargaining.

Indeed, as the NLRB has often recognized:

> The effects are so inextricably interwoven with the decision itself that bargaining limited to effects will not be meaningful if it must be carried on within a framework of a [management] decision which cannot be revised. An interpretation of the law which carries the obligations to 'effects,' therefore, cannot well stop short of the decision itself which directly affects 'terms and conditions of employment.'

Ozark Trailers, *supra*, at p. 1269. This iron link between the exercise of any management right and the duty to bargain how that exercise is to be effectuated is not set out in the text of the Federal Labor Management Relations Act, 29 U.S.C. §151 *et seq.* (LMRA). The LMRA merely requires that private sector employers "meet at reasonable times and c&a2661H"management rights" and "effects bargaining"

arise inexorably from the process of defining the frontier between what constitutes "wages, hours, and other terms and conditions of employment," and what subjects lie outside the duty to bargain.

The propriety of the concept of "effects bargaining" was approved by the U. S. Supreme Court in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). There, the Court said:

> [B]argaining over the effects of a [managerial] decision must be conducted in a meaningful manner and at a meaningful time....[The union] has some control over the effects of the decision and indirectly may ensure that the decision itself is deliberately considered.

452 U.S. at 682.

The twin concepts of "management rights" and "effects bargaining" have continued to be applied in public sector collective bargaining throughout the United States. Pursuant to the Civil Service Reform Act of 1978, employees of the Federal Government were granted collective bargaining rights. While the parameters of those rights are somewhat different than for the private sector (e.g. Federal employees are not permitted to strike), the basic concepts remain the same. As the U.S. Court of Appeals for the District of Columbia observed in *Dept. of Defense v. FLRA*, 659 F.2d 1140 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 945 (1982):

> Even with regard to reserved management rights, the Act authorizes collective bargaining over the 'procedures which management officials of the agency will observe in exercising [their] authority....'

Thus, "effects bargaining" is also described as the duty to bargain over the procedures for implementing a managerial decision.

The same concepts have also been applied in Montgomery County collective bargaining laws, whether or not the County statute specifically includes a detailed guide to effects bargaining. The County Collective Bargaining Law, § 33-101, *et seq.*, Mont. Co. Code, 1994, and the Fire and Rescue Collective Bargaining Law, § 33-147, *et seq.*, Mont. Co. Code, 1994, do not include the general reference to effects bargaining found in the County's Police Labor Relations Act at § 33-80(a)(6). Nevertheless, "effects" or "procedural implementation" bargaining have been determined to be a necessary concomitant to the subjects of bargaining outlined in the County Collective Bargaining Law at § 33-107(a).

In *Montgomery County Government v. MCGEO-UFCW Local 400*, Case 90-1, the Montgomery County Labor Relations Administrator (LRA) determined that four bargaining proposals by MCGEO regarding contractual procedural regulation (by the use of seniority) of the County's implementation of the management rights to transfer, promote, fill vacancies, and assign overtime are "legal" proposals under County law. In reaching that decision, the LRA reviewed major precedents in state and local public sector bargaining affirming the concepts of effects bargaining. In that case, even the County conceded some of the basic premises of effects bargaining. The LRA noted:

> In any event, the County's position throughout has been that it is legal and appropriate to entertain and discuss 'seniority' proposals, and to agree to same, when it is 'post-decisional' i.e. after the County decides that services and operating efficiencies are not substantially impaired....
>
> The four proposals as written do not violate the County's prerogatives. The County concedes that the proposals fall within the general definition of 'conditions of employment' under [the statute] ... and since seniority matters are of fundamental concern to employees, the County violated the statute by failing to bargain.

This decision brings us full circle to the premise enunciated by the Supreme Court in *First National Maintenance, supra*: "[The union] has some control over the [managerial] decision...."

As we have referenced, the Police Labor Relations Law includes at Section 33-80(a)(7) the duty to bargain:

> The effect on employees of the employer's exercise of rights enumerated in subsection (b) hereof.
>
> Section 80(b) lists management rights under the PLRA.

Whether or not such a provision were to be included in any collective bargaining legislation covering police supervisors or other County employees not presently covered by a collective bargaining unit, the concept of "effects bargaining" is so deeply ingrained in American labor relations jurisprudence, that any statute directing collective bargaining regarding any subjects traditionally included within the concept "wages, hours, and other terms and conditions of employment" necessarily includes effects bargaining.

During the 18 years of the parties' experience with the PLRA, there have been few if any formal controversies regarding the scope of proper subjects of bargaining. This excellent experience has been fostered by the detailed clarity of the bargaining duty under the PLRA. Removal of the specific reference to effects bargaining from any future law would simply raise the possibility that sergeants, through their union, will have to clarify that such bargaining is required through litigation, such as occurred shortly after the promulgation of the County Collective Bargaining Law in 1996.

LAW SHOULD BE CONSISTENT

A problem with exclusions of specific reference to "effects bargaining" is that two groups of police employees will be bargaining under different statutes. This is akin to a football game where one team plays under NFL rules and the other plays under Canadian Football League [CFL] rules. Clearly, confusion and disputes will result.

Moreover, established legislative terms and understandings will be disputed and a new law will need to be defined through dispute resolution mechanisms and litigation. This is not in the larger interest of the sound public policy articulated at § 33-75.

The PLRA represents a balance of the interests between Management and the Union. American labor law has evolved over scores of years as a result of the struggles of employees to achieve democracy in the workplace on the one hand, and management to hold onto what it perceives as its "prerogatives."

It is out of respect for the manner in which the PLRA was drafted in response to a Citizen Initiative that Lodge 35 has not sought to expand the scope or parameters of the PLRA beyond the inclusion of sergeants under the same law. (We were honest and open with the 1982 Council and Executive, as well as political candidates since that time, that we intended to continue to push for inclusion of sergeants.) Unfortunately, the Duncan Administration has exploited this legislation and the OLO study of the police complaint system to attack an established law.

"EFFECTS BARGAINING" IS WIDELY MISUNDERSTOOD

"Effects bargaining" has been blamed for all sorts of perceived evils unrelated to the concept. Interestingly, the department issues internal directives regularly. Very few of those directives involve bargaining. Those that do, generally address mandatory bargaining, not effects. For instance, directives and policies on arrest procedures, enforcement priorities, district boundaries, crime reporting, selective enforcement, issuance of citations, jurisdiction, department organization, search and seizure, prisoners and fugitives, community services, and public relations rarely result in bargaining of any kind. And when they do, bargaining is limited to small and specific portions that involve working conditions.

Part of the confusion has been the result of Contract Article 61 *Directives and Administrative Procedures*. That Article requires that "[n]egotiable matters pertaining to administrative procedures, department directives, and rules referenced in this agreement . . . are subject to addition, change, amendment, or modification, only after specific notice is provided to the union with an opportunity to bargain and after the parties reach agreement. If no agreement is reached, the addition, change, amendment, or modification shall not be implemented." The Article further provides that

"[c]hanges to directives, rules and procedures not enumerated in th[e] agreement, or the effects on employees of the employer's exercise of a management right as enumerated in Article 42 § A, which involve matters appropriate for collective bargaining will be proposed by the County to the Union for bargaining. Thereafter, and before implementation, bargaining and agreement shall occur. Failing agreement, the dispute will be resolved pursuant to the impasse procedures . . . of Chapter 33, § 33-81(b) of the Montgomery County Code."

This Contract Article simply affords the County flexibility to seek change without waiting for bargaining on a successor (or term) contract. An analogy to the County's budget process might be appropriate.

In March of each year the Executive submits a recommended budget to Council. Council spends considerable time analyzing and questioning the recommendation. By law, a date is set for approval of the budget that becomes effective on July 1.

Should the Executive desire to amend or supplement the budget after July 1, s/he must follow certain procedures and submit the request to Council. As you well know, certain requests are barred until after January 1. Charter § 307. Emergency appropriations to meet specific circumstances can be made at any time. Charter § 308. In both cases, public notice is required. These charter provisions apply to all county agencies, including public safety.

Council will deliberate and discuss these supplemental budget requests. Year after year, we read of the Executive's expressed frustration with Council for doing its job. Executives have accused Council of micro-managing, interfering, endangering public safety, etc. The rhetoric goes on year after year, budget after budget. Such is the nature of our democratic form of government.

Like the budget process, the term bargaining process takes place at certain times. Contracts last for not less than one, nor more than three years. In November, we commence the process. If no resolution is reached by January 20, impasse reached. All issues must be resolved by February 1 and portions of the Agreement requiring Council action must be submitted as part of the Executive's Recommended Budget. By May 1, the Council must indicate its intent to accept or reject all or any portion of the agreement. If any portion is rejected, the parties enter into a process for resolution. The contract becomes effective on July 1.

Therefore, for purposes of our analogy, term bargaining is like the annual budget process. Interim bargaining under Article 61 and "effects bargaining" is like supplemental budget requests.

Both the budget and bargaining processes require deliberation and review by the parties, neither interferes with the efficient and effective delivery of essential public services. Both are subject to complaints by the Executive!

In this regard, management is critical of Lodge 35 for its thorough analysis of issues submitted for bargaining, saying this is time-consuming. Like legislatures and good business in all segments of our society, all parties have a duty to be thorough. We do not take our obligations lightly.

Another recent management complaint has been the delay in bargaining "effects" and non-effects issues midterm in the contract. Both sides have been responsible for delay in various matters. If this is a concern of either management or the union, either is free to require the other to bargain through established procedures, e.g. Charge of Prohibited Labor Practice.

Penultimately, it must be restated that the Police Complaint Process study that brought this issue to the forefront of attention is mostly unrelated to any collective bargaining. The investigation of most complaints against police officers, and all complaints alleging excessive use of force, is governed by the Law Enforcement Officers' Bill of Rights. Article 27, § 727, *et seq.* of the Annotated Code of Maryland.

That law affords police officers certain procedural rights in investigations, including the right to ten (10) days to obtain representation before being subjected to questioning of the officer concerning his/her conduct. Hence, no matter how serious the allegation, the officer has ten days after notification to make a statement, but management frequently postpones asking for that statement, thereby delaying the process. But, as stated, this is state law, not collective bargaining.

Management complains of this law and says, that because of "effects bargaining" it can't engage in corrective action to prevent inappropriate conduct. Our response is simple: In the very few cases where this has been at issue, we demanded due process for our members and management tried to deny that due process notwithstanding the constitution and Personnel Regulations Section 3.2 *Due Process*. Management can submit a proposal to bargain, but hasn't. To say that "effects bargaining" is at the root of all evil is disingenuous at best. (Even management touts the low number of complaints relative to the amount of police activity.)

I further note that it has been those areas where the LEOBR or an unfettered management right applies that have been the subject of most criticism. The Department of Justice was falsely told by police management that FOP Lodge 35 delayed the disciplinary process and Lodge 35 provided proof that it did not. DoJ found many management, not FOP, deficiencies and the recently signed Agreement with DoJ preserved all contract and PLRA rights while requiring changes in certain management (not FOP) practices.

In sum, this 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.

Our law, unlike the other County bargaining laws, sets forth by statute what others have had to define through litigation. Our job as police officers is a tough one. The public is better served when we negotiate according to statute than when we litigate over it.

Our goal is to avoid continuing controversy, not to create it. We therefore urge Council to include sergeants in the bargaining unit under the law that has existed for 18 years.

We look forward to working with you, the MFP Committee, and full Council on this most important legislation.

Sincerely,

Walter E. Bader
President

Enclosures (Reference material; MCGEO ULP Case 90-1)

cc: Mr. Andrews, Lead, MFP
Mrs. Dacek
Mr. Denis
Mr. Ewing
Mr. Leggett
Mrs. Praisner, Chair, MFP Committee
Mr. Silverman
Mr. Subin, President

BEFORE THE MONTGOMERY COUNTY
MARYLAND
LABOR RELATIONS ADMINISTRATOR

In the Matter of a Charge of Prohibited Practices filed Against MONTGOMERY COUNTY GOVERNMENT -and- SIDNEY KRAMER, Montgomery County Executive Charged Parties and MONTGOMERY COUNTY GOVERNMENT EMPLOYEES ORGANIZATION A Division of UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 400 Charging Party	Case No. 90-1

Joseph A. Sickles
Labor Relations Administrator

Appearances:

For the Charging Party:	William W. Thompson II Gino Renne
For the Charged Party :	Sharon Burrell Linda D. Berk

DECISION ON REMAND

BACKGROUND

On or about February 16, 1990, the Montgomery County Government Employees Organization, a division of United Food and Commercial Workers, Local 400 (herein "union") submitted to the Labor Relations Administrator (herein "LRA") a charge of prohibited practices, asserting that the Montgomery County Government and

Sidney Kramer, Montgomery County Executive (herein "County") refused to respond to four (4) union demands during the last collective bargaining negotiation sessions.

Subsequent to compliance with the requirements of the Montgomery County Collective Bargaining Law (Article VII, Section 33-101 et seq) the Collective Bargaining Regulations and Procedures (# 43-89, Effective January 11, 1990) and the Administrative Procedure Act, hearings were conducted on March 28 and 29, 1990 and a 151 page verbatim transcript of proceedings was compiled.

Both parties submitted Briefs on or about April 23, 1990, and after full consideration of all items of record, the LRA issued a Decision and Order on July 25, 1990 sustaining the charge.[1]

On August 21, 1990 the County filed an Order For Appeal and Petition on Appeal in the Circuit Court for Montgomery County, Maryland (herein "Court"). The County alleged that the 7/25/90 decision is arbitrary and capricious, violates the Montgomery County Charter and Montgomery County Code, is contrary to policy and standards for merit system employees, and is not supported by law or the evidence on the record. The County requested the Court to reverse the Decision and Order and to rule that the County is not required to bargain with the union over proposals which violate its rights as set forth in Montgomery County Code sec. 33-107(b).

On September 21, 1990, the union submitted an Answer and Motion to Dismiss the Appeal.

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[1] No purpose is served in repeating the contents of The July 25, 1990 Order and Decision at length in this document, but excerpts will be cited herein as "7/25/90 decision"

Subsequent to Court proceedings, a June 14, 1991 Order was issued by the Court remanding the matter to the LRA.

The LRA received the record from the Court on August 8, 1991.

COURT'S ORDER

The June 14, 1990 Order of the Court (Case No. 63381) stated that the issue before the LRA in the charge was "... whether or not the four seniority proposals presented by [the union] in the parties' negotiations for the contract for the years 1990-93 are bargainable." (Paragraph 1)

The Court noted that: "In order to be bargainable, the four seniority proposals, if agreed to, must be capable of being included in the parties' collective bargaining agreement." (Paragraph 2) and the Court held that: "The Labor Relations Administrator erred in not deciding the issue presented to him." (Paragraph 3)

The Court Ordered:

> 1. That the decision of the Labor Relations Administrator is vacated on the grounds that his decision that the Appellants had committed a prohibited practice was based on a finding that the general subjects in issue fall within the duty to bargain, instead of a finding as to whether the proposals as written could be agreed to without violating the collective bargaining law.
>
> 2. That the matter be remanded to the Labor Relations Administrator who is directed to use whatever means necessary to decide the following issue:

QUESTION AT ISSUE

The specific issue mandated by the Court is:

> Are the four seniority proposals, as presently written, legal or illegal under Montgomery County Code, sec. 33-107?

DISCUSSION

The Four seniority proposals presented by the Union on November 9, 1989 for the parties' negotiation of the 1990-1993 contract are:

> Article 5.9 OVERTIME: Overtime work shall be voluntary. There shall be no discrimination against any employee who declines to work overtime. When there are no volunteers in the event of an emergency, the employee with the least seniority shall be required to perform the overtime duty. Work schedules for members of the bargaining unit shall not be changed for the purpose of avoiding overtime.
>
> Article 9 WORKING CONDITIONS: 9.3 (a) Change last sentence to read: Employees covered under this agreement shall have first preference to fill such job openings in accordance with their seniority, within the highest rated category.
>
> Article 23 TRANSFER: 23.3 (b) Change to read: Transfers shall be done on the basis of seniority. senior employees desiring a transfer shall be offered the first available position for which they are qualified.
>
> Article 24 PROMOTION: 24.2 delete last sentence and replace with: Promotions shall be made in accordance with seniority with the most senior qualified candidate receiving the job.

In the 7/25/90 LRA decision, the Questions at Issue was framed in a broader sense than the question remanded by the Court[2] and the ultimate decision, which answered that question in the

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[2] "Are the four demands....matters subject to bargaining...? (Underscoring supplied)

affirmative, deliberately refused to make a narrow determination that the four proposals, as written could be included in the collective bargaining agreement[3] in an effort to follow the dictates of the County Statute that I provide for an "...effective implementation and administration of this article concerning ...prohibited practices..." (Article VII, Section 103 [a]) and issue a remedial order which would best "...remedy the violation..." (Article VII, Section 33,109 [d]) and at the same time not further polarize the parties into their position but rather permit continuance of free collective bargaining between the parties as is recognized and preferred in the statute. Nonetheless, the Court in its wisdom has remanded the matter to me to make a definitive determination of whether four seniority proposals, as presently written, are legal or illegal under the Montgomery County Code, Sec 33-107.

I find that the four proposals are capable of being included in the parties' collective bargaining agreement if agreed to and, as presently written, they are legal under Montgomery County Code, Sec 33-107.

Article VII, Sec 33- 107 (b) specifically limits the matters which are conditions of employment subject to bargaining under 107(a) and neither the statutory Article nor an agreement made

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[3] "While it may be, and the undersigned makes no determination in this regard, that the proposals, as now written could not be agreed to without violating Article 33, Section 107 (b), at the same time topics of overtime, filling of vacancies, transfers and promotions, as well as the topic of seniority itself cannot be so odious as to fall outside of the definition of 'working condition' and thus I find a duty to bargain." Page 23 7/25/90 decision

under it shall impair the right and responsibility of the employer to perform the following:

> (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.
>
> (9) Transfer, assign and schedule employees

One could suppose that a bland reading of the proposals and a cold comparison with the statutory language might lead a reader to question inclusion in the agreement. But that is not the true test.

In Beloit Education Assn. v. WERC, 73 Wis. 2d 5, 242 N.W. 2d 231 (1976) the Wisconsin Supreme Court considered a state statute requiring public employers to meet and confer regarding conditions of employment. There were restraints in that statute similar to those here under review and the school Board had resisted negotiating in certain areas because of "school management and educational policies". The Court held that matters fundamentally, basically or essentially a wage, hour or condition of employment are required to be bargained. Considering a question of layoff by seniority the lower court had discussed a clarification and modified the commission's holding to require a "reasonable clarification" to that effect be inserted in the collective bargaining agreement if proposed by the school board. The Court noted at 242 N.W. 2d 231, 239:

> As so clarified and modified, the proposals stop well short of invading the school board's right to determine the curriculum, and to retain, in case of layoff, teachers qualified to teach particular subjects in such curriculum. As so limited and modified, the proposal, we hold, is one primarily related to "wages, hours and conditions of employment" and hence required to be bargained.[4]

See also Minneapolis Federation of Teachers, Local 59 v. Minneapolis Special School District # 1 258 N.W. 2d 802 wherein a declaratory judgment was sought to compel bargaining on transfer procedures as a mandatory topic under a meet and confer statute. The trail court had found that teacher transfers were a matter of inherent managerial policy (excluded by law from being a mandatory subject of bargaining) but the Supreme Court reversed. It noted at 258 N.W. 2d, p. 805:

> There is no doubt the decision to transfer a number of teachers is a managerial decision. The criteria for determining which teachers are to be transferred, however, involves a decision which directly affects a teacher's welfare and enters into a field which we hold is in fact negotiable.

The New Jersey Supreme Court held that there is no danger of a merit system being injured when only qualified employees are included in the proposal concerning layoffs, recalls, bumping etc. by seniority dictate. State of New Jersey v. Supervisory Employees' Assn. Local 195 IFPTE and Local 518, SEIU, 393 A 2d 233[5]

The record is singularly clear in this case that the Union

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[4] See also cases cited in footnotes 9,10,11 and 12 of the Court's decision.

[5] The Court did not compel bargaining based upon another statute dealing with a statutory seniority crediting system, which is not pertinent here.

clarified, at the bargaining session, that its proposals only referred to qualified individuals, and in fact the last three proposals specifically relate to qualification and it is implicit in the first proposal even if clarification had not been made. The entire bargaining history of these two parties can not permit of any conclusion other than a clear understanding by the County that the Union was always willing to accept the County's qualification determinations.

Union negotiator, Renne, testified as to the County's counter-proposals during the 1986 negotiations and the fact that the Union conceded that the County made qualification determinations. (See TR 67, et seq: 3/29/90). In 1990-1991, the County made no counter-proposals to the four proposals, but at one point the County asked who made qualification determinations. The Union "...again emphatically responded that obviously, you're the employer, you would determine qualifications." (TR 73, 3/29/90) See also the discussion at TR 89, 3/29/90:

> Q. Now, regarding the determination of who are qualified for a transfer or promotion, how is that determination made?
>
> *** *** *** ***
>
> Mr. Sickles: Isn't it conceded that the Management does?
>
> Mr. Thompson: Yeah, we've been trying to trumpet that through this whole proceeding.
>
> Ms. Burrell: I have no further questions.

The County's EEO officer reviews potential vacancies and promotions and may designate a position for "affirmative action consideration." Neither overtime nor transfers are covered by the

EEO considerations (TR 70, 3/28) and the County concedes that the Union stated at negotiation sessions, and continues to insist, that its proposals were in no manner to be construed as disturbing any EEO goals. See TR 66, 3/28/90: TR 73, 3/29/90.

It is interesting to note that the County did respond to allegedly non-negotiable proposals during the 1986-87 bargaining. See Page 19 of the County's April 23, 1990 Brief to the LRA:

> The Union was not aware when it offered its initial proposals that the County would assert that proposals which include seniority as a standard for personnel actions are non-negotiable. Therefore, in good faith, the County offered negotiable counterproposals so that the parties could enter into an agreement which provided for all matters subject to bargaining. (See testimony of James Torgeson, Transcript, Vol. II, p. 88)

See also TR 104-105, 3/28/90

But in the 1990-1993 negotiations, the County asserted non-negotiability under 107 (b), alleging impairment of management rights and responsibilities under the statute, and it apparently waited for the Union to modify its proposals or offer counterproposals. See Page 2, County's April 23, 1990 Brief to the LRA and TR 31, 3/28/90 [6]

In any event, the County's position throughout has been that it is legal and appropriate to entertain and discuss "seniority" proposals, and to agree to same, when it is "post decisional" i.e.

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[6] The County also objected to a fifth 1989 proposal which had overtones of seniority as it related to leave and vacation scheduling. During the mediation stage, the County responded to the Mediator's request for counterproposal language and finally the parties agreed to section 14.7 of Exhibit Q. After the County determines service and operating efficiency matters, vacation preferences are honored on a seniority basis.

after the County decides that services and operating efficiencies are not substantially impaired. The County insists that it must make the initial and basic decision of need, and then, if it merely becomes a question of which employee "gets off (in a leave situation, for example) that question may properly be decided solely on a seniority basis.(See TR 35, 3/28)

I find that the four Union proposals at issue, as written, and surely as clarified and/or explained at the bargaining table, and (as noted previously) fully understood by the County during the negotiating sessions are no less "post decisional" than other proposals and agreement provisions not found to be odious, illegal or statutorily restrictive by the County.

The County feels that the selection of the least senior person to work overtime might result in the designation of a person it did not want (TR 26, 3/28/90) and it could result in promotions and/or transfers of persons when a particular supervisor desired someone else. But, as long as the employee summoned for overtime work is qualified to do the job (a management decision) and/or the person promoted, transferred or assigned to a vacancy is qualified to perform the task, as decided solely by management, a seniority preference system is as 'post decisional" as the identity of the person who is on leave or vacation at a given time, or the identity of the employee who drives a particular Ride-On bus route.

Surely the designation which is made only after the County finds a need for overtime and/or finds it appropriate to transfer, promote or fill a vacancy (post decisional) and is made only from

those the County has deemed to be qualified (and/or fall within the highest rated category designated by the County) does not run afoul of Section 107 (b). A reasonable reading of section 107 (b) does not suggest that it would impair any of the enumerated rights and responsibilities. In short, the employer still decides the structure, methods, means, job classifications, etc. and chooses its basic personnel at its designated facilities. It has not abandoned direction or supervision of employees nor is hiring compromised. It still selects and establishes the standards governing promotions, still classifies positions and still makes the initial unilateral determination that qualified employees are to be transferred, assigned, etc.

The four proposals as written do not violate the County's prerogatives. The County concedes that the proposals fall within the general definition of "conditions of employment" under 107 (a) and since seniority matters are of direct fundamental concern to employees, the County violated the statute by failing to bargain.

DECISION

The four seniority proposals, as presently written, are legal under Montgomery County Code, sec 33-107.

Joseph A. Sickles
Labor Relations Administrator
Montgomery County, Maryland

August 27, 1991

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MONTGOMERY COUNTY, MARYLAND and NEAL POTTER, Plaintiff	:	
v.	:	Civil No. 81020
MONTGOMERY COUNTY GOVERNMENT EMPLOYEES ORGANIZATION AKAS: UFCW LOCAL 400 AFL-CIO, Defendant	:	

Rockville, Maryland

July 2, 1992

WHEREUPON, proceedings in the above-entitled matter commenced,

BEFORE: THE HONORABLE J. JAMES McKENNA, Judge

APPEARANCES

FOR THE PLAINTIFF:

SHARON V. BURRELL, ESQ.
101 Monroe Street
Rockville, VA 20850

FOR THE DEFENDANT:

WILLIAM W. THOMPSON II, ESQ.
1025 Connecticut Avenue, NW, 307
Washington, DC 20036

P R O C E E D I N G S

July 2, 1992

PARTIAL TRANSCRIPT

THE COURT: I want to thank the lawyers for a well argued and a well briefed issue. It is nice, it is kind of a pleasure. I don't know about you, but I was enjoying this this morning. I don't always enjoy myself up here, so I appreciate it, with both of you.

Now, I think that the first thing that I have to kind of touch upon is the question of whether or not this is purely a legal issue; thus, if that be the case, that I can chuck out any notions of being deferential to the LRA.

I think that the better of the two arguments on it is that it is a mixed question of law and fact. I am loathed to say that it was a total exercise in futility to have gone through the two days of hearings and taking of testimony that occurred before the LRA and just simply dismiss that with a wave of the hand. I think that it was absolutely necessary in order to come to some kind of a conclusion with regard to it.

I do accept the distinction that is made by the union in this case as to, first, the -- well, the phraseology that I might use is maybe a little bit different, but essentially that when the superstructure of the event that is to occur, whatever it is, is provided for

by the County, once that is accomplished, that the then carrying out of that becomes an item that is negotiable and should come within the bargaining between the parties, and I am satisfied, having read the briefs and hearing argument, that the superstructure is in place and has been placed in place by the County, the County has all of the -- or a great number of the cards which it can play before it ever gets to a situation where any one of these proposals by the union would trigger in, and that really what has occurred here, what the union is seeking to do, is to have a discussion in the bargaining process, pursuant to 33-107, both a and b.

This is by way of saying and underscoring what the LRA did. I will accept that this particular fellow is a nationally recognized man. I have no reason to think otherwise, and if counsel says so, I will accept that, as he being an officer of the court, and I feel that under these circumstances, since it is a mixed question of law and fact, I must -- this court must give great deference, or at least some deference to his findings of fact with regard to all these matters; therefore -- and the only issue that he was asked to address, this last go-round, was the question of legality or nonlegality of the proposals. He found that they were legal. In this context, the question of legality or nonlegality, as lawyers at least know and I have come to know, is a word of art and that implicit in what the LRA did

was to find that these issues were legal and that they, therefore, are a fortiori bargainable and come within the terms of items under 33-107. Therefore, I will affirm the findings of the LRA and that will be the end of it.

I do want to thank you again for well written and well argued briefs. Thank you very much.

(Whereupon, the court's ruling in this matter was concluded.)

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, March 20, 2001 Rockville, Md.

The County Council for Montgomery County, Maryland convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:55 A.M. on Tuesday, March 20, 2001.

PRESENT

Blair G. Ewing, President	Steven A. Silverman, Vice President
Phil Andrews	Isiah Leggett
Nancy H. Dacek	Marilyn J. Praisner
Howard A. Denis	Michael L. Subin

ABSENT

Derick Berlage

The President in the Chair.

SUBJECT: Approval of Legislative Journal

Approved the journals of February 27 and March 6, 2001.

The motion was made by Councilmember Andrews. Councilmember Berlage was absent.

INTRODUCTION OF BILLS

SUBJECT: Bill 12-01. Germantown Recreational Park – Golf Driving Range Lease

ACTION: Introduced Draft 1 sponsored by the Council President at the request of the Maryland-National Capital Park and Planning Commission.

SUBJECT: **Bill 13-01, Collective Bargaining – Fire/Rescue Employees**

ACTION: Introduced Draft 1 sponsored by the Council President at the request of the County Executive.

The meeting adjourned at 10:00 A.M.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Mary A. Edgar

Bill No. 13-01
Concerning: Collective Bargaining – Fire/Rescue Employees
Revised: 3/15/01 Draft No. 1
Introduced: March 20, 2001
Enacted: July 17, 2001
Executive: July 30, 2001
Effective: October 29, 2001
Sunset Date: None
Ch. 15, Laws of Mont. Co. 2001

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

(1) include certain fire/rescue lieutenants and captains in the bargaining unit with certain fire/rescue employees for the purpose of collective bargaining; and
(2) generally amend the law regarding collective bargaining for fire/rescue employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-148 and 33-151

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-148 and 33-151 are amended as follows:

33-148. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(2) **Certified representative** means an **employee** organization chosen to represent the **unit** as the exclusive bargaining agent **[**in accordance with**]** under this Article or Article VII.

* * *

(4) **Employee** means **[**any**]** a fire and rescue **employee** in the classification of Fire/Rescue Captain, Fire/Rescue Lieutenant, Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not **[**any **employee]**:

(A) an **employee** in a probationary status**[**, or**]**;

(B) an employee in the classification of **[**Fire/Rescue Lieutenant**]** District Chief or **[**any**]** an equivalent or higher classification**[.]**; or

(C) a Fire/Rescue Lieutenant or Captain whose primary assignment is in:

(i) budget;

(ii) internal affairs;

(iii) labor relations;

(iv) human resources;

(v) public information; or

(vi) quality assurance.

* * *

33-151. Selection, certification, and decertification procedures.

(a) **[**Any**]** An **employee** organization seeking certification as representative of the **unit** must file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The **employee** organization must also send a copy of the petition, including a copy of the signatures of the supporting **employees** on the petition, to the employer. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, signifying **[**their**]** the **employees**' desire to be represented by the **employee** organization for purposes of collective bargaining.

* * *

Approved:

/S/ July 18, 2001
Blair G. Ewing, President, County Council Date

/S/ July 30, 2001
Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

/S/ Jul;y 30, 2001
Mary A. Edgar, CMC, Clerk of the Council Date

Bill 13-01

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

RECEIVED COUNCIL
01 MAR 8 A10 : 02

Douglas M. Duncan
County Executive

March 7, 2001

036482

TO: Blair G. Ewing, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Collective Bargaining for Fire and Rescue Employees

I am pleased to transmit for your introduction, consideration, and approval legislation to extend collective bargaining rights to Fire and Rescue lieutenants and captains. Fire and Rescue lieutenants and captains have expressed an interest in having a more active role in determining their salaries, benefits, and other working conditions.

This legislation will allow the lieutenants and captains of the Fire and Rescue Services to organize and be represented for the purpose of collective bargaining.

My staff and I look forward to working together with you towards favorable consideration of this legislation. Thank you.

Attachments

Bill No. -01
Concerning: Collective Bargaining – Fire/Rescue Employees
Revised: _____ Draft No. ____
Introduced: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

(1) include uniformed fire/rescue lieutenants and captains in the bargaining unit with non-supervisory uniformed fire/rescue employees for the purpose of collective bargaining; and

(2) generally amend the law regarding collective bargaining for uniformed fire/rescue employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-148 and 33-151

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-148 and 33-151 are amended as follows:

33-148. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(2) **Certified representative** means an **employee** organization chosen to represent the **unit** as the exclusive bargaining agent [in accordance with] under this Article or Article VII.

* * *

(4) **Employee** means [any] a fire and rescue **employee** in the classification of Fire/Rescue Captain, Fire/Rescue Lieutenant, Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not [any **employee**]:

(A) an **employee** in a probationary status[, or];

(B) an employee in the classification of [Fire/Rescue Lieutenant] District Chief or [any] an equivalent or higher classification[.]; or

(C) a Fire/Rescue Lieutenant or Captain whose primary assignment is in:

(i) budget;

(ii) internal affairs;

(iii) labor relations;

(iv) human resources;

(v) public information; or

(vi) quality assurance.

* * *

33-151. Selection, certification, and decertification procedures.

(a) [Any] An **employee** organization seeking certification as representative of the **unit** must file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The **employee** organization must also send a copy of the petition, including a copy of the signatures of the supporting **employees** on the petition, to the employer. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, signifying [their] the **employees'** desire to be represented by the **employee** organization for purposes of collective bargaining.

* * *

Approved:

_____

Blair Ewing, President, County Council Date

_____

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

_____

Mary A. Edgar, CMC, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill -01
Collective Bargaining – Fire/Rescue Employees

DESCRIPTION:	Provides collective bargaining rights for fire/rescue lieutenants and captains by including them in the bargaining unit with non-supervisory uniformed fire/rescue employees.
PROBLEM:	County law does not currently allow fire/rescue lieutenants and captains to be represented for the purpose of collective bargaining.
GOALS AND OBJECTIVES:	To allow fire/rescue lieutenants and captains to be represented for collective bargaining purposes in a bargaining unit with non-supervisory fire/rescue employees.
COORDINATION:	Office of Human Resources and Fire & Rescue Services
FISCAL IMPACT:	Office of Management and Budget will provide a fiscal impact analysis.
ECONOMIC IMPACT:	n/a
EVALUATION:	n/a
EXPERIENCE ELSEWHERE:	In Baltimore County and the D.C. Government, fire/rescue employees at the rank of captain and below are included in a unit with non-supervisory employees; in Howard County fire/rescue employees at the rank of lieutenant and below are in a bargaining unit with non-supervisory employees; in Prince George's County, sergeants, lieutenants, and captains are in a separate unit; in Baltimore City, fire/rescue lieutenants, captains, and battalion chiefs are represented in a separate unit; and in Anne Arundel County, fire/rescue supervisors are not included in a bargaining unit (in July 1999, lieutenants and captains were removed from the unit because they have supervisory authority over unit members).
SOURCE OF INFORMATION:	James E. Torgesen, Office of Human Resources, 7-5050
APPLICATION WITHIN MUNICIPALITIES:	n/a
PENALTIES:	n/a

TESTIMONY OF JAMES TORGESEN

LABOR/EMPLOYEE RELATIONS MANAGER, OFFICE OF HUMAN RESOURCES

BEFORE THE MONTGOMERY COUNTY COUNCIL

ON BILL NO. 13-01, APRIL 17, 2001

GOOD MORNING, MY NAME IS JAMES TORGESEN AND I AM HERE ON BEHALF OF THE COUNTY EXECUTIVE TO EXPRESS SUPPORT FOR BILL NO. 13-01.

THE COUNTY EXECUTIVE DESIRES TO PROVIDE AN OPPORTUNITY FOR LIEUTENANTS AND CAPTAINS WITHIN THE COUNTY'S DEPARTMENT OF FIRE AND RESCUE SERVICES TO COLLECTIVELY BARGAIN OVER THEIR WAGES, HOURS AND WORKING CONDITIONS. THIS BILL WOULD INCLUDE EMPLOYEES IN THESE TWO JOB CLASSES IN THE EXISTING BARGAINING UNIT OF EMPLOYEES IN THE RANK OF MASTER FIRE FIGHTER/RESCUER AND BELOW. AS EMPLOYEES IN THESE TWO CLASSES WORK CLOSELY WITH EXISTING BARGAINING UNIT MEMBERS IN THE DAY TO DAY OPERATIONS OF THE DEPARTMENT THERE IS EVIDENCE OF A COMMUNITY OF INTEREST IN THE TERMS AND CONDITIONS OF EMPLOYMENT BETWEEN THE TWO GROUPS. MOREOVER, MANY OF

THE TERMS OF THE EXISTING AGREEMENT HAVE BEEN PASSED THROUGH TO THESE EMPLOYEES.

EXTENDING COLLECTIVE BARGAINING RIGHTS TO THIS GROUP OF EMPLOYEES IS NOT INCONSISTENT WITH THE TREATMENT OF SIMILAR EMPLOYEES IN OTHER LOCAL GOVERNMENT JURISDICTIONS IN THE WASHINGTON/BALTIMORE METROPOLITAN AREA. AS NOTED IN THE LEGISLATIVE REQUEST REPORT, THE SAME STRUCTURE AS PROPOSED EXISTS IN BALTIMORE COUNTY AND THE DISTRICT OF COLUMBIA. OTHER JURISDICTIONS INCLUDING HOWARD COUNTY, PRINCE GEORGES COUNTY AND BALTIMORE CITY EXTEND BARGAINING RIGHTS TO SIMILAR CLASSES AS A PART OF A NON-SUPERVISORY UNIT OR AS A SEPARATE UNIT.

THE BILL DOES CONTAIN A SERIES OF EXCLUSIONS WHICH WE FEEL ARE NECESSARY FOR THE EFFECTIVE OPERATION OF THE DEPARTMENT AND WILL HELP AVOID THE POTENTIAL FOR CONFLICTS OF INTEREST. IN THE MAIN, THESE ASSIGNMENTS HAVE TO DO WITH THE PERSONNEL, FINANCIAL AND POLICY ADMINISTRATION WITHIN THE DEPARTMENT.

AS THE COUNTY IS COMPLETING THE SECOND YEAR OF A THREE YEAR AGREEMENT WITH THE MONTGOMERY COUNTY CAREER FIRE FIGHTERS ASSOCIATION, IAFF LOCAL 1664, THE

PASSAGE OF THIS BILL WOULD EXTEND THE OPPORTUNITY FOR LIEUTENANTS AND CAPTAINS TO PARTICIPATE IN THE BARGAINING PROCESS THIS FALL. COVERAGE UNDER A COLLECTIVE BARGAINING AGREEMENT WOULD THEN TAKE EFFECT WITH THE IMPLEMENTATION OF A NEW AGREEMENT AS OF JULY 1, 2002.

THANK YOU FOR THE OPPORTUNITY TO PROVIDE TESTIMONY ON THIS PROPOSED BILL AND WE WOULD REQUEST THAT YOU FAVORABLY CONSIDER ITS PASSAGE.

LOCAL 1664

Montgomery County Career
Fire Fighters Ass'n., Inc.

TESTIMONY OF JOHN J. SPARKS, PRESIDENT, MONTGOMERY COUNTY CAREER FIRE FIGHTERS ASSOCIATION IAFF LOCAL 1664

PUBLIC HEARING - BILL 13-01
April 17, 2001

President Ewing, County Council members, thank you for the opportunity to speak to you on Bill 13 – 01 Collective Bargaining for Fire/ Rescue Employees. We applaud County Executive Doug Duncan for recognizing the importance of extending collective bargaining rights to Fire/ Rescue Lieutenants and Captains. Representation for these employees is long overdue.

As you know, our collective bargaining law restricts the subjects that represented employees may bargain over.
These subjects are:

- Salary and Wages
- Pension and other retirement benefits
- Insurance, leave, holiday and vacations
- Hours and working conditions
- Settlement of grievances
- Matters affecting health and safety and
- The amelioration of the effect on employees when the exercise of employer rights cause a loss of existing jobs

These subjects are just as important to Lieutenants and Captains as they are to Master Fire Fighters and Fire Fighter Rescuers. None of these subjects impact the job duties and job requirements of any rank in the fire/ rescue service. In fact, when our Local negotiates changes that affect these subjects they are passed through to Lieutenants and Captains. Wage increases, changes to retirement, pensions, insurance, leave, hours of work and working conditions, they mean the same to each of us regardless of our rank. The only difference is in the settlement of grievances, where they currently follow a different process.

Currently there are 191 combined Lieutenants and Captains. Of those 191 personnel, 118 of them are and have been members of our Local for years, paying dues voluntarily. They pay their dues even though they are not "officially" represented however, knowingly aware that they will reap the benefits of the collective bargaining process. It is time to bring them out of the closet and to extend the basic rights of representation to these ranks as those employees that they work side by side with currently enjoy.

Please note: the website printed below is incorrect; it should read as *www.iafflocal1664.com*.

We ask that you support Bill 13 – 01. Thank you very much.

B13-01

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MONTGOMERY COUNTY FIRE BOARD

April 17, 2001

037973

Honorable Council Members
Montgomery County Council
Stella Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

RE: Testimony to Bill 13-01 Collective Bargaining -- Fire/Rescue Employees

Dear Council Members:

The Montgomery County Fire Board, representing the nineteen Local Fire and Rescue Departments, appreciates the opportunity provided by law to comment on proposed legislation contemplated by the Montgomery County Council. To that end, we are pleased to advise the Montgomery County Council on matters concerning the Bill 13-01, Collective Bargaining -- Fire/Rescue Employees.

This proposed amendment to the County Code would modify Chapter 33, Sections 33-148 and 33–151, wherein the career fire and rescue lieutenants and captains would become part of the same collective bargaining unit as other fire and rescue employees whom they supervise. The Fire Board has concerns and is opposed to such action that would place management and supervisory personnel in a position that would compromise their ability to effectively manage those whom they are responsible for supervising.

We are disappointed that the County Executive forwarded this bill for consideration without thoughtful consideration and contact with appropriate Montgomery County Fire and Rescue Service (MCFRS) stakeholders, especially the Fire and Rescue Commission, the County's regulatory authority for the Service. It is also troublesome to see that such a measure would be introduced to Council without first seeking input from the Local Fire and Rescue Departments' Boards of Directors, which comprise the County's private management partners.

We are concerned that without management representation within the Local Fire and Rescue Department stations, the interests of both partners, County Government and the corporate entity of the Local Fire and Rescue Departments, will not be served under this measure. This initiative is believed to have a number of shortcomings associated with it.

With that in mind, the Fire Board has several specific points to be considered:

No. 1 The County would do well to look to the structure of the National Labor Relations Act (NLRA), which governs private sector employment. It contemplates that management is to have the right to demand the absolute loyalty of its supervisors. Towards that end, the employer has the absolute right to keep supervisors out of any bargaining unit. The point under the NLRA, therefore, is that supervisors should owe complete allegiance to management, which they cannot have if they also have allegiance to the union, which marches in the opposite direction. The only ones left who can be depended on to tow management's position, will be the chiefs who, effectively, will be turned into micromanagers rather than leaders.

No. 2 The above point is underscored by virtue of the power of the union to sanction its members for violation of union rules. So, for instance, if the union enacts an internal rule to ban captains from chastising a subordinate fellow member, the union would then be able to sanction the captain for disciplining a firefighter who, for instance, failed to follow an order to wear his/her protective clothing properly. The net effect can be to allow the union to control the management and supervision of the department through the union's power to sanction and discipline supervisors as mere members. Followed to its inexorable end, the union would be able to completely cripple management simply through its union power to control members for not following union policy.

No. 3 In theory, the object of collective bargaining is to equalize the power of labor to that of management. But, when management jumps into the union side of the seesaw, the desired equilibrium is destroyed.

There unfortunately already exists in Montgomery County, the situation where many of the present lieutenants and captains are already dues paying members of the union, thus, calling to question their loyalties as managers in the Service. The lack of any consistent discipline at the field level in the fire service is testament to the argument that supervisors should not be in the same bargaining unit as those they are paid to supervise. To make matters even worse, even the highest level of management continues to be allowed to participate in the union, even if the collective bargaining does not apply. Even a past Director of the Department of Fire and Rescue Services remarked that he was still a dues paying member of the union. The Council not only needs to defeat this bill, but also should consider a measure prohibiting the practice of any manager remaining affiliated with the union representing those whom they are assigned to manage.

No. 4 If the County, notwithstanding, wants to give the lieutenants and captains "a say in wages and benefits," there are alternatives. The County could, with relative ease, form a committee of captains and lieutenants and solicit their input in determining wages and benefits (without bargaining and without putting them in their subordinates' bargaining unit).

The County would be wise to learn from the mistakes made in our neighboring counties. For instance, Ann Arundel County, according to information contained in County Executive Douglas M. Duncan's letter to the Council introducing this bill, at one time allowed lieutenants and captains to be members of the collective bargaining unit, and later rescinded that practice. When the Fire Board inquired as to why this practice was discontinued, Fire Administrator Gordon Aoyagi, on April 4, 2001, reasoned that it was likely because the lieutenants and captains are supervisors. When asked further if Montgomery County's lieutenants and captains are considered supervisors, he answered that they indeed are. That recent exchange of questions and answers again demonstrates how Montgomery County, and specifically the fire and rescue service, fails to properly distinguish the relationship between management and labor.

In closing, it has been brought to our attention that even some of the lieutenants and captains who would supposedly "benefit" from enactment of this bill are publicly opposed to it for some of the very reasons listed above. Those officers should be commended for their leadership and ability to recognize what is best for the County and its citizenry. They clearly recognize that what has been characterized as a "side-by-side" working relationship with their subordinates never relieves them of their responsibility to make effective management and supervisory decisions and represent the management ideals of County Government.

Therefore, the Fire Board recommends that the Montgomery County Council **REJECT Bill 13-01, Collective Bargaining -- Fire/Rescue Employees**, as it is not in the best interests of the Montgomery County Fire and Rescue Service, nor is it consistent with the needs of the citizens of Montgomery County. Should you wish to discuss this further, please feel free to contact me on 301-929-8000.

Sincerely,

Andrew B. White
Chairperson

MFP ITEM 1
June 28, 2001
Worksession

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 13-01, *Collective Bargaining - Fire/Rescue Employees*

The Council President at the request of the County Executive introduced Bill 13-01, *Collective Bargaining - Fire/Rescue Employees* on March 20, 2001. Bill 13-01 would include fire/rescue lieutenants and captains in the bargaining unit with lower ranking fire/rescue employees. It is similar to Bill 10-00, enacted last year, which incorporated police sergeants into the police collective bargaining unit. Currently, according to the Office of Human Resources (OHR), the bargaining unit has about 662 members (Firefighter/Rescuer I, II, III and Master Firefighter/Rescuer), and the Fire and Rescue Service has 110 captains and 89 lieutenants.

A public hearing was held on April 17. Along with the testimony on ©8-12 and Fire Board letter on ©13-15, a representative of the Career Fire and Rescue Officers Association supported the bill, and a fire lieutenant opposed it because, in his view, the affected employees should be able to vote on joining the bargaining unit rather than having that decision made for them.

Issues

1) Right to bargain: Should fire supervisors be able to bargain collectively?

Bill 13-01 extends collective bargaining to lieutenants, who are first-line supervisors, and fire captains. Until police sergeants were given collective bargaining rights by Bill 10-00, supervisors were not included in any County government bargaining unit.[1]

On the merits, *any* group of employees (except the highest management ranks) has a strong argument for gaining the right to bargain collectively to have a mechanism for management to recognize and respond to their unique problems. (County policy has traditionally

[1]See the definition of "employee" in Code §33-102(4) for County employees, especially §33-102(4)(S), which defines and excludes "supervisors"; the definition of "employee" in Code §33-148(4) for firefighters, which excludes Fire/Rescue Lieutenants and higher ranks.

been to pass through wage and benefit settlements to unrepresented employees, so supervisors' primary need for collective bargaining is not economic.) The central question then becomes: at what level of management is collective bargaining inappropriate because of the fundamental difference of roles between managers and line employees?

2) Nature of bargaining unit: What kind of bargaining unit should fire supervisors be placed in?

If fire supervisors are covered by collective bargaining, what bargaining unit is most suitable? Two options seem reasonable:

Supervisors-only unit Under this approach, the captains and lieutenants would be placed in a separate unit whose members would elect their own bargaining agent, which could be the bargaining agent for the current unit (the IAFF) or a different union.

"Rank and file" unit The bill as introduced places the captains and lieutenants in the "rank and file" bargaining unit, as was ultimately done for the police sergeants. The rationale for doing this centers on the need for a single fire service collective bargaining agreement, or at least the need to avoid inconsistent agreements. However, a single unit has been criticized because it places the first-line supervisors, who administer discipline and otherwise direct employee conduct, in the same unit as those they supervise.

3) Scope of bargaining unit: Which supervisors should be excluded?

The bill as introduced lists management personnel who would *not* be in the bargaining unit: any captain or lieutenant whose primary assignment involves sensitive issues such as labor relations, budget, personnel, internal affairs, public information, and quality assurance (see ©2, lines 17-24).

4) Process: Should the captains and lieutenants vote on their bargaining status?

The bill as introduced would automatically place the captains and lieutenants in the bargaining unit, without any opportunity to vote on the issue, as was done with the police sergeants. In effect, this treats the change as an accretion to the bargaining unit. However, the size of the affected employee cohort (the bill would increase the size of the bargaining unit by about 30%) and the nature of the employees (management rather than rank-and-file) contrasts with a normal accretion, which generally involves smaller numbers of more-or-less identical employees. These distinctions, in Council staff's view, argue for an independent process.

Normally employees are put in a collective bargaining unit only if they vote to do so or otherwise register their desire to be subject to collective bargaining. For example, the initial certification of a bargaining agent under the fire/rescue collective bargaining law (Code §33-151(a)) requires "the uncoerced signatures of 30 percent of the employees in the unit, signifying their desire to be represented by the employee organization for purposes of collective bargaining." After those signatures are validated, an election is held among "all eligible employees" and they are placed in a bargaining unit only by majority vote.

When the Council placed police sergeants in the police bargaining unit, the applicable union, the Fraternal Order of Police, had already enrolled a majority of the affected employees as non-represented members. Similarly (see IAFF testimony, ©11) the union representing this bargaining unit claims a majority of the captains and lieutenants as members.

One amendment the Committee could consider is to allow the supervisors to vote on several options for representation. Those options could include:

- Inclusion in the current fire/rescue bargaining unit;
- A stand-alone supervisors' bargaining unit;
- A single-rank bargaining unit, including only either lieutenants or captains.

If the employees select either of the latter two options, the new bargaining unit would then hold another election to select a bargaining agent.

This packet contains:	Circle #
Bill 13-01	1
Legislative Request Report	4
Memo from County Executive	5
Fiscal impact statement`	6
Testimony from public hearing	8

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Bill No. 13-01
Concerning: Collective Bargaining – Fire/Rescue Employees
Revised: 3/15/01 Draft No. 1
Introduced: March 20, 2001
Expires: September 20, 2001
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. ____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

(1) include certain fire/rescue lieutenants and captains in the bargaining unit with certain fire/rescue employees for the purpose of collective bargaining; and

(2) generally amend the law regarding collective bargaining for fire/rescue employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-148 and 33-151

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

(1)

Sec. 1. Sections 33-148 and 33-151 are amended as follows:

33-148. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(2) **Certified representative** means an **employee** organization chosen to represent the **unit** as the exclusive bargaining agent [in accordance with] under this Article or Article VII.

* * *

(4) **Employee** means [any] a fire and rescue **employee** in the classification of Fire/Rescue Captain, Fire/Rescue Lieutenant, Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not [any **employee**]:

(A) an **employee** in a probationary status[, or];

(B) an employee in the classification of [Fire/Rescue Lieutenant] District Chief or [any] an equivalent or higher classification[.]; or

(C) a Fire/Rescue Lieutenant or Captain whose primary assignment is in:

(i) budget;

(ii) internal affairs;

(iii) labor relations;

(iv) human resources;

(v) public information; or

(vi) quality assurance.

* * *

33-151. Selection, certification, and decertification procedures.

(a) [Any] An **employee** organization seeking certification as representative of the **unit** must file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The **employee** organization must also send a copy of the petition, including a copy of the signatures of the supporting **employees** on the petition, to the employer. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, signifying [their] the **employees'** desire to be represented by the **employee** organization for purposes of collective bargaining.

* * *

Approved:

Blair G. Ewing, President, County Council — Date

Douglas M. Duncan, County Executive — Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council — Date

LEGISLATIVE REQUEST REPORT

Bill -01
Collective Bargaining – Fire/Rescue Employees

DESCRIPTION:	Provides collective bargaining rights for fire/rescue lieutenants and captains by including them in the bargaining unit with non-supervisory uniformed fire/rescue employees.
PROBLEM:	County law does not currently allow fire/rescue lieutenants and captains to be represented for the purpose of collective bargaining.
GOALS AND OBJECTIVES:	To allow fire/rescue lieutenants and captains to be represented for collective bargaining purposes in a bargaining unit with non-supervisory fire/rescue employees.
COORDINATION:	Office of Human Resources and Fire & Rescue Services
FISCAL IMPACT:	Office of Management and Budget will provide a fiscal impact analysis.
ECONOMIC IMPACT:	n/a
EVALUATION:	n/a
EXPERIENCE ELSEWHERE:	In Baltimore County and the D.C. Government, fire/rescue employees at the rank of captain and below are included in a unit with non-supervisory employees; in Howard County fire/rescue employees at the rank of lieutenant and below are in a bargaining unit with non-supervisory employees; in Prince George's County, sergeants, lieutenants, and captains are in a separate unit; in Baltimore City, fire/rescue lieutenants, captains, and battalion chiefs are represented in a separate unit; and in Anne Arundel County, fire/rescue supervisors are not included in a bargaining unit (in July 1999, lieutenants and captains were removed from the unit because they have supervisory authority over unit members).
SOURCE OF INFORMATION:	James E. Torgesen, Office of Human Resources, 7-5050
APPLICATION WITHIN MUNICIPALITIES:	n/a
PENALTIES:	n/a

Bill

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

March 7, 2001

036482

TO: Blair G. Ewing, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Collective Bargaining for Fire and Rescue Employees

I am pleased to transmit for your introduction, consideration, and approval legislation to extend collective bargaining rights to Fire and Rescue lieutenants and captains. Fire and Rescue lieutenants and captains have expressed an interest in having a more active role in determining their salaries, benefits, and other working conditions.

This legislation will allow the lieutenants and captains of the Fire and Rescue Services to organize and be represented for the purpose of collective bargaining.

My staff and I look forward to working together with you towards favorable consideration of this legislation. Thank you.

Attachments

(5)

Bill 13-01

OFFICE OF MANAGEMENT AND BUDGET

Douglas M. Duncan
County Executive

Robert K. Kendal
Director

MEMORANDUM

March 30, 2001

037421

RECEIVED COUNCIL
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TO: Blair G. Ewing, President
Montgomery County Council

VIA: Bruce Romer
Chief Administrative Officer

FROM: Robert K. Kendal, Director
Office of Management and Budget

SUBJECT: Collective Bargaining – Uniformed Fire and Rescue Lieutenants and Captains

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the aforementioned proposed legislation.

SUMMARY

The County Executive proposed legislation amends Chapter 33 of the Montgomery County Code, Personnel and Human Resources. The proposed amendment would include supervisory uniformed Fire and Rescue employees classified as Lieutenants and Captains in the International Association of Firefighters, Local 1664, which currently includes non-supervisory uniformed fire and rescue employees.

FIRE/RESCUE SUPERVISORS - FISCAL SUMMARY

During FY02, County labor negotiations would begin with the existing International Association of Firefighters, Local 1664, in which the proposed legislation would include employees within the Fire and Rescue Lieutenant and Captain job classes. The Office of Human Resources anticipates $10,000 of additional operating costs to cover consultant services and costs associated with the implementation of these classes during the FY02 collective bargaining process.

		FY 02
Personnel Cost	None	$0
Operating Expenses		$10,000
Total		$10,000

Jim Torgesen, Office of Human Resources, contributed and concurred with this analysis.

RKK: jab

cc: Marta Brito Perez, Director, Office of Human Resources

m:\fis\Legislation\FY01\CB Fire Rescue Supervisors Memo.doc

TESTIMONY OF JAMES TORGESEN

LABOR/EMPLOYEE RELATIONS MANAGER, OFFICE OF HUMAN RESOURCES

BEFORE THE MONTGOMERY COUNTY COUNCIL

ON BILL NO. 13-01, APRIL 17, 2001

GOOD MORNING, MY NAME IS JAMES TORGESEN AND I AM HERE ON BEHALF OF THE COUNTY EXECUTIVE TO EXPRESS SUPPORT FOR BILL NO. 13-01.

THE COUNTY EXECUTIVE DESIRES TO PROVIDE AN OPPORTUNITY FOR LIEUTENANTS AND CAPTAINS WITHIN THE COUNTY'S DEPARTMENT OF FIRE AND RESCUE SERVICES TO COLLECTIVELY BARGAIN OVER THEIR WAGES, HOURS AND WORKING CONDITIONS. THIS BILL WOULD INCLUDE EMPLOYEES IN THESE TWO JOB CLASSES IN THE EXISTING BARGAINING UNIT OF EMPLOYEES IN THE RANK OF MASTER FIRE FIGHTER/RESCUER AND BELOW. AS EMPLOYEES IN THESE TWO CLASSES WORK CLOSELY WITH EXISTING BARGAINING UNIT MEMBERS IN THE DAY TO DAY OPERATIONS OF THE DEPARTMENT THERE IS EVIDENCE OF A COMMUNITY OF INTEREST IN THE TERMS AND CONDITIONS OF EMPLOYMENT BETWEEN THE TWO GROUPS. MOREOVER, MANY OF

THE TERMS OF THE EXISTING AGREEMENT HAVE BEEN PASSED THROUGH TO THESE EMPLOYEES.

EXTENDING COLLECTIVE BARGAINING RIGHTS TO THIS GROUP OF EMPLOYEES IS NOT INCONSISTENT WITH THE TREATMENT OF SIMILAR EMPLOYEES IN OTHER LOCAL GOVERNMENT JURISDICTIONS IN THE WASHINGTON/BALTIMORE METROPOLITAN AREA. AS NOTED IN THE LEGISLATIVE REQUEST REPORT, THE SAME STRUCTURE AS PROPOSED EXISTS IN BALTIMORE COUNTY AND THE DISTRICT OF COLUMBIA. OTHER JURISDICTIONS INCLUDING HOWARD COUNTY, PRINCE GEORGES COUNTY AND BALTIMORE CITY EXTEND BARGAINING RIGHTS TO SIMILAR CLASSES AS A PART OF A NON-SUPERVISORY UNIT OR AS A SEPARATE UNIT.

THE BILL DOES CONTAIN A SERIES OF EXCLUSIONS WHICH WE FEEL ARE NECESSARY FOR THE EFFECTIVE OPERATION OF THE DEPARTMENT AND WILL HELP AVOID THE POTENTIAL FOR CONFLICTS OF INTEREST. IN THE MAIN, THESE ASSIGNMENTS HAVE TO DO WITH THE PERSONNEL, FINANCIAL AND POLICY ADMINISTRATION WITHIN THE DEPARTMENT.

AS THE COUNTY IS COMPLETING THE SECOND YEAR OF A THREE YEAR AGREEMENT WITH THE MONTGOMERY COUNTY CAREER FIRE FIGHTERS ASSOCIATION, IAFF LOCAL 1664, THE

PASSAGE OF THIS BILL WOULD EXTEND THE OPPORTUNITY FOR LIEUTENANTS AND CAPTAINS TO PARTICIPATE IN THE BARGAINING PROCESS THIS FALL. COVERAGE UNDER A COLLECTIVE BARGAINING AGREEMENT WOULD THEN TAKE EFFECT WITH THE IMPLEMENTATION OF A NEW AGREEMENT AS OF JULY 1, 2002.

THANK YOU FOR THE OPPORTUNITY TO PROVIDE TESTIMONY ON THIS PROPOSED BILL AND WE WOULD REQUEST THAT YOU FAVORABLY CONSIDER ITS PASSAGE.

LOCAL 1664

Montgomery County Career
Fire Fighters Ass'n., Inc.

TESTIMONY OF JOHN J. SPARKS, PRESIDENT, MONTGOMERY COUNTY CAREER FIRE FIGHTERS ASSOCIATION IAFF LOCAL 1664

PUBLIC HEARING - BILL 13-01
April 17, 2001

President Ewing, County Council members, thank you for the opportunity to speak to you on Bill 13 – 01 Collective Bargaining for Fire/ Rescue Employees. We applaud County Executive Doug Duncan for recognizing the importance of extending collective bargaining rights to Fire/ Rescue Lieutenants and Captains. Representation for these employees is long overdue.

As you know, our collective bargaining law restricts the subjects that represented employees may bargain over.
These subjects are:

- Salary and Wages
- Pension and other retirement benefits
- Insurance, leave, holiday and vacations
- Hours and working conditions
- Settlement of grievances
- Matters affecting health and safety and
- The amelioration of the effect on employees when the exercise of employer rights cause a loss of existing jobs

These subjects are just as important to Lieutenants and Captains as they are to Master Fire Fighters and Fire Fighter Rescuers. None of these subjects impact the job duties and job requirements of any rank in the fire/ rescue service. In fact, when our Local negotiates changes that affect these subjects they are passed through to Lieutenants and Captains. Wage increases, changes to retirement, pensions, insurance, leave, hours of work and working conditions, they mean the same to each of us regardless of our rank. The only difference is in the settlement of grievances, where they currently follow a different process.

Currently there are 191 combined Lieutenants and Captains. Of those 191 personnel, 118 of them are and have been members of our Local for years, paying dues voluntarily. They pay their dues even though they are not "officially" represented however, knowingly aware that they will reap the benefits of the collective bargaining process. It is time to bring them out of the closet and to extend the basic rights of representation to these ranks as those employees that they work side by side with currently enjoy.

932 Hungerford Drive, Suite 33A, Rockville, MD 20850-1713 • Telephone: (301) 762-6611 • FAX: (301) 762-7390 • Website: www.iaff.com

We ask that you support Bill 13 – 01. Thank you very much.

B13-01

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CC
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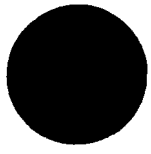
MONTGOMERY COUNTY FIRE BOARD

April 17, 2001

Honorable Council Members
Montgomery County Council
Stella Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850



037973

RE: Testimony to Bill 13-01 Collective Bargaining -- Fire/Rescue Employees

Dear Council Members:

The Montgomery County Fire Board, representing the nineteen Local Fire and Rescue Departments, appreciates the opportunity provided by law to comment on proposed legislation contemplated by the Montgomery County Council. To that end, we are pleased to advise the Montgomery County Council on matters concerning the Bill 13-01, Collective Bargaining -- Fire/Rescue Employees.

This proposed amendment to the County Code would modify Chapter 33, Sections 33-148 and 33–151, wherein the career fire and rescue lieutenants and captains would become part of the same collective bargaining unit as other fire and rescue employees whom they supervise. The Fire Board has concerns and is opposed to such action that would place management and supervisory personnel in a position that would compromise their ability to effectively manage those whom they are responsible for supervising.

We are disappointed that the County Executive forwarded this bill for consideration without thoughtful consideration and contact with appropriate Montgomery County Fire and Rescue Service (MCFRS) stakeholders, especially the Fire and Rescue Commission, the County's regulatory authority for the Service. It is also troublesome to see that such a measure would be introduced to Council without first seeking input from the Local Fire and Rescue Departments' Boards of Directors, which comprise the County's private management partners.

We are concerned that without management representation within the Local Fire and Rescue Department stations, the interests of both partners, County Government and the corporate entity of the Local Fire and Rescue Departments, will not be served under this measure. This initiative is believed to have a number of shortcomings associated with it.

Montgomery County Fire Board
101 Monroe Street, 12th Floor • Rockville, Maryland 20850 • 301/217-2461

With that in mind, the Fire Board has several specific points to be considered:

No. 1 The County would do well to look to the structure of the National Labor Relations Act (NLRA), which governs private sector employment. It contemplates that management is to have the right to demand the absolute loyalty of its supervisors. Towards that end, the employer has the absolute right to keep supervisors out of any bargaining unit. The point under the NLRA, therefore, is that supervisors should owe complete allegiance to management, which they cannot have if they also have allegiance to the union, which marches in the opposite direction. The only ones left who can be depended on to tow management's position, will be the chiefs who, effectively, will be turned into micromanagers rather than leaders.

No. 2 The above point is underscored by virtue of the power of the union to sanction its members for violation of union rules. So, for instance, if the union enacts an internal rule to ban captains from chastising a subordinate fellow member, the union would then be able to sanction the captain for disciplining a firefighter who, for instance, failed to follow an order to wear his/her protective clothing properly. The net effect can be to allow the union to control the management and supervision of the department through the union's power to sanction and discipline supervisors as mere members. Followed to its inexorable end, the union would be able to completely cripple management simply through its union power to control members for not following union policy.

No. 3 In theory, the object of collective bargaining is to equalize the power of labor to that of management. But, when management jumps into the union side of the seesaw, the desired equilibrium is destroyed.

There unfortunately already exists in Montgomery County, the situation where many of the present lieutenants and captains are already dues paying members of the union, thus, calling to question their loyalties as managers in the Service. The lack of any consistent discipline at the field level in the fire service is testament to the argument that supervisors should not be in the same bargaining unit as those they are paid to supervise. To make matters even worse, even the highest level of management continues to be allowed to participate in the union, even if the collective bargaining does not apply. Even a past Director of the Department of Fire and Rescue Services remarked that he was still a dues paying member of the union. The Council not only needs to defeat this bill, but also should consider a measure prohibiting the practice of any manager remaining affiliated with the union representing those whom they are assigned to manage.

No. 4 If the County, notwithstanding, wants to give the lieutenants and captains "a say in wages and benefits," there are alternatives. The County could, with relative ease, form a committee of captains and lieutenants and solicit their input in determining wages and benefits (without bargaining and without putting them in their subordinates' bargaining unit).

The County would be wise to learn from the mistakes made in our neighboring counties. For instance, Ann Arundel County, according to information contained in County Executive Douglas M. Duncan's letter to the Council introducing this bill, at one time allowed lieutenants and captains to be members of the collective bargaining unit, and later rescinded that practice. When the Fire Board inquired as to why this practice was discontinued, Fire Administrator Gordon Aoyagi, on April 4, 2001, reasoned that it was likely because the lieutenants and captains are supervisors. When asked further if Montgomery County's lieutenants and captains are considered supervisors, he answered that they indeed are. That recent exchange of questions and answers again demonstrates how Montgomery County, and specifically the fire and rescue service, fails to properly distinguish the relationship between management and labor.

In closing, it has been brought to our attention that even some of the lieutenants and captains who would supposedly "benefit" from enactment of this bill are publicly opposed to it for some of the very reasons listed above. Those officers should be commended for their leadership and ability to recognize what is best for the County and its citizenry. They clearly recognize that what has been characterized as a "side-by-side" working relationship with their subordinates never relieves them of their responsibility to make effective management and supervisory decisions and represent the management ideals of County Government.

Therefore, the Fire Board recommends that the Montgomery County Council **REJECT Bill 13-01, Collective Bargaining -- Fire/Rescue Employees**, as it is not in the best interests of the Montgomery County Fire and Rescue Service, nor is it consistent with the needs of the citizens of Montgomery County. Should you wish to discuss this further, please feel free to contact me on 301-929-8000.

Sincerely,

Andrew B. White
Chairperson

(15)

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

MANAGEMENT AND FISCAL POLICY COMMITTEE

Thursday, June 28, 2001
2:05 P.M. – 3:04 P.M.
Council Conference Room

PRESENT

Marilyn J. Praisner, Chair

Phil Andrews Howard A. Denis

Councilmember Denis in the Chair.

SUBJECT: **Bill 13-01, Collective Bargaining – Fire/Rescue Employees**

The Committee had before it the memorandum and attachments from Senior Legislative Attorney Faden, dated June 28, 2001.

ACTION: Discussed with Mr. Sparks, Fire and Rescue Service, the comments in the letter from the Montgomery County Fire Board, dated June 17, 2001, attached to Staff's memorandum on pages 13-15; and received information from Mr. Aoyagi, Fire Administrator, that the Fire Board was involved in the process.

Agreed that fire supervisors have the right to bargain collectively, and that captains and lieutenants be placed in the "rank and file" bargaining unit. Councilmember Praisner recommended that the captains and lieutenants be placed in a separate bargaining unit.

Received comments from Mr. Sparks in support of the captains and lieutenants being placed in the "rank and file" bargaining unit.

Agreed that management who would not be included in the bargaining unit are those captains or lieutenants whose primary assignment involves sensitive issues such as labor relations, budget, personnel, internal affairs, public information, and quality assurance.

Discussed whether captains and lieutenants should vote on their bargaining unit; and recommended that captains and lieutenants be automatically placed in the bargaining unit without any opportunity to vote on the issues.

Recommended approval of Bill 13-01, as introduced.

Councilmember Praisner in the Chair.

SUBJECT: **Bill 11-01, Ethics – Political Activities – Quasi-Judicial Officers**

The Committee had before it the memorandum and attachments from Mr. Faden, dated June 28, 2001.

ACTION: Discussed the testimony that was presented at the public hearing, including the testimony of Mr. Leventhal, Montgomery County Democratic Central Committee, attached on page ©57 and 58 of Staff's memorandum.

Agreed that it is appropriate to have some restrictions on political activities of quasi-judicial officials and that there should be a close nexus between the restrictions and the ability of the person who is being restricted to impact a business or person. Recommended that the restrictions be limited to a business or person who does business or appears before a board or commission or is under the authority or regulated by the board or commission.

Discussed the current restrictions on public employees for soliciting or accepting gifts and how the Committee recommendation could be constructed to parallel Section 19A-16 of the Montgomery County Code. Requested Mr. Faden to draft language that would amend the bill by making it more limiting, and that the revised draft be submitted to the Committee members, the County Attorney's Office, Ethics Commission, quasi-judicial boards and commissions, and other individuals who commented on the bill.

Discussed whether to limit the prohibition to particular boards or commissions; and received information from Mr. Faden that the approach the Committee recommended would be self-limiting.

Discussed the restriction that any quasi-judicial official cannot be a candidate for a federal, state, or county elected office without resigning from the quasi-judicial position; and deferred consideration of whether language should be included in the bill extending the restriction to a candidate for a municipal office.

Discussed the status of the financial disclosure form modifications with Ms. Keller, Vice-Chair of the Ethics Commission; and received information that there is a subcommittee working on modifications to the form. Noted Councilmember Praisner's request that the modifications to the form be completed in the November/December time period; and received comments from Staff of the County Attorney's Office on the status of the modifications and the limitations that exist. Received information that the changes to the form suggested by Council Staff Director Farber were accepted and will be implemented and that the form and directions will be available on the Commission's website. Requested a briefing be scheduled in September to discuss the status of the modifications to the financial disclosure form.

Recommended approval of Bill 11-01, as amended subject to the redraft.

This is an accurate account of the meeting:

_____

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Elda Dodson, CMC, Deputy Clerk

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, July 17, 2001 Rockville, Md.

The County Council for Montgomery County, Maryland convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:28 A.M. on Tuesday, July 17, 2001.

PRESENT

Blair G. Ewing, President	Steven A. Silverman, Vice President
Phil Andrews	Howard A. Denis
Derick Berlage	Isiah Leggett
Nancy H. Dacek	Michael L. Subin

ABSENT

Marilyn J. Praisner

The President in the Chair.

President Ewing announced that Councilmember Praisner is absent because she is representing Montgomery County at the National Association of Counties annual conference.

SUBJECT: Approval of Journal

ACTION: Approved the Journal of June 26, 2001.

The motion was made by Councilmember Subin. Councilmember Praisner was absent.

INTRODUCTION OF BILLS

SUBJECT: **Bill 26-01, Board of Social Services - Membership**

ACTION: Introduced draft 1 of the subject bill sponsored by the Council President at the request of the County Executive.

CALL OF BILLS FOR FINAL READING

SUBJECT: **Bill 13-01, Collective Bargaining – Fire/Rescue Employees**

The Council had before it the memorandum and attachments from Senior Legislative Attorney Faden, dated July 17, 2001.

Councilmember Denis, Lead Councilmember for Personnel Issues on the Management and Fiscal Policy (MFP) Committee, presented the report of the Committee.

Councilmember Subin said that he would abstain from voting on the bill because he is opposed to including captains and lieutenants in the "rank and file" bargaining unit. With respect to Bill 10-00, Collective Bargaining – Police – Sergeants, which the Council enacted, he said that he was also opposed to including police sergeants into the police collective bargaining unit and that, philosophically, he has concerns about moving in that direction. Mr. Subin said that he supported dividing the police bargaining unit into two units but as a matter of equity, he would not vote in opposition to the bill because it would be unfair to deny the fire and rescue employees the same opportunity as the police.

Councilmember Dacek said that she supports the comments of Councilmember Subin and the ability of lieutenants and captains to bargain collectively but she does not support the inclusions of captains and lieutenants, who are first-line supervisors, in the "rank and file" bargaining unit. Ms. Dacek said for that reason she will vote present on the bill.

In response to Councilmember Leggett's concerns, Councilmember Denis said that similar structures exist in other jurisdictions in the region and other counties within the State. Mr. Leggett requested and received assurance from Councilmembers Denis and Andrews that while Councilmember Praisner preferred to create a separate bargaining unit for the fire supervisors, she supported the bill.

ACTION: Adopted the following amendments as reflected in the bill:

AN ACT to:

(1) include certain fire/rescue lieutenants and captains in the bargaining unit with certain fire/rescue employees for the purpose of collective bargaining; and

(2) generally amend the law regarding collective bargaining for fire/rescue employees.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-148 and 33-151

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-148 and 33-151 are amended as follows:

33-148. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(2) **Certified representative** means an **employee** organization chosen to represent the **unit** as the exclusive bargaining agent [in accordance with] under this Article or Article VII.

* * *

(4) **Employee** means [any] a fire and rescue **employee** in the classification of Fire/Rescue Captain, Fire/Rescue Lieutenant. Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not [any **employee**]:

(A) an **employee** in a probationary status[, or];

(B) an employee in the classification of [Fire/Rescue Lieutenant] District Chief or [any] an equivalent or higher classification[.]; or

(C) a Fire/Rescue Lieutenant or Captain whose primary assignment is in:

(i) budget;

(ii) internal affairs:

(iii) labor relations:

(iv) human resources:

(v) public information: or

(vi) quality assurance.

* * *

33-151. Selection, certification, and decertification procedures.

(a) [Any] An **employee** organization seeking certification as representative of the **unit** must file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The **employee** organization must also send a copy of the petition, including a copy of the signatures of the supporting **employees** on the petition, to the employer. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the **unit**, signifying [their] the **employees**' desire to be represented by the **employee** organization for purposes of collective bargaining.

* * *

ACTION: Enacted Bill 13-01.

The motion was made by the MFP Committee and was enacted by a roll call vote:

YEAS: Andrews, Berlage, Leggett, Denis, Silverman, Ewing
PRESENT: Dacek, Subin
ABSENT: Praisner.

The Council recessed at 10:35 A.M. and reconvened at 1:50 P.M.

CALL OF BILLS FOR FINAL READING (Continued)

SUBJECT: Bill 23-01, Homestead Property Tax Credit – 2002 Tax Year

The Council had before it the memorandum and attachments from Mr. Faden, dated July 17, 2001.

ACTION: Enacted Bill 23-01.

The motion was made by Councilmember Dacek and the bill was enacted by a roll call vote.

YEAS: Andrews, Dacek, Subin, Denis, Silverman, Ewing
ABSENT: Praisner; Leggett, Berlage (temporarily).

SUBJECT: Bill 24-01. Bond Authorization

The Council had before it the memorandum and attachments from Legislative Attorney Cogan, dated June 25, 2001.

ACTION: Enacted Bill 24-01.

The motion was made by Councilmember Dacek and the bill was enacted by a roll call vote:

YEAS: Andrews, Dacek, Subin, Denis, Silverman, Ewing
ABSENT: Praisner; Leggett, Berlage (temporarily).

President Ewing announced that Councilmember Praisner indicated that had she been present for the meeting she would have voted in support of Bill 23-01 and Bill 24-01.

The meeting adjourned at 1:52 P.M.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Elda Dodson, Deputy Clerk

Bill No. 9-01
Concerning: County Employees-Collective Bargaining Units
Revised: 5-2-02 Draft No. 3
Introduced: February 27, 2001
Enacted: May 7, 2002
Executive: May 20, 2002
Effective: August 19, 2002
Sunset Date: None
Ch. 8, Laws of Mont. Co. 2002

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Subin, Council President Ewing, and Councilmembers Leggett, Berlage, Denis, Silverman, and Andrews

AN ACT to:

(1) include certain County employees in a collective bargaining unit, subject to certain limits on the scope of bargaining; and

(2) generally amend the law governing collective bargaining with County employees.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
[[Section**]]** Sections 33-102, 33-105, and 33-107

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. [[Section is]] Sections 33-102, 33-105, and 33-107 are amended as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

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

(A) **[[**Confidential aides**]]** a confidential aide to an elected **[[**officials.**]]** official;

(B) **[[**All persons who are not covered by the County government merit system.**]]** a person holding a position designated by law as a non-merit position;

(C) **[[**Heads**]]** a head of a principal **[[**departments, offices, and agencies.**]]** department, office, or agency;

(D) **[[**Deputies and assistants**]]** a deputy or assistant to **[[**heads**]]** a head of a principal **[[**departments, offices, and agencies.**]]** department, office, or agency;

(E) **[[**Persons**]]** an employee who **[[**provide**]]** provides direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency**[[**.**]]**;

(F) **[[**Persons**]]** an employee who **[[**report**]]** reports directly to, or whose immediate supervisor is;

(i) the County Executive **[[**or**]]**;

(ii) the Chief Administrative Officer; or

(iii) **[[**their principal aides.**]]** a principal aide of the County Executive or Chief Administrative Officer;

(G) **[[**Persons**]]** an employee who **[[**work**]]** works for:

(i) the Office of the County Executive **[[**and**]]**;

(ii) the Office of the Chief Administrative Officer**[[**.**]]**;

[(H)**]** (iii) **[[**Persons who work for**]]** the County Council**[[**.**]]**;

[(I)**]** (iv) **[[**Persons who work for**]]** the Office of the County Attorney**[[**.**]]**;

[(J)**]** (v) **[[**Persons who work for**]]** the Office of Management and Budget**[[**.**]]**;

(vi) the Office of Intergovernmental Relations;

[(K)**]** (vii) **[[**Persons who work for**]]** the Office of Human Resources**[[**.**]]**; or

[(L)**]** (viii) **[[**Persons who work for**]]** the Merit System Protection Board**[[**.**]]**;

[(M)**]** (H) **[**Persons who work on a temporary, seasonal, or substitute basis.**]** an employee in a temporary, seasonal, or substitute position, unless the position is in a job class in which the incumbents are predominantly career merit system employees;

[(N)**]** (I) **[[**Newly hired persons on probationary status.**]]** a recently-hired employee who has not completed the probationary period;

[(O)**]** (J) **[[**Persons who work for the Police Department and are represented by a certified employee organization under Article V.**]]** an employee in the police bargaining unit;

[(P)**]** (K) **[[**Persons who work for the Department of Fire and Rescue Services and are represented by a certified employee organization under Article X.**]]** an employee in the firefighter/rescuer bargaining unit;

[(Q)**]** (L) **[[**Officers in the uniformed services (Corrections, Fire and Rescue, Police, Office of the Sheriff) in the rank of sergeant and above.**]]** a uniformed officer in the Department of Correction & Rehabilitation at the rank of sergeant or higher;

(M) **[[**Subject**]]** subject to any limitations in State law, **[[**deputy sheriffs below the rank of sergeant are employees.**]]** a uniformed officer in the Office of the Sheriff at the rank of sergeant or higher;

[(R)**]** (N) **[[**Persons**]]** an employee who **[[**are members**]]** is a member of the State merit system**[[**.**]]**;

[(S)**]** (O) **[[**Supervisors, which means persons having**]]** a supervisor, meaning an employee who has the authority to:

(i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively recommend any of these actions;

(ii) direct the activity of 3 or more employees; or

(iii) adjust or recommend adjustment of grievances**[[**.**]]**;

[(T) Persons grade 27 or above, whether or not they are supervisors.**]**

(P) an employee in a position classified at grade 27 or above unless the employee's position is reclassified or reallocated

on or after July 1, 2002, to a non-supervisory position at grade 27 or above; or

(Q) an employee in a position classified in the Management Leadership Service.

* * *

33-105. Units for collective bargaining.

(a) There are 2 units for collective bargaining and for purposes of certification and decertification. **[[**Persons in**]]** Members of these units are all County government **[[**merit system**]]** employees **[[**working on a continuous full-time, career or part-time, career basis**]]**, **[[**except any person who is not**]]** as defined **[[**as an employee**]]** in Section 33-102(4), and those employees who are limited-scope members of a bargaining unit under subsection (c)(2). The employees are divided into 2 units:

* * *

(2) * * *

[[a.**]]** (A) * * *

[[b.**]]** (B) * * *

[[c.**]]** (C) * * *

[[d.**]]** (D) * * *

* * *

(c) *Temporary, seasonal, and substitute employees.*

(1) A temporary, seasonal, or substitute employee in an occupational class in which the incumbents are predominantly career merit system employees becomes a member of the applicable bargaining unit when the employee has worked 6 months in a position in that occupational class. However, the employee may be terminated for any cause or without cause and without any

right of grievance until the employee has completed 1040 hours of service in that position in any 12-month period.

(2) A temporary, seasonal, or substitute employee who is excluded from the definition of "employee" under Section 33-102(4)(H) because the employee is not in an occupational class in which the incumbents are predominantly career merit system employees becomes a limited-scope member of the applicable bargaining unit immediately after the employee begins employment if:

(A) the employee works at least 25 hours per pay period; and

(B) the employee organization which represents that bargaining unit has adopted a reduced scale of dues and service fees for employees in the limited-scope membership group that is generally proportional to the organization's representational responsibilities for employees in that group relative to the organization's representational responsibilities for other bargaining unit members, as determined by the employee organization.

Membership in a bargaining unit on a limited-scope basis must not carry any right to continued employment or access to any grievance procedure or other benefit that is extended to other bargaining unit members.

33-107. Collective bargaining.

(a) *Duty to bargain; matters subject to bargaining.* Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects for employees other than limited-scope members of the bargaining unit under Section 33-105(c)(2):

* * *

(2) Pension and other retirement benefits **[[**shall be negotiable,**]]** for active employees only, **[[**one (1) year after the effective date of this article**]]** but the parties must not bargain over the participation by any employee who is a member of the bargaining unit under Section 33-105(c)(1) in either the Integrated Retirement Plan or the Retirement Savings Plan.

* * *

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include:

[[a.**]]** (A) Binding third party arbitration for employees other than members of the bargaining unit under Section 33-105(c)(1), **[[**provided that**]]** but the arbitrator **[[**shall have no authority to**]]** must not amend, add to, or subtract from the provisions of the collective bargaining agreement; and

[[b.**]]** (B) Provisions for exclusivity of forum.

The duty to bargain under this subsection, and any agreement reached as a result of bargaining, must not limit the employer's authority to require a newly-hired employee to remain in probationary status, during which the employee may be terminated for any cause or without cause and without any right of grievance, for a period that does not exceed 6 months. Unless a specific probationary period is required by law, the parties may agree on any probationary period that is not less than 6 months.

(b) *Duty to bargain for limited-scope employees.* The employer and the certified representative have the duty to bargain collectively on only the

following subjects with respect to employees who are limited-scope members of the bargaining unit under Section 33-105(c)(2):

(1) wage scales and general wage adjustments; and

(2) dues or service fee deductions.

[[(b)**]]** (c) * * *

[[(c)**]]** (d) * * *

[[(d)**]]** (e) *Agreement.* * * *

Sec. 2. Transition.

The certified representative and the employer must bargain under Section 33-107 with respect to temporary, seasonal, and substitute employees who are members of a bargaining unit, including limited-scope employees, immediately after this Act becomes law. The procedures for impasse resolution under Section 33-108 apply to this bargaining process, but the specific action deadlines in that section do not apply. An initial agreement between the certified representative and the employer with respect to temporary, seasonal, and substitute employees must expire on the same date as the existing agreements for the SLT and OPT bargaining units.

Approved:

/S/ May 9, 2002

Steven A. Silverman, President, County Council Date

Approved:

/S/ May 20, 2002

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

/S/ May 22, 2002

Mary A. Edgar, CMC, Clerk of the Council Date

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

MANAGEMENT AND FISCAL POLICY COMMITTEE

Wednesday, May 1, 2002
2:00 P.M. to 3:20 P.M.
Council Hearing Room

PRESENT

Marilyn J. Praisner, Chair

Phil Andrews Howard A. Denis

SUBJECT: **FY 03 Operating Budget – Office of Intergovernmental Relations**

The Committee had before it the memorandum and attachments from Council Staff Director Farber, dated April 29, 2002.

ACTION: Recommended approval of the budget request of $594,840, less $5,950 in operating expenses to meet the 1.0 percent target reduction.

Discussed and praised the office's work in Annapolis this year and noted the great contributions of Mr. Bialek, Mr. Madaleno, and Ms. Sprague.

Noted Mrs. Praisner's comments about identifying state-funded programs for which the County provides additional funding, and the issue of which region the County is placed in for purposes of cost-of-living adjustments in state programs.

SUBJECT: **FY 03 Operating Budget – Office of Inspector General**

The Committee had before it the memorandum and attachments from Council Staff Director Farber, dated April 29, 2002.

ACTION: Recommended approval of the budget request of $527,130, less $5,270 in operating expenses to meet the 1.0 percent target reduction.

SUBJECT: **Interagency Training Team**

The Committee had before it the memorandum and attachments from Legislative Analyst Davidson, dated April 29, 2002.

ACTION: Received comments from Ms. Plucinski, Office of Human Resources (OHR), on the goals of the Interagency Training Team.

Requested that a Training Team representative be present when the Committee discusses the issue of succession planning.

Agreed to format the work plan for the Interagency Training Team as a resolution.

SUBJECT: **Operating Budget Adjustments: Governmental Accounting Standards Board Statement 34 (GASB 34) Required Amendments**

The Committee had before it the memorandum from Legislative Analyst Sherer, dated April 25, 2002.

ACTION: Recommended approval of the amendments as included in the County Executive's memorandum dated April 22, 2002, to align the County's budgeting practices with guidance from GASB 34.

Expressed concern that transferring Landlord-Tenant Affairs and Common Ownership Communities into the General Fund would make it impossible to know that the revenues for each function were used to provide the services for which the revenues are collected. Received assurance from Office of Management and Budget (OMB) and Division of Finance Staff that mechanisms are in place to track revenues and expenses.

SUBJECT: **Operating Budget Adjustments: NDA - Future Federal, State and Other Grants**

The Committee had before it the memorandum from Mr. Sherer, dated April 24, 2002.

ACTION: Recommended approval of the revised $15.0 million total for FY 03, noting that it is still $10.0 million less than the $25.0 million appropriated in FY 02.

SUBJECT: **Operating Budget Adjustments: Department of Technology Services (DTS) - Expanded Internet Bandwidth**

The Committee had before it the memorandum from Legislative Analysts Trombka and Healy, dated April 29, 2002.

ACTION: Received comments from Mr. Novak, DTS, that the Department is exploring internet connectivity to Montgomery County Public Schools (MCPS) and Montgomery College through FiberNet; that through eMontgomery the Department is developing a cross-agency approach, and that WSSC and Park and Planning are utilizing the autonomy search engine and MCPS and the College are reviewing it.

Noted that the streaming video provided of the Council sessions and traffic video requires a substantial amount of bandwidth.

Recommended approval of the Operating Budget adjustment to include $86,000 for expanded Internet bandwidth.

Requested DTS Staff to provide a demonstration of the capabilities of the Internet with the expanded bandwidth after the August recess.

Councilmember Denis, lead member for personnel, in the Chair.

SUBJECT: **Bill 9-01, County Employees - Collective Bargaining Unit**

The Committee had before it the memorandum and attachments from Senior Legislative Attorney Faden, dated May 1, 2002.

ACTION: Expressed appreciation to everyone involved with this issue for their cooperation in addressing this legislation.

Received clarification from Mr. Faden that if the Management Leadership Service (MLS) is extended to Grade 27, it takes those employees out of the bargaining unit.

Noted Councilmember Praisner's view that she supports the legislation but that seasonal employees, because they are a large group, should have the opportunity to vote on whether to become part of the bargaining unit rather than becoming a part of the unit by accretion; and that she supports the Office of Intergovernmental Affairs not being included in a bargaining unit.

Councilmember Andrews expressed support for the bill.

Noted that the Office of Human Resources, the County Executive, and the Union support this legislation.

Recommended approval of Bill 9-01.

This is an accurate account of the meeting:

_____

Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Stephen B. Farber, Council Staff Director
Mary Anne Paradise, Deputy Clerk
Charles H. Sherer, Legislative Analyst

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Tuesday, May 7, 2002 Rockville, Md.

The County Council for Montgomery County, Maryland convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:05 A.M. on Tuesday, May 7, 2002.

PRESENT

Steven A. Silverman, President	Derick P. Berlage, Vice President
Phil Andrews	Blair G. Ewing
Nancy H. Dacek	Isiah Leggett
Howard A. Denis	Marilyn J. Praisner

Michael L. Subin

The President in the Chair.

Reverend Douglas Jones, Epiphany Lutheran Church, Silver Spring, gave the invocation.

SUBJECT: Presentation of the Margaret Cutler Intergenerational Leadership Award

President Silverman introduced Mr. Heyman, Interages Founder, and Ms. Lessenco, Interages Board Member, who presented Mr. Short, Director, Health and Human Services a silver platter for his years of outstanding leadership and developing, implementing and supporting intergenerational programs in Montgomery County.

SUBJECT: Agenda and Calendar Changes

Legislative Analyst Lauer directed attention to the addendum to the agenda, adding to the consent calendar the introduction of a resolution to create the Pedestrian Safety Advisory Committee; continuing the public hearing on an amendment to the Master Plan for Historic Preservation for Olney-Sandy Spring-Goshen Area Historic Resources from 7:30 p.m. this evening to May 14 at 1:30 p.m.; and announcing that the public hearing on the Ceiling Element of the FY 03 Annual Growth Policy will be held on June 4, 2002 at 1:30 p.m.

SUBJECT: **Approval of Minutes**

ACTION: Approved the minutes of April 23, 2002, as amended.

Councilmember Ewing made the motion. Councilmembers Subin, Praisner, Berlage, and Leggett were temporarily absent.

SUBJECT: **Acknowledgement of Receipt of Petitions**

ACTION: Acknowledged petitions from the parents of Weller Road Elementary School students supporting the allocation of additional funds to the elementary school modernization schedule during the budget reconciliation process; from the residents of Montgomery County supporting full funding of the three existing Parenting Resource Centers; and from Derwood Noise Abatement Coalition supporting nose mitigation funding.

SUBJECT: **Consent Calendar**

Referring to the introduction of resolutions to establish four Agricultural Districts, Councilmember Dacek said that three of the petitions are for the farms owned by Mr. Rubin who is an outstanding citizen and interested in the preservation of our agricultural areas. She said that he rents the houses on these properties to tenants who will farm the land and he is also interested in the horse industry that will be discussed later in the day. Ms. Dacek also spoke in support of the petition from Mr. Suddath to establish a State Agricultural District.

ACTION: Adopted the consent calendar:

Introduced a resolution to approve the Washington Suburban Sanitary Commission System Development Charge for FY 03;

Introduced a resolution to approve a special appropriation to the FY 02 Capital Budget and the FY 01-06 Capital Improvements Program (CIP) of the Maryland-National Capital Park and Planning Commission (M-NCPPC), for the Bonifant Road Landfill Closure, in the amount of $1,151,000;

Introduced a resolution to amend FY 02 Capital Budget and the FY 01-06 CIP of M-NCPPC, to implement transfers for Sligo Creek Golf Course, Northwest Branch Golf Course, South Germantown Recreational Park, Wheaton Ice Rink, Fairland Gunpowder Golf Center and Northwest Branch Golf Course to Enterprise Facilities;

Resolution 14-1235, approving amendments to Resolution 14-889, Section G, the FY 02 Designation of Entities for Non-Competitive Award Status;

Introduced a resolution recommending that the Maryland Agricultural Land Preservation Foundation approve the petition to establish a State Agricultural District on the farm owned and operated by Howard F. Suddath;

Introduced a resolution recommending that the Maryland Agricultural Land Preservation Foundation approve the petition to establish State Agricultural Districts on MDR Friendly Acres L.L.C., MDR Friends Advice L.L.C., and MDR Friends Ahoy L.L.C., which are farms owned and operated by Michael Rubin Managing Partner;

Introduced a resolution to approve a special appropriation to the FY 02 Operating Budget of the Montgomery County Government Independent Audit Nondepartmental Account, in the amount of $73,000, to fund the work that KPMG will complete during May and June of FY 02;

Introduced a resolution to create the Pedestrian Safety Advisory Committee.

Councilmember Dacek made the motion. Councilmembers Subin, Praisner, Berlage, and Leggett were temporarily absent.

SUBJECT: Legislative Session

See the legislative journal for the minutes of the legislative session.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND SITTING AS THE BOARD OF HEALTH

SUBJECT: Board of Health Report

Dr. Garvey, County Health Officer, provided a PowerPoint presentation on health planning priorities, including the progress that is being made in the areas of access to care, elimination of disparities, and environmental safety. Ms. Frank, Chief, Public Health Services, provided an update on the specific activities and associated costs of the Bioterrorism Response Team.

Referring to a hypothetical situation about an outbreak of small pox, Councilmember Dacek requested and received information from Dr. Garvey on the County's plan for dispensing the small pox vaccine. Dr. Garvey provided background information on the current Center for Disease Control plan that recommends against universal vaccination but rather recommends a "ring vaccination" in which the first individuals exposed to the small pox and their household contacts would be immunized. Dr. Garvey said that this is an evolving issue but, at the present time, that is the official plan. She said that there were several articles in the New England Journal of Medicine a few weeks ago that indicated it would be better to have all first responders vaccinated before an event occurs. With respect to Councilmember Dacek's questions about what would occur if there was a major outbreak, Ms. Frank provided a brief report on the plan that is currently in place. Ms. Frank said that the procedural agreements are in place with the schools, including the number of nurses, pharmacists, and medical volunteers that would be needed and the amount of time required to immunize the population.

Councilmember Ewing requested and received information from Dr. Garvey about the increased number of low-income children enrolled in health care coverage programs. Dr. Garvey said the increased numbers means that coverage has been required for the child, the child has been connected to a medical facility, and the normal preventative services are provided, but it does not necessarily mean the parents bring the child in for every appointment. With respect to Mr. Ewing's questions related to pharmaceutical access, Dr. Garvey said that the Primary Care Coalition is currently taking a number of different simultaneous approaches but there is only partial access to pharmaceuticals. She said that some of the County funding is used for Mobile Med which encourages the use of generic medications and purchases medications that are prescribed most often. In response to Councilmember Ewing's question about what would be required to provide data on Asian Americans, Dr. Garvey said that the Asian Americans do well on the health indicators, but there is an aggressive outreach effort to the older Asian Americans to participate in the cancer-screening program. Councilmember Ewing requested that in the future, data on Asian Americans be included on the charts.

Councilmember Denis expressed appreciation to Dr. Garvey and Ms. Frank for their participation in emergency planning, and acknowledged the participation of Ms. Frank in a news conference on regional health issues that was held by Congresswoman Morella. He referred to an article in the New York Times about the effect of September 11 attack on young children. Mr. Denis said that the study concluded some children have serious mental health issues as a result of the terrorist attacks, and that some of the children were reacting by having nightmares and drawing frightful pictures, while others had even more serious problems and were showing no reaction at all to the situation. Councilmember Denis expressed the view that this issue is an important one that should be tracked. With respect to the potential for bioterriorism attacks, he stressed the importance of being in a constant state of alert and having a sense of mission. Mr. Denis spoke about the issue of chemical weapons testing, noting that this issue first came to his attention last year when Congresswoman Morella addressed citizens concerns about the

possibility of soil contamination in the Spring Valley neighborhood of the District of Columbia which was formerly used as a defense site. He said at that time, he wrote a letter to Dr. Garvey and Mr. Caldwell, Director, Department of Environmental Protection, expressing concern that this area is on the border of Montgomery County. Councilmember Denis said that he was surprised that the local officials were not involved "in the loop" and urged Dr. Garvey to continue to monitor the situation and to make sure the community is notified of any events.

Dr. Garvey said that it has been a challenge to get information regarding the soil contamination issue in the Spring Valley neighborhood, but it is being monitored and the Council will be kept informed of the situation.

Councilmember Andrews expressed appreciation to Dr. Garvey and Ms. Frank for their good work. He said that he agrees with Ms. Frank that terrorism creates fear and panic which is why it is so important to have in place the plans and services on how to respond. Mr. Andrews said that the anthrax attack was a prime example of that situation.

President Silverman expressed appreciation to Dr. Garvey and Ms. Frank for their work and their continuing involvement in the public health of the County residents.

The Vice President in the Chair.

SUBJECT: FY 03 Operating Budget for the Department of Economic Development

The Committee had before it the memorandum and attachments from Legislation Analyst Ferber, dated May 2, 2002.

Councilmember Berlage presented the report of the Planning, Housing, and Economic Development (PHED) Committee.

Mr. Edgerley, Director, Department of Economic Development (DED), commented on the work that has been accomplished successfully during the past year by DED, and discussed the proposal to establish an Intellectual Property Center that would address issues pertaining to the protection, usage, and ethical and societal impact of intellectual property. Mr. Edgerley said that the concept of the Intellectual Property Center is the result of a study conducted by the University of Maryland. He said that the report prepared by the University of Maryland proposed the Intellectual Property Center as a statewide concept.

Councilmember Praisner requested a copy of the report prepared by the University of Maryland concerning the concept of an Intellectual Property Center.

In response to Councilmember Praisner's questions, Mr. Edgerley explained plans to evaluate the Intellectual Property Center with the assistance of an advisory board that will be established. Mr. Edgerley said that he believes the State intends to continue to support this effort in the future.

Mr. Edgerley discussed the rationale for eliminating the Small Business Development Center (SBDC) grant funds in accordance with the information contained on page 7 of the Council Staff memorandum. He noted the assistance to small businesses that will be available from the University of Maryland, as well as from the County's Business Resource Center.

Councilmember Dacek asked about the effect of eliminating the SBDC grant funds on the assistance provided to small business owners in the County, recalling past tours of Damascus at which representatives of DED would speak to small business owners. Mr. Edgerley stated that DED Staff will to continue to provide this service.

Councilmember Ewing expressed concern that the assistance to small business owners will be diminished by the proposed change and indicate a lack of commitment to small businesses. He said that he does not agree with the proposed reductions to the SBDC program.

In discussing the Bankers' Loan Fund, Mr. Edgerley stated that information provided in the Council's packet that indicated a loan activity amount of $5 million was incorrect. In response to concerns expressed by Councilmember Ewing, Mr. Edgerley assured him that the SBDC program would continue to exist in the County and would continue to provide service to small business owners.

Councilmember Dacek discussed the importance of the Equine program to the horse industry in the County, and noted the importance of the Equine Outreach Specialist position which has not been filled because of the County's "freeze" on the filling of new positions. Ms. Dacek urged DED to focus on filling the position, after the six-month delay resulting from increased lapse of .05 workyear, because of the importance of the position to the agricultural community.

Councilmember Praisner suggested filling the Equine Outreach Specialist position under a contractual arrangement, since it has proven difficult to hire a merit system employee for the position. Mr. Edgerley agreed that this would be a feasible option, but requested the flexibility to use the funds for either a merit system or contractual position.

ACTION: Agreed that the Equine Outreach Specialist position could be filled by a merit system or contractual position.

Councilmember Dacek commented on the use of a portion of the $6,710 for the Close Encounters Program that is one of the programs operated by the Cooperative Extension Service. She noted that the funds have been placed on the reconciliation list, and expressed the hope that the Council will fund the Program.

The Council reviewed the information contained on page 11 of the Council Staff memorandum concerning the Committee's recommendation to place the restoration of the following items on the reconciliation list: $14,470 for Montgomery Youth works; $9,220 for Montgomery Life Alliance, and $111,200 for One-Stop Shops (in two parts of $55,600 each). Councilmember Berlage provided additional information concerning these items, and Mr. Edgerley provided background information. Councilmember Praisner commented on the possibility of Federal reductions in funding that might affect these programs, as well as summer youth initiatives. She noted the need to monitor this carefully and if this becomes a reality, to ask Mr. Bialek, Director, Department of Intergovernmental Relations, to bring this to the attention of the Congressional Delegation. On a related issue, Councilmember Praisner stated that funds had been placed on the reconciliation list in two components for programs operated by the Montgomery Work Life Alliance. She said the $20,000 that is listed on line 304 of the reconciliation list is for the Telework Tool Kit Program that has received State recognition. Ms. Praisner said that she believes it would be unfortunate if the Council were unable to fund the continuation and expansion of the Telework Tool Kit Program. She requested that both amounts that were placed on the reconciliation list for the Montgomery Work Life Alliance be funded.

ACTION: Approved the FY 03 Operating Budget for the DED.

The PHED Committee made the motion.

SUBJECT: **FY 03 Operating Budget for the Economic Development Fund**

The Council had before it the memorandum and attachments from Ms. Ferber, dated May 2, 2002.

Councilmember Berlage presented the PHED Committee report.

ACTION: Approved the FY 03 Operating Budget for the Economic Development Fund for $495,000, and placed the target reduction of $5,000 as a non-recommended reduction on the reconciliation list.

The PHED Committee made the motion.

SUBJECT: **FY 03 Operating Budget for the Conference Center Nondepartmental Account**

The Council had before it the memorandum and attachments from Ms. Ferber, dated May 2, 2002.

Councilmember Berlage presented the PHED Committee report.

ACTION: Approved the FY 03 Operating Budget for the Conference Center Nondepartmental Account for $200,000.

The PHED Committee made the motion.

SUBJECT: **FY 03 Operating Budget for the Conference and Visitor's Bureau Nondepartmental Account**

The Council had before it the memorandum and attachments from Ms. Ferber, dated May 2, 2002

Councilmember Berlage presented the PHED Committee report.

ACTION: Approved the FY 03 Operating Budget for the Conference and Visitor's Bureau Non-departmental Account for $435,750.

The PHED Committee made the motion.

SUBJECT: **FY 03 Operating Budget for the FY 03-08 Capital Improvements Program: Silver Spring Civic Building Project; and Budget Adjustments for Silver Spring Redevelopment Program, and Silver Spring Civic Building Projects**

The Council had before it the memorandum and attachments from Ms. Ferber, dated May 2, 2002

Councilmember Berlage presented the PHED Committee report.

Discussion was held concerning the major elements of the civic building, including the attempt being made to design some elements of the building to replace facilities previously located in the Silver Spring Armory.

Mr. Stith, Director, Silver Spring Regional Services Center, responded to Councilmembers' questions regarding the size and use of "The Great Hall" being provided in the civic building to replace the former "Drill Hall"; the size of the civic building as compared to the Armory; and the proposed uses for the civic building.

Councilmember Praisner commented on the need to consider the facade of the building and its relationship to downtown Silver Spring. She emphasized that the entrance to the building should be attractive, blend in with the surrounding community, appear open, and be easily accessed.

Councilmember Praisner reiterated a request she made previously for a list that identifies both the workforce and the location of the workforce in the Silver Spring area. She said that she is concerned about dispersing personnel efficiently.

ACTION: Agreed in concept with the Program of Requirements (POR) for the Silver Spring Civic Building and with the Silver Spring Civic Building Steering Committee's recommendations for priorities for adjustments to the Civic Building POR should the construction cost exceed the $9.4 million budget.

Approved the County Executive's CIP budget adjustments to the Silver Spring Civic Building Project and the Silver Spring Redevelopment Program Project.

The PHED Committee made the motion. Councilmembers Dacek and Silverman were temporarily absent.

Councilmember Subin in the Chair.

SUBJECT: **FY 03 Operating Budget for Montgomery College**

The Council had before it the memorandum and attachments from Legislative Analyst Sherer, dated May 2, 2002.

Dr. Nichols, Chair, Board of Trustees of Montgomery College, expressed appreciation for being provided the opportunity to discuss the funding needs of the College. He said that the enrollment of the College is increasing and the students are younger and more diverse requiring more services to be provided. Dr. Nichols said that the Board of Trustees has increased tuition costs in an attempt to respond to reductions in State aid to the College, but the revenue received from this increase is not sufficient to address the problem. He explained the need for additional funds, stating that without them the Board will have to consider serious reductions in programs and services. He requested that the Council support the Committee's recommendations.

Dr. Nunley, President, Montgomery College, stated that an attempt was made to put together a fiscally responsible budget, and a budget was submitted that requested the same dollars per Full Time Equivalent (FTE) student as approved in the FY 02 appropriation. She commented on the loss of anticipated funding from the State, as well as the change in the

formula for funding community colleges. She said that the Board of Trustees responded to these loses by increasing the tuition rate an additional $3; a $2 increase had already been presumed. She said that the increase in tuition narrowed the $4.1 million gap by about $1.7 million. Dr. Nunley said that the College still needs the Council's help, and that she strongly supports the Committee's recommendation.

Councilmember Praisner suggested that the Council should take the lead in ensuring adequate State funding for community colleges. In that regard, Ms Praisner said, with the help of Dr. Nunley and Ms. Maden, Montgomery College Staff, she has submitted a proposal to the Maryland Association of Counties (MACo), requesting that MACo focus its legislative initiative for the coming year on the funding needs of both the capital and operating budgets for community colleges. Ms Praisner said she is uncertain whether MACo will select the community college initiative since MACo is limited to only four legislative initiatives. She said that she has invited Dr. Nunley and representatives from the community colleges to the MACo summer conference so they will have the opportunity to discuss community college issues with MACo representatives. Ms. Praisner suggested that the community college initiative be presented as a statewide initiative.

Councilmember Subin, in presenting the Committee report, commented on the increased student enrollment at Montgomery College, the loss of State aid, the effect of this loss in the future because of changes made to the funding formula for community colleges, the adjustments that the College has to make to address the needs of a greater number of full-time students, the technology needs at the College, and his hope that MACo will select community colleges as one of its legislative initiatives next year.

The President in the Chair.

ACTION: Approved the FY 03 Operating Budget for Montgomery College.

The Education Committee made the motion. Councilmembers Praisner and Dacek were temporarily absent.

SUBJECT: **Proposal to Fund Adult English for Speakers of Other Languages (ESOL)/Literacy Program**

Councilmember Subin stated that Council Staff has recommended placing on the reconciliation list $50,000 for an ESOL/Literacy Program that would involve an analysis of the extent of the need and where the Program would be housed.

Councilmember Ewing stated that this proposal is endorsed by Councilmembers, the Montgomery County Public Schools, Montgomery College, the United Way, the Literacy Council, and the Business Round Table on Education.

ACTION: Approved placing $50,000 on the reconciliation list for an ESOL/Literacy Program. Councilmembers Praisner and Dacek were temporarily absent.

SUBJECT: **County Executive's Budget Adjustments to the FY 03-08 Capital Improvements Program (CIP) of Montgomery College**

The Council had before it the memorandum and attachments from Legislative Analyst Sherer, dated May 1, 2002, containing background information and the Committee's recommendations on adjustments to the Takoma Park Expansion project (#996662) and the Information Technology: College project (#856509).

Councilmember Subin presented the Education Committee report.

Councilmember Andrews stated that he strongly agrees with the Education Committee's recommendations, and commended the College for the good work that it does, including providing an outstanding education to a growing number of County residents. He said that the College also provides direct and indirect benefits to the community through a variety of programs, noting that he recently had the opportunity to attend an interesting program at the College on Genetic Discrimination.

ACTION: Approved the budget adjustments to the FY 03-08 CIP of Montgomery College. Councilmembers Dacek and Praisner were temporarily absent.

The Council recessed at 11:35 A.M. and reconvened at 1:33 P.M. in the Council Hearing Room.

SUBJECT: **Public Hearing/Action on a Supplemental Appropriation to the FY 02 Operating Budget of the Department of Housing and Community Affairs, for a Technology Center in Wheaton for Small Business Owners, in the Amount of $249,450**

The public hearing was conducted.

ACTION: Adopted Resolution 14-1236, approving the subject supplemental appropriation.

Councilmember Berlage made the motion. Councilmembers Leggett, Praisner and Subin were temporarily absent.

SUBJECT: **Public Hearing/Action on a Special Appropriation to the FY 02 Operating Budget of the Maryland-National Capital Park and Planning Commission, for the Sligo Creek Parkway Speed Management Plan Implementation, in the Amount of $150,000**

The public hearing was conducted.

ACTION: Adopted Resolution 14-1237, approving the subject special appropriation.

The PHED Committee made the motion.

SUBJECT: **FY 03 Operating Budget: Department of Public Works and Transportation (DPWT): Fleet Management Services and Motor Pool Fund Contribution Nondepartmental Account (NDA)**

The Council had before it the memorandum and attachments from Legislative Analyst Healy, dated May 3, 2002.

The Council received opening remarks from Mr. Genetti, Director, DPWT, and Ms. Subadan, Chief, Division of Fleet Management Services, on the six-year impact of replacement collections (included on page © 6 of the packet), and on the direction given to the Division to try maintain approximately a one-year replacement cash balance.

Councilmember Leggett, in agreeing with Ms. Subadan, expressed concern about delays in vehicle replacement. He noted that the Council stated last year that it would be necessary to move more aggressively in terms of fleet replacement starting this year to make up the deficit, and that it is still possible to begin to meet this objective if funding for this purpose is included in the budget.

Councilmember Dacek expressed concern that funding for fleet replacement will be reduced again this year, noting that $1.5 million was eliminated from this NDA last year by the Council at the last minute.

ACTION: Agreed to place two increments of $250,000 on the reconciliation list for the Fleet Management Services and Motor Pool Fund Contribution NDA.

Councilmembers Subin, Berlage, and Silverman were temporarily absent.

SUBJECT: **FY 03-08 Capital Improvements Program (CIP): Compressed Natural Gas (CNG) Fueling Station**

The Council had before it the memorandum and attachments from Legislative Analyst Healy and Deputy Council Director Orlin, dated May 3, 2002, and an addendum memorandum dated May 6, 2002.

The Council discussed with representatives from DPWT the current operations, maintenance, costs, environmental issues, and possible alternatives to CNG buses, and noted that alternative fuel technologies will be available for buses in the future. Mr. Genetti commented that the Department is not advocating a 100% CNG fleet, and that the County is obligated to reduce NOx emissions (nitrogen oxide) by 3.045 tons per day; and that State aid is anticipated . Councilmember Leggett commented that the fleet will remain predominantly diesel even if this proposal is accepted. With regard to the anticipated State aid, Councilmember Leggett said it is appropriate to wait to make a decision until State funds have been appropriated. Mr. Orlin suggested that if the State provides grant funds, the CIP can be amended at that time to incorporate the new source of funds. Councilmember Dacek stated that the Governor indicated the State was prepared to pay for a share of the costs associated with reducing NOx emissions.

Councilmember Andrews said the Department presented a good case for the need for the fast-fill CNG station, and that the Council needs to consider this issue in a broad way. He said he understands the Committee recommendation to approve the slow-fill station. He suggested that this item be deferred until it is determined what funding, if any, will be provided by the State. Councilmember Praisner questioned the ongoing implications of making a decision now on the types of buses to purchase, and that although the Council's budget cycle dictates that decisions must be made, it may not be the appropriate time to resolve this issue.

Councilmember Berlage said the question to consider is whether upcoming new technologies might serve the County better than those being considered today, and that he would spend as little as possible now to be able to make a major investment at a later date.

ACTION: Agreed to defer this item until the end of the budget process.
Councilmember Subin was temporarily absent.

SUBJECT: **FY 03 Operating Budget DPWT: Mass Transit, Parking Lot District, and General Funds Operating Budget, Homeowner Association Roads Reimbursement NDA; Community Grants NDA (Olney Boys and Girls Club); FY 03-08 CIP, DPWT: Parking Lot District Project and Other Projects**

The Council had before it the memorandum and attachments from Mr. Orlin, dated May 3, 2002.

Mr. Orlin presented the recommendations of the Transportation and Environment (T&E) Committee.

The Council discussed bus service, and Councilmember Dacek expressed the view that the Poolesville route should not be eliminated because the Council made a commitment to serve that area. Ms. Dacek also commented that the Urbana Park and Ride is an important stop, and expressed the hope that the Germantown transportation center will encourage bus ridership. Regarding the possibility of a "meet the MARC " bus route in Garrett Park, Mr. Genetti said that Garrett Park opposed any bus service but that he would contact the Mayor of Garrett Park to encourage support for a bus route. In response to Ms. Dacek's observation that the Germantown MARC station free Ride-On bus is underutilized, DPWT Staff responded that this route is funded by the MARC service.

Councilmember Denis expressed appreciation to the Committee for its support of the Central Business District (CBD) Shuttles.

Councilmember Ewing said that bus riders want comfort, convenience, and frequency of service, particularly during rush hours. He made a motion, duly seconded, to include $1,500,000 on the reconciliation list in three increments of $500,000, for additional peak period service on existing bus routes, to begin in January, 2003.

ACTION: Agreed to add three increments of $500,000 to the reconciliation list for additional peak period bus service on existing bus routes.

Speaking in reference to the "Free Wheeling Days" promotion, Councilmember Silverman expressed interest in extending the promotion to other parts of the County, as was discussed last year if the initial promotion proved successful. He made a motion, duly seconded, to include two increments of $250,000 to extend the "Free Wheeling Days" promotion to more routes on the reconciliation list. After receiving additional information from DPWT Staff later in the meeting that the promotion will stop on June 30 for the Interstate 270 route because funding was not included in the County Executive's budget, Mr. Silverman withdrew his motion. Councilmember Silverman requested DPWT to provide funding options for this promotion for time periods of three, six, and nine months. Councilmember Leggett said that other options regarding the restructuring of fares and the amount of the subsidy need to be considered.

Councilmember Praisner made a motion, duly seconded, to add $50,000 to the reconciliation list to extend the "Kids Ride Free" program to Metrobus. She said that comments were received from young people that they need more access to public transportation, and that she wrote to the Washington Metropolitan Area Transportation Authority (WMATA) requesting that this program be extended, but did not receive a response. Ms. Praisner said it needs to be clear that it is not known how much this program will cost. She suggested this be implemented

in the eastern part of the County where there are fewer Ride On buses, but, she expressed the hope that, eventually, this program will be available on Metrobuses throughout the County. Councilmember Berlage said that encouraging young people to use public transportation is a good idea with the hope that they will continue to use transit when they are older.

ACTION: Agreed to place $50,000 to extend the "Kids Ride Free" Metrobus program.

Agreed to place four increments of $300,000 each for the Fare Share/Super Fare Share program on the reconciliation list.

The Council considered the issue of advertising on County buses and shelters and the amount of revenue that it would generate. Councilmember Leggett said that further discussion is needed before any level of revenue is assumed from bus advertising. Councilmember Praisner commented that she does not want to be recorded in support of the Committee recommendation to assume $500,000 in advertising revenue because there are legal considerations that need to be resolved.

Regarding the Call-n-Ride program, Councilmember Praisner said there is confusion among citizens because departmental responsibility for the program is not designated, and expressed hope that the T&E and the Health and Human Services (HHS) Committees would continue to address the need for a "one stop shop" for transportation programs, particularly for seniors.

Councilmember Berlage spoke in support of increasing parking rates in North Bethesda to 40¢/hour and to $75 for a monthly pass. He said that this increase would generate additional revenue, and is justified. He made a motion, duly seconded, to raise the long-term parking rate to 40¢/hour and to increase the monthly pass to $75.

Councilmember Leggett expressed the view that the rate increase is substantial, and that he and Councilmember Ewing recommended increasing the cost of the monthly parking pass in two steps: to $55 in FY 03 and then to $65 in FY 04; and to increase the long-term parking rate from 25¢/hour to 35¢/hour for FY 03. Councilmember Berlage noted that parking rates in Silver Spring are either the same or higher.

Councilmember Praisner expressed support for the motion because the Council has been a strong advocate of the North Bethesda Transportation Management District (TMD).

ACTION: Agreed to increase the long-term and monthly parking rates in North Bethesda to 40¢ per hour and the monthly pass to $75:

YEAS: Andrews, Dacek, Praisner, Berlage, Silverman
NAYS: Subin, Denis, Leggett, Ewing.

Agreed (as part of the $1.2 million above) to show a $350,000 transfer from the Bethesda Parking District to the Mass Transit Fund, to fund Bethesda's Fare Share and Super Fare Share programs. (The second piece would be $250,000.)

Speaking in reference to the General Fund-Transportation recommendation that would delete the Chief of Design position, Councilmember Dacek cautioned that the elimination of this position would result in slower implementation rates for new roads. Councilmember Praisner said she shares Ms. Dacek's concern regarding this position. Ms. Dacek expressed appreciation to the Division of Highway Services for the good job being done on cleaning up rural and rustic roads.

Regarding Graffiti Abatement Partners, Inc. (GRAB), Councilmember Praisner commented that when GRAB was created, the assumption was that the agencies would contribute to GRAB, to work more collectively to fund activities that would have been done within individual departments. She expressed concern that the impression is left that the Council is asked to subsidize GRAB. Ms. Praisner said that graffiti is becoming an increasing problem in the County, and expressed the hope that in the future, GRAB will not have to ask for funding and that agencies will make contributions to this effort as was originally intended.

Councilmember Dacek expressed concern that most of the funding for street/sidewalk services was spent in the Silver Spring area, because many other communities and subregional centers have expressed concern about receiving these services. She said that either more funding needs to be appropriated to provide services to other areas in the County or steps need to be taken to ensure that areas other than Silver Spring receive service within budget limits. Ms. Dacek made a motion, duly seconded to include two increments of $56,000 on the reconciliation list to provide additional street/sidewalk services to other areas. Councilmember Praisner said she supports Ms. Dacek's motion and staff's recommendation that a way to monitor services provided be developed to address this as a separate item in the budget, and that it would be useful to have an accounting of what centers meet the established criteria and what services the County is planning to deliver in town center areas. She said there was considerable interest in the Germantown area, and that she believes services should be provided there, especially as the Germantown Town Center is being developed.

ACTION: Agreed to add two increments of $56,000 to the reconciliation list for street/sidewalk services.

Regarding the Homeowners' Association Road Maintenance Reimbursement NDA, Mr. Orlin commented that there are 40 eligible miles, rather than 49 as included in the County Executive's budget, which would make the Committee's and County Executive's recommendation the same at $30,910.

ACTION: Agreed to add $30,910 to the reconciliation list for Homeowners' Association Road Maintenance Reimbursement NDA.

Councilmember Silverman commented regarding the addition of $160,000 to the reconciliation list for the Community Grants NDA for a traffic signal at the entrance to the new Olney Boys and Girls Club, that the reason this request came so late was that it was thought the Club could obtain a line of credit for funding, but that the extension of additional credit was contingent on the provision of the traffic signal, and tied into whether they would be able to open their summer camps. Councilmember Praisner said it needs to be clear that the County is not funding traffic lights on State roads, and that the State must first agree that a traffic signal is necessary.

Regarding the FY 03-08 CIP for Parking Lot District Projects, Councilmember Leggett expressed concern about the cost of signage for the Bethesda Wayfinding project, and received information from DPWT Staff that this signage is necessary to meet design standards.

ACTION: Approved the FY 03-08 CIP: Parking Lot District projects and other projects.

SUBJECT: Legislative Session

See the legislative journal of this date for the minutes of the legislative session.

The Council recessed at 4:25 P.M. and reconvened at 4:30 P.M. in the Council Hearing Room.

SUBJECT: FY 03 Bi-County Budget Issues

The Council had before it the memorandum and attachments from Council Staff Director Farber, dated May 7, 2002.

Mr. Farber led the Council through the bi-county issues set forth on the charts attached to his memorandum involving the Washington Suburban Sanitary Commission (WSSC) and the Maryland-National Capital Park and Planning Commission (M-NCPPC). Mr. Farber suggested that issues on which the two Council's positions differ be addressed orally.

The Council expressed no objection to the joint staff recommendations set forth on the charts. It was noted that the Council will meet with the Prince George' s County Council in Upper Marlboro at 3:00 p.m., on Thursday, May 9, 2002.

The Council recessed at 4:36 P.M. and reconvened at 7:30 P.M. in the Council Hearing Room.

SUBJECT: **Public Hearing on an Amendment to the Master Plan for the Historic Preservation: Olney-Sandy Spring-Goshen Area Historic Resources**

ACTION: The public hearing was continued to May 14, 2002 at 1:30 P.M.

The meeting adjourned at 7:45 P.M.

This is an accurate account of the meeting:

_____

Mary A. Edgar, CMC
Clerk of the Council

Bill No. 9-01
Concerning: County Employees-Collective Bargaining Units
Revised: 2-7-01 Draft No. 2
Introduced: February 27, 2001
Expires: August 27, 2002
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Subin, Council President Ewing, and Councilmembers Leggett, Berlage, Denis, Silverman, and Andrews

AN ACT to:

(1) include certain County employees in a collective bargaining unit; and
(2) generally amend the law governing collective bargaining with County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-102

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 33-102 is amended as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

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

* * *

[(B) All persons who are not covered by the County government merit system.]

[(C)] (B) * * *

[(D)] (C) * * *

[(E)] (D) * * *

[(F)] (E) * * *

[(G)] (F) * * *

[(H)] (G) * * *

[(I)] (H) * * *

[(J)] (I) * * *

[(K)] (J) * * *

[(L)] (K) * * *

[(M) Persons who work on a temporary, seasonal, or substitute basis.]

[(N)] (L) * * *

[(O)] (M) * * *

[(P)] (N) * * *

[(Q)] (O) * * *

[(R)] (P) * * *

[(S)] (Q) * * *

[(T) Persons in grade 27 or above, whether or not they are supervisors.]

* * *

Approved:

Blair G. Ewing, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 9-01

County Employees - Collective Bargaining Units

DESCRIPTION:	Would move certain employees into the County employees collective bargaining units by repealing the current law's exemptions for temporary, seasonal, or substitute employees; highly paid (Grade 27+) non-supervisory employees; and certain non-merit employees who are not department heads or deputies.
PROBLEM:	Certain County employees are not currently subject to collective bargaining but deserve to be covered.
GOALS AND OBJECTIVES:	To expand the coverage of collective bargaining laws to currently excluded County employees.
COORDINATION:	Office of Human Resources, Office of Management and Budget
FISCAL IMPACT:	To be requested
ECONOMIC IMPACT:	To be requested
EVALUATION:	To be requested
EXPERIENCE ELSEWHERE:	To be requested
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County employees
PENALTIES:	Not applicable

MFP ITEM 7
May 1, 2002
Worksession

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 9-01, *County Employees - Collective Bargaining Units*

Background Councilmembers Subin, Council President Ewing, and Councilmembers Leggett, Berlage, Denis, Silverman, and Andrews introduced Bill 9-01, *County Employees - Collective Bargaining Units* on February 27, 2001. A public hearing was held on March 20, 2001, and an initial Committee worksession was held on April 25, 2001.

As introduced, Bill 9-01 would move certain employees into the County employees collective bargaining units by repealing the current law's exemptions for temporary, seasonal, or substitute employees; highly paid (Grade 27+) non-supervisory employees; and certain non-merit employees who are not department heads or deputies. For a list of currently exempt employees, see the excerpt from the County Code on ©5-7.

At the public hearing the only speakers represented the Municipal and County Government Employees Organization (MCGEO). See testimony, ©10-11. While Executive branch staff did not testify at the hearing, the Office of Human Resources (OHR) did respond later to questions posed by Council staff when the bill was introduced (see ©28-30). Just before the April 2001 worksession OMB submitted a fiscal impact statement, which estimated the cost of implementing this bill, if it results in extending health benefits to certain temporary employees, at about $900,000, and the economic impact on affected County employees (union dues or service fees paid) at about $250,000 (see ©31-33). The fiscal impact estimate does not include any salary increase that might be necessary to attract applicants to fill certain jobs affected by this bill; for arguable examples of this effect, see the emails on ©23-24 and 26.

Outreach Shortly before the hearing, Council staff notified County employees of this bill by email (see ©8) and sent postcards (see ©9) to about 2700 temporary, seasonal, and substitute employees (all those who received a County paycheck during the previous year). Response to these notices was uniformly negative, as the sample letters and emails on ©12-27 indicate; only one affected employee, a telephone caller, supported the bill without reservation. However, MCGEO attributed the negative response to the wording of the notice.

Activity after Committee worksession After the April 2001 worksession MCGEO's attorney submitted a memo on the issue of standards for accretion to the bargaining unit and

related issues (see ©36-42). Council staff distilled the Committee members' remaining questions into a memo to OHR and MCGEO (see ©43-44). Both parties responded in detail (see ©45-48 for MCGEO, ©49-54 for OHR). In addition, Sheila Sprague of the Office of Intergovernmental Relations (OIR) submitted a letter, proposing that upper-level OIR staff be exempted from the bargaining unit (see ©55-56). Finally, after conferring extensively with the Executive branch and MCGEO, Councilmember Denis, lead member for personnel issues, drafted a set of amendments -- essentially a substitute bill -- for the Committee to consider (see ©57-63).

Issues/pending amendment

This section of our memo will consider the issues raised by the bill as introduced and how Councilmember Denis' amendments would resolve those issues.

1) How many employees, in which job classifications, would be added to the bargaining units?

As introduced, the bill would bring 3 types of employees into the County employees collective bargaining units. Below are the categories, some subcategories and typical jobs, and approximate number of employees in each category (as estimated by OHR last year):

Temporary, seasonal, or substitute employees	**2700**
Minimum wage job classes (S1-S8; see ©35)	2250
(typical job: recreation/aquatics assistant, library page)	
Bargaining unit job classes	410
(typical job: seasonal highway construction supervisor, substitute nurse, librarian)	
Non-supervisory Grade 27 and up[1]	54
(typical job: DIST programmer)	

At the hearing MCGEO's President, Gino Renne, noted that many employees in this category who are in sensitive job classes can still be individually excluded from the bargaining unit by action of the OHR Director. His reason for wanting to cover them in this bill is to protect them from being excluded from the bargaining unit solely because of a reclassification or promotion.

Non-merit employees who are not department heads or deputies 0

Executive and Council staff have not identified anyone who would fall into this category. Many non-merit employees are in completely exempt offices, such as the Executive's, Chief Administrative Officer's, and Council offices, and virtually all other non-merit employees are exempt because they are supervisors. In addition, under the current law (see ©2, lines 5-6) the bargaining unit consists only of merit system employees, so the only apparent effect of this amendment (©2, lines 10-11) is to delete an error or anomaly from the law.

[1]Supervisors in all grades would still be exempt. See (S) on ©6.

Denis amendment: This amendment would add the following employees to the bargaining units:

- employees in positions classified in grade 27 or higher which before July 1, 2002, had been classified below grade 27 -- see (P) on ©60;
- temporary, seasonal, and substitute employees who work more than 6 months in a bargaining unit job class (now estimated to be about 470 employees) -- see (H) on ©58 and §33-105(c)(1) on ©60-61; and
- temporary, seasonal, and substitute employees who are not in bargaining unit job classes and who work at least 25 hours per pay period -- see §33-105(c)(2) on ©61 and §33-107(b) on ©63. This group includes what are usually considered the truly seasonal employees -- for example, the lifeguards, recreation workers, and leaf collectors. Two special provisions would apply to these "limited-scope" employees: they would be assessed lower union dues or service fees (see §33-105(c)(2)(B) on ©61), and the scope of bargaining for them would be limited essentially to wages (see §33-107(b) on ©63).

In Council staff's view, the first two groups are the most defensible inclusions, especially if the inclusion is accomplished by accretion (see next issue). These are the exempt employees who most closely resemble covered employees, and who have the fewest substantive reasons to be excluded. The inclusion of employees who are reclassified to grade 27 or higher after the bill takes effect responds to MCGEO's "grade creep" argument. However, these groups include many of the people who expressed strong opposition to membership in the bargaining unit (see e.g. ©12-17, 25).[2] The "limited-scope" seasonal employees -- such as lifeguards, recreation workers, leaf collectors -- who are classified in the Minimum Wage/Seasonal Salary Schedule (see ©35) arguably have a more remote relationship to current bargaining unit members, although MCGEO points out that they work with and are supervised by bargaining unit members.

2) Should the affected employees be able to vote on joining a bargaining unit?

In other words, should this bill amend County Code §33-106 to apply the petition and election procedures to substantial additions to a bargaining unit as well as certification and decertification of the bargaining agent? Normally employees are put in a collective bargaining unit only if they vote to do so or otherwise register their desire to be subject to collective bargaining. For example, the initial certification of a bargaining agent under the County employees collective bargaining law[3] requires "the uncoerced signatures of thirty (30) percent of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining." After those signatures are validated, an election is held among "all eligible employees" and they are incorporated in a bargaining unit only by majority vote.

---

[2]Committee members may recall that the law does not require a bargaining unit member to be a member of MCGEO, but instead the employee must pay an agency fee unless exempt on religious grounds (see County Code §33-104(c)-(d), and definition of *agency shop* in §33-102(1) on ©5).

[3]County Code §33-106(a)(1).

By contrast, this bill would absorb covered employees in a bargaining unit by legislative fiat. (Before the Council in Bill 10-00 took a similar action to place police sergeants in the police bargaining unit, the applicable union, the Fraternal Order of Police, had already enrolled a majority of the affected employees as non-represented members.) When the only available gauge of employee sentiment -- communication with the Council -- runs almost unanimously *against* bargaining unit membership, that fact would seem to warrant greater legislative caution.

MCGEO argues that conducting a petition drive or an election among a shifting group of temporary, seasonal employees could be difficult or impractical. If so, that would raise the question whether it makes sense to place this employee group in a bargaining unit -- i.e., whether these employees have the requisite community of interest. In staff's view, the nature of the employee group governs both questions equally. OHR concluded that the reasons for excluding these employees from the bargaining units are still valid (see ©28, 49-51).

Denis amendment: This amendment would automatically include covered employees in the bargaining unit. For the smaller group of employees who are most like current bargaining unit members, in Council staff's view the community of interest is clearer and the objections to accretion by legislation lose much of their force. The same cannot easily be said for the larger group of "true seasonal" employees, who would be represented only for wages and would pay reduced dues (although the exact size of the reduction is determined by the union).

3) Should short-term employees be treated like other temporary employees for collective bargaining purposes?

OHR makes a case that the "true seasonal" employees either should not be merged into the bargaining unit, or should be represented only for purposes of bargaining wages (see ©29). As OHR also notes, wage increases are always passed through to these and other unrepresented employees. Council staff agrees with OHR that seasonal employees hired for a truly short term (e.g., less than 90 days) should be excluded from bargaining even if seasonal employees as a class are included. Excluding these employees (e.g. lifeguards, summer camp aides) would simplify the County's personnel administration and narrow the issue (discussed below) of proration of dues and service fees. The strongest argument for including them in a bargaining unit is their "free rider" status vis-à-vis wage adjustments, but in staff's view that argument carries less weight for truly transient workers.

Denis amendment: Includes in the bargaining unit, for wage bargaining only, short-term temporary, seasonal, and substitute employees who are not in bargaining unit job classes. Those employees become members of the bargaining unit when their County employment begins if they are scheduled to work at least 25 hours a pay period (assuming that the union has met the condition of reducing their dues commensurate with its narrower scope of representational responsibilities).

4) Should temporary, seasonal, or substitute employees be treated the same as other bargaining unit members for negotiation of employee benefits? Should the collective bargaining law limit benefits for short-term employees?

OHR proposed that these employees be represented only for bargaining wages (see ©29). OMB estimated the cost of providing health benefits to 50% of the eligible temporary employees at about $360,000 (the S series of minimum wage job classes on ©35) and about $425,000 for temporary employees in the bargaining unit classes. See fiscal estimate, ©32.

Denis amendment: This amendment does not restrict the scope of bargaining for those temporary, seasonal, and substitute employees in bargaining unit job classes, except that their probation period -- or any other employee's -- cannot be reduced below 6 months (see ©62-63), and they cannot be bargained into the current retirement systems or be eligible for binding grievance arbitration (see §33-107(a)(2) and (5) on ©62). It does limit the scope of bargaining for "true seasonal" employees to wages (see ©63).

5) Should dues or service fee payments be prorated for short-term employees? For low-paid employees?

As a number of affected employees noted (see letters, ©12-27), their already low pay would be made more regressive if union dues (or the alternative service fee) were withheld at the current rate, which is $12 a pay period. The County collective bargaining law does not govern the level of dues and service fees, and last year's MCGEO contract amendments deleted any mention of the amount of dues from the collective bargaining agreement. Thus the only constraints on the level of dues are the union members' willingness to re-elect its leadership or decertify the bargaining agent. However, the law could condition coverage of this particular group of employees on limiting (by dollar amount or percent of hourly wage) the amount of dues they would be charged. Federal labor law contains ample precedent for this kind of employee protection: the Taft-Hartley Act defines charging an excessive or discriminatory fee as a condition of union membership as a union unfair labor practice, and the Landrum-Griffin Act requires certain procedural safeguards before a union can raise dues, fees or assessments. MCGEO continues to maintain that members' dues are not a proper subject of legislation (see ©42, 46). In addition, depending on the scope of bargaining allowed for each group of temporary employees, it may be difficult to justify collecting full union dues or fees for less-than-full representation.

Denis amendment: Requires the union to reduce dues and service fees for "limited-scope" bargaining unit members commensurate with its narrower scope of representational responsibilities, but does not prescribe the exact amount to be reduced. Does not, for example, adjust the amount of dues charged to part-time or short-term employees based on the ratio of $312 (the current full amount of annual dues) to the average salary of represented employees.

6) Should OIR employees be excluded from the bargaining unit?

Sheila Sprague's letter on ©55 raises the issue whether Office of Intergovernmental Relations (OIR) employees, above grade 27 or generally, should be excluded from the bargaining units. **Denis amendment:** does not address this issue. **Council staff recommendation:** exclude all OIR employees from the bargaining process. In our view, OIR is a small, specialized office, whose employees are involved in sensitive policy issues and have a

unique relationship to elected officials, much like the Council staff, the Executive's office, and OMB, all of whose employees are entirely exempt from bargaining unit coverage.

7) **When should this bill take effect?**

Denis amendment: Essentially follows OHR's suggestion on ©29 to let the parties negotiate a transitional agreement covering temporary, seasonal, and substitute employees once this bill becomes law. Employees would become bargaining unit members (if they qualify by length of service) when the bill takes effect, 90 days after the Executive signs it. (See ©63.)

This packet contains:	Circle #
Bill 9-01	1
Legislative Request Report	4
Current collective bargaining law (excerpt)	5
Email notice	8
Postcard sent to employees	9
MCGEO testimony	10
Selected employee comments	12
OHR answers to Council staff questions	28
Fiscal impact statement	31
County salary schedules	34
Letter from MCGEO attorney	36
Council staff memo with Committee questions	43
MCGEO response	45
OHR response	49
Letter from Sheila Sprague, OIR	55
Councilmember Denis amendments	57

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Bill No. 9-01
Concerning: County Employees-Collective Bargaining Units
Revised: 2-7-01 Draft No. 2
Introduced: February 27, 2001
Expires: August 27, 2002
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Subin, Council President Ewing, and Councilmembers Leggett, Berlage, Denis, Silverman, and Andrews

AN ACT to:

(1) include certain County employees in a collective bargaining unit; and
(2) generally amend the law governing collective bargaining with County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-102

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 33-102 is amended as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

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

* * *

[(B) All persons who are not covered by the County government merit system.]

[(C)] (B) * * *

[(D)] (C) * * *

[(E)] (D) * * *

[(F)] (E) * * *

[(G)] (F) * * *

[(H)] (G) * * *

[(I)] (H) * * *

[(J)] (I) * * *

[(K)] (J) * * *

[(L)] (K) * * *

[(M) Persons who work on a temporary, seasonal, or substitute basis.]

[(N)] (L) * * *

[(O)] (M) * * *

[(P)] (N) * * *

[(Q)] (O) * * *

[(R)] (P) * * *

[(S)] (Q) * * *

[(T) Persons in grade 27 or above, whether or not they are supervisors.]

* * *

Approved:

Blair G. Ewing, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 9-01

County Employees - Collective Bargaining Units

DESCRIPTION:	Would move certain employees into the County employees collective bargaining units by repealing the current law's exemptions for temporary, seasonal, or substitute employees; highly paid (Grade 27+) non-supervisory employees; and certain non-merit employees who are not department heads or deputies.
PROBLEM:	Certain County employees are not currently subject to collective bargaining but deserve to be covered.
GOALS AND OBJECTIVES:	To expand the coverage of collective bargaining laws to currently excluded County employees.
COORDINATION:	Office of Human Resources, Office of Management and Budget
FISCAL IMPACT:	To be requested
ECONOMIC IMPACT:	To be requested
EVALUATION:	To be requested
EXPERIENCE ELSEWHERE:	To be requested
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County employees
PENALTIES:	Not applicable

bargaining shall be used in place of, and not in addition to, existing means for initiating governmental action on subjects that are defined as appropriate for like collective bargaining in this article. (1986 L.M.C., ch. 70, § 3.)

Editor's note—The above section is cited in Dashiell v. Montgomery County, 925 F.2d 750 (4th Cir. 1991).

Sec. 33-102. Definitions.

The following terms have the meaning indicated when used in this article:

(1) *Agency shop* means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require an employee to pay initiation fees, assessments, fines, or any other like collections or their equivalent as a condition of continued employment. A collective bargaining agreement shall not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the collective bargaining agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, with provision for dispute resolution if there is not agreement, and to give to the employer and the certified representative written proof of this payment. The certified representative shall adhere at all times to all federal constitutional requirements in its administration of any agency shop system maintained by it.

(2) *Certified representative* means an employee organization chosen to represent employees as their exclusive bargaining agent in one (1) or both units as defined in Section 33-105 in accordance with the procedures of this Article.

(3) *Collective bargaining* means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this Article. This Article shall not be interpreted to compel either party to agree to a proposal or make a concession.

(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:

(A) Confidential aides to elected officials.

(B) All persons who are not covered by the County government merit system.

(C) Heads of principal departments, offices, and agencies.

(D) Deputies and assistants to heads of principal departments, offices, and agencies.

(E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

(F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

(G) Persons who work for the Office of the County Executive and the Office of the Chief Administrative Officer.

(H) Persons who work for the County Council.

(I) Persons who work for the Office of the County Attorney.

(J) Persons who work for the Office of Management and Budget.

(K) Persons who work for the Office of Human Resources.

(L) Persons who work for the Merit System Protection Board.

(M) Persons who work on a temporary, seasonal, or substitute basis.

(N) Newly hired persons on probationary status.

(O) Persons who work for the Police Department and are represented by a certified employee organization under Article V.

(P) Persons who work for the Department of Fire and Rescue Services and are represented by a certified employee organization under Article X.

(Q) Officers in the uniformed services (Corrections, Fire and Rescue, Police, Office of the Sheriff) in the rank of sergeant and above. Subject to any limitations in State law, deputy sheriffs below the rank of sergeant are employees.

(R) Persons who are members of the State merit system.

(S) Supervisors, which means persons having authority to:

(i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively recommend any of these actions;

(ii) direct the activity of 3 or more employees; or

(iii) adjust or recommend adjustment of grievances.

(T) Persons in grade 27 or above, whether or not they are supervisors.

(5) *Employee organization* means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining.

(6) *Employer* means the County Executive and his or her designees.

(7) *Lockout* means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) *Mediation* means an effort by the mediator/fact-finder chosen under this Article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) *Strike* means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing, or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition, or authority of the employee or an employee organization.

(10) *Unit* means either of the units defined in Section 33-105.

(11) When either the female or the male pronoun appears herein, it is to be read to include both genders. (1986 L.M.C., ch. 70, § 3; 1994 L.M.C., ch. 16, § 1; 1996 L.M.C., ch. 21, § 1.)

Sec. 33-103. Labor relations administrator.

(a) A Labor Relations Administrator must be appointed to effectively administer this Article as it governs selection, certification and decertification procedures, prohibited practices, and the choice of a mediator/fact-finder. The Administrator must:

(7)

Printed by: COGANM

Mail: Bill 9-01

From: MONT. CO. POSTMASTER
To: 7 recipients

--- Received from DIST.POSTMAST/SDD00E4 777- 01-04-10 16.45

-> DIST.CNTYALL county wide distribution list

****
*******PLEASE DO NOT RESPOND TO POSTMASTER*******
*****Questions may be directed to Council at*****
**********(240) 777-7900**********

The Management and Fiscal Policy Committee of the County Council will hold a worksession on Bill 9-01 on April 25 at 2:00 p.m. in the 7th floor hearing room of the Council Office Building. This worksession had been tentatively scheduled for April 20.

Bill 9-01 would move certain employees who are currently not covered by collective bargaining into the County employees collective bargaining units. The bill does this by repealing the current law's exemptions for temporary, seasonal, or substitute employees; highly paid (Grade 27+) non-supervisory employees; and certain non-merit employees who are not department heads or deputies.

For further information or to confirm the Committee schedule, please call (240) 777-7900.

Dear Montgomery County Temporary, Seasonal, or Substitute Employee:

A bill pending before the County Council, Bill 9-01, would move temporary, seasonal, and substitute employees, who currently are not covered by collective bargaining, into the County employees collective bargaining units. If this bill is enacted, affected employees would be represented for collective bargaining purposes by the Municipal and County Government Employees Organization (MCGEO), and could be assessed dues or a service fee by MCGEO.

The public hearing record on this bill is open until April 10. Written comments from employees and all others are welcome. Comments can be sent to the Council President at the address on the front of this card, or by e-mail to county.council@co.mo.md.us. The Council's Management and Fiscal Policy Committee is scheduled to consider Bill 9-01 on April 20 at 2 p.m. For further information, please call the Council's Legislative Information Service at (240) 777-7910.

County Council

Montgomery County Maryland

My name is Carey R. Butsavage of the law firm Butsavage & Associates of Washington, D.C. I am counsel for UFCW, Local 1994.

We appreciate and welcome this opportunity to address the County Council concerning the proposed amendment to the Collective Bargaining Law (33-101) to include temporary, seasonal and substitute employees in the currently authorized collective bargaining units. For the reasons set out below, we strongly believe that the proposed amendment will provide substantial benefits to the County, the affected employees and the citizens of Montgomery County.

We believe that since the passage of the initial Collective Bargaining law in 1986, there has been a growing sense and recognition that there is a substantial portion of this nation's work force that has been neglected, overlooked and taken for granted. That group includes the kind of temporary, seasonal and substitute workers employed in Montgomery County. It is the case in many State, County and municipal jurisdictions and it is certainly the case in the Private Sector. It is time that the individuals who comprise that group and provide the citizens of Montgomery County with valuable services are represented. Those workers help to make Montgomery County one of the best places to live in this nation, and they should have a seat at the collective bargaining table.

Under the current system, there are approximately 2,000 to 2,400 people who make up the temporary. seasonal and substitute work force in this County. The tasks they perform and services they provide are both varied and vital. They are the individuals who staff Park and Recreation facilities in the Summer, so that families and individuals can enjoy the many amenities that Department provides. They collect the leaves and beautify our roadways so as to

(10)

make our County a more pleasing and attractive place to live. Across the spectrum of County services, they are the substitute workers who ensure that our citizens' services remain uninterrupted and undiminished due to sickness, vacations or temporary unavailability in the regular work force. In short, they perform many of the services, often working side-by-side with Union workers, that help make this County such a desirable place to live.

Unfortunately, however, it is our view that the workers who provide this County and all of its citizens with the foregoing services have too often been overlooked, neglected and taken for granted. This is particularly evident, we submit, in their continuing exclusion from the enjoying the rights and benefits of collective bargaining.

Thus, under the current system, which excludes temporary, seasonal and substitute employees, the simple fact of the matter is that all of the thousands of workers cited above are wholly without the benefits, advantages and protections of collective bargaining and representation. In this regard, they have no collective voice to speak on their behalf in terms of their wages, hours and working conditions. They have no meaningful avenue to present grievances or have them adjusted and resolved. Even when they are terminated, they have only partial rights to challenge that action. In short, in terms of having a meaningful say in their work lives and being treated with the dignity and respect that is accorded their colleagues who work for this County, the temporary, seasonal and substitute employees are effectively treated as second class citizens and employees. In light of the first class services they provide and the first class contribution to the County that they make to the County their exclusion from collective bargaining rights is an inequity that should no longer be visited upon them.

We urge prompt approval of the proposed amendment.

MEMORANDUM

April 4, 2001

TO: Blair Ewing, President
Montgomery County Council

FROM: Elizabeth C. Notter, Highway Inspector
Division of Highway Services
Department of Public Works and Transportation

SUBJECT: Bill 9-01

I am sending this letter to the entire County Council, with only non-substantive modifications. My family and I are registered and voting Montgomery County Democrats, and I am a retired professional County employee. I returned to work as a temporary employee to supplement my income due to a family medical situation. At my current salary level, any additional levy on my check would be difficult. Many of my coworkers experience the same kinds of problems.

I understand that MCGEO has argued that increases in costs of living and other benefits derive from the union's efforts. However, management staff, as well as retirees and other non-union employees, enjoy these same increases without the comparable payment of dues or a "service" charge to the union that this bill would require. If temporary and/or seasonal workers must become union members and pay a "service" charge, it is only fair that all other classes should pay the same "service" charge, since they all benefit equally (except of course for the fact that most are currently receiving full benefits). Why should those with the least support those with the most?

If there is some belief that the union might negotiate for temporary employees any of the benefits such as health insurance, vacation, paid holidays, sick leave, etc., which none of us have under our current status, please consider the chances of changing the current personnel regulations, and adding sufficient funding to cover any or all of these benefits in this time of fiscal concern and highly reduced budgets. As I noted earlier, the union will claim that their negotiation of cost-of-living increases is a benefit for which we should pay. If so, so should everyone! Consider this: employees who earn $10.23/hour for six months will have to work for 1 ½ hours each pay period for the union, in return for benefits as yet unnamed, to be determined in a contract as yet unwritten. This is not fair.

I, and others to whom I've spoken, believe the impacts, fiscal and administrative, of this legislation have been underestimated, and, in some cases, entirely overlooked. The

representatives of the classes affected feel strongly that no benefits will accrue to their groups from such coverage, and that they are being treated unfairly under this legislation.

When made aware of the bill, the temporary/seasonal inspectors with whom I spoke expressed very negative opinions on becoming union members. None had been contacted for input or opinion by the union in advance of this bill's submittal to the County Council. Some of us feel that the bill has been written in a vacuum, without any input either from those to be acted upon, or those who must administer the programs in which the employees work. We believe that the County Council cannot, in good conscience, act on a bill the details of which have not been shared with those affected, and the ramifications of which have not been examined.

I hope to attend the work session, although I would like to understand more clearly before that time how your sponsorship decision on this bill was reached.

I do appreciate your attention to this letter. I am not speaking only for myself.

ECN:

(13

cc

RECEIVED COUNCIL

037143

APR 3 A10 : 14

Printed by: CAPOBS

Mail: County Council, Bill 9-01

From:

To: MONTGOMERY COUNTY COUNCIL

From: WDJOY@aol.com
To: county.council@co.mo.md.us
Date: Mon, 2 Apr 2001 14:34:20 EDT
Subject: County Council, Bill 9-01

To Whom It May Concern

I wish to state my objection to the inclusion of temporary employees in (MCGEO). I retired after over 31 years as a County employee and was asked to come back to work part time in another agency.

I have worked there for 4 years on a part time basis no more than 20hrs a week. As a retired employee I receive no other benefits that an hourly wage.

I feel that inclusion in the union would be of no benefit to me and would result in me working one hour per pay period for the union. As far as I can determine no temporary, seasonal and/or substitute employee have requested or have been asked if they wanted to be included in this union.

I do not think this would be fair to me or other temporary employees to include our positions.

Bill 9-01

MF
cc

RECEIVED COUNCIL

01 APR 4 A 9:22

Franklin R. Hum
5519 McKinley Street
Bethesda, Maryland 20817-3729
(301) 530-4388

April 2, 2001

037197

Council President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Bill 9-01 County Employees-Collective Bargaining Units

I have received the post card sent to inform me that the Council is considering the referenced bill to move temporary, seasonal, and substitute employees, currently not covered by collective bargaining, into the County employees collective bargaining units. I am opposed to this proposed action by the Council.

I am currently a temporary, seasonal employee working as a Highway Construction Inspector 1 for the Division of Highway Services. I have been employed at this position since 1997. At the beginning of each construction season, I am hired as a new employee and at the end of the construction season I am terminated.

If the Municipal and County Government Employees Organization is so interested in our welfare, why don't they ask the County government to hire more full time employees instead of relying on staffing by using temporary, seasonal personnel. Then they can have more members to pay dues or fees instead of trying to force people into their organization who have not asked to join.

I realize that if we are made a part of the MCGEO they will bargain with the County Executive for benefits for us. However, I don't believe that we would be consulted on proposed benefits that the MCGEO would bargain for with the County Executive, especially since we weren't asked if we wanted to be included in a union. I can't imagine what types of benefits that we would receive since I and other inspectors at Highway Services are hired and terminated after working anywhere from eight to ten months depending on the weather and funding. Will the Finance Office be able to keep up with the changes in our status or the status of the hundreds of people that are employed for shorter periods? Will the Council find adequate funding for these additional expenses especially since you are currently considering raising taxes and fees to fund the next budget shortfall between the amount that the County Executive wants to spend and the Council's spending priorities.

I'm afraid that the temporary, seasonal employees will end up with little or no benefits and will be forced to pay MCGEO for the privilege of working for Montgomery County.

I also want express my disappointment at the way this Bill 9-01 has been introduced and the lack of notice for the public hearing that was held on March 20th. If the Council or the MCGEO were concerned with the welfare and interests of the temporary, seasonal and substitute employees, someone should have had the courtesy to notify those most affected of this proposed action. Instead the Bill was introduced by the sponsors and the only group that spoke at the meeting was the MCGEO which wrote the measure to begin with. We were notified by post card mailed three days afterwards that this Bill has been proposed and now was in the comment period. In addition, the Bill was not posted on the Council web site so anyone interested in learning of the provisions of the Bill could not get any information.

(15)

The sponsors of the Bill have the reputation of addressing and providing remedies for constituent concerns. Various members of the sponsoring council member have introduced Bills in the name of constituent services to deny monies to organizations that permit gun shows; restricting the activities of long established companies to lessen the noise and dirt that new homeowners adjacent to an existing quarry and public road have to endure; permitted municipalities in the county to pass laws restricting the use of tobacco in their jurisdiction or requiring homeowners to remove snow from the sidewalks in front of their homes. All these measures have a constituency and urgency that various Council members felt they have to address.

What is the constituency that this Bill addresses and is to serve? Certainly it is not the many temporary, seasonal and substitute employees who work for the County often at wages slightly above the federal minimum.

I have been a resident of this County since 1967 and have paid a lot of money to the County in the form of income and property taxes. Can the leadership of MCGEO say the same?

Franklin R. Hum

cc: Howard Denis

Bill 9-01

HF
OC

Elizabeth Triau
18056 Mill Creek Dr.
Derwood, MD 20855

037196

April 2, 2001

Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

Attention: Montgomery County Council President
Regarding: Bill 9-01

I am a retired school nurse currently working part time in the school Health Services Center. I was very upset to learn of the upcoming Bill 9-01 that would force temporary employees such as I to be members of the union (MCGEO) and be assessed dues or fees for something I do not wish to be a part of. I do not earn much money as I work only a few hours each week and it would be unfair to deduct union dues from my meager paycheck. Please do not allow this bill to pass.

Sincerely,

Elizabeth Triau

Elizabeth Triau

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01 APR 4 A10:18

(17)

RE: Bill 9-01

Bill 9-01

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April 5, 2001

037430

Mr. Blair Ewing
Montgomery County Council President
100 Maryland Avenue
Rockville, MD 20850

Dear Mr. Ewing:

I am writing as a Montgomery County Temporary Seasonal employee who wishes to request the Council not make Temporary Seasonal employees join the MCGEO. I have worked for Montgomery County for three years now and would like to become a permanent employee who would have no problem joining the union at that time, however, as a Temporary Seasonal employee I must purchase my own health insurance plan, retirement, and save for the time I am out of work. I should not be burdened with union dues too. The cost of dues would be difficult to bear and is taxation without representation. The union would do nothing for me.

As someone who supervises contractors, I feel it would be a poor management move as well. The union tends to protect people who do not want to work. Being a union member, it would be difficult to weed out poor workers. The short season to accomplish the much needed work of the Sidewalk and Driveway program, would be burdened with further delays if my supervisor hires an individual who becomes complacent or an attendance problem. Please do not make their job more difficult.

Thank you for considering my request.

Sincerely,

Adam Derrick
308 Mt. Vernon Place
Rockville, MD 20852

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01 APR 10 A10 : 12

(18)

9-01

MF
CC

Auburn Avenue Liquor Store
4800 Auburn Avenue
Bethesda, Maryland 20814
301/986-4366
Retail Division 301/777-1930

037388

MARCH 29, 2001

TO: COUNTY COUNCIL

FROM: PART-TIME TEMPORARY CLERK, AUBURN STORE; DLC

SUBJECT: BILL 9-01

IF TEMPORARY EMPLOYEES, WHO ARE CURRENTLY NOT COVERED BY COLLECTIVE BARGAINING, AND, WHO ARE NOT RECEIVING ANY BENEFITS, ARE MOVED INTO COLLECTIVE BARGAINING UNITS, WILL THEY BE ENTITLED TO BENEFITS + RETIREMENT ?

IF TEMPORARY EMPLOYEES ARE MOVED INTO COLLECTIVE BARGAINING UNITS AND ARE NOT AFFORDED BENEFITS AND RETIREMENT, THEN I AM FIRMLY AGAINST THE BILL.

IF TEMPORARY EMPLOYEES WILL RECEIVE BENEFITS AND RETIREMENT WITH BILL 9-01 THEN I AM ALL FOR IT!

Thanks for listening

WILLIAM BRAGG

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(19)

Bill 9-01

ME
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RECEIVED COUNCIL 037386

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Mail: Bill 9-01

From: Charles Crickman
To: MONTGOMERY COUNTY COUNCIL

From: crickman@erols.com
To: county.council@co.mo.md.us
Date: Fri, 6 Apr 2001 17:16:06 -0400
Subject: Bill 9-01

Dear Mr. Ewing and other members of the Montgomery County Council,

I am opposed to Bill 9-01 pending before the Council. This appears to be an attempt by MCGEO to enrich the union coffers at the expense of temporary, seasonal and substitute employees, who are most unlikely to achieve any benefit through collective bargaining.

It is my understanding that a hearing has been held before the Council where no representatives from the affected categories, nor anyone on their behalf, gave testimony about this legislation. Only the union side was represented.. I have been unable even to determine what the details of this legislation are.

? What is the proposed fee structure and how would it be assessed from employees who are with the county for obviously short-term and intermittent employment?

? What does MCGEO expect to offer them as benefits?

? What specific representations have the union made that show a benefit for these employees?

Without such specific information available for public comment how can the Council possibly consider this bill fair or responsible? I hope that each council member will think hard about the implications of passing legislation so unfair to those it employs. The County should serve as a model employer

20

Printed by: CAPOBS **037101**

Mail: Bill 9-01

From: Margaret Zierdt
To: MONTGOMERY COUNTY COUNCIL

From: margaret.zierdt@juno.com
To: county.council@co.mo.md.us
Date: Sat, 31 Mar 2001 17:45:19 -0800
Subject: Bill 9-01

RECEIVED COUNCIL
01 APR 2 A9:37

To: County Council President

As a substitute shelving assistant (formerly known as "page") at the Rockville Library, recently I received notification of a public hearing on your proposed Bill 9-01. I have been working at minimum wage since 1996, so I am profoundly interested in your proposals.

However, I am mystified by the wording. The concept of imposing a particular bargaining agent without an affirmative vote of those affected is very bizarre to say the least. To assess dues again without consent of a majority sounds like company shops of the 1800s.

I am delighted with the prospect of collective bargaining. I would like to hear what MCGEO proposes., Other unions should also be invited to present proposals. The areas of pay scales, vacation time, health benefits, working conditions, transfers etc., are some of the concerns, I feel , of all substitute workers. And for all shelving assistants, substitute and regular, who now work at minimum wage, what relief will the bargaining agent provide to bring us closer to living wage?

Please share my concerns with other council members.

My address is 701 Roxboro, Rockville 20850; tele. 301-762-3001.
Margaret Zierdt

(21)

MF
CC

037033

Printed by: CAPOBS

Mail: UNION MEMBERSHIP

From: COUNCILMEMBER BLAIR EWING OFF.

To: MONTGOMERY COUNTY COUNCIL

--- Received from COUNCIL.EWINGOFF/MCC00VR -------- 01-03-28 17.11

-> COUNCIL.MCCMAIL MONTGOMERY COUNTY COUNCIL COUNCIL

forward

--- Received from COMWOMEN.ABRAMN 279-8300 01-03-28 17.06

-> COUNCIL.EWINGB *> Forwarded by

Dear Mr. Ewing,

I am a temporary part time employee at the Commission For Women. Last week I received a card from the Union informing me of their intention to include part time and temporary employees as part of the Union.

I am completely opposed to Union membership and to being forced to pay dues. I work 8 hours a week have no benefits and no leave. There is no benefit to joining the Union. As an 8 hour a week employee, I will never receive a benefit and will be forced into a reduction in salary or resigning from my position prior to the action. Being a Union member is a liability. The Commission for Women Counselors all work part time. This action will cause major recruiting problems and jeapordize the community counseling program provided by the Commission for Women.

I would appreciate your assistance in protecting my rights to work independently from the union.

Please let me know if there are other actions I need to take or other people I should contact.

Sincerely,
Nancy Abramson

RECEIVED COUNCIL 01 MAR 28 A8:40

22

036928

Printed by: CAPOBS

Mail: Bill 9-01 is a bad idea

From: Doris and Charlie Auer
To: MONTGOMERY COUNTY COUNCIL

From: auer.charles@erols.com
To: county.council@co.mo.md.us
Date: Sun, 25 Mar 2001 13:26:56 -0500
Subject: Bill 9-01 is a bad idea

Dear Sir:

We understand that County Council Bill 9-01, currently being considered, would force seasonal employees into the County employees collective bargaining unit. We have been the parent representatives for the Poolesville Swim Team in the Montgomery County Swim League for the last 5 seasons. We are opposed to this bill which would adversely affect the operation of the swim team and pool. Every year MCRD has a hard time recruiting qualified staff to handle the swim team coaching responsibilities. The pay at county pools does not compare very well with that which is available at private pools and this bill would further increase the pay differential and make this task even more difficult.

The main effect of this bill if passed will be to fund the union on the backs of temporary workers while making it harder to fill county pool jobs - before you vote on this bill ask MCRD about their chronic problems in recruiting adequate numbers of life guards and other pool workers to meet the need. Beyond numbers, it is also difficult to find quality employees who can capably uphold their responsibilities. With a decline in take home pay attributable to union fees, these problems will increase and the quality of service provided to pool patrons will further decline which will eventually have an adverse impact on pool patronage .

This bill is inadvised and will have a negative impact on the operation of county pools and the swim teams which are associated with those

RECEIVED COUNCIL
01 MAR 26 A 8:37

pools. We call on you to vote against this bill and its negative effect on the operation of county pools.

Sincerely,

Doris and Charles Auer, Parent Reps for Poolesville Swim Team, MCSL

(24)

Inc HD → CC

037311

Printed by: CAPOBS

Mail: Objection to Bill 9-01

From: DERI MOEIS

To: MONTGOMERY COUNTY COUNCIL

--- Received from DIST.MOEISD 240-777-2957 01-04-05 15.53

-> COUNCIL.MCCMAIL MONTGOMERY COUNTY COUNCIL COUNCIL

01 APR 6 A9:16

RECEIVED COUNCIL

Dear Councilmembers,

I am a grade 27 career employee with 15 years of service with the County. I work for the Department of Information Systems and Telecommunications as a Computer Systems Programmer. I am writing this e-mail to state my objection to being forced to join the union. My reasons include the following:
I Have been at the top of my grade for several years. My only salary increase has been a percentage of the COLA every year. I have nothing to gain with any salary negotiations MCGEO enters into with the County. If there were ever any personal issues between the County and myself I would go to the Merit Protection Board. I don't need union protection. Forcing me to join the union will change the membership group in my retirement plan from Non-represented to Represented without my consent. Although this doesn't appear to alter my retirement benefits yet, it has the possibility of doing so in the future. In the past any changes to an employees retirement plan has been grandfathered and is an employee option. My County Retirement Plan is very important to me and is one of the many reasons I stayed with the County. Finally there's the matter of being forced to pay union dues. Since I will derive no benefits from joining the union, this is little more than a forced pay cut. Given the fact that I only get a reduced cost of living increase every year as it is, decreasing my salary further by taking out money to hand over to the union is an additional burden to me.

To summarize, what I see here is a bill that will force me to join a union which offers me no salary benefits and no personal negotiating benefits with the County. A bill that could possibly alter my retirement plan. And finally, a bill that will force me to support a union with money that I see as being garnished from my salary.

25

Printed by: CAPOBS

Mail: Bill 9-01

From: "OLeary, Tim"
To: MONTGOMERY COUNTY COUNCIL

From: Tim.OLeary@Calvert.com
To: county.council@co.mo.md.us
Date: Mon, 26 Mar 2001 12:15:21 -0500
Subject: Bill 9-01

I am responding to the postcard I received regarding Bill 9-01. I think, if I am reading the information correctly, that assessing dues or service fees to employees who don't voluntarily want to be covered by the collective bargaining units, would deter a large portion of your part time and seasonal employees from seeking further employment from the County. I think that your recreational programs would be deeply wounded, due to the fact that a large number of the employees that fill these positions are college and high school students working as a summer job. The part time wage competition also comes into play. The average wage being paid to these summer workers, is right around the lower end of the pay scale, then to pay extra fees or dues on top of that, wouldn't be very prudent.

I know that I personally will no longer offer my services to the county as a temporary employee when asked. I have a regular full time job, and would not need, nor want to pay the fees to be covered under this unit. I only work for the county, when asked and needed, for an approximate total of 40 to 50 hours per year. The passing of this bill would give me the absolute reason for saying no to the hours.

Thank you for your time and consideration

Timothy A O'Leary

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MAR 27 AM 10:

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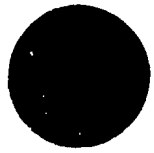
RECEIVED COUNCIL 037144



ted by: CAPOBS 01 APR 3 A10 : 14
il: (no subject)
rom: STEVEN F MAZER
To: MONTGOMERY COUNTY COUNCIL

From: STEVEDIVMD@GWOG.COM
To: county.council@co.mo.md.us
Date: Sun, 1 Apr 2001 15:42:59 -0400
Subject: (no subject)

COUNCIL PRESIDENT:

I AM A STUDENT AND PART TIME SUMMER EMPLOYEE. BEING A MINIMUM WAGE EMPLOYEE I DO NOT WANT TO HAVE DUES OR FEES ASSESSED FROM MY PAYCHECK,
WHICH WOULD PROVIDE NO BENEFIT TO ME. I THEREFORE AM AGAINST HAVING MY
POSITION PUT INTO A COLLECTIVE BARGAINING UNIT. STUDENT PART TIME EMPLOYEES SHOULD NOT BE COMPELLED TO PARTICIPATE IN SUCH A PROGRAM.

ALEXANDER M. MAZER

OFFICE OF HUMAN RESOURCES

Douglas M. Duncan
County Executive

Marta Brito Perez
Director

MEMORANDUM

April 23, 2001

TO: Michael Faden, Senior Legislative Attorney

FROM: Marta Brito Perez, Director Office of Human Resources

SUBJECT: Issues List - County Employees- Collective Bargaining Units

The following is a response to the several questions that you raised in your February 23, 2001 correspondence concerning the above referenced Bill.

1. **How many employees, in which job classifications, would be affected?**

Data concerning the affected job classes was transmitted to the Council Staff Director on April 9, 2001.

2. **What were the original reasons for excluding these classes of employees from the bargaining unit?**

Historically, temporary employees have been excluded from collective bargaining because various forms of compensation, insurance, retirement, leave benefits, and other subjects that are negotiable under the collective bargaining law were not extended to temporary employees. Also, the limited, transient nature of temporary positions did not focus concern for working conditions. Moreover, the County did not deem it prudent to make the significant fiscal investment required by collective bargaining for employees who, by the nature of their appointment, did not have a career focus in County employment. Finally, these benefits have not been extended to temporary employees of other local governments in this region.

Are those reasons still valid?

Yes, for the most part the incumbents of temporary positions remain transient in nature. 1600 of the seasonal employees (S1-S8 job classes) that approximate 2300 of the 2700 temporary employees have two seasonal years or less with the County. It is also important to note that the wage rates for temporary employees have increased as the product of "pass through."

3. **Should short term employees (e.g., less than 90 days) be treated like other employees for collective bargaining purposes?**

The average number of hours worked for the seasonal classes (S1-S8) last year were 302, which approximates 40 workdays. Extending traditional bargaining rights to these employees will pose tracking and transitional issues that will increase administrative costs associated with benefit eligibility and accrual. In addition, as noted above there is minimal focus on a long-term employment relationship. For these reasons the practicality of extending collective bargaining rights, if at all, should be limited solely to wages.

Temporaries in existing bargaining unit classes number about 400 and on average worked 600 hours last year which approximates 75 work days. While many of the same tracking and transitional problems will exist with this group, the number of employees in these job classes will significantly diminish such issues. Nevertheless, the limited number of workdays that these employees worked last year exemplifies the temporary nature of their work and lack of a career focus. These job classes should also have limited bargaining rights.

4. **Should dues or service fee payments be prorated for short-term employees? For lower paid employees?**

This is a question for the Union to answer.

5. **Should this Bill, if enacted, take effect on July 1, when the next collective bargaining agreement for these units takes effect? If not, will incorporating these employees into a bargaining unit during the current agreement affect their salaries or benefits?**

The bill could take effect on or after July 1; however, as noted below, application of the new agreements does not extend to temporary employees.

In reference to the second question, the new collective bargaining agreements would not have application to the newly accreted job classes. The recognition article of the agreements extends the benefits of the collective bargaining agreement to "*any person who works under the County government merit system on a continuous full-time, or career part-time career basis in the certified bargaining unit.*" Since the agreements are between the Executive and the Certified Representative, the Council has no authority to amend the agreements. However, the Council through legislative amendment may adopt transitional language that would permit the parties to negotiate a transitional agreement until such time as the accreted employees are folded into the agreement for the collective bargaining units.

6. **Should temporary, seasonal, or substitute employees be treated the same as other bargaining unit members for negotiation of employee benefits? Should collective bargaining law restrict access to benefits for short-term employees?**

See response to question # 3.

If there are any questions concerning this matter please contact Jim Torgesen, 7-5050.

cc: Blair C. Ewing, Council President
Bruce Romer, Chief Administrative Officer

OFFICE OF MANAGEMENT AND BUDGET

Douglas M. Duncan
County Executive

Robert K. Kendal
Director

MEMORANDUM

April 24, 2001

TO: Blair G. Ewing, Council President
Montgomery County Council

VIA: Bruce Romer
Chief Administrative Officer

FROM: Robert K. Kendal, Director
Office of Management and Budget

SUBJECT: Council Bill 9-01, County Employees – Collective Bargaining Units

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the aforementioned proposed legislation.

LEGISLATION SUMMARY

The County Council proposed legislation amends Chapter 33 of the Montgomery County Code, Personnel and Human Resources. The proposed amendment would include temporary, seasonal, or substitute County employees and non-supervisory employees currently in grade 27 or above in the Office Professional and Technical and Service Labor and Trades Bargaining Units currently represented by the Municipal and County Government Employees Organization (MCGEO), United Food and Commercial Workers, Local 1994.

FISCAL SUMMARY

The Office of Human Resources will require an additional Human Resource Specialist II (1.0 workyear) and a part time Principal Administrative Aide (0.5 workyear) to handle the additional workload created by adding approximately 2,700 temporary positions which currently are not tracked by OHR. OHR administers benefits and union status by employee. Adding 2,700 employees to these systems is a substantial workload impact particularly since turnover with these types of positions is frequent. The fiscal impact of adding 1.5 workyears to the OHR personnel complement is $81,270 assuming the positions are hired at the mid-point salary range at the beginning of FY02.

Placing temporary employees in bargaining units could make them eligible at some level for health benefits, which are currently unavailable to them. OHR and OMB estimate approximately 50 percent of these employees could take advantage of these benefits. There are two general classes of temporary employees: minimum wage job classes, (currently 2,248 employees), and bargaining unit job classes, (currently 410 employees and unrepresented due to their temporary job status).

The minimum wage job classes typically work a four pay period equivalent per year. The health benefit fiscal impact for half of these employees (1,124) at an average County contribution of $80 per pay period per employee and assuming an average equivalent of four pay periods worked, is $359,680 for FY02. The temporaries in bargaining unit classes work an average of 660 hours per year, an average of 25 hours per pay period. The health benefit fiscal impact for half of these employees (205) at an average County contribution of $80 per pay period per employee and assuming employment over 26 pay periods is $426,400 for FY02.

The Office of Human Resources anticipates $35,000 of additional operating costs to cover consultant services and costs associated with any renegotiation of the existing terms of agreements effective FY02 through FY04, and their applicability to temporary employees.

There is no wage fiscal impact for the addition of either of these employee groups to the bargaining unit, because the negotiated general wage adjustment, (GWA), was recommended to be passed through in the County Executive's Recommended FY02 Operating Budget. The fiscal impact for other bargaining unit items such as shift differential, multi-lingual pay differential, tuition assistance, holidays, leave, etc., are deemed insignificant for the job classes affected and the number of annual hours worked.

There is no fiscal impact for the addition of the non-supervisory positions grade 27 and above, because these positions already receive health and retirement benefits. The negotiated GWA was recommended to be passed through in the County Executive's Recommended FY02 Operating Budget. The chart below shows the cost breakout.

FY02 Fiscal Impact	
OHR Staff	$ 81,270
Health Benefits	
• Minimum Wage Job Classes	$359,680
• Temporaries in Bargaining Unit Classes	$426,400
Total Personnel	$867,350
Operating Expenses (Consultant)	$ 35,000
Total	$902,350

It should be noted that depending on the amount of union dues or service fee that will be collected, there could be a significant economic impact on these temporary, seasonal and non supervisory employees. Assuming the current $12 union dues per pay period, each temporary employee working eight weeks during the summer would pay $48 in union dues. The

total annual amount for 2,248 employees would be $108,000. Temporary employees who are in job classes that are currently bargaining unit job classes would pay $312 union dues per year ($12 union dues for 26 pay periods). The total annual amount for these 410 employees would be $128,000. Non-supervisory employees Grade 27 and above would pay $312 union dues per year ($12 union dues for 26 pay periods). The total annual amount for these 54 employees would be $16,848.

Possible Economic Impact	
Minimum Wage Job Classes	$108,000
Temporaries in Bargaining Unit Classes	$128,000
Non-supervisory Employees Grade 27 and above	$ 16,848
Total	$252,848

Jo Ann Byrum of OMB and Jim Torgeson of OHR contributed to this analysis.

RKK: jab

cc: Marta Brito Perez, Director, OHR
Jim Torgesen, OHR
Philip Weeda, OMB

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MONTGOMERY COUNTY GOVERNMENT

GENERAL SALARY SCHEDULE

FISCAL YEAR 2002

NON-REPRESENTED EMPLOYEES

[Schedule 01]

GRADE	MINIMUM SALARY	MAXIMUM SALARY
5	$19,046	$29,424
6	$19,776	$30,649
7	$20,547	$31,962
8	$21,346	$33,415
9	$22,189	$34,945
10	$23,080	$36,594
11	$24,013	$38,317
12	$24,987	$40,128
13	$26,016	$42,029
14	$27,098	$44,031
15	$28,228	$46,124
16	$29,435	$48,330
17	$30,772	$50,643
18	$32,180	$53,073
19	$33,699	$55,619
20	$35,284	$58,296
21	$36,957	$61,107
22	$38,707	$64,060
23	$40,548	$67,164
24	$42,479	$70,412
25	$44,505	$73,830
26	$46,637	$77,421
27	$48,854	$81,189
28	$51,050	$85,147
29	$53,353	$89,300
30	$55,774	$93,665
31	$58,316	$98,245
32	$60,983	$101,254
33	$63,783	$104,260
34	$66,725	$107,272
35	$69,816	$110,279
36	$73,061	$113,289
37	$76,464	$116,295
38	$80,041	$118,970
39	$83,793	$120,725
40	$87,737	$122,473

Effective: July 1, 2001 3.25 percent GWA

MONTGOMERY COUNTY GOVERNMENT

BARGAINED UNION SALARY SCHEDULE

FISCAL YEAR 2002

MCGEO

Municipal and County Government Employees Organization

Service, Labor and Trades Bargaining Unit

[SLT - Schedule 02]

Office, Professional and Technical Bargaining Unit

[OPT - Schedule 03]

GRADE	MINIMUM SALARY	MAXIMUM SALARY
5	$19,046	$29,424
6	$19,776	$30,649
7	$20,547	$31,962
8	$21,346	$33,415
9	$22,189	$34,945
10	$23,080	$36,594
11	$24,013	$38,317
12	$24,987	$40,128
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24	$42,479	$70,412
25	$44,505	$73,830
26	$46,637	$77,421

Effective: July 1, 2001 3.25 percent GWA

MONTGOMERY COUNTY GOVERNMENT

EXECUTIVE RECOMMENDED SALARY SCHEDULE

FISCAL YEAR 2002

Minimum Wage/Seasonal Salary Schedule

[Schedule 08]

GRADE	MINIMUM ANNUAL	MINIMUM HOURLY	MAXIMUM ANNUAL	MAXIMUM HOURLY
S1	$10,712	$5.150	$14,533	$6.987
S2	$12,997	$6.248	$16,893	$8.122
S3	$14,944	$7.185	$19,427	$9.340
S4	$16,893	$8.122	$21,962	$10.559
S5	$19,493	$9.372	$25,339	$12.182
S6	$24,690	$11.870	$32,094	$15.430
S7	$29,966	$14.407	$38,956	$18.729
S8	$35,413	$17.026	$46,038	$22.133

Effective: July 1, 2001 3.25 percent GWA

MONTGOMERY COUNTY GOVERNMENT

MANAGEMENT LEADERSHIP SERVICE SALARY SCHEDULE

[Schedule 09]

FISCAL YEAR 2002

GRADE	Level	MINIMUM	CONTROL POINT	MAXIMUM
M1	Management Level I	$65,034	$110,463	$115,510
M2	Management Level II	$56,869	$98,602	$103,239
M3	Management Level III	$48,854	$85,256	$89,300

Effective: July 1, 2001 3.25 percent GWA

Bill 9-01

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Carey R. Butsavage
Marc A. Stefan
Mark H. Reynolds*
Dianna M. Louis*

*Admitted in Maryland Only

May 29, 2001

The Honorable Blair Ewing
President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Bill 9-01
County Employees

Dear President Ewing:

In accordance with discussions between representatives of MCGEO and members of the County Council at a working session conducted on April 25, 2001, MCGEO submits the attached memorandum with regard to questions raised concerning Bill 9-01 (County Employees).

We very much appreciate the opportunity to present the views of the men and women of MCGEO to the County Council, and would be glad to answer any further questions or concerns you or any Council member might have. Thank you for your consideration.

Very truly yours,

Carey R. Butsavage
Counsel to MCGEO

cc: All County Council Members

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(36)

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STATEMENT OF MCGEO
With Regard To Bill 9-01, County Employees

During the working session on April 25, 2001, concerning Bill 9-01, questions were raised about various aspects of the Bill. This statement constitutes MCGEO's response to those questions and issues.

A. Is A Vote Among The Additional Employees Necessary or Appropriate? --

One of the main questions concerned whether or not it is appropriate or necessary to conduct a vote among the additional employees before they can be included in the existing units. For the reasons set out below, the answer is, no. That is so because the inclusion of the new employees is consistent with basic concepts and principles or unit composition and community of interest and because the inclusion is properly viewed as an "accretion".

Community of Interest

In American labor law, unit composition issues involve application of what is termed "community of interest" principles to determine the appropriate groupings of employees for collective bargaining purposes. Thus, "Community of interest is the fundamental factor in bargaining unit determination ...." and "[c]ommunity of interest controls the appropriateness of all bargaining units ...." Hardin, The Developing Labor Law, p. 451 (3rd Ed. 1992). See also, *NLRB v. Action Automotive,* 469 U.S. 490 (1985).

More specifically:

> [T]he ... basic function in determining the appropriateness of a potential bargaining unit is to decide whether or not the employees in a proposed unit share a sufficient "community of interest" and to group together for purposes of collective bargaining employees who share common interests in wages, hours and other conditions of employment. Community of interest is not susceptible to precise definition or a mechanical definition.

Id. at 452. In this connection, employees termed "regular part time" employees are invariably included in a unit or units comprised of full time employees, as are employees who employees who have a reasonable expectation of continued employment and "a substantial interest in working conditions at the employer's place of business." *Id.* at 422 (footnote omitted).

Accretion

Accretion issues arise when there is some change in circumstances that give rise to the question of whether a group or group of employees should properly be included in an existing unit or unit of employees or whether such employees are properly deemed a separate and distinct unit or units. Accretion is defined by the National Labor Relations Board as:

> [T]he addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity. The additional employees are then properly governed by the unit's choice of bargaining representative.

Safeway Stores, 256 NLRB 918, 924 (1981). See also, *Progressive Service Die Co,* 323 NLRB 183, 186 (1997). When accretion is appropriate, the new employees are simply included with the existing unit without an election. See, e.g., *Southwestern Bell Telephone Company,* 254 NLRB 451 (1981). Conversely, it is only when the new employees would properly constitute a separate and distinct unit or units unto themselves that a separate election is necessary or appropriate. See, e.g., *Gould, Inc.,* 263 NLRB 445 (1982).

Accretion issues can arise in a variety of circumstances. Most commonly, they occur when the employer opens or secures a new facility that is separate from the exiting facility or facilities. Accretion is also an issue in other instances, however, such as following a reorganization, a change in operations or other altered circumstances that require resolution of whether a "new" group of employees should be included with a larger group of employees in an already existing unit or units. The latter circumstances include situations where, as here, a previously existing impediment to the employees being included in the unit at issue ceases to exist. *Southwestern Bell,* 254 NLRB at 452.

While cases are necessarily determined on a case by case basis, the basic guidelines for determining whether an accretion is appropriate include the following: (1) the degree of interchange among the employees; (2) geographic proximity; (3) integration of operations; (4) integration of machinery and tools or services; (5) centralized administrative control; (6) similarity of working conditions, skills and functions; (7) common control of labor relations; (8) collective bargaining history; and (9) the number of employees proposed for accretion as compared to the number of employees in the already existing unit(s). See generally, Hardin, at p. 405.; See also, *Gould, Inc.,* 263 NLRB 445 (1982); *Towne Ford Sales,* 270 NLRB 311, 312 (1984). Generally speaking, Agencies which administer and decide such issues tend to find accretion inappropriate where: (a) the employees at issue are hired specifically for a wholly autonomous operation; (b) the operations are separately managed; (c) there is no interchange of employees; (d) the new operations are substantially distant from each other or operated wholly autonomously. Hardin, at p. 406.

Application of the foregoing guidelines is really nothing new to Montgomery County and MCGEO. For instance, in 1996, the Maryland legislature passed a bill which "accreted" some 325 employees from the Maryland Department of Social Services into the existing MCGEO unit without an election and without a vote. Indeed that accretion is directly analogous to the situation presented here, inasmuch as the job titles there, which were similar (but not identical) to MCGEO job titles were integrated into the existing MCGEO unit.

Analysis

Applying the foregoing concepts and guidelines to the present situation, it is readily apparent that accretion and related principles operate to include the new groups proposed by 9-01 in the existing units. Accordingly, no election is necessary or appropriate.

As a threshold matter, core concepts of unit composition and community of interest plainly demonstrate that inclusion of the additional employees in the existing units is appropriate. In this regard (although the issue is addressed more directly elsewhere) the additional group(s) are most akin to regular part-time employees -- a grouping that invariably is included in with full time employees. In this sense, had the initial unit composition been with the potential inclusion of the additional employees in mind, there can be no meaningful dispute over the fact that they would have been included, along with the present included employees, in the two broad units on whose behalf bargaining takes place at the present time.

In that same context, community of interest principles also dictate inclusion of the additional group(s) with the existing ones. As we set out in our initial testimony on this matter, the so-called casual, temporary and substitute employees share a substantial community of interest with the currently included employees. Thus, whether one looks to wages, hours, supervision, work rules or any other terms and conditions of employment, the community of interest between existing employees and the additional group(s) is common and pervasive.

Viewed from the obverse perspective -- whether the additional group would constitute a separate appropriate unit on its own, the answer would be, obviously not. Here again, whether one looks to wages, hours, working conditions, benefits, work rules, supervision or any of the other applicable factors, it simply is illogical and inappropriate to conclude that the additional groups could, under traditional principles of unit determination and community of interest, constitute a separate and appropriate unit or units.

As for application of the technical accretion guidelines, analysis there overwhelmingly demonstrates that "accretion" is appropriate and, accordingly, that no separate election is either necessary or appropriate. Indeed, all of the guidelines that counsel in favor of accretion are fully and comfortably present.

Thus, there is substantial and pervasive "interchange among the employees". Indeed, "interchange" itself is a bit of a misnomer in these circumstances, because many of the employees in the additional group work, literally, side-by-side with unit employees. Those who

do not are in frequent and regular contact with unit employees in performing their jobs. The same can be said of "geographic proximity". In this regard, the "work sites" for the additional employees and the existing unit employees are often exactly the same. Even in instances where the work sites are physically separate, they are all within the County and, therefore, proximate to each other.

"Integration of operations" also argues in favor of accretion. This is so because the various work tasks being performed by both existing unit employees and the additional employees are the manifestation of the integrated and interdependent County services that are being provided. Precisely the same can be said about "integration of machinery and tools or services".

"Centralized administrative control" and "common control of labor relations" are also present, and, in fact, are a key components of the County structure and its provision of services. As for "similarity of working conditions, skills and functions" the included and additional groups are virtually synonymous. While there is not a preexisting "history of collective bargaining" for the additional employees, there is a long and fruitful history of collective bargaining involving employees who often work side-by-side with the additional employees or who perform integrated or similar tasks with them. Finally, in this regard, the relative numbers of existing unit employees easily predominate over the relatively smaller number of additional employees thereby rendering both accretion and reliance on the existing choice concerning representation appropriate.

Regarding the factors that traditionally militate against accretion, none are even arguably present to a degree that would render accretion inappropriate. Thus, while some of the additional employees are hired to perform specific, seasonal tasks, they are hired on a regular an repeated basis and, as noted above, they perform not autonomous tasks, but functions that are fully integrated with and/or a part of the county functions and services performed by existing unit employees. On the remaining three factors that militate against accretion, it simply is not the case that "operations are separately managed", nor that there is "no interchange of employees" nor that the "new operations are substantially distant from each other or operated wholly autonomously". In short, this manifestly is not a situation where accretion principles mandate a separate unit or units or a separate election regarding inclusion.

In short, as we stated at the working session of the Management and Fiscal Policy Subcommittee, a "vote" among the employees who are the subject of 9-01 is neither necessary nor appropriate.

Additional questions raised include the following.[1]

[1] We would note that with regard to references concerning employee "response" to the purported "outreach" effort, adverse conclusions that might be drawn from such "responses" are premature and not well founded. As noted at the hearing, employees were told only that they would be included under the Collective Bargaining law and assessed dues. That an adverse response to such "information" would be negative is not surprising. If employees had been told, as would be the case if the appropriate amendments are made, that inclusion would provide them with collective bargaining rights they did not previously have, that they would begin to have a say in their work and its conditions, that they could gain the right to file grievances over wrongful treatment and gain the opportunity to

B. Treatment of "Short term employees", Exclusion of Employees Who Work Less Than 90 Days per Year --

As an initial matter, this section of the report reflects certain, and perhaps even understandable, confusion about the appropriate terminology for specific groups of employees. In this regard, there are two options that could serve to avoid confusion in the analysis and in the administration of the amendments if passed. Thus, the terms temporary, seasonal and substitute need to be defined. That can be done directly, or, as we recommend by simply defining "part-time employees" in a manner that includes those portions of the additional group who properly should be included in the existing units. Our recommended language is set out at the end of this submission.

Beyond definitions, the report recommends that employees who work less than 90 days in a calendar year be excluded. In traditional labor law terms, such a definition would render people who worked less than the prescribed amount of days "casual" employees. We strongly disagree with the recommendation.

To begin with, 90 days of work -- based on a five day work week amounts to 18 full weeks of work. That, we submit is hardly a negligible amount of time or commitment on the part of the employees. Indeed, under the National Labor Relations Act, "casual" employees generally are excluded from a unit only if they work, on average, less than four (4) hours per week in a given calendar quarter (i.e., less than 52 hours within a three month period). Accordingly, the recommendation's proposal is completely out of step with established labor law definitions and guidelines.

Beyond the numbers, however, the real issue is one of contribution, commitment and expectation on the part of the employees. In this regard, 18 weeks of work (or even longer in a less than five day work week) is a substantial commitment of time, skill and effort on the part of a worker. And, it is in large part because of that commitment that employees in that group both need and are entitled to representation and the right to engage in collective bargaining. Moreover, the commitment of that time skill and effort results in a substantial benefit to the County and its residents. To term that commitment and contribution "casual" is unfair not only to the worker but to the County and the residents it serves.

C. Limited Bargaining --

OHR recommends that the newly included group of employees be represented only for purposes of bargaining wages. We strongly disagree.

While wages are significant matters -- and matters on which the employees at issue are entitled to engage in collective bargaining -- they are not the only maters of employee concerns. Just some of those include grievance and complaint mechanisms, benefits, opportunities for

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bargain improvements in their wages, benefits and working conditions, there is little doubt the response would have been substantially more positive.

promotions and a myriad of other working conditions. Each and all of those are significant matters to workers and their families and are matters on which workers are entitled to the rights of collective bargaining and having a say in their daily lives and careers. to artificially truncate those matters and limit them merely to wages is, we believe, inappropriate and unnecessary.

This is particularly true, we might add, for employees whose wages already are near the bottom of the overall wage scale and for whom meaningful pay increases are unlikely in any event. Indeed, it is perhaps those employees most of all who both need and are entitled to representation and collective bargaining that will respectively protect their rights and advance their work interests.

Finally, in this regard, we suspect that an underlying concern that may have prompted this limited bargaining recommendation is the perceived chances of increased costs to the County. to that concern, we would say two things. First, if fair and appropriate treatment of County employees as gained through good faith collective bargaining increases the County's costs, it is an increase in costs that is both necessary and appropriate. Second, The notion of dealing with limited budgets, revenues and other sources of income for the County is nothing new to MCGEO and, in fact, is a part of the overall collective bargaining process to begin with. In that regard, part of the Union's job and the service it provides to its members is to represent them collectively in a manner that weighs and balances options, alternatives and priorities -- monetary and otherwise. Adding an additional group of workers to that equation is nothing new. Indeed, the only thing "new" is granting a seat at the table to employees who have been excluded for too long.

D. Dues --

As stated at the working session, MCGEO's **members** vote on the dues structure of the organization. As we believe we made clear at the hearing, MCGEO will, to the extent it is necessary, assure the County Council that it will continue to structure and administer its dues scale in a manner that is appropriate and fair to its members.

PROPOSED AMENDMENT LANGUAGE

"For purposes of this section, "part-time" and, therefore, included employees means, among other things: employees who are listed or qualified to work on a regular basis as a substitute in unit positions; employees whose hours of work over a given calendar quarter exceed an average of four (4) per week for the period; and, employees who work on a "seasonal" basis so long as the seasonal period for which they are hired lasts more than 30 days."

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

August 27, 2001

TO: Marta Perez, Director, Office of Human Resources
Gino Renne, President, Municipal and County Government Employees Organization

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: Bill 9-01 -- remaining questions

Both your staffs have asked me what questions raised at the April 25 Management and Fiscal Policy Committee worksession on Bill 9-01 remain to be answered. On May 29, MCGEO's counsel, Mr. Butsavage, submitted to the Council a detailed memo on accretion and other issues, which Council staff sent a copy of to Mr. Torgesen. To allow further consideration of this bill by the MFP Committee, it would help if each of you could respectively answer the following questions.

Questions for OHR

- Do you support or oppose the thrust of the amendment drafted by Mr. Butsavage (at the end of his memo) which would include certain "part-time" employees in the bargaining unit? Which short-term positions should continue to be excluded from the bargaining unit?
- Is there a viable way to measure the views of affected employees regarding their inclusion in the bargaining unit? Are those employees' views relevant to this decision?
- Do you generally agree with Mr. Butsavage's memo or have any other comments on it?

Questions for MCGEO

- Does MCGEO contend that the views of the affected employees are irrelevant to the decision whether to include them in a bargaining unit? If not, how should their views be measured?
- At the Committee worksession Mr. Renne said you would provide amendment language to address the continued inclusion of bargaining unit positions that are reclassified upward to Grade 27 or higher. Is that amendment drafted?
- In response to Councilmember Denis, Mr. Renne said you would provide an amendment to "clarify the scope of bargaining" on health benefits -- in other words, to define which employees are not eligible to bargain health benefits. Is that amendment drafted?
- At the worksession Mr. Butsavage said that short-term employees are often included in collective bargaining units elsewhere. Can you provide examples of other local governments, preferably in this area, with similar collective bargaining structures that include short-term employees in their bargaining units?
- Responding to Council staff's memo, Mr. Butsavage notes that "MCGEO will...continue to structure and administer its dues scale in a manner that is appropriate and fair to its members." What does that mean, specifically, for dues payments by short-term and low-paid employees? Does MCGEO intend to offer any adjustments for those employees if they are included in the bargaining unit?

If anything in this memo needs to be clarified, feel free to call me at 240-777-7905 or email me at mike.faden@co.mo.md.us. I look forward to receiving your answers.

C: Members, Management and Fiscal Policy Committee
Jim Torgesen
Carey Butsavage

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MCGEO
WWW.MCGEO.ORG
UNITED FOOD & COMMERCIAL WORKERS LOCAL 1994, AFL-CIO/CLC
■ GINO RENNE PRESIDENT ■ YVETTE CUFFIE SECRETARY-TREASURER ■ TYRONE WILLS RECORDER

MUNICIPAL & COUNTY GOVERNMENT EMPLOYEES ORGANIZATION ■ 108 OLDE TOWNE AVENUE ■ SUITE 13 ■ GAITHERSBURG, MD 20877 ■ 301-977-2447 ■ 800-948-0654 ■ FAX 301-977-6752

November 5, 2001

VIA FACSIMILE

Michael Faden, Esquire
Senior Legislative Attorney
Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Dear Mr. Faden:

The most compelling argument for accretion is Montgomery County's own past practice. In 1998, the state legislature, at the urging of County Executive Doug Duncan, passed legislation which "accreted"former employees of the Maryland State Department of Social Services to the MCGEO Bargaining Unit and made them employees of Montgomery County. Their employer benefit structure, and employee rights were changed through legislation and they were accreted, all without a vote, based on the same principle.

In response to your memo and its questions, MCGEO UFCW Local 1994 responds as follows:

1. As we have explained in our previous submissions, to the extent it is determined that the employees at issue are–because of their common job duties, common supervision and other factors that establish the requisite and extensive community of interest with unit employees–a true accretion to the existing unit, then, the "views" of the affected employees are, as a matter of law, not determinative on the inclusion issue. We submit, however, that the question of employee sentiments is effectively moot and a bit of a red herring. Thus, as an organization that values, respects and honors its members' views and sentiments, MCGEO is certain that–when presented with a fair and balanced picture of the advantages of inclusion in the bargaining unit–the affected employees will overwhelmingly support inclusion, just as their co-workers in the unit now overwhelmingly support and enjoy the advantages of

VICE PRESIDENTS: ■ LARRY DICKTER ■ SYDNEY FRYMIRE ■ KEVIN HAGBERG ■ BARBARA JACKSON ■ FLORA LINDSAY ■ PATRICIA MAIOLO ■ TIM O'GWIN ■ NELVIN RANSOME ■ ANGEL ROSADO ■ EARL SHIFLETT

(45)

Unionization. Our "measure" of that is already reflected in the current membership and their sentiments. We submit that regarding the "measure" for the newly included employees, the proof will be in the pudding–the degree to which a fully and fairly informed component of the work force will overwhelmingly recognize and embrace the advantages of joining their brothers and sisters as Union members.

Moreover, we note that despite what we consider to have been a "loaded" question sent to temporary employees by your staff, only a handful of employees replied to that memo with negative responses. To a certain extent, the measure of the temporary employees has already been taken by you.

2. See attached Exhibit A for the draft amendment language.

3. See attached Exhibit B for the draft amendment language.

4. In response to your questions concerning dues, we reiterate that we will structure our dues in a manner that is appropriate and fair to our members, including part-time employees. We note that the matter of dues is an internal Union matter which is, and properly should be, between the Union and its members.

Please do not hesitate to contact us if you have any further questions.

Very truly yours,

Gino

Gino Renne
President
MCGEO UFCW Local 1994

EXHIBIT A

Nothing in this legislation shall affect the status of those current bargaining unit members who would otherwise have been excluded for the bargaining unit as a result of an upgrade in their job classification. Those employees whose jobs have been reclassified to Grade 27 or higher shall remain included in the bargaining unit. Unless their job duties and responsibilities are changed in a manner which would require exclusion form the unit in accordance with the collective bargaining laws.

MUNICIPAL & COUNTY GOVERNMENT EMPLOYEES ORGANIZATION ■ 18310 MONTGOMERY VILLAGE AVENUE ■ SUITE 220 ■ GAITHERSBURG, MD 20879

EXHIBIT B

Employees who work a regular part-time schedule will be eligible for health benefits in the same manner as those current employees who are regular part-time employees.

OFFICE OF HUMAN RESOURCES

Douglas M. Duncan
County Executive

MEMORANDUM

Marta Brito Perez
Director

November 29, 2001

TO: Michael Faden, Senior Legislative Attorney

FROM: Marta Brito Perez, Director
Office of Human Resources

SUBJECT: Bill 9-01 -- remaining questions

This is a response to your August 27 correspondence concerning the above referenced topic. You posed three questions to this Office concerning matters raised by Mr. Butsavage in his May 29th correspondence to the County Council.

1. Do you (OHR) support or oppose the thrust of the amendment drafted by Mr. Butsavage which would include certain part-time employees in the bargaining unit? Which short term positions should continue to be excluded from the bargaining unit?

For reasons specified in our analysis of the arguments made by Mr. Butsavage for including all job classes of temporary employees in existing bargaining units, we would limit eligibility of temporary employees to those employees in **existing bargaining unit classes**. The Butsavage amendment would set an eligibility standard for intermittent/substitute employees of 4 or more hours per week over a calendar quarter; and, for seasonal employees continuous employment of 30 or more days.

Temporary employees are of three types: full or part-time working no more than 12 months, intermittent/substitute, and seasonal. For temporary employees in existing bargaining unit classes we would propose that eligibility be based upon satisfying a minimum of twenty-five hours of scheduled work per pay period. This is the current minimum number of hours worked by bargaining unit employees.

As noted above, those temporary positions which should be excluded from bargaining unit eligibility include all non-bargaining unit job classes not on the general salary schedule and presently under the S1-S8 salary schedule. In addition to having a different pay structure than bargaining unit employees the majority of employees perform work that is seasonal in nature and of short duration. Thus, they have no reasonable expectation of continued employment. The S1-S8 non-bargaining unit job classes include the following:

(49)

Conservation/Service Corp Trainee
County Government Aide
Recreation Assistant I-VIII
Library Page
Community Correction Intern
Public Service Guide
Nutrition Program Aide

2. Is there a viable way to measure the views of affected employees regarding inclusion in the bargaining unit? Are those employees relevant to this decision?

Labor relations principles generally are premised on the basic right of employees to express their desire to be represented for the purposes of collective bargaining. However, in certain circumstances, unrepresented employees may be accreted into an existing bargaining unit wherein the majority of those voting have previously cast their vote in favor of representation. Incumbents of accreted positions do not have the opportunity to express an interest in representation through voting, as they become a part of an existing bargaining unit for which representation has previously been determined. Because the accretion process adds employees to an existing unit without according these employees any representational voting rights, the accretion doctrine has been narrowly applied in both the private sector and federal sector cases. As noted in item #3, below, analysis of Mr. Butsavage's correspondence, the private sector case law has developed criteria to help guide the determination of job classes appropriate for accretion into existing bargaining units. One of the significant elements in making this determination is the number of employees proposed for accretion compared to the number of employees in the already existing bargaining unit. This is an important factor to consider so as to preserve, where possible, the opportunity for large numbers of employees to express their desire for representation. There are a substantial number of temporary employees who, if considered eligible, should have the right to express an interest in representation, and if there is sufficient interest have the opportunity to cast a vote.

Another significant factor is community of interest; elements of work, compensation and the work environment common to the positions in question. As further detailed below, when dealing with the eligibility of temporary employees inclusion in an existing bargaining unit private sector case law sets a higher bar for the accretion of temporary employees requiring an "overwhelming" community of interest to apply.

For these reasons, we do not agree with the Union that all temporary job classes should be accreted into existing bargaining units. Temporary employees in non-bargaining unit classes **should be excluded** from bargaining rights for the reasons stated under item #3. Our views notwithstanding, if it is determined that such employees are to have bargaining rights, we do **not** believe it appropriate for these employees to be accreted into an existing unit. More appropriately, temporary employees in non-bargaining unit classes should be grouped in a separate bargaining unit and be given the opportunity to demonstrate through a showing of interest {thirty (30) percent of those eligible} a desire to be represented. If there is a sufficient showing of interest, a secret ballot election of those eligible is conducted and the majority of

those voting determine whether they will be represented. These employees should then have a separate bargaining unit status for collective bargaining purposes.

3. Do you generally agree with Mr. Butsavage's memo or have any other comments on it?

We do **not** generally agree with the conclusions reached in his May 29, 2001 memo regarding the proposed treatment of temporary employees. Two separate, but related, questions are addressed in the correspondence: a) Are temporary employees and their associated job classes appropriate for accretion into existing bargaining units? and, b) What are appropriate eligibility requirements for temporary employees to be included within a bargaining unit?

a) Mr. Butsavage has referenced the following definition of accretion:

> **[T]he addition of a relatively small group of employees to an existing unit** where these additional employees share a sufficient community of interest with the unit employees and have no separate identity. The additional employees are then properly governed by the unit's choice of bargaining representative. (Emphasis added.)

Based upon the information on the number of employees in temporary positions that we have previously provided Council staff, the total number of temporary employees approximates 2,660 employees. This does not represent a "relatively small group of employees" in relation to the total number of bargaining unit employees (3,942) in the existing Office, Professional and Technical (2,937) and Service Labor and Trades (1,005) bargaining units. (All employees combined, temporary employees represent forty (40) percent of the total.) For a group of this size it is not reasonable to expect them to forego an opportunity to determine if they want representation. Accretion contemplates the inclusion of a sufficiently small group of employees so as not to have an impact on the right of self-determination by the majority of the bargaining unit.

MCGEO requests that the County's temporary employees be treated the same as previously accreted State/County merit system employees that were brought into the Department of Health and Human Services in 1996. The treatment of those employees accreted into the Office, Professional and Technical Unit is not analogous to the issue at hand. First, the number of employees, approximately 350, represented a much smaller portion of the bargaining unit to which they were accreted (OPT unit approximated 2,600). Second, there are substantial differences in the community of interest as the majority of temporary employees are not in existing bargaining unit classes.

As noted earlier, community of interest with unit employees is also identified within the definition of accretion as a factor of consideration. However, because accretion precludes employee self-determination, accretion will be found only where the employees to be accreted share an **overwhelming** community of interest with the preexisting unit and have little or no separate identity. *Passavant Retirement & Health Center, 313 NLRB 1216, 1218 (1994).* Elements of community of interest would include commonality among employees in

compensation, hours and working conditions. This is further reflected in additional guidelines identified in the Union's argument which clarify community of interest issues to include; the degree of interchange between employees; geographic proximity; integration of operations; similarity of working conditions, skills and functions; common control of labor relations; and collective bargaining history.

There is merit in considering for accretion those temporary employees occupying existing bargaining unit job classes. The elements of a community of interest are relevant to these employees. These are employees who have a general wage structure similar to the bargaining unit and whose work is integrated with bargaining unit employees with whom there is a high degree of interchange. The performance of work is also in geographic proximity to other bargaining unit employees. They often perform the same duties as bargaining unit employees, thus skill and functions are similar. This number approximates 410 employees. This group is therefore more appropriately considered a "small group of employees" in relation to the size of the two units into which they would be accreted.

Temporary employees in **non-bargaining unit** classes, however, should not be accreted to the existing unit because they do not share a sufficient community of interest, let alone meet the higher standard of an overwhelming community of interest, with the regular employees in the bargaining unit. These employees do not share the same skills and job functions with unit employees. Their pay schedules are not comparable to those of unit employees. Many of these employees are hired to perform specific, seasonal tasks. Their work is of short duration, often limited and sporadic, and they have no reasonable expectation of continued employment.

b) The Union argues that ninety (90) working days per year as a threshold to determine eligibility for unit inclusion is unreasonable in view of private sector practices with regard to "casual employees." While private sector principles provide insight into the treatment of temporary employees and bargaining unit rights this should not be the sole standard for consideration. It is noted in this instance that the private sector model is most likely utilized because of the absence of local government precedent. Certainly, this is true in our own immediate region. We are not aware of State or any local government employers in our area that extend collective bargaining rights to temporary employees. Nevertheless, private sector principles established through National Labor Relations Board (NLRB) decisions and the Federal Sector through the Federal Labor Relations Authority (FLRA) focus eligibility of temporary employees on the nature of their employment tenure. The following are examples of some general principles that have been established through case law.

> If temporary employees are employed for one job only, or for a set duration, or have not substantial expectancy of continued employment and are notified of this fact, and there have been no recalls, such employees are excluded from bargaining unit eligibility. *Indiana Bottled Gas Co., 128 NLRB 1441fn.4 (1960); Owens-Corning Fiberglass Corp., 140 NLRB 1323(1963); Sealite, Inc. 125NLRB 619 (1959).*

Temporary employees who are retained beyond their original term of employment, and whose employment is thereafter for an indefinite period are considered eligible for bargaining unit status. *Orchard Industries, 118 NLRB 798(1957)*

Temporary employees who have worked for substantial periods where there is no likelihood that their employment will end in the immediate foreseeable future have been included in the bargaining unit. *Horizon House 1 Inc, 151 NLRB 1433*

(1958); Textile Workers UTWA, 138 NLRB 269 fn. 3(1962); Lloyd A. Fry Roofing Co., 121 NLRB 1433(1958)

Temporary summer seasonal employees are generally excluded from an appropriate unit; such employees are only deemed eligible if, upon returning to school, their employment evidences regular part-time status. This should be distinguished from intermittent, sporadic employment. *Crest Wine & Spirits, Ltd. 168 NLRB 754(1968; Beverly Manor Nursing Home, 310 NLRB 538 fn.3(1993).*

Case law from the Federal Sector also follows similar trends.

Temporary employees, including summer hires, who are not promised permanent positions or subsequent employment, are excluded from the unit. F*ederal Mediation and Conciliation Service and NAGE Local R3-118, 5 FLRA 28 (1981).*

Temporary disaster employees were included in a unit. They had a reasonable expectancy of continued employment beyond their initial six-month appointment, shared general supervision, work schedules, office conditions and common working environment with other unit employees, and performed some of the same duties as other employees. *SBA Lower Rio Grande Valley District Office and AFGE Local 3904, 16FLRA 180 (1984).*

Actually employed individuals working without a fixed schedule from day to day, paid only for hours worked are to be included in a unit if serving appointments full time and over 90 days. *Panama Canal Comm'n and AFGE Local 1805, 5 FLRA 104, 121 (1981).*

To have a community of interest with unit employees, a temporary employee must have a reasonable expectation of continued employment in the unit. *Headquarters, XVIII Airborne Corp and Fort Bragg, Fort Bragg, North Carolina, 36 FLRA 237(1990).*

Employees appointed for six months with no guarantee of reappointment, serving in a special program, not subject to merit promotion or the Federal Retirement program, who received no differentials, holiday pay, insurance benefits, or sick or annual leave and did not have competitive status, were not considered to share sufficient community of interest with other regular employees to be included in the unit. *Dept. of Agriculture, Animal*

Plant Health Inspection Service, Plant Protection Quarantine, Pink Bollwarm Rearing Facility and NFFE Local 376, 6 FLRA 261 (1981).

In view of the above, we believe a more appropriate criteria for determining employee eligibility is one that demonstrates a reasonable expectation of continued employment. Where it may be appropriate to accrete temporary employees because of the relatively small size of the employee group and an overwhelming community of interest, we propose to condition their continuing eligibility for bargaining unit representation on working a minimum of twenty-five (25) hours per pay period; the minimum eligibility standard for existing bargaining unit employees.

3. Temporary employees accreted to an existing bargaining unit should have limited bargaining rights.

The scope of bargaining for temporary employees is another critical issue that must be addressed. The Union argues for a full range of bargaining rights for these employees to include compensation, grievance rights, benefits, opportunities for promotion and a "myriad" of other working conditions. While temporary employees are hired through merit system processes, they are not merit system employees. Therefore, they have not been extended the same regulatory protections, benefits and compensation as merit system employees. Because of their limited and sporadic employment we do not support full bargaining rights for these employees. We believe bargaining for temporary employees in bargaining unit classes should be limited to general wage adjustments and union security issues (dues and service fee check-off).

I trust this discussion of the bargaining unit status and bargaining rights of temporary employees has been responsive to your queries. Please let me know if I can be of further assistance on this matter.

cc: Bruce Romer, Chief Administrative Officer

OFFICE OF INTERGOVERNMENTAL RELATIONS

Douglas M. Duncan
County Executive

Ben Bialek
Director

April 26, 2001

The Honorable Blair Ewing, President
Montgomery County Council
COB 6th Floor
100 Maryland Avenue
Rockville, Maryland 20850

RE: Bill 9-101, County Employees – Collective Bargaining Units

Dear President Ewing:

I write to express my concern with the above-referenced bill as it would apply to non-supervisory Grade 27 employees in the Office of Intergovernmental Relations (OIR). The bill raises several issues which, I believe, warrant an exemption for these OIR employees. Because of the General Assembly session in Annapolis, it was impossible to testify at the public hearing in Rockville.

There are two specific reasons to request the exemption. First, there is a potential for conflict of interest problems since OIR may be requested to handle matters pertaining to collective bargaining before the State legislature. In the recent past, for example, we have worked on legislation affecting MCGEO representation at the Housing Opportunities Commission and the Maryland-National Park and Planning Commission. It is conceivable that amendments to laws pertaining to collective bargaining at the independent agencies will again be introduced. Being members of the union may place the OIR employee in a difficult position when representing the County Council and County Executive before our State elected officials.

Secondly, as you know, many of the issues we deal with are of a politically sensitive nature. For this reason, I believe that the OIR non-supervisory Grade 27 employees should be considered in the same manner as persons who work for the County Council and for the Office of the County Executive ~ that is, exempted from the provisions of Bill 9-101.

(55)

101 Monroe Street • Rockville, Maryland 20850-2589 • 240/777-6550, FAX 240/777-6551
47 State Circle • Annapolis, Maryland 21401 • 301/261-2461, FAX 301/261-2820
MAILING ADDRESS: 101 Monroe Street • Rockville, Maryland 20850

Thank you for your consideration. I can be reached at 240-777-6555 should you wish to discuss this further.

Sincerely,

Sheila Sullivan Sprague
Legislative Analyst

Cc: The Honorable Marilyn Praisner, Chair
Management and Fiscal Policy Committee

Michael Faden, Senior Legislative Attorney

Stephen Farber, Council Staff Director

Amendments to Bill 9-01

By Councilmember Denis

Replace text of introduced bill with the following:

Sec. 1. [[Section 33-102]] Chapter 33 is amended as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(4) Employee means any person who works [[under]] for the County government [[merit system on a continuous full-time, career or part-time, career basis, or an a temporary, seasonal, or substitute basis]], except:

(A) [[Confidential aides]] a confidential aide to an elected [[officials.]] official;

(B) [[All persons who are not covered by the County government merit system.]] a person holding a position designated by law as a non-merit position;

(C) [[Heads]] a head of a principal [[departments, offices, and agencies.]] department, office, or agency;

(D) [[Deputies and assistants]] a deputy or assistant to [[heads]] a head of a principal [[departments, offices, and agencies.]] department, office, or agency;

(E) [[Persons]] an employee who [[provide]] provides direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency[[.]];

57

(F) [[Persons]] an employee who [[report]] reports directly to, or whose immediate supervisor is;

(i) the County Executive [[or]];

(ii) the Chief Administrative Officer; or

(iii) [[their principal aides.]] a principal aide of the County Executive or Chief Administrative Officer;

(G) [[Persons]] an employee who [[work]] works for:

(i) the Office of the County Executive [[and]];

(ii) the Office of the Chief Administrative Officer[[.]];

[(H)] (iii) [[Persons who work for]] the County Council[[.]];

[(I)] (iv) [[Persons who work for]] the Office of the County Attorney[[.]];

[(J)] (v) [[Persons who work for]] the Office of Management and Budget[[.]];

[(K)] (vi) [[Persons who work for]] the Office of Human Resources[[.]]; or

[(L)] (vii) [[Persons who work for]] the Merit System Protection Board[[.]];

[(M)] (H) [Persons who work on a temporary, seasonal, or substitute basis.] an employee in a temporary, seasonal, or substitute position, unless the position is in a job class in which the incumbents are predominantly career merit system employees;

[(N)] (I) [[Newly hired persons on probationary status.]] a recently-hired employee who has not completed the probationary period;

[(O)] (J) [[Persons who work for the Police Department and are represented by a certified employee organization under Article V.]] an employee in the police bargaining unit;

[(P)] (K) [[Persons who work for the Department of Fire and Rescue Services and are represented by a certified employee organization under Article X.]] an employee in the firefighter/rescuer bargaining unit;

[(Q)] (L) [[Officers in the uniformed services (Corrections, Fire and Rescue, Police, Office of the Sheriff) in the rank of sergeant and above.]] a uniformed officer in the Department of Correction & Rehabilitation at the rank of sergeant or higher;

(M) [[Subject]] subject to any limitations in State law, [[deputy sheriffs below the rank of sergeant are employees.]] a uniformed officer in the Office of the Sheriff at the rank of sergeant or higher;

[(R)] (N) [[Persons]] an employee who [[are members]] is a member of the State merit system[[.]];

[(S)] (O) [[Supervisors, which means persons having]] a supervisor, meaning an employee who has the authority to:

(i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively recommend any of these actions;

(ii) direct the activity of 3 or more employees; or

(iii) adjust or recommend adjustment of grievances[[.]];

[(T) Persons grade 27 or above, whether or not they are supervisors.]

(P) an employee in a position classified at grade 27 or above unless the employee's position is reclassified or reallocated on or after July 1, 2002, to a non-supervisory position at grade 27 or above; or

(Q) an employee in a position classified in the Management Leadership Service.

* * *

33-105. Units for collective bargaining.

(a) There are 2 units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees [[working on a continuous full-time, career or part-time, career basis]], except any person who is not defined as an employee in Section 33-102(4). The employees are divided into 2 units:

* * *

(2) * * *

[[a.]] (A) * * *

[[b.]] (B) * * *

[[c.]] (C) * * *

[[d.]] (D) * * *

* * *

(c) *Temporary, seasonal, and substitute employees.*

(1) A temporary, seasonal, or substitute employee in an occupational class in which the incumbents are predominantly career merit system employees becomes a member of the

applicable bargaining unit when the employee has worked 6 months in a position in that occupational class. However, the employee may be terminated for any cause or without cause and without any right of grievance until the employee has completed 1040 hours of service in that position in any 12-month period.

(2) A temporary, seasonal, or substitute employee who is excluded from the definition of "employee" under Section 33-102(4)(H) because the employee is not in an occupational class in which the incumbents are predominantly career merit system employees becomes a limited-scope member of the applicable bargaining unit immediately after the employee begins employment if:

(A) the employee works at least 25 hours per pay period; and

(B) the employee organization which represents that bargaining unit has adopted a reduced scale of dues and service fees for employees in the limited-scope membership group that is generally proportional to the organization's representational responsibilities for employees in that group relative to the organization's representational responsibilities for other bargaining unit members, as determined by the employee organization.

Membership in a bargaining unit on a limited-scope basis must not carry any right to continued employment or access to any grievance procedure or other benefit that is extended to other bargaining unit members.

33-107. Collective bargaining.

(a) *Duty to bargain; matters subject to bargaining.* Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects for employees other than limited-scope members of the bargaining unit under Section 33-105(c)(2):

* * *

(2) Pension and other retirement benefits [[shall be negotiable,]] for active employees only, [[one (1) year after the effective date of this article]] but the parties must not bargain over the participation by any employee who is a member of the bargaining unit under Section 33-105(c)(1) in either the Integrated Retirement Plan or the Retirement Savings Plan.

* * *

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include:

[[a.]] (A) Binding third party arbitration for employees other than members of the bargaining unit under Section 33-105(c)(1), [[provided that]] but the arbitrator [[shall have no authority to]] must not amend, add to, or subtract from the provisions of the collective bargaining agreement; and

[[b.]] (B) Provisions for exclusivity of forum.

The duty to bargain under this subsection, and any agreement reached as a result of bargaining, must not limit the employer's authority to require a newly-hired employee to remain in probationary status, during which the employee may be terminated for any cause or

without cause and without any right of grievance, for a period that does not exceed 6 months. Unless a specific probationary period is required by law, the parties may agree on any probationary period that is not less than 6 months.

(b) *Duty to bargain for limited-scope employees.* The employer and the certified representative have the duty to bargain collectively on only the following subjects with respect to employees who are limited-scope members of the bargaining unit under Section 33-105(c)(2):

(1) wage scales and general wage adjustments; and

(2) dues or service fee deductions.

[[(b)]] (c) * * *

[[(c)]] (d) * * *

[[(d)]] (e) *Agreement.* * * *

Sec. 2. Transition.

The certified representative and the employer must bargain under Section 33-107 with respect to temporary, seasonal, and substitute employees who are members of a bargaining unit, including limited-scope employees, immediately after this Act becomes law. The procedures for impasse resolution under Section 33-108 apply to this bargaining process, but the specific action deadlines in that section do not apply. An initial agreement between the certified representative and the employer with respect to temporary, seasonal, and substitute employees must expire on the same date as the existing agreements for the SLT and OPT bargaining units.

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

MEMORANDUM

March 17, 2005

TO: Thomas E. Perez, President, Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Proposed Legislation to Amend the County Collective Bargaining Law to Include Correctional Sergeants in the Office, Professional, and Technical Bargaining Unit

I am asking the Council to consider the attached expedited bill that was drafted to include newly created Correctional Sergeant positions in the Office, Professional, and Technical (OPT) bargaining unit. The current plan is to create approximately 42 Correctional Sergeant positions, to fill these positions over time through a competitive process, and to abolish an equivalent number of Master Correctional Officer positions. The Master Correctional Officer positions are in the OPT bargaining unit. The newly created positions, because they are supervisory positions, will be excluded from the bargaining unit unless Section 33-102 of the County Collective Bargaining Law is amended to allow them to be included in the OPT unit.

The Municipal and County Government Employees Organization, Local 1994 (MCGEO), which represents the OPT bargaining unit, is, of course, in favor of the new promotional opportunities for its members that the new Correctional Sergeant positions will provide. However, MCGEO is also concerned about the loss of bargaining unit positions that the reorganization within the Department of Correction and Rehabilitation will cause. We are sympathetic to the Union's concern and view this proposed change as consistent with earlier legislative initiatives that allowed the first level of supervision to be included in the other public safety bargaining units (Fire/Rescue and Police). Because these changes in the workforce are imminent, I urge the Council to review this bill promptly.

DMD:cmr

Attachments

Expedited Bill No. 11-05
Concerning: Collective Bargaining – [[Corrections]] Correction Department - Sergeants
Revised: 5-6-05 Draft No. 2
Introduced: April 26, 2005
Enacted: June 28, 2005
Executive: July 10, 2005
Effective: July 10, 2005
Sunset Date: None
Ch. 8, Laws of Mont. Co. 2005

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

(1) include uniformed Sergeants in the Department of [[Corrections]] Correction and Rehabilitation in the Office, Professional, and Technical bargaining unit; and
(2) generally amend the law regarding County employees collective bargaining.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-102

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 33-102 is amended as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(4) *Employee* means any person who works for the County government, except:

* * *

(L) a uniformed officer in the Department of [[Corrections]] Correction and Rehabilitation at the rank of [sergeant] Lieutenant or higher;

* * *

(O) a supervisor, [meaning an employee who has the authority to:

(i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively recommend any of these actions;

(ii) direct the activity of 3 or more employees; or

(iii) adjust or recommend adjustment of grievances] other than a Sergeant in the Department of [[Corrections]] Correction and Rehabilitation;

* * *

(10) *Supervisor* means an employee who has the authority to:

(A) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge another

employee, or effectively recommend any of these actions;

(B) direct the activity of 3 or more employees; or

(C) adjust or recommend adjustment of any grievance.

[(10)] (11) *Unit* means either of the units defined in Section 33-105.

[(11) When either the female or the male pronoun appears herein, it is to be read to include both genders.]

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

Thomas E. Perez, President, County Council — Date: 6/30/05

Douglas M. Duncan, County Executive — Date: 7/11/05

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council — Date: 7/11/05

B11-05

Petition
113 names

4+5
cc
MF

CORRECTIONAL OFFICERS 015720

FOR MONTGOMERY COUNTY, MARYLAND

BY: MONTGOMERY COUNTY CORRECTIONAL OFFICERS

Subject: Exnedited Bill No. 11-5

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2005 JUN 10 AM 10:58

Presented on: June 10th, 2005

Enclosures:

- **Petition Against Expedited Bill No. 11-05**
- **Signature of Agreeable officers**
- **Copy of Expedited Bill No. 11-05**

CORRECTIONAL OFFICERS
FOR MONTGOMERY COUNTY, MARYLAND

BY: CORRECTION OFFICERS

Subject: Expedited Bill No. 11-5

The Collective Bargaining Local Union 1994 with the help of the Council President who introduced this Expedited Bill No. 11-5 at the request of the County Executive has submitted a request to amend this law regarding county employees' collective bargaining. The officers of Corrections and Rehabilitation (DOCR) recommend that the County Council do not revise this law.

The Collective Bargaining Local Union 1994 has not officially or unofficially had any communication with the majority of the Officers involved to present this amendment in good faith. The aforementioned amendment, request to add Sergeants in the Union appears to do more harm than good and could be seen as monetarily motivated by Local Union 1994. This law has been in place for years, so to change the Law without any dialect or a voted ballot with the officers that are going to be affected is not in the best interest of the majority of the officers involved. The Officers are trying to be heard and be a part of the Council's decision-making process.

The amendment revision of this Law will affect the correctional facility's operation because the Sergeants work in compliance with established County Laws and Regulations. DOCR Officers propose that the County Council review the literature of the Sergeant Class Specification (Grade 22) Code No.3234 to show that this revision will be taking Sergeants a step back in a progressive county. The County Council should be aware of the new revision to this Law because it will impact the Sergeants potential for a position as a supervisor in the future. The proposed Sergeant Class Specification recognized Sergeants as "first line Supervisors". The Local Union 1994 is trying to propose a language change contrary to the agreed Class Specification, knowing that Sergeants will still be carrying out and effectively recommending these tasks, (evaluating, rewarding, and disciplining subordinates), as part of their daily assignments and now will not be receiving any credit for performing the duties of "First Line Supervisors".

The Local Union 1994 also proposes to strip DOCR officers of their rights by adding to the existing law the following statement: "other than a Sergeant in the Department of Corrections and Rehabilitation." This amendment revision only applies to Corrections and Rehabilitation officers and is not county wide (police, sheriffs, fire and rescue).

The Officers of Montgomery county Correctional Department ask that the Montgomery County Personnel Regulations are to be kept in tact, so all remains fair and consistent with other Management First Line Supervisor positions and Law Enforcement positions in Montgomery County. The Department of Corrections and Rehabilitation should not be the only Department that differs. To reiterate again this revision of the law is not favored by the majority of dues paying members who will be affected by the bill, but only by Local Union 1994. In this instance amendment of the Personnel Regulations is not in best interest of the majority.

The Local Union 1994 has delayed forty four (44) Sergeants promotional positions that should have been effective April 17, 2005. After investigating this situation it is evident that the potential Sergeants are not in favor of the proposal changes. Please see the attached signatures of agreeable officers.

Thank you, County Council in advance of your patience, expertise in resolving this issue.

OFFICE OF HUMAN RESOURCES

Douglas M. Duncan
County Executive

MEMORANDUM

Joseph Adler
Director

June 16, 2005

TO: Michael Faden, Senior Legislative Attorney

FROM: James Torgesen, Labor/Employee Relations Manager

SUBJECT: Correctional Sergeant Issues

You have requested that this Office respond to certain issues raised by submissions to the County Council from employees in connection with the proposed amendment to the County Collective Bargaining law to include the newly created job class of Correctional Sergeants in the Office Professional and Technical bargaining unit. The following is offered as points of clarification concerning the status of incumbents of this newly created class and the Correctional Dietary Supervisor job class.

As the result of an occupational class study of the Correctional Officer (CO) class series it was determined through discussions between the Office of Human Resources and the Department of Corrections and Rehabilitation that there was a need to establish a job class that provided closer more direct supervision of correctional officers within the County's detention facilities. The OHR classification study recommended the creation of a new job classification, Correctional Supervisor –Sergeant, to supervise all inmate confinement and control activities exercised by subordinate Correctional Officers. Per the class specification incumbents of this class are responsible for maintaining the security and well being of the inmate population which they and their subordinates supervise, and the safety of staff and visitors. Specific duties include; ensuring compliance with standard operating procedures; serving as the first point of contact in responding to and investigating major incidents/problems within an assigned area; and, participating regularly in decisions or actions regarding officers within their assigned area on a variety of personnel matters involving orientation, training, annual leave, performance appraisal, promotion, rewards and adjustment of minor complaints. The amendment to the County Collective Bargaining law referred to above in no way modifies or diminishes the supervisory responsibilities as outlined in the class specification.

An issue was raised by employees pertaining to the timing of the promotions to Sergeant. The results of the study, which included other classification actions, were effective on April 17, 2005. The classification study recommended that establishment of positions to populate the Correctional Supervisor- Sergeant class would require new position creations, rather than reclassification of existing positions, since the new class

described supervisory duties of a nature and level not described in existing CO classes or performed by employees in the CO occupation. The classification study further recommended that Master Correctional Officer incumbents be the source of filling the newly created Correctional Supervisor – Sergeant positions. The filling of the newly created Correctional Sergeant positions required a competitive process. This process included an announcement of existing vacancies, expressions of interests by employees, a review of qualifications, interviews and the establishment of an eligible list. Promotions into the new job class were effective June 12, 2005. The completion of the promotional process was done in a timely fashion.

Employees have raised a concern about the bargaining unit status of Correctional Dietary Supervisors (CDS). The job class of Correctional Dietary Officer and Correctional Dietary Supervisor were not a part of the Correctional Officer job classification study because these job classes are relatively new, created in September, 2002 and there was no evidence that the duties and responsibilities of the class had changed significantly, since its creation. The CDS job class has different responsibilities and different minimum qualifications than the Correctional Sergeant. Correctional Dietary Supervisors (CDS) supervise the food service operation within the facility and provide supervision to a team of Correctional Dietary Officers (CDO). The minimum experiential requirement is 3 years of experience in large-scale institutional food preparation and service. Employees are required to complete the Food Service Sanitation Management course and obtain a valid Montgomery County Certified Food Service Manager Certificate within 60 days from date of hire. The class specification for Correctional Dietary Supervisor does state that employees must "successfully complete State Training Academy Correctional Entry-Level Program and First-line Supervisor Training, and possess Certificates of successful completion, within 12 months of hire" and have the "ability to perform the duties of a Correctional Officer, in the event of an emergency, after required training is completed." This job class has been excluded from the bargaining unit as a supervisory class since its creation. The aforementioned amendment does not modify the CDS's bargaining unit status.

Cc: Joseph Adler, Director, OHR
Gino Renne, President, MCGEO/UFCW Local 1994
Arthur Wallenstein, Director, DOCR

(13)

OFFICE OF HUMAN RESOURCES

Douglas M. Duncan
County Executive

Joseph Adler
Director

Executive Branch Testimony
Inclusion of Correctional Sergeants
In the Office Professional and Technical Bargaining Unit

Good afternoon, my name is Joseph Adler, as Director of the Office of Human Resources, I am here on behalf of the County Executive to speak in support of the proposed Amendment to the County Collective Bargaining Law to incorporate the newly created job class of correctional sergeant into the Office Professional and Technical Bargaining Unit. By amending the law to permit correctional sergeants, as first level supervisors, into the bargaining unit we are following the legislative model that has been previously established for police and fire/rescue first line supervisors in the County.

The forty-four newly promoted sergeants have previous experience as Master Correctional Officers within the Department of Corrections and Rehabilitation and were all in the bargaining unit. Moreover, as first level supervisors in County detention facilities these individuals are responsible for maintaining the security and well being of the inmate population which they and their subordinates supervise. Specifically, the employees' work impacts a group of correctional officers within a cluster of posts or an assigned area in the correctional facility and the inmate population covered by those posts. Hence, they are subject to the same hours and working conditions of those that they supervise. This recent representation experience and community of interest aligns with including the positions in the bargaining unit.

For these reasons the County Executive believes that including this group of supervisors in the bargaining unit will provide continuity of representation for public safety personnel and support the interests of an important part of our County workforce. We urge your support of this amendment. Thank you.

B11-05

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

MANAGEMENT AND FISCAL POLICY COMMITTEE

Monday, June 20, 2005
2:06 P.M. to 3:45 P.M.
Council Hearing Room

PRESENT

Councilmember Marilyn J. Praisner, Chair

Councilmember Phil Andrews Councilmember Howard A. Denis

Mr. Denis in the Chair.

SUBJECT: **Expedited Bill 11-05, Collective Bargaining – Correction Department - Sergeants**

Reference: 6/20/05 memorandum from Senior Legislative Attorney Faden.

Received information that 68% of the uniformed Correction Department Sergeants in the Office, Professional, and Technical County employees' collective bargaining unit have signed authorization cards expressing support for the bill.

Requested that after the authorization cards are certified by a third party that the signatures are authentic, the information be provided to Councilmembers prior to action on the bill.

Recommended approval of Expedited Bill 11-05, with the provision that the signatures have been verified by a third party.

Next Step: Council action is tentatively scheduled for June 28, 2005.

SUBJECT: **Expedited Bill 12-05, Personnel – Salary schedules; and a Resolution to Approve FY 2005 and FY 2006 Salary Schedules for Uniformed Correctional Officers**

Reference: 6/20/05 memorandum from Senior Legislative Attorney Boucher.

Recommended approval of Expedited Bill 12-05 and the subject resolution.

Enacted Bill 14-05 as introduced. The Public Safety Committee made the motion and the bill was enacted by a roll call vote:

YEAS: Denis, Floreen, Silverman, Knapp, Andrews, Praisner, Leventhal, Perez

ABSENT: Subin (temporarily). Later in the meeting Mr. Subin requested to be recorded as voting in the affirmative.

SUBJECT: **Bill 15-05. Special Capital Improvements Project – White Oak Community Recreation Center**

Reference: Agenda Item 6

Enacted Bill 15-05 as introduced. The Planning, Housing, and Economic Development (PHED) Committee made the motion and the bill was enacted by a roll call vote:

YEAS: Denis, Floreen, Silverman, Knapp, Andrews, Praisner, Leventhal, Perez

ABSENT: Subin (temporarily). Later in the meeting Mr. Subin requested to be recorded as voting in the affirmative.

SUBJECT: **Bill 6-05. Junk Dealers and Junkyards – Repeal**

Reference: Agenda Item 7

Enacted Bill 6-05 as introduced. The Transportation and Environment (T&E) Committee made the motion and the bill was enacted by a roll call vote:

YEAS: Denis, Floreen, Silverman, Knapp, Andrews, Praisner, Leventhal, Perez

ABSENT: Subin (temporarily). Later in the meeting Mr. Subin requested to be recorded as voting in the affirmative.

SUBJECT: **Expedited Bill 11-05. Collective Bargaining – Corrections Department – Sergeants**

Reference: Agenda Item 8

Enacted Bill 11-05 as introduced. The Management and Fiscal Policy (MFP) Committee made the motion and the bill was enacted by a roll call vote:

YEAS: Denis, Floreen, Silverman, Knapp, Andrews, Praisner, Leventhal, Perez
ABSENT: Subin (temporarily). Later in the meeting Mr. Subin requested to be recorded as voting in the affirmative.

SUBJECT: Expedited Bill 12-05. Personnel – Salary Schedules
Reference: Agenda Item 9

Adopted the following amendments as reflected in the bill:

AN EXPEDITED ACT to:
(1) modify the uniform salary plan for County employees to include salary schedules for sworn deputy sheriff managers and uniformed correctional managers;
(2) establish factors on which the Chief Administrative Officer must base any recommended amendment to these salary schedules;
(3) exclude certain occupational classes from a requirement that all occupational classes be paid certain comparable salaries; and
(4) generally amend the law governing salary schedules for County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-11

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 33-11 is amended as follows:
33-11. Classification; salary and wage plans.
* * *
(b) *Uniform salary plan.*
(1) The uniform salary plan consists of:
(A) salary schedules for employees represented by certified employee organizations;
(B) a minimum wage/seasonal salary schedule;
(C) a salary schedule for sworn police managers;

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Tuesday, June 28, 2005 Rockville, Md.

The County Council for Montgomery County, Maryland convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:40 A.M. on Tuesday, June 28, 2005.

PRESENT

Councilmember Thomas Perez, President
Councilmember George Leventhal, Vice President
Councilmember Phil Andrews
Councilmember Michael Knapp
Councilmember Howard Denis
Councilmember Nancy Floreen
Councilmember Marilyn J. Praisner
Councilmember Steven A. Silverman
Councilmember Michael Subin

The President in the Chair.

The invocation was given by Dr. Dean Ahmad, Islamic Society of Washington Area, Silver Spring.

SUBJECT: Proclamation in Recognition of Mosquito Awareness Week

Mr. Leventhal presented the proclamation to Dr. Tillman, Public Health Officer, and Marilyn Piety, Department of Health and Human Services.

SUBJECT: General Business

Approval of Minutes

Approved the minutes of May 11, 13, 18, and 26, 2005.

Mr. Knapp made the motion. Mr. Subin was temporarily absent.

Receipt of Petitions

The Council received no petitions this week.

SUBJECT: Consent Calendar
Reference: Agenda Items 2 A - G

The Consent Calendar was adopted:

Introduced a resolution to establish the reuse priorities for Alta Vista Elementary School;

Introduced a resolution to authorize advance taking – Fairland Road Improvements;

Resolution 15-1058, extending the effective date of Temporary Executive Regulation 13-05T, Moderately Priced Dwelling Unit (MPDU) Program until September 28, 2005;

Resolution 15-1059, confirming the County Executive's appointment of Sally Sternbach to the Charter Review Commission;

Resolution 15-1060, confirming the County Executive's appointment of the following persons to the Commission on Child Care: Dionne Koller Fine, Melissa M. Jenkins, Vivian Nunez, Harriet Berger, Jackie Leach, Linda E. Kumkumian, R. Lorraine Brown, M. Therese Gnezda, and David P. Moore;

Resolution 15-1061, confirming the County Executive's appointment of the following persons to the Commission for Women: Patricia E. Cornish, Anne S. Kasper, Elizabeth Keyes, Fauzia R. Najm, Gloria A. Aparicio, Martha Nguyen;

Resolution 15-1062, confirming the County Executive's appointment of the following persons to the Upcounty Citizens Advisory Board: Andres Aviles, Bradley J. Davis, Rhonda R. Dolan, Elise Hackey, Jorge Hernandez-Fujigaki, Robert J. Hydorn, Timothy O. Milbrath, Loretta L. Schmitzer, and Richard N. Wright.

Ms. Praisner made the motion. Mr. Subin was temporarily absent.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND SITTING AS A DISTRICT COUNCIL FOR THAT PORTION OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN MONTGOMERY COUNTY

SUBJECT: **Zoning Text Amendment 05-07, Parking Facilities – Country Inn Zone**
Reference: Agenda Item 3

Adopted **Ordinance 15-51**, approving ZTA 05-07.

The PHED Committee made the motion and the Ordinance was adopted by a roll call vote:

YEAS: Denis, Floreen, Silverman, Knapp, Andrews, Praisner, Leventhal, Perez.

Later in the meeting, Mr. Subin requested to be recorded as voting in the affirmative.

SUBJECT: **Legislative Session**

See the legislative journal for the minutes of this session.

SUBJECT: **Resolution to Approve FY05 and FY06 Salary Schedules for Uniformed Correctional Managers**
Reference: Agenda Item 10

Resolution 15-1063 was adopted, approving the FY05 and FY06 Salary Schedules for Uniformed Correctional Managers.

The MFP Committee made the motion.

SUJBECT: **Receipt and Release – Office of Legislative Oversight (OLO) Report 2005-6, An Assessment of Language Assistance Services Provided by Montgomery County Public Schools (MCPS) to the School Community**
Reference: Agenda Item 11

Received and released the subject report.

Ms. Praisner made the motion.

Ms. Praisner requested information from MCPS staff regarding how parents are affected when their children move out of ESOL programs into a standard classroom environment. She questioned how MCPS calculates the mobility rate with regard to students who may have a gap in instruction time but do not change schools, and requested information on the extent to which efforts have been made regarding the strategies for successful schools.

Mr. Subin requested OLO to determine how the lack of Federal and State funding for adult education will affect the recommendations included in the report.

Mr. Silverman requested MCPS staff to provide information regarding expectations for non-English speaking children in the first grade to be reading English at grade level.

The meeting adjourned at 11:31 A.M.

This is an accurate account of the meeting:

_____

Linda M. Lauer, Clerk of the Council

Minutes written by: Mary Anne Paradise, Deputy Clerk

June FYI

MEMORANDUM

DATE: October 2, 1979

TO: County Council

FROM: Pearl O. Schloo, Legislative Staff Specialist

SUBJECT: Explanation of renumbering of Chapter 33

Bill 36-78, the Merit System law, which became effective February 8, 1979, (and therefore is not as yet codified) transferred Article II, Sections 33-5 through 33-33 to an Appendix in the Code.

This bill added a new Article II title "Merit System" with new section numbers 33-5 to 33-16.

Section 4 of 36-78 provided that individual section numbers of Article III title "Employees' Retirement System" and Article IV title "Employer-Employee Relations" of Chapter 33 be sequentially numbered as appropriate.

Therefore Article III would begin with Section 33-17. That Article is codified as Sections 33-34 through 33-57 on pages 2 through 36 in the 1978 supplement to Volume 2 of the Code. The new numbers, pursuant to Bill 36-78, would be 33-17 through 33-40.

Article IV title "Employer-Employee Relations" would therefore begin with Section # 33-41, and end with 33-52, thereby replacing the presently listed 33-62 through 33-73.

In reviewing Bill 23-79, the section for Procedures for certification of employee organizations should be Sec. 33-45.

As a result of 36-78, effective 2/8/79:

		New Numbers:
Article II	"Merit System" -	33-5 -33-16
Article III	"Employees Retirement System"-	33-17 - 33-40
Article IV	"Employer-Employee Relations"-	33-41 - 33-52

BILL NO. 23-79

Introduced: March 20, 1979
Enacted: October 2, 1979
Executive: October 11, 1979
Effective: January 10, 1980

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

March Legislative Session 1979

Chapter 11

Laws of Montgomery County 1980

AN ACT to amend Subsection 33-45(f) of Section 33-45, titled "Procedures for Certification of Employee Organizations" of Article IV, title "Employer-Employee Relations" of Chapter 33, titled "Personnel" of the Montgomery County Code, 1972, as amended, to provide for an exclusive representation upon the casting of a certain percentage of votes.

Be It Enacted by the County Council for Montgomery County, Maryland, that -

Sec. 1. Subsection 33-45(f) of Section 33-45, titled "Procedures for Certification of Employee Organizations", of Article IV, title "Employer-Employee Relations" of Chapter 33, titled "Personnel" of the Montgomery County Code, 1972, as amended, is hereby repealed and re-enacted with amendments to read as follows:

33-45. Procedures for Certification of Employee Organizations.

* * *

(f) When an organization receives at least fifty percent (50%) of valid votes cast in the election, the Chief Administrative Officer shall certify it as the official employee organization for the employee unit.

* * *

Sec. 2. Severability.

The provisions of this Act are severable, and if any provision, clause, sentence, section, word or part thereof is illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of the Act

or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, unconstitutional or inapplicable provision, sentence, section, word, or part had not been included therein, and if the person or circumstances to which the Act or part thereof is inapplicable had been specifically exempted therefrom.

Sec. 3. Effective Date.

This Act shall take effect on the 91st day following the date on which it becomes law.

Approved:

Scott Foster — Oct. 3, 1979

Vice President, Montgomery County Council — Date

Approved:

October 11, 1979

County Executive — Date

ATTEST:

Oct 12, 1979

Secretary of the County Council — Date

23-79 3701-1

Office Of The County Executive

RECEIVED COUNCIL
79 MAR 8 A8:58

MEMORANDUM

Date March 6, 1979

To Neal Potter, President, County Council

From Charles W. Gilchrist, County Executive Charles W. Gilchrist

Subject Amendment to Employer/Employee Relations Act

I am sending you an amendment to Article IV, Employer/Employee Relations, which is designed to change the participation requirement for the certification of employee organizations. Under the County's meet and confer law, the existing provisions require that at least sixty (60) percent of the employees eligible to participate in an election must cast ballots in order to validate the election process. This amendment will eliminate the sixty percent participation requirement and permit validation, and subsequent certification when an organization receives the majority of votes cast.

This change supports a more realistic approach to allowing employee organizations to participate in the meet and confer process. The sixty percent voter requirement provided in Section 33-66(f) of the law places an unrealistic requirement on employee organizations. The law has been in effect since March, 1977, and only one employee group has been certified. I believe this is due in part to the restrictiveness of the present voting requirement. It is a common practice among both the public and private jurisdictions where there exists a mechanism to recognize employee groups, to do so through a majority vote requirement.

The purpose of the meet and confer process, in part, is to grant recognition to employee organizations in order that they might represent specific groups of employees. The law, in its present form, restricts this opportunity. It is my intent to make the "meet and confer" a more meaningful process by allowing the County Government to make policy decisions based on input from recognized representatives of all of our employees. I believe this amendment will have the effect of more readily establishing recognition rights for groups of employees.

This amendment is of sufficient importance that I believe it should be considered as emergency legislation.

The adoption of the amendment will not have any immediate impact on the present capital or operating budget.

The amendment, as presently drafted, has been approved by the County Attorney as to its form and legality.

I would appreciate your favorable and earliest consideration of this legislation. Any further information concerning the amendment should be directed to James Torgesen, Assistant to the Personnel Director for Labor Relations, 279-1208.

CWG:jey

Office of the County Executive

MEMORANDUM

Date July 25, 1978

To All Employees

From William H. Hussmann, Chief Administrative Officer WH

Subject Meet and Confer Election Results

On March 22 and 23, 1978, a representation election was held to determine if the Montgomery County Government Employees' Organization, Inc. (MCGEO) should be certified as an exclusive representative of all eligible employees currently not covered by an existing unit structure to the exclusion of all uniformed personnel in the Montgomery County Department of Fire and Rescue Services. Following this election, MCGEO filed several challenges which they felt gave sufficient cause to void the election results.

The State Department of Labor and Industry was requested to review the challenges and make recommendations as to their validity. Their findings stated that they found no cause to invalidate the election results. After careful study and review, I concur with these findings and am, therefore, issuing the official election results.

Approximate number of eligible voters	3,801
Void ballots	13
Votes cast for Montgomery County Government Employees' Organization, Inc. (MCGEO)	1,882
Votes cast for no representation	142
Challenged ballots	58
Valid votes counted plus challenged ballots	2,082

Under 33-66(f) of the Employer-Employee Relations Act, I am required to certify an employee organization when it receives a majority of the votes cast in an election where at least sixty percent (60%) of the employees eligible cast valid ballots. The latter requirement was not met in this election, in that the 2,082 votes cast did not equal at least 60% of 3,801 total eligible voters.

WHH:jjk

P L E A S E P O S T

23-79

MEMORANDUM

September 14, 1979

TO: County Council

FROM: Pearl O. Schloo, Legislative Staff Specialist

SUBJECT: Worksession on Bill 23-79, Amendments to Meet and Confer Legislation

A worksession on Bill 23-79 has been scheduled for Monday, September 17, 1979, at 10 AM in the Council Conference Room. All interested parties have been notified of this worksession.

All speakers who testified at the July 17, 1979, public hearing endorsed Bill 23-79 as proposed by the County Executive and were unanimous in their opposition to the two amendments proposed by Councilmembers Scull, Gelman and Potter which would provide that before an employee organization is certified, at least 50% or 30% of the eligible employees would be required to cast ballots. It was pointed out that:

- requiring a percentage of all eligible to vote makes it difficult to have a representative group certified;
- local, state and federal elections are decided by a simple majority;
- the Task Force on Collective Bargaining for Public Employees appointed by the General Assembly in October 1977 recommended that an employee organization be recognized as the exclusive employee representative upon receiving a simple majority of the votes cast in an election;
- most state and local labor laws require only a majority of votes cast to determine the employee representative organization.

Tom Stone, representing the County Executive, suggested that Bill 23-79 be amended to delete the emergency provision and that this bill be considered as regular legislation.

Attached for your consideration are:

-several letters received following the public hearing

-a copy of Bill 23-79

-a copy of the Meet and Confer legislation, Bill 11-76

POS/sgh

23-79

MINORITY EMPLOYEES ASSOCIATION

THE ORGANIZATION FOR
MONTGOMERY COUNTY GOVERNMENT
MINORITY EMPLOYEES

July 17, 1979

TO: Mr. Neal Potter, President and Members of the Montgomery County Council

FROM: Donald R. Gibson, Chairperson and Members of the Minority Employees Association

SUBJECT: Public Hearing Testimony; Amendments to County Meet and Confer Legislation

"When an organization receives at least fifty percent (50%) of valid votes cast in the election, the Chief Administrative Officer shall certify it as the official employee organization for the employee unit."

The concept of a majority of valid votes cast in an election being equated to representative Democracy is one of the primary building blocks of this Country. Any amendment which alters this basic foundation tears at the roots of "the will of the people to be represented."

Suppose the founders of this Country had placed a minimum voting requirement which stated that "50% or 30% of the people eligible to participate in an election must cast valid ballots before a President of the United States can be elected". The reality of this statement is that in this day and age, we would not have an elected leader.

The Minority Employees Association therefore, reject both amendments to the Employee Organization Certification Requirements. MEA however, does support the Amendment to the Employer/Employee Relations Act as set forth by the County Executive, Mr. Gilchrist on March 6, 1979 and previously alluded to in the opening statement.

Let's keep Democracy simple and workable. Thank you.

MEA

RECEIVED COUNCIL

79 JUL 16 A11:24

214 Domer Avenue
Takoma Park, MD 20012
July 13, 1979

Mr. Neal Potter, President
Montgomery County Council
County Office Building
Rockville MD 20012

Dear Mr. Potter:

I am sorry I cannot attend the July 17 hearing on the "meet and confer" bill and its amendments. I hope to be in New Hampshire by Tuesday.

I'd like to make known my support for an employee election in which the decision would be based upon a majority of those voting if a majority (not sixty per cent) of County employees voted in the election. I was a poll watcher (for MCGEO) at the employee election where a number of people believed they were eligible to vote, but their votes had to be challenggd. Others who did not vote could have done so according to the print-out list. The guidelines for eligibility were obviously not clear.

I hope you can support a simple majority of County employees voting in an election to establish the employee organization with which County government officials will meet and confer.

Sincerely yours,

Jessie H. Bakeman

Jessie H. Bakeman

women for equality
The Organization for
Women Employees of Montgomery County Government
150 Maryland Avenue / Rockville, Maryland 20850

July 13, 1979

Mr. Neal Potter, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Mr. Potter: Re: Meet and Confer Bill

The Meet and Confer legislation before you is an important and giant step in the improvement of employee-management relationships. The Women Employees of this government urge its passage without numerical voting requirements.

It is our understanding that a sixty percent to thirty percent of those eligible to vote requirement is to be written into the bill as a requirement for recognition of the employee organization.

It does not appear to be rational to impose such percentages on employee representation. There should be no requirement other than a simple majority of those voting. To require a percentage of all eligible to vote seems to present a hardship on employee organizations. We are after all speaking to only meet and confer arrangements and not to hard and fast bargaining and demands.

Women for Equality urges the Council to pass a bill requiring a simple majority of those voting for recognition of the employees organization.

Thank you for your consideration of this matter.

Cordially,

Suzanne H. Muncy
Chairperson

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, March 20, 1979 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, County Office Building, Rockville, Maryland, at 12:45 P.M., on Tuesday, March 20, 1979.

PRESENT

Neal Potter, President
Scott Fosler, Vice President
Elizabeth L. Scull
Esther P. Gelman
Rose Crenca
Ruth Spector
Michael L. Gudis

The President in the Chair.

The Journal of March 6, 1979, was approved as amended.

INTRODUCTION OF BILLS:

Re: Introduction of Bill No. 23-79, Executive's Proposed Revisions to Employee Organization Certification Requirements Under the Meet & Confer Process

The Council had before it for consideration Bill No. 23-79, the County Executive's proposed revisions to employee organization certification requirements under the "Meet and Confer Process."

Councilmembers reviewed the County Executive's memorandum of March 6, 1979, as follows:

> I am sending you an amendment to Article IV, Employer/Employee Relations, which is designed to change the participation requirement for the certification of employee organizations. Under the County's meet and confer law, the existing provisions require that at least sixty (60) percent of the employees eligible to participate in an election must cast ballots in order to validate the election process. This amendment will eliminate the sixty percent participation requirement and permit validation, and subsequent certification when an organization receives the majority of votes cast.
>
> This change supports a more realistic approach to allowing employee organizations to participate in the meet and confer process. The sixty percent voter requirement provided in Section 33-66(f) of the law places an unrealistic requirement on employee organizations. The law has been in effect since March, 1977, and only one employee group has been certified. I believe this is due in part to the restrictiveness of the present voting requirement. It is a common practice among both the public and private jurisdictions where there exists a mechanism to recognize employee groups, to do so through a majority vote requirement.

The purpose of the meet and confer process, in part, is to grant recognition to employee organizations in order that they might represent specific groups of employees. The law, in its present form, restricts this opportunity. It is my intent to make the "meet and confer" a more meaningful process by allowing the County Government to make policy decisions based on input from recognized representatives of all of our employees. I believe this amendment will have the effect of more readily establishing recognition rights for groups of employees.

This amendment is of sufficient importance that I believe it should be considered as emergency legislation.

The adoption of the amendment will not have any immediate impact on the present capital or operating budget.

The amendment, as presently drafted, has been approved by the County Attorney as to its form and legality.

I would appreciate your favorable and earliest consideration of this legislation. Any further information concerning the amendment should be directed to James Torgesen, Assistant to the Personnel Director for Labor Relations, 279-1208.

Following discussion of the fact that Bill No. 23-79, in deleting the requirement that 60% of the eligible voters participate in an election, also deleted any participation requirement at all, two alternate amendments to paragraph (f) were introduced without objection: both amendments restore the deleted requirement, but change the 60% requirement to 50% (in Amendment No. 1) and 30% (in Amendment No. 2).

Councilwoman Crenca suggested that the Council staff confer with representatives of the Montgomery County Government Employees Organization and Executive Branch staff members with respect to the foregoing percentages.

Upon motion of Councilwoman Gelman, duly seconded and without objection, the Council voted to waive the reading of the title of Bill No. 23-79.

Bill No. 23-79, sponsored by the Council President, cosponsored by Councilwoman Crenca, was introduced, as requested by the County Executive. The title of the subject bill is set forth below:

> AN EMERGENCY ACT to amend Subsection 33-43(f) of Section 33-43, titled "Procedures for Certification of Employee Organizations" of Article IV, title "Employer Employee Relations" of Chapter 33, titled "Personnel" of the Montgomery County Code, 1972, as amended, to provide for an exclusive representation upon the casting of a certain percentage of votes.

Re: Introduction of Bill No. 24-79, Industrial Revenue Bond Financing for the Psychiatric Institute of Montgomery County, Inc.

The Council had before it for consideration Bill No. 24-79, the County Executive's proposed Industrial Development Revenue Bond Authorization for the benefit of the Psychiatric Institute project.

"Guarantees"), pursuant to which the Borrower and such affiliated corporations will fully and unconditionally and irrevocably guarantee to the Trustee for the benefit of the holders of the Bonds (among other things) the full and prompt payment of the principal of and interest on the Bonds when and as the same shall become due and payable.

As evidenced by the letter of intent dated December 4, 1978, delivered by the Borrower to the County in accordance with Section 266B(d) of the Enabling Legislation (the "Letter of Intent"), a copy of which is attached to this Act as Exhibit A and made a part hereof, the Industrial Building is to be acquired by a bona fide tenant or purchaser within the meaning of the Enabling Legislation.

The Bonds will be sold at private (negotiated) sale.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

No bills were called for final reading.

MISCELLANEOUS BUSINESS:

There being no further official business to come before the Council in Legislative Session, the meeting adjourned at 12:55 P.M., to reconvene in Special Legislative Session at 2:00 P.M., on Friday, March 23, 1979, or at the call of the President.

ATTEST:

Kathleen A. Freedman

Kathleen A. Freedman, Deputy Secretary
of the County Council for
Montgomery County, Maryland

APPROVED

2750

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, October 2, 1979 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 11:05 A.M. on Tuesday, October 2, 1979.

PRESENT

Scott Fosler, Vice President
Michael L. Gudis
Rose Crenca
Elizabeth L. Scull
Ruth Spector
Esther P. Gelman

ABSENT

Neal Potter, President

The Vice President in the Chair.

The Journal of September 11, 1979, was approved as amended.

INTRODUCTION OF BILLS:

There were no bills for introduction.

MEMORIALS AND PETITIONS:

There were no memorials or petitions for presentation.

CALL OF BILLS FOR FINAL READING:

Re: Enactment of Bill No. 23-79, Employer-Employee Relations Law Amendment

Bill No. 23-79, Amendment to Employer-Employee Relations Law, was called for final reading.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council waived the reading of the bill and proceeded to consideration of amendments.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council deleted the language on lines 31 through 34, page 2, and inserted in lieu thereof: This Act shall take effect on the 91st day following the date on which it becomes law.

At the suggestion of Ms. Schloo, Legislative Staff Specialist, the Council deleted [33-43] and inserted in lieu thereof 33-45 throughout the bill.

Councilwoman Scull stated that she will vote against this bill. She believes that it is most unwise to go from a requirement that 60% of the eligible voters actually participate in an election to designate an employee organization to no requirement at all regarding the number of participants in the election. In the last such election, the Montgomery County Government Employees Organization (MCGEO) brought out just 58.8% of the eligible voters. She believes that it would be preferable to reduce the 60% requirement somewhat rather than eliminating it entirely. She believes that a requirement for 30% of the voters would be entirely reasonable. Councilwoman Scull stated that she does not agree with the argument that there should be no requirement at all because that is how it is done in many other jurisdictions. The Council is aware that some other jurisdictions are having serious difficulties caused by the demands of irresponsible leaders of employee organizations. These are not private groups whose decisions affect only their own members. The decisions can have serious impact on all of the people of the County. Consequently, it is not unreasonable to require that the leaders have the support of a significant number of employees.

Councilwoman Scull moved, duly seconded, that the Council remove the bracket before the word "and" on page 2, line 11; delete the phrase [sixty percent (60%)] and insert in lieu thereof thirty percent (30%); and delete the bracket after the word "ballots" on line 12.

Councilwoman Scull pointed out that, if 30% of the employees eligible are required to vote to validate an election, an employee organization can be designated as the official organization with only 16% of the employees voting for it. That is not a huge requirement.

Councilwoman Scull's motion failed, Councilmembers Scull and Gelman voting in the affirmative, Councilmembers Fosler, Spector, Crenca and Gudis voting in the negative and Councilman Potter being absent.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of Bill No. 23-79. By a yea and nay vote, Councilmembers Spector, Gudis, Crenca and Fosler voting in the affirmative, Councilmembers Gelman and Scull voting in the negative and Councilman Potter being absent, Bill No. 23-79, Employer-Employee Relations, was enacted, as amended.

Re: Enactment of Bill No. 48-79, Immunization of Children

Bill No. 48-79, Immunization of Children, was called for final reading.

Upon motion of Councilwoman Scull, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of Bill No. 48-79. By a yea and nay vote, Councilmembers Gelman, Spector, Scull, Crenca and Fosler voting in the affirmative, Councilman Gudis being temporarily absent, and Councilman Potter being absent, Bill No. 48-79 was enacted.

MISCELLANEOUS BUSINESS:

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 11:23 A.M., to reconvene at 1:30 P.M. on Tuesday, October 9, 1979, or at the call of the President.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

DF

Montgomery County Government

ROCKVILLE, MARYLAND 20850

Charles W. Gilchrist
County Executive
(301) 251-2500
TTY 279-1083

MEMORANDUM

911418

May 13, 1982

TO: Neal Potter, President, County Council

FROM: Charles W. Gilchrist, County Executive

SUBJECT: Amendments to the Police Labor Relations Law

Upon review of the Police Labor Relations Law, which I signed on April 16, 1982, my staff has determined that the effective date provided for in the Law nullifies specific action dates in the Law which permit submission of petitions by employee organizations for election and/or certification. Specifically, the current effective date of the legislation (July 15) precludes employee organizations from filing petitions between May 1 and June 30 as provided in the Law. Therefore, I am submitting the attached amendments to correct this inconsistency.

My staff has been advised by David Frankel, Legislative Counsel, that these amendments are to be submitted as new Law. Therefore, in compliance with the County Council's rules and procedures, I am providing a response to the following points.

1. Description: Amendments to the Police Labor Relations Law. These amendments change the date for the filing of initial petitions, correct grammatical errors and amend the effective date of the Law.

2. Problem: To correct inconsistencies between dates permitting the filing of initial petitions and the effective date of the Law.

3. Goals and Objectives: The proposed amendments will provide sufficient time for the appointment by the County Executive with confirmation by the County Council of a Permanent Umpire, prior to the date permitting submission by employee organizations of initial petitions for election and/or certification. It is necessary for the Permanent Umpire to be appointed prior to the submission of petitions in order that petition may be filed with the umpire.

4. Coordination: The proposed amendments will not duplicate or overlap any existing laws or programs.

5. Fiscal Impact: The proposed amendments have no impact on capital programs and/or the operating budget.

6. Economic Impact: The proposed amendments have no economic impact.

7. Evaluation: The proposed amendments will not require an additional mechanism for evaluation, but will be a part of the subsequent evaluation of the overall effectiveness of the Law.

8. Experience Elsewhere: Not applicable.

9. Source of Information: Robert Hillman, Special Counsel or Clinton Hilliard, Personnel Director.

As these proposed amendments do not change or in any way alter the intent of the Law, it is my desire to have these amendments expedited as soon as possible. If at all possible, I would like to be able to have these amendments effective by June 1, so that there is sufficient time between the effective date of the Law and the date (July 1) permitting the filing of initial petitions.

CWW:jey

(5)

DO'N
6-8-82
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mml

MONTGOMERY COUNTY, MARYLAND

In the Matter of:

Bill # 24-82

Public Hearing

Council Hearing Room
City Office Building
100 Maryland Avenue
Rockville, Maryland

Tuesday,
June 8, 1982

The above-entitled matter came on for hearing pursuant to notice at 5:00 p.m.

BEFORE: MONTGOMERY COUNTY COUNCIL

NEAL POTTER, PRESIDENT

Members of Council:

VICE PRESIDENT MICHAEL GUDIS

ESTHER P. GELMAN

RUTH SPECTOR

ROSE CRENCA

DAVE SCULL

On behalf of the County Attorney:

STEVEN ELMENDORF

Also Present:

ROBERT MCDONALD, STAFF DIRECTOR

P R O C E E D I N G S

PRESIDENT POTTER: Good afternoon, ladies and gentlemen.

This is a public hearing on Legislative Bill Number 24-82, AN EMERGENCY ACT to repeal and reenact with amendments subsection (a) of Section 33-79, title "Selection, Certification, and Decertification Procedures," of Article V, title "Police Labor Relations," of Chapter 33, title "Personnel," of the Montgomery County Code, 1972, as amended, to change the dates for filing of initial petitions, to correct grammatical errors, and to amend uncodified Section 5, title "Effective Date" of Chapter 53 of the Laws of Montgomery County, 1982, for the purpose of making that Chapter emergency legislation, effective on the date it became law.

Enactment of this bill is scheduled during the Legislative Session today, following this hearing.

Therefore, the record will be closed at the conclusion of this hearing.

Are there witnesses to be heard on this emergency bill 24-82?

I see the head of our Personnel Office -- Personnel Department, Mr. Hilliard present to answer questions, I take it.

Are there questions to Mr. Hilliard?

[No response]

PRESIDENT POTTER: Lacking any witnesses, I will declare the hearing closed, and we will proceed to Legislative Session.

[Whereupon at 5:00 p.m. the hearing was concluded.]

REPORTER'S CERTIFICATE

DOCKET NUMBER: 24-82

CASE TITLE: Public Hearing

HEARING DATE: June 8, 1982

LOCATION: Rockville, Maryland

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before Montgomery County Council

and that this is a true and correct transcript of the same.

Date: June 14, 1982

Debra L. O'Neill

Official Reporter
Acme Reporting Company, Inc.
1411 K Street, N.W.
Washington, D.C. 20005

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, June 8, 1982 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 10:10 A.M. on Tuesday, June 8, 1982.

PRESENT

Neal Potter, President
Michael L. Gudis, Vice President
Rose Crenca
Ruth Spector
David Scull
Scott Fosler
Esther P. Gelman

The President in the Chair.

No journal was presented for approval.

INTRODUCTION OF BILLS:

Re: Emergency Bill No. 25-82, Providing an Alternative Method of Assuring Completion of Subdivision Streets & Roads - Introduced

The Council had before it for introduction Bill No. 25-82, providing for an alternative method of assuring completion of subdivision streets and roads.

President Potter indicated that he has some editorial changes to the bill to make it more understandable and readible. He said he would prefer to delay introducing the bill until this afternoon and have a properly edited bill before the Council when the session is continued at 4:30 P.M.

Legislative Counsel Frankel added that there are a number of areas in the bill that need clarification and suggested that it be referred to committee before the public hearing or that introduction be deferred for a week to work out the language to some substantive questions to a technical bill.

Councilwoman Spector suggested that the scope of the advertising of the bill should be broad enough to encompass any needed amendments.

Mr. Merryman of the Executive Branch said he was not familiar with the Council's procedures, but that he could provide technical advice with respect to the language of the bill.

see an economics needs test applied. She is happy that the handicapped were added under the provision of this bill. She cautioned that "minority" should never be interpreted to mean "inferior."

Councilwoman Spector asked about the County's position with respect to challenges from the majority and the voluntary nature of the bill.

Mr. Scull responded that the concept of "minority" is within the bill. The definition is the same as is contained in State legislation. The law provides that no law suit can be filed based on this law. Oversight is by the Council looking at the CAO's annual report to see whether he has done an adequate job. The experience at the State level has been positive and successful beyond expectation. He has not heard of any complaints from majority contractors.

Upon motion of Councilman Scull, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment.

Councilmembers Spector, Crenca, Scull, Gelman, Fosler, Gudis and Potter voting in the affirmative, Bill 54-81, an amendment to the contract procurement law to increase the amount of contracts which do not require competitive bidding, was enacted, as amended.

(The Legislative Session was recessed until 5:00 P.M.)

Re: Bill 24-82, Technical Amendments to Police Collective Bargaining

Bill 24-82, technical amendments to the Police Collective Bargaining law, was called for final reading.

Upon motion of Councilman Scull, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment.

Councilmembers Spector, Crenca, Scull, Gelman, Fosler, Gudis and Potter voting in the affirmative, Bill 24-82, technical amendment to the Police Collective Bargaining law, was enacted.

Re: Bill 54-81, Contract Procurement Law - Reconsidered, Amended and Reenacted

Councilman Gudis moved reconsideration of Bill 54-81, amendment to contract procurement law, enacted earlier today. His motion was seconded & passed.

Upon motion of Councilman Gudis, duly seconded and without objection, Bill No. 54-81 was amended on lines 25 and 26, on page 4, to substitute invitation for bids for "request for proposals" on both lines.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to reenactment of the bill.

Councilmembers Spector, Crenca, Scull, Gelman, Gudis and Potter voting in the affirmative, and Councilman Fosler being temporarily absent, Bill 54-81, an amendment to the contract procurement law to increase the amount of contracts which do not require competitive bidding, was reenacted, as amended further.

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 5:10 P.M. to reconvene at 1:30 P.M. on Tuesday, June 15, 1982, or at the call of the President.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

MEMORANDUM

September 28, 1983

Admin. Proc. Act
46-83
Fiscal Impact

TO: Montgomery County Council

FROM: Jacqueline H. Rogers, Director
Office of Management & Budget

SUBJECT: Final Fiscal Impact Statement for Bill No. 46-83, Amending the Administrative Procedures Act

This memorandum updates our July 22 fiscal impact analysis concerning Bill No. 46-83, which would amend the "Administrative Procedures Act" of the Montgomery County Code (1972) by establishing an uniform procedure for adoption, review, repeal, notification, and compilation of Executive regulations. The July 22 memorandum stated that the proposed legislation would generate a fiscal impact on the County Operating Budget. This memorandum provides more precise cost estimates associated with Bill No. 46-83.

Consultation with the County Attorney's Office has enabled us to refine the preliminary cost estimates mentioned in the July 22 memorandum. It is now estimated that approximately $43,542 in net total costs would occur in the initial year for design and organization of the COMCOR. Slightly lower costs are expected in subsequent years for review of existing regulations, publication of supplements to the COMCOR, and compilation of the Register on an on-going basis. The anticipated costs are arrayed on the attached page.

No new costs in the Executive Branch will be associated with compilation of Executive Orders and Administrative Procedures inasmuch as these activities have already been completed and future costs for updating and review are already included in the Operating Budget.

In conclusion, enactment of Bill No. 46-83 would generate $43,542 in net Operating Budget expenditures during the first year. Subsequently, after the COMCOR format is developed, it is anticipated that annual costs will be slightly lower--approximately $27,000--inasmuch as most personnel time will be devoted to updating and reviewing Executive regulations.

JHR:ark/1447Z

cc: C. Gilchrist
L. Roberts
A. McArthur
R. Kendal
P. McGuckian

Cost Item	Calculation of Cost	Appropriated Cost	Cost Recovery	Total Net Cost
FIRST YEAR				
Code of Montgomery County Regulations (COMCOR)	Staffing County Attorney's Office:			
1) Design, organize, index existing body of Executive regulations	One Senior Assistant Attorney (Grade 32, at $37,844/year X .1 workyear + 28% Fringe Benefits)	$4,844		
2) Develop editorial standards	One Legal Assistant (Grade 15 at $17,514/year X .75 workyear + 28% Fringe Benefits)	16,814		
3) Incorporate judicial annotations	One Administrative Aide IV (Grade 12 at $15,504/			
4) Edit, type regulations	year X .75 workyear + 28% Fringe Benefits)	14,884		
5) Review regulations for obsolescence				
6) Print sets of COMCOR	Miscellaneous Operating Costs (for phone, supplies,etc.)	1,000		
7) Distribute COMCOR internally, to public				
8) Set price for COMCOR	Production of COMCOR: 400 sets X $20/set	8,000		
	Less sale of 100 sets to the public		(2,000)	
Total Cost for Initial Year		45,542	(2,000)	43,542
FOLLOWING YEARS				
Permanent Annual Supplements to COMCOR	Same staffing as above, for .15 workyear	7,236		
1) Edit, type regulations				
2) Print Supplements	Miscellaneous Operating Costs	1,000		
3) Distribute Supplements				
	Production costs: 100 pages X 5¢/page duplication	2,000		
	Less sale of 100 sets to the public		(500)	
Montgomery County Register (to temporarily supplement COMCOR)	Same staffing as above, for .15 workyear	7,236		
1) Compile, type Register	Production costs: Minimal, assuming that Register			
2) Print Register	can be published in Public Information Office's			
3) Distribute Register	new County Newsletter as a removable center insert, publication and distribution costs could be			
	absorbed by the newsletter budget.	-0-		
Periodic Sunset Reviews	Same staffing as above, for .2 workyear	9,648		
Total Annual Cost in Subsequent Years		27,120	(500)	26,620

46-83

Introduced: June 21, 1983
Enacted: December 6, 1983
Executive: December 15, 1983
Effective: March 15, 1984

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

June Legislative Session 1983

Chapter 24

Laws of Montgomery County, 1984

AN ACT to amend the following sections of the Montgomery County Code 1972, as amended, for the purposes of establishing procedures for promulgation of executive regulations; providing for the publication of a Code of Montgomery County Regulations; providing for the periodic issuance of a Montgomery County Register, which is to be used as a temporary supplement to the Code of Montgomery County Regulations; and to provide for the periodic review of regulations: Chapter 2A, title "Administrative Procedures Act"; Sections 1-18(c) and 1-19 of Chapter 1, title "General Provisions"; Section 2-99, title "Annual compilation of laws...(etc.)" of Chapter 2, title "Administration"; Section 2-105, title "Procedure for adoption of rules and regulations by the county executive" of Chapter 2, title "Administration"; Sections 2-9, 2-15, 2-33, 2-42(c), and 2-140(a)(6) of Chapter 2, title "Administration": Section 2B-5(a)(4) of Chapter 2B, title "Agricultural Land Preservation"; Sections 3-4(a) of Chapter 3, title "Air Quality Control"; Sections 3A-2 (c) and (f) and Section 3A-6 of Chapter 3A, title "Alarms"; Section 4-31 of Chapter 4, title "Amusements"; Sections 5-4, 5-7(a), 5-21, 5-43, 5-44, 5-45(b), 5-59(a), 5-67 and 5-69 of Chapter 5, title "Animal Control"; Section 5A-4(d) of Chapter 5A title "Arts"; Sections 8-13, 8-33, 8-34, 8-35 and 8-36 of Chapter 8, title "Buildings"; Sections 8A-11(e), 8A-13(b), 8A-18(f) and 8A-21(h) of

Chapter 8A, title Cable Communications"; Sections 10-3 and 10-11 of Chapter 10, title "Child Care"; Section 11-2(k) of Chapter 11, title "Consumer Protection"; Sections 11A-3(b)(2), 11A-5(e), 11A-7(c), 11A-9 and 11A-13 of Chapter 11A, title "Condominiums"; Sections 11B-18, 11B-20, 11B-23C, 11B-25, 11B-26(a), 11B-27 and 11B-39 of Chapter 11B, title "Contracts, procurement matters and public ethics"; Sections 13-1(a) and 13-7 of Chapter 13, title "Detention Centers and Rehabilitation Facilities"; Section 13A-4 and 13A-5 of Chapter 13A, title "Development Rights Fund"; Section 15-12 of Chapter 15, title "Eating and Drinking Establishments"; Sections 17-2(a) and (b), 17-22, 17-25(a), 17-37(a) and 17-38(b) of Chapter 17, title "Electricity"; Sections 19-6, 19-8, 19-17 and 19-31 of Chapter 19, title "Erosion and Sediment Control"; Section 19A-5(j) of Chapter 19A, title "Ethics"; Sections 21-4B(e) of Chapter 21, title "Fire and Rescue Services"; Sections 22-13, 22-37 and 22-96(g) of Chapter 22, title "Fire Safety Code"; Sections 23A-6, and 23A-9(a)(4) of Chapter 23A, title "Group Residential Care Facilities"; Section 24-9(j) of Chapter 24, title "Health and Sanitation"; Section 24A-4(h) of Chapter 24A, title "Historic Resources Preservation"; Section 25-18 of Chapter 25, title "Hospitals, Sanitariums, Nursing and Care Homes"; Sections 25A-3, 25A-6(a), and 25A-7(c) and (d), 25A-8(a) and 25A-10 of Chapter 25A, title "Housing, Moderately Priced"; Sections 25B-3(c)(5), 25B-4(b) and 25B-8 of Chapter 25B, title "Housing Policy"; Sections 26-21(g) and 26-22 of Chapter 26, title "Housing Standards"; Sections 27-6(a)(7), 27-6A(c), 27-26D(a), 27-29(g) and 27-42(j) of Chapter 27, title "Human Relations and Civil Liberties"; Sections 27A-4 and 27A-5(e) of Chapter 27A, title "Individual Water Supply and Sewage Disposal Systems"; Sections 29-10(a) 29-19, 29-28A(b)(3), and 29-49(a) of Chapter 29, title "Landlord-Tenant Relations"; Section 29A-5(b)(9) of Chapter 29A, title "Legislative Oversight"; Sections 30-2, 30-5, 30-8, 30-11 and 30-12 of Chapter 30, title "Licensing and Regulations Generally"; Sections 30B-3, 30B-10, 30B-13 and 30B-15 of Chapter 30B, title "Massage Establishments and Massage Technicians"; Sections 31-2, 31-5(b), 31-6(a), 31-9(b), 31-10, 31-21(b), 31-23, 31-26, 31-29(b),

31-30(a), 31-31(b), 31-33(a), 31-46(b), 31-48(b),(g)and (h), 31-51(a) and (b), 31-52(e), 31-57(a), 31-58, and 31-62(c) of Chapter 31, title "Motor Vehicles and Traffic"; Sections 31A-3(a), 31A-4(b) and 31A-8 of Chapter 31A, title "Motor Vehicle Repair and Towing Registration"; Sections 31B-3(d) and (e), 31B-10, 31B-12 and 31B-13 of Chapter 31B, title "Noise Control"; Sections 33-3(b), 33-7(b), 33-9(a), 33-12(b), 33-13, 33-13A(d), 33-18(g) and (j), 33-19(b), 33-47(b), and 33-77 of Chapter 33, title "Personnel"; Sections 35-3(c), 35-13A and 35-14(e) of Chapter 35, title "Police"; Sections 38A-4 and 38A-11 of Chapter 38A, title "Radio, Television and Electrical Appliance Installation and Repair"; Section 39-7 of Chapter 39, title "Rat Control"; Sections 41-4 and 41-23(a) of Chapter 41, title "Recreation and Recreation Facilities"; Sections 41A-2(a), 41A-3(c) and (e), 41A-7(a), 41A-9(a) and 41A-12 of Chapter 41A, title "Rent Supplement and Assistance Programs"; Sections 44-3(a)(5) and 44-22 of Chapter 44, title "Schools and Camps"; Sections 44A-3 (b), 44A-4(c), 44A-5, 44A-8(b) and (c), 44A-9, 44A-11(b) and 44A-16 of Chapter 44A, title "Secondhand Personal Property"; Sections 47-13 and 47-22 of Chapter 47, title "Solicitors, Hawkers and Peddlers"; Sections 48-6, 48-26, 48-29(d) and 48-32(a) of Chapter 48, title "Solid Wastes"; Sections 49-1, 49-4, 49-7, 49-23(a), 49-27, 49-33, 49-33A(c), 49-36, 49-38(b), (c) and (g), 49-40(e), 49-68A and 49-75 of Chapter 49, title "Streets and Roads"; Sections 51-11 and 51-12(a) of Chapter 51, title "Swimming Pools"; Sections 52-7(k), 52-8, 52-16B(k), 52-18A(c), 52-18B(k), 52-18C(m), 52-18D(d), 52-21(d), 52-21(h)(4) and 52-21(i)(4) and (7) of Chapter 52, title "Taxation"; Sections 53-18, 53-19(c) and (e), 53-37A, 53-42 and 53-46(c)(5) of Chapter 53, title "Taxicabs and Limousines"; Sections 53A-3, 53A-8(c) and 53A-10 of Chapter 53A, title "Tenant Displacement"; Sections 54-2, 54-15, 54-19 and 54-23 of Chapter 54, title "Transient Lodging Facilities"; and Sections 56-1, 56-2A, 56-6, 56-30(h) and 56-34 of Chapter 56, title "Urban Renewal and Community Development"; Sections 56A-5(a), 56A-8 and 56A-9(b) of Chapter 56A, title "Video Games".

Be It Enacted by the County Council for Montgomery County, Maryland, that -

Sec. 1. Chapter 2A, title "Administrative Procedures Act" of the Montgomery County Code 1972, as amended, be and hereby is amended to read as follows:

Chapter 2A

Administrative Procedures Act

Article 1. Appeals from Administrative Agencies

2A-1.

* * *

2A-2. Applicability

* * *

(c) Appeals, grievances and complaints filed pursuant to Chapter 33, as amended, for which hearings are provided or required by that Chapter before the Montgomery County Merit System Protection Board.

* * *

(f) Such other hearings as hereinafter provided for by law or executive regulations which are specifically designated as being governed hereby. In this regard, the County Executive is hereby authorized to add or delete additional quasi-judicial authorities from time to time by executive regulation adopted under Method (2) of Section 2A-15 of this Code.

2A-3. Conflicts of laws; interpretations.

(a) Where any provision of this Article conflicts with a substantive provision of an act pertaining to a particular agency, the latter shall prevail.

(b) The provisions of this Article are not intended to confer different or additional powers or jurisdiction on hearing authorities governed hereby; in this regard, this Article shall be construed to be procedural rather than substantive.

(c) The provisions set forth herein shall prevail over any agency rule of procedure and in the event of conflict, the latter shall be amended to conform with this Article; provided, however, that nothing herein shall be construed to limit or restrict a hearing authority from adopting additional rules of procedure as will implement this Article and the substantive provisions under which it operates so long as they are not in conflict with this Article.

(d) No action taken hereunder shall be declared invalid on the basis of procedural irregularities absent a finding of a denial of substantive due process. Substantial compliance with this Article shall be sufficient.

2A-4. Definitions.

The following words and phrases shall have the meaning assigned to them below, except when otherwise indicated in this Article.

Hearing authority. The Montgomery County Commission on Human Relations, or designated panel thereof; the Montgomery County Merit System Protection Board; the County Board of Appeals for Montgomery County; the Montgomery County Landlord-Tenant Commission, the Director of the Montgomery County Office of Consumer Affairs; or a hearing examiner or official so designated or appointed to conduct those hearings which are enumerated in Section 2A-2.

* * *

2A-5. Initiation of hearing process.

Any proceeding governed by this Article as specified in Section 2A-2 shall be initiated by filing a charging document in writing with the office of the hearing authority on forms provided therefor. Such forms shall include or be accompanied by a written statement which may include: a description of the nature and specifics of the allegation together with reference to sections of applicable laws, ordinances or regulations, if known, which are alleged to have been violated or relied upon. The statement shall contain the nature of the relief requested and if applicable the names and addresses of the person, persons, business entity or organization or agency alleged to have committed any violation or undertaken any action which is the subject of the proceedings governed by this Article. The statement may be accompanied by supporting documentation.

* * *

2A-8. Hearings.

* * *

(h) Powers of the hearing authority. In addition to any other power granted by this Article, a hearing authority is empowered:

* * *

(10) To take any other action authorized by this Article or necessary to a fair disposition of the case.

* * *

(i) Hearing conduct and procedure.

(1) Unless otherwise provided by law:

* * *

c. The members of any hearing authority shall be subject to disqualification for conflict of interest, and suggestions for disqualification of any member may be made on petition of any party.

* * *

(j) Sanctions. The hearing authority may impose sanctions against parties and witnesses for failure to abide by the provisions of this Article, or for unexcused delays or obstructions to the pre-hearing and hearing process. Such sanctions may include suspension or continuance of scheduled hearings, dismissals of actions, denial of admission of documents and exhibits and admission of matters as adverse to a defaulting party.

* * *

2A-9. Emergency hearings.

Where the ordinary processing of any appeal may, due to time constraints, cause injury to any party, the hearing authority may for good cause grant an emergency hearing on its own motion or upon good cause shown by any party thereto. Where an emergency hearing is ordered by a hearing authority, it may suspend or alter any provisions of this Article necessary to avert such undue injury; provided, however, that in such cases, the hearing authority shall notify all parties of the operation of this Section, and make every reasonable effort to provide substantive due process of law to all parties. All hearings involving the removal or suspension of a County Merit System employee shall be governed by this Section.

2A-10. Decisions.

* * *

(c) Voting requirements.

Any decision rendered in conformance with the provisions of this Article must have the concurrence of a majority of the voting members of the decision making authority unless a greater number of votes are required by

law. Members of the hearing authority absent during a hearing may vote upon a matter upon written certification that they have read the transcripts and reviewed the evidence of record.

Failure to achieve the necessary affirmative votes shall act as a denial of the relief requested by the charging party by operation of law. No written opinion in this instance shall be required; provided, however, individual members of the hearing authority may file written reasons supporting their respective positions.

* * *

2A-11. Judicial review.

Any party aggrieved by a final decision in a case governed by this Article, whether such decision is affirmative or negative in form, may appeal said decision to the Circuit Court for Montgomery County, Maryland, in accord with the provisions of the Maryland Rules of Procedure governing administrative appeals. Said court shall have the power to affirm, reverse or modify the decision or remand the case for further proceedings as justice may require. The filing of such appeal shall not stay the order of the hearing authority. Any party to the proceeding in the Circuit Court may appeal from such decision to the appellate courts of Maryland pursuant to applicable provisions of the Maryland Rules of Procedure.

Article II. Regulations

2A-12. Declaration of Policy and Legislative Intent.

(a) Purpose. It is the purpose of this article to prescribe a single and consistent procedure for the adoption, periodic review and repeal of regulations, and to provide a uniform procedure for their public notification and compilation.

(b) Scope. Unless otherwise provided, the provisions of this Article apply to all regulations.

2A-13. Definitions.

(a) In General. Unless otherwise clearly indicated by the context, in this Article the following words have the meanings indicated.

(b) Administrative Procedure. "Administrative Procedure" means any written directive concerning the internal management of one or more County agency or department.

(c) CAO. "CAO" means the Chief Administrative Officer of the County.

(d) COMCOR. "COMCOR" means the Code of Montgomery County Regulations established under this Article.

(e) Executive Order. "Executive Order" means an order issued by the County Executive that directs a specific action.

(f) Promulgator. "Promulgator" means:

(1) The County Executive; or

(2) A person authorized by law to issue regulations.

(g) Regulation. (1) "Regulation" means any rule or standard that a promulgator by law is authorized to issue.

(2) "Regulation" includes any amendment to an existing regulation.

(h) Register. "Register" means The Montgomery County Register established under this Article.

2A-14. Authority to Adopt Regulations. If a law authorizes a promulgator to implement or enforce that law, the promulgator may adopt regulations to implement or enforce that law even if the authority to adopt the regulations is not specifically stated in that law.

2A-15. Procedure for Adoption of Regulations.

(a) Requirement. Before a regulation is effective, the regulation shall meet:

(1) The requirements of this Article; and

(2) Any other requirement imposed by law.

(b) Single Subject Requirement. A proposed regulation may not contain more than one subject matter.

(c) Publication. A promulgator shall publish in the Register:

(1) A summary of the proposed regulation;

(2) The place where a copy of the proposed regulation may be obtained;

(3) The date, time, and place of any public hearing;

(4) The name and address of a person to whom comments may be directed;

(5) The deadline for submitting comments;

(6) A citation of the section of the County code that authorizes the adoption of the regulation; and

(7) A statement of the procedural method under Subsection (d) of this Section that is to be used.

(d) Procedures for Approval. (1) A regulation shall be adopted under one of the 3 methods set out in this Subsection.

(2) A law authorizing a regulation may provide for one of the three methods to be used.

(3) If the law does not provide one of the three methods to be used, Method (2) shall be used.

Method (1)

1. The promulgator shall send a copy of the proposed regulation to the County Council within 14 calendar days after the deadline for comments published in the Register.

2. Within 30 calendar days after receipt of the proposed regulation under Part 1 of this Method, the County Council President may set a deadline for approval or disapproval of the proposed regulation.

3. If a deadline under Part 2 of this Method is not set, the proposed

regulation is placed on the Council agenda that immediately follows the 30 calendar days after receipt of the proposed regulation.

4. If necessary to assure complete review, the County Council by resolution may extend the deadline for County Council action.

5. The County Council by resolution may approve or disapprove in whole or in part the proposed regulation.

6. If the County Council approves the regulation, the regulation is effective 30 calendar days after the date of adoption of the resolution approving the regulation.

Method (2)

1. The promulgator shall send a copy of the proposed regulation to the County Council within 14 calendar days after the deadline for comments published in the Register.

2. The County Council by resolution may approve or disapprove in whole or in part the proposed regulation within 30 calendar days after receipt of the proposed regulation under Part 1 of this Method.

3. If necessary to assure complete review, the County Council by resolution may extend the 30 calendar day deadline under Part 2 of this Method.

4. If the County Council approves the proposed regulation, the regulation is effective 30 calendar days after the date of adoption of the resolution approving the regulation.

5. If the County Council does not approve or disapprove the proposed regulation within the 30 calendar days after receipt of the proposed regulation under Part 1 of this Method, the proposed regulation is automatically approved.

6. If the proposed regulation is automatically approved under Part 5 of this Method, the regulation is effective 60 calendar days after receipt of the proposed regulation under Part 1 of this Method.

7. If the County Council extends the time for approval or disapproval under Part 3 of this Method, until the expiration of the extended time, the proposed regulation is not automatically approved.

Method (3)

1. A proposed regulation under this Method is not subject to County Council approval or disapproval.

2. The promulgator shall send a copy of the proposed regulation to the County Council.

3. The regulation is effective 30 calendar days after the deadline for comments published in the Register.

(e) Amendment of Proposed Regulation. The promulgator may amend a proposed regulation if:

(1) The County Council has not taken final action on the proposed regulation; and

(2) The amendment relates to the advertised purpose of the proposed regulation.

(f) Withdrawal of Proposed Regulation. No later than 10 days before the effective date of a proposed regulation, the promulgator may withdraw the proposed regulation.

(g) Publication of Final Action. (1) In the issue of the Register that follows the final action taken on a proposed regulation, the promulgator shall publish the final action taken on the proposed regulation.

(2) If the proposed regulation is approved, the promulgator shall:

a. If a substantive change to the proposed regulation is not made, cite the issue of the register that contains the initial publication of notice of the proposed regulation; or

b. If a substantive change to the proposed regulation is made, publish a summary of the proposed regulation as amended.

(h) Emergency Regulations. (1) If a promulgator determines that an emergency exits, an emergency regulation does not have to meet the publication and approval requirements of Subsection (c) and (d) of this Section.

(2) An emergency regulation is effective:

a. Immediately after:

1. The adoption of the emergency regulation by the promulgator; and

2. The promulgator sends to the County Council a copy of the proposed regulation and a statement of reason for the emergency regulation; and

b. For a period of 45 days.

(3) a. The promulgator may request the County Council to extend the effective period of an emergency regulation.

b. The promulgator shall provide the County Council with written information stating the reason for an extension request.

(4) a. The County Council by resolution may repeal an emergency regulation.

b. If the County Council repeals an emergency regulation, the County Council shall give written notice to the promulgator of the reason for the repeal.

2A-16. Administrative Procedures.

(a) Collection. The CAO shall develop a comprehensive collection of administrative procedures.

(b) Copy to the County Council. The CAO shall provide the Secretary of the County Council with a copy of the administrative procedures.

(c) Availability. The administrative procedures shall be available to any County employee.

(d) Prohibition. If a law delegates to a promulgator the authority to adopt a regulation, the promulgator may not adopt an administrative procedure instead of a regulation.

2A-17. Executive Orders.

(a) Procedure for Adoption. The County Executive shall develop an administrative procedure for the adoption of any executive order.

(b) Content of Procedure. The administrative procedure shall provide for:

(1) Adoption.

(2) Notice.

(3) Compilation.

(4) Amendment.

(5) Repeal.

(c) Copy to County Council. The County Executive shall provide the Secretary of the County Council with a copy of each executive order adopted.

2A-18. Compilation of Executive Regulations.

(a) COMCOR established. There is a code of Montgomery County regulations that includes:

(1) Each regulation of the County government;

(2) Any document that the CAO determines should be included;

(3) Annotations of any judicial decision that cites a regulation or document contained in COMCOR;

(4) Any explanatory annotation; and

(5) An index by agency and subject matter.

(b) Duties of CAO. (1) The CAO shall compile, edit, index, and supplement COMCOR.

(2) The CAO may procure a contract to meet the requirements of this Subsection.

(c) Plain Language Standards and Codification Systems. (1) Any regulation adopted under this Article shall be written under the plain language standard approved by the County Council.

(2) The CAO shall establish a codification system for executive regulations.

(3) Any regulation or document published in COMCOR shall meet the plain language standard and codification system of this subsection.

(d) Removal of Obsolete Regulations. With the advice of the County Council, the CAO may remove a regulation or a part of a regulation from COMCOR if:

(1) The regulation is declared unconstitutional by a court of final appeal; or

(2) The department or agency that enforced or administered the regulation ceases to exist and the functions and responsibilities of the department or agency are not transferred to a successor.

(e) Supplement to COMCOR. (1) At least once a year, each regulation adopted during the year and any document that the CAO determines should be included shall be published in a supplement to COMCOR.

(2) The index to COMCOR shall be revised and included in the supplement.

2A-19. Montgomery County Register.

(a) Register Established. There is a Montgomery County Register that:

(1) Is a temporary supplement to COMCOR;

(2) Publishes any regulation adopted between issues of the Register; and

(3) Includes:

a. The information required under Section 2A-15 of this Article for each regulation;

b. Any document that the CAO determines should be included;

c. A table of contents; and

d. An index of the COMCOR sections affected.

(b) Duties of the CAO. (1) The CAO shall compile and publish the Register.

(2) The CAO may procure a contract to meet the requirements of this Subsection.

(c) Frequency of Publication. The Register shall be published at least once every three months.

2A-20. Pricing and Availability of COMCOR and the Register.

(a) Pricing. The CAO shall set a reasonable price for each copy or each subscription of:

(1) COMCOR;

(2) The Register; or

(3) The supplements to COMCOR.

(b) Availability. Anyone may purchase a copy of:

(1) COMCOR;

(2) The Register; and

(3) The supplements to COMCOR.

(c) Free Distribution. A copy of COMCOR, the Register, and the supplements to COMCOR shall be distributed to:

(1) The Secretary of the County Council;

(2) The County Attorney;

(3) The County Executive;

(4) The State Hall of Records Commission;

(5) The State Law Library;

(6) The State Department of Legislative Reference;

(7) The Maryland-Municipal Collection of the Montgomery County Department of Public Libraries;

(8) The Office of Legislative Oversight;

(9) Any person that the County Council by resolution designates; and

(10) Any person that the County Executive by executive order designates.

2A-21. Review of Regulations.

(a) Review Required. At least once every 4 years, each regulation shall be reviewed by the County Council.

(b) Duties of the CAO. The CAO shall:

(1) Before July 1, 1984, establish four groups of regulations by agency to be reviewed; and

(2) Designate each new regulation adopted to a group established under Paragraph (1) of this Subsection.

(c) Time for Initial Review. (1) Group I is subject to review in FY 1985;

(2) Group II is subject to review in FY 1986;

(3) Group III is subject to review in FY 1987; and

(4) Group IV is subject to review in FY 1988.

(d) Manner of Review. Each regulation shall be reviewed in the same manner as the Method under Section 2A-15 of this Article that is designated for the adoption of the regulation.

(e) Regulations Under Methods (1) and (2). If a Regulation is to be reviewed under Method (1) or (2) of Section 2A-15 of this Article, by October 15 of the year that the regulation is subject to review, the promulgator shall submit to the County Council:

(1) A copy of the regulation;

(2) A copy of the regulation written under the plain language standard adopted by the County Council;

(3) A copy of any form used to carry out the regulation;

(4) A statement of any change to the regulation that the promulgator proposes;

(5) A statement of any change in condition or law that affects the regulation; and

(6) A statement of why the regulation is needed and that a simpler way of accomplishing the purpose of the regulation cannot be found.

(f) Regulations Under Method (3). If a regulation is to be reviewed under Method (3) of Section 2A-15 of this Article, by October 15 of the year that the regulation is subject to review, the promulgator shall:

(1) Review the regulation for any change in condition or law that affects the regulation; and

(2) Rewrite the regulation in the plain language standard adopted by the County Council.

(g) Repeal of Regulation. (1) For any regulation reviewed under Method (1) of Section 2A-15 of this Article, if the County Council by resolution does not extend the regulation before February 15 of the year after the regulation is subject to review, the regulation is repealed as of June 30 of that year.

(2) For any regulation reviewed under Method (2) of Section 2A-15 of this Article, if the County Council by resolution does not repeal the regulation before February 15 of the year after the regulation is subject to review, the regulation continues in effect.

Sec. 1A. Sections 1-18(c) and 1-19 of Chapter 1, title "General Provisions" of the Montgomery County Code 1972, as amended, be and hereby are amended to read as follows:

1-18. Civil fines and procedures.

(c) Amount of fine.

The amount of the civil fine which is to be imposed for a violation is that amount set forth in Section 1-19, unless a lower amount for a specific violation has been established by an executive regulations adopted by the County Executive under Method (1) of Section 2A-15 of this Code.

1-19. Enforcement of County Law.

Violations of County laws, ordinances and regulations identified as Class A, B, or C violations shall, upon conviction thereof before a court of competent jurisdiction, be punishable as a misdemeanor by a fine of not more than the amount shown below, or both such fine and imprisonment, in the discretion of the court.

Violations may, in the alternative and at the discretion of the agency responsible for enforcement thereof, be punishable as a civil violation, as set forth in Section 1-18. The civil fine shall be in the amount shown below, unless a lower amount for a specific violation has been established by an executive regulation adopted by the County Executive under Method (1) of Section 2A-15 of this Code.

Sec. 2. Section 2-99, title "Annual compilation of laws, ordinances, regulations or cumulative supplement - Required; preparation and publication; contents" of Chapter 2, title "Administration" of the Montgomery County Code 1972, as amended, be and hereby is amended to read as follows:

2-99. Annual compilation of laws, ordinances, regulations or cumulative supplement - required; preparation and publication; contents.

The County Attorney shall prepare and have published and printed under his direction, as soon as practicable after June 30, of each year a bound, hardback compilation or cumulative supplement to the Montgomery County Code which shall include the following:

(a) Laws enacted during the last previous twelve-month period ending June 30, etc. Laws enacted by the Council during the last previous twelve-month period ending June 30 or a cumulative supplement containing, as

amended, the sections of the Montgomery County Code amended during the preceding fiscal years, cumulated since the last publication of the Code, by enactments of the Maryland General Assembly or the Montgomery County Council.

(b) Other laws, etc. Other laws and ordinances enacted by the County Council, cumulated since the last publication of the Code which are not codified by section of the Montgomery County Code, shall be included in an appropriate place in every cumulative supplement; except, that standards and regulations adopted by reference to an existing specific publication need not be included in a cumulative supplement provided that the legislative vehicle by which such standard or regulation was adopted is included.

(c) Appropriation resolution. The appropriation resolution adopted by the County Council for the fiscal year current at the time of publication.

(d) Cumulative table of sections. A table of the sections of the County Code repealed, added or amended subsequent to the publication of the last edition of the Montgomery County Code.

(e) Changes in Constitution, etc. Changes in Article XI-A of the Maryland Constitution, Article 25A of the Annotated Code of Maryland, the Charter, and the rules of legislative procedure of the County Council.

(f) Indices. Appropriate indices of the foregoing.

Sec. 3. Section 2-105, title "Procedure for adoption of rules and regulations by the County Executive" of Chapter 2, title "Administration" of the Montgomery County Code 1972, as amended, be and hereby is repealed in its entirety. Any reference in the County Code to Section 2-105 shall be deemed to refer to Article II of Chapter 2.

Sec. 4. Sections 2-9, 2-15, 2-33, 2-42(c), and 2-140(a)(6) of Chapter 2, title "Administration", be and hereby are amended to read as follows:

2-9. County vehicles - Storage, parking, markings or identification, designation and use generally

Storage, parking, markings or identification, designation and use of County vehicles shall be provided for in executive regulations adopted by the County Executive under Method (3) of Section 2A-15 of this Code; provided, that in accordance with Section 2-10, such vehicles shall be used only for official County business.

2-15. Same - Arms and ammunition; civilian defense personnel; rules, regulations, etc.

In order to carry out the provisions of Sections 2-14 through 2-16 of this Code the County Executive may provide and furnish arms and ammunition to the citizens of the County or to the militia of the State, and may provide and furnish any or all persons engaged in public defense within the County with protective armor and such other equipment and supplies and also purchase, rent, hire and maintain lands, buildings, and equipment as may be considered to be necessary and proper. The County Executive may engage the service of persons charged with assisting in public defense and may, with the approval of the Council, fix the compensation of such persons, including the payment for services heretofore rendered in connection with the civilian defense activities of the County, and may do all other things needful and necessary to protect and safeguard the people and property within the County from actual or threatened armed invasion or insurrection, and may alleviate their suffering resulting from fire, flood, disaster or epidemic of disease, or other such emergencies. The County Executive is authorized to adopt regulations under Method (2) of Section 2A-15 of this Code to protect the citizens of the County during blackouts, practice air raid alarms, air raids and invasion. All acts done and all money expended by the County for such purposes, either heretofore or hereafter, including the purchase of equipment for civilian defense organization and maintenance, the employment of administrative and technical aid in the interest of civilian defense, the purchase of medical supplies for casualty stations, and the purchase of arms, ammunition and providing and furnishing of telephone service and other service and supplies are hereby ratified and confirmed as just and lawful acts of the County.

2-33. Collection of taxes and special assessments; receipt of and responsibility for money; service charge for dishonored checks or drafts.

The Director of Finance shall collect all taxes and special assessments levied by the County Council, and such other taxes and assessments the collection of which may by the Charter or public general or local law be charged to the Department of Finance. The Director of Finance shall receive all money paid to the County from any source. The Director of Finance shall not be responsible for money paid to persons or officials not under the

Director's direction or control, until such monies have been properly transferred to the Director of Finance or someone designated by the Director for receipt of such funds.

When any check or draft tendered to Montgomery County in payment of any tax, fee, charge, penalty, interest or fine due the County is dishonored by a bank, a service charge of ten dollars or such other reasonable amount as may be established by executive regulation, adopted by the County Executive under Method (3) of Section 2A-15 of this Code, shall be imposed and added to the amount due and owing. The Director may require that the total amount due, including the service charge, be paid in cash, certified check or money order.

2-42. Generally

(c) Eligibility and fees for services. The Council is hereby authorized to adopt resolutions establishing eligibility for service. Fee schedules for any Health Department services shall be established by the County Executive, by regulations adopted under Method (3) of Section 2A-15 of this Code, who may from time to time change such fees to an amount not to exceed the cost of the services provided therefor.

2-140. Powers, duties and functions.

(a) The Office of the Hearing Examiner shall have the following powers, duties and functions:

(6) To recommend regulations to the County Council to be adopted under Method (2) of Section 2A-15 of this Code to govern the conduct of public hearings and other functions of the Office of the Hearing Examiner.

Sec. 5. Section 2B-5(a)(4) of Chapter 2B, title "Agricultural Land Preservation" be and hereby is amended to read as follows:

2B-5. Agricultural easements - Generally.

(a) Purchase of easements.

(4) The purchase of easements by the County must be consistent with the General Plan of Montgomery County, as amended by applicable master plans. The County Executive shall adopt regulations, under Method (2) of Section 2A-15 of this Code, for the County purchase of easements.

Sec. 6. Section 3-4 of Chapter 3, title "Air Quality Control" be and hereby is amended to read as follows:

3-4. Rules and regulations.

(a) The County Executive may adopt regulations under Method (2) of Section 2A-15 of this Code, for this Chapter. Such regulations shall not conflict with nor waive any provisions of this Code nor be less restrictive than regulations currently established and in effect as requirements of the State Department of Health and Mental Hygiene.

(b) Regulatons adopted pursuant to provisions of this Section shall provide for but not be limited to the following:

(1) Control of particulate matter emissions from fuel burning installations, grain drying installations, materials handling and construction and other acts and installations;

(2) Control of gas, vapor, odor and volatile organic compound emissions from fuel burning and other installations;

(3) Prohibition of certain incinerators and new fuel burning installations;

(4) Application fees at a rate not to exceed the cost of administering the program.

(c) Notwithstanding any other provisions of this Section, the County Executive may adopt regulations, under Method (2) of Section 2A-15 of this Code, regarding procedures for the issuance of permits for indirect sources of pollution in accordance with applicable State and Federal regulations.

Sec. 6A. Sections 3A-2 (c) and (f) and Section 3A-6 of Chapter 3A, title "Alarms" of the Montgomery County Code 1972, as amended, be and hereby are amended to read as follows:

3A-2. Alarm signal response fees.

(c) The Office of Consumer Affairs will be responsible for publishing procedures and fees for the registration and the issuing of licenses to all alarm businesses that have consumers in Montgomery County and the issuing of the permits and permit decals to non-residential alarm users. The Office of Consumer Affairs will be responsible for the collection of the assessed fees hereunder.

(f) The County Executive may adopt regulations, under Method (3) of Section 2A-15 of this Code, establishing procedures and fees for the registration and the issuing of licenses, permits and permit decals, and

outlining the pertinent information needed from alarm businesses when reporting alarms directly to the police. Failure to provide the required information when notifying the police of an alarm may be cause for the suspension or revocation of the alarm business license by the Office of Consumer Affairs.

3A-6. Rules and regulations.

The County Executive shall adopt, under Method (2) of Section 2A-15 of this Code, reasonable and necessary regulations for the implementation and administration of this Chapter.

Sec. 7. Section 4-31 of Chapter 4, title "Amusements", be and hereby is amended to read as follows:

4-31. Applications generally.

All applications for a license required by this Division shall be made to the Department on such form as shall be designated. Applications shall not be accepted for filing unless accompanied by a receipt of the Director of Finance showing payment to the County of a filing fee of fifty dollars, or such other amount as may be established by regulation adopted by the County Executive under Method (3) of Section 2A-15 of this Code, such fee to cover the cost of advertising in the newspaper and providing a transcript of the testimony at the hearing. No fee shall be refunded.

Sec. 8. Sections 5-4, 5-7(a), 5-21, 5-43, 5-44, 5-45(b), 5-59(a), 5-67 and 5-69 of Chapter 5, title "Animal Control" be and hereby are amended to read as follows:

5-4. Adoption of additional regulations.

The County Executive is hereby authorized to adopt regulations under Method (2), of Section 2A-15 of this Code, necessary for the implementation of any of the provisions of this Chapter, including fees necessary for the administration of the Chapter.

5-7. Spaying, neutering and altering clinics.

(a) The County Executive shall establish a clinic or clinics to be operated either by the County or under contract, at which residents may have dogs or cats spayed, neutered or altered in a humane manner by a licensed veterinarian upon the payment of a fee to be determined by the County Executive by executive regulation adopted under Method (3) of Section 2A-15 of

this Code. Such fee may, in the discretion of the County Executive, be either uniform or graduated based on ability to pay. In cases of demonstrated inability to pay the required fee, the animal of such owner may be spayed, neutered or altered without charge. In addition, the County Executive may, in the Executive's discretion, contract for such services to be performed by licensed veterinarians at their own places of business.

5-21. Same - Redemption and disposition generally.

(a) The owner of any animal impounded for running at large or any vicious or dangerous animal impounded as hereinabove provided shall be entitled to redeem such animal upon payment of redemption fees established by written regulations of the County Executive, adopted under Method (3) of Section 2A-15 of this Code, and proof of ownership; provided, that the licensing provisions of this Chapter have been complied with.

(b) No animal impounded due to a violation of any Section of this Chapter, which has been previously impounded for a violation of any Section of this Chapter during the preceding twelve months, shall be released until a notice of violation of the applicable Section has been issued to the owner of such animal.

(c) Any domesticated animal which is impounded and not redeemed by its owner within five days following notice of impoundment shall be deemed abandoned and shall become the property of the County and may be adopted pursuant to Section 5-22 of this Chapter or otherwise disposed of in a humane manner which shall take into account the advice of a licensed veterinarian, in accordance with procedures prescribed by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code, such procedures to be examined periodically by a licensed veterinarian to assure that they are being carried out in a humane manner.

5-43. Maintenance of vaccination clinics.

The Health Officer shall maintain at least annually vaccination clinics at convenient locations in the County for such periods as he shall deem necessary and all dogs may be vaccinated at such clinics during such periods. The County Executive may, by written regulation adopted under Method (3) of Section 2A-15 of this Code, establish a fee for vaccinations to be collected in lieu of a license fee not to exceed the costs of administration.

5-44. Issuance of new vaccination certificate to replace lost or destroyed certificate.

The Health Officer or veterinarian who administered the vaccination shall issue a new vaccination certificate to replace a lost or destroyed certificate upon satisfactory evidence showing that the dog or cat was vaccinated pursuant to the provisions of this Article. The County Executive may, by written regulation adopted under Method (3) of Section 2A-15 of this Code, establish a fee for replacement of lost or destoryed vaccination certificates, not to exceed the costs of replacement.

5-45. Vaccination required.

(b) No person licensed pursuant to Article VII of this Chapter may sell a dog or cat four months of age or less, unless a deposit is received for the purpose of ensuring that the dog or cat will be vaccinated against rabies. The amount of the deposit shall be $10.00 or such other amount, not to exceed $50.00, as is specified by executive regulations adopted by the County Executive under Method (3) of Section 2A-15 of this Code. The County Executive is authorized and directed to adopt regulations, under Method (3) of Section 2A-15 of this Code, specifying procedures for the collection, handling and use of the deposits.

5-59. Required; issuance; duration.

(a) It shall be unlawful for any person to own or harbor a dog over the age of four months unless such dog is licensed as provided by this Article. Every person owning or harboring a dog within the County shall on or before July 1 of each year or within ten days of acquiring any dog over four months of age or within ten days after any such dog becomes four months of age obtain an annual license for each dog so owned or harbored, except dogs kept under a commerical kennel or fanciers' kennel license as provided in this Chapter. The fee for all such individual dog licenses shall be established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code; provided, that no fee shall be charged for the licensing of any dog trained to aid the blind and actually in use for such purpose; and provided further, that the County Executive shall establish a differential license fee for spayed and unspayed female dogs as a means to encourage owners to have their animals spayed. When applications are made between January 1

and May 1 and the dog was not subject to licensing before that date, the license fee shall be one-half the specified amount. The County Executive may, by written regulation adopted under Method (3) of Section 2A-15 of this Code, increase or diminish any fees to an amount not to exceed the costs of administering and enforcing this Chapter.

5-67. Required; fee; issuance.

(a) It shall be unalwful for any person, association or corporation to operate, establish or maintain a pet shop either independently or as part of another commercial enterprise without first obtaining an annual license therefor from the Department. The license fee for pet shops shall be fixed by executive regulation adopted under Method (3) of Section 2A-15 of this Code by the County Executive who may from time to time increase or diminish such fee to an amount not to exceed the cost of administering this Article. Dogs harbored by a licensed pet shop for breeding purposes or sale may be taken under close supervision from the pet shop for exercise and returned to the pet shop in like manner but no dog harbored at a licensed pet shop may otherwise be permitted to leave the establishment without wearing an individual dog license tag if such a license is required under the provisions of this Chapter.

(b) It shall be unlawful for any person, association or corporation to operate, establish or maintain a commercial kennel without first obtaining an annual license therefor from the Department. The license fee for commercial kennels owning or keeping not more than twenty-five animals shall be twenty-five dollars and for commercial kennels owning or keeping more than twenty-five animals the license fee shall be fifty dollars; provided, that the County Executive may from time to time adopt executive regulations under Method (3) of Section 2A-15 of this Code to increase or diminish such fees to an amount not to exceed the cost of administering and enforcing this Article. Dogs harbored by a licensed commercial kennel for breeding purposes or sale may be taken under close supervision from the commercial kennel for exercise and returned to the commercial kennel in like manner but no dog harbored at a licensed commercial kennel may otherwise be permitted to leave the establishment without wearing an individual dog license tag if such a license is required under the provisions of this Chapter.

* * *

(d) It shall be unlawful for any person, association or corporation to establish, operate or maintain a riding school or stable without first obtaining an annual license therefor from the Department. The license fees for riding schools and stables shall be fixed by the County Executive, by executive regulation adopted under Method (3) of Section 2A-15 of this Code, who may from time to time increase or diminish such to an amount not to exceed the cost of administering this Article.

* * *

5-69. Renewal; notification.

The holder of any expiring license under this Article desiring a new annual license to be effective on the expiration of the existing license shall, not less than thirty nor more than sixty days before the expiration of the existing license, file a written application for renewal with the Director giving such information as is required on the form provided therefor and pay the annual renewal fee in such amount as may be fixed from time to time by executive regulation adopted by the County Executive under Method (3) of Section 2A-15 of this Code. Licensees shall be notified by the Director at least sixty days prior to the expiration of a license.

Sec. 9. Section 5A-4(d) of Chapter 5A, title "Arts" be and hereby is amended to read as follows:

5A-4. Same - Membership and organization.

(d) The Arts Council should establish regulations adopted under Method (2) of Section 2A-15 of this Code concerning its operation and functions; elections and/or appointments and terms of office of its governing body and officers; conduct of its meetings and administrative procedures relating to its activities.

Sec. 10. Sections 8-13, 8-33, 8-34, 8-35 and 8-36 of Chapter 8, title "Buildings" be and hereby are amended to read as follows:

8-13. Rules and regulations.

(a) The director may recommend written regulations for the administration of the provisions of this Chapter including a schedule of fees and may, at his discretion, hold public hearings as part of this rule-making process. Such regulations and amendments thereto shall not conflict with nor waive any provisions of this Chapter nor be less restrictive than its

provisions and shall be adopted by the County Executive under Method (2) of Section 2A-15 of this Code. In the case of fees, the County Executive shall promptly forward to the County Council a copy of the new fee schedule for use in budgetary planning activities. Such fees shall be in accordance with formulas based upon criteria to include area or estimated cost of construction or a minimal set fee per category, not to exceed the cost of administering and enforcing this Code.

(b) The Director shall hold public hearings, upon adequate public notice, prior to forwarding his or her recommendations for regulations setting forth the standards and requirements for the construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of all buildings and structures, on-site access facilities to such buildings and structures and their service equipment within the County. Such regulations, adopted under Method (2) of Section 2A-15 of this Code, shall be based upon a designated edition of the BOCA Basic Building Code and local amendments thereto.

(c) Those provisions of Chapter 8 regulating standards and requirements described in subsection (b) herein repealed by this Act, shall continue in force and effect until they are superseded by regulations adopted and approved in accordance with subsection (b).

8-33. Application; fee; qualifications.

The Director shall maintain a register for the Board of all applicants for business and all licenses, in such form as the Board shall require.

Any person desiring to be licensed as a building contractor in the County shall make and file with the Director a written application on a form approved by the Board. Each application shall be accompanied by an application fee which shall be established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code. The applicant shall furnish information as to his character references and financial responsibility, his experience or training and education or the experience and training and education of his associates, construction superintendent or other principal employees in the building trade as the Board shall require. Before the issuance of a license the Director shall ascertain from reliable sources the applicant's record of compliance with the laws of

the State and the County. The Board may request further information from the Director or other sources, make independent investigations and conduct examination of the applicant, at its discretion. On the basis of the foregoing, it shall be the Board's duty, within thirty days after submission of an application for a license, unless the time is extended for good cause, to certify to the Director whether the applicant and his organization are qualified to comply with the building code and laws of the County and State, and to perform fully his building contracts, and whether he should be licensed and then to notify the applicant. In no case shall denial of certification be unreasonable and a denial shall be in writing stating the reason and shall be personally served or mailed by certified mail to the address on the application. Any denial may be appealed to the County Board of Appeals by filing notice of appeal with the Clerk of the Board of Appeals not later than ten days after such notice is personally served or mailed.

8-34. Issuance; bond required; fee.

The Director shall issue a license to applicants qualified to be licensed upon payment of a license fee which shall be established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code, and deliver to the County a cash bond or a corporate bond executed by a surety company qualified to transact business in the State in the amount of two thousand dollars. The cash or corporate bond shall run to the County and shall be conditioned upon the licensee performing all work done by him in the County in accordance with the building code and laws of the County and State. The County or any person damaged by failure of the licensee to comply with such code and laws may proceed against such bond in any court of competent jurisdiction.

This bonding provision may be satisfied if the applicant has obtained a bond in at least the amount of two thousand dollars in connection with an organized program approved by the Board, which program provides procedures for the processing and resolution of complaints against such building contractor and thus affords substantially the same bonding protection to the public as the bond required by this Chapter.

The Director shall immediately revoke the license upon failure of any licensee to maintain such bond.

8-35. Term of licenses; renewals.

Licenses issued under this Article shall be valid for one year from the date of issuance and may be renewed upon application to the Director. Applicants for renewal shall pay to the County at the time of filing such application a fee which shall be established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code.

8-36. Display; duplicates.

Holders of licenses issued under this Article shall display the same in a prominent place at their place of business and upon demand shall give the number of the license to any person who shall demand the same. If any license is lost, defaced or destroyed, the licensee may obtain a duplicate upon application to the Director and payment of a fee which shall be established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code.

Sec. 11. Sections 8A-11(e), 8A-13(b), 8A-18(f) and 8A-21(h) of Chapter 8A, title "Cable Communications" be and hereby are amended to read as follows:

8A-11. Operations; minimum channel capacity; access channels; production facilities; charges; privacy.

(e) Further conditions for utilization of educational, general public and County government access shall be determined by subsequent local legislation or by executive regulation adopted by the County Executive under Method (1) of Section 2A-15 of this Code. Subject to the franchise agreement, where such legislation or regulations cause an increase in a franchisee's costs, the County shall negotiate compensation to it therefor.

8A-13. Operational Requirements; tests.

(b) Tests. In addition to all performance tests required to be conducted by the FCC, the County may require additional tests from time to time as required to determine compliance with technical performance standards. The County may require full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests will be limited to the particular matter in controversy. The County will endeavor to so arrange its requests for such

special tests as to minimize hardship or inconvenience to the franchisee or the subscribers. The County shall provide for such standards, tests and procedures as set forth in the franchise agreement and/or by executive regulation adopted by the County Executive under Method (2) of Section 2A-15 of this Code and after notice to franchisees.

8A-18. Administration.

The Montgomery County Executive or his designeee shall have the responsibility for the administration and enforcement of this law and any franchise agreement. He shall have the following duties, powers and authority which he may delegate at his discretion:

(f) To adopt regulations, under Method (1) of Section 2A-15 of this Code, for the implementation of the intent of this Chapter.

8A-21. Lobby disclosure and conflict of interest.

(h) Reports.

(1) Each lobbyist required to register under this Section shall file a quarterly report itemizing compensation received and expenses incurred while retained as a lobbyist.

(2) Each applicant shall file a quarterly report, itemizing all expenses incurred for the purpose of lobbying and public relations for the County franchise. Expenses reported under Section (h)(1) do not have to be reported by the applicant.

(3) All reports shall be on forms specified by the County Attorney, and shall be filed at such time and in such detail as specified in regulations which shall be adopted by the County Executive under Method (1) of Section 2A-15 of this Code. The period to be covered by such reports shall begin on the effective date of this law and shall terminate six months following the date the franchise is awarded.

Sec. 12. Sections 10-3 and 10-11 of Chapter 10, title "Child Care" be and hereby are amended to read as follows:

10-3. Regulations and administration of Chapter.

The County Executive is authorized to adopt executive regulations under Method (2) Section 2A-15 of this Code, for the implementation of this Chapter, including the establishment of health and welfare standards for group day care centers. This Chapter shall be administered by the Director of the Department of Health acting under the supervision of the County Executive.

10-11. License fee.

The fees for licenses issued under this Article shall be paid to the Director and shall be of such an amount as the County Executive by regulation, adopted under Method (3) of Section 2A-15 of this Code, may set from time to time. The fees shall not exceed the cost of inspection and issuing the permits for the various establishments regulated by this Chapter. The permit fee so fixed shall be submitted with the application and is not refundable in whole or in part unless the application is withdrawn prior to the inspection of the premises by the Director or authorized agent of the Director. If the application is withdrawn prior to the inspection, the entire permit fee shall be refunded.

Sec. 13. Section 11-2(k) of Chapter 11, title "Consumer Protection" be and hereby is repealed and reenacted with amendments to read as follows:

11-2. Office of Consumer Affairs.

There is hereby created the Montgomery County Office of Consumer Affairs, hereinafter referred to as "Office." The County Executive shall appoint a single officer to be known as the Executive Director of the Office of Consumer Affairs, subject to the confirmation of the County Council. The office shall have the following duties, powers and authority:

(k) To adopt regulations, under Method (3) of Section 2A-15 of this Code, for the conduct of the activities of that office.

Sec. 14. Sections 11A-3(b)(2), 11A-5(e), 11A-7(c), 11A-9 and 11A-13 of Chapter 11A, title "Condominiums" be and hereby are amended to read as follows:

11A-3. Right of first refusal to purchase rental facilities.

(b) Notice required; exercise of right of first refusal.

(2) The County Executive may require the owner, by executive regulations adopted under Method (3) of Section 2A-15 of this Code, to make available to the County and its designated housing agency information regarding the characteristics and condition of the facility deemed relevant to the exercise of the right of first refusal, including but not limited to architectural and engineering plans and specifications and facility operating data. In addition, the County Executive by regulation adopted under Method (3) of Section 2A-15 of this Code may require the owner to provide access to the facility for purposes of inspection by the County or its designated housing agency provided, the County, its designated housing agency, and their

agents shall be responsible for any damage to the property caused by such inspection. The County Executive may provide by regulation that any information received by either the County or its designated housing agency, pursuant to this subsection, is confidential and not subject to public disclosure.

11A-5. Extended leases.

(e) The County Executive, by executive regulations adopted under Method (3) of Section 2A-15 of this Code, may provide for implementation of this Section, including promulgation and enforcement of recordation requirements for owners of condominium units subject to life tenancies under this Section and prohibitions against changes of business or leasing practices to circumvent the giving of extended tenancies under this Section.

11A-7. Consumer guide.

(c) The consumer guide shall be sufficient if it contains the following:

(1) Plat.

(2) Sample deed.

(3) Estimated itemized closing costs.

(4) Estimated itemized monthly housing costs, including principal, interest, taxes, condominium fee and utilities.

(5) Statement of all warranties, including statutory implied warranties.

(6) Name(s) of institutions offering long-term financing and terms, if the developer has obtained a commitment.

(7) Other information, as required by executive regulations adopted by the County Executive under Method (3) of Section 2A-15 of this Code, to promote full and fair disclosure of the details of the transaction, the nature of condominium ownership and the characteristics of the particular condominium facility.

11A-9. Budgeted reserves.

During the period when the developer retains control of the Council of Unit Owners, the developer of a condominium shall budget and contribute annually to reserves. The contribution of the developer shall be in proportion to the number of condominium units owned by the developer, but in

no event shall the total annual contributions of all unit owners, including the developer, be less than an amount calculated to maintain the reserve fund at a level adequate for deferred maintenance, repairs and replacement of those common elements or major components of common elements that must be replaced on a periodic basis.

The County Executive shall by executive regulation adopt regulations under Method (3) of Section 2A-15 of this Code detailing requirements of the budgeted reserves to be incorporated in the consumer guide.

11A-13. Administration of Chapter.

The Office of Consumer Affairs shall be responsible for administration of this Chapter and the County Executive shall, from time to time, adopt under Method (2) of Section 2A-15 of this Code, written regulations necessary to put into effect and to administer the provisions of this Chapter.

Sec. 15. Sections 11B-18, 11B-20, 11B-23C, 11B-25, 11B-26(a), 11B-27 and 11B-39 of Chapter 11B, title "Contracts, procurement matters and public ethics" be and hereby are amended to read as follows:

11B-18. General review requirements.

(a) The County Executive shall establish, by written regulation adopted under Method (1) of Section 2A-15 of this Code, the general requirements and procedures for review of professional service contracts within County government.

(b) Included among the requirements and procedures to be established by the County Executive shall be the following:

(1) Procedures for review by the Contract Review Committee of all professional service contracts and contract modifications in excess of ten thousand dollars and such other contracts and contract modifications as deemed appropriate.

(2) Procedures for coordination with and concurrence by concerned departments, offices and agencies.

(3) Procedures for review of contract modifications where these will affect the scope of the original contract or where they will result in an increase in expenditures above a specified amount.

(4) Procedures for departmental contractor qualification and selection committees to review, evaluate and recommend contractors for

professional service contracts in excess of ten thousand dollars or such other contracts as deemed appropriate.

(5) Such other factors as the County Executive deems appropriate to carry out the purpose and intent of this Chapter, including a prohibition on dividing contracts in order to avoid the contract review process.

(c) Agreements between the Office of Architectural Services and the Civil Defense Preparedness Agency for professional architectural advisory services, to be furnished in kind and at no cost to the County, for the application of building design concepts to protect against the hazards of natural, man-made and nuclear disasters, are not subject to these procedures.

11B-20. Public announcement process.

(a) Procurement of professional services shall be announced in a manner consistent with written regulations adopted by the County Executive under Method (1) of Section 2A-15 of this Code, or by resolution of the County Council, as appropriate.

(b) The public announcement will also be mailed to those potential contractors who have been previously qualified and to local and State professional organizations or societies for dissemination to their members.

11B-23C. Procedures.

The Chief Administrative Officer shall structure the County's procedures for purchasing materials, supplies, equipment, and services, including construction services, to attempt to achieve, as a result, that a minimum of 10% of the total dollar value of such purchases are made directly or indirectly from minority businesses. These procedures may include provisions for a minority preference in competitive bidding requirements for contracts between seven thousand dollars (as adjusted by the County Executive) and five hundred thousand dollars to allow for selection of a minority bidder other than the lowest responsible bidder, provided the cost does not exceed an amount determined by the Executive in his discretion, and specified in the invitation for bids, up to 120% of the lowest responsible bid, and provided further that the invitation for bids for any contract where a minority preference is to be used shall state the intention to utilize minority preference procedures.

11B-25. Establishment of regulations.

(a) The County Executive shall adopt under Method (1) of Section 2A-15 of this Code, such regulations as shall be necessary to promote efficiency of operations and compliance with the provisions of this Chapter.

11B-26. Contract Review Committee; establishment; composition.

(a) The County Executive shall establish, by written regulation adopted under Method (1) of Section 2A-15 of this Code, a Contract Review Committee for the purpose of review and evaluation of the selection of contractors for professional services and such other responsibilities as specified elsewhere in this Chapter, or as may be assigned. The regulations shall provide for expeditious review and evaluation including specific periods of time for such review and evaluation. In addition, the Committee shall review all contracts where the award is to other than the lowest bidder when formal competitive bidding procedures are used.

11B-27. Departmental responsibilities.

(a) The County Executive shall establish by written regulation, adopted under Method (1) of Section 2A-15 of this Code, the responsibilities of and the procedures to be followed by the various departments, offices and agencies of County government engaged in contracting and procurement matters.

(b) Included among the responsibilities and procedures to be established by the County Executive shall be:

(1) Development of request for and evaluation of contractual proposals.

(2) Development of necessary plans and specifications.

(3) Procedures for coordination with and concurrence by concerned departments, offices and agencies.

(4) Fiscal and administrative controls.

(5) Legal review.

(6) Announcement of bids, proposals and contracts in a uniform and consistent manner.

(7) Such other factors as the County Executive deems appropriate to carry out the purpose and intent of this Chapter.

11B-39. Regulations.

The Contract Review Committee may adopt regulations under Method (1) of Section 2A-15 of this Code, which provide to the fullest extent informal, expenditious and fair resolutions of claims and appeals.

Sec. 16. Sections 13-1(a) and 13-7 of Chapter 13, title "Detention Centers and Rehabilitation Facilities" be and hereby are amended to read as follows:

13-1. Powers and duties generally of Director of Department of Correction and Rehabilitation.

(a) The Director of the Department of Correction and Rehabilitation, thereafter in this Chapter referred to as the Director, shall recommend to the County Executive who may adopt under Method (2) of Section 2A-15 of this Code, all regulations of the County which pertain to the administration and operation of the Department of Correction and Rehabilitation, not inconsistent with law, necessary to exercise the responsibilities and duties of the position.

13-7. Same - Same - Payment for work and program participation.

The Director of Finance is authorized to pay each inmate who is assigned to work at an essential job or to participate in a program specified by the Director at the rate of one dollar per day, or such higher rate as may be established in executive regulations adopted by the County Executive under Method (3) of Section 2A-15 of this Code, for the actual days worked or for the actual days of successful participation in a program. The Director or designee will maintain a list of essential inmate work positions and will specify the programs for which inmates will be paid. Such payment shall not be made for required housekeeping duties performed within an inmate's quarters or confinement area.

Sec. 17. Section 13A-4 and 13A-5 of Chapter 13A, title "Development Rights Fund" be and hereby are amended to read as follows:

13A-4. Authority of the Board.

The Board of Directors is hereby empowered to commit and authorize expenditure of all, or a portion, of the funds made available to it: (1) to establish a reserve fund to guarantee in whole, or in part, loans made by commercial lending institutions insofar as such loans are secured by development rights, and (2) to purchase and sell development rights

easements. It shall be the policy of the Board to facilitate the establishment of a private market for development rights and to serve as a financial resource available when private commercial resources are not readily available at prevailing market rates. The Board shall, after consulting with the Agricultural Preservation Advisory Board and after holding a public hearing, propose regulations to govern its operations. The regulations for the Board shall be adopted under Method (2) of Section 2A-15 of this Code by the County Executive. The regulations shall set forth eligibility requirements for loan guarantees and for sellers to and buyers from the fund of development rights. In addition to other requirements, the regulations shall provide that:

(a) The first priority for the use of its funds shall be to guarantee loans;

(b) Loan guarantees may not exceed 75% of the value of development rights. The Board may charge a fee for the loan guarantee;

(c) No loan guarantee may exceed five years, however, a single one year extension may be granted for good cause;

(d) Development rights which are purchased by the fund must be sold prior to the termination of the fund as provided in Section 13A-7 herein;

(e) The Board shall require evidence from the applicant that he has been unable to obtain a commercial loan using development rights as collateral before a loan guarantee may be approved. This requirement shall not apply to loan guarantees for existing loans;

(f) Development rights may be sold by the Board by any legally permissible means, including auction;

(g) The Board must determine the value of development rights for any negotiated purchase by obtaining two independent appraisals or some other reasonable means;

(h) Prior to purchasing development rights from an applicant, the Board shall require evidence from the applicant that he has been unable to sell development rights in the private market.

The Board shall be under no duty to act even if all requirements have been satisfied but may exercise its discretion and best judgment to fulfill the purpose of this Chapter. The Board shall report semi-annually to the

County Executive and the County Council on its financial activities.

13A-5. Eligibility requirements.

Before the fund can purchase development rights or make loan guarantees using development rights as collateral, it must be established to the satisfaction of the Board that the land to which the development rights attach is located within the rural density transfer zone. This eligibility requirement is in addition to any other requirements which may be established in the regulations proposed by the Board and adopted under Method (2) of Section 2A-15 of this Code.

Sec. 18. Section 15-12 of Chapter 15, title "Eating and Drinking Establishments" be and hereby is amended to read as follows:

15-12. Fees.

The fees for permits under this Article shall be of such an amount as the County Executive, by regulation adopted under Method (3) of Section 2A-15 of this Code, may set from time to time. The fees shall not exceed the cost of inspecting and issuing the permits for the various establishments regulated by this Chapter. The permit fee so fixed shall be submitted with the application and is not refundable in whole or in part unless the application is withdrawn prior to an inspection of the premises by the Director or his/her authorized agent. If the application is withdrawn prior to inspection, the entire permit fee shall be refunded.

The County Executive may waive all or part of the permit fee required for the following establishments which pay a license fee under some other licensing law of the County:

(a) Hospitals, sanitariums, nursing homes and care homes.

(b) Private educational institutions.

(c) Child care homes.

(d) Hotels, tourist homes, boardinghouses and rooming houses.

Sec. 19. Sections 17-2(a) and (b), 17-22, 17-25(a), 17-37(a) and 17-38(b) of Chapter 17, title "Electricity" be and hereby are amended to read as follows:

17-2. Regulations.

(a) The Director may recommend written rules and regulations for the administration of the provisions of this Chapter and may, at his discretion,

hold public hearings as part of this rule-making process. Such rules and regulations and amendments thereto shall not conflict with nor waive any provisions of this Chapter nor be less restrictive than its provisions and shall be adopted by the County Executive under Method (2) of Section 2A-15 of this Code.

(b) The Director shall hold public hearings, upon adequate public notice, with opportunity for full participation from members of the Board of Electrical Examiners and shall obtain the recommendations of the Board of Electrical Examiners prior to forwarding his recommendations for regulations setting forth the standards and requirements for all installations of electrical equipment within the County. Such regulations shall be based upon a designated edition of the National Electrical Code and local amendments thereto, including but not limited to those for the installation of fire alarm systems. Such regulations and amendments thereto shall be adopted by the County Executive under Method (2) of Section 2A-15 of this Code.

17-22. Same - Master electrician limited.

(a) Any person who desires to install, repair, maintain or erect electrical equipment as a master electrician limited, as defined in this Chapter, may at any time make application to the Director to be examined and the Director shall provide the applicant with the prescribed forms.

(b) An applicant may be licensed hereunder for a particular type of electrical installation or may be licensed for all types or as many types of limited electrical installations as defined herein and for which he shall be found qualified by the Board. He shall have been regularly and principally employed for four (4) years preceding application in the area of limitation, under the direction of a master electrician, or master electrician limited, where the limitation is in the same area as requested. The type of limited licenses shall be set forth in regulations adopted under Method (3) of Section 2A-15 of this Code by the County Executive upon recommendation of the Board. Particular license classifications shall include, without limiting, licenses for electrical connections and circuits to air conditioning, elevators, gasoline pumps, automatic heating furnaces whose principal operation is derived from fuel oil, gas, steam, solar panels, or coal, lighting, illuminated signs, and similar specialties, and electrical repair and

maintenance work, in plants, factories, apartment complexes and any public occupancy employing maintenance forces, fire alarm systems and electronic equipment, or major appliances, all employing the use of electrical current or connections. The conditions of the license shall appear plainly on the license.

(c) Those persons who are employed by a plant, factory, apartment, condominium, office building or other facility employing maintenance personnel are encouraged to obtain a master electrician's limited license for maintenance in order to be able to obtain permits for electrical maintenance work. In addition to the requirements in Section 17-22(a) and (b), the owner or agent for the building or buildings must certify that the applicant is a full-time employee and is covered by liability insurance in the amount established by Section 17-19(c).

17-25. Term of licenses; renewal.

(a) All licenses issued under this Chapter after the effective date of this legislation shall be valid for two years from the date of issuance and may be renewed upon application to the Director. Applicants for licenses and renewals thereof shall pay to the County a fee for a business license, master electrician's license, master electrician's limited license and journeyman electrician's license as provided for by regulations adopted under Method (3) of Section 2A-15 of this Code by the County Executive.

17-37. General requirements.

(a) It shall be the duty of the owner, agent, lessee, occupant, or any other person entitled to the beneficial use, rental or control of any building which is required under this Code to have a fire alarm system to provide, install and maintain therein a fire alarm system with sufficient alarm bells, striking stations or automatic detectors, of such type and character as contained in regulations adopted by the County Executive under Method (2) of Section 2A-15 of this Code.

17-38. Generally.

(b) The standards and requirements of this Chapter shall be based upon the currently designated edition of the National Electrical Code and amendments thereto as specified in regulations adopted by the County Executive under Method (2) of Section 2A-15 of this Code and are hereby declared to be

minimum standards and requirements. Any electrical equipment or installation which is equal or superior to such standards and requirements shall be deemed to be in compliance therewith.

Sec. 20. Sections 19-6, 19-8, 19-17 and 19-31 of Chapter 19, title "Erosion and Sediment Control" be and hereby are amended to read as follows:

19-6. Same - Fees.

The County Executive, by written regulations adopted under Method (3) of Section 2A-15 of this Code, may establish, increase or decrease permit and inspection fees and set nonrefundable fee schedules for filing, additional submissions, and permit renewals in an amount not to exceed the reasonable cost of administering and enforcing this Chapter.

19-8. Same - Expiration; renewal.

Every permit issued hereunder shall expire at the end of the period of time set out in the permit. The permittee shall fully perform and complete all of the work required to be done within one year after the date of issuance, unless specified otherwise by the Department for good cause shown. If the permittee shall be unable to complete the work within the specified time, he shall, within thirty days prior to expiration of the permit, present in writing to the Department a request for an extension of time, setting forth therein the reasons for the requested extension. If, in the discretion of the Director, such an extension is warranted, he may grant additional time for the completion of the work for an additional fee, such fee to be established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code. Where the Director determines that the extension of time will require a substantial modification of the grading, erosion and sediment control plan, any extension of a permit shall be subject to approval of a revised sediment control plan by the District.

19-17. Regulations.

(a) The Director may recommend written regulations for the administration of the provisions of this Chapter and may, at his discretion, hold public hearings as part of this rule-making process, with opportunity for full participation from the County Soil Conservation District and shall obtain the recommendations from the District prior to forwarding his recommendations for regulations. Such regulations and amendments thereto shall not conflict

with nor waive any provisions of this Chapter nor be less restrictive than its provisions and shall become effective upon their adoption by the County Executive under Method (3) pursuant to Section 2A-15 of this Code.

(b) The Director shall hold hearings upon adequate public notice of no less than thirty days, with opportunity for full participation from the Soil Conservation District and shall obtain the recommendations from the Soil Conservation District prior to forwarding his recommendations for regulations for provisions set forth in subsection (c) of this Section. Such regulations shall not conflict with nor waive any provisions of this Chapter nor be less restrictive than regulations promulgated and in effect as requirements of the State Department of Natural Resources. Such regulations and amendments thereto shall become effective upon their adoption by the County Executive under Method (2) of Section 2A-15 of this Code.

(c) Regulations adopted under this Chapter shall establish criteria which shall not conflict with nor waive any provisions of this Chapter nor be less restrictive than criteria adopted for the same purposes by the Soil Conservation District. These regulations shall include but not be limited to the following provisions:

(1) Maximum duration of exposure;

(2) Critical slope protection;

(3) On-site grading controls;

(4) On-site drainage controls

(5) Protection of specimen trees.

19-31. Regulations; interagency agreements.

The Director may recommend written regulations for the administration of the provisions of this Article, and shall hold public hearings as part of this rule-making process, with opportunity for full participation by the District and the Commission. Such regulations, and amendments thereto, shall not conflict with, nor waive, any of the provisions of this Chapter, nor be less restrictive than its provisions, and shall become effective upon their adoption by the County Executive under Method (2) of Section 2A-15 of this Code. Such regulations shall include the establishment of a fee schedule for monetary contributions to the County in lieu of the required on-site storm water management facility, and may also include design standards and other

criteria or procedures necessary to implement the provisions of this Article. The Executive, the District and the Board shall, within sixty days following the effective date of this Article, execute such agreements as may be necessary to implement its provisions, including the monitoring and review on a periodic basis, of the effect that the program has had on the watersheds of the County. These agreements shall become effective within thirty days of their effective date, unless disapproved by the County Council.

Sec. 21. Section 19A-5(j) of Chapter 19A, title "Ethics" be and hereby is amended to read as follows:

19A-5. Montgomery County Ethics Commission.

(j) The County Ethics Commission shall adopt under Method (2) of Section 2A-15 of this Code reasonable and necessary regulations for the implementation and administration of this Chapter.

Sec. 22. Sections 21-4B(e) of Chapter 21, title "Fire and Rescue Services" be and hereby is amended to read as follows:

21-4B. Fire and Rescue Commission.

(e) Duties, responsibilities and authority. The Commission, on behalf of the County, is hereby authorized to develop effective, efficient and equitable fire, rescue and emergency medical services County-wide, and to provide the policy and regulatory framework for all such fire, rescue and medical service operations. The Commission shall work closely with both the Director and the Fire Board. The Commission shall have the following functions in addition to those elsewhere assigned by law, or regulation adopted by the County Executive under Method (2) of Section 2A-15 of this Code:

(1) Advise the County Executive and the County Council on any matter relating to fire, rescue and emergency medical services.

(2) Adopt County-wide policies, standards, procedures, plans and programs applicable to all fire, rescue and emergency medical service operations;

(3) Adopt regulations under Method (2) of Section 2A-15 of this Code;

(4) Establish communications and dispatch procedures for emergency operations centers; and

(5) Establish guidelines for curriculum and programs of the Public Service Training Academy.

Sec. 23. Sections 22-13, 22-37 and 22-96(g) of Chapter 22, title "Fire Safety Code" be and hereby are amended to read as follows:

22-13. Rules and Regulations.

(a) The Director may recommend written regulations for the administration of the provisions of this Chapter including a schedule of fees and hold public hearings as part of the rule-making process. Such regulations and amendments thereto shall not conflict with nor waive any provisions of this Chapter nor be less restrictive than its provisions and shall become effective upon their adoption by the County Executive under Method (2) of Section 2A-15 of this Code. In the case of fees, the County Executive shall promptly forward to the County Council a copy of the new fee schedule for use in budgetary planning activities. Such fees shall be in accordance with formulas based upon criteria to include area or estimated cost of construction, or cost of inspection and processing or a minimal set fee per category, not to exceed the cost of administering and enforcing this Code.

(b) The Director shall hold public hearings, upon adequate public notice of not less than thirty days, prior to forwarding his recommendations for regulations setting forth the standards and requirements for controlling the hazards of fire and explosion from improper storage, handling or use of substances, materials or devices and for controlling the hazardous use of property.

22-37. Regulating fire extinguisher service.

The Director of the Department of Fire and Rescue Services shall exercise the following functions, powers and duties:

(1) To administer such regulations as may be determined necessary for the protection and preservation of life and property in controlling:

i. The registration of firms engaging in the business of servicing portable fire extinguishers;

ii. The registration of firms engaging in the business of hydrostatically testing U.S. Department of Transportation specification gas cylinders used for portable fire extinguishers;

iii. The examination of persons applying for a license to service portable fire extinguishers;

iv. The licensing of persons to service portable fire extinguishers;

v. The requirements for servicing of portable fire extinguishers.

(2) To evaluate the qualifications of firms or individuals for a certificate of registration to engage in the business of servicing portable fire extinguishers.

(3) To conduct examinations to ascertain the qualifications and fitness of applicants for a license to service portable fire extinguishers.

(4) To issue certificates of registration for those firms that qualify under these regulations to engage in the business of servicing portable fire extinguishers, and issue licenses, apprentice permits, and authority to perform hydrostatic testing to the qualified persons.

22-96. Smoke detectors.

(g) Permits and fees.

No smoke detector or alternative system shall be directly connected (permanently wired) to the electrical system of the structure unless an electrical permit shall have first been obtained from the Department of Environmental Protection or the municipal electrical permit authority having jurisdiction. The County Executive is hereby authorized to adopt, under Method (3) of Section 2A-15 of this Code, a fee schedule for the issuance of said permit which shall not exceed the cost of administration of this Section; further, the County Executive is authorized to waive, partially or wholly, the fee requirement at his discretion, or to issue multiple permits under the payments of a single fee.

Sec. 24. Sections 23A-6(a) and (b), and 23A-9(a)(4) of Chapter 23A, title "Group Residential Care Facilities" be and hereby are amended to read as follows and Sections 23A-6(c), (d) and (e) are renumbered as (b), (c) and (d):

23A-6. Regulations.

(a) The County Executive may adopt or amend written regulations under Method (2) of Section 2A-15 of this Code for this Chapter. Such regulations shall not conflict with nor waive any provisions of this Chapter, nor be less restrictive than its provisions or those found in Chapter 26 of this Code.

23A-9. Annual facility license; procedures; conditions; administration and enforcement.

(a) License procedures. The Director shall process any facility license application according to the following procedures:

(4) Applicants shall pay to Montgomery County, Maryland a fee to be established and revised, by executive regulation adopted under Method (3) of Section 2A-15 of this Code, from time to time by the County Executive not to exceed the costs of administering this Chapter.

Sec. 25. Section 24-9(j) of Chapter 25, title "Health and Sanitation", be and hereby is amended to read as follows:

24-9. Smoking prohibitions and restrictions.

(j) Regulations. The County Executive shall adopt reasonable and necessary regulations, under Method (2) of Section 2A-15 of this Code, for the implementation, administration and enforcement of this Chapter.

Sec. 26. Section 24A-4(h) of Chapter 24A, title "Historic Resources Preservation", be and hereby is amended to read as follows:

24A-4. Historic Preservation Commission - Generally.

(h) Regulations. The Commission may adopt, under Method (2) of Section 2A-15 of this Code, such regulations as it may be deemed necessary for the proper transaction of the business of the Commission.

* * *

Sec. 27. Section 25-18 of Chapter 25, title "Hospitals, Sanitariums, Nursing and Care Homes", be and hereby is amended to read as follows:

25-18. Fees.

(a) The annual license fees for all institutions subject to the provisions of this Article shall be established and may be revised from time to time by the County Executive by written regulations adopted under Method (3) of Section 2A-15 of this Code in an amount not to exceed the reasonable costs of administration and enforcement of this Chapter.

(b) No annual license shall be issued by the Department until payment of the prescribed license fee has been made to the Department of Finance by the institution requesting the license.

Sec. 28. Sections 25A-3, 25A-6(a), 25A-7(c) and (d), 25A-8(a) and 25A-10 of Chapter 25A, title "Housing, Moderately Priced", be and hereby are amended to read as follows:

25A-3. Definitions.

* * *

Moderate income: The phrase "moderate income" means levels of income which prohibit or severely limit the financial ability of persons to purchase or to rent housing in Montgomery County and which, therefore, based upon the experience in the housing market in Montgomery County, require that the type of moderately priced housing intended to be developed under the provisions of this Chapter be constructed.

Moderate income levels shall be established by written regulations which shall be adopted under Method (1) of Section 2A-15 of this Code and revised by the County Executive at such time as corresponds with the promulgation and revision of the executive regulations which establish the sales and rental prices for moderately priced dwelling units, as required by Section 25A-3 herein, or more frequently as deemed necessary by the County Executive.

In establishing the moderate income levels, the County Executive shall consider, but shall not be limited to a consideration of, the price established for the sale or rental of dwelling units developed pursuant to the provisions of the Chapter plus the term, interest rate and taxes applicable to the financing of such dwelling units, the estimated levels of income necessary to finance the acquisition of such dwelling units, the family size and number of dependents.

Moderately priced dwelling unit: The phrase "moderately priced dwelling unit" means a dwelling unit which meets the specifications of either paragraph (1) or (2) below:

(1) A dwelling unit which is constructed, sold or rented under a federal program to assist the construction of housing for families of low income, namely, (i) "conventional" or "turnkey" construction of dwelling units for the County Housing Opportunities Commission (hereinafter the "Commission") or construction in reliance upon an agreement by the Commission prior to commencement of construction to enter into a lease (commonly known as "turnkey leasing") or purchase contract for dwelling units after completion thereof, as authorized by the United States Housing Act of 1937 (codified as 12 U.S.C. 1401-1436), as amended, or (ii) provision of dwelling units under the Federal

rent supplement program authorized in Section 101 of the Housing and Urban Development Law (codified as 12 U.S.C. 1701s), as amended, or (iii) a dwelling unit which is constructed, sold or rented under a Federal program to assist the construction or occupancy of housing for families under the programs for homeownership, rental and/or cooperative housing authorized in Section 235 and 236 of the National Housing Act (codified as 12 U.S.C. 1715z and 1715z-1), as amended, or (iv) any other dwelling unit which is constructed, sold or rented under a Federal, State or local government program identified by the County Executive in written regulations adopted under Method (1) of Section 2A-15 of this Code, as designed to assist the construction or occupancy of housing for families of low or moderate income as defined under those programs.

(2) A dwelling unit which is sold or rented in accordance with the following:

a. Sales housing. The sales price of housing for sale for single-family dwelling units (including closing costs and brokerage fees) shall not exceed the applicable maximum sales price set forth herein or as established from time to time by the County Executive by written regulation, adopted under Method (1) of Section 2A-15 of this Code in accordance with the schedule of adjustments outlined below:

* * *

b. Rental housing. The rental price, including utilities and parking, for any dwelling unit described in subparagraph (2) of the definition of the term moderately priced dwelling unit shall not exceed the maximum rental price for such dwelling unit, as established by written regulation adopted by the County Executive, under Method (1) of Section 2A-15 of this Code, or as might be applicable under any system of rent controls in effect in the County.

The rental price of dwelling units rented pursuant to the provisions of this Chapter shall be established by written regulations adopted by the County Executive under Method (1) of Section 2A-15 of this Code, at the times and following the procedures set forth above for sales housing. Different rental prices shall be established for units where utility costs are borne by the tenant and not included in the rent.

The County Executive, in determining the rental price, shall take into consideration the current rent payable to lessors of dwelling units under programs identified by the Executive, pursuant to the definition of moderately priced dwelling unit. The County Executive, in determining the rental price, shall seek, in addition to the above guideline, such other information as from time to time may be required, such as rents currently being paid to lessors in the private market, and shall consult with the rental industry, employers and professional and citizens groups to obtain statistical information, including vacancy ratios in available rental housing in the private market and current general market and economic conditions, which may enable the County Executive to arrive at a current maximum rental price for moderately priced dwelling units. Consideration shall be given to cost of construction, capital and operating costs of such rental units and changes from time to time in the income levels of persons of low and moderate income and their ability to rent housing. The County Executive shall consider also the extent to which, consistent with the requirements of County codes and housing standards, the cost of rental housing can be reduced by the elimination of certain amenities.

25A-6. Sale or rental of moderately priced dwelling units.

(a) Sale or rental to general public.

(1) Subject to the provisions of this subsection, every moderately priced dwelling unit required by this Chapter shall be offered to the general public for sale or rental to a good faith purchaser or renter to be used for his or her own residence, with the exception of units offered for sale or rent with the assistance of, and subject to the conditions of, a subsidy under a Federal, State or local government program, identified in regulations adopted by the County Executive under Method (1) of Section 2A-15 of this Code, whose purpose is to provide housing for persons of low or moderate income.

* * *

(5) Every purchaser or renter of a moderately priced dwelling unit shall certify on a form prescribed by the Director of the Department of Housing and Community Development that he or she is acquiring or leasing said unit for his or her own, or family's, primary place of residence. Purchasers

of moderately priced dwelling units, except the Housing Opportunities Commission, shall not be permitted to lease moderately priced dwelling units to other parties unless sufficient cause can be found to waive this restriction to allow temporary rentals of such units based upon regulations, which may include maximum rental levels, to be adopted by the County Executive under Method (1) of Section 2A-15 of this Code. No applicant shall sell or lease any unit without first obtaining such certificates from purchaser or lessee. Copies of certificates to applicants from purchasers or lessees shall be furnished to the Department of Housing and Community Development and shall be maintained on file with the Department in such a manner as the Department shall provide. Prior to the sale by an applicant or by the Housing Opportunities Commission to any purchaser of any moderately priced dwelling unit constructed under this Chapter, the applicant or the Housing Opportunities Commission shall request a determination by the Department of Housing and Community Development from the certificates on file whether or not such proposed purchaser was a previous purchaser of a moderately priced dwelling unit. Previous purchasers shall not be permitted to purchase a second moderately priced dwelling unit unless there are no other first-time purchasers qualified to make such purchase; provided, that the Director of the Department of Housing and Community Development may waive this restriction for good cause.

25A-7. Control of subsequent sale or rental prices; foreclosure.

(c) Subsequent rental price. Moderately priced dwelling units constructed or offered for rent under this Chapter shall not be rented during a period of ten years from the date of original rental at a rental rate greater than that established by regulations adopted by the County Executive under Method (1) of Section 2A-15 of this Code. Whenever any moderately priced dwelling unit (as described in subparagraph (2) of the definition of that term and other than those offered by the Commission) is offered for rent during the aforesaid control period, it shall be offered exclusively for 60 days to the Housing Opportunities Commission and persons of moderate income, as defined by this Chapter and as determined eligible by the Department of Housing and Community Development, for use as his or her own residence. The Commission may assign its right to rent such units to persons of low or

moderate income who are eligible for assistance under any Federal, State or local program identified in regulations adopted by the County Executive under Method (1) of Section 2A-15 of this Code.

(d) County foreclosure regulations. Notwithstanding the foregoing provisions, the County Executive is authorized to adopt written regulations under Method (1) of Section 2A-15 of this Code dealing with foreclosure proceedings.

25A-8. Executive regulations; enforcement of Chapter.

(a) For the purpose of effectuating the requirements of this Chapter, the Department of Housing and Community Development shall maintain a list of all moderately priced dwelling units constructed, sold or rented pursuant to this Chapter, and the County Executive shall, from time to time, adopt such written regulations, under Method (1) of Section 2A-15 of this Code, as may be necessary to put into effect and to administer the provisions of this Chapter.

25A-10. Applicability.

The provisions of this Chapter, as amended, shall be applicable to all applicants and units developed by applicants, except that where a person qualified as an applicant prior to October 1, 1981, the following shall apply:

(a) The required percentage of moderately priced dwelling units specified in Section 25A-4(a)(1) shall be 15%;

(b) The price control period for sale and rental units shall be five years; and

(c) The provisions of Section 25A-6(a)(4) shall not be applicable.

An applicant may elect to waive the exception noted above in its entirety, according to such procedures and at such times as shall be specified in regulations adopted by the County Executive under Method (1) of Section 2A-15 of this Code. Any agreement required by Section 25A-4 shall be submitted or amended to conform with such election.

Sec. 28A. Sections 25B-3(c)(5), 25B-4(b) and 25B-8 of Chapter 25B, title "Housing Policy" of the Montgomery County Code 1972, as amended, be and hereby are amended to read as follows:

25B-3. Housing Policy implementation.

(c) The County Executive shall:

(5) Revise or recommend revisions, under Method (2) of Section 2A-15 of this Code, to regulations which add unnecessarily to the cost or delay of housing construction;

25B-4. Annual Housing Report.

(b) The County Executive shall also include in the Annual Housing Report a report of existing and approved assisted-family housing and other characteristics affecting the suitability of placing additional units of assisted-family housing by census tract or other enumeration area as designated by executive regulation adopted under Method (3) of Section 2A-15 of this Code; and the County Executive shall recommend to the County Council those geographic areas which should be designated as limited priority for receiving additional assisted-family housing in the forthcoming year.

25B-8. Administrative rules.

The County Executive and each relevant agency may adopt, after public hearing, rules of procedure or executive regulations adopted under Method (2) of Section 2A-15 of this Code, necessary to administer the provisions of this law and to implement the County's adopted Housing Policy.

Sec. 29. Sections 26-21(g) and 26-22 of Chapter 26, title "Housing Standards", be and hereby are amended to read as follows:

26-21. Smoke detectors.

(g) Permits and fees. No smoke detectors or alternative system shall be directly connected (permanently wired) to the electrical system of the structure unless an electrical permit shall have first been obtained from the Department of Environmental Protection or the municipal electrical permit authority having jurisdiction. The County Executive is hereby authorized to adopt executive regulations, under Method (3) of Section 2A-15 of this Code, to adopt a fee schedule for the issuance of said permit which shall not exceed the cost of administration of this Section; further, the County Executive is authorized to waive, partially or wholly, the fee requirement at his/her discretion, or to issue multiple permits under the payment of a single fee.

26-22. Executive regulations.

The County Executive is hereby authorized to adopt regulations, under Method (2) of Section 2A-15 of this Code, to implement and administer the provisions of this Chapter and to create standards for materials and equipment.

Sec. 30. Sections 27-6(a)(7), 27-6A(c), 27-26D(a), 27-29(g) and 27-42(j) of Chapter 27, title "Human Relations and Civil Liberties", be and hereby are amended to read as follows:

27-6. Duties generally.

(a) The Commission on Human Relations shall have the power and it shall be its duty:

(7) To adopt such regulations under Method (2) of Section 2A-15 of this Code, as may be necessary to carry out the purposes and provisions of this Article; to keep a record of its hearings, activities and minutes of all meetings. The records and minutes shall be on file with the Executive Secretary of the Commission and open to the public at reasonable business hours upon request.

27-6A. Definitions generally.

For the purposes of this Article the following words and phrases shall have the meaning ascribed to them:

(c) Reasonable accommodation. The effort necessary to make suitable a working, recreational or living environment for a handicapped person without danger to any person's health or safety or without undue hardship or expense to a business or other activity making such accommodation. In rental housing, the landlord may impose special conditions upon a handicapped tenant, the purpose of which is to protect the health and safety of the tenant and other residents of the facility. Such conditions and agreement thereto by the tenant shall be in writing. The Commission shall provide by regulation, adopted under Method (2) of Section 2A-15 of this Code, a procedure by which those persons covered by the provisions of this Article may apply to the Human Relations Commission for a declaratory ruling as to whether or not a proposed acoommodation is reasonable. The procedure for such declaratory ruling shall include all due process safeguards. Any person aggrieved by such ruling shall have the right to appeal to the Circuit Court for Montgomery County under the provisions of Maryland Rule B. Such an appeal shall also include full appellate review by the appeal courts of Maryland. The Commission may also prescribe by regulation, adopted under Method (2) of Section 2A-15 of this Code, guidelines under which pre-employment or pre-rental inquiries may be made of handicapped individuals, the purpose of which is to determine the

measures necessary to protect the health and safety of handicapped persons and others. Any inquiry so permitted shall not be used as a basis for discriminatory practices made unlawful by this Article; provided, however, the results of such inquiries may form the basis for a determination of reasonable accommodation.

27-26D. Alternative service; Anti-Hate/Violence Fund.

(a) Any civil monetary liability to Montgomery County imposed pursuant to this Division, upon a child or an adult, may be paid in kind by the performance of alternative community service, as provided by the County Executive by regulation adopted under Method (3) of Section 2A-15 of this Code.

27-29. Powers and duties generally.

The Commission shall have the power and it shall be its duty:

(g) To adopt, under Method (2) of Section 2A-15 of this Code, such regulations as may be necessary to carry out the purposes of this Article; to keep a record of its activities and minutes of all meetings; such records and minutes shall be on file and shall be open to the public at reasonable business hours upon request.

27-42. Powers and duties generally of Committee.

To accomplish the purposes for which the Community Action Agency is established, the Community Action Committee shall have the power to:

(j) Adopt, amend and repeal by-laws, and adopt regulations under Method (2) of Section 2A-15 of this Code governing the manner in which its activities may be conducted and the powers vested in it may be exercised;

Sec. 31. Sections 27A-4 and 27A-5(e) of Chapter 27A, title "Individual Water Supply and Sewage Disposal Systems", be and hereby are repealed and reenacted with amendments to read as follows:

27A-4. Regulations.

(a) The County Executive may adopt, under Method (2) of Section 2A-15 of this Code, written regulations for this Chapter.

(b) Following consultation with the Washington Suburban Sanitary Commission, the Montgomery County Planning Board and other concerned public agencies, the Director shall recommend regulations for the administration and enforcement of the provisions of this Chapter. The regulations shall be adopted under Method (3) of Section 2A-15 of this Code and shall include the

standards and requirements governing such things as the location, design, construction, maintenance, repair and operation of individual water supply systems; the pre-drilling of wells; the location, design, construction, maintenance, operation and scavenging of individual sewage disposal systems; the abandonment of wells; the protection of percolation test holes; and field and laboratory tests appurtenant to the foregoing.

27A-5. Permits.

(e) The County Executive shall adopt a schedule of fees, by executive regulation adopted under Method (3) of Section 2A-15 of this Code, which shall apply to the issuance of permits required hereunder; to other services such as special inspections, field testing, plans review, laboratory analyses; and to the issuance of permits for the collection, transport and disposal of solid and liquid wastes as required hereunder.

Sec. 32. Sections 29-10(a), 29-19, 29-28A(b)(3), and 29-49(a) of Chapter 29, title "Landlord-Tenant Relations", be and hereby are amended to read as follows:

29-10. Powers and duties generally.

In addition to any other power, duty or responsibility provided in this Chapter, the Commission shall have the following powers:

(a) The Commission may adopt regulations under Method (2) of Section 2A-15 of this Code, including provisions for notification under this Chapter, as it deems necessary to implement the provisions of this Chapter.

29-19. Fees.

An annual license fee per dwelling unit shall be established by the County Executive by written regulation, adopted under Method (3) of Section 2A-15 of this Code, in an amount sufficient to pay the costs incidental to the administration of this Chapter and to make this Chapter self-sustaining; provided, that no part of this fee shall be used for any costs of administering or providing financial assistance in connection with Section 29-28A of this Chapter relating to the transportation and storage of evicted tenants' chattels.

29-28A. Eviction - Removal, transportation and storage of evicted tenants' chattels.

(b) Transportation and storage of chattels at County's expense.

(3) The County Executive is authorized to provide, by written regulation adopted under Method (3) of Section 2A-15 of this Code, for financial assistance to tenants without sufficient financial means to reclaim their chattels from storage under the provisions of this subsection. The funds for such financial assistance shall be appropriated to the Office of Landlord-Tenant Affairs and shall be made available by that Office in accordance with the procedures established by written regulation of the County Executive.

29-49. Administration, enforcement and penalties.

(a) The County Executive is authorized to adopt, under Method (2) of Section 2A-15 of this Code, such regulations as may be necessary to administer this Article properly.

Sec. 33. Section 29A-5(b)(9) of Chapter 29A, title "Legislative Oversight", be and hereby is amended to read as follows:

29A-5. Same - Responsibilities, powers and duties.

(b) Powers and duties. In addition to any other power, duty or responsibility provided in this Chapter, the Office shall have the following powers and duties:

(9) Develop uniform review and evaluation procedures, guidelines and regulations for the conduct and explanation of audits, surveys and investigations under this Chapter. Regulations that may be issued pursuant to this Chapter shall be adopted under Method (2) of Section 2A-15 of this Code.

Sec. 34. Sections 30-2, 30-5, 30-8, 30-11 and 30-12 of Chapter 30, title "Licensing and Regulations Generally", be and hereby are amended to read as follows:

30-2. Picnics, dances, soirees and other entertainment - Authority to regulate, etc.

The fees for licenses issued under this Chapter shall be of such an amount as the County Executive by regulation, adopted under Method (3) of Section 2A-15 of this Code, may set from time to time and shall not exceed the cost of administering this Chapter. The permit fee so fixed shall be submitted with the application and is not refundable in whole or in part. The County Executive is authorized to adopt such regulations, under Method (3) of

Section 2A-15 of this Code, in connection with such permit, license and fee, as are necessary to protect the public health, safety and welfare.

30-5. Public amusements, clubhouses, sanitariums, hospitals, etc. - Generally.

(a) The Council is hereby empowered to prescribe by law for the licensing and regulation within the limits of the County any place of public amusement or recreation, pleasure parks, picnic grounds, clubhouses, theatrical exhibitions, baseball grounds, bowling alleys, billiard halls or poolrooms, camp-meeting grounds, graveyards, sanitariums, hospitals, homes for the aged, private educational institutions, orphan asylums, homes for children and convalescent homes, signs or signboards, roadside stands or establishments; and in order to safeguard the public health, safety, morals and welfare, to pass regulations for the purpose of carrying out the powers herein granted or to authorize the County Executive to issue regulations to implement any law; provided, that such regulations shall contain proper standards for the exercise of the discretion conferred herein and shall operate uniformly; provided further, that the power of the Council to license, regulate or limit clubhouses shall not apply to the clubhouses of country clubs which were in existence and operation on January 1, 1927 and which on that date had a public or private list of fifty or more bona fide members paying dues and which on that date maintained on the club premises at least two of the following athletic facilities for their membership:

(1) A golf course of nine holes or more;

(2) Two or more tennis courts; or

(3) A swimming pool not less than forty feet in length and twenty feet in width.

(b) Any regulation adopted under this Section shall be adopted under Method (2) of Section 2A-15 of this Code.

30-8. Same - Regulations and licensing generally.

(a) The Council is hereby authorized to provide by law for the regulation and licensing of pawnbrokers and their activities, as it shall deem necessary to promote the public health, safety, morals and welfare of the community.

(b) Any regulation adopted under this Section shall be adopted under Method (3) of Section 2A-15 of this Code.

30-11. License fees generally.

The Council shall fix and enforce a uniform schedule of fees for licensing any class of business or enterprise as it may deem necessary, or the County Executive by regulation, adopted under Method (3) of Section 2A-15 of this Code, may establish such fees, not to exceed the reasonable costs of licensing and enforcement. All fees so determined shall be collected and paid over to the Director of Finance for the use of the County.

30-12. Alcoholic beverages - Consumption on public property.

The County Executive is hereby authorized to adopt regulations, under Method (3) of Section 2A-15 of this Code, governing the consumption of alcoholic beverages on "public property" as that phrase is defined in Article 2B, Section 210 of the Annotated Code of Maryland.

Sec. 35. Sections 30B-3, 30B-10, 30B-13 and 30B-15 of Chapter 30B, title "Massage Establishments and Massage Technicians", be and hereby are amended to read as follows:

30B-3. Administration; fees; regulations.

(a) The County Executive is hereby authorized to adopt regulations for the implementation of this Chapter under Method (3) of Section 2A-15 of this Code; specifically, he or she may authorize or require extensive background reviews for all applicants for licensure or registration under this Chapter, require from the applicant such background information as may be necessary to determine the fitness of the applicant for a license or registration, require applicants strictly to comply with all County and State health requirements as a condition subsequent to the issuance of a license or registration and may require such training programs for massage technicians as he or she deems necessary or reasonable.

(b) The County Executive, by executive regulation adopted under Method (3) of Section 2A-15 of this Code, is hereby authorized to adopt from time to time a schedule of fees, not to exceed the reasonable costs of administration of this Chapter.

(c) Exemptions.

(1) The County Executive may, by written regulation adopted under Method (3) of Section 2A-15 of this Code, specifically (by address) exempt any establishment from the requirements hereof if he or she finds:

a. That such establishment (or the users thereof) reasonably requires the administration of massages pursuant to a bona fide professional discipline for which State licensure is being sought.

b. That such establishment (or the users thereof) reasonably requires the administration of massages pursuant to a bona fide athletic or educational event or function.

Provided, however, that no exemption shall issue which is likely to contravene the purposes of this law.

(2) The County Executive may, by written regulation adopted under Method (3) of Section 2A-15 of this Code, specifically (by name) exempt any person from the requirements hereof if he or she finds:

a. That such person is reasonably required to administer massages pursuant to a professional discipline for which State licensure is being sought.

b. That such person is reasonably required to administer massages pursuant to a bona fide athletic or educational event or function.

Provided, however, that no exemption shall issue which is likely to contravene the purposes of this law.

30B-10. Application, fees and requirements.

Each application for massage establishment license shall be upon a form provided by the Director and accompanied by such licensure fees as are adopted by the County Executive in an executive regulation adopted under Method (3) of Section 2A-15 of this Code. Such forms shall contain all information as set forth in executive regulations adopted hereunder; these regulations may impose different requirements depending on whether the applicant is a person, partnership or corporation, and require reapplication upon any change in ownership.

30B-13. Minimum standards for massage establishments.

Massages must be administered either on the massage establishment's premises, or in the private residence of the patron. Where massages are

administered on the massage establishment's premises, it shall meet the minimum standards as set forth in the executive regulations adopted under Method (2) of Section 2A-15 of this Code. Where massages are to be administered off the premises, the office address of the massage establishment shall be the premises for which the license is granted.

30B-15. Application, fee and requirements.

Each application for a massage technician's registration shall be upon a form provided by the Director, and accompanied by such registration fees as are adopted by the County Executive in an executive regulation adopted under Method (3) of Section 2A-15 of this Code. Such form shall contain all information as set forth in the executive regulation adopted hereunder. No registration shall issue to a partnership, corporation, etc. or other than a named individual.

Sec. 36. Sections 31-2, 31-5(b), 31-6(a), 31-9(b), 31-10, 31-21(b), 31-23, 31-26, 31-29(b), 31-30(a), 31-31(b), 31-33(a), 31-46(b), 31-48(b)(g)(h), 31-51(a)(b), 31-52(e), 31-57(a), 31-58 and 31-62(c), of Chapter 31, title "Motor Vehicles and Traffic", be and hereby are amended to read as follows:

31-2. Authority of County Executive to erect traffic signs.

Whenever, in the judgment of the County Executive, it is necessary for the safety or control of vehicular or pedestrian traffic, he is authorized to provide, by executive order, for the erection of "stop," "speed limit" and other traffic control signs and devices on public streets, highways or other areas in the County; provided, that no such sign or device shall be erected on State highways without the approval of the State Highway Administration; and provided, that no such sign or device shall be erected at the cost of the County government in any incorporated town or special taxing area unless the Council has by resolution consented to the payment of such costs; and provided, that if the private owner of any land used by the general public shall cause to have erected "stop," "speed limit" or other traffic control signs or devices upon streets, highways and other areas within said private property said signs shall conform to the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways" with regard to design, color, size and placement. The County Executive is authorized to

approve by executive order said traffic control signs and devices, which shall then have the same effect as those public traffic control signs and devices erected by the direction of the County Executive; provided, that all such signs and devices on private property shall be constructed, erected and maintained at the cost of the owner of said land.

31-5. Driving over curbs, sidewalks or drainage structures.

(b) Bicycles which are not motorized and special vehicles used by handicapped persons may be operated upon sidewalk areas and appurtenant drainage structures designed for pedestrian use except where, in the judgment of the County Executive, it is necessary for the safety or control of vehicular and pedestrian traffic to prohibit riding of such vehicles. Whenever any person is riding upon a sidewalk, such person shall give an audible signal and yield the right-of-way to any pedestrian. The County Executive may, by regulation adopted under Method (3) of Section 2A-15 of this Code, define "special vehicle" and "handicapped"; establish licensing requirements; and establish hours during which special vehicles may be operated upon sidewalk areas.

31-6. Snow and ice emergency traffic control.

(a) The County Executive is hereby authorized from time to time to designate, by executive order, important streets and highways of the County as snow emergency routes, which shall be marked by snow emergency route signs.

31-9. Impounding illegally parked vehicles, impeding traffic, etc.

(b) In any case involving the impoundment of a vehicle pursuant to this Section, an administrative cost not to exceed twenty-five dollars or such lesser amount as established from time to time by the County Executive by executive regulation adopted under Method (3) of Section 2A-15 of this Code, shall be charged to the owner of the vehicle in addition to all fines and penalties assessed pursuant to any violation of this Chapter plus any towing or storage charges incurred. All such fines, penalties, costs and charges shall be paid to the County or its agent before the owner may reclaim or secure the release of the vehicle.

31-10. Authority of County Executive to erect parking signs.

Whenever, in the judgment of the County Executive, it is necessary for the safety or control of vehicular traffic and parking or for pedestrian

safety, he is authorized to provide by executive order for the erection of "no stopping," "no standing," "no parking," and other parking control signs and devices on public streets, highways or other areas in the County; provided, that no such sign or device shall be erected on State highways without the approval of the State Highway Administration; and provided, that no such sign or device shall be erected at the cost of the County government in any incorporated town or special taxing area unless the Council has by resolution consented to the payment of such costs; and provided, that if the private owner of any land used by the general public shall cause to have erected "no stopping," "no standing," "no parking" or other parking control signs or devices upon streets, highways, and other areas within said private property, said signs shall conform to the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways" with regard to design, color, size and placement. The County Executive is authorized to approve by executive order said parking control signs and devices which shall then have the same effect as those public parking control signs and devices erected by the direction of the County Executive; provided, that all such signs and devices on private property shall be constructed, erected and maintained at the cost of the owner of the land.

31-21. Impounding illegally parked vehicles.

(b) In any case involving the impoundment of a vehicle pursuant to this Section, an administrative cost not to exceed twenty-five dollars or such lesser amount as established from time to time by the County Executive, by executive regulation adopted under Method (3) of Section 2A-15 of this Code, shall be charged to the owner of the vehicle in addition to all outstanding fines and penalties assessed pursuant to violations of this Article plus any towing or storage charges incurred.

31-23. Authority of County Executive or his designee to regulate by signs.

(a) The County Executive or his designee is hereby authorized, by executive order in the form of traffic orders, to regulate parking of vehicles on County property by the erection of official signs conforming to the regulations regarding signs posted on public streets and highways, and

conforming in design, color, size and placement to the standards established in the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways."

(b) All parking signs erected on any privately owned parking lot within the County shall conform to the regulations regarding signs posted on public streets, highways or other areas in the County, and conform in design, color, size and placement to the standards established in the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways." The County Executive or his designee may provide, by executive order in the form of traffic orders, for the erection of official signs regulating parking on any privately owned parking facility within the County, which parking facility is open to and used by members of the general public for parking in connection with retail commercial establishments, or other businesses to which the parking facility is appurtenant. Any traffic order issued under this Section may require that the owner, tenant or employees of retail or commercial establishments furnish evidence necessary for the enforcement of such order.

31-26. Parking regulations - Public parking facilities.

(a) Except temporarily for the purpose of and while actually engaged in loading or unloading passengers or for emergency repairs when the vehicle cannot be driven, no person shall park any vehicle on a public parking facility:

* * *

(6) For a period longer than twenty-four hours, except when otherwise authorized by executive order.

* * *

31-29. Uses prohibited.

(b) Notwithstanding the provisions of subsection (a) above, the County Executive shall establish, by regulation adopted under Method (3) of Section 2A-15 of this Code, procedures for the issuance of written permits for the use of County owned or leased and operated parking facilities for storage and off-street parking purposes under the following conditions:

(1) Storage or parking restricted to areas of such facilities as directed by the Department of Transportation.

(2) Vehicle operation and parking within such facilities fully in accordance with County regulations including the observance of posted regulations and appropriate parking meter fees.

(3) The term of such permits not to exceed one year and providing not less than thirty days' notice of termination or suspension upon a finding that such action is necessary to carry out the purposes of the public parking district provisions of this Code or shorter notice upon occasion of emergency repairs, demolition or other public exigency.

(4) Establishment of a permit fee schedule sufficient, when considered with the parking meter fee, to cover the operating cost and amortized capital costs of the space involved.

31-30. Snow and ice emergency.

(a) The County Executive is hereby authorized from time to time to designate, by executive order, important public parking facilities of the County, or areas thereof, as snow emergency lots which shall be marked by snow emergency lot signs.

31-31. Impounding illegally parked vehicles.

(b) In any case involving the impoundment of a vehicle pursuant to this Section, an administrative cost not to exceed twenty-five dollars, or such lesser amount as established from time to time by the County Executive by executive regulation adopted under Method (3) of Section 2A-15 of this Code, shall be charged to the owner of the vehicle in addition to all outstanding fines and penalties assessed pursuant to violations of this Article plus any towing or storage charges incurred.

31-33. Authority of County Executive, establish fees, time limits, etc.

(a) Parking meters.

(1) The County Executive is hereby authorized to provide by executive order for the installation, maintenance and operation of parking meters along, and limiting the time motor vehicles may park on, the streets, highways and alleys located throughout the County and on public parking facilities acquired by or leased to and operated by the County, by use of parking meters or otherwise; and,

(2) The County Executive may adopt regulations under Method (3) of Section 2A-15 of this Code to prescribe parking meter or other fees for parking on such parking facilities, streets, highways, alleys.

(3) After the adoption of such regulations, the County may purchase, install, maintain and operate any such parking meters on all streets, highways, alleys and public parking facilities in accordance with the executive order issued under paragraph (1) of this subsection; provided that the location thereof is approved by the County Executive.

31-46. Impounding illegally parked vehicles.

(b) In any case involving the impoundment of a vehicle pursuant to this Section, an administrative cost not to exceed twenty-five dollars, or as shall be established from time to time by the County Executive by executive regulation adopted under Method (3) of Section 2A-15 of this Code, shall be charged to the owner of the vehicle in addition to all outstanding fines and penalties assessed pursuant to violations of this Article plus any towing and storage charges incurred as a result of impoundment. All such fines, penalties, costs and charges shall be paid to the County or its agent before the owner or operator may reclaim or secure the release of the vehicle.

31-48. Parking permit areas.

(b) The County Executive is hereby authorized to designate, by executive order, roads, streets and other areas within the County in which the parking of vehicles may be restricted, in whole or in part, during certain specified times, to holders of valid parking permits issued pursuant to this Section. The County Executive shall consider the institution of a parking permit system upon petition by the residents of a given area. The authority granted herein shall be in addition to, and may be exercised in conjunction with, any other authority the County Executive may have to regulate the times and conditions of motor vehicle parking.

(g) The County Executive is authorized to establish written regulations adopted under Method (2) of Section 2A-15 of this Code to implement the provisions of this Section.

(h) The County Executive is authorized to establish, by written regulation adopted under Method (3) of Section 2A-15 of this Code, a parking permit fee for permits issued pursuant to this Section in an amount sufficient to pay the cost incidental to the issuance of permits authorized by this Section.

31-51. Authority of County Executive to administer and enforce Chapter, establish and collect fines.

Pursuant to the provisions of State law, the County Executive is hereby authorized and empowered:

(a) To establish by written regulation adopted under Method (3) of Section 2A-15 of this Code, after review by the District Court of Maryland for Montgomery County, a schedule of fines or other penalties for violations of the provisions or regulations of this Chapter, such fines and penalties not to exceed that which may be imposed for a Class A violation as set forth in Section 1-19 of Chapter 1 of the County Code.

(b) To adopt regulations, under Method (3) of Section 2A-15 of this Code, as he may deem necessary or proper for the collection by the Department of Finance of the County of all such fines, penalties, costs and other charges imposed by this Chapter and to define any term used in connection with the collection of said fines, penalties, costs and other charges.

31-52. Duty and responsibility of the Department of Finance.

(e) The Director of Finance may, in accordance with the procedures prescribed by the State Motor Vehicle Administration and State law, give or cause to be given notice to said administration of all vehicles registered by the State and the subject of any outstanding and past due parking violation of this Code and request that the administration refuse registration or transfer of registration of the subject vehicle, until notified by the County that said violation has been satisfied.

In such cases, the Director of Finance may impose an additional cost of ten dollars, or as may be otherwise established from time to time by the County Executive by executive regulation adopted under Method (3) of Section 2A-15 of this Code, for each registration withheld; and the owner of the vehicle shall be subject to payment of such costs, and all other fines, penalties and charges before notice is given to the administration that the subject violation has been satisfied and the registration is released.

31-57. Failure to pay or comply; penalty in addition to fine.

(a) In the event said owner or operator fails to comply with the preceding Sections and the instructions provided on a notice of violation within the period prescribed by this Article, the fine for such violation shall be increased by an additional penalty not to exceed ten dollars, or as shall otherwise be established from time to time by written regulation of the

County Executive adopted under Method (3) of Section 2A-15 of this Code.

31-58. Dishonored check charges.

Whenever any check or draft tendered to the County in payment of any fine, penalty, cost or other charge as provided in this Chapter is dishonored by a bank or otherwise returned as uncollectible, a charge of ten dollars, or as may be otherwise established from time to time by the County Executive by executive regulation adopted under Method (3) of Section 2A-15 of this Code, may be imposed and added to the amount due in order to defray the cost of its collection. In such cases, the County may require that the total amount due be paid in the form of a certified check or money order.

31-62. Impounding or immobilizing vehicles after enumerated violations generally.

(c) In any case involving the impoundment or immobilization of a vehicle pursuant to this Section, an administrative cost not to exceed twenty-five dollars, or such lesser amount as established from time to time by the County Executive by executive regulation adopted under Method (3) of Section 2A-15 of this Code, shall be charged to the owner or operator of the vehicle in addition to all outstanding fines and penalties assessed pursuant to violations of this Chapter plus any towing and storage costs incurred. All such fines, penalties, cost and charges shall be paid to the County before the owner may reclaim or secure the release of the vehicle.

Sec. 37. Sections 31A-3(a), 31A-4(b) and 31A-8 of Chapter 31A, title "Motor Vehicle Repair and Towing Registration" be and hereby are amended to read as follows:

31A-3. Application fee.

(a) Any person, firm or corporation desiring to be engaged in business to repair, maintain or tow motor vehicles or install, repair or maintain motor vehicle equipment in the County shall register on the form provided by the County. Each application filed shall be accompanied by an application fee in the amount established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code. The County Executive shall establish a sliding scale for such fees based on the number of employees engaged in repair work and with incentive to participate in voluntary certification through the National Institute for Automotive Service

Excellence. This provision shall not be construed to require the registration of employees.

31A-4. Certificate - Issuance; term; renewal; display.

(b) Registration certificates issued pursuant to this Chapter shall be valid for an initial period of one year from date of issuance; renewal certificates shall be valid for a period of three years. Applicants for renewal shall make application therefor at least thirty days prior to the expiration of their registration and pay such fee as is established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code.

31A-8. Adoption of additional regulations.

The County Executive is hereby authorized to adopt, under Method (2) of Section 2A-15 of this Code, written regulations necessary for the implementation of the provisions of this Chapter.

Sec. 38. Sections 31B-3(d) and (e), 31B-10, 31B-12 and 31B-13 of Chapter 31B, title "Noise Control", be and hereby are amended to read as follows:

31B-3. Administration of Chapter

(d) Within six months after the effective date of this Chapter, the County Executive, with the advice and assistance of the Director, the Noise Control Advisory Board and other appropriate governmental agencies, shall establish in writing the following:

(1) Regulations to be used in measuring noise levels set forth in this Chapter.

(2) Such other noise control regulations and standards as the County Executive, with the advice and assistance of the Director and the Noise Control Advisory Board, may deem necessary and proper to accomplish the purposes and intent of this Chapter including when appropriate, rules, regulations or standards adopted by the State or Federal government as well as regulations or standards revising the noise limits set forth in this Chapter, if such revisions are deemed necessary.

(3) Any such regulation or standard shall be established by the County Executive, by executive regulation adopted under Method (3) of Section 2A-15 of this Code, only after the County Executive or his designee, after

reasonable notice to the public, shall have conducted a public hearing, at which hearing all interested persons shall be given an opportunity to testify and to submit alternative proposals for consideration. In no case shall such regulation or standard become effective prior to October 1, 1976.

(e) (1) Within six months after the effective date of this Chapter, the County Executive, with the advice and assistance of the Director and the Noise Control Advisory Board, shall propose regulations, including standards, for the control of noise due to construction, repair or demolition of structures or facilities within eight hundred feet of occupied residential uses or within four hundred feet of occupied commercial uses.

(2) Any regulation adopted under this subsection shall be adopted under Method (2) of Section 2A-15 of this Code.

31B-10. Noise sensitive areas.

Whenever the protection of the public health, safety and welfare so require, the County Executive, with the advice of the Director and the Noise Control Advisory Board, may designate, in executive regulations adopted under Method (2) of Section 2A-15 of this Code, any geographical area of the County as a noise sensitive area in which certain noise producing activities may be prohibited effective October 1, 1976. Such designation shall include a description of the subject area by reference to named streets, the reasons for determination as a noise sensitive area and a list of those activities which, if undertaken in such area, would constitute unnecessary noise. Such designation may be limited to specified times or days of the week. In cases where the limitations imposed by executive regulation, adopted under authority granted herein, are more stringent than those prescribed by restrictions within this Chapter, such regulations shall control within such noise sensitive areas.

31B-12. Temporary exemptions.

The Director is hereby authorized to grant a temporary exemption from the maximum permissible sound levels established by this Chapter if such temporary exemption would be in the public interest. An application for a temporary exemption shall be accompanied by a fee determined by written regulation of the County Executive, adopted under Method (3) of Section 2A-15 of this Code, in an amount sufficient to defray the administrative costs of

processing the application. Upon receipt of an application for a temporary exemption, the Director shall give public notice of the application and the fact that any adversely affected party may request a public hearing on the application. A temporary exemption must be in writing, signed by the Director or his appointed representative and must set forth the name of the party to whom the exemption is granted, the description and location of the property for which the exemption is authorized, the maximum sound level permitted and the period of time during which the exemption shall be effective and any other conditions or qualifications deemed necessary for the protection of the public. A temporary exemption shall be granted only for a reasonable period of time in view of all the facts and circumstances. A temporary exemption shall not be renewable and shall not be granted more than three times in any one calendar year with respect to a given property and location. In no case shall the holder of a temporary exemption be authorized to exceed the maximum permissible sound levels established by this Chapter by more than 25 dB(A).

31B-13. Special exemptions.

In addition to temporary exemptions provided for in Section 31B-12 of this Chapter, the Director is hereby authorized to grant a special exemption from compliance with any or all of the requirements of this Chapter in the event of hardship or if such exemption would otherwise be in the public interest. An application for a special exemption shall be accompanied by a fee determined by written regulation of the County Executive, adopted under Method (3) of Section 2A-15 of this Code, in an amount sufficient to defray the administrative costs of processing the application. Upon receipt of an application for a special exemption, the Director shall give public notice of the application and the fact that any adversely affected party may request a public hearing on the application.

Sec. 39. Sections 33-3(b), 33-7(b), 33-9(a), 33-12(b), 33-13, 33-13A(d), 33-19(b), 33-47(b), 33-77 and 33-86(g) and (j) of Chapter 33, title "Personnel", be and hereby are amended to read as follows:

33-3. Continuation and administration of Merit System.

(b) The Merit System shall be administered by the Chief Administrative Officer, under the direction of the County Executive, and shall be governed by and subject to the provisions of the Charter for Montgomery County, Maryland,

1978, as amended, provisions of this Chapter, and the personnel regulations adopted by the County Executive under Method (1) of Section 2A-15 of this Code.

33-7. County Executive and Merit System Protection Board responsibilities.

(b) Personnel regulations. The County Executive shall adopt personnel regulations under Method (1) of Section 2A-15 of this Code.

The personnel regulations shall provide the framework for:

(1) The classification of all Merit System positions in the executive and legislative branches;

(2) Minimum qualifications for Merit System positions, methods of determining qualifications and methods of selection for any positions;

(3) Probationary periods, promotions, transfers;

(4) Causes for removal from any Merit System position and methods of removal, including demotions, furloughs and reduction of staff;

(5) Annual, sick and other leave;

(6) Prohibitions against political activity;

(7) Maintenance of personnel records; and

(8) Similar personnel matters as may be provided by law.

33-9. Equal employment opportunity and affirmative action.

(a) Policy. The County's policy shall be to take all personnel actions on the basis of merit and fitness without regard to political affiliation or non-merit factors, and without regard to other factors as may be provided for in Chapter 27 "Human Relations and Civil Liberties" such as sex, marital status, race, religion, national origin, age or handicap. The Chief Administrative Officer shall be responsible for initiating, developing and maintaining such an equal employment opportunity and affirmative action program as necessary to insure all persons an equal opportunity to enter and progress in the County's service on the basis of open competition and demonstrated ability. The County Executive is authorized to issue such regulations, adopted under Method (1) of Section 2A-15 of this Code, as necessary to implement this policy. Such regulations shall provide that an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in an alternate work schedule in order to meet those religious requirements. The regulation shall include provision for any employee who elects to work an alternate schedule to

be obligated to work an equal period of time to that taken off for such religious reasons.

33-12. Appeals of disciplinary actions; grievance procedures.

(b) Grievances. A grievance is a formal complaint arising out of a misunderstanding or disagreement between a Merit System employee and supervisor with reference to a term or condition of employment. Thedetermination of the Board as to what constitutes a term or condition of employment shall be final. Grievances do not include the following: classification allocations, except due process violations; failure to reemploy a probationary employee; or other employment matters for which another forum is available to provide relief or the Board determines are not suitable matters for the grievance resolution process. A grievance shall include termination by resignation which is found by the Board to have been submitted under circumstances which cause the resignation to be involuntary; in the event of such a finding, the Board shall require the appointing authority to substantiate the termination as in the case of a removal. The County Executive shall prescribe, in the personnel regulations adopted under Method (1) of Section 2A-15 of this Code, procedures which seek to secure at the lowest possible level a fair, prompt and mutually satisfactory resolution to grievance. In providing these procedures, the County Executive shall ensure that any grievance based upon an alleged improper application of a Merit System law or regulation concerning a disputed issue of fact is entitled to resolution after a fact-finding inquiry authorized by the Board. Grievances based upon an alleged improper interpretation of Merit System laws or regulations do not require a hearing during the grievance resolution process.

33-13. Appeal procedures.

The County Executive shall prescribe by personnel regulations, adopted under Method (1) of Section 2A-15 of this Code, procedures covering appeals, including grievances which shall include the time limit for filing such appeal, the granting of administrative leave pending appeal, filing and cost of the administrative record, conduct of hearings, requirements for written notice, special evidentiary proceedings in cases where the remedy of employee reinstatement was a contested and unresolved issue in an ordinary appeal hearing and provisions for summary actions by the Board.

33-13A. Audits, investigations and inquiries.

(d) Designate, with the approval of the Council, an alternate special personnel investigator for matters in which he has a conflict of interest or is otherwise unable to pursue.

The special personnel investigator shall be appointed by the County Council for a term of five years, or until his successor is appointed and qualified, subject to removal at the pleasure of the Council and upon the vote of five members of the Council; shall have experience in law or personnel matters; shall be paid a per diem fee as set forth by contract with the County; and shall be reimbursed for necessary expenses.

When an audit, investigation or inquiry gives the Board cause to believe that the Merit System has not been administered in accordance with the provisions of this Chapter or regulations promulgated pursuant thereto, the Board may refer the matter to an appropriate investigative entity, including the special personnel investigator, at the Board's option. Where a complaint is filed by the special personnel investigator, or on its own motion, the Board may hold a hearing and issue a decision ordering such corrective action as it determines to be necessary, including those remedies provided in Section 33-14(c). Where the Board holds a hearing on its own motion, the Board's staff or the special personnel investigator shall be the charging party. In any hearing, the responding party shall include all individuals who may be adversely affected. All investigatory proceedings under this Section shall include due process protections consistent with the purposes of this Chapter and procedures shall be included in the personnel regulations adopted under Method (1) of Section 2A-15 of this Code, which specify these protections in further detail. Nothing herein shall be construed to prohibit the Board from initiating and acting upon audits, investigations or inquiries until such regulations are adopted.

33-18. Deduction for child support.

(g) Director's duties

The Director, upon receipt of the Clerk's determination shall, unless contrary to law, court rule, or the provisions of a collectively bargained agreement, deduct the specified amount from the paycheck of the payor and transfer same to the Clerk. The Clerk shall then forward the amount

of the payment directly to the payee. The Director may also deduct from the amount of the support payment, a fee, established by executive regulation by the County Executive adopted under Method (3) of Section 2A-15 of this Code, not to exceed the reasonable costs of implementing the determination of the Clerk.

(j) Executive regulations.

The County Executive is authorized to adopt regulations, under Method (1) of Section 2A-15 of this Code, for the implementation of the provisions of this Section.

33-19. Day care as alternative fringe benefit.

(b) The County Executive shall adopt executive regulations under Method (1) of Section 2A-15 of this Code for the implementation of this Section. These regulations shall assure that the County's dependent care assistance plan is in conformance with United States Internal Revenue Service requirements.

33-47. Administration by Chief Administrative Officer.

(b) Regulations for administration. The County Executive shall establish regulations, adopted under Method (1) of Section 2A-15 of this Code, for the administration of the retirement system, within the limitations of this Article. The Chief Administrative Officer may engage actuarial and other services and incur expenses as required to transact the business of the retirement system.

33-77. Permanent umpire.

(a) There is hereby created the position of Permanent Umpire, so as to provide for the effective implementation and administration of Sections 33-79 and 33-82 of this Article concerning selection, certification and decertification procedures and prohibited practices. The Permanent Umpire shall exercise the following powers and perform the following duties and functions:

(1) Adopt regulations under Method (1) of Section 2A-15 of this Code, for the implementation and administration of Sections 33-79 and 33-82 as are consistent with this Article;

* * *

Sec. 40. Sections 35-3(c), 35-13A and 35-14(e) of Chapter 35, title "Police", be and hereby are amended to read as follows:

35-3. Same - Powers and duties.

(c) Adoption of regulations, orders, etc., generally. The Director of Police shall adopt, under Method (2) of Section 2A-15 of this Code, all regulations for the County which pertain to the work of the Department of Police. The Director shall issue such additional instructions and adopt such orders, and administrative procedures, not inconsistent with law, as deemed proper in the exercise of the functions of chief executive officer of the Department of Police.

35-13A. Anti-Hate/Violence Fund.

(a) There is created within the Department of Police the Anti-Hate/Violence Fund, to be administered and applied pursuant to regulations adopted by the County Executive under Method (2) of Section 2A-15 of this Code, in exchange for information leading to the arrest or apprehension for commission within Montgomery County of any act described in Section 27-26A of the County Code or proscribed by Sections 10A or 111 of Article 27, Annotated Code of Maryland.

35-14. Generally

(e) The County Merit System Protection Board may adopt regulations within the limitations of this Article and the Employees' Retirement System Ordinance contained in Chapter 33 of this Code to govern the implementation of the provisions of the police relief and retirement fund. These regulations shall be adopted under Method (3) of Section 2A-15 of this Code and shall be made in appendant of the Personnel Regulations.

Sec. 41. Sections 38A-4 and 38A-11 of Chapter 38A, title "Radio, Television and Electrical Appliance Installation and Repair", be and hereby are amended to read as follows:

38A-4. Same - Issuance; bond.

The Director shall issue a certificate of registration to applicants qualified pursuant to Section 38A-3, upon payment of the registration fee established by executive regulation adopted by the County Executive under Method (3) Section 2A-15 of this Code, and upon delivery to the County of a cash bond or a corporate bond executed by a surety company qualified to

transact business in the State in the amount of two thousand dollars. The cash or corporate bond shall be conditioned upon the registrant's performing all work done for consumers in the County in accordance with this Code and laws of the County and State and shall provide that the County or any person damaged by failure of the registrant to comply with such Code and laws may proceed against such bond in any court of competent jurisdiction.

The Director shall immediately revoke the certificate of registration upon failure of any registrant to maintain such bond.

38A-11. Adoption of regulations.

The County Executive is hereby authorized to adopt, under Method (2) of Section 2A-15 of this Code, written regulations necessary for the implementation of the provisions of this Chapter, following public hearing on reasonable notice.

Sec. 42. Section 39-7 of Chapter 39, title "Rat Control", be and hereby is amended to read as follows:

39-7. Regulations.

The County Executive is hereby authorized to adopt, under Method (2), of Section 2A-15 of this Code, and enforce such regulations as he may from time to time find necessary to adopt to carry out the purposes of this Chapter to protect the public health, safety and welfare.

Sec. 43. Sections 41-4 and 41-23(a) of Chapter 41, title "Recreation and Recreation Facilities", be and hereby are amended to read as follows:

41-4. Adoption of rules and regulations.

In order to carry out the objectives of this Chapter, the County Executive is hereby authorized to adopt and amend, from time to time, regulations, under Method (2) of Section 2A-15 of this Code, for the government and use of all land, buildings and other recreational facilities acquired or constructed by or committed to the care or supervision of the County hereunder. Such regulations may include provisions limiting the use of any such recreational facility for reasons of health, safety, comfort or morals; for fees for the use of any such facility or service in connection therewith, provided, that such fees shall not exceed the cost of providing the same; for the issuance of permits by the Director of Recreation to individuals or groups of individuals for the use of any such facility, which permits may

grant exclusive use thereof or limit the permittee to a particular area or facility.

41-23. Same - Officers; committees; by-laws; meetings; quorum; compensation of members.

(a) The chairperson of the County Recreation Board shall be elected by the membership annually. The County Recreation Board is authorized to elect other officers, to establish committees of its members and to adopt by-laws and adopt regulations, under Method (2) of Section 2A-15 of this Code, for the conduct of its affairs as it deems desirable.

Sec. 44. Sections 41A-2(a), 41A-3(c) and (e), 41A-7(a), 41A-9(a) and 41A-12 of Chapter 41A, title "Rent Supplement and Assistance Programs", be and hereby are amended to read as follows:

41A-2. Eligibility for rent supplement.

(a) Rent supplement for tenants in the form of grants authorized under this Chapter may be allowed to any tenant who meets the following conditions:

* * *

(4) The combined gross income shall not exceed an income limit specified by executive regulation, adopted by the County Executive under Method (1) of Section 2A-15 of this Code; however, incomes in excess of the income limit shall be entitled to a partial rent supplement as specified in paragraph 41A-3(c).

41A-3. Rent supplement amount, calculation, method of payment, regulations.

(c) The amount of the rent supplement shall be three percentum (3%) of the difference between a calculation base specified by executive regulation, adopted under Method (1) of Section 2A-15 of this Code, and the combined gross income. When the combined gross income exceeds the income limit, the rent supplement amount calculated under the above formula shall be reduced by 25% of the excess of such income above the income limit.

(e) The County Executive may adopt regulations, under Method (1) of Section 2A-15 of this Code, necessary to administer this Chapter.

41A-7. Rental assistance program for handicapped persons needing supporting services.

(a) Purpose. The purpose of this Article is to provide rental assistance to handicapped persons needing supporting services, such persons

being unable to live independently of such services, and whose income meets requirements established by the County Executive by regulations adopted under Method (1) of Section 2A-15 of this Code.

41A-9. Eligibility for rental assistance.

Eligibility for rental assistance under this Article shall extend to those handicapped persons who:

(a) Meet the income requirements of regulations adopted by the County Executive under Method (1) of Section 2A-15 of this Code; and

41A-12. Amount of rental assistance.

The amount of rental assistance hereunder shall be calculated on a monthly basis by adjusting the recipient's monthly gross income by subtracting any medical expenses allowed under the executive regulations and multiplying the difference by 25% and then subtracting the product from the recipient's actual monthly rent. In no event can the combined total of the monthly rental assistance payment and the recipient's monthly share of the rent exceed $200.00 per individual per month. The monetary figure mentioned above shall be reviewed annually and modified, if necessary, by regulation adopted by the County Executive under Method (1) of Section 2A-15 of this Code.

Sec. 45. Sections 44-3(a)(5) and 44-22 of Chapter 44, title "Schools and Camps", be and hereby are amended to read as follows:

44-3. Interagency Coordinating Board.

(a) There is hereby established the Interagency Coordinating Board for Community Educational Services, the principal responsibility of which shall be to review and coordinate the activities conducted under this Article. This responsibility shall include:

(5) Adopt regulations, under Method (2) of Section 2A-15 of this Code, as may be necessary to implement the requirements of this Act; and

44-22. License fees.

Annual fees for licenses issued under this Division shall be of such an amount as the County Executive, by regulation adopted under Method (3) of Section 2A-15 of this Code, may set from time to time. The fees shall not exceed the cost of inspection and issuing the permits for the various establishments regulated by this Chapter. The permit fee so fixed shall be submitted with the application and is not refundable in whole or in part

unless the application is withdrawn prior to an inspection of the premises by the Director of the Department or his/her authorized agent. If the application is withdrawn prior to the inspection, the entire permit fee shall be refunded.

Sec. 45A. Sections 44A-3(b), 44A-4(c), 44A-5, 44A-8(b) and (c), 44A-9, 44A-11(b) and 44A-16 of Chapter 44A, title "Secondhand Personal Property" of the Montgomery County Code 1972, as amended, be and hereby are amended to read as follows:

44A-3. Required books and records.

(b) A dealer shall cause a written record, in the English language, to be made of each transaction involving a purchase, acquisition or receipt by or on behalf of the dealer of secondhand personal property at the time of the transaction. Each transaction shall be recorded in a format specified by executive regulation, adopted under Method (3) of Section 2A-15 of this Code, and shall contain the following information:

* * *

44A-4. Retention of secondhand personal property.

(c) The requirements of subsections (a) and (b) shall not be applicable to any secondhand personal property which has been inspected and received written clearance for earlier disposition by the Director or his designee in accordance with regulations adopted by the County Executive under Method (3) of Section 2A-15 of this Code.

44A-5. Exemption for certain dealers.

The County Executive may, by regulation adopted under Method (3) of Section 2A-15 of this Code, modify or eliminate the licensing, holding, recordkeeping or reporting requirements of this Chapter as they pertain to dealers who derive less than 10% of their gross personal property sales from the sale of secondhand personal property.

44A-8. Application for license; license fee.

(b) The annual license fee for each license shall be established by the County Executive, by written regulation adopted under Method (3) of Section 2A-15 of this Code, in an amount not to exceed the estimated costs of administering and enforcing this Chapter.

(c) Each application for a dealer's license shall contain a statement that the applicant authorizes the Montgomery County Department of Police or other police departments having jurisdiction to inspect the books, records, inventory and premises of the business during normal business hours, and a statement that the dealer agrees to pay for the purchase of any secondhand personal property by check and not to cash any such check, except as permitted by executive regulation adopted under Method (3) of Section 2A-15 of this Code.

44A-9. Payments by check.

A dealer must pay for the purchase of all secondhand personal property by check, except as permitted by executive regulation adopted under Method (3) of Section 2A-15 of this Code.

44A-11. Expiration and renewal of license; prohibition on transfer.

(b) A license issued under this Chapter may be renewed on application and payment of a fee established by the County Executive by regulation adopted under Method (3) of Section 2A-15 of this Code, which shall not exceed the estimated costs of administration and enforcement.

44A-16. Regulations; restitution.

The County Executive shall adopt under Method (2) of Section 2A-15 of this Code, reasonable and necessary regulations for the implementation and administration of this Chapter. These regulations may include provisions providing for the County to, and the County may, obtain restitution on behalf of an injured party.

Sec. 46. Sections 47-13 and 47-22 of Chapter 47, title "Solicitors, Hawkers and Peddlers", be and hereby are amended to read as follows:

47-13. License - Fee; issuance; contents.

A fee to cover the cost of investigating the applicant for a license and processing of the application under this Article shall be paid to the County when the application is filed, and shall not be returnable under any circumstances. The County Executive may from time to time, by executive regulation adopted under Method (3) of Section 2A-15 of this Code, change such fee to an amount not to exceed the reasonable costs of licensing and enforcement under this Article. Unless, after investigation, the Director finds that the applicant has not complied with this Article or is not of good moral character, he/she shall issue a license upon the posting of the bond as

provided in the preceding Section which shall show the name and address of the solicitor and the date of issuance and expiration of the license, and one of the photographs submitted by the solicitor shall be attached to the license. No license shall be issued to any holder of a license issued under this Article within one year of a revocation. In determining good moral character, the reputation of the applicant, his criminal record, if any, and license history in this or other jurisdictions shall be considered. Emphasis in reaching a decision on moral character shall be given to any convictions for crimes of violence, sex offenses, violations of the gaming, narcotic, alcoholic beverage laws and fraud. No person shall be denied a license solely on the grounds of previous convictions or penal servitude, if, in fact, his record, conduct and habits for a period of three years after conviction or release from penal servitude, whichever is later, indicate that he is a proper person to be licensed under the standards of this Article.

47-22. Same - Fee; license year.

For each license required by the preceding Section, each person shall pay a fee which shall be established and may be revised from time to time by the County Executive by written regulations adopted under Method (3) of Section 2A-15 of this Code in an amount not to exceed the reasonable costs of administration and enforcement of this Article. The fee schedule shall provide for a license fee for different periods of time up to one year.

Sec. 47. Sections 48-6, 48-26, 48-29(d) and 48-32(a) of Chapter 48, title "Solid Wastes", be and hereby are amended to read as follows:

48-6. Regulations for collection or disposal.

Collection or disposal of solid waste shall be in accordance with such regulations, which may include the imposition of reasonable fees to cover the cost of inspection and licensing, as the County Executive shall, from time to time, adopt under Method (2) of Section 2A-15 of this Code; provided, that no incorporated town or special taxing area shall be required to pay any fees for inspection and licensing.

48-26. Same - Fees.

Permit or license fees under this Chapter shall be fixed annually by executive regulation adopted by the County Executive under Method (3) of Section 2A-15 of this Code. The fees shall not exceed the cost of inspection,

licensing and enforcement of this Chapter.

48-29. Solid waste collection districts.

(d) The County Executive shall fix charges annually, for solid waste collection and disposal services, so as to coincide in time with the fixing of the annual real property tax rates; such charges shall correspond as closely as practicable to the actual cost to the County to perform such services; provided, that if such collection or disposal charges, together with manner of collection, are prescribed by law, the charges and manner of collection established by such law shall prevail. The County Executive is authorized to adopt under Method (3) of Section 2A-15 of this Code, all necessary regulations for the implementation and enforcement of this Chapter, which regulations shall have the force and effect of law.

48-32. Imposition; amount; exemptions.

(a) A base solid waste disposal charge is herein established at a fixed rate per ton, to be determined by resolution of the County Council, for any and all types of disposable refuse delivered by any person or agency, public or private, to the County solid waste acceptance facilities. The County Executive is authorized, by written regulation adopted under Method (2) of Section 2A-15 of this Code, to provide for a charge different from the base solid waste charge for any particular type of disposable refuse which has a cost of disposal different from the base solid waste charge or for which any other jurisdiction in the metropolitan Washington, D.C., area is charging more than the base charge of the County. The Council may, by resolution, after considering any recommendations from the County Executive, change such base rate, following notice and a public hearing on such a change; the effective date of any change in the base solid waste disposal charge shall provide adequate time to allow public and private agencies and organizations to make necessary billing adjustments.

Sec. 48. Sections 49-1, 49-4, 49-7, 49-23(a), 49-27, 49-33, 49-33A(c), 49-36, 49-38(b), (c) and (g), 49-40(e), 49-68A and 49-75 of Chapter 49, title "Streets and Roads", be and hereby are amended to read as follows:

49-1. Regulations and ordinances - Authority to adopt, etc.

The County Council is hereby authorized to adopt, and from time to time change and amend, any and all necessary and reasonable regulations and

ordinances governing the proper use, care, construction, reconstruction, improvement, grading, repairing and maintenance of the County roads, lanes, streets, alleys, avenues, bridges or other highways, including those dedicated for public use, but excepting those located within incorporated towns and incorporated special taxing areas of the County. The County Executive is also authorized to adopt, and from time to time, amend and change any and all necessary and reasonable regulations governing the aforegoing matters which are not inconsistent with or superseded by any regulation, ordinance or law adopted or enacted by the County Council. The Council is hereby authorized to provide reasonable penalties for the violation of all such regulations and make other necessary provisions for the enforcement thereof. All such regulations when adopted under Method (2) of Section 2A-15 of this Code shall have the force and effect of law.

49-4. Authority of citizens' committees of special taxing areas to regulate construction, maintenance, etc., of streets and roads.

The citizens' committee of any special taxing area, which committee has the authority and duty to pave and maintain streets, roads or other highways in its area, is hereby authorized to adopt, and from time to time, change and amend reasonable regulations and orders under Method (2) of Section 2A-15 of this Code with reference to the proper construction, maintenance, improvement, grading and repairing of the roads, lanes, streets, alleys, avenues, bridges or other highways in taxing areas, including those dedicated for public use. Thereafter no public road, lanes, street, alley, avenue, bridge or other highway within such special taxing area, including those dedicated for public use, shall be constructed, repaired, graded, improved or maintained by any person, association or corporation unless such construction, repairing, improvement, grading or maintenance comply in all particulars with such regulations and orders. In adopting such regulations and orders, the aforesaid citizens' committee may, by resolution, adopt all or part of the regulations and orders promulgated by the County Council of Montgomery County for the construction, maintenance, improvement, grading and repairing of the County roads, lanes, streets, alleys, avenues, bridges or other highways. Any person, association or corporation violating any provisions of this Section or any regulation or order of any citizens' committee passed pursuant hereto

shall be subject to punishment for a Class B violation as set forth in Section 1-19 of Chapter 1 of this Code. Each day's violation shall constitute a separate offense.

49-7. Permit required for grading, etc., projects; fee.

Before any street, sidewalk, gutter, curb, grading project or drainage project may be begun on a County road or street or within the boundaries of a dedication to the public use, the applicant for a permit to undertake any such project shall pay to the County, as an inspection and engineering fee, such fee as may be provided by written regulation of the County Executive, adopted under Method (3) of Section 2A-15 of this Code, for the construction of any such street, sidewalk, gutter, curb, grading project or drainage project.

Any person who violates any provision of this Section shall, upon conviction, be fined not more than one thousand dollars or imprisoned for not more than one year, or both, for each offense.

49-23. Licensing and regulating hoisting.

(a) Whenever, in the judgment of the County Executive, it is necessary for the safety and control of vehicular or pedestrian traffic, he is hereby authorized to issue written safety regulations, adopted under Method (3) of Section 2A-15 of this Code, restricting or limiting the movement or use of any material, platform hoist, bucket hoist, crane, derrick, material hoist tower or any other device designed to hoist anything whatsoever on or over any public street, right-of-way or public place.

49-27. Conversion of existing overhead public utility lines to underground locations.

Whenever it shall be necessary as the result of the construction or improvement of any County road to relocate any overhead electric, telephone, telegraph or other overhead lines of any kind, or related facilities, within any such County road right-of-way, the County Executive shall, by written regulation adopted under Method (3) of Section 2A-15 of this Code, require that any such lines be installed underground if he determines that such underground installation is required by one or more of the following conditions:

* * *

49-33. Standards and specifications.

Except as otherwise provided, the construction of all roads shall conform to the minimum requirements, standards and specifications provided in this Article. Whenever used in this Article the word "standards" means Montgomery County Design Standards, and the word "specifications" means Montgomery County Standard Specifications. The Montgomery County Design Standards and Montgomery County Standard Specifications are hereby adopted and made a part of this Article. The "standards" and "specifications" adopted hereby may be amended by the County Executive by regulation adopted under Method (2) of Section 2A-15 of this Code. The Secretary of the County Council shall keep among the official records the standards and specifications, as adopted by the County Council, together with any amendments thereto. The Secretary shall also prepare and make available to the public printed copies of this Article and of such standards and specifications, and they shall be given such free distribution or sold for such price as the County Executive may determine from time to time.

49-33A. Pedestrian walkways, bikeways and wheelchair traffic.

(c) In order to promote the safety of bicycle and wheelchair travel throughout the County, the County Executive shall establish, by written regulation adopted under Method (3) of Section 2A-15 of this Code, standards and specifications for the construction and maintenance of ramps at curbed intersections and for the construction and maintenance of storm water gratings and other openings along roads and streets of such a design and type as not to constitute a hazard to bicycle and wheelchair traffic. Such nonhazardous ramps, gratings and openings shall be constructed and maintained in connection with all projects implemented pursuant to subsections (a) and (b) of this Section.

49-36. Classification by County Executive.

No person shall construct any road and the County shall not authorize any road to be constructed or issue any permit therefor, until such proposed road shall have been classified by the County Executive as prescribed in this Section. All classifications of roads shall be by written regulation, adopted by the County Executive under Method (2) of Section 2A-15 of this Code, which shall include a statement of facts and conclusions in support thereof.

Classifications of any road may be changed from time to time in like manner. An alphabetical name file of all roads within the County to which this Article applies, indicating their classification and status as either "maintained", "accepted for maintenance" or "not maintained" shall be kept by the County. A similar file listing all roads according to election district and road number shall also be kept.

49-38. Permits for grading and construction - Required; application; fee.

(b) Before any road, sidewalk, curb and gutter or drainage project, except a project which is entirely a grading project, may be begun on a road or within the boundaries of a dedication to the public use, the applicant for a permit to undertake any such project shall pay to the County a fee which shall be established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code.

(c) Where any such project is entirely a grading project, the applicant shall pay a fee to the County as an inspection and engineering fee when the office of the Director does the engineering work on such project and a separate fee when the applicant for the permit furnishes the engineering work. The fees for grading projects shall be established and may be revised from time to time by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code.

(g) No person shall construct sidewalks, driveway entrances, retaining walls, steps, cut curbs or construct or place any temporary or permanent structure within a public right-of-way without first obtaining a permit therefor from the Director of Transportation, and without paying a fee which shall be established and may be revised from time to time by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code.

49-40. Street and road bonds.

(e) The County Executive is authorized to adopt regulations, under Method (3) of Section 2A-15 of this Code, to implement the provisions of this section. The Director shall recommend permit fees to include amounts as may be necessary to cover any increased costs of administration of any of the programs set forth in this Section.

49-68A. Application filing fee.

Except for applications by the County and other governmental agencies, no application under this Article shall be received for filing unless it is accompanied by the payment of a filing fee in the amount of one hundred and twenty-five dollars or such other amount established by regulations of the County Executive, adopted under Method (3) of Section 2A of this Code, to defray the cost of hearing and other expenses of such application.

49-75. Adoption of regulations.

The County Executive is authorized to adopt, under Method (2) of Section 2A-15 of this Code, necessary regulations concerning freeways or expressways; such may include, but not be limited to, further provisions for the establishment, construction, use and access to freeways or expressways.

Sec. 49. Sections 51-11 and 51-12(a) of Chapter 51, title "Swimming Pools" be and hereby are amended to read as follows:

51-11. Fees.

The fee for obtaining any license, permit or registration as provided in this Chapter shall be such amount as the County Executive, by regulation adopted under Method (3) of Section 2A-15 of this Code, may set from time to time. No separate pool operating permit shall be required for a wading or spray pool. A separate fee, in such amount as the Executive may set by regulation adopted under Method (2) of Section 2A-15 of this Code, from time to time, will be charged for administration of the examination to applicants for a pool operator's license as provided in this Chapter. Fees shall not exceed the reasonable costs of administering and enforcing this Chapter. There shall be no operating permit fee charged for any pool operated by the County.

51-12. Regulations.

(a) The County Executive is authorized and designated to prescribe and issue written regulations, adopted under Method (2) of Section 2A-15 of this Code, for the implementation and operation of public swimming pools and public swimming pool construction as may be necessary from time to time to implement the provisions of this Chapter.

(b) Each person selling, constructing or installing a swimming pool in Montgomery County shall provide the purchaser or owner with a current copy of this Chapter.

Sec. 50. Sections 52-7(k), 52-8, 52-16B(k), 52-18A(c), 52-18B(k), 52-18C(m), 52-18D(d), 52-21(d), 52-21(h)(4) and 52-21(i)(4) and (7) of Chapter 52, title "Taxation", be and hereby are amended to read as follows:

52-7. Same - Purchase by County taxpayers; denominations; increase in value; form; redemption; nontransferable; limitation on amount issued; lost or stolen certificates.

(k) The County Executive is authorized to establish regulations, adopted under Method (3) of Section 2A-15 of this Code, for the replacement of lost or stolen certificates upon proof of loss satisfactory to the Director.

52-8. Certification of payment of taxes; fees; liability for errors, etc.

For certifying the payment or nonpayment of ordinary taxes, to persons other than the Council or the head of any department of the County government, the Director of Finance shall charge and collect a fee for each such certification as shall be established by the County Executive by written regulations adopted under Method (3) of Section 2A-15 of this Code and in an amount not to exceed the cost of administering and providing for liability under this Section.

In addition, the Director of Finance shall charge and collect a fee which shall be established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code for each certification of payment or nonpayment of any farmland transfer tax due under Section 52-21.

All such certifications shall certify the taxes that are paid or unpaid according to the records of the County but neither the Director of Finance nor any official authorized by him to make such certification shall be personally liable for any error in such certificate unless the error be caused by his willful, capricious or fraudulent act. In the event of the failure to list on such certificate unpaid taxes for the period covered by such certificate, or the failure to list properly payment or nonpayment of the farmland transfer tax due under section 52-21, the liability of the County on such certificate shall be limited to the amount of such unpaid taxes, interest and penalties.

52-16B. Beverage container tax.

(k) Additional provisions. The County Executive may adopt regulations, adopted under Method (2) of Section 2A-15 of this Code, necessary to implement and clarify the provisions of this tax.

52-18A. Tax credit for certain nonprofit organizations.

(c) The County Executive is delegated authority to prepare such regulations, adopted under Method (2) of Section 2A-15 of this Code, as the County Executive determines may be needed for the administration of tax credits to the extent such administrative rules and regulations are not inconsistent with Section 9C, Article 81, Annotated Code of Maryland.

52-18B. Moderate income multi-family rental housing facility real property tax deferral.

(k) The County Executive is authorized to adopt regulations, under Method (2) of Section 2A-15 of this Code, for the administration of this deferral program.

52-18C. Residential real property tax deferral.

(m) The County Executive is authorized to adopt regulations, under Method (2) of Section 2A-15 of this Code, for the administration of this deferral program.

52-18D. Tax credit for Great Hope Homes Limited.

(d) The County Executive is delegated authority to prepare such regulations, to be adopted under Method (3) of Section 2A-15 of this Code, as the Executive determines may be needed for the administration of tax credit to the extent such administrative regulations are not inconsistent with Section 9C, Article 81, Annotated Code of Maryland.

52-21. Levied; amount.

(d) A percentage of the value of the consideration for the transfer of land, excluding improvements thereon, which, while owned by the transferor, has been assessed at any time during the five years preceding transfer on the basis of being actively devoted to farm or agricultural use or which while owned by the transferor has been valued and assessed on the assessment records on the basis of the agricultural use value assessment at any time during the five years preceding transfer, said tax to be paid by the transferor of such land, which percentage shall vary according to the following schedule:

(1) Land assessed and taxed to the transferor for one year on the basis of farm or agricultural use, two and one-half percent.

(2) Land assessed and taxed to the transferor for two years on the basis of farm or agricultural use, four percent.

(3) Land assessed and taxed to the transferor for three years on the basis of farm or agricultural use, five and one-half percent.

(4) Land assessed and taxed to the transferor for more than three years on the basis of farm or agricultural use, six percent.

Improvements and land which were not assessed based on farm or agricultural use and are not subject to the farmland transfer tax levied in subsections (d)(1), (2), (3), or (4) and are transferred as a part of a transaction including a transfer of land previously assessed as farmland, shall be taxed as provided in other subsections of this Section 52-21 as if such improvements and land were not part of a transaction including farmland. Consideration for the improvements and non-farm-assessed land shall be presumed to be the total full cash value most recently determined by the Supervisor of Assessments based on the most recent notice of assessment. The presumption may be rebutted by clear and convincing evidence.

Where the transfer is subject both to the tax imposed by this subsection (d) and the tax imposed by subsection (e) below, the tax imposed by subsection (e) shall be the only tax imposed on the transfer.

The County Executive may from time to time issue written regulations adopted under Method (3) of Section 2A-15 of this Code, pertaining to the collection of the tax levied in this subsection.

(h) Four percent of the value of the consideration for the initial transfer of a residential unit subject to a condominium regime, which unit was offered for rent for residential purposes prior to the establishment of the condominium regime.

* * *

(4) The County Executive may adopt regulations, under Method (2) of Section 2A-15 of this Code, for the implementation of the purposes set forth above. Expenditures from the fund shall be authorized by appropriation by the County Council.

* * *

(i) Four percent of the value of the consideration for the initial transfer of stock or other evidence of membership in a cooperative or similar entity where such stock corresponds to a residential unit which is being converted from rental status to a system of cooperative housing corporation ownership under which title to a multi-unit residential facility is held by a corporation, the shareholders or members of which, by virtue of such ownership or membership, are entitled to enter into an occupancy agreement for a particular residential unit.

* * *

(4) The County Executive may adopt regulations, under Method (2) of Section 2A-15 of this Code, for the implementation of the purposes set forth above. Expenditures from the fund shall be authorized by appropriation by the County Council.

* * *

(7) For purposes of subsection (i), a transfer or issuance of stock or other evidence of membership from the cooperative housing corporation to the developer shall not be deemed to be the initial transfer. The County Executive may from time to time issue written regulations, adopted under Method (2) of Section 2A-15 of this Code, to define any terms or to effectuate the purposes of this subsection (i).

* * *

Sec. 51. Sections 53-18, 53-19(c) and (e), 53-37A, 53-42 and 53-46(c)(5) of Chapter 53, title "Taxicabs and Limousines" be and hereby are amended to read as follows:

53-18. Vehicle equipment - Taximeters.

Each taxicab for which a passenger vehicle license has been issued under this Chapter shall be equipped, while in service, with an accurate, properly installed and connected taximeter which has a security seal affixed by the Office of Consumer Affairs. Periodic tests of such meters will be made. Upon successful completion of the tests, the taximeter shall be affixed with a security seal. These tests should be scheduled by the County in such a manner as to minimize the interruption of taxicab service to the public. Except as otherwise specified, the requirements for approval and methods of testing and operation of taximeters shall conform to specifications,

tolerances and regulations for taximeters as set out in the National Bureau of Standards Handbook 44, or as may be established by executive regulation adopted under Method (3) of Section 2A-15 of this Code. It shall be unlawful and cause for revocation or suspension of identification card or passenger vehicle license for any person:

(a) To make any change in the mechanical condition of wheels, tires and gears of any taxicab with intent to cause false registration by the meter of the fare to be charged any passenger.

(b) To make any charge for transportation other than computed by the taximeter with a security seal, provided, however, that the Director of the Department of Transportation, or his or her authorized designee, may grant a waiver to this provision for a contract filed therewith that permits lower rates than those computed by the taximeter upon a written determination that the contract provision will not result in a significant reduction of service to the general public as provided under Section 53-31.

53-19. Schedule of fare rates.

(c) Adjustments of rates. The County Executive may adjust such rates, by executive regulations adopted under Method (3) of Section 2A-15 of this Code, as he or she deems necessary in the public interest after public notice and hearing and after giving consideration to the recommendations of the Taxicab Service Advisory Committee.

(e) The County Executive is authorized to adopt regulations, under Method (2) of Section 2A-15 of this Code, to include but not be limited to a taxicab reporting system in order to carry out the intent of this Article.

53-37A. Regulations.

The County Executive is hereby authorized to establish in writing regulations, adopted under Method (2) of Section 2A-15 of this Code, necessary and proper to carry out the purposes and intent of this Chapter.

53-42. Insurance required of applicants.

Before issuing any passenger vehicle license under this Article, the Department of Transportation shall ascertain as to each vehicle licensed that the owner has insurance or surety for the vehicle covering bodily injury or death to any passenger or other person, and property damage in the amounts required by regulations adopted by the County Executive under Method (3) of

Section 2A-15 of this Code, and further that such insurance surety covers the full period for which the vehicle is to be insured.

If at any time, for any reason, the insurance or surety coverage lapses during the license year, the license shall be immediately suspended without notice or hearing, and the Director or his agent shall proceed immediately to obtain possession of the license and shall not reissue it until the insurance or surety requirements are fully met.

53-46. Issuance; maximum number; waiting list; rights of heirs of deceased licensee.

(c) Authorized, unissued passenger vehicle licenses shall be issued in accordance with the following procedure and determinations:

(5) Applications for a passenger vehicle license shall be processed in accordance with the following procedures:

a. Application shall be made in writing to the Department of Transportation in accordance with Section 53-40 of this Chapter.

b. Upon receipt of any such application, the Department of Transportation shall give due notice thereof to the public by posting a notice of such application in the office of the Department and by causing copies of such notice to be transmitted to such other persons as the Department may by regulation determine. Any interested person may file with the Department a protest or memorandum of opposition to or in support of the grant of any such application. The County Executive shall, by regulation adopted under Method (3) of Section 2A-15 of this Code, determine the duration of such posting and any limitations of time applicable to the giving of notice and the filing of protests or memoranda and such periods of time shall be sufficient in duration to most nearly assure actual notice and opportunity to be heard to all interested persons.

c. The Department may act without a public hearing to recommend disposition of any application as to which neither a protest nor a memorandum in the opposition has been duly furnished to the Department within the prescribed time. The Department shall set all other applications for public hearing, at which oral and written evidence, testimony and argument shall be received from the applicant and other interested persons. The County Executive shall, by written regulation adopted under Method (3) of Section

2A-15 of this Code, establish procedures which will assure that interested persons receive actual notice and an opportunity to participate in such hearing.

* * *

Sec. 52. Sections 53A-3, 53A-8(c) and 53A-10 of Chapter 53A, title "Tenant Displacement", be and hereby are amended to read as follows:

53A-3. Right of first refusal to purchase rental facilities.

(a) Sale of rental facilities.

Prior to the sale or transfer of a rental facility of more than ten rental units to any person for the purpose of conversion, the owner shall provide a right of first refusal to purchase the rental facility to the County, its designated housing agency and tenants' organizations certified by the Office of Consumer Affairs pursuant to executive regulations adopted under Method (3) of Section 2A-15 of this Code.

* * *

(b) Notice required; exercise of right of first refusal.

* * *

(4) The County Executive may require the owner, by executive regulations adopted under Method (3) of Section 2A-15 of this Code, to make available to the County, its designated housing agency and certified tenants organization information regarding the characteristics and condition of the facility deemed relevant to the exercise of the right of first refusal, including but not limited to architectural and engineering plans and specifications and facility operating data. In addition, the County Executive, by regulation adopted under Method (3) of Section 2A-15 of this Code, may require the owner to provide access to the facility for purposes of inspection by the County, its designated housing agency, and certified tenants organization, provided, the County, its designated housing agency, and certified tenants organization, and their agents shall be responsible for any damage to the property caused by such inspection. The County Executive may provide, by regulation adopted under Method (3) of Section 2A-15 of this Code, that any information received by either the County or its designated housing agency, pursuant to this subsection, is confidential and not subject to public disclosure.

* * *

53A-8. Notice to tenants of status conversion; right of tenant to terminate lease; liability for relocation costs.

(c) Any tenant who, within one hundred eighty (180) days after receipt of a notice of intention to convert the status or use of the rental facility, under this Chapter, gives written notice of intent to move to the owner, shall be entitled to reimbursement by the owner for the reasonable costs of relocation assistance as determined by executive regulation, adopted under Method (3) of Section 2A-15 of this Code, up to $750.00, provided that complaints regarding the application of this subsection may be filed with the Office of Landlord-Tenant Affairs.

53A-10. Administration of Chapter.

The Office of Consumer Affairs shall be responsible for administration of this Chapter and the County Executive shall, from time to time, issue such written regulations, adopted under Method (2) of Section 2A-15 of this Code, as may be necessary to put into effect and to administer the provisions of this Chapter.

Sec. 53. Sections 54-2, 54-15, 54-19 and 54-23 of Chapter 54, title "Transient Lodging Facilities", be and hereby are amended to read as follows:

54-2. Authority of County Executive to regulate and license.

The County Executive, in order to implement the health standards and regulations of this Chapter, is hereby authorized by law to adopt such regulations, under Method (3) Section 2A-15 of this Code, concerning the operation, maintenance and conduct of any of the types of establishments referred to in this Chapter, including provision of such licenses and license fees for such establishments as he may deem appropriate. Neither the provisions of this Chapter nor the provisions of any law adopted hereunder shall be applicable within the corporate limits of any incorporated municipality or special taxing area within the County which by law has authority to enact similar regulations.

54-15. Application.

Before an annual license for any establishment shall be issued by the Director under this Division, an application shall be filed by the owner or operator, or his duly authorized agent, in accordance with the regulations prescribed by the County Executive under Method (3) of Section 2A-15 of this Code.

54-19. Fees.

The annual fees for licenses under this Division shall be established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code.

54-23. Change of location of establishment; transfer.

(a) Whenever an establishment changes its location, the current license held by such owner or operator under this Division shall automatically become void.

(b) The Director may, in his discretion, authorize the transfer of a license issued under this Division to a new owner or operator upon an application for transfer of the license and payment of a transfer fee which shall be established by the County Executive by written regulation adopted under Method (3) of Section 2A-15 of this Code.

Sec. 54. Sections 56-1, 56-2A, 56-6, 56-30(h) and 56-34 of Chapter 56, title "Urban Renewal and Community Development", be and hereby are amended to read as follows:

56-1. Rehabilitation loan fund.

The County Council is hereby empowered and authorized by resolution to establish and thereafter to maintain a special fund to be known as the "rehabilitation loan fund" for the purpose of making loans to homeowners of low income to finance rehabilitation required to make their homes or mobile homes conform to applicable County Code requirements, provided such loans are not available on reasonable terms and conditions from other sources. The County Executive shall prescribe from time to time such regulations, adopted under Method (2) of Section 2A-15 of this Code, deemed appropriate for the making of such loans and the administration of the fund, including the right to contract with private organizations for the administration of such fund.

56-2A. Authority to establish.

The County Council is hereby empowered and authorized by resolution to establish and thereafter to maintain a special fund to be known as the "homeowners' replacement loan fund" for the purpose of making direct loans to homeowners of low income, whose present homes cannot be rehabilitated to conform with applicable County Code requirements, to finance new homes, including prefabricated and mobile homes and to finance the purchase of land

upon which a home is situated; provided, that such loans are not available on reasonable terms and conditions from other sources. The County Executive shall adopt under Method (2) of Section 2A-15 of this Code, from time to time such regulations as he or she shall deem appropriate for the making of such loans and the administration of the fund, including the right to contract with private organizations for the administration of such fund; provided, that the loans available under this fund shall be limited to those individuals whose income and net worth preclude home financing through normal banking or other financial channels. In determining the availability to the property owner of adequate commerical financing, the following shall be taken into consideration:

* * *

56-6. Administration.

The homeowners replacement loan fund shall be administered by the Director of Housing and Community Development, pursuant to regulations to be adopted by the County Executive, under Method (2) of Section 2A-15 of this Code.

56-30. Powers and authority of County.

(h) Eligibility standards. Adopt and revise standards, by executive regulations adopted under Method (2) of Section 2A-15 of this Code, for eligibility for renting or purchasing opportunity housing, and establish and revise the rents, sales prices or charges therefor; such rents, sales prices or charges to be based upon a set of maximum income or other financial limits to be established and revised by the County Executive for eligibility and admission to such opportunity housing. In establishing and revising such income limits, the County Executive shall consider all available statistical data indicating the minimum rentals and sales prices of dwelling units or housing available or being produced in the private market, including sales price data from the County's Department of Finance; the vacancy ratio in rental units; the currently prevailing prices at which private enterprise can and will produce sales and rental units; and any other statistical data which at the discretion of the County Executive is deemed appropriate and relevant to the general market and economic conditions that currently exist.

56-34. Financial assistance.

(a) The County Council is hereby empowered and authorized by resolution to establish and thereafter to maintain a special fund to be known as the "tenant displacement aid fund" for the purpose of making grants and loans to persons of eligible income, as follows:

(1) Down payment assistance loans

a. Down payment assistance loans may be made from the tenant displacement fund to persons who are eligible for the following reasons: a household member is 62 years of age or older at the time of the application or is physically or mentally handicapped as defined by executive regulation adopted by the County Executive under Method (2) of Section 2A-15 of this Code, and has an income within the moderately priced dwelling unit ordinance income limits and is being displaced or threatened by displacement as a result of a rental facility changing in status or use, including, but not limited to, the establishment of a condominium regime, the establishment of a cooperative housing project, the establishment of a commercial use of a facility, or partial or complete demolition.

* * *

(2) Rental assistance grant

a. Grants from the tenant displacement aid fund may be made for rent differential assistance, as defined by executive regulations adopted by the County Executive under Method (2) of Section 2A-15 of this Code, to persons who are eligible for the following reasons: a household member is 62 years of age or older at the time of the application or is physically or mentally handicapped as defined by executive regulation, and has an income within the moderately priced dwelling unit ordinance income limits, and is being displaced or threatened by displacement as a result of a rental facility changing in status or use, including, but not limited to, the establishment of a condominium regime, the establishment of a cooperative housing project, the establishment of a commercial use of a facility, or partial or complete demolition.

* * *

(b) Grant payments to the Housing Opportunities Commission may be made for the purchase of rental units converting to condominium or other status. The County Executive shall prescribe from time to time, such terms,

conditions, regulations, adopted under Method (2) of Section 2A-15 of this Code, as he shall deem appropriate for the making of grants and the administration of the fund.

(c) The County Executive shall prescribe from time to time regulations adopted under Method (2) of Section 2A-15 of this Code, as he shall deem appropriate for the making of all grants and loans and the administration of the fund.

* * *

Sec. 54A. Sections 56A-5(a), 56A-8 and 56A-9(b) of Chapter 56A, title "Video Games", be and hereby are amended to read as follows:

56A-5. License fees.

(a) The fee for a license issued under this Chapter is:

(1) Paid to the Director;

(2) In the amount that the County Executive by regulation, adopted under Method (3) of Section 2A-15 of this Code, sets;

(3) Not refundable.

56A-8. Registration Fee

The fee for a certificate or registration issued under this Chapter is:

(1) Paid to the Director;

(2) In the amount that the County Executive by regulation, adopted under Method (3) of Section 2A-15 of this Code, sets; and

(3) Not refundable.

56A-9. Administration.

(b) The County Executive may issue any necessary regulation, adopted under Method (2) of Section 2A-15 of this Code, to implement this Chapter.

Sec. 55. Severability.

The provisions of this Act are severable and if any provision, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional

provision, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 56. Effective Date.

This Act shall take effect on the 91st day following the date on which it becomes law.

Approved:

Esther P. Gelman 12-15-83
President, Montgomery County Council Date

Approved:

/s/ Charles W. Gilchrist 12/15/83
County Executive Date

ATTEST:

/s/ Kathleen A. Freedman 12/16/83
Acting Secretary of the County Council Date

APPROVED

5032

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

December 6, 1983 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 10:12 A.M. on Tuesday, December 6, 1983.

PRESENT

Esther P. Gelman, President — Michael L. Gudis, Vice President
William E. Hanna, Jr. President Pro Tem
David L. Scull — Neal Potter
Scott Fosler

ABSENT

Rose Crenca

The President in the Chair.

INTRODUCTION OF BILLS

There were no bills for introduction.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

Re: Enactment of Bill No. 46-83, Executive Regulations

Bill No. 46-83, Executive Regulations, was called for final reading. The Council had before it for consideration Draft No. 5, dated November 30, 1983.

Councilman Scull said that, following the Council's worksession on the bill at its Legislative Session of November 22, 1983, the subject bill was reviewed by the Council's Government Structure, Automation, and Regulation (GSA) Committee. The Committee attempted to respond to Councilmembers' concerns which resulted in some additional amendments being made. Mr. Scull recommended the bill for enactment, stating that it is a credit to the good working relationship of the County Executive's and Council's staff. He said

it touches every subject with which the County government is involved. Mr. Scull said that the subject bill, along with the civil fine bill of last year and the code revision efforts of future years, is part of an effort to standardize, streamline, and modernize the Code to make it more useful to the public. He expressed appreciation to the staff for its work, noting that their work will be appreciated even more when regulations begin to appear in readable form and can be located easily.

Councilman Potter said that the subject legislation has been needed for some time. He hopes the process will remain clear, the files of executive regulations will remain accessible and executive regulations will become easier to understand. Mr. Potter said that, because of the length of the subject bill, some amendments which should have been made may have been overlooked; if this is the case, the Council can further amend the subject bill later.

Vice President Gudis said that Ms. Orlansky, Mr. Scull's assistant, had provided him with answers to the questions he raised at the Council's worksession on the bill. Mr. Gudis said that he had discussed traffic controls and policy concerns with Mr. Cichy and representatives of a citizens association last week and that Mr. Cichy has agreed to keep the Council informed concerning traffic control policy decisions.

Upon motion of Councilman Scull, duly seconded and without objection, the Council approved the following amendments to the bill:
(underlining indicates additions to current law, brackets indicate deletions from current law; capital letters indicate additions to the bill as introduced; and strike-throughs indicate deletions from the bill as introduced):

Sec. 1. Chapter 2A, title "Administrative Procedures Act" of the Montgomery County Code (1972, as amended) be and hereby is amended to read as follows:

Chapter 2A

Administrative Procedures Act

Article 1. Appeals from Administrative Agencies

2A-1.

* * *

2A-2. Applicability

* * *

(c) Appeals, grievances and complaints filed pursuant to chapter 33, as amended, for which hearings are provided or required by that chapter before the Montgomery County [personnel] merit system protection board.

* * *

(f) Such other hearings as hereinafter provided for by law or executive regulation which are specifically designated as being governed hereby. In this regard, the county executive is hereby authorized to add or delete additional quasi-judicial authorities from time to time by executive regulation adopted [pursuant to [chapter 2-105] UNDER METHOD (2) OF Section 2A-15 of this ~~code~~ CODE.

2A-3. Conflicts of laws; interpretations.

(a) Where any provision of this [chapter] Article conflicts with a substantive provision of an act pertaining to a particular agency, the latter shall prevail.

(b) The provisions of this [chapter] Article are not intended to confer different or additional powers or jurisdiction on hearing authorities governed hereby; in this regard, this [chapter] Article shall be construed to be procedural rather than substantive.

(c) The provisions set forth herein shall prevail over any agency rule of procedure and in the event of conflict, the latter shall be amended to conform with this [chapter] Article; provided, however, that nothing herein shall be construed to limit or restrict a hearing authority from adopting additional rules of procedure as will implement this [chapter] Article and the substantive provisions under which it operates so long as they are not in conflict with this [chapter] Article.

(d) No action taken hereunder shall be declared invalid on the basis of procedural irregularities absent a finding of a denial of substantive due process. Substantial compliance with this [chapter] Article shall be sufficient.

2A-4. Definitions.

The following words and phrases shall have the meaning assigned to them below, except when otherwise indicated in this [chapter] Article.

Hearing authority. The Montgomery County commission on human relations, or designated panel thereof; the Montgomery County [personnel] merit system protection board; the County board of appeals for Montgomery County; the Montgomery County landlord-tenant commission, the director of the Montgomery County office of consumer affairs; or a hearing examiner or official so designated or appointed to conduct those hearings which are enumerated in section 2A-2.

* * *

2A-5. Initiation of hearing process.

Any proceeding governed by this [chapter] Article as specified in section 2A-2 shall be initiated by filing a charging document in writing with the office of the hearing authority on forms provided therefor. Such forms shall include or be accompanied by a written statement which may include: a description of the nature and specifics of the allegation together with reference to sections of applicable laws, ordinances or regulations, if known, which are alleged to have been violated or relied upon. The statement shall contain the nature of the relief requested and if applicable the names and addresses of the person, persons, business entity or organization or agency alleged to have committed any violation or undertaken any action which is the subject of the proceedings governed by this [chapter] Article. The statement may be accompanied by supporting documentation.

* * *

2A-8. Hearings.

* * *

(h) Powers of the hearing authority. In addition to any other power granted by this [chapter] Article, a hearing authority is empowered:

* * *

(10) To take any other action authorized by this [chapter]

Article or necessary to a fair disposition of the case.

* * *

(i) Hearing conduct and procedure.

(1) Unless otherwise provided by law:

* * *

c. [Disqualification of any] The members of any hearing authority shall be subject to disqualification for conflict of interest, [for conflict of interest shall be governed by the Montgomery County Code of Ethics, chapter 2-129] and suggestions for disqualification of any member may be made on petition of any party.

* * *

(j) Sanctions. The hearing authority may impose sanctions against parties and witnesses for failure to abide by the provisions of this [chapter] Article, or for unexcused delays or obstructions to the pre-hearing and hearing process. Such sanctions may include suspension or continuance of scheduled hearings, dismissals of actions, denial of admission of documents and exhibits and admission of matters as adverse to a defaulting party.

* * *

2A-9. Emergency hearings.

Where the ordinary processing of any appeal may, due to time constraints, cause injury to any party, the hearing authority may for good cause grant an emergency hearing on its own motion or upon good cause shown by any party thereto. Where an emergency hearing is ordered by a hearing authority, it may suspend or alter any provisions of this [chapter] Article necessary to avert such undue injury; provided, hwoever, that in such cases, the hearing authority shall notify all parties of the operation of this section, and make every reasonable effort to provide substantive due process of law to all parties. All hearings involving the removal or suspension of a county merit-system employee shall be governed by this section.

2A-10. Decisions.

* * *

(c) Voting requirements. Any decision rendered in conformance with the provisions of this [chapter] Article must have the concurrence of a majority of the voting members of the decision making authority unless a greater number of votes are required by law. Members of the hearing authority

absent during a hearing may vote upon a matter upon written certification that they have read the transcripts and reviewed the evidence of record.

Failure to achieve the necessary affirmative votes shall act as a denial of the relief requested by the charging party by operation of law. No written opinion in this instance shall be required; provided, however, individual members of the hearing authority may file written reasons supporting their respective positions.

* * *

2A-11. Judicial review.

Any party aggrieved by a final decision in a case governed by this [chapter] Article, whether such decision is affirmative or negative in form may appeal said decision to the circuit court for Montgomery County, Maryland, in accord with the provisions of the Maryland Rules of Procedure governing administrative appeals. Said court shall have the power to affirm, reverse or modify the decision or remand the case for further proceedings as justice may require. The filing of such appeal shall not stay the order of the hearing authority. Any party to the proceeding in the circuit court may appeal from such decision to the appellate courts of Maryland pursuant to applicable provisions of the Maryland Rules of Procedure

Article II. Regulations

2A-12. Declaration of Policy and Legislative Intent.

(A) PURPOSE. It is the purpose of this article to prescribe a single and consistent procedure for the adoption, periodic review and repeal of regulations, and to provide a uniform procedure for their public notification and compilation. ~~The provisions of this article shall be applicable to all regulations, unless otherwise indicated.~~

(B) SCOPE. UNLESS OTHERWISE PROVIDED, THE PROVISIONS OF THIS ARTICLE APPLY TO ALL REGULATIONS.

2A-13. Definitions.

~~The following words shall have the following meanings in this article unless otherwise clearly indicated by the context.~~

(A) IN GENERAL. UNLESS OTHERWISE CLEARLY INDICATED BY THE CONTEXT, IN THIS ARTICLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) ADMINISTRATIVE PROCEDURE. "Administrative Procedure" means any

written directive// policy of procedure which regulates activities of more than one department of agency of the County Government CONCERNING THE INTERNAL MANAGEMENT OF ONE OR MORE COUNTY AGENCY OR DEPARTMENT.

(C) CAO. "CAO" means the Chief Administrative Officer of the County.

/COMCOR/ means the Code of Montgomery County Regulations created in Section 2A-17 of this code/

(D) COMCOR. "COMCOR" MEANS THE CODE OF MONTGOMERY COUNTY REGULATIONS ESTABLISHED UNDER THIS ARTICLE.

/Executive Order/ means an order issued by the county executive of his designee directing a specific action rather than establishing rules and standards/

(E) EXECUTIVE ORDER. "EXECUTIVE ORDER" MEANS AN ORDER ISSUED BY THE COUNTY EXECUTIVE THAT DIRECTS A SPECIFIC ACTION.

(F) PROMULGATOR. "PROMULGATOR" MEANS:

(1) THE COUNTY EXECUTIVE; OR

(2) A PERSON AUTHORIZED BY LAW TO ISSUE REGULATIONS.

/Regulation/ of /Executive Regulation/ means any rule of act of standards which is promulgated by the county executive of any other person authorized by law to issue regulations/

/Register/ means the Montgomery County Register, created in Section 2A-18 of this code/

2A-14/// Adoption of Regulations/

(a) Procedure/// Whenever the County Executive of any other person is authorized to promulgate regulations// the publication and procedural requirements set forth in this section shall be followed in addition to any other requirements imposed by law/

(b) Publication/// The promulgator shall publish in the Register/ at least 90 days prior to the proposed effective date// a summary of the proposed regulation// a statement of its proposed effective date// the place where a copy may be obtained// notice of any public hearings// the name and address of a person to whom comments may be directed// the time period for submitting comments// and a citation indicating the section of the County Code authorizing its promulgation// including whether it is to be promulgated by method (1)// (2)// or (3) as prescribed in Section 2A-14(c)/

(c) Procedures for Approval. Regulations shall be adopted in accordance with one of the three procedural methods set forth below, as prescribed by law. Method (2) shall be used where a specific method has not been prescribed by law.

	County Council Action	Effective Date
(1) Method (1)	A copy of the complete regulation shall be forwarded to the Council by the promulgator of the a proposed regulation, upon or prior to publication in the Register. The regulation shall not become effective unless approved, in whole or in part, by the Council by resolution.	The regulation, other than any disapproved portion, shall become effective 30 days following approval by Council resolution unless another date is specified in the resolution.
(2) Method (2)	The regulation may be disapproved, in whole or in part, by the Council by resolution within 60 days following publication.	The regulation, other than any disapproved portion, shall become effective on the 90th day following publication.
(3) Method (3)	Not subject to Council action.	The regulation shall become effective on the 30th day following publication.

(G) REGULATION. (1) "REGULATION" MEANS ANY RULE OR STANDARD THAT A PROMULGATOR BY LAW IS AUTHORIZED TO ISSUE.

(2) "REGULATION" INCLUDES ANY AMENDMENT TO AN EXISTING REGULATION.

(H) REGISTER. "REGISTER" MEANS THE MONTGOMERY COUNTY REGISTER ESTABLISHED UNDER THIS ARTICLE.

2A-14. AUTHORITY TO ADOPT REGULATIONS. IF A LAW AUTHORIZES A PROMULGATOR TO IMPLEMENT OR ENFORCE THAT LAW, THE PROMULGATOR MAY ADOPT REGULATIONS TO IMPLEMENT OR ENFORCE THAT LAW EVEN IF THE AUTHORITY TO ADOPT THE REGULATIONS IS NOT SPECIFICALLY STATED IN THAT LAW.

2A-15. PROCEDURE FOR ADOPTION OF REGULATIONS.

(A) REQUIREMENT. BEFORE A REGULATION IS EFFECTIVE, THE REGULATION SHALL MEET:

(1) THE REQUIREMENTS OF THIS ARTICLE; AND

(2) ANY OTHER REQUIREMENT IMPOSED BY LAW.

(B) SINGLE SUBJECT REQUIREMENT. A PROPOSED REGULATION MAY NOT CONTAIN MORE THAN ONE SUBJECT MATTER.

(C) PUBLICATION. A PROMULGATOR SHALL PUBLISH IN THE REGISTER:

(1) A SUMMARY OF THE PROPOSED REGULATION;

(2) THE PLACE WHERE A COPY OF THE PROPOSED REGULATION MAY BE OBTAINED;

(3) THE DATE, TIME, AND PLACE OF ANY PUBLIC HEARING;

(4) THE NAME AND ADDRESS OF A PERSON TO WHOM COMMENTS MAY BE DIRECTED;

(5) THE DEADLINE FOR SUBMITTING COMMENTS;

(6) A CITATION OF THE SECTION OF THE COUNTY CODE THAT AUTHORIZES THE ADOPTION OF THE REGULATION; AND

(7) A STATEMENT OF THE PROCEDURAL METHOD UNDER SUBSECTION (D) OF THIS SECTION THAT IS TO BE USED.

(D) PROCEDURES FOR APPROVAL. (1) A REGULATION SHALL BE ADOPTED UNDER ONE OF THE 3 METHODS SET OUT IN THIS SUBSECTION.

(2) A LAW AUTHORIZING A REGULATION MAY PROVIDE FOR ONE OF THE 3 METHODS TO BE USED.

(3) IF THE LAW DOES NOT PROVIDE ONE OF THE 3 METHODS TO BE USED, METHOD (2) SHALL BE USED.

METHOD (1)

1. THE PROMULGATOR SHALL SEND A COPY OF THE PROPOSED REGULATION TO THE COUNTY COUNCIL WITHIN 14 CALENDAR DAYS AFTER THE DEADLINE FOR COMMENTS PUBLISHED IN THE REGISTER.

2. WITHIN 30 CALENDAR DAYS AFTER RECEIPT OF THE PROPOSED REGULATION UNDER PART 1. OF THIS METHOD, THE COUNTY COUNCIL PRESIDENT MAY SET A DEADLINE FOR APPROVAL OR DISAPPROVAL OF THE PROPOSED REGULATION.

3. IF A DEADLINE UNDER PART 2. OF THIS METHOD IS NOT SET, THE PROPOSED REGULATION IS PLACED ON THE COUNCIL AGENDA THAT IMMEDIATELY FOLLOWS THE 30 CALENDAR DAYS AFTER RECEIPT OF THE PROPOSED REGULATION.

4. IF NECESSARY TO ASSURE COMPLETE REVIEW, THE COUNTY COUNCIL BY RESOLUTION MAY EXTEND THE DEADLINE FOR COUNTY COUNCIL ACTION.

5. THE COUNTY COUNCIL BY RESOLUTION MAY APPROVE OR DISAPPROVE IN WHOLE OR IN PART THE PROPOSED REGULATION.

6. IF THE COUNTY COUNCIL APPROVES THE REGULATION, THE REGULATION IS EFFECTIVE 30 CALENDAR DAYS AFTER THE DATE OF ADOPTION OF THE RESOLUTION APPROVING THE REGULATION.

METHOD (2)

1. THE PROMULGATOR SHALL SEND A COPY OF THE PROPOSED REGULATION TO THE COUNTY COUNCIL WITHIN 14 CALENDAR DAYS AFTER THE DEADLINE FOR COMMENTS PUBLISHED IN THE REGISTER.

2. THE COUNTY COUNCIL BY RESOLUTION MAY APPROVE OR DISAPPROVE IN WHOLE OR IN PART THE PROPOSED REGULATION WITHIN 30 CALENDAR DAYS AFTER RECEIPT OF THE PROPOSED REGULATIONS UNDER PART 1. OF THIS METHOD.

3. IF NECESSARY TO ASSURE COMPLETE REVIEW, THE COUNTY COUNCIL BY RESOLUTION MAY EXTEND THE 30 CALENDAR DAY DEADLINE UNDER PART 2. OF THIS METHOD.

4. IF THE COUNTY COUNCIL APPROVES THE PROPOSED REGULATION, THE REGULATION IS EFFECTIVE 30 CALENDAR DAYS AFTER THE DATE OF ADOPTION OF THE RESOLUTION APPROVING THE REGULATION.

5. IF THE COUNTY COUNCIL DOES NOT APPROVE OR DISAPPROVE THE PROPOSED REGULATION WITHIN THE 30 CALENDAR DAYS AFTER RECEIPT OF THE PROPOSED REGULATION UNDER PART 1. OF THIS METHOD, THE PROPOSED REGULATION IS AUTOMATICALLY APPROVED.

6. IF THE PROPOSED REGULATION IS AUTOMATICALLY APPROVED UNDER PART 5. OF THIS METHOD, THE REGULATION IS EFFECTIVE 60 CALENDAR DAYS AFTER RECEIPT OF THE PROPOSED REGULATION UNDER PART 1. OF THIS METHOD.

7. IF THE COUNTY COUNCIL EXTENDS THE TIME FOR APPROVAL OR DISAPPROVAL UNDER PART 3 OF THIS METHOD, UNTIL THE EXPIRATION OF THE EXTENDED TIME, THE PROPOSED REGULATION IS NOT AUTOMATICALLY APPROVED.

METHOD (3)

1. A PROPOSED REGULATION UNDER THIS METHOD IS NOT SUBJECT TO COUNTY COUNCIL APPROVAL OR DISAPPROVAL.

2. THE PROMULGATOR SHALL SEND A COPY OF THE PROPOSED REGULATION TO THE COUNTY COUNCIL.

3. THE REGULATION IS EFFECTIVE 30 CALENDAR DAYS AFTER THE DEADLINE FOR COMMENTS PUBLISHED IN THE REGISTER.

(E) AMENDMENT OF PROPOSED REGULATION. THE PROMULGATOR MAY AMEND A PROPOSED REGULATION IF:

(1) THE COUNTY COUNCIL HAS NOT TAKEN FINAL ACTION ON THE PROPOSED REGULATION; AND

(2) THE AMENDMENT RELATES TO THE ADVERTISED PURPOSE OF THE PROPOSED REGULATION.

(F) WITHDRAWAL OF PROPOSED REGULATION. NO LATER THAN 10 DAYS BEFORE THE EFFECTIVE DATE OF A PROPOSED REGULATION, THE PROMULGATOR MAY WITHDRAW THE PROPOSED REGULATION.

(G) PUBLICATION OF FINAL ACTION. (1) IN THE ISSUE OF THE REGISTER THAT FOLLOWS THE FINAL ACTION TAKEN ON A PROPOSED REGULATION,THE PROMULGATOR SHALL PUBLISH THE FINAL ACTION TAKEN ON THE PROPOSED REGULATION.

(2) IF THE PROPOSED REGULATION IS APPROVED, THE PROMULGATOR SHALL:

(I) IF A SUBSTANTIVE CHANGE TO THE PROPOSED REGULATION IS NOT MADE, CITE THE ISSUE OF THE REGISTER THAT CONTAINS THE INITIAL PUBLICATION OF NOTICE OF THE PROPOSED REGULATION; OR

(II) IF A SUBSTANTIVE CHANGE TO THE PROPOSED REGULATION IS MADE, PUBLISH A SUMMARY OF THE PROPOSED REGULATION AS AMENDED.

(H) EMERGENCY REGULATIONS. (1) IF A PROMULGATOR DETERMINES THAT AN EMERGENCY EXISTS, AN EMERGENCY REGULATION DOES NOT HAVE TO MEET THE PUBLICATION AND APPROVAL REQUIREMENTS OF SUBSECTION (C) AND (D) OF THIS SECTION.

(2) AN EMERGENCY REGULATION IS EFFECTIVE:

(I) IMMEDIATELY AFTER:

1. THE ADOPTION OF THE EMERGENCY REGULATION BY THE PROMULGATOR; AND

2. THE PROMULGATOR SENDS TO THE COUNTY COUNCIL A COPY OF THE PROPOSED REGULATION AND A STATEMENT OF REASON FOR THE EMERGENCY REGULATION; AND

(II) FOR A PERIOD OF 45 DAYS.

(3) (I) THE PROMULGATOR MAY REQUEST THE COUNTY COUNCIL TO EXTEND THE EFFECTIVE PERIOD OF AN EMERGENCY REGULATION.

(II) THE PROMULGATOR SHALL PROVIDE THE COUNTY COUNCIL WITH WRITTEN INFORMATION STATING THE REASON FOR AN EXTENSION REQUEST.

(4) (I) THE COUNTY COUNCIL BY RESOLUTION MAY REPEAL AN EMERGENCY REGULATION.

(II) IF THE COUNTY COUNCIL REPEALS AN EMERGENCY REGULATION, THE COUNTY COUNCIL SHALL GIVE WRITTEN NOTICE TO THE PROMULGATOR OF THE REASON FOR THE REPEAL.

(d)///Emergency/regulations///The/regulations/of/subsection/(b) and/(c)/shall/not/apply/upon/declaration/of/an/emergency/by/the promulgator/of/the/regulation///A/copy/of/the/complete/emergency regulation/shall/be/forwarded/to/the/Council/and/shall/become effective/in/whole/or/in/part/ when/approved/by/the/Council/by/resolution///Publication/of/the/approved regulation/shall/be/made/in/the/following/edition/of/the/Register/

2A-15///Administrative/procedures/

The/CAO/shall/provide/a/comprehensive/collection/of/administrative procedures///This/information/is/to/be/accessible/to/all/county employees///The/information/provided/shall/also/be/filed/with/the secretary/to/the/county/council/

2A-16///Executive/orders/

The/county/executive/shall/provide/by/administrative/procedure/for

the adoption, notification, compilation, amendment, and repeal of executive orders. A copy of each adopted will be filed with the secretary to the county council.

2A-17. Compilation of executive regulations.

(a) Code of Montgomery County Regulations (COMCOR) which shall be published by the county attorney. These regulations may be filed by contract.

(b) Contents of COMCOR. Except as otherwise provided by law, the following shall be compiled in COMCOR:

(1) Every regulation;

(2) Any other document of a class of document which the CAO determines should be included unless otherwise privileged, and

(3) An index by agency and subject matter of the regulations and documents contained in COMCOR.

(c) Annotations. The county attorney shall prepare, or procure by contract, and include in COMCOR and permanent supplements to COMCOR annotations of judicial decisions and other explanatory material relating to any regulation of document published in COMCOR.

2A-16. ADMINISTRATIVE PROCEDURES.

(A) COLLECTION. THE CAO SHALL DEVELOP A COMPREHENSIVE COLLECTION OF ADMINISTRATIVE PROCEDURES.

(B) COPY TO THE COUNTY COUNCIL. THE CAO SHALL PROVIDE THE SECRETARY OF THE COUNTY COUNCIL WITH A COPY OF THE ADMINISTRATIVE PROCEDURES.

(C) AVAILABILITY. THE ADMINISTRATIVE PROCEDURES SHALL BE AVAILABLE TO ANY COUNTY EMPLOYEE.

(D) PROHIBITION. IF A LAW DELEGATES TO A PROMULGATOR THE AUTHORITY TO ADOPT A REGULATION, THE PROMULGATOR MAY NOT ADOPT AN ADMINISTRATIVE PROCEDURE INSTEAD OF A REGULATION.

2A-17. EXECUTIVE ORDERS.

(A) PROCEDURE FOR ADOPTION. THE COUNTY EXECUTIVE SHALL DEVELOP AN ADMINISTRATIVE PROCEDURE FOR THE ADOPTION OF ANY EXECUTIVE ORDER.

(B) CONTENT OF PROCEDURE. THE ADMINISTRATIVE PROCEDURE SHALL PROVIDE FOR:

(1) ADOPTION.

(2) NOTICE.

(3) COMPILATION.

(4) AMENDMENT.

(5) REPEAL.

(C) COPY TO COUNTY COUNCIL. THE COUNTY EXECUTIVE SHALL PROVIDE THE SECRETARY OF THE COUNTY COUNCIL WITH A COPY OF EACH EXECUTIVE ORDER ADOPTED.

2A-18. COMPILATION OF EXECUTIVE REGULATIONS.

(A) COMCOR ESTABLISHED. THERE IS A CODE OF MONTGOMERY COUNTY REGULATIONS THAT INCLUDES:

(1) EACH REGULATION OF THE COUNTY GOVERNMENT;

(2) ANY DOCUMENT THAT THE CAO DETERMINES SHOULD BE INCLUDED;

(3) ANNOTATIONS OF ANY JUDICIAL DECISION THAT CITES A REGULATION OR DOCUMENT CONTAINED IN COMCOR;

(4) ANY EXPLANATORY ANNOTATIONS; AND

(5) AN INDEX BY AGENCY AND SUBJECT MATTER.

(B) DUTIES OF CAO. (1) THE CAO SHALL COMPILE, EDIT, INDEX, AND SUPPLEMENT COMCOR.

(2) THE CAO MAY PROCURE A CONTRACT TO MEET THE REQUIREMENTS OF THIS SUBSECTION.

(d)//Editorial/standards/and/codification/system.//The/CAO/shall
establish/editorial/standards/and/a/codification/system/to/which/all
regulations/and/documents/published/in/COMCOR/and/the/permanent
supplements/shall/conform.//Effect/consolidation/with/the/promulgating
authority.//The/CAO/may/edit/previously/adopted/regulations/to/conform/to
established/editorial/standards/and/codification/system/

(e)//Removal/of/obsolete/regulations.//With/the/consent/of/the
county/attorney,//the/CAO/may/remove/obsolete/regulations/or/parts/of
regulations/from/COMCOR/when/

(1)//The/regulations/are/declared/unconstitutional/by/a/court
of/final/appeal;/or

(2)//The/department/or/agency/which/was/to/administer/or

expire. The regulations remain in effect until repealed, amended, or superseded by the County Council.

(C) PLAIN LANGUAGE STANDARDS AND CODIFICATION SYSTEMS. (1) ANY REGULATION ADOPTED UNDER THIS ARTICLE SHALL BE WRITTEN UNDER THE PLAIN LANGUAGE STANDARD APPROVED BY THE COUNTY COUNCIL.

(2) THE CAO SHALL ESTABLISH A CODIFICATION SYSTEM FOR EXECUTIVE REGULATIONS.

(3) ANY REGULATION OR DOCUMENT PUBLISHED IN COMCOR SHALL MEET THE PLAIN LANGUAGE STANDARD AND CODIFICATION SYSTEM OF THIS SUBSECTION.

(D) REMOVAL OF OBSOLETE REGULATIONS. WITH THE ADVICE OF THE COUNTY COUNCIL, THE CAO MAY REMOVE A REGULATION OR A PART OF A REGULATION FROM COMCOR IF:

(1) THE REGULATION IS DECLARED UNCONSTITUTIONAL BY A COURT OF FINAL APPEAL; OR

(2) THE DEPARTMENT OR AGENCY THAT ENFORCED OR ADMINISTERED THE REGULATION CEASES TO EXIST AND THE FUNCTIONS AND RESPONSIBILITIES OF THE DEPARTMENT OR AGENCY ARE NOT TRANSFERRED TO A SUCCESSOR.

(E) SUPPLEMENT TO COMCOR. (1) AT LEAST ONCE A YEAR, EACH REGULATION ADOPTED DURING THE YEAR AND ANY DOCUMENT THAT THE CAO DETERMINES SHOULD BE INCLUDED SHALL BE PUBLISHED IN A SUPPLEMENT TO COMCOR.

(2) THE INDEX TO COMCOR SHALL BE REVISED AND INCLUDED IN THE SUPPLEMENT.

2A-18. THE MONTGOMERY COUNTY REGISTER.

TEMPORARY SUPPLEMENT TO COMCOR. THE CAO SHALL PUBLISH, OR ARRANGE FOR PUBLICATION OF, A TEMPORARY SUPPLEMENT TO COMCOR WHICH SUPPLEMENT SHALL BE CALLED THE MONTGOMERY COUNTY REGISTER.

(B) CONTENTS. THE REGISTER SHALL INCLUDE:

(1) ALL INFORMATION REQUIRED BY SECTION 2A-14(B);

(2) A BRIEF SUMMARY OF EVERY EFFECTIVE REGULATION, INCLUDING EMERGENCY REGULATIONS, NOT PREVIOUSLY PUBLISHED IN COMCOR OR THE REGISTER. THE SUMMARY SHALL INCLUDE A STATEMENT OF THE EFFECTIVE DATE AND THE PLACE WHERE A COPY OF THE REGULATION MAY BE PROMPTLY OBTAINED;

(3) ANY OTHER DOCUMENT OR CLASS OF DOCUMENTS WHICH THE CAO DETERMINES SHOULD BE INCLUDED, UNLESS OTHERWISE REQUIRED BY

~~(4)//A/table/of/contents/and/an/index/to/all/sections/of COMCOR/affected.~~

~~(c)//Frequency/of/publication.~~

~~(1)//The/Register/shall/be/published/at/least/once/every/3 months.~~

~~(2)//The/CAO/may/provide/for/the/more/frequent/publication/of the/Register/as/circumstances/require.~~

~~2A-19.//Permanent/supplements/to/COMCOR.~~

~~At/least/once/a/year,/every/regulation,/and/any/other/document/or class/of/documents/which/the/CAO/determines/should/be/included,/shall/be published/by/the/County/Attorney/and/permanently/integrated/into/COMCOR using/looseleaf/pages/or/other/appropriate/permanent/supplements/to COMCOR.//The/index/to/COMCOR/shall/be/similarly/supplemented/or/reissued.~~

~~2A-20.//Pricing/and/distribution/of/COMCOR/and/The/Register.~~

~~(a)//Pricing.//The/CAO/shall/periodically/establish/reasonable/prices for/individual/copies/of/or/a/subscription/to/COMCOR,/The/Register,/and the/permanent/supplements.~~

~~(b)//Distribution/to/public.//Copies/of/every/publication/printed pursuant/to/this/article/shall/be/made/available/to/the/public/at/a/cost as/provided/by/the/CAO.~~

~~(c)//Free/distribution.//One/copy/of/every/publication/printed/under the/authority/of/this/article/shall/be/distributed/free/of/charge/to/the following:~~

~~(1)//The/secretary/of/the/county/council~~

~~(2)//The/county/attorney~~

~~(3)//The/county/executive~~

~~(4)//The/state/hall/of/records/commission~~

~~(5)//The/state/law/library~~

~~(6)//The/state/department/of/legislative/reference~~

~~(7)//Maryland-municipal/collection/of/the/montgomery/county department/of/public/libraries,/and~~

~~(8)//Any/other/person/designated/by/the/county/council/by resolution/or/the/county/executive/by/executive/order.~~

2A-19. MONTGOMERY COUNTY REGISTER.

(A) REGISTER ESTABLISHED. THERE IS A MONTGOMERY COUNTY REGISTER

THAT:

(1) IS A TEMPORARY SUPPLEMENT TO COMCOR;

(2) PUBLISHES ANY REGULATION ADOPTED BETWEEN ISSUES OF THE REGISTER; AND

(3) INCLUDES:

(I) THE INFORMATION REQUIRED UNDER SECTION 2A-15 OF THIS ARTICLE FOR EACH REGULATION;

(II) ANY DOCUMENT THAT THE CAO DETERMINES SHOULD BE INCLUDED;

(III) A TABLE OF CONTENTS; AND

(IV) AN INDEX OF THE COMCOR SECTIONS AFFECTED.

(B) DUTIES OF THE CAO. (1) THE CAO SHALL COMPILE AND PUBLISH THE REGISTER.

(2) THE CAO MAY PROCURE A CONTRACT TO MEET THE REQUIREMENTS OF THIS SUBSECTION.

(C) FREQUENCY OF PUBLICATION. THE REGISTER SHALL BE PUBLISHED AT LEAST ONCE EVERY 3 MONTHS.

2A-20. PRICING AND AVAILABILITY OF COMCOR AND THE REGISTER.

(A) PRICING. THE CAO SHALL SET A REASONABLE PRICE FOR EACH COPY OR EACH SUBSCRIPTION OF:

(1) COMCOR;

(2) THE REGISTER; OR

(3) THE SUPPLEMENTS TO COMCOR.

(B) AVAILABILITY. ANYONE MAY PURCHASE A COPY OF:

(1) COMCOR;

(2) THE REGISTER; AND

(3) THE SUPPLEMENTS TO COMCOR.

(C) FREE DISTRIBUTION. A COPY OF COMCOR, THE REGISTER, AND THE SUPPLEMENTS TO COMCOR SHALL BE DISTRIBUTED TO:

(1) THE SECRETARY OF THE COUNTY COUNCIL;

(2) THE COUNTY ATTORNEY;

(3) THE COUNTY EXECUTIVE;

(4) THE STATE HALL OF RECORDS COMMISSION;

(5) THE STATE LAW LIBRARY;

(6) THE STATE DEPARTMENT OF LEGISLATIVE REFERENCE;

(7) THE MARYLAND-MUNICIPAL COLLECTION OF THE MONTGOMERY COUNTY DEPARTMENT OF PUBLIC LIBRARIES;

(8) THE OFFICE OF LEGISLATIVE OVERSIGHT;

(9) ANY PERSON THAT THE COUNTY COUNCIL BY RESOLUTION DESIGNATES; AND

(10) ANY PERSON THAT THE COUNTY EXECUTIVE BY EXECUTIVE ORDER DESIGNATES.

2A-21. REVIEW OF REGULATIONS.

(A) REVIEW REQUIRED. AT LEAST ONCE EVERY 4 YEARS, EACH REGULATION SHALL BE REVIEWED BY THE COUNTY COUNCIL.

(B) DUTIES OF THE CAO. THE CAO SHALL:

(1) BEFORE JULY 1, 1984, ESTABLISH 4 GROUPS OF REGULATIONS BY AGENCY TO BE REVIEWED; AND

(2) DESIGNATE EACH NEW REGULATION ADOPTED TO A GROUP ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(C) TIME FOR INITIAL REVIEW. (1) GROUP I IS SUBJECT TO REVIEW IN FY 1985;

(2) GROUP II IS SUBJECT TO REVIEW IN FY 1986;

(3) GROUP III IS SUBJECT TO REVIEW IN FY 1987; AND

(4) GROUP IV IS SUBJECT TO REVIEW IN FY 1988.

(D) MANNER OF REVIEW. EACH REGULATION SHALL BE REVIEWED IN THE SAME MANNER AS THE METHOD UNDER SECTION 2A-15 OF THIS ARTICLE THAT IS DESIGNATED FOR THE ADOPTION OF THE REGULATION.

(E) REGULATIONS UNDER METHODS (1) AND (2). IF A REGULATION IS TO BE REVIEWED UNDER METHOD (1) OR (2) OF SECTION 2A-15 OF THIS ARTICLE, BY OCTOBER 15 OF THE YEAR THAT THE REGULATION IS SUBJECT TO REVIEW, THE PROMULGATOR SHALL SUBMIT TO THE COUNTY COUNCIL:

(1) A COPY OF THE REGULATION;

(2) A COPY OF THE REGULATION WRITTEN UNDER THE PLAIN LANGUAGE STANDARD ADOPTED BY THE COUNTY COUNCIL;

(3) A COPY OF ANY FORM USED TO CARRY OUT THE REGULATION;

(4) A STATEMENT OF ANY CHANGE TO THE REGULATION THAT THE PROMULGATOR PROPOSES;

(5) A STATEMENT OF ANY CHANGE IN CONDITION OR LAW THAT AFFECTS THE REGULATION; AND

(6) A STATEMENT OF WHY THE REGULATION IS NEEDED AND THAT A SIMPLER WAY OF ACCOMPLISHING THE PURPOSE OF THE REGULATION CANNOT BE FOUND.

(F) REGULATIONS UNDER METHOD (3). IF A REGULATION IS TO BE REVIEWED UNDER METHOD (3) OF SECTION 2A-15 OF THIS ARTICLE, BY OCTOBER 15 OF THE YEAR THAT THE REGULATION IS SUBJECT TO REVIEW, THE PROMULGATOR SHALL:

(1) REVIEW THE REGULATION FOR ANY CHANGE IN CONDITION OR LAW THAT AFFECTS THE REGULATION; AND

(2) REWRITE THE REGULATION IN THE PLAIN LANGUAGE STANDARD ADOPTED BY THE COUNTY COUNCIL.

(G) REPEAL OF REGULATION. (1) FOR ANY REGULATION REVIEWED UNDER METHOD (1) OF SECTION 2A-15 OF THIS ARTICLE, IF THE COUNTY COUNCIL BY RESOLUTION DOES NOT EXTEND THE REGULATION BEFORE FEBRUARY 15 OF THE YEAR AFTER THE REGULATION IS SUBJECT TO REVIEW, THE REGULATION IS REPEALED AS OF JUNE 30 OF THAT YEAR.

(2) FOR ANY REGULATION REVIEWED UNDER METHOD (2) OF SECTION 2A-15 OF THIS ARTICLE, IF THE COUNTY COUNCIL BY RESOLUTION DOES NOT REPEAL THE RESOLUTION BEFORE FEBRUARY 15 OF THE YEAR AFTER THE REGULATION IS SUBJECT TO REVIEW, THE REGULATION CONTINUES IN EFFECT.

2A-11///Petition/Review/of/Regulations/

(a)///Not/later/than/July/1,/1984,/the/CAO/shall/classify/all regulations/into/four/groups,/by/agency/or/subject/matter/or/such/other manner/as/he/deems/best.///Group/I/shall/be/subject/to/review/in/FY/1984, Group/II/in/FY/1985;/Group/III/in/FY/1986,/and/Group/IV/in/FY/1987.///Each group/shall/be/subject/to/review/again/every/fifth/year/after/its/initial review/in/the/years/specified/above.///The/group/of/regulations/becoming effective/after/July/1,/1984/shall/be/that/group/next/to/be/reviewed/4 years/after/the/effective/date/of/the/regulations/

(b)///For/the/fiscal/year/in/which/a/regulation/originally/subject/to county/council/approval/is/reviewed/

(1)///The/regulation/shall/be/deemed/of/no/further/force/and effect/after/February/15/unless/it/has/been/reapproved/by/the/county council/pursuant/to/this/section/

(2) The proposed regulation shall be submitted to the county council by October 15 drafts of the regulations he proposes for reappraisal, together with copies of the associated forms used to carry out the regulation and a concise statement:

(i) of any changes proposed from the previous version of the regulation;

(ii) of significant changes in conditions of in governing federal, state, or other applicable requirements affecting the need of the form of the regulation since its previous appraisal;

(iii) that the proposed regulation is necessary and that no simpler means of accomplishing its purpose can be found.

(3) The regulation shall be adopted by the council and shall continue in force and effect of law after February 15, unless the council, by resolution within 90 days of submission to it, disapproves the regulation. The Council may, by resolution, set a later date, not later than June 30, for consideration of regulations submitted to it for reappraisal, and extend the termination date of any regulation being so considered.

Sec. 1A. Sections 1-18(c) and 1-19 of Chapter 1, title "General Provisions" of the Montgomery County Code 1972, as amended, be and hereby are amended to read as follows:

1-18. Civil Fines and Procedures.

* * *

(c) Amount of Fine.

The amount of the civil fine which is to be imposed for a violation is that amount set forth in Section 1-19, unless a lower amount for a specific violation has been established by an Executive Regulations [, approved by the County Council] promulgated ADOPTED by the County Executive by UNDER Method 2/pursuant/to/the (1) OF Section 2A-14(c)(2)2A-15 of this code CODE.

* * *

1-19. Enforcement of County Law.

Violations of County laws, ordinances and regulations identified as Class A, B, or C violations shall, upon conviction thereof before a court of competent jurisdiction, be punishable as a misdemeanor by a fine of not

more than the amount shown below, or both such fine and imprisonment, in the discretion of the court.

Violations may, in the alternative and at the discretion of the agency responsible for enforcement thereof, be punishable as a civil violation, as set forth in Section 1-18. The civil fine shall be in the amount shown below, unless a lower amount for a specific violation has been established by an Executive Regulation [, subject to approval by the County Council] ~~promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method ~~1 pursuant to the~~ (1) OF Section 2A-~~15(c)(2)~~ 15 of this ~~code~~ CODE.

Sec. 2. Section 2-99, title "Annual compilation of laws...(etc.)" of Chapter 2, title "Administration" of the Montgomery County Code (1972, as amended) be and hereby is amended to read as follows:

2-99. Annual compilation of laws, ordinances, [rules and] regulations or cumulative supplement - Required; preparation and publication; contents.

The county attorney shall prepare and have published and printed under his direction, as soon as practicable after June 30, of each year a bound, hardback compilation or cumulative supplement to the Montgomery County Code which shall include the following:

(a) Laws enacted during the last previous twelve-month period ending June 30, etc. Laws enacted by the council during the last previous twelve-month period ending June 30 or a cumulative supplement containing, as amended, the sections of the Montgomery County Code amended during the preceding fiscal years, cumulated since the last publication of the Code, by enactments of the Maryland General Assembly or the Montgomery County Council.

(b) [Rules, regulations and ordinances. Rules, regulations and ordinances adopted by the council and rules and regulations promulgated by the county executive during the last previous twelve months' period ending June 30, general and permanent in character and having the force and effect of law or a cumulative supplement containing, as amended, the sections of the Montgomery County Code amended since the last publication of the Code by rules and regulations and ordinances adopted by the Montgomery County Council and rules and regulations promulgated by the county executive.

(c)] Other laws, etc. Other laws [,] and ordinances enacted by the county council [and all rules and regulations of a general and permanent

nature having the force and effect of law adopted by the county council or promulgated by the county executive], cumulated since the last publication of the code which are not codified by section of the Montgomery County Code shall be included in an appropriate place in every cumulative supplement; except, that standards[, rules] and regulations adopted by reference to an existing specific publication need not be included in a cumulative supplement provided that the legislative vehicle by which such standard[, rule] or regulation was adopted is included.

[(d)] (c) Appropriation resolution. The appropriation resolution adopted by the county council for the fiscal year current at the time of publication.

[(e)] (d) Cumulative table of sections. A table of the sections of the county code repealed, added or amended subsequent to the publication of the last edition of the Montgomery County Code.

[(f)] (e) Changes in constitution, etc. Changes in article XI-A of the Maryland Constitution, Article 25A of the Annotated Code of Maryland, the Charter, and the rules of legislative procedure of the County Council.

[(g)] (f) Indices. Appropriate indices of the foregoing.

Sec. 3. Section 2-105, title "Procedure for adoption of rules and regulations by the county executive" of Chapter 2, title "Administration" of the Montgomery County Code (1972, as amended) be and hereby is repealed in its entirety. Any reference in the County Code to Section 2-105 shall be deemed to refer to Article II of Chapter 2.

Sec. 4. Sections 2-9, 2-15, 2-33, 2-42(c) and 2-140(a)(6) of Chapter 2, title "Administration", be and hereby are amended to read as follows:

2-9. County vehicles - Storage, parking, markings or identification, designation and use generally.

Storage, parking, markings or identification, designation and use of county vehicles shall be provided for in [the administrative] executive regulations [of] ~~promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method 2 (3) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE; provided, that in accordance with section 2-10, such vehicles shall be used only for official county business.

* * *

2-15. Same - Arms and ammunition; civilian defense personnel; rules,

regulations, etc.

In order to carry out the provisions of sections 2-14 through 2-16 of this Code the county executive may provide and furnish arms and ammunition to the citizens of the county or to the militia of the state, and may provide and furnish any or all persons engaged in public defense within the county with protective armor and such other equipment and supplies and also purchase, rent, hire and maintain lands, buildings, and equipment as may be considered to be necessary and proper. The county executive may engage the service of persons charged with assisting in public defense and may, with the approval of the council, fix the compensation of such persons, including the payment for services heretofore rendered in connection with the civilian defense activities of the county, and may do all other things needful and necessary to protect and safeguard the people and property within the county from actual or threatened armed invasion or insurrection, and may alleviate their suffering resulting from fire, flood, disaster or epidemic of disease, or other such emergencies. The county executive is authorized to [promulgate] ADOPT [rules and] regulations ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE to protect the citizens of the county during blackouts, practice air raid alarms, air raids and invasion. All acts done and all money expended by the county for such purposes, either heretofore or hereafter, including the purchase of equipment for civilian defense organization and maintenance, the employment of administrative and technical aid in the interest of civilian defense, the purchase of medical supplies for casualty stations, and the purchase of arms, ammunition and providing and furnishing of telephone service and other service and supplies are hereby ratified and confirmed as just and lawful acts of the county.

* * *

2-33. Collection of taxes and special assessments; receipt of and responsibility for money; service charge for dishonored checks or drafts.

The director of finance shall collect all taxes and special assessments levied by the county council, and such other taxes and assessments the collection of which may by the charter or public general or local law be charged to the department of finance. The director of finance shall receive

all money paid to the county from any source. The director of finance shall not be responsible for money paid to persons or officials not under the director's direction or control, until such monies have been properly transferred to the director of finance or someone designated by the director for receipt of such funds.

When any check or draft tendered to Montgomery County in payment of any tax, fee, charge, penalty, interest or fine due the county is dishonored by a bank, a service charge of ten dollars or such other reasonable amount as may be established by executive regulation [of] ~~promulgated~~ ADOPTED by the county executive ~~by~~ under Method 2 (3) ~~pursuant to~~ OF Section 2A-~~2A-15(c)(3)~~ 15 of this ~~code~~ CODE, shall be imposed and added to the amount due and owing. The director may require that the total amount due, including the service charge, be paid in cash, certified check or money order.

2-42. GENERALLY.

* * *

(C) ELIGIBILITY AND FEES FOR SERVICES. THE COUNCIL IS HEREBY AUTHORIZED TO ADOPT RESOLUTIONS ESTABLISHING ELIGIBILITY FOR SERVICE. FEE SCHEDULES FOR ANY HEALTH DEPARTMENT SERVICES SHALL BE ESTABLISHED BY THE COUNTY EXECUTIVE, BY REGULATIONS ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE, WHO MAY FROM TIME TO TIME CHANGE SUCH FEES TO AN AMOUNT NOT TO EXCEED THE COST OF THE SERVICES PROVIDED THEREFOR.

* * *

2-140. Powers, duties and functions.

(a) The office of the hearing examiner shall have the following powers, duties and functions:

* * *

(6) To recommend [rules and] regulations to the county council TO BE ADOPTED UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE to govern the conduct of public hearings and other functions of the office of the hearing examiner.

Sec. 5. Section 2B-5(a)(4) of Chapter 2B, title "Agricultural Land Preservation" be and hereby is amended to read as follows:

2B-5. Agricultural easements - Generally.

(a) Purchase of easements.

* * *

(4) The purchase of easements by the county must be consistent with the general plan of Montgomery County, as amended by applicable master plans. The county executive shall [promulgate] ADOPT regulations ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section ~~2A-14(c)(2)~~ 2A-15 of this ~~code~~ CODE, for the county purchase of easements [and, prior to final adoption, such proposed regulations shall be submitted to the county council for review and comments].

Sec. 6. Sections 3-3(c) and 3-4 of Chapter 3, title "Air Quality Control" be and hereby are amended to read as follows:

3-3(c). Administration.

It shall be the duty of the director of the department of environmental protection to:

* * * (c) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;

* * *

3-4. [Rules and regulations] REGULATIONS.

The [director] county executive may, [after a duly advertised public hearing, adopt, amend or alter written] ~~promulgate~~ ADOPT [rules and] regulations, ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE, for this chapter. Such [rules and] regulations shall not conflict with nor waive any provisions of this Code nor be less restrictive than [rules and] regulations currently established and in effect as requirements of the state department of health and mental hygiene. [At least three weeks prior to adoption of the proposed rules and regulations, the county executive shall cause to be published once a week for two successive weeks in two newspapers of general circulation in the county, a brief summary of the rules and regulations to be adopted, together with a statment of the place where a complete copy thereof may be obtained and an invitation to the public to testify in person or submit written comments on the proposed rules and regulations. Such rules and regulations and amendments thereto shall become effective upon their adoption by the county executive and shall have the force and effect of law from and after the thirtieth day following their adoption or upon such earlier date as may be

fixed upon declaration of any emergency. There shall be no requirement for a public hearing hereunder when the proposed changes are merely to conform the rules and regulations to state or federal law, rules or regulations.]

[(b) Promptly following adoption and prior to the efective date, the county executive shall cause to be published once a week for two successive weeks in any one newspaper of general circulation in the county, a brief summary of the rules and regulations so adopted, together with a statement of its effective date and of the place where a copy thereof may be obtained. The requirements of publication prior to the effective date shall not apply to rules and regulations adopted upon the declaration of an emergency. A summary of emergency rules and regulations shall be published promptly after the adoption of such regulations.]

[(c)] (b) [Rules and regulations promulgated] REGULATIONS ADOPTED pursuant to provisions of this section shall provide for but not be limited to the following:

(1) Control of particulate matter emissions from fuel burning installations, grain drying installations, materials handling and construction and other acts and installations;

(2) Control of gas, vapor, odor and volatile organic compound emissions from fuel burning and other installations;

(3) Prohibition of certain incinerators and new fuel burning installations;

(4) Application fees at a rate not to exceed the cost of administering the program.

[(d)] (c) Notwithstanding any other provisions of this section, the county executive[, after notice and public hearing,] may [promulgate rules and] ADOPT regulations, ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section ~~2A-14(c)(2)~~ 2A-15 of this ~~code~~ CODE, regarding procedures for the issuance of permits for indirect sources of pollution in accordance with applicable state and federal regulations. [The county council may also hold hearings on these rules and regulations and such rules and regulations shall not be effective until approved by the council and published.]

Sec. 6A. Sections 3A-2 (c) and (f) and Section 3A-6 of Chapter 3A, title "Alarms" of the Montgomery County Code 1972, as amended, be and hereby are amended to read as follows:

3A-2. Alarm signal response fees.

* * *

(c) The Office of Consumer Affairs will be responsible [for [establishing and] publishing] ~~ADOPTING REGULATIONS UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE~~ procedures and fees] for the registration and the issuing of licenses to all alarm businesses that have consumers in Montgomery County and the issuing of the permits and permit decals to non-residential alarm users. The Office of Consumer Affairs will be responsible for the collection of the assessed fees hereunder.

* * *

(f) The County Executive may [establish and publish] ~~PROMULGATE~~ ADOPT regulations, ~~BY~~ UNDER Method 2 (3) ~~PURSUANT TO~~ OF Section ~~2A-14(C)(2)~~ 2A-15 of this ~~CODE~~ CODE, establishing procedures and fees for the registration and the issuing of licenses, permits, and permit decals and outlining the pertinent information needed from alarm businesses when reporting alarms directly to the police. Failure to provide the required information when notifying the police of an alarm may be cause for the suspension or revocation of the alarm business license by the Office of Consumer Affairs.

3A-6. Rules and Regulations.

The county executive shall adopt [and promulgate], ~~BY~~ UNDER Method (2) ~~PURSUANT TO~~ OF Section 2A-~~14(C)(2)~~ 15 of this ~~CODE~~ CODE, reasonable and necessary [rules and] regulations for the implementation and administration of this Chapter.

Sec. 7. Section 4-31 of Chapter 4, title "Amusements", be and hereby is amended to read as follows:

4-31. Applications generally.

All applications for a license required by this division shall be made to the department on such form as shall be designated. Applications shall not be accepted for filing unless accompanied by a receipt of the director of finance showing payment to the county of a filing fee of fifty dollars, or such other amount as may be established by regulation [of] ~~PROMULGATED~~ ADOPTED by the county executive ~~BY~~ UNDER Method (3) ~~PURSUANT TO~~ OF Section 2A-~~14(C)(3)~~ 15 of this ~~CODE~~ CODE, such fee to cover the cost of advertising in the newspaper and providing a transcript of the testimony

at the hearing. No fee shall be refunded.

Sec. 8. Sections 5-4, 5-7(a), 5-21, 5-43, 5-44, 5-45(b), 5-59(a), 5-67 and 5-69 of Chapter 5, title "Animal Control" be and hereby are amended to read as follows:

5-4. [Promulgation] ADOPTION of additional regulations.

The county executive is hereby authorized to adopt ~~and/promulgate~~ [written] regulations ~~by~~ UNDER Method (2), [pursuant to ~~[~~the procedures prescribed by law] OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE, necessary for the implementation of any of the provisions of this chapter, including fees necessary for the administration of the chapter.

5-7. Spaying, neutering and altering clinics.

(a) The county executive shall establish a clinic or clinics to be operated either by the county or under contract, at which residents may have dogs or cats spayed, neutered or altered in a humane manner by a licensed veterinarian upon the payment of a fee to be determined by the county executive by executive regulation ~~promulgated~~/~~by~~ ADOPTED UNDER Method ~~2/pursuant/to~~ (3) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE. Such fee may, in the discretion of the county executive, be either uniform or graduated based on ability to pay. In cases of demonstrated inability to pay the required fee, the animal of such owner may be spayed, neutered or altered without charge. In addition, the county executive may, in the executive's discretion, contract for such services to be performed by licensed veterinarians at their own places of business.

5-21. Same - Redemption and disposition generally.

(a) The owner of any animal impounded for running at large or any vicious or dangerous animal impounded as hereinabove provided shall be entitled to redeem such animal upon payment of redemption fees established by written regulations of the county executive, ~~by~~ ADOPTED UNDER Method (3) ~~pursuant/to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE, and proof of ownership; provided, that the licensing provisions of this chapter have been complied with.

(b) No animal impounded due to a violation of any section of this chapter, which has been previously impounded for a violation of any section of this chapter during the preceding twelve months shall be released until a

notice of violation of the applicable section has been issued to the owner of such animal.

(c) Any domesticated animal which is impounded and not redeemed by its owner within five days following notice of impoundment shall be deemed abandoned and shall become the property of the county and may be adopted pursuant to section 5-22 of this chapter or otherwise disposed of in a humane manner which shall take into account the advice of a licensed veterinarian, in accordance with procedures prescribed by the county executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method ~~(2)~~ (3) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE, such procedures to be examined periodically by a licensed veterinarian to assure that they are being carried out in a humane manner.

5-43. Maintenance of vaccination clinics.

The health officer shall maintain at least annually vaccination clinics convenient locations in the county for such periods as he shall deem necessary and all dogs may be vaccinated at such clinics during such periods. The county executive may, by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE, establish a fee for vaccinations to be collected in lieu of a license fee not to exceed the costs of administration.

5-44. Issuance of New Vaccination Certificate to Replace Lost or Destroyed Certificate.

The health officer or veterinarian who administered the vaccination shall issue a new vaccination certificate to replace a lost or destroyed certificate upon satisfactory evidence showing that the dog or cat was vaccinated pursuant to the provisions of this Article. The county executive may, by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE, establish a fee for replacement of lost or destoryed vaccination certificates, not to exceed the costs of replacement.

5-45. Vaccination Required.

* * *

(b) No person licensed pursuant to Article VII of this Chapter may sell a dog or cat four months of age or less, unless a deposit is received for the purpose of ensuring that the dog or cat will be vaccinated against

rabies. The amount of the deposit shall be $10.00 or such other amount, not to exceed $50.00, as is specified by executive regulations ~~promulgated by~~ ADOPTED by the county executive ~~by~~ UNDER Method (3) OF ~~pursuant to~~ Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE. The county executive is authorized and directed to [promulgate] ADOPT regulations, UNDER METHOD (3) OF ~~pursuant to~~ Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE specifying procedures for the collection, handling and use of the deposits.

5-59. Required; issuance; duration.

(a) It shall be unlawful for any person to own or harbor a dog over the age of four months unless such dog is licensed as provided by this article. Every person owning or harboring a dog within the county shall on or before July 1 of each year or within ten days of acquiring any dog over four months of age or within ten days after any such dog becomes four months of age obtain an annual license for each dog so owned or harbored, except dogs kept under a commerical kennel or fanciers' kennel license as provided in this chapter. The fee for all such individual dog licenses shall be established by the county executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE; provided, that no fee shall be charged for the licensing of any dog trained to aid the blind and actually in use for such purpose; and provided further, that the county executive shall establish a differential license fee for spayed and unspayed female dogs as a means to encourage owners to have their animals spayed. When applications is made between January 1 and May 1 and the dog was not subject to licensing before that date, the license fee shall be one-half the specified amount. The county executive may, by written regulation, ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE, increase or diminish any fees to an amount not to exceed the costs of administering and enforcing this chapter.

* * *

5-67. Required; fee; issuance.

(a) It shall be unlawful for any person, association or corporation to operate, establish or maintain a pet shop either independently or as part of another commercial enterprise without first obtaining an annual license therefore from the department. The license fee for pet shops shall be fixed

by executive regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE by the county executive who may from time to time increase or diminish such fee to an amount not to exceed the cost of administering this article. Dogs harbored by a licensed pet shop for breeding purposes or sale may be taken under close supervision from the pet shop for exercise and returned to the pet shop in like manner but no dog harbored at a licensed pet shop may otherwise be permitted to leave the establishment without wearing an individual dog license tag if such a license is required under the provisions of this chapter.

(b) It shall be unlawful for any person, association or corporation to operate, establish or maintain a commercial kennel without first obtaining an annual license therefor from the department. The license fee for commercial kennels owning or keeping not more than twenty-five animals shall be twenty-five dollars and for commercial kennels owning or keeping more than twenty-five animals, the license fee shall be fifty dollars; provided, that the county executive may from time to time ~~promulgate~~ ADOPT executive regulations ~~by~~ UNDER Method (3) ~~pursuant to~~ OF Section ~~2A-14(c)(3)~~2A-15 of this ~~code~~ CODE to increase or diminish such fees to an amount not to exceed the cost of administering and enforcing this article. Dogs harbored by a licensed commercial kennel for breeding purposes or sale may be taken under close supervision from the commercial kennel for exercise and returned to the commercial kennel in like manner but no dog harbored at a licensed commercial kennel may otherwise be permitted to leave the establishment without wearing an individual dog license tag if such a license is required under the provisions of this chapter.

* * *

(d) It shall be unlawful for any person, association or corporation to establish, operate or maintain a riding school or stable without first obtaining an annual license therefor from the department. The license fees for riding schools and stables shall be fixed by the county executive , by executive regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE, who may from time to time increase or diminish such to an amount not to exceed the cost of administering this article.

* * *

5-69. Renewal; notification.

The holder of any expiring license under this article desiring a new annual license to be effective on the expiration of the existing license shall, not less than thirty nor more than sixty days before the expiration of the existing license, file a written application for renewal with the director giving such information as is required on the form provided therefor and pay the annual renewal fee in such amount as may be fixed from time to time by executive regulation adopted by ~~method 3 of~~ the county executive ~~pursuant to~~ UNDER METHOD (3) OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE. Licensees shall be notified by the director at least sixty days prior to the expiration of a license.

Sec. 9. Section 5A-4(d) of Chapter 5A, title "Arts" be and hereby is amended to read as follows:

5A-4. Same - Membership and organization.

(d) The arts council should establish [rules and] regulations ADOPTED UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE concerning its operation and functions; elections and/or appointments and terms of office of its governing body and officers; conduct of its meetings and administrative procedures relating to its activities.

Sec. 10. Sections 8-13, 8-33, 8-34, 8-35 and 8-36 of Chapter 8, title "Buildings" be and hereby are amended to read as follows:

8-13. Rules and regulations.

(a) The director may recommend written [rules and] regulations for the administration of the provisions of this chapter including a schedule of fees and may, at his discretion, hold public hearings as part of this rule-making process. Such [rules and] regulations and amendments thereto shall not conflict with nor waive any provisions of this chapter nor be less restrictive than its provisions and shall [become effective upon their adoption] be ~~promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method (2) [in accordance with procedures set forth in section 2-105] ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~ 15 of this Code. In the case of fees, the county executive shall promptly forward to the county council a copy of the new fee schedule for use in budgetary planning activities. Such fees shall be in accordance with formulas based upon criteria to include

area or estimates cost of construction or a minimal set fee per category, not to exceed the cost of administering and enforcing this Code.

(b) [(1)] The director shall hold public hearings, upon adequate public notice, prior to forwarding his or her recommendations for [rules and] regulations setting forth the standards and requirements for the construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of all buildings and structures, on-site access facilities to such buildings and structures and their service equipment within the county. Such regulations, ADOPTED UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE, shall be based upon a designated edition of the BOCA Basic Building Code and local amendments thereto.

[(ii) Such rules and regulations and amendments thereto shall become effective upon their adoption by the county executive in accordance with the procedures set forth in section 2-105, as amended, and upon their approval by resolution of the county council.]

(c) Those provisions of chapter 8 regulating standards and requirements described in subsection (b) herein repealed by this Act, shall continue in force and effect until they are superseded by regulations adopted and approved in accordance with subsection (b).

8-33. Application; fee; qualifications.

The director shall maintain a register for the board of all applicants for business and all licenses, in such form as the board shall require.

Any person desiring to be licensed as a building contractor in the county shall make and file with the director a written application on a form approved by the Board. Each application shall be accompanied by an application fee which shall be established by the county executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant~~ [to [the procedure set forth in section 8-13 of this chapter] OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE. The applicant shall furnish information as to his character references and financial responsibility, his experience or training and education or the experience and training and education of his associates, construction superintendent or other principal employees in the building trade as the board shall require. Before the issuance of a license the director shall ascertain from reliable sources the applicant's record of compliance with the laws of the state and the county.

The board may request further information from the director or other sources, make independent investigations and conduct examination of the applicant, at its discretion. On the basis of the foregoing, it shall be the board's duty, within thirty days after submission of an application for a license, unless the time is extended for good cause, to certify to the director whether the applicant and his organization are qualified to comply with the building code and laws of the county and state, and to perform fully his building contracts, and whether he should be licensed and then to notify the applicant. In no case shall denial of certification be unreasonable and a denial shall be in writing stating the reason and shall be personally served or mailed by certified mail to the address on the application. Any denial may be appealed to the County Board of Appeals by filing notice of appeal with the Clerk of the Board of Appeals not later than ten days after such notice is personally served or mailed.

8-34. Issuance; bond required; fee.

The director shall issue a license to applicants qualified to be licensed upon payment of a license fee which shall be established by the county executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant~~ [to ~~[~~ the procedure set forth in section 8-13 of this chapter] OF Section 2A-~~11(f)(3)~~15 of this ~~code~~CODE, and deliver to the county of a cash bond or a corporate bond executed by a surety company qualified to transact business in the state in the amount of two thousand dollars. The case or corporate bond shall run to the county and shall be conditioned upon the licensee performing all work done by him in the county in accordance with the building code and laws of the county and state. The county or any person damaged by failure of the licensee to comply with such code and laws may proceed against such bond in any court of competent jurisdiction.

This bonding provision may be satisfied if the applicant has obtained a bond in at least the amount of two thousand dollars in connection with an organized program approved by the board, which program provides procedures for the processing and resolution of complaints against such building contractor and thus affords substantially the same bonding protection to the public as the bond required by this chapter.

The director shall immediately revoke the license upon failure of any

licensee to maintain such bond.

8-35. Term of licenses; renewals.

Licenses issued under this article shall be valid for one year from the date of issuance and may be renewed upon application to the director. Applicants for renewal shall pay to the county at the time of filing such application a fee which shall be established by the county executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant~~ [to ~~[~~ the procedure set forth in section 8-13 of this chapter] OF Section ~~2A-14(c)(3)~~2A-15 of this ~~code~~ CODE.

8-36. Display; duplicates.

Holders of licenses issued under this article shall display the same in a prominent place at their place of business and upon demand shall give the number of the license to any person who shall demand the same. If any license is lost, defaced or destroyed, the licensee may obtain a duplicate upon application to the director and payment of a fee which shall be established by the county executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant~~ [to ~~[~~ the procedure set forth in section 8-13 of this chapter] OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE.

Sec. 11. Sections 8A-11(e), 8A-13(b), 8A-18(f) and 8A-21(h) of Chapter 8A, title "Cable Communications" be and hereby are amended to read as follows:

8A-11. Operations; minimum channel capacity; access channels; production facilities; charges; privacy.

* * *

(e) Further conditions for utilization of educational, general public and county government access shall be determined by subsequent local legislation or by executive regulation ~~promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~ 15 of this ~~code~~ CODE. Subject to the franchise agreement, where such legislation or regulations cause an increase in a franchisee's costs, the county shall negotiate compensation to it therefor.

8A-13. OPERATIONAL REQUIREMENTS; TESTS.

* * *

(B) TESTS. IN ADDITION TO ALL PERFORMANCE TESTS REQUIRED TO BE

CONDUCTED BY THE FCC, THE COUNTY MAY REQUIRE ADDITIONAL TESTS FROM TIME TO TIME AS REQUIRED TO DETERMINE COMPLIANCE WITH TECHNICAL PERFORMANCE STANDARDS. THE COUNTY MAY REQUIRE FULL OR PARTIAL REPEAT TESTS, DIFFERENT TEST PROCEDURES, OR TESTS INVOLVING A SPECIFIC SUBSCRIBER'S TERMINAL. REQUESTS FOR SUCH ADDITIONAL TESTS WILL BE MADE ON THE BASIS OF COMPLAINTS RECEIVED OR OTHER EVIDENCE INDICATING AN UNRESOLVED CONTROVERSY OR SIGNIFICANT NONCOMPLIANCE, AND SUCH TESTS WILL BE LIMITED TO THE PARTICULAR MATTER IN CONTROVERSY. THE COUNTY WILL ENDEAVOR TO SO ARRANGE ITS REQUESTS FOR SUCH SPECIAL TESTS AS TO MINIMIZE HARDSHIP OR INCONVENIENCE TO THE FRANCHISEE OR THE SUBSCRIBERS. THE COUNTY SHALL PROVIDE FOR SUCH STANDARDS, TESTS AND PROCEDURES AS SET FORTH IN THE FRANCHISE AGREEMENT AND/OR BY EXECUTIVE REGULATION ADOPTED BY THE COUNTY EXECUTIVE UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE AND AFTER NOTICE TO FRANCHISEES [AND PUBLIC AND OPPORTUNITY FOR OBJECTIONS AND COMMENT].

8A-18. Administration.

(a) The Montgomery County Executive or his designeee shall have the responsibility for the administration and enforcement of this law and any franchise agreement. He shall have the following duties, powers and authority which he may delegate at his discretion:

* * *

[(f)] (6) To [promulgate ~~by/Method/1~~ rules and] ADOPT regulations, [subject to approval of the county council by resolution] ~~pursuant/to~~ UNDER METHOD (1) OF Section 2A-~~14(c)(1)~~ 15 of this ~~code~~ CODE, for the implementation of the intent of this chapter [pursuant to the Montgomery County Code, 1972 (1977 Repl. Vol.) Ch. 2-105].

8A-21. Lobby disclosure and conflict of interest.

* * *

(h) Reports.

(1) Each lobbyist required to register under this section shall file a quarterly report itemizing compensation received and expenses incurred while retained as a lobbyist.

(2) Each applicant shall file a quarterly report, itemizing all expenses incurred for the purpose of lobbying and public relations for the county franchise. Expenses reported under section (h)(1) do not have to be reported by the applicant.

(3) All reports shall be on forms specified by the county attorney, and shall be filed at such time and in such detail as specified in regulations which shall be [promulgated] ADOPTED by the county executive ~~by~~/ UNDER Method 1 (1) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE. The period to be covered by such reports shall begin on the effective date of this law and shall terminate six months following the date the franchise is awarded.

Sec. 12. Sections 10-3 and 10-11 of Chapter 10, title "Child Care" be and hereby are amended to read as follows:

10-3. Regulations and Administration of Chapter.

The county executive, after holding a public hearing, is authorized to [promulgate] ADOPT executive regulations ~~by Method 1~~[, in the manner provided by [law] ~~pursuant to~~ UNDER METHOD (2) OF Section 2A-~~2A-14(c)(2)~~ 15 of this ~~code~~ CODE, for the implementation of this chapter, including the establishment of health and welfare standards for group day care centers. This chapter shall be administered by the director of the Department of Health acting under the supervision of the county executive.

10-11. License fee.

The fees for licenses issued under this article shall be paid to the director and shall be of such an amount as the county executive by regulation, ~~promulgated by~~ ADOPTED UNDER Method 1 (3) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE, may set from time to time. The fees shall not exceed the cost of inspection and issuing the permits for the various establishments regulated by this chapter. The permit fee so fixed shall be submitted with the application and is not refundable in whole or in part unless the application is withdrawn prior to the inspection of the premises by the director or authorized agent of the director. If the application is withdrawn prior to the inspection, the entire permit fee shall be refunded.

Sec. 13. Section 11-2(k) of Chapter 11, title "Consumer Protection" be and hereby is repealed and reenacted with amendments to read as follows:

11-2. Office of consumer affairs.

There is hereby created the Montgomery County Office of Consumer Affairs, hereinafter referred to as "office." The county executive shall

appoint a single officer to be known as the executive director of the office of consumer affairs, subject to the confirmation of the county council. The office shall have the following duties, powers and authority:

* * *

(k) To [prepare and publish] ~~promulgate~~ rules and] ADOPT regulations ~~by~~ UNDER Method ~~(1)~~(3)~~ pursuant to~~ OF Section ~~11A-11(k)(1)~~2A-15 of this ~~code~~ CODE, for the conduct of the activities of that office.

Sec. 14. Sections 11A-3(b)(2), 11A-5(e), 11A-7(c), 11A-9 and 11A-13 of Chapter 11A, title "Condominiums" be and hereby are amended to read as follows:

11A-3. Right of first refusal to purchase rental facilities.

* * *

(b) Notice required; exercise of right of first refusal.

* * *

(2) The county executive may require the owner, by executive regulations ~~promulgated by~~ ADOPTED UNDER Method ~~(1)~~(3) ~~pursuant to~~ OF Section 2A-~~11A(k)(1)~~ 15 of this ~~code~~ CODE to make available to the county and its designated housing agency information regarding the characteristics and condition of the facility deemed relevant to the exercise of the right of first refusal, including but not limited to architectural and engineering plans and specifications and facility operating data. In addition, the county executive by regulation ~~promulgated by~~ ADOPTED UNDER Method ~~(1)~~(3) ~~pursuant to~~ OF Section 2A-~~11A(k)(1)~~15 of this ~~code~~ CODE may require the owner to provide access to the facility for purposes of inspection by the county or its designated housing agency provided, the county, its designated housing agency, and their agents shall be responsible for any damage to the property caused by such inspection. The county executive may provide by regulation that any information received by either the county or its designated housing agency, pursuant to this subsection, is confidential and not subject to public disclosure.

11A-5. Extended leases.

* * *

(e) The county executive, by executive regulations ~~promulgated by~~

ADOPTED UNDER Method (2)(3) ~~pursuant to~~ OF Section 2A-14(c)(2) 15 of this ~~code~~ CODE, may provide for implementation of this section, including promulgation and enforcement of recordation requirements for owners of condominium units subject to life tenancies under this section and prohibitions against changes of business or leasing practices to circumvent the giving of extended tenancies under this section.

11A-7. Consumer guide.

* * *

(c) The consumer guide shall be sufficient if it contains the following:

(1) Plat.

(2) Sample deed.

(3) Estimated itemized closing costs.

(4) Estimated itemized monthly housing costs, including principal, interest, taxes, condominium fee and utilities.

(5) Statement of all warranties, including statutory implied warranties.

(6) Name(s) of institutions offering long-term financing and terms, if the developer has obtained a commitment.

(7) Other information, as required by executive regulations ~~promulgated~~ ADOPTED by the county executive ~~pursuant to~~ UNDER Method (2)(3) OF Section 2A-14(c)(2)15 of this ~~code~~ CODE, to promote full and fair disclosure of the details of the transaction, the nature of condominium ownership and the characteristics of the particular condominium facility.

11A-9. Budgeted reserves.

~~In the case of a conversion, during the period of control of unit owners by the developer, through the council of unit owners, the developer shall budget and contribute annually to reserves for repair and replacement of common elements. Such annual contributions to reserves for repair and replacement shall be equal to a percentage of the replacement cost of the common elements (100% replacement value, exclusive of land) as established for casualty insurance purposes at the time of the conversion. The percentage of replacement shall be established by executive regulation.~~

DURING THE PERIOD WHEN THE DEVELOPER RETAINS CONTROL OF THE COUNCIL OF

UNIT OWNERS, THE DEVELOPER OF A CONDOMINIUM SHALL BUDGET AND CONTRIBUTE ANNUALLY TO RESERVES. THE CONTRIBUTION OF THE DEVELOPER SHALL BE IN PROPORTION TO THE NUMBER OF CONDOMINIUM UNITS OWNED BY THE DEVELOPER, BUT IN NO EVENT SHALL THE TOTAL ANNUAL CONTRIBUTIONS OF ALL UNIT OWNERS, INCLUDING THE DEVELOPER, BE LESS THAN AN AMOUNT CALCULATED TO MAINTAIN THE RESERVE FUND AT A LEVEL ADEQUATE FOR DEFERRED MAINTENANCE, REPAIRS AND REPLACEMENT OF THOSE COMMON ELEMENTS OR MAJOR COMPONENTS OF COMMON ELEMENTS THAT MUST BE REPLACED ON A PERIODIC BASIS.

THE COUNTY EXECUTIVE SHALL BY EXECUTIVE REGULATION [PROMULGATE RULES AND] ADOPT REGULATIONS UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE DETAILING REQUIREMENTS OF THE BUDGETED RESERVES TO BE INCORPORATED IN THE CONSUMER GUIDE.

11A-13. Administration of chapter.

The Office of Consumer Affairs shall be responsible for administration of ~~promulgated by the county executive by Method 2 pursuant to Section 2A-14(c)(2) of this code~~ this chapter; and the county executive shall, from time to time, [issue such] ~~promulgated by~~ ADOPT UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~ CODE, written regulations [as may be] necessary to put into effect and to administer the provisions of this chapter.

Sec. 15. Sections 11B-18, 11B-20, 11B-23C, 11B-25, 11B-26(a), 11B-27 and 11B-39 of Chapter 11B, title "Contracts, procurement matters and public ethics" be and hereby are amended to read as follows:

11B-18. General review requirements.

(a) The [chief administrative] county executive shall establish, by written regulation ~~promulgated by~~ ADOPTED UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~ CODE, the general requirements and procedures for review of professional service contracts within county government.

(b) Included among the requirements and procedures to be established by the [chief administrative officer] county executive shall be the following:

(1) Procedures for review by the contract review committee of all professional service contracts and contract modifications in excess of ten thousand dollars and such other contracts and contract modifications as deemed appropriate.

(2) Procedures for coordination with and concurrence by concerned departments, offices and agencies.

(3) Procedures for review of contract modifications where these will affect the scope of the original contract or where they will result in an increase in expenditures above a specified amount.

(4) Procedures for departmental contractor qualification and selection committees to review, evaluate and recommend contractors for professional service contracts in excess of ten thousand dollars or such other contracts as deemed appropriate.

(5) Such other factors as the [chief administrative officer] county executive deems appropriate to carry out the purpose and intent of this chapter, including a prohibition on dividing contracts in order to avoid the contract review process.

(c) Agreements between the office of architectural services and the defense civil preparedness agency for professional architectural advisory services, to be furnished in kind and at no cost to the county, for the application of building design concepts to protect against the hazards of natural, man-made and nuclear disasters, are not subject to these procedures.

11B-20. Public announcement process.

(a) Procurement of professional services shall be announced in a manner consistent with written regulations [established by the chief administrative officer] ~~procedures~~ ADOPTED by the county executive ~~by~~ UNDER Method (1) ~~to~~ OF Section 2A-~~11(c)(1)~~ 15 of this ~~code~~ CODE, or by resolution of the county council, as appropriate.

(b) The public announcement will also be mailed to those potential contractors who have been previously qualified and to local and state professional organizations or societies for dissemination to their members.

11B-23C. Procedures.

The chief administrative officer shall structure the county's procedures for purchasing materials, supplies, equipment, and services, including construction services, to attempt to achieve, as a result, that a minimum of 10% of the total dollar value of such purchases are made directly or indirectly from minority businesses. These procedures may include provisions for a minority preference in competitive bidding requirements for contracts between seven thousand dollars (as adjusted by the county

executive) and five hundred thousand dollars to allow for selection of a minority bidder other than the lowest responsible bidder, provided the cost does not exceed an amount determined by the executive in his discretion, and specified in the invitation for bids, up to 120% of the lowest responsible bid, and provided further that the invitation for bids for any contract where a minority preference is to be used shall state the intention to utilize minority preference procedures.

11B-25. Establishment of [rules and] regulations [by chief administrative officer].

(a) The [chief administrative officer shall, subject to the direction of the] county executive[, establish, amend when necessary and enforce] shall ~~promulgate, by~~ ADOPT UNDER Method 2(1) ~~to~~ OF Section 2A-~~14(b)(2)~~15 of this ~~code~~ CODE, such [rules and] regulations as shall be necessary to promote efficiency of operations and compliance with the provisions of this chapter.

11B-26. Contract review committee; establishment; composition.

(a) The [chief administrative officer] county executive shall establish, by written regulation ~~promulgated by~~ ADOPTED UNDER Method ~~2~~(1) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, a contract review committee for the purpose of review and evaluation of the selection of contractors for professional services and such other responsibilities as specified elsewhere in this chapter, or as may be assigned. The regulations shall provide for expeditious review and evaluation including specific periods of time for such review and evaluation. In addition, the committee shall review all contracts where the award is to other than the lowest bidder when formal competitive bidding procedures are used.

11B-27. Departmental responsibilities.

(a) The [chief administrative officer] county executive shall establish by written regulation ~~promulgated by~~ ADOPTED UNDER Method ~~2~~(1) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, the responsibilities of and the procedures to be followed by the various departments, offices and agencies of county government engaged in contracting and procurement matters.

(b) Included among the responsibilities and procedures to be

established by the [chief administrative officer] county executive shall be:

(1) Development of request for and evaluation of contractual proposals

(2) Development of necessary plans and specifications.

(3) Procedures for coordination with and concurrence by concerned departments, offices and agencies.

(4) Fiscal and administrative controls.

(5) Legal review.

(6) Announcement of bids, proposals and contracts in a uniform and consistent manner.

(7) Such other factors as the [chief administrative officer] county executive deems appropriate to carry out the purpose and intent of this chapter.

11B-39. Rules and regulations.

The contract review committee may [adopt] promulgate [rules and] regulations BY UNDER Method (2)(1), in the manner described in OF Section 2A-14(c)(2)15 of this code CODE, which provide to the fullest extent informal, expeditious and fair resolutions of claims and appeals.

Sec. 16. Sections 13-1 and 13-7 of Chapter 13, title "Detention Centers and Rehabilitation Facilities" be and hereby are amended to read as follows:

13-1. Powers and duties general of director of department of correction and rehabilitation.

(a) The director of the department of correct and rehabilitation, thereafter in this chapter referred to as the director, shall recommend to the county executive who may [promulgate,] BY ADOPT UNDER Method (2) pursuant to OF Section 2A-14(c)(2)15 of this code CODE, all [rules and] regulations of the county which pertain to the administration and operation of the department of correction and rehabilitation, not inconsistent with law, necessary to exercise the responsibilities and duties of the position.

* * *

13-7. Same - Same - Payment for work and program participation.

The director of finance is authorized to pay each inmate who is assigned

to work at an essential job or to participate in a program specified by the director at the rate of one dollar per day, or such higher rate as may be [determined by the director] established in executive regulations ~~promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method ~~(2)~~(3) ~~pursuant to~~ OF Section ~~2(A)-14(c)(2)~~2A-15 of this ~~code~~ CODE, for the actual days worked or for the actual days of successful participation in a program. The director or designee will maintain a list of essential inmate work positions and will specify the programs for which inmates will be paid. Such payment shall not be made for required housekeeping duties performed within an inmate's quarters or confinement area.

Sec. 17. Section 13A-4 and 13A-5 of Chapter 13A, title "Development Rights Fund" be and hereby are amended to read as follows:

13A-4. Authority of the board.

The board of directors is hereby empowered to commit and authorize expenditure of all, or a portion, of the funds made available to it: (1) to establish a reserve fund to guarantee in whole, or in part, loans made by commercial lending institutions insofar as such loans are secured by development rights, and (2) to purchase and sell development rights easements. It shall be the policy of the board to facilitate the establishment of a private market for development rights and to serve as a financial resource available when private commercial resources are not readily available at prevailing market rates. The board shall, after consulting with the Agricultural Preservation Advisory Board and after holding a public hearing, propose [rules and] regulations to govern its operations. The[se] rules [shall become effective upon their promulgation] ~~and~~ regulations for the board shall be ~~promulgated by~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE by the county executive [and approval by the county council].

The [rules and] regulations shall set forth eligibility requirements for loan guarantees and for sellers to and buyers from the fund of development rights. In addition to other requirements, the [rules and] regulations shall provide that:

(a) The first priority for the use of its funds shall be to guarantee loans;

(b) Loan guarantees may not exceed 75% of the value of development

rights. The board may charge a fee for the loan guarantee;

(c) No loan guarantee may exceed five years, however, a single one year extension may be granted for good cause;

(d) Development rights which are purchased by the fund must be sold prior to the termination of the fund as provided in section 13A-7 herein;

(e) The board shall require evidence from the applicant that he has been unable to obtain a commercial loan using development rights as collateral before a loan guarantee may be approved. This requirement shall not apply to loan guarantees for existing loans;

(f) Development rights may be sold by the board by any legally permissible means, including auction;

(g) The board must determine the value of development rights for any negotiated purchase by obtaining two independent appraisals or some other reasonable means;

(h) Prior to purchasing development rights from an applicant, the board shall require evidence from the applicant that he has been unable to sell development rights in the private market.

The board shall be under no duty to act even if all requirements have been satisfied but may exercise its discretion and best judgment to fulfill the purpose of this chapter. The board shall report semi-annually to the county executive and the county council on its financial activities.

13A-5. Eligibility requirements.

Before the fund can purchase development rights or make loan guarantees using development rights as collateral, it must be established to the satisfaction of the board that the land to which the development rights attach is located within the rural density transfer zone. This eligibility requirement is in addition to any other requirements which may be established in the [rules and] regulations [proposed by] for the board [and [approved by the county council] ADOPTED UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE.

Sec. 18. Section 15-12 of Chapter 15, title "Eating and Drinking Establishments" be and hereby is amended to read as follows:

15-12. Fees.

The fees for permits under this article shall be of such an amount as the county executive, by regulation promulgated by ADOPTED UNDER Method

~~(2)~~(3) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, may set from time to time. The fees shall not exceed the cost of inspecting and issuing the permits for the various establishments regulated by this chapter. The permit fee so fixed shall be submitted with the application and is not refundable in whole or in part unless the application is withdrawn prior to an inspection of the premises by the director or his/her authorized agent. If the application is withdrawn prior to inspection, the entire permit fee shall be refunded.

The county executive may waive all or part of the permit fee required for the following establishments which pay a license fee under some other licensing law of the county:

(a) Hospitals, sanitariums, nursing homes and care homes.

(b) Private educational institutions.

(c) Child care homes.

(d) Hotels, tourist homes, boardinghouses and rooming houses.

Sec. 19. Sections 17-2, 17-22, 17-25(a), 17-37(a) and 17-38(b)(c) of Chapter 17, title "Electricity" be and hereby are amended to read as follows:

17-2. [Rules and regulations]REGULATIONS.

(a) The director may recommend written rules and regulations for the administration of the provisions of this chapter and may, at his discretion, hold public hearings as part of this rule-making process. Such rules and regulations and amendments thereto shall not conflict with nor waive any provisions of this chapter nor be less restrictive than its provisions and shall [become effective upon their adoption] be ~~promulgated~~ ADOPTED by the county executive [in accordance with procedures set forth in chapter 2,] ~~by~~ UNDER Method 3(2) ~~pursuant to~~ OF section [2-105] 2A-~~14(2)~~ 15 of this Code.

(b) The director shall hold public hearings, upon adequate public notice, with opportunity for full participation from members of the board of electrical examiners and shall obtain the recommendations of the board of electrical examiners prior to forwarding his recommendations for [rules and] regulations setting forth the standards and requirements for all installations of electrical equipment within the county. Such regulations shall be based upon a designated edition of the National Electrical Code and local amendments thereto, including but not limited to, those for the

installation of fire alarm systems. Such [rules and] regulations and amendments thereto shall [become effective upon their adoption] be ~~promulgated~~ ADOPTED by the county executive [in accordance with procedures set forth in chapter 2,] ~~by~~ UNDER Method (2) ~~pursuant to~~ OF section [2-105]2A-~~14(c)(2)~~15 of this code [and upon their approval by resolution of the county council].

17-22. Same - Master electrician limited.

(a) Any person who desires to install, repair, maintain or erect electrical equipment as a master electrician limited, as defined in this chapter, may at any time make application to the director to be examined and the director shall provide the applicant with the prescribed forms.

(b) An applicant may be licensed hereunder for a particular type of electrical installation or may be licensed for all types or as many types of limited electrical installations as defined herein and for which he shall be found qualified by the board. He shall have been regularly and principally employed for four (4) years preceding application in the area of limitation, under the direction of a master electrician, or master electrician limited, where the limitation is in the same area as requested. The type of limited licenses shall be set forth in regulations [promulgated] ~~by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE by the county executive [as set forth in this chapter] upon recommendation of the board. Particular license classifications shall include, without limiting, licenses for electrical connections and circuits to air conditioning, elevators, gasoline pumps, automatic heating furnaces whose principal operation is derived from fuel oil, gas, steam, solar panels, or coal, lighting, illuminated signs, and similar specialties, and electrical repair and maintenance work, in plants, factories, apartment complexes and any public occupancy employing maintenance forces, fire alarm systems and electronic equipment, or major appliances, all employing the use of electrical current or connections. The conditions of the license shall appear plainly on the license.

(c) Those persons who are employed by a plant, factory, apartment, condominium, office building or other facility employing maintenance personnel are encouraged to obtain a master electrician's limited license for maintenance in order to be able to obtain permits for electrical

maintenance work. In addition to the requirements in Section 17-22(a) and (b), the owner or agent for the building or buildings must certify that the applicant is a full-time employee and is covered by liability insurance in the amount established by Section 17-19(c).

17-25. Term of licenses; renewal.

(a) All licenses issued under this chapter after the effective date of this legislation shall be valid for two years from the date of issuance and may be renewed upon application to the director. Applicants for licenses and renewals thereof shall pay to the county a fee for a business license, master electrician's license, master electrician's limited license and journeyman electrician's license as provided for by regulations [of] ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section ~~2A-14(c)(3)~~ 2A-15 of this ~~code~~ CODE by the county executive.

17-37. General requirements.

(a) It shall be the duty of the owner, agent, lessee, occupant, or any other person entitled to the beneficial use, rental or control of any building which is required under this Code to have a fire alarm system to provide, install and maintain therein a fire alarm system with sufficient alarm bells, striking stations or automatic detectors, of such type and character as contained in regulations [adopted] ~~promulgated~~ by the county executive [and approved by the county council] ~~by~~ UNDER Method ~~(2)(B) pursuant~~ [to [provisions of] (2) OF section [17-2(b) of this chapter]2A-~~14(c)(2)~~15 of this ~~code~~ CODE.

17-38. Generally.

* * *

(b) The standards and requirements of this chapter shall be based upon the currently designated edition of the National Electrical Code and amendments thereto as specified in regulations adopted by the county executive [and approved by the county council] pursuant to procedures set forth in section 17-2(b)] ADOPTED UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE and are hereby declared to be minimum standards and requirements. Any electrical equipment or installation which is equal or superior to such standards and requirements shall be deemed to be in compliance therewith.

* * *

Sec. 20. Sections 19-6, 19-8, 19-17 and 19-31 of Chapter 19, title

"Erosion and Sediment Control" be and hereby are amended to read as follows:

19-6. Same - Fees.

The county executive, by written regulations [adopted] ~~promulgated by~~ UNDER Method (3) [pursuant to] OF section [2-105]~~2A-14(c)(3)~~2A-15 of this code, may establish, increase or decrease permit and inspection fees and set nonrefundable fee schedules for filing, additional submissions, and permit renewals in an amount not to exceed the reasonable cost of administering and enforcing this chapter.

19-8. Same - Expiration; renewal.

Every permit issued hereunder shall expire at the end of the period of time set out in the permit. The permittee shall fully perform and complete all of the work required to be done within one year after the date of issuance, unless specified otherwise by the department for good cause shown. If the permittee shall be unable to complete the work within the specified time, he shall, within thirty days prior to expiration of the permit, present in writing to the department a request for an extension of time, setting forth therein the reasons for the requested extension. If, in the discretion of the director, such an extension is warranted, he may grant additional time for the completion of the work for an additional fee, such fee to be established by the county executive by written regulation adopted [pursuant to] UNDER METHOD (3) OF section [2-105]2A-~~14(c)(3)~~15 of this Code. Where the director determines that the extension of time will require a substantial modification of the grading, erosion and sediment control plan, any extension of a permit shall be subject to approval of a revised sediment control plan by the district.

19-17. [Rules and regulations]REGULATIONS.

(a) The director may recommend written [rules and] regulations for the administration of the provisions of this chapter and may, at his discretion, hold public hearings as part of this rule-making process, with opportunity for full participation from the county soil conservation district and shall obtain the recommendations from the district prior to forwarding his recommendations for [rules and] regulations. Such [rules and] regulations and amendments thereto shall not conflict with nor waive any provisions of this chapter nor be less restrictive than its provisions and shall become effective upon their adoption ~~and promulgation~~ by the county executive

[in accordance with the procedures set forth in the] ~~by~~ UNDER Method 2(2) ~~pursuant to~~ OF section [2-105]2A-~~14(c)(3)~~15 of this Code.

(b) The director shall hold hearings upon adequate public notice of no less than thirty days, with opportunity for full participation from the soil conservation district and shall obtain the recommendations from the soil conservation district prior to forwarding his recommendations for [rules and] regulations for provisions set forth in subsection (c) of this section. Such [rules and] regulations shall not conflict with nor waive any provisions of this chapter nor be less restrictive than [rules or] regulations promulgated and in effect as requirements of the state department of natural resources. Such [rules and] regulations and amendments thereto shall become effective upon their adoption ~~and promulgation~~ by the county executive [in accordance with] ~~by~~ UNDER Method ~~(3)~~(2) ~~pursuant to~~ OF section [2-105]2A-~~14(c)(3)~~15 of this code [and upon their approval as submitted or amended by resolution of the county council].

(c) Regulations [promulgated pursuant to] ADOPTED UNDER this chapter shall establish criteria which shall not conflict with nor waive any provisions to this chapter nor be less restrictive than criteria adopted for the same purposes by the soil conservation district. These regulations shall include but not be limited to the following provisions:

(1) Maximum duration of exposure;

(2) Critical slope protection;

(3) On-site grading controls;

(4) On-site drainage controls

(5) Protection of specimen trees.

19-31. [Rules and regulations]REGULATIONS; interagency agreements.

The director may recommend written [rules and] regulations for the administration of the provisions of this article, and shall hold public hearings as part of this rule-making process, with opportunity for full participation by the District and the commission. Such [rules and] regulations, and amendments thereto, shall not conflict with, nor waive, any of the provisions of this chapter, nor be less restrictive than its provisions, and shall become effective upon their adoption ~~and promulgation~~ by the county executive ~~by~~ UNDER Method (2) ~~pursuant~~

to [in accordance with the procedures set forth in] OF section [2-105]2A-15 of this code[, and upon their approval by resolution of the county council]. Such [rules and] regulations shall include the establishment of a fee schedule for monetary contributions to the county in lieu of the required on-site storm water management facility, and may also include design standards and other criteria or procedures necessary to implement the provisions of this article. The executive, the District and the board shall, within sixty days following the effective date of this article, execute such agreements as may be necessary to implement its provisions, including the monitoring and review on a periodic basis, of the effect that the program has had on the watersheds of the county. These agreements shall become effective within thirty days of their effective date, unless disapproved by the county council.

Sec. 21. Section 19A-5(j) of Chapter 19A, title "Ethics" be and hereby is amended to read as follows:

19A-5. Montgomery County Ethics Commission

(j) The County Ethics Commission shall in the manner described in Section 2A-15(c)(2) of this code adopt [and promulgate] by UNDER Method (2) OF SECTION 2A-15 OF THIS CODE reasonable and necessary [rules and] regulations for the implementation and administration of this chapter.

Sec. 22. Sections 21-4B(e) of Chapter 21, title "Fire and Rescue Services" be and hereby is amended to read as follows:

21-4B. Fire and rescue commission.

(e) Duties, responsibilities and authority. The commission, on behalf of the county, is hereby authorized to develop effective, efficient and equitable fire, rescue and emergency medical services county-wide, and to provide the policy and regulatory framework for all such fire, rescue and medical service operations. The commission shall work closely with both the director and the fire board. The commission shall have the following functions in addition to those elsewhere assigned by law[,] or regulation [or assigned] promulgated ADOPTED by the county executive by UNDER Method (2) pursuant to OF Section 2A-15(c)(2)15 of this code CODE:

(1) Advise the county executive and the county council on any matter relating to fire, rescue and emergency medical services.

(2) Adopt county-wide policies, [regulations,] standards, procedures,

plans and programs applicable to all fire, rescue and emergency medical service operations;

(3) ADOPT REGULATIONS UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE;

[(3)](4) Establish communications and dispatch procedures for emergency operations centers; and

[(4)](5) Establish guidelines for curriculum and programs of the Public Service Training Academy.

Sec. 23. Sections 22-13, 22-37 and 22-96(g) of Chapter 22, title "Fire Safety Code" be and hereby is amended to read as follows:

22-13. [Rules and regulations]REGULATIONS.

(a) The director may recommend written [rules and] regulations for the administration of the provisions of this chapter including a schedule of fees and hold public hearings as part of the rule-making process. Such [rules and] regulations and amendments thereto shall not conflict with nor waive any provisions of this chapter nor be less restrictive than its provisions and shall become effective upon their adoption ~~and promulgation~~ by the county executive ~~by~~ UNDER Method (2) ~~pursuant~~ ~~to~~ OF [in accordance with procedures set forth in] section [2-105, Montgomery County Code 1972, and upon their approval by resolution of the county council]2A-~~14(c)(2)~~15 of this ~~code~~ CODE. In the case of fees, the county executive shall promptly forward to the county council a copy of the new fee schedule for use in budgetary planning activities. Such fees shall be in accordance with formulas based upon criteria to include area or estimated cost of construction, or cost of inspection and processing or a minimal set fee per category, not to exceed the cost of administering and enforcing this code.

(b) The director shall hold public hearings, upon adequate public notice of not less than thirty days, prior to forwarding his recommendations for [rules and] regulations setting forth the standards and requirements for controlling the hazards of fire and explosion from improper storage, handling or use of substances, materials or devices and for controlling the hazardous use of property.

22-37. Regulating fire extinguisher service.

The director of the department of fire and rescue services shall

exercise the following functions, powers and duties:

(1) To administer such [rules and] regulations~~promulgated by the county executive by Method 2 pursuant to Section 2A-18(c)(2) of this code~~ as may be determined necessary for the protection and preservation of life and property in controlling:

i. The registration of firms engaging in the business of servicing portable fire extinguishers;

ii. The registration of firms engaging in the business of hydrostatically testing U.S. Department of Transportation specification gas cylinders used for portable fire extinguishers;

iii. The examination of persons applying for a license to service portable fire extinguishers;

iv. The licensing of persons to service portable fire extinguishers;

v. The requirements for servicing of portable fire extinguishers.

(2) To evaluate the qualifications of firms or individuals for a certificate of registration to engage in the business of servicing portable fire extinguishers.

(3) To conduct examinations to ascertain the qualifications and fitness of applicants for a license to service portable fire extinguishers.

(4) To issue certificates of registration for those firms that qualify under these regulations to engage in the business of servicing portable fire extinguishers, and issue licenses, apprentice permits, and authority to perform hydrostatic testing to the qualified persons.

22-96. Smoke detectors.

(g) Permits and fees: No smoke detector or alternative system shall be directly connected (permanently wired) to the electrical system of the structure unless an electrical permit shall have first been obtained from the department of environmental protection or the municipal electrical permit authority having jurisdiction. The county executive is hereby authorized to adopt~~by executive regulations promulgated by~~ UNDER Method (1)(3) ~~pursuant~~ OF ~~to~~ Section 2A-18(c)(1)15 of this ~~code~~ CODE, a fee schedule for the issuance of said permit which shall not exceed the cost of administration of this section; further, the county executive is authorized to waive, partially or wholly, the fee requirement at his discretion, or to issue multiple permits under the payments of a single fee.

Sec. 24. Sections 23A-6(a) and (b), and 23A-9(a)(4) of Chapter 23A, title "Group Residential Care Facilities" be and hereby are amended to read as follows:

23A-6. Rules and regulations.

(a) The county executive may [adopt] promulgate or amend written [rules and] regulations by UNDER Method (2) pursuant to OF Section 2A-14(c)(2)15 of this code CODE for this chapter [and may, at his or discretion, hold public hearings as part of this rule-making procedure]. Such [rules and] regulations shall not conflict with nor waive any provisions of this chapter, nor be less restrictive than its provisions or those found in chapter 26 of this code. [Such rules and regulations or amendments thereto shall become effective thirty days after their adoption by the county executive unless an earlier date may be affixed upon a declaration of an emergency and they shall have the force and effect of law.]

[(b) Promptly following adoption and prior to the effective date the county executive shall cause to have published a brief summary of the rules or regulations so adopted, together with a statement of its effective date and of the place where a copy thereof may be obtained. The requirement of publication prior to the effective date shall not apply to rules and regulations adopted upon the declaration of an emergency. A summary of emergency rules and regulations shall be published immediately after adoption.]

23A-9. Annual facility license; procedures; conditions; administration and enforcement.

(a) License procedures. The director shall process any facility license application according to the following procedures:

* * *

(4) Applicants shall pay to Montgomery County, Maryland a fee to be established and revised, by executive regulation promulgated by ADOPTED UNDER Method 1(3) pursuant to OF Section 2A-14(c)(2)15 of this code CODE, from time to time by the county executive not to exceed the costs of administering this chapter.

* * *

Sec. 25. Section 24-9(j) of Chapter 25, title "Health and Sanitation", be and hereby is amended to read as follows:

24-9. Smoking Prohibitions and Restrictions.

(j) [Rules and regulations]REGULATIONS. The county executive shall adopt [and promulgate] reasonable and necessary [rules and] regulations, ~~pursuant to~~ UNDER METHOD (2) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, for the implementation, administration and enforcement of this chapter.

Sec. 26. Section 24A-4(h) of Chapter 24A, title "Historic Resources Preservation", be and hereby is amended to read as follows:

24A-4. Historic preservation commission - Generally.

(h) Regulations. The commission may adopt, ~~in the manner described in~~ UNDER METHOD (2) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, such [rules and] regulations as it may be deemed necessary for the proper transaction of the business of the commission.

* * *

Sec. 27. Section 25-18 of Chapter 25, title "Hospitals, Sanitariums, Nursing and Care Homes", be and hereby is amended to read as follows:

25-18. Fees.

(a) The annual license fees for all institutions subject to the provisions of this Article shall be established and may be revised from time to time by the county executive by written regulations ~~promulgated by~~ ADOPTED UNDER Method 1(3) OF ~~pursuant to~~ [in accordance with] section [2-105] 2A-~~14(c)(1)~~15 of this Code in an amount not to exceed the reasonable costs of administration and enforcement of this chapter.

(b) No annual license shall be issued by the department until payment of the prescribed license fee has been made to the department of finance by the institution requesting the license.

Sec. 28. Sections 25A-3, 25A-6(a), 25A-7, 25A-8(a) and 25A-10 of Chapter 25A, title "Housing, Moderately Priced", be and hereby are amended to read as follows:

25A-3. Definitions.

* * *

Moderate income: The phrase "moderate income" means levels of income which prohibit or severely limit the financial ability of persons to purchase or to rent housing in Montgomery County and which, therefore, based upon the experience in the housing market in Montgomery County, require that the type of moderately priced housing intended to be developed under the provisions of this chapter be constructed.

Moderate income levels shall be established by written regulations which shall be [promulgated] ~~by~~ ADOPTED UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~CODE and revised by the county executive at such time as corresponds with the promulgation and revision of the executive regulations which establish the sales and rental prices for moderately priced dwelling units, as required by section 25A-3 herein, or more frequently as deemed necessary by the county executive. [Not less than seven days prior to promulgation of such written regulations, the county executive shall notify the county council of such moderate income levels or changes thereto with supporting data and reasons therefore].

In establishing the moderate income levels, the county executive shall consider, but shall not be limited to a consideration of, the price

established for the sale or rental of dwelling units developed pursuant to the provisions of the chapter plus the term, interest rate and taxes applicable to the financing of such dwelling units, the estimated levels of income necessary to finance the acquisition of such dwelling units, the family size and number of dependents.

Moderately priced dwelling unit. The phrase "moderately priced dwelling unit" means a dwelling unit which meets the specifications of either paragraph (1) or (2) below:

(1) A dwelling unit which is constructed, sold or rented under a federal program to assist the construction of housing for families of low income, namely, (i) "conventional" or "turnkey" construction of dwelling units for the County Housing Opportunities Commission (hereinafter the "Commission') or construction in reliance upon an agreement by the Commission prior to commencement of construction to enter into a lease (commonly known as "Turnkey leasing") or purchase contract for dwelling units after completion thereof, as authorized by the United States Housing Act of 1937 (codified as 12 U.S.C. 1401-1436), as amended, or (ii) provision of dwelling units under the federal rent supplement program authorized in section 101 of the Housing and Urban Development Law (codified as 12 U.S.C. 1701s), as amended, or (iii) a dwelling unit which is constructed, sold or rented under a federal program to assist the construction or occupancy of housing for families under the programs for homeownership, rental and/or cooperative housing authorized in section 235 and 236 of the National Housing Act (codified as 12 U.S.C. 1715z and 1715z-1), as amended, or (iv) any other dwelling unit which is constructed, sold or rented under a federal, state or local government program identified by the county executive in written regulations, ~~promulgated by~~ ADOPTED UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~CODE, as designed to assist the construction or occupancy of housing for families of low or moderate income as defined under those programs.

(2) A dwelling unit which is sold or rented in accordance with the following:

a. Sales housing. The sales price of housing for sale for single-family dwelling units (including closing costs and brokerage fees) shall not exceed the applicable maximum sales price set forth herein or as

established from time to time by the county executive by written regulation, ~~promulgated by~~ ADOPTED UNDER Method (1) ~~pursuant to~~ OF Section ~~2A-14(c)(1)~~ 2A-15 of this ~~code~~ CODE in accordance with the schedule of adjustments outlined below:

* * *

b. Rental housing. The rental price, including utilities and parking, for any dwelling unit described in subparagraph (2) of the definition of the term moderately priced dwelling unit shall not exceed the maximum rental price for such dwelling unit, as established by written regulation [promulgated] ADOPTED by the county executive, ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~CODE, or as might be applicable under any system of rent controls in effect in the county.

The rental price of dwelling units rented pursuant to the provisions of this chapter shall be established by written regulations [promulgated] ADOPTED by the county executive, ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~CODE, at the times and following the procedures set forth above for sales housing. Different rental prices shall be established for units where utility costs are borne by the tenant and not included in the rent.

The county executive, in determining the rental price, shall take into consideration the current rent payable to lessors of dwelling units under programs identified by the executive, pursuant to the definition of moderately priced dwelling unit. The county executive in determining the rental price shall seek, in addition to the above guideline, such other information as from time to time may be required, such as rents currently being paid to lessors in the private market, and shall consult with the rental industry, employers and professional and citizens groups to obtain statistical information, including vacancy ratios in available rental housing in the private market and current general market and economic conditions, which may enable the county executive to arrive at a current maximum rental price for moderately priced dwelling units. Consideration shall be given to cost of construction, capital and operating costs of such rental units and changes from time to time in the income levels of persons

of low and moderate income and their ability to rent housing. The county executive shall consider also the extent to which, consistent with the requirements of county codes and housing standards, the cost of rental housing can be reduced by the elimination of certain amenities.

25A-6. Sale or rental of moderately priced dwelling units.

(a) Sale or rental to general public.

(1) Subject to the provisions of this subsection, every moderately priced dwelling unit required by this chapter shall be offered to the general public for sale or rental to a good faith purchaser or renter to be used for his or her own residence, with the exception of units offered for sale or rent with the assistance of, and subject to the conditions of, a subsidy under a federal, state or local government program, identified in regulations [promulgated] ADOPTED by the county executive ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~CODE, whose purpose is to provide housing for persons of low or moderate income.

* * *

(5) Every purchaser or renter of a moderately priced dwelling unit shall certify on a form prescribed by the director of the Department of Housing and Community Development that he or she is acquiring or leasing said unit for his or her own, or family's, primary place of residence. Purchasers of moderately priced dwelling units, except the Housing Opportunities Commission, shall not be permitted to lease moderately priced dwelling units to other parties unless sufficient cause can be found to waive this restriction to allow temporary rentals of such units based upon regulations, which may include maximum rental levels, to be [established] ~~and promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~CODE. No applicant shall sell or lease any unit without first obtaining such certificates from purchaser or lessee. Copies of certificates to applicants from purchasers or lessees shall be furnished to the Department of Housing and Community Development and shall be maintained on file with the department in such a manner as the department shall provide. Prior to the sale by an applicant or by the Housing Opportunities Commission to any purchaser of any moderately priced dwelling unit constructed under this

chapter, the applicant or the Housing Opportunities Commission shall request a determination by the Department of Housing and Community Development from the certificates on file whether or not such proposed purchaser was a previous purchaser of a moderately priced dwelling unit. Previous purchasers shall not be permitted to purchase a second moderately priced dwelling unit unless there are no other first-time purchasers qualified to make such purchase; provided, that the director of the Department of Housing and Community Development may waive this restriction for good cause.

25A-7. Control of subsequent sale or rental prices; foreclosure.

* * *

(c) Subsequent rental price. Moderately priced dwelling units constructed or offered for rent under this chapter shall not be rented during a period of ten years from the date of original rental at a rental rate greater than that established by regulations promulgated by the county executive ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~CODE. Whenever any moderately priced dwelling unit (as described in subparagraph (2) of the definition of that term and other than those offered by the commission) is offered for rent during the aforesaid control period, it shall be offered exclusively for 60 days to the Housing Opportunities Commission and persons of moderate income, as defined by this chapter and as determined eligible by the Department of Housing and Community Development, for use as his or her own residence. The commission may assign its right to rent such units to persons of low or moderate income who are eligible for assistance under any federal, state or local program identified in regulations [promulgated] ADOPTED by the county executive ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~ CODE.

(d) County foreclosure regulations. Notwithstanding the foregoing provisions, the county executive is authorized to [establish] ~~and~~ ~~promulgate~~ ADOPT written regulations ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~CODE [subject to approval by the county council] dealing with foreclosure proceedings.

25A-8. Executive regulations; enforcement of chapter.

(a) For the purpose of effectuating the requirements of this chapter, the department of housing and community development shall maintain a list of

all moderately priced dwelling units constructed, sold or rented pursuant to this chapter, and the county executive shall, from time to time, [issue] ~~promulgate~~ ADOPT such written regulations, ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~CODE, as may be necessary to put into effect and to administer the provisions of this chapter.

25A-10. Applicability.

The provisions of this chapter, as amended, shall be applicable to all applicants and units developed by applicants, except that where a person qualified as an applicant prior to October 1, 1981, the following shall apply:

(a) The required percentage of moderately priced dwelling units specified in section 25A-4(a)(1) shall be 15%;

(b) The price control period for sale and rental units shall be five years; and

(c) The provisions of section 25A-6(a)(4) shall not be applicable.

An applicant may elect to waive the exception noted above in its entirety, according to such procedures and at such times as shall be specified in regulations [promulgated] ADOPTED by the county executive ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~CODE. Any agreement required by section 25A-4 shall be submitted or amended to conform with such election.

Sec. 28A. Sections 25B-3(c)(5), 25B-4(b) and 25B-8 of Chapter 25B, title "Housing Policy" of the Montgomery County Code 1972, as amended, be and hereby are amended to read as follows:

25B-3 HOUSING POLICY IMPLEMENTATION.

* * *

(C) THE COUNTY EXECUTIVE SHALL:

(5) REVISE OR RECOMMEND REVISIONS, UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE, TO REGULATIONS WHICH ADD UNNECESSARILY TO THE COST OR DELAY OF HOUSING CONSTRUCTION;

* * *

25B-4. Annual Housing Report.

* * *

(b) The county executive shall also include in the Annual Housing

Report a report of existing and approved assisted-family housing and other characteristics affecting the suitability of placing additional units of assisted-family housing by census tract or other enumeration area as designated by executive regulation ~~promulgated by~~ ADOPTED UNDER Method ~~2 pursuant to~~ (3) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE; and the county executive shall recommend to the county council those geographic areas which should be designated as limited priority for receiving additional assisted-family housing in the forthcoming year.

25B-8. Administrative Rules.

The county executive and each relevant agency may adopt after public hearing, rules of procedure or executive regulations ~~promulgated by~~ ADOPTED UNDER Method (2) ~~in the manner described in~~ OF Section ~~2A-14(c)(2)~~ 2A-15 of this ~~code~~ CODE, necessary to administer the provisions of this law and to implement the County's adopted Housing Policy.

Sec. 29. Sections 26-21(g) and 26-22 of Chapter 26, title "Housing Standards", be and hereby are amended to read as follows:

26-21. Smoke detectors.

* * *

(g) Permits and fees: No smoke detectors or alternative system shall be directly connected (permanently wired) to the electrical system of the structure unless an electrical permit shall have first been obtained from the department of environmental protection or the municipal electrical permit authority having jurisdiction. The county executive is hereby authorized to ~~promulgate~~ ADOPT executive regulations, ~~by~~ UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~ CODE, to adopt a fee schedule for the issuance of said permit which shall not exceed the cost of administration of this section, further, the county executive is authorized to waive, partially or wholly, the fee requirement at his/her discretion, or to issue multiple permits under the payment of a single fee.

26-22. Executive regulations.

The county executive is hereby authorized to [promulgate rules and] ADOPT regulations, [subject to council approval] ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, to implement and administer the provisions of this chapter and to create standards for materials and equipment. [The regulations shall be deemed approved 45 days

following receipt by the council if by that time the council has not acted upon the regulations in some manner, including a resolution to extend the time for its consideration.]

Sec. 30. Sections 27-6(a)(7), 27-6A(c), 27-26D(a), 27-29(g) and 27-42(j) of Chapter 27, title "Human Relations and Civil Liberties", be and hereby are amended to read as follows:

27-6. Duties generally.

(a) The commission on human relations shall have the power and it shall be its duty:

* * *

(7) To [adopt] ~~promulgate~~ such [rules and procedures]REGULATIONS, ~~by~~ UNDER Method (2) ~~in the manner described in~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~CODE, [after notice and public hearing] as may be necessary to carry out the purposes and provisions of this article; to keep a record of its hearings, activities and minutes of all meetings. The records and minutes shall be on file with the executive secretary of the commission and open to the public at reasonable business hours upon request.

27-6A. Definitions generally.

For the purposes of this article the following words and phrases shall have the meaning ascribed to them:

* * *

(c) Reasonable accommodation. The effort necessary to make suitable a working, recreational or living environment for a handicapped person without danger to any person's health or safety or without undue hardship or expense to a business or other activity making such accommodation. In rental housing, the landlord may impose special conditions upon a handicapped tenant, the purpose of which is to protect the health and safety of the tenant and other residents of the facility. Such conditions and agreement thereto by the tenant shall be in writing. The commission, [subject to approval by the county council], shall provide by [administrative rule or] regulation, ~~promulgated by~~ ADOPTED UNDER Method (2) ~~in the manner described in~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, a procedure by which those persons covered by the provisions of this article may apply to the human relations commission for a declaratory ruling as to

whether or not a proposed acoommodation is reasonable. The procedure for such declaratory ruling shall include all due process safeguards. Any person aggrieved by such ruling shall have the right to appeal to the circuit court for Montgomery County under the provisions of Maryland Rule B. Such an appeal shall also include full appellate review by the appeal courts of Maryland. The commission may also prescribe by [rule or] regulation, ~~promulgated by~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section ~~2A-14(c)(2)~~ 2A-15 of this ~~code~~ CODE, guidelines under which pre-employment or pre-rental inquiries may be made of handicapped individuals, the purpose of which is to determine the measures necessary to protect the health and safety of handicapped persons and others. Any inquiry so permitted shall not be used as a basis for discriminatory practices made unlawful by this article; provided, however, the results of such inquiries may form the basis for a determination of reasonable accommodation.

27-26D. Alternative Service; Anti-Hate/Violence Fund.

(a) Any civil monetary liability to Montgomery County imposed pursuant to this Division, upon a child or an adult, may be paid in kind by the performance of alternative community service, as provided by the county executive by regulation ~~promulgated by~~ ADOPTED UNDER Method 2 ~~pursuant to~~(3) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~CODE.

* * *

27-29. Powers and duties generally.

The Commission shall have the power and it shall be its duty:

* * *

(g) To adopt, ~~by~~ UNDER Method (2) ~~in the manner described in~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~CODE, such [rules and procedures]REGULATIONS as may be necessary to carry out the purposes of this article; to keep a record of its activities and minutes of all meetings; such records and minutes shall be on file and shall be open to the public at reasonable business hours upon request.

27-42. Powers and duties generally of committee.

To accomplish the purposes for which the community action agency is established, the community action committee shall have the power to:

* * *

(j) Adopt, amend and repeal by-laws[, rules] and ADOPT regulations UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE governing the manner in which its activities may be conducted and the powers vested in it may be exercised;

Sec. 31. Sections 27A-4 and 27A-5(e) of Chapter 27A, title "Individual Water Supply and Sewage Disposal Systems", be and hereby are repealed and reenacted with amendments to read as follows:

27A-4. [Rules and regulations]REGULATIONS.

(a) The county executive may [adopt] promulgate or amend, by UNDER Method (2) OF SECTION 2A-15 OF THIS CODE, written [rules and] regulations for this chapter[pursuant to Section 2A-15(j)(2) of this code]. [Such rules and regulations and amendments thereto shall not conflict with nor waive any provisions of this chapter nor be less restrictive than its provisions. Such rules and regulations and amendments thereto shall, subsequent to adoption by the county executive, require approval by resolution of the county council adopted not less than fourteen days following its introduction. Thereafter, such rules and regulations shall become effective as provided in section 2-105.]

(b) Following consultation with the Washington Suburban Sanitary Commission, the Montgomery County Planning Board and other concerned public agencies, the director shall recommend [rules and] regulations for the administration and enforcement of the provisions of this chapter. The [director shall hold public hearings, upon adequate public notice, prior to forwarding to the county executive recommendations for rules and regulations for] REGULATIONS SHALL BE ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE AND SHALL INCLUDE the standards and requirements governing such things as the location, design, construction, maintenance, repair and operation of individual water supply systems; the pre-drilling of wells; the location, design, construction, maintenance, operation and scavenging of individual sewage disposal systems; the abandonment of wells; the protection of percolation test holes; and field and laboratory tests appurtenant to the foregoing.

27A-5. Permits.

(e) The county executive shall adopt a schedule of fees, by executive regulation promulgated by ADOPTED UNDER Method (3) pursuant to OF Section 2A-15(j)(3)15 of this code CODE, which shall apply to the

issuance of permits required hereunder; to other services such as special inspections, field testing, plans review, laboratory analyses; and to the issuance of permits for the collection, transport and disposal of solid and liquid wastes as required hereunder.

Sec. 32. Sections 29-10(a), 29-19, 29-28A(b)(3), and 29-49(a) of Chapter 29, title "Landlord-Tenant Relations", be and hereby are amended to read as follows:

29-10. Powers and duties generally.

In addition to any other power, duty or responsibility provided in this chapter, the Commission shall have the following powers:

(a) [Subject to approval by the county council, the]The commission may [make, issue,] adopt[, promulgate, amend and rescind,] [the manner described in] by method 2 pursuant to Section 2A-15(c)(2) of this code, [such rules and] regulations UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE, including provisions for notification under this chapter, as it deems necessary to implement the provisions of this chapter.

29-19. Fees.

An annual license fee per dwelling unit shall be established by the county executive by written regulation, promulgated by ADOPTED UNDER Method 2 pursuant to (3) OF Section 2A-15(c)(2)15 of this code CODE, in an amount sufficient to pay the costs incidental to the administration of this chapter and to make this chapter self-sustaining; provided, that no part of this fee shall be used for any costs of administering or providing financial assistance in connection with section 29-28A of this chapter relating to the transportation and storage of evicted tenants' chattels.

29-28A. Eviction - Removal, transportation and storage of evicted tenants' chattels.

* * *

(b) Transportation and storage of chattels at county's expense.

* * *

(3) The county executive is authorized to provide by written regulation [adopted] promulgated by UNDER Method 2(3) [in accordance with the procedures prescribed by [law] OF Section

~~2A-14(c)(2)~~15 of this ~~code~~CODE, for financial assistance to tenants without sufficient financial means to reclaim their chattels from storage under the provisions of this subsection. The funds for such financial assistance shall be appropriated to the office of landlord-tenant affairs and shall be made available by that office in accordance with the procedures established by written regulation of the county executive.

29-49. Administration, enforcement and penalties.

(a) The county executive is authorized to adopt ~~by~~ UNDER Method (2)~~,~~ ~~pursuant to~~ (2) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~CODE, such regulations as may be necessary to administer this article properly.

Sec. 33. Section 29A-5(b)(9) of Chapter 29A, title "Legislative Oversight", be and hereby is amended to read as follows:

29A-5. - Same - Responsibilities, powers and duties.

(b) Powers and duties. In addition to any other power, duty or responsibility provided in this chapter, the office shall have the following powers and duties:

* * *

(9) Develop uniform review and evaluation procedures, guidelines and regulations[, subject to approval by the county council,] for the conduct and explanation of audits, surveys and investigations under this chapter. Regulations that may be issued pursuant to this chapter shall [contain provisions for citizen input and input from the private sector into the legislative oversight process]be ~~promulgated by~~ ADOPTED UNDER Method (2) ~~in the manner described in~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~CODE. [Procedures and guidelines shall be subject to approval by the county council.]

Sec. 34. Sections 30-2, 30-5, 30-8, 30-11 and 30-12 of Chapter 30, title "Licensing and Regulations Generally", be and hereby are amended to read as follows:

30-2. Picnics, dances, soirees and other entertainment - Authority to regulate, etc.

The fees for licenses issued under this chapter shall be of such an amount as the county executive by regulation, ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE, may set from time to time and shall not exceed the cost of

administering this chapter. The permit fee so fixed shall be submitted with the application and is not refundable in whole or in part. The county executive is authorized to [issue] ~~promulgate by method 3~~ ADOPT such [rules and] regulations, ~~pursuant to~~ UNDER METHOD (3) OF Section 2A-~~11(c)(3)~~15 of this ~~code~~ CODE, in connection with such permit, license and fee as are necessary to protect the public health, safety and welfare.

30-5. PUBLIC AMUSEMENTS, CLUBHOUSES, SANITARIUMS, HOSPITALS, ETC. - GENERALLY.

(A) THE COUNCIL IS HEREBY EMPOWERED TO PRESCRIBE BY LAW FOR THE LICENSING AND REGULATION WITHIN THE LIMITS OF THE COUNTY ANY PLACE OF PUBLIC AMUSEMENT OR RECREATION, PLEASURE PARKS, PICNIC GROUNDS, CLUBHOUSES, THEATRICAL EXHIBITIONS, BASEBALL GROUNDS, BOWLING ALLEYS, BILLIARD HALLS OR POOLROOMS, CAMP-MEETING GROUNDS, GRAVEYARDS, SANITARIUMS, HOSPITALS, HOMES FOR THE AGED, PRIVATE EDUCATIONAL INSTITUTIONS, ORPHAN ASYLUMS, HOMES FOR CHILDREN AND CONVALESCENT HOMES, SIGNS OR SIGNBOARDS, ROADSIDE STANDS OR ESTABLISHMENTS; AND IN ORDER TO SAFEGUARD THE PUBLIC HEALTH, SAFETY, MORALS AND WELFARE, TO PASS [RULES AND] REGULATIONS FOR THE PURPOSE OF CARRYING OUT THE POWERS HEREIN GRANTED OR TO AUTHORIZE THE COUNTY EXECUTIVE TO ISSUE REGULATIONS TO IMPLEMENT ANY LAW; PROVIDED, THAT SUCH [RULES AND] REGULATIONS SHALL CONTAIN PROPER STANDARDS FOR THE EXERCISE OF THE DISCRETION CONFERRED HEREIN AND SHALL OPERATE UNIFORMLY; PROVIDED FURTHER, THAT THE POWER OF THE COUNCIL TO LICENSE, REGULATE OR LIMIT CLUBHOUSES SHALL NOT APPLY TO THE CLUBHOUSES OF COUNTRY CLUBS WHICH WERE IN EXISTENCE AND OPERATION ON JANUARY 1, 1927 AND WHICH ON THAT DATE HAD A PUBLIC OR PRIVATE LIST OF FIFTY OR MORE BONA FIDE MEMBERS PAYING DUES AND WHICH ON THAT DATE MAINTAINED ON THE CLUB PREMISES AT LEAST TWO OF THE FOLLOWING ATHLETIC FACILITIES FOR THEIR MEMBERSHIP:

(1) A GOLF COURSE OF NINE HOLES OR MORE;

(2) TWO OR MORE TENNIS COURTS; OR

(3) A SWIMMING POOL NOT LESS THAN FORTY FEET IN LENGTH AND TWENTY FEET IN WIDTH.

(B) ANY REGULATION ADOPTED UNDER THIS SECTION SHALL BE ADOPTED UNDER

METHOD (2) OF SECTION 2A-15 OF THIS CODE.

* * *

30-8. SAME - REGULATIONS AND LICENSING GENERALLY.

(A) THE COUNCIL IS HEREBY AUTHORIZED TO PROVIDE BY LAW FOR THE REGULATION AND LICENSING OF PAWNBROKERS AND THEIR ACTIVITIES, AS IT SHALL DEEM NECESSARY TO PROMOTE THE PUBLIC HEALTH, SAFETY, MORALS AND WELFARE OF THE COMMUNITY.

(B) ANY REGULATION ADOPTED UNDER THIS SECTION SHALL BE ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE.

* * *

30-11. LICENSE FEES GENERALLY.

THE COUNCIL SHALL FIX AND ENFORCE A UNIFORM SCHEDULE OF FEES FOR LICENSING ANY CLASS OF BUSINESS OR ENTERPRISE AS IT MAY DEEM NECESSARY, OR [THE COUNCIL BY RESOLUTION MAY AUTHORIZE] THE COUNTY EXECUTIVE BY REGULATION, ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE, [TO] MAY ESTABLISH SUCH FEES, NOT TO EXCEED THE REASONABLE COSTS OF LICENSING AND ENFORCEMENT. ALL FEES SO DETERMINED SHALL BE COLLECTED AND PAID OVER TO THE DIRECTOR OF FINANCE FOR THE USE OF THE COUNTY.

30-12. Alcoholic beverages - Consumption on public property.

The county executive is hereby authorized to [establish] ADOPT and from time to time amend [rules and] regulations ~~by~~ UNDER Method (3) ~~pursuant to~~ OF Section 2A-15 of this ~~code~~ CODE, governing the consumption of alcoholic beverages on "public property" as that phrase is defined in article 2B, section 210 of the Annotated Code of Maryland.

Sec. 35. Sections 30B-3, 30B-10, 30B-13 and 30B-15 of Chapter 30B, title "Massage Establishments and Massage Technicians", be and hereby are amended to read as follows:

30B-3. Administration; fees; [rules and] regulations.

(a) The county executive is hereby authorized[, following a public hearing,] to adopt ~~and promulgate by Method 1~~ [rules and] regulations for

the implementation of this chapter [pursuant to section 2-105 of the Montgomery County] UNDER METHOD (3) OF SECTION 2A-14(c)(2)15 of this ~~code~~CODE[, as amended]; specifically, he or she may authorize or require extensive background reviews for all applicants for licensure or registration under this chapter, require from the applicant such background information as may be necessary to determine the fitness of the applicant for a license or registration, require applicants strictly to comply with all county and state health requirements as a condition subsequent to the issuance of a license or registration and may require such training programs for massage technicians as he or she deems necessary or reasonable.

(b) The county executive, by executive regulation ~~promulgated by~~ ADOPTED UNDER Method 1(3) ~~pursuant to~~ OF Section 2A-14(c)(2)15 of this ~~code~~CODE, is hereby authorized to adopt from time to time a schedule of fees, not to exceed the reasonable costs of administration of this chapter.

(c) Exemptions.

(1) The county executive may, by written regulation ~~promulgated by~~ ADOPTED UNDER Method 1(3)~~pursuant to~~ OF Section 2A-14(c)(2)15 of this ~~code~~CODE, specifically (by address) exempt any establishment from the requirements hereof if he or she finds:

a. That such establishment (or the users thereof) reasonably requires the administration of massages pursuant to a bona fide professional discipline for which state licensure is being sought.

b. That such establishment (or the users thereof) reasonably requires the administration of massages pursuant to a bona fide athletic or educational event or function.

Provided, however, that no exemption shall issue which is likely to contravene the purposes of this law.

(2) The county executive may, by written regulation ~~promulgated by method 2 pursuant to~~ ADOPTED UNDER METHOD (3) OF Section 2A-14(c)(2)15 of this ~~code~~CODE, specifically (by name) exempt any person from the requirements hereof if he or she finds:

a. That such person is reasonably required to administer massages pursuant to a professional discipline for which state licensure is being sought.

b. That such person is reasonably required to administer massages pursuant to a bona fide athletic or educational event or function.

Provided, however, that no exemption shall issue which is likely to contravene the purposes of this law.

30B-10. Application, fees and requirements.

Each application for massage establishment license shall be upon a form provided by the director and accompanied by such licensure fees as are adopted by the county executive in an executive regulation ~~promulgated by~~ ADOPTED UNDER Method 2(3) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~CODE. Such forms shall contain all information as set forth in executive regulations promulgated hereunder; these regulations may impose different requirements depending on whether the applicant is a person, partnership or coporation, and require reapplication upon any change in ownership.

30B-13. Minimum standards for massage establishments.

Massages must be administered either on the massage establishment's premises, or in the private residence of the patron. Where massages are administered on the massage establishment's premises, it shall meet the minimum standards as set forth in the executive regulations [promulgated hereunder] ADOPTED UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE. Where massages are to be administered off the premises, the office address of the massage establishment shall be the premises for which the license is granted.

30B-15. Application, fee and requirements.

Each application for a massage technician's registration shall be upon a form provided by the director, and accompanied by such registration fees as are adopted by the county executive in an executive regulation ~~promulgated by~~ ADOPTED UNDER Method 2(3) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE. Such form shall contain all information as set forth in the executive regulation promulgated hereunder. No registration shall issue to a partnership, corporation, etc. or other than a named individual.

Sec. 36. Sections 31-2, 31-5(b), 31-6(a), 316-(a), 31-9(b),31-10, 31-21(b), 31-23, 31-26, 31-29(b), 31-30(a), 31-31(b), 31-33(a), 31-46(b), 31-48(b)(g)(h), 31-51(a)(b), 31-52(e), 31-57(a), 31-58. and 31-62(c), of Chapter 31, title "Motor Vehicles and Traffic", be and hereby are amended to

read as follows:

31-2. Authority of county executive to erect traffic signs.

Whenever, in the judgment of the county executive, it is necessary for the safety or control of vehicular or pedestrian traffic, he is authorized to provide, by executive ORDER ~~regulation promulgated by Method 2 pursuant to Section 2A-14(c)(2) of this Code~~, for the erection of "stop," "speed limit" and other traffic control signs and devices on public streets, highways or other areas in the County; provided, that no such sign or device shall be erected on State highways without the approval of the State Highway Administration; and provided, that no such sign or device shall be erected at the cost of the county government in any incorporated town or special taxing area unless the council has by resolution consented to the payment of such costs; and provided, that if the private owner of any land used by the general public shall cause to have erected "stop," "speed limit" or other traffic control signs or devices upon streets, highways and other areas within said private property said signs shall conform to the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets amd Highways" with regard to design, color, size and placement. The county executive is authorized to approve by [written regulation] EXECUTIVE ORDER ~~promulgated by Method 2 pursuant to Section 2A-14(c)(2) of this Code~~ said traffic control signs and devices, which shall then have the same effect as those public traffic control signs and devices erected by the direction of the county executive; provided, that all such signs and devices on private property shall be constructed, erected and maintained at the cost of the owner of said land.

31-5. Driving over curbs, sidewalks or drainage structures.

* * *

(b) Bicycles which are not motorized and special vehicles used by handicapped persons may be operated upon sidewalk areas and appurtenant drainage structures designed for pedestrian use except where, in the judgment of the county executive, it is necessary for the safety or control of vehicular and pedestrian traffic to prohibit riding of such vehicles. Whenever any person is riding upon a sidewalk, such person shall give an audible signal and yield the right-of-way to any pedestrian. The county executive may, by regulation [promulgated] ~~by~~ ADOPTED UNDER Method (3)

~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE, a holding a public hearing, define "special vehicle" and "handicapped"; establish licensing requirements; and establish hours during which special vehicles may be operated upon sidewalk areas.

* * *

31-6. Snow and ice emergency traffic control.

(a) The county executive is hereby authorized from time to time to designate, by [written regulation] EXECUTIVE ORDER ~~promulgated by Method 1 pursuant to Section 2A-14(c)(1) of this code~~, important streets and highways of the county as snow emergency routes, which shall be marked by snow emergency route signs.

31-9. Impounding illegally parked vehicles, impeding traffic, etc.

* * *

(b) In any case involving the impoundment of a vehicle pursuant to this section, an administrative cost not to exceed twenty-five dollars or such lesser amount as established from time to time by the county executive by executive regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE, shall be charged to the owner of the vehicle in addition to all fines and penalties assessed pursuant to any violation of this chapter plus any towing or storage charges incurred. All such fines, penalties, costs and charges shall be paid to the county or its agent before the owner may reclaim or secure the release of the vehicle.

31-10. Authority of county executive to erect parking signs.

Whenever, in the judgment of the county executive, it is necessary for the safety or control of vehicular traffic and parking or for pedestrian safety, he is authorized to provide by executive ORDER ~~regulation promulgated by Method 3 pursuant to Section 2A-14(c)(3) of this code~~, for the erection of "no stopping," "no standing," "no parking," and other parking control signs and devices on public streets, highways or other areas in the county; provided, that no such sign or device shall be erected on state highways without the approval of the state highway administration; and provided, that no such sign or device shall be erected at the cost of the county government in any incorporated town or special taxing area unless the

council has by resolution consented to the payment of such costs; and provided, that if the private owner of any land used by the general public shall cause to have erected "no stopping," "no standing," "no parking" or other parking control signs or devices upon streets, highways, and other areas within said private property, said signs shall conform to the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways" with regard to design, color, size and placement. The county executive is authorized to approve by [written regulation]/ ~~promulgated by Method 1 pursuant to Section 2A-14(d)(1) of this Code~~/ EXECUTIVE ORDER said parking control signs and devices which shall then have the same effect as those public parking control signs and devices erected by the direction of the county executive; provided, that all such signs and devices on private property shall be constructed, erected and maintained at the cost of the owner of the land.

31-21. Impounding illegally parked vehicles.

* * *

(b) In any case involving the impoundment of a vehicle pursuant to this section, an administrative cost not to exceed twenty-five dollars or such lesser amount as established from time to time by the county executive, by executive regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~Code~~CODE, shall be charged to the owner of the vehicle in addition to all outstanding fines and penalties assessed pursuant to violations of this article plus any towing or storage charges incurred.

* * *

31-23. Authority of county executive or his designee to regulate by signs.

(a) The county executive or his designee is hereby authorized, by [written regulation]/ ~~promulgated by Method 3 pursuant to Section 2A-14(c)(3) of this Code~~/ EXECUTIVE ORDER in the form of traffic orders, to regulate parking of vehicles on county property by the erection of official signs conforming to the regulations regarding signs posted on public streets and highways, and conforming in design, color, size and placement to the standards established in the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways."

(b) All parking signs erected on any privately owned parking lot within

the county shall conform to the regulations regarding signs posted on public streets, highways or other areas in the county, and conform in design, color size and placement to the standards established in the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways." The county executive or his designee may provide, by [written regulation] ~~promulgated by method 3 pursuant to Section 2A-14(c)(3) of this Code~~ EXECUTIVE ORDER in the form of traffic orders, for the erection of official signs regulating parking on any privately owned parking facility within the county, which parking facility is open to and used by members of the general public for parking in connection with retail commercial establishments, or other businesses to which the parking facility is appurtenant. Any traffic order issued under this section may require that the owner, tenant or employees of retail or commercial establishments furnish evidence necessary for the enforcement of such order.

31-26. Parking Regulations - Public Parking Facilities.

(a) Except temporarily for the purpose of and while actually engaged in loading or unloading passengers or for emergency repairs when the vehicle cannot be driven, no person shall park any vehicle on a public parking facility:

* * *

(6) For a period longer than twenty-four hours, except when otherwise authorized by executive [regulation] ORDER ~~promulgated by method 3 pursuant to Section 2A-14(c)(3) of this Code~~.

31-29. USES PROHIBITED.

* * * *

(B) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A) ABOVE, THE COUNTY EXECUTIVE SHALL ESTABLISH, BY REGULATION ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE, PROCEDURES FOR THE ISSUANCE OF WRITTEN PERMITS FOR THE USE OF COUNTY OWNED OR LEASED AND OPERATED PARKING FACILITES FOR STORAGE AND OFF-STREET PARKING PURPOSES UNDER THE FOLLOWING CONDITIONS:

(1) STORAGE OR PARKING RESTRICTED TO AREAS OF SUCH FACILITIES AS DIRECTED BY THE DEPARTMENT OF TRANSPORTATION.

(2) VEHICLE OPERATION AND PARKING WITHIN SUCH FACILITIES FULLY IN

ACCORDANCE WITH COUNTY REGULATIONS INCLUDING THE OBSERVANCE OF POSTED REGULATIONS AND APPROPRIATE PARKING METER FEES.

(3) THE TERM OF SUCH PERMITS NOT TO EXCEED ONE YEAR AND PROVIDING NOT LESS THAN THIRTY DAYS' NOTICE OF TERMINATION OR SUSPENSION UPON A FINDING THAT SUCH ACTION IS NECESSARY TO CARRY OUT THE PURPOSES OF THE PUBLIC PARKING DISTRICT PROVISIONS OF THIS CODE OR SHORTER NOTICE UPON OCCASION OF EMERGENCY REPAIRS, DEMOLITION OR OTHER PUBLIC EXIGENCY.

(4) ESTABLISHMENT OF A PERMIT FEE SCHEDULE SUFFICIENT, WHEN CONSIDERED WITH THE PARKING METER FEE, TO COVER THE OPERATING COST AND AMORTIZED CAPITAL COSTS OF THE SPACE INVOLVED.

31-30. Snow and ice emergency.

(a) The county executive is hereby authorized from time to time to designate, by [written regulation] EXECUTIVE ORDER ~~promulgated by Method 3 [illegible]~~ important public parking facilities of the county, or areas thereof, as snow emergency lots which shall be marked by snow emergency lot signs.

* * *

31-31. Impounding illegally parked vehicles.

* * *

(b) In any case involving the impoundment of a vehicle pursuant to this section, an administrative cost not to exceed twenty-five dollars, or such lesser amount as established from time to time by the county executive by executive regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE, shall be charged to the owner of the vehicle in addition to all outstanding fines and penalties assessed pursuant to violations of this article plus any towing or storage charges incurred.

* * *

31-33. Authority of county executive, establish fees, time limits, etc.

(a)(1) The county executive is hereby authorized to ~~adopt regulations promulgated by ADOPTED UNDER Method 2 pursuant to (3) of Section 2A-14 Section 2A-14(c)(2)(b) of this code~~ PROVIDE BY EXECUTIVE ORDER for the installation, maintenance and operation of parking meters along, and limiting the time motor vehicles may park on, the streets, highways and

alleys located throughout the county and on public parking facilities acquired by or leased to and operated by the county, by use of parking meters or otherwise, and.

(2) THE COUNTY EXECUTIVE MAY ADOPT REGULATIONS UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE to prescribe parking meter or other fees for parking on such parking facilities, streets, highways, alleys.

(3) After the adoption of such regulations, the ~~THE~~ county may purchase, install, maintain and operate any such parking meters on all streets, highways, alleys and public parking facilities in accordance with [such regulations] THE EXECUTIVE ORDER ISSUED UNDER PARAGRAPH (1) OF THIS SUBSECTION; provided that the location thereof is approved by the county executive.

* * *

31-46. Impounding illegally parked vehicles.

* * *

(b) In any case involving the impoundment of a vehicle pursuant to this section, an administrative cost not to exceed twenty-five dollars, or as shall be established from time to time by the county executive by executive regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~ CODE, shall be charged to the owner of the vehicle in addition to all outstanding fines and penalties assessed pursuant to violations of this article plus any towing and storage charges incurred as a result of impoundment. All such fines, penalties, costs and charges shall be paid to the county or its agent before the owner or operator may reclaim or secure the release of the vehicle.

31-48. Parking permit areas.

* * *

(b) The county executive is hereby authorized to designate, by [written order or] ~~regulation promulgated by~~ APPROPRIATE UNDER Method (3) ~~pursuant to of Section 2A-14(c)(3)15 of this code~~ EXECUTIVE ORDER, roads, streets and other areas within the county in which the parking of vehicles may be restricted, in whole or in part, during certain specified times, to holders of valid parking permits issued pursuant to this section. The county executive shall consider the institution of a parking permit system upon petition by the residents of a given area. The authority granted

herein shall be in addition to, and may be exercised in conjunction with, any other authority the county executive may have to regulate the times and conditions of motor vehicle parking.

* * *

(g) The county executive is authorized to establish[, after due notice and opportunity for interested parties to be heard,] written regulations ~~promulgated by~~ ADOPTED UNDER Method ~~(3) pursuant to~~ (2) OF Section 2A-~~14(c)(3)~~15 of this ~~code~~ CODE to implement the provisions of this section.

(h) The county executive is authorized to establish, by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section ~~2A-14(c)(3)~~ 2A-15 of this ~~code~~ CODE, a parking permit fee for permits issued pursuant to this section in an amount sufficient to pay the cost incidental to the issuance of permits authorized by this section.

* * *

31-51. Authority of county executive to administer and enforce chapter, establish and collect fines.

Pursuant to the provisions of state law, the county executive is hereby authorized and empowered:

(a) To establish by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE, after review by the District Court of Maryland for Montgomery County, a schedule of fines or other penalties for violations of the provisions or regulations of this chapter, such fines and penalties not to exceed that which may be imposed for a Class A violation as set forth in Section 1-19 of Chapter 1 of the County Code.

(b) To [make,] adopt and amend by written regulation, ~~promulgated by~~ UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE, [such rules, regulations and procedures] as he may deem necessary or proper for the collection by the department of finance of the county of all such fines, penalties, costs and other charges imposed by this chapter and to define any term used in connection with the collection of said fines, penalties, costs and other charges.

* * *

31-52. Duty and responsibility of the department of finance.

* * *

(e) The director of finance may, in accordance with the procedures prescribed by the state motor vehicle administration and state law, give or cause to be given notice to said administration of all vehicles registered by the state and the subject of any outstanding and past due parking violation of this code and request that the administration refuse registration or transfer of registration of the subject vehicle, until notified by the county that said violation has been satisfied.

In such cases, the director of finance may impose an additional cost of ten dollars, or as may be otherwise established from time to time by the county executive by executive regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE, for each registration withheld; and the owner of the vehicle shall be subject to payment of such costs, and all other fines, penalties and charges before notice is given to the administration that the subject violation has been satisfied and the registration is released.

31-57. Failure to pay or comply; penalty in addition to fine.

(a) In the event said owner or operator fails to comply with the preceding sections and the instructions provided on a notice of violation within the period prescribed by this article, the fine for such violation shall be increased by an additional penalty not to exceed ten dollars, or as shall otherwise be established from time to time by written regulation of the county executive ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE.

* * *

31-58. Dishonored check charges.

Whenever any check or draft tendered to the county in payment of any fine, penalty, cost or other charge as provided in this chapter is dishonored by a bank or otherwise returned as uncollectible, a charge of ten dollars, or as may be otherwise established from time to time by the county executive by executive regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE, may be imposed and added to the amount due in order to defray the cost of its collection. In such cases, the county may require that the total amount due be paid in the form of a certified check or money order.

31-62. Impounding or immobilizing vehicles after enumerated violations generally.

* * *

(c) In any case involving the impoundment or immobilization of a vehicle pursuant to this section, an administrative cost not to exceed twenty-five dollars, or such lesser amount as established from time to time by the county executive by executive regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE, shall be charged to the owner or operator of the vehicle in addition to all outstanding fines and penalties assessed pursuant to violations of this chapter plus any towing and storage costs incurred. All such fines, penalties, cost and charges shall be paid to the county before the owner may reclaim or secure the release of the vehicle.

Sec. 37. Sections 31A-3(a), 31A-4(b) and 31A-8 of Chapter 31A, title "Motor Vehicle Repair and Towing Registration" be and hereby are amended to read as follows:

31A-3. Application fee.

(a) Any person, firm or corporation desiring to be engaged in business to repair, maintain or tow motor vehicles or install, repair or maintain motor vehicle equipment in the county shall register on the form provided by the county. Each application filed shall be accompanied by an application fee in the amount established by the county executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section ~~2A-14(c)(3)~~ 2A-15 of this ~~code~~ CODE. The county executive shall establish a sliding scale for such fees based on the number of employees engaged in repair work and with incentive to participate in voluntary certification through the National Institute for Automotive Service Excellence. This provision shall not be construed to require the registration of employees.

* * *

31A-4. Certificate - Issuance; term; renewal; display.

* * *

(b) Registration certificates issued pursuant to this chapter shall be valid for an initial period of one year from date of issuance; renewal certificates shall be valid for a period of three years. Applicants for

renewal shall make application therefor at least thirty days prior to the expiration of their registration and pay such fee as is established by the county executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~CODE.

* * *

31A-8. Adoption of additional [rules and] regulations.

[Following a public hearing held after reasonable notice, the] The county executive is hereby authorized to adopt ~~and promulgate by~~ UNDER Method (2)/ [in accordance with the procedure prescribed by [law] OF Section 2A-~~14(c)(2)~~15 of this ~~code~~CODE, written [rules and] regulations necessary for the implementation of the provisions of this chapter.

Sec. 38. Sections 31B-3(d) and (e), 31B-10, 31B-12 and 31B-13 of Chapter 31B, title "Noise Control", be and hereby are amended to read as follows:

31B-3. Administration of Chapter

* * *

(d) Within six months after the effective date of this chapter, the county executive, with the advice and assistance of the director, the noise control advisory board and other appropriate governmental agencies, shall establish in writing the following:

(1) [Rules, regulations and procedures] REGULATIONS to be used in measuring noise levels set forth in this chapter.

(2) Such other noise control [rules,] regulations and standards as the county executive, with the advice and assistance of the director and the noise control advisory board, may deem necessary and proper to accomplish the purposes and intent of this chapter including when appropriate, rules, regulations or standards promulgated by the state or federal government as well as [rules,] regulations or standards revising the noise limits set forth in this chapter, if such revisions are deemed necessary.

(3) Any such [rule,] regulation or standard shall be established by the county executive, by executive regulation ~~promulgated by~~ ADOPTED UNDER Method ~~(2)~~(3) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, only after the county executive or his designee, after reasonable notice to the public, shall have conducted a public hearing, at which

hearing all interested persons shall be given an opportunity to testify and to submit alternative proposals for consideration. In no case shall such [rule,] regulation or standard become effective prior to October 1, 1976.

(E)(1) WITHIN SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS CHAPTER, THE COUNTY EXECUTIVE, WITH THE ADVICE AND ASSISTANCE OF THE DIRECTOR AND THE NOISE CONTROL ADVISORY BOARD, SHALL PROPOSE [IN WRITING] REGULATIONS, [AND] INCLUDING STANDARDS, FOR THE CONTROL OF NOISE DUE TO CONSTRUCTION, REPAIR OR DEMOLITION OF STRUCTURES OR FACILITIES WITHIN EIGHT HUNDRED FEET OF OCCUPIED RESIDENTIAL USES OR WITHIN FOUR HUNDRED FEET OF OCCUPIED COMMERCIAL USES.

(2) ANY REGULATION ADOPTED UNDER THIS SUBSECTION SHALL BE ADOPTED UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE.

31B-10. NOISE SENSITIVE AREAS.

WHENEVER THE PROTECTION OF THE PUBLIC HEALTH, SAFETY AND WELFARE SO REQUIRE, THE COUNTY EXECUTIVE [AFTER A DULY ADVERTISED PUBLIC HEARING AND] WITH THE ADVICE OF THE DIRECTOR AND THE NOISE CONTROL ADVISORY BOARD, MAY DESIGNATE, IN [WRITING] EXECUTIVE REGULATIONS ADOPTED UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE, ANY GEOGRAPHICAL AREA OF THE COUNTY AS A NOISE SENSITIVE AREA IN WHICH CERTAIN NOISE PRODUCING ACTIVITIES MAY BE PROHIBITED EFFECTIVE OCTOBER 1, 1976. SUCH DESIGNATION SHALL INCLUDE A DESCRIPTION OF THE SUBJECT AREA BY REFERENCE TO NAMED STREETS, THE REASONS FOR DETERMINATION AS A NOISE SENSITIVE AREA AND A LIST OF THOSE ACTIVITIES WHICH, IF UNDERTAKEN IN SUCH AREA, WOULD CONSTITUTE UNNECESSARY NOISE. SUCH DESIGNATION MAY BE LIMITED TO SPECIFIED TIMES OR DAYS OF THE WEEK. IN CASES WHERE THE LIMITATIONS IMPOSED BY EXECUTIVE REGULATION, [PROMULGATED] ADOPTED UNDER AUTHORITY GRANTED HEREIN, ARE MORE STRINGENT THAN THOSE PRESCRIBED BY RESTRICTIONS WITHIN THIS CHAPTER, SUCH REGULATIONS SHALL CONTROL WITHIN SUCH NOISE SENSITIVE AREAS.

* * *

31B-12. Temporary exemptions.

The director is hereby authorized to grant a temporary exemption from the maximum permissible sound levels established by this chapter if such

temporary exemption would be in the public interest. An application for a temporary exemption shall be accompanied by a fee determined by written regulation of the county executive, ~~provided by~~ ADOPTED UNDER Method 2 ~~pursuant to~~ (3) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, in an amount sufficient to defray the administrative costs of processing the application. Upon receipt of an application for a temporary exemption, the director shall give public notice of the application and the fact that any adversely affected party may request a public hearing on the application. A temporary exemption must be in writing, signed by the director or his appointed representative and must set forth the name of the party to whom the exemption is granted, the description and location of the property for which the exemption is authorized, the maximum sound level permitted and the period of time during which the exemption shall be effective and any other conditions or qualifications deemed necessary for the protection of the public. A temporary exemption shall be granted only for a reasonable period of time in view of all the facts and circumstances. A temporary exemption shall not be renewable and shall not be granted more than three times in any one calendar year with respect to a given property and location. In no case shall the holder of a temporary exemption be authorized to exceed the maximum permissible sound levels established by this chapter by more than 25 dB(A).

31B-13. Special exemptions.

In addition to temporary exemptions provided for in section 31B-12 of this chapter, the director is hereby authorized to grant a special exemption from compliance with any or all of the requirements of this chapter in the event of hardship or if such exemption would otherwise be in the public interest. An application for a special exemption shall be accompanied by a fee determined by written regulation of the county executive, ~~provided by~~ ADOPTED UNDER Method 2 ~~pursuant to~~ (3) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, in an amount sufficient to defray the administrative costs of processing the application. Upon receipt of an application for a special exemption, the director shall give public notice of the application and the fact that any adversely affected party may request a public hearing on the application.

Sec. 39. Sections 33-3(b), 33-7(b), 33-9(a), 33-12(b), 33-13,

33-13A(d), 33-19(b), 33-47(b), 33-77 and 33-86(g) and (j) of Chapter 33, title "Personnel", be and hereby are amended to read as follows:

33-3. Continuation and administration of merit system.

* * *

(b) The merit system shall be administered by the chief administrative officer, under the direction of the county executive, and shall be governed by and subject to the provisions of the charter for Montgomery County, Maryland, 1978, as amended, provisions of this chapter, and the personnel regulations [adopted by the county executive [and approved by the county council] UNDER METHOD (1) OF SECTION 2A-15 OF THIS CODE.

33-7. County executive and merit system protection board responsibilities.

* * *

(b) Personnel regulations. The county executive[, after a public hearing,] shall adopt or amend personnel regulations ~~by Method (1)~~ [subject to county council approval] ~~pursuant to~~ ADOPTED UNDER METHOD (1) OF Section 2A-~~14(c)(1)~~15 of this ~~code~~ CODE. [The regulations shall be deemed approved 45 days following receipt by the council if by that time the council has not acted upon the regulations in some manner, including a resolution to extend, for not more than 30 days, the time for its following approval. Promptly following approval, the county executive shall cause to be published once in one newspaper of general circulation published in the county a brief summary of the regulation so adopted, together with a statement of its effective date and of the place where a copy thereof may be promptly obtained.] The requirement of public hearing[, county council approval and publication] shall not apply to regulations adopted upon declaration of an emergency, unless the substance of the regulations had been the subject of previous emergency regulations. [A summary of emergency regulations shall be published promptly after adoption and in the same manner described above. [Emergency regulations shall cease to be effective and shall be of no further force or effect on or after the 61st day following their adoption.]

The personnel regulations shall provide the framework for:

(1) The classification of all merit system positions in the executive and legislative branches;

(2) Minimum qualifications for merit system positions, methods of

determining qualifications and methods of selection for any positions;

(3) Probationary periods, promotions, transfers;

(4) Causes for removal from any merit system position and methods of removal, including demotions, furloughs and reduction of staff;

(5) Annual, sick and other leave;

(6) Prohibitions against political activity;

(7) Maintenance of personnel records; and

(8) Similar personnel matters as may be provided by law.

* * *

33-9. Equal Employment Opportunity and Affirmative Action.

(a) Policy. The county's policy shall be to take all personnel actions on the basis of merit and fitness without regard to political affiliation or non-merit factors, and without regard to other factors as may be provided for in Chapter 27 "Human Relations and Civil Liberties" such as sex, marital status, race, religion, national origin, age or handicap. The chief administrative officer shall be responsible for initiating, developing and maintaining such an equal employment opportunity and affirmative action program as necessary to insure all persons an equal opportunity to enter and progress in the county's service on the basis of open competition and demonstrated ability. The county executive is authorized to issue such [rules and] regulations, ~~promulgated by~~ ADOPTED UNDER Method 1 ~~pursuant to~~ (1) OF Section 2A-~~14(c)(1)~~ 15 of this ~~code~~ CODE, as necessary to implement this policy. Such regulations shall provide that an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in an alternate work schedule in order to meet those religious requirements. The regulation shall include provision for any employee who elects to work an alternate schedule to be obligated to work an equal period of time to that taken off for such religious reasons.

* * *

33-12. Appeals of disciplinary actions; grievance procedures.

* * *

(B) GRIEVANCES. A GRIEVANCE IS A FORMAL COMPLAINT ARISING OUT OF A MISUNDERSTANDING OR DISAGREEMENT BETWEEN A MERIT SYSTEM EMPLOYEE AND SUPERVISOR WITH REFERENCE TO A TERM OR CONDITION OF EMPLOYMENT. THE

DETERMINATION OF THE BOARD AS TO WHAT CONSTITUTES A TERM OR CONDITION OF EMPLOYMENT SHALL BE FINAL. GRIEVANCES DO NOT INCLUDE THE FOLLOWING: CLASSIFICATION ALLOCATIONS, EXCEPT DUE PROCESS VIOLATIONS; FAILURE TO REEMPLOY A PROBATIONARY EMPLOYEE; OR OTHER EMPLOYMENT MATTERS FOR WHICH ANOTHER FORUM IS AVAILABLE TO PROVIDE RELIEF OR THE BOARD DETERMINES ARE NOT SUITABLE MATTERS FOR THE GRIEVANCE RESOLUTION PROCESS. A GRIEVANCE SHALL INCLUDE TERMINATION BY RESIGNATION WHICH IS FOUND BY THE BOARD TO HAVE BEEN SUBMITTED UNDER CIRCUMSTANCES WHICH CAUSE THE RESIGNATION TO BE INVOLUNTARY; IN THE EVENT OF SUCH A FINDING, THE BOARD SHALL REQUIRE THE APPOINTING AUTHORITY TO SUBSTANTIATE THE TERMINATION AS IN THE CASE OF A REMOVAL. THE COUNTY EXECUTIVE SHALL PRESCRIBE, IN THE PERSONNEL REGULATIONS ADOPTED UNDER METHOD (1) OF SECTION 2A-15 OF THIS CODE, PROCEDURES WHICH SEEK TO SECURE AT THE LOWEST POSSIBLE LEVEL A FAIR, PROMPT AND MUTUALLY SATISFACTORY RESOLUTION TO GRIEVANCE. IN PROVIDING THESE PROCEDURES, THE COUNTY EXECUTIVE SHALL ENSURE THAT ANY GRIEVANCE BASED UPON AN ALLEGED IMPROPER APPLICATION OF A MERIT SYSTEM LAW OR REGULATION CONCERNING A DISPUTED ISSUE OF FACT IS ENTITLED TO RESOLUTION AFTER A FACT-FINDING INQUIRY AUTHORIZED BY THE BOARD. GRIEVANCES BASED UPON AN ALLEGED IMPROPER INTERPRETATION OF MERIT SYSTEM LAWS OR REGULATIONS DO NOT REQUIRE A HEARING DURING THE GRIEVANCE RESOLUTION PROCESS.

* * *

33-13. Appeal procedures.

The county executive shall prescribe by personnel regulations, ~~provided by~~ ADOPTED UNDER Method (1) ~~pursuant to~~ OF Section ~~2A-14(c)(1)~~ 2A-15 of this ~~code~~ CODE, procedures covering appeals, including grievances which shall include the time limit for filing such appeal, the granting of administrative leave pending appeal, filing and cost of the administrative record, conduct of hearings, requirements for written notice, special evidentiary proceedings in cases where the remedy of employee reinstatement was a contested and unresolved issue in an ordinary appeal hearing and provisions for summary actions by the board.

33-13A. AUDITS, INVESTIGATIONS AND INQUIRIES.

* * *

(D) DESIGNATE, WITH THE APPROVAL OF THE COUNCIL, AN ALTERNATE SPECIAL

PERSONNEL INVESTIGATOR FOR MATTERS IN WHICH HE HAS A CONFLICT OF INTEREST OR IS OTHERWISE UNABLE TO PURSUE.

THE SPECIAL PERSONNEL INVESTIGATOR SHALL BE APPOINTED BY THE COUNTY COUNCIL FOR A TERM OF FIVE YEARS, OR UNTIL HIS SUCCESSOR IS APPOINTED AND QUALIFIED, SUBJECT TO REMOVAL AT THE PLEASURE OF THE COUNCIL AND UPON THE VOTE OF FIVE MEMBERS OF THE COUNCIL; SHALL HAVE EXPERIENCE IN LAW OR PERSONNEL MATTERS; SHALL BE PAID A PER DIEM FEE AS SET FORTH BY CONTRACT WITH THE COUNTY; AND SHALL BE REIMBURSED FOR NECESSARY EXPENSES.

WHEN AN AUDIT, INVESTIGATION OR INQUIRY GIVES THE BOARD CAUSE TO BELIEVE THAT THE MERIT SYSTEM HAS NOT BEEN ADMINISTERED IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER OR REGULATIONS PROMULGATED PURSUANT THERETO, THE BOARD MAY REFER THE MATTER TO AN APPROPRIATE INVESTIGATIVE ENTITY, INCLUDING THE SPECIAL PERSONNEL INVESTIGATOR, AT THE BOARD'S OPTION. WHERE A COMPLAINT IS FILED BY THE SPECIAL PERSONNEL INVESTIGATOR, OR ON ITS OWN MOTION, THE BOARD MAY HOLD A HEARING AND ISSUE A DECISION ORDERING SUCH CORRECTIVE ACTION AS IT DETERMINES TO BE NECESSARY, INCLUDING THOSE REMEDIES PROVIDED IN SECTION 33-14(C). WHERE THE BOARD HOLDS A HEARING ON ITS OWN MOTION, THE BOARD'S STAFF OR THE SPECIAL PERSONNEL INVESTIGATOR SHALL BE THE CHARGING PARTY. IN ANY HEARING, THE RESPONDING PARTY SHALL INCLUDE ALL INDIVIDUALS WHO MAY BE ADVERSELY AFFECTED. ALL INVESTIGATORY PROCEEDINGS UNDER THIS SECTION SHALL INCLUDE DUE PROCESS PROTECTIONS CONSISTENT WITH THE PURPOSES OF THIS CHAPTER AND PROCEDURES SHALL BE INCLUDED IN THE PERSONNEL REGULATIONS [APPROVED BY THE COUNCIL PURSUANT TO SECTION 33-7(b) OF THE MONTGOMERY COUNTY CODE, 1972, AS AMENDED,] ADOPTED UNDER METHOD (1) OF SECTION 2A-15 OF THIS CODE, WHICH SPECIFY THESE PROTECTIONS IN FURTHER DETAIL. NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT THE BOARD FROM INITIATING AND ACTING UPON AUDITS, INVESTIGATIONS OR INQUIRIES UNTIL SUCH REGULATIONS ARE ADOPTED.

* * *

(B) THE COUNTY EXECUTIVE SHALL [PROMULGATE] ADOPT EXECUTIVE REGULATIONS [SUBJECT TO COUNCIL APPROVAL] UNDER METHOD (1) OF SECTION 2A-15 OF THIS CODE FOR THE IMPLEMENTATION OF THIS SECTION. THESE REGULATIONS SHALL ASSURE THAT THE COUNTY'S DEPENDENT CARE ASSISTANCE PLAN IS IN CONFORMANCE WITH UNITED STATES INTERNAL REVENUE SERVICE REQUIREMENTS.

33-47. Administration by chief administrative officer.

* * *

(b) [Rules and regulations] REGULATIONS for administration. The [chief administrative officer] county executive shall establish [rules and] regulations, ~~promulgated by~~ ADOPTED UNDER Method ~~2 pursuant to~~ (1) OF Section 2A-15 of this ~~2A-14(b)(2) 15 of this code~~ CODE, for the administration of the retirement system, within the limitations of this article[, and]. The chief administrative officer may engage actuarial and other services and incur expenses as required to transact the business of the retirement system.

* * *

~~(33-76.) (33-74.)~~ 33-86. Deduction for child support.

* * *

(g) Director's duties

The director, upon receipt of the clerk's determination shall, unless contrary to law, court rule, or the provisions of a collectively bargained agreement, deduct the specified amount from the paycheck of the payor and transfer same to the clerk. The clerk shall then forward the amount of the payment directly to the payee. The director may also deduct from the amount of the support payment, a fee, established by executive regulation by the county executive [promulgated] ~~by~~ ADOPTED UNDER Method ~~2 pursuant to~~ (3) OF Section 2A-~~14(c)~~ 15 of this ~~code~~ CODE, not to exceed the reasonable costs of implementing the determination of the clerk.

* * *

(J) EXECUTIVE REGULATIONS.

THE COUNTY EXECUTIVE IS AUTHORIZED TO [PROMULGATE] ADOPT REGULATIONS, [SUBJECT TO COUNTY COUNCIL APPROVAL] UNDER METHOD (1) OF SECTION 2A-15 OF THIS CODE, FOR THE IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION.

33-77. Permanent umpire.

(a) There is hereby created the position of Permanent Umpire, so as to provide for the effective implementation and administration of Sections 33-79 and 33-82 of this Article concerning selection, certification and decertification procedures and prohibited practices. The Permanent Umpire shall exercise the following powers and perform the following duties and

functions:

(1) Adopt[, amend and rescind, from time to time,] ~~in the manner described in Section 2A-15(c)(2),~~ [such rules,] regulations [and procedures], UNDER METHOD (1) OF SECTION 2A-15 OF THIS CODE, for the implementation and administration of Sections 33-79 and 33-82 as are consistent with this Article;

* * *

Sec. 40. Sections 35-3(c), 35-13A and 35-14(e) of Chapter 35, title "Police", be and hereby are amended to read as follows:

35-3. Same - Powers and duties.

* * *

(c) [Promulgation of rules,] ADOPTION OF regulations, orders, etc., generally. The ~~[~~director of police~~]~~ ~~county executive~~ shall [promulgate]~~,~~ ~~by~~ ADOPT UNDER Method (2) ~~pursuant to~~ OF Section ~~2A-15(c)(2)~~ 2A-15 of this ~~code~~ CODE, all [rules and] regulations for the county which pertain to the work of the department of police. [and] THE DIRECTOR shall issue such additional instructions and [promulgate] ADOPT such orders[, rules]and [regulations] ADMINISTRATIVE PROCEDURES, not inconsistent with law, as deemed proper in the exercise of the functions of chief executive officer of the department of police.

* * *

35-13A. Anti-Hate/Violence Fund.

(a) There is created within the Department of Police the Anti-Hate/Violence Fund, to be administered and applied pursuant to regulations [promulgated] ADOPTED by the County Executive ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~15(c)(2)~~ 15 of this ~~code~~ CODE, in exchange for information leading to the arrest or apprehension for commission within Montgomery County of any act described in Section 27-26A of the County Code or proscribed by Sections 10A or 111 of Article 27, Annotated Code of Maryland.

* * *

35-14. Generally

* * *

(e) The county [personnel] merit system protection board may adopt

[rules and] regulations within the limitations of this article and the Employees' Retirement System Ordinance contained in chapter 33 of this Code to govern the implementation of the provisions of the police relief and retirement fund. These regulations shall be [adopted] ~~promulgated by~~ UNDER Method 1 (3) ~~in the manner described in~~ OF Section 2A-~~14(d)(1)~~ 15 of this ~~code~~ CODE and shall be made in appendant of the personnel regulations.

* * *

Sec. 41. Sections 38A-4 and 38A-11 of Chapter 38A, title "Radio, Television and Electrical Appliance Installation and Repair", be and hereby are amended to read as follows:

38A-4. Same - Issuance; bond.

The director shall issue a certificate of registration to applicants qualified pursuant to section 38A-3, upon payment of the registration fee established by executive regulation ~~promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method 1 (3) ~~pursuant to~~ OF Section 2A-~~14(d)(1)~~ 15 of this ~~code~~ CODE, and upon delivery to the county of a cash bond or a corporate bond executed by a surety company qualified to transact business in the state in the amount of two thousand dollars. The cash or corporate bond shall be conditioned upon the registrant's performing all work done for consumers in the county in accordance with this Code and laws of the county and state and shall provide that the county or any person damaged by failure of the registrant to comply with such Code and laws may proceed against such bond in any court of competent jurisdiction.

The director shall immediately revoke the certificate of registration upon failure of any registrant to maintain such bond.

38A-11. Adoption of [rules and] regulations.

The county executive is hereby authorized to adopt ~~and promulgate by~~ UNDER Method (2)[, in accordance with the procedure prescribed by [law] OF Section 2A-~~14(d)(1)~~ 15 of this ~~code~~ CODE, written [rules and] regulations necessary for the implementation of the provisions of this chapter, following public hearing on reasonable notice.

Sec. 42. Section 39-7 of Chapter 39, title "Rat Control", be and hereby is amended to read as follows:

39-7. Regulations.

The county executive is hereby authorized to adopt, ~~and promulgate by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~ 15 of this ~~code~~/CODE, and enforce such [rules and] regulations as he may from time to time find necessary to [promulgate] ADOPT to carry out the purposes of[this chapter to protect the public health, safety and welfare.

Sec. 43. Sections 41-4 and 41-23 of Chapter 41, title "Recreation and Recreation Facilities", be and hereby are amended to read as follows:

41-4. Adoption of rules and regulations.

In order to carry out the objectives of this chapter, the county executive is hereby authorized[, pursuant to the procedures prescribed by ~~[~~law] ~~Section 2A-14(c)(1) of this code~~ to adopt ~~by Method 1~~ and amend, from time to time, [rules and] regulations, UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE, for the government and use of all land, buildings and other recreational facilities acquired or constructed by or committed to the care or supervision of the county hereunder. Such [rules and] regulations may include provisions limiting the use of any such recreational facility for reasons of health, safety, comfort or morals; for fees for the use of any such facility or service in connection therewith, provided, that such fees shall not exceed the cost of providing the same; for the issuance of permits by the director of recreation to individuals or groups of individuals for the use of any such facility, which permits may grant exclusive use thereof or limit the permittee to a particular area or facility.

41-23. Same - officers; committees; by-laws; meetings; quorum; compensation of members.

(a) The chairperson of the County Recreation Board shall be elected by the membership annually. The County Recreation Board is authorized to elect other officers, to establish committees of its members and to adopt by-laws and ~~promulgate by Method 1~~ [rules and] ADOPT regulations, ~~in the~~ UNDER METHOD (2) OF ~~manner described in~~ Section 2A-~~14(c)(1)~~15 of this ~~code~~ CODE, for the conduct of its affairs as it deems desirable.

* * *

Sec. 44. Sections 41A-2(a), 41A-3(c) and (e), 41-7(a), 41-9(a) and 41A-12 of Chapter 41A, title "Rent Supplement and Assistance Programs", be and hereby are amended to read as follows:

41A-2. Eligibility for rent supplement.

(a) Rent supplement for tenants in the form of grants authorized under this chapter may be allowed to any tenant who meets the following conditions:

* * *

(4) The combined gross income shall not exceed an income limit specified by executive regulation, ~~promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~ 15 of this ~~code~~ CODE; however, incomes in excess of the income limit shall be entitled to a partial rent supplement as specified in paragraph 41A-3(c).

41A-3. Rent supplement amount, calculation, method of payment, rules and regulations.

* * *

(c) The amount of the rent supplement shall be three percentum (3%) of the difference between a calculation base specified by executive regulation, ~~promulgated by the county executive~~ ADOPTED UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~ 15 of this ~~code~~ CODE, and the combined gross income. When the combined gross income exceeds the income limit, the rent supplement amount calculated under the above formula shall be reduced by 25% of the excess of such income above the income limit.

* * *

(e) The county executive may [promulgate] ADOPT ~~by method~~ [administrative rules and] regulations, ~~pursuant to~~ UNDER METHOD (1) OF Section 2A-~~14(c)(1)~~15 of this ~~code~~ CODE, necessary to administer this chapter.

41A-7. RENTAL ASSISTANCE PROGRAM FOR HANDICAPPED PERSONS NEEDING SUPPORTING SERVICES.

(A) PURPOSE. THE PURPOSE OF THIS ARTICLE IS TO PROVIDE RENTAL ASSISTANCE TO HANDICAPPED PERSONS NEEDING SUPPORTING SERVICES, SUCH PERSONS BEING UNABLE TO LIVE INDEPENDENTLY OF SUCH SERVICES, AND WHOSE INCOME MEETS REQUIREMENTS ESTABLISHED BY [THE MONTGOMERY COUNTY HOUSING OPPORTUNITIES COMMISSION IN ACCORDANCE WITH CRITERIA ESTABLISHED PURSUANT TO SECTION 8 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 (42 USC 14 378(8)(2), AS AMENDED] THE COUNTY EXECUTIVE BY REGULATIONS ADOPTED UNDER METHOD (1) OF SECTION 2A-15 OF THIS CODE.

* * *

41A-9. ELIGIBILITY FOR RENTAL ASSISTANCE.

ELIGIBILITY FOR RENTAL ASSISTANCE UNDER THIS ARTICLE SHALL EXTEND TO THOSE HANDICAPPED PERSONS WHO:

(A) MEET THE INCOME REQUIREMENTS OF REGULATIONS [PROMULGATED] ADOPTED BY THE COUNTY EXECUTIVE [AND APPROVED BY THE COUNTY COUNCIL] UNDER METHOD (1) OF SECTION 2A-15 OF THIS CODE; AND

41A-12. Amount of rental assistance.

[The amount of rental assistance hereunder shall be calculated on a monthly basis by adjusting the recipient's monthly gross income by subtracting any medical expenses allowed under the regulations of the Housing Opportunities Commission and multiplying the difference by 25% and then subtracting the product from the recipient's actual monthlyrent. In no event can the combined total of the monthly rental assistance payment and the recipient's monthly share of the rent exceed $150.00 per individual per month. The monetary figure mentioned above shall be reviewed annually and modified, if necessary, by regulation [promulgated] ADOPTED by the county executive ~~by~~ UNDER Method (1) ~~pursuant to~~ OF Section 2A-~~14(a)(1)~~ 15 of this ~~code~~ CODE.]

THE AMOUNT OF RENTAL ASSISTANCE HEREUNDER SHALL BE CALCULATED ON A MONTHLY BASIS BY ADJUSTING THE RECIPIENT'S MONTHLY GROSS INCOME BY SUBTRACTING ANY MEDICAL EXPENSES ALLOWED UNDER THE EXECUTIVE REGULATIONS AND MULTIPLYING THE DIFFERENCE BY 25% AND THEN SUBTRACTING THE PRODUCT FROM THE RECIPIENT'S ACTUAL MONTHLY RENT. IN NO EVENT CAN THE COMBINED TOTAL OF THE MONTHLY RENTAL ASSISTANCE PAYMENT AND THE RECIPIENT'S MONTHLY SHARE OF THE RENT EXCEED $200.00 PER INDIVIDUAL PER MONTH. THE MONETARY FIGURE MENTIONED ABOVE SHALL BE REVIEWED ANNUALLY AND MODIFIED, IF NECESSARY, BY REGULATION [PROMULGATED] ADOPTED BY THE COUNTY EXECUTIVE [AND APPROVED BY THE COUNTY COUNCIL] UNDER METHOD (1) OF SECTION 2A-15 OF THIS CODE.

Sec. 45. Sections 44-3(a)(5) and 44-22 of Chapter 44, title "Schools and Camps", be and hereby are amended to read as follows:

44-3. Interagency coordinating board.

(a) There is hereby established the interagency coordinating board for community educational services, the principal responsibility of which shall be to review and coordinate the activities conducted under this article.

This responsibility shall include:

* * *

(5) Adopt ~~by Method 1~~ [rules or] regulations, ~~in the manner~~ ~~described in~~ UNDER METHOD (2) OF Section 2A-~~14(c)(1)~~ 15 of this ~~code~~ CODE, as may be necessary to implement the requirements of this act; and

44-22. License fees.

Annual fees for licenses issued under this division shall be of such an amount as the county executive, by regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE, may set from time to time. The fees shall not exceed the cost of inspection and issuing the permits for the various establishments regulated by this chapter. The permit fee so fixed shall be submitted with the application and is not refundable in whole or in part unless the application is withdrawn prior to an inspection of the premises by the director of the department or his/her authorized agent. If the application is withdrawn prior to the inspection, the entire permit fee shall be refunded.

Sec. 45A. Sections 44A-3, 44-4(c), 44A-5, 44A-8 (b) and (c), 44A-9, 44A-11 and 44A-16 of Chapter 44A, title "Secondhand Personal Property" of the Montgomery County Code 1972, as amended, be and hereby are amended to read as follows:

44A-3. Required books and records.

* * *

(b) A dealer shall cause a written record, in the English language, to be made of each transaction involving a purchase, acquisition or receipt by or on behalf of the dealer of secondhand personal property at the time of the transaction. Each transaction shall be recorded in a format specified by executive regulation, ~~promulgated by~~ ADOPTED UNDER Method 1 ~~pursuant to~~ (3) OF Section 2A-~~14(c)(1)~~ 15 of this ~~code~~ CODE, and shall contain the following information:

* * *

44A-4. RETENTION OF SECONDHAND PERSONAL PROPERTY.

* * *

(C) THE REQUIREMENTS OF SUBSECTIONS (A) AND (B) SHALL NOT BE APPLICABLE TO ANY SECONDHAND PERSONAL PROPERTY WHICH HAS BEEN INSPECTED AND RECEIVED

WRITTEN CLEARANCE FOR EARLIER DISPOSITION BY THE DIRECTOR OR HIS DESIGNEE IN ACCORDANCE WITH REGULATIONS [PROMULGATED] ADOPTED BY THE COUNTY EXECUTIVE UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE.

44A-5. Exemption for certain dealers.

The county executive may, by regulation ~~promulgated by~~ ADOPTED UNDER Method ~~1 pursuant to~~ (3) OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE, modify or eliminate the licensing, holding, recordkeeping or reporting requirements of this Chapter as they pertain to dealers who derive less than 10% of their gross personal property sales from the sale of secondhand personal property.

44A-8. Application for license; license fee.

* * *

(b) The annual license fee for each license shall be established by the County Executive, by written regulation ~~promulgated by~~ ADOPTED UNDER Method ~~1 pursuant to~~ (3) OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE, in an amount not to exceed the estimated costs of administering and enforcing this chapter.

(C) EACH APPLICATION FOR A DEALER'S LICENSE SHALL CONTAIN A STATEMENT THAT THE APPLICANT AUTHORIZES THE MONTGOMERY COUNTY DEPARTMENT OF POLICE OR OTHER POLICE DEPARTMENTS HAVING JURISDICTION TO INSPECT THE BOOKS, RECORDS, INVENTORY AND PREMISES OF THE BUSINESS DURING NORMAL BUSINESS HOURS, AND A STATEMENT THAT THE DEALER AGREES TO PAY FOR THE PURCHASE OF ANY SECONDHAND PERSONAL PROPERTY BY CHECK AND NOT TO CASH ANY SUCH CHECK, EXCEPT AS PERMITTED BY EXECUTIVE REGULATION ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE.

* * *

44A-9. PAYMENTS BY CHECK.

A DEALER MUST PAY FOR THE PURCHASE OF ALL SECONDHAND PERSONAL PROPERTY BY CHECK, EXCEPT AS PERMITTED BY EXECUTIVE REGULATION ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE.

44A-11. Expiration and renewal of license; prohibition on transfer.

* * *

(b) A license issued under this Chapter may be renewed on application and payment of a fee established by the County Executive by regulation ~~promulgated by~~ ADOPTED UNDER Method ~~1 pursuant to~~ (3) OF Section

~~2A-14(c)(2)~~ 15 of this ~~code~~ CODE, which shall not exceed the estimated costs of administration and enforcement.

* * *

44A-16. ~~[Rules and regulations]~~ REGULATIONS; restitution.

The county executive shall adopt ~~[and promulgate]~~, UNDER ~~by~~ Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE, reasonable and necessary ~~[rules and]~~ regulations for the implementation and administration of this Chapter. These ~~[rules and]~~ regulations may include provisions providing for the County to, and the County may, obtain restitution on behalf of an injured party.

Sec. 46. Sections 47-13 and 47-22 of Chapter 47, title "Solicitors, Hawkers and Peddlers", be and hereby are amended to read as follows:

47-13. License - Fee; issuance; contents.

A fee to cover the cost of investigating the applicant for a license and processing of the application under this article shall be paid to the county when the application is filed, and shall not be returnable under any circumstances. The county executive may from time to time, by executive regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE, change such fee to an amount not to exceed the reasonable costs of licensing and enforcement under this article. Unless, after investigation, the director finds that the applicant has not complied with this article or is not of good moral character, he/she shall issue a license upon the posting of the bond as provided in the preceding section which shall show the name and address of the solicitor and the date of issuance and expiration of the license, and one of the photographs submitted by the solicitor shall be attached to the license. No license shall be issued to any holder of a license issued under this article within one year of a revocation. In determining good moral character, the reputation of the applicant, his criminal record, if any, and license history in this or other jurisdictions shall be considered. Emphasis in reaching a decision on moral character shall be given to any convictions for crimes of violence, sex offenses, violations of the gaming, narcotic, alcoholic beverage laws and fraud. No person shall be denied a license solely on the grounds of previous convictions or penal servitude, if, in

fact, his record, conduct and habits for a period of three years after conviction or release from penal servitude, whichever is later, indicate that he is a proper person to be licensed under the standards of this article.

47-22. Same - fee; license year.

For each license required by the preceding section, each person shall pay a fee which shall be established and may be revised from time to time by the county executive by written regulations ~~promulgated by~~ ADOPTED UNDER Method (3)[in accordance with] OF section [2-105] 2A-~~14(c)(3)~~ 15 of this code in an amount not to exceed the reasonable costs of administration and enforcement of this article. The fee schedule shall provide for a license fee for different periods of time up to one year.

Sec. 47. Sections 48-6, 48-26, 48-29(d) and 48-32(a) of Chapter 48, title "Solid Wastes", be and hereby are amended to read as follows:

48-6. Rules and regulations for collection or disposal.

Collection or disposal of solid waste, shall be in accordance with such [rules and] regulations, which may include the imposition of reasonable fees to cover the cost of inspection and licensing, as the county executive shall, from time to time, [prescribe] ~~by~~ ADOPT UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE; provided, that no incorporated town or special taxing area shall be required to pay any fees for inspection and licensing.

48-26. Same - fees.

Permit or license fees under this chapter shall be fixed annually by executive regulation ~~promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method ~~2/pursuant to~~ (3) OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE. The fees shall not exceed the cost of inspection, licensing and enforcement of this chapter.

48-29. Solid waste collection districts.

* * *

(d) The county executive shall fix charges annually, for solid waste collection and disposal services, so as to coincide in time with the fixing of the annual real property tax rates; such charges shall correspond as closely as practicable to the actual cost to the county to perform such services; provided, that if such collection or disposal charges, together

with manner of collection, are prescribed by law, the charges and manner of collection established by such law shall prevail. The county executive is authorized to [make and publish] ~~promulgate~~/by ADOPT UNDER Method 2 ~~pursuant~~/to (3) OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE, all necessary regulations for the implementation and enforcement of this chapter, which regulations shall have the force and effect of law.

* * *

48-32. Imposition; amount; exemptions.

(a) A base solid waste disposal charge is herein established at a fixed rate per ton, to be determined by resolution of the county council, for any and all types of disposable refuse delivered by any person or agency, public or private, to the county solid waste acceptance facilities. The county executive is authorized, by written regulation ~~promulgated~~/by ADOPTED UNDER Method (2) ~~pursuant~~/to OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE, to provide for a charge different from the base solid waste char ge for any particular type of disposable refuse which has a cost of disposal d ifferent from the base solid waste charge or for which any other jurisdiction in the metropolitan Washington, D.C., area is charging more than the base char ge of the county. The council may, by resolution, after considering any recom mendations from the county executive, change such base rate, following notice and a public hearing on such a change; the effective date of any change in the base solid waste disposal charge shall provide adequate time to allow public and private agencies and organizations to make necessary billing adjustments.

* * *

Sec. 48. Sections 49-1, 49-4, 49-7, 49-23(a), 49-27, 49-33, 49-33A(c), 49-36, 49-38(b), (c) and (g), 49-40(e), 49-68A and 49-75 of Chapter 49, title "Streets and Roads", be and hereby are amended to read as follows:

49-1. [Rules, regulations] REGULATIONS and ordinances - Authority to adopt, etc.

The county council is hereby authorized to adopt, and from time to time change and amend, any and all necessary and reasonable [rules,] regulations and ordinances governing the proper use, care, construction, reconstruction, improvement, grading, repairing and maintenance of the county roads, lanes, streets, alleys, avenues, bridges or other highways, including those dedicated for public use, but excepting those located within incorporated

towns and incorporated special taxing areas of the county. The county executive is also authorized to [promulgate or] adopt, and from time to time, amend and change any and all necessary and reasonable [rules and] regulations governing the aforegoing matters which are not inconsistent with or superseded by any [rule,] regulation, ordinance or law adopted or enacted by the county council. The council is hereby authorized to provide reasonable penalties for the violation of all such [rules and] regulations and make other necessary provisions for the enforcement thereof. All such [rules and] regulations when adopted UNDER ~~by~~ Method (2) [in accordance with the procedures prescribed by [law] OF section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE shall have the force and effect of law.

49-4. AUTHORITY OF CITIZENS' COMMITTEES OF SPECIAL TAXING AREAS TO REGULATE CONSTRUCTION, MAINTENANCE, ETC., OF STREETS AND ROADS.

THE CITIZENS' COMMITTEE OF ANY SPECIAL TAXING AREA, WHICH COMMITTEE HAS THE AUTHORITY AND DUTY TO PAVE AND MAINTAIN STREETS, ROADS OR OTHER HIGHWAYS IN ITS AREA, IS HEREBY AUTHORIZED TO ADOPT, AND FROM TIME TO TIME, CHANGE AND AMEND REASONABLE [RULES,] REGULATIONS AND ORDERS UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE WITH REFERENCE TO THE PROPER CONSTRUCTION, MAINTENANCE, IMPROVEMENT, GRADING AND REPAIRING OF THE ROADS, LANES, STREETS, ALLEYS, AVENUES, BRIDGES OR OTHER HIGHWAYS IN TAXING AREAS, INCLUDING THOSE DEDICATED FOR PUBLIC USE. THEREAFTER NO PUBLIC ROAD, LANES, STREET, ALLEY, AVENUE, BRIDGE OR OTHER HIGHWAY WITHIN SUCH SPECIAL TAXING AREA, INCLUDING THOSE DEDICATED FOR PUBLIC USE, SHALL BE CONSTRUCTED, REPAIRED, GRADED, IMPROVED OR MAINTAINED BY ANY PERSON, ASSOCIATION OR CORPORATION UNLESS SUCH CONSTRUCTION, REPAIRING, IMPROVEMENT, GRADING OR MAINTENANCE COMPLY IN ALL PARTICULARS WITH SUCH [RULES,] REGULATIONS AND ORDERS. IN ADOPTING SUCH [RULES,] REGULATIONS AND ORDERS, THE AFORESAID CITIZENS' COMMITTEE MAY, BY RESOLUTION, ADOPT ALL OR PART OF THE [RULES,] REGULATIONS AND ORDERS PROMULGATED BY THE COUNTY COUNCIL OF MONTGOMERY COUNTY FOR THE CONSTRUCTION, MAINTENANCE, IMPROVEMENT, GRADING AND REPAIRING OF THE COUNTY ROADS, LANES, STREETS, ALLEYS AVENUES, BRIDGES OR OTHER HIGHWAYS. ANY PERSON, ASSOCIATION OR CORPORATION VIOLATING ANY PROVISIONS OF THIS SECTION OR ANY [RULE,] REGULATION OR ORDER OF ANY CITIZENS' COMMITTEE PASSED PURSUANT HERETO SHALL BE [GUILTY OF A MISDEMEANOR AND

PUNISHABLE BY A FINE NOT TO EXCEED ONE HUNDRED DOLLARS, OR IMPRISONMENT FOR NOT MORE THAN THIRTY DAYS, OR BOTH FOR EACH OFFENSE, AND] SUBJECT TO PUNISHMENT FOR A CLASS B VIOLATION AS SET FORTH IN SECTION 1-19 OF CHAPTER 1 OF THIS CODE. EACH DAY'S VIOLATION SHALL CONSTITUTE A SEPARATE OFFENSE.

49-7. Permit required for grading, etc., projects; fee.

Before any street, sidewalk, gutter, curb, grading project or drainage project may be begun on a country road or street or within the boundaries of a dedication to the public use, the applicant for a permit to undertake any such project shall pay to the county as an inspection and engineering fee, such fee as may be provided by written regulation of the county executive, ~~provided by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section ~~2A-14(c)(3) 15~~ 2A-15 of this ~~code~~ CODE, for the construction of any such street, sidewalk, gutter, curb, grading project or drainage project.

Any person who violates any provision of this section shall, upon conviction, be fined not more than one thousand dollars or imprisoned for not more than one year, or both, for each offense.

49-23. Licensing and regulating hoisting.

(a) Whenever, in the judgment of the county executive, it is necessary for the safety and control of vehicular or pedestrian traffic, he is hereby authorized to issue written safety regulations, ~~provided by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE, restriction or limiting the movement or use of any material, platform hoist, bucket hoist, crane, derrick, material hoist tower or any other device designed to hoist anything whatsoever on or over any public street, right-of-way or public place.

* * *

49-27. Conversion of existing overhead public utility lines to underground locations.

Whenever it shall be necessary as the result of the construction or improvement of any county road to relocate any overhead electric, telephone, telegraph or other overhead lines of any kind, or related facilities, within any such county road right-of-way, the county executive shall, by written regulation ~~provided by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE, require that any such lines be installed underground if he determines that such underground installation

is required by one or more of the following conditions:

49-33. Standards and specifications.

Except as otherwise provided, the construction of all roads shall conform to the minimum requirements, standards and specifications provided in this article. Whenever used in this article the word "standards" means Montgomery County Design Standards, and the word "specifications" means Montgomery County Standard Specifications. The Montgomery County Design Standards and Montgomery County Standard Specifications are hereby adopted and made a part of this article. The "standards" and "specifications" adopted hereby may be amended by the county executive by regulation ~~promulgated by~~ ADOPTED UNDER Method (2) [pursuant to] OF section [2-105 and subject to the approval, by resolution, of the county council] ~~2A-15(c)(2)~~ 2A-15 of this ~~code~~ CODE. The secretary of the county council shall keep among his official records the standards and specifications, as adopted by the county council, together with any amendments thereto. The secretary shall also prepare and make available to the public printed copies of this article and of such standards and specifications, and they shall be given such free distribution or sold for such price as the county executive may determine from time to time.

49-33A. Pedestrian walkways, bikeways and wheelchair traffic.

* * *

(c) In order to promote the safety of bicycle and wheelchair travel throughout the county, the county executive shall establish, by written regulation ~~promulgated by~~ ADOPTED UNDER Method ~~2/pursuant to~~ (3) OF Section 2A-~~15(c)(2)~~ 15 of this ~~code~~ CODE, standards and specifications for the construction and maintenance of ramps at curbed intersections and for the construction and maintenance of storm water gratings and other openings along roads and streets of such a design and type as not to constitute a hazard to bicycle and wheelchair traffic. Such nonhazardous ramps, gratings and openings shall be constructed and maintained in connection with all projects implemented pursuant to subsections (a) and (b) of this section.

49-36. Classification by county executive.

No person shall construct any road and the county shall not authorize

any road to be constructed or issue any permit therefor, until such proposed road shall have been classified by the county executive as prescribed in this section. All classifications of roads shall be by written regulation, ~~provided~~ ADOPTED by the county executive ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, which shall include a statement of facts and conclusions in support thereof. Classifications of any road may be changed from time to time in like manner. An alphabetical name file of all roads within the county to which this article applies, indicating their classification and status as either "maintained", "accepted for maintenance" or "not maintained" shall be kept by the county. A similar file listing all roads according to election district and road number shall also be kept.

49-38. Permits for grading and construction - required; application; fee.

* * *

(b) Before any road, sidewalk, curb and gutter or drainage project, except a project which is entirely a grading project, may be begun on a road or within the boundaries of a dedication to the public use, the applicant for a permit to undertake any such project shall pay to the county a fee which shall be established by the county executive by written regulation ~~provided for by~~ ADOPTED UNDER Method (3) [in accordance with section [2-105] OF SECTION 2A-~~14(c)(3)~~ 15 of this code.

(c) Where any such project is entirely a grading project, the applicant shall pay a fee to the county as an inspection and engineering fee when the office of the director does the engineering work on such project and a separate fee when the applicant for the permit furnishes the engineering work. The fees for grading projects shall be established and may be revised from time to time by the County Executive by written regulation [in accordance with section ~~[2-105]/2A-14(c)(3)~~ of the code] ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE.

* * *

(g) No person shall construct sidewalks, driveway entrances, retaining walls, steps, cut curbs or construct or place any temporary or permanent structure within a public right-of-way without first obtaining a permit therefor from the director of transportation, and without paying a fee which shall be established and may be revised from time to time by the county

executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) [in accordance with section ~~[2-105] 2A-14(c)(3)~~ of this code] OF SECTION 2A-15 OF THIS CODE.

* * *

49-40. Street and road bonds.

* * *

(e) The county executive is authorized to [promulgate rules and] ADOPT regulations, ~~by~~ UNDER Method (3) ~~pursuant to~~ OF Section ~~2A-14[c][7]~~15 of this ~~code~~ CODE, to implement the provisions of this section. The director shall recommend permit fees to include amounts as may be necessary to cover any increased costs of administration of any of the programs set forth in this section.

49-68A. Application filing fee.

Except for applications by the county and other governmental agencies, no application under this article shall be received for filing unless it is accompanied by the payment of a filing fee in the amount of one hundred and twenty-five dollars or such other amount established by regulations of the county executive, ~~promulgated by~~ ADOPTED UNDER Method (3) [from time to time] ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~ CODE, to defray the cost of hearing and other expenses of such appplication.

49-75. Adoption of [rules and] regulations.

The county executive is authorized to adopt, ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, necessary [rules or] regulations concerning freeways or expressways; such may include, but not be limited to, further provisions for the establishment, construction, use and access to freeways or expressways.

Sec. 49. Sections 51-11 and 51-12(a) of Chapter 51, title "Swimming Pools" be and hereby are amended to read as follows:

51-11. Fees.

The fee for obtaining any license, permit or registration as provided in this chapter shall be such amount as the county executive, by regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section ~~2A-14(c)(3)~~ 2A-15 of this ~~code~~ CODE, may set from time to time. No separate pool operating permit shall be required for a wading or spray pool. A separate fee in such amount as the executive may set by regulation

~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section ~~2A-14(c)(3)~~ 2A-15 of this ~~code~~ CODE, from time to time, will be charged for administration of the examination to applicants for a pool operator's license as provided in this chapter. Fees shall not exceed the reasonable costs of administering and enforcing this chapter. There shall be no operating permit fee charged for any pool operated by the county.

51-12. [Rules and regulations.] REGULATIONS

(a) The county executive is authorized and designated to prescribe and issue written [rules and] regulations, ~~promulgated by~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~ 15 of this ~~code~~ CODE, for the implementation and operation of public swimming pools and public swimming pool construction to this chapter as may be necessary from time to time to implement the provisions of this chapter.

(b) Each person selling, constructing or installing a swimming pool in Montgomery County shall provide the purchaser or owner with a current copy of this chapter.

Sec. 50. Sections 52-7(k), 52-8, 52-16B(k), 52-18A(c), 52-18B(k), 52-18C(m), 52-18D(d), 52-21(d), 52-21(h)(4) and 52-21(i)(4) and (7) of Chapter 52, title "Taxation", be and hereby are amended to read as follows:

52-7. Same - Purchase by county taxpayers; denominations; increase in value; form; redemption; nontransferable; limitation on amount issued; lost or stolen certificates.

* * *

(k) The [director of finance] county executive is authorized to establish regulations [and procedures], ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE, for the replacement of lost or stolen certificates upon proof of loss satisfactory to the director.

52-8. Certification of payment of taxes; fees; liability for errors, etc.

For certifying the payment or nonpayment of ordinary taxes, to persons other than the council or the head of any department of the county government, the director of finance shall charge and collect a fee for each such certification as shall be established by the county executive by written regulations ~~promulgated by~~ ADOPTED UNDER Method (3) [in accordance with] OF section [2-105] 2A-~~14(c)(3)~~ 15 of this code and in

amount not to exceed the cost of administering and providing for liability under this section.

In addition, the director of finance shall charge and collect a fee which shall be established by the county executive by written regulation ~~provided for~~ ADOPTED UNDER Method (3) [in accordance with] OF section [2-105] 2A-~~14(c)(3)~~ 15 of this code for each certification of payment or nonpayment of any farmland transfer tax due under Section 52-21.

All such certifications shall certify the taxes that are paid or unpaid according to the records of the county but neither the director of finance nor any official authorized by him to make such certificate shall be personally liable for any error in such certificate unless the error be caused by his willful, capricious or fraudulent act. In the event of the failure to list on such certificate unpaid taxes for the period covered by such certificate, or the failure to list properly payment or nonpayment of the farmland transfer tax due under section 52-21, the liability of the county on such certificate shall be limited to the amount of such unpaid taxes, interest and penalties.

52-16B. Beverage container tax.

* * *

(k) Additional provisions. The county executive may adopt [rules and] regulations, ~~provided for~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~ 15 of this ~~code~~ CODE, necessary to implement and clarify the provisions of this tax.

52-18A. Tax credit for certain nonprofit organizations.

* * *

(c) The [Director of Finance] county executive is delegated authority to prepare such [rules and] regulations, ~~provided for~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~ 15 of this ~~code~~ CODE, as the [Director] county executive determines may be needed for the administration of tax credits to the extent such administrative rules and regulations are not inconsistent with Section 9C, Article 81, Annotated Code of Maryland.

* * *

52-18B. Moderate income multi-family rental housing facility real property tax deferral.

* * *

k. The county executive is authorized to [promulgate] ADOPT regulations, ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~Code~~ CODE, for the administration of this deferral program.

52-18C. Residential real property tax deferral.

* * *

(m) The county executive is authorized to [promulgate] ADOPT regulations, ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~Code~~ CODE, for the administration of this deferral program.

* * *

52-18D. TAX CREDIT FOR GREAT HOPE HOMES LIMITED.

* * *

(D) THE [DIRECTOR OF FINANCE] COUNTY EXECUTIVE IS DELEGATED AUTHORITY TO PREPARE SUCH [RULES AND] REGULATIONS, TO BE ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE, AS THE [DIRECTOR] EXECUTIVE DETERMINES MAY BE NEEDED FOR THE ADMINISTRATION OF TAX CREDIT TO THE EXTENT SUCH ADMINISTRATIVE [RULES AND] REGULATIONS ARE NOT INCONSISTENT WITH SECTION 9C, ARTICLE 81, ANNOTATED CODE OF MARYLAND.

* * *

52-21. Levied; amount.

* * *

(d) A percentage of the value of the consideration for the transfer of land, excluding improvements thereon, which, while owned by the transferor, has been assessed at any time during the five years preceding transfer on the basis of being actively devoted to farm or agricultural use or which while owned by the transferor has been valued and assessed on the assessment records on the basis of the agricultural use value assessment at any time during the five years preceding transfer, said tax to be paid by the transferor of such land, which percentage shall vary according to the following schedule:

(1) Land assessed and taxed to the transferor for one year on the basis of farm or agricultural use, two and one-half percent.

(2) Land assessed and taxed to the transferor for two years on the basis of farm or agricultural use, four percent.

(3) Land assessed and taxed to the transferor for three years on the

basis of farm or agricultural use, five and one-half percent.

(4) Land assessed and taxed to the transferor for more than three years on the basis of farm or agricultural use, six percent.

Improvements and land which were not assessed based on farm or agricultural use and are not subject to the farmland transfer tax levied in subsections (d)(1), (2), (3), or (4) and are transferred as a part of a transaction including a transfer of land previously assessed as farmland, shall be taxed as provided in other subsections of this Section 52-21 as if such improvements and land were not part of a transaction including farmland. Consideration for the improvements and non-farm-assessed land shall be presumed to be the total full cash value most recently determined by the Supervisor of Assessments based on the most recent notice of assessment. The presumption may be rebutted by clear and convincing evidence.

Where the transfer is subject both to the tax imposed by this subsection (d) and the tax imposed by subsection (e) below, the tax imposed by subsection (e) shall be the only tax imposed on the transfer.

The [Director of Finance]county executive may from time to time issue written regulations, ~~promulgated by~~ ADOPTED UNDER Method 2 ~~pursuant to~~ (3) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, pertaining to the collection of the tax levied in this subsection.

* * *

(h) Four percent of the value of the consideration for the initial transfer of a residential unit subject to a condominium regime, which unit was offered for rent for residential purposes prior to the establishment of the condominium regime.

* * *

(4) The county executive may adopt regulations, ~~promulgated by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, for the implementation of the purposes set forth above[, subject to notification to the county council seven (7) days prior to issuance]. Expenditures from the fund shall be authorized by appropriation by the county council.

* * *

(1) Four percent of the value of the consideration for the initial

transfer of stock or other evidence of membership in a cooperative or similar entity where such stock corresponds to a residential unit which is being converted from rental status to a system of cooperative housing corporation ownership under which title to a multi-unit residential facility is held by a corporation, the shareholders or members of which, by virtue of such ownership or membership, are entitled to enter into an occupancy agreement for a particular residential unit.

* * *

(4) The county executive may adopt regulations, ~~pursuant to~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~11(f)(2)~~15 of this ~~code~~ CODE, for the implementation of the purposes set forth above[, subject to notification to the county council seven (7) days prior to issuance]. Expenditures from the fund shall be authorized by appropriation by the county council.

* * *

(7) For purposes of subsection (i), a transfer or issuance of stock or other evidence of membership from the cooperative housing corporation to the developer shall not be deemed to be the initial transfer. The county executive may from time to time issue written regulations, ~~pursuant to~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~11(f)(2)~~15 of this ~~code~~ CODE, to define any terms or to effectuate the purposes of this subsection (i).

* * *

Sec. 51. Sections 53-18, 53-19(c) and (e), 53-37A, 53-42 and 53-46(c)(5) of Chapter 53, title "Taxicabs and Limousines" be and hereby are amended to read as follows:

53-18. VEHICLE EQUIPMENT - TAXIMETERS.

EACH TAXICAB FOR WHICH A PASSENGER VEHICLE LICENSE HAS BEEN ISSUED UNDER THIS CHAPTER SHALL BE EQUIPPED, WHILE IN SERVICE, WITH AN ACCURATE, PROPERLY INSTALLED AND CONNECTED TAXIMETER WHICH HAS A SECURITY SEAL AFFIXED BY THE OFFICE OF CONSUMER AFFIARS. PERIODIC TESTS OF SUCH METERS WILL BE MADE. UPON SUCCESSFUL COMPLETION OF THE TESTS, THE TAXIMETER SHALL BE AFFIXED WITH A SECURITY SEAL. THESE TESTS SHOULD BE SCHEDULED BY THE COUNTY IN SUCH A MANNER AS TO MINIMIZE THE INTERRUPTION OF TAXICAB SERVICE TO THE PUBLIC. EXCEPT AS OTHERWISE SPECIFIED, THE REQUIREMENTS FOR APPROVAL AND METHODS OF

TESTING AND OPERATION OF TAXIMETERS SHALL CONFORM TO SPECIFICATIONS, TOLERANCES AND REGULATIONS FOR TAXIMETERS AS SET OUT IN THE NATIONAL BUREAU OF STANDARDS HANDBOOK 44, OR AS MAY BE ESTABLISHED BY EXECUTIVE REGULATIONS ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE. IT SHALL BE UNLAWFUL AND CAUSE FOR REVOCATION OR SUSPENSION OF IDENTIFICATION CARD OR PASSENGER VEHICLE LICENSE FOR ANY PERSON:

(A) TO MAKE ANY CHANGE IN THE MECHANICAL CONDITION OF WHEELS, TIRES AND GEARS OF ANY TAXICAB WITH INTENT TO CAUSE FALSE REGISTRATION BY THE METER OF THE FARE TO BE CHARGED ANY PASSENGER.

(B) TO MAKE ANY CHARGE FOR TRANSPORTATION OTHER THAN COMPUTED BY THE TAXIMETER WITH A SECURITY SEAL, PROVIDED, HOWEVER, THAT THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION, OR HIS OR HER AUTHORIZED DESIGNEE, MAY GRANT A WAIVER TO THIS PROVISION FOR A CONTRACT FILED THEREWITH THAT PERMITS LOWER RATES THAN THOSE COMPUTED BY THE TAXIMETER UPON A WRITTEN DETERMINTION THAT THE CONTRACT PROVISION WILL NOT RESULT IN A SIGNIFICANT REDUCTION OF SERVICE TO THE GENERAL PUBLIC AS PROVIDED UNDER SECTION 53-31.

53-19. Schedule of fare rates.

* * *

(c) Adjustments of rates. The county executive may adjust such rates, by executive regulations ~~promulgated by~~ ADOPTED UNDER Method 1 ~~pursuant to~~ (3) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, as he or she deems necessary in the public interest after public notice and hearing and after giving consideration to the recommendations of the taxicab service advisory committee.

* * *

(e) The county executive is authorized to adopt after public hearing [rules and] regulations, ~~promulgated by~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, to include but not be limited to a taxicab reporting systen in order to carry out the intent of this article.

53-37A. Rules and regulations.

The county executive is hereby authorized to establish in writing [rules and] regulations, ~~promulgated by~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, necessary and proper to carry out the purposes and intent of this chapter. [Any such

rule or] regulation/ shall become effective only after the county executive or his designee shall have conducted a public hearing, after reasonable notice, at which hearing all interested persons shall have an opportunity to appear and testify on the proposed rule or regulation.

53-42. INSURANCE REQUIRED OF APPLICANTS.

BEFORE ISSUING ANY PASSENGER VEHICLE LICENSE UNDER THIS ARTICLE, THE DEPARTMENT OF TRANSPORTATION SHALL ASCERTAIN AS TO EACH VEHICLE LICENSED THAT THE OWNER HAS INSURANCE OR SURETY FOR THE VEHICLE COVERING BODILY INJURY OR DEATH TO ANY PASSENGER OR OTHER PERSON, AND, PROPERTY DAMAGE, IN THE AMOUNTS REQUIRED BY REGULATIONS ADOPTED BY THE COUNTY EXECUTIVE UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE, AND FURTHER THAT SUCH INSURANCE SURETY COVERS THE FULL PERIOD FOR WHICH THE VEHICLE IS TO BE INSURED.

IF AT ANY TIME, FOR ANY REASON, THE INSURANCE OR SURETY COVERAGE LAPSES DURING THE LICENSE YEAR, THE LICENSE SHALL BE IMMEDIATELY SUSPENDED WITHOUT NOTICE OR HEARING, AND THE DIRECTOR OR HIS AGENT SHALL PROCEED IMMEDIATELY TO OBTAIN POSSESSION OF THE LICENSE AND SHALL NOT REISSUE IT UNTIL THE INSURANCE OR SURETY REQUIREMENTS ARE FULLY MET.

53-46. Issuance; maximum number; waiting list; rights of heirs of deceased licensee.

* * *

(c) Authorized, unissued passenger vehicle licenses shall be issued in accordance with the following procedure and determinations:

* * *

(5) Applications for a passenger vehicle license shall be processed in accordance with the following procedures:

a. Application shall be made in writing to the department of transportation in accordance with section 53-40 of this chapter.

b. Upon receipt of any such application, the department of transportation shall give due notice thereof to the public by posting a notice of such application in the office of the department and by causing copies of such notice to be transmitted to such other persons as the department may by regulation determine. Any interested person may file with the department a protest or memorandum of opposition to or in support of the grant of any such application. The [department] county executive shall, by regulation ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF

Section 2A-14(c)(3)15 of this code CODE, determine the duration of such posting and any limitations of time applicable to the giving of notice and the filing of protests or memoranda and such periods of time shall be sufficient in duration to most nearly assure actual notice and opportunity to be heard to all interested persons.

c. The department may act without a public hearing to recommend disposition of any application as to which neither a protest nor a memorandum in the opposition has been duly furnished to the department within the prescribed time. The department shall set all other applications for public hearing, at which oral and written evidence, testimony and argument shall be received from the applicant and other interested persons. The county executive shall, by written regulation promulgated/by ADOPTED UNDER Method (3) pursuant/to OF Section 2A-14(c)(3)15 of this code CODE, establish procedures which will assure that interested persons receive actual notice and an opportunity to participate in such hearing.

* * *

Sec. 52. Sections 53A-3, 53A-8(c) and 53A-10 of Chapter 53A, title "Tenant Displacement", be and hereby are amended to read as follows:

53A-3. Right of first refusal to purchase rental facilities.

(a) Sale of rental facilities.

Prior to the sale or transfer of a rental facility of more than ten rental units to any person for the purpose of conversion, the owner shall provide a right of first refusal to purchase the rental facility to the county, its designated housing agency and tenants' organizations certified by the office of consumer affairs pursuant to executive regulations, promulgated ADOPTED by/the/county/executive by UNDER METHOD Method 2 pursuant/to (3) OF Section 2A-14(c)(2)15 of this code CODE.

* * *

(b) Notice required; exercise of right of first refusal.

* * *

(4) The county executive may require the owner, by executive regulations promulgated/by ADOPTED UNDER Method 2/pursuant/to (3) OF Section 2A-14(c)(2)15 of this code CODE, to make available to the county, its designated housing agency and certified tenants organization information regarding the characteristics and condition of the facility

deemed relevant to the exercise of the right of first refusal, including but not limited to architectural and engineering plans and specifications and facility operating data. In addition, the county executive, by regulation ~~promulgated by~~ ADOPTED UNDER Method 2 ~~pursuant to~~ (3) OF Section ~~2A-14(c)(2)~~ 2A-15 of this ~~code~~ CODE, may require the owner to provide access to the facility for purposes of inspection by the county, its designated housing agency, and certified tenants organization, provided, the county, its designated housing agency, and certified tenants organization, and their agents shall be responsible for any damage to the property cause by such inspection. The county executive may provide, by regulation ~~promulgated by~~ ADOPTED UNDER Method 2 ~~pursuant to~~ (3) OF Section 2A-15 ~~2A-14(c)(2)(i)~~ of this ~~code~~ CODE, that any information received by either the county or its designated housing agency, pursuant to this subsection, is confidential and not subject to public disclosure.

* * *

53A-8. Notice to tenants of status conversion; right of tenant to terminate leave; liability for relocation costs.

* * *

(c) Any tenant who, within one hundred eight (180) days after receipt of a notice of intention to convert the status or use of the rental facility, under this chapter, gives written notice of intent to move to the owner, shall be entitled to reimbursement by the owner for the reasonable costs of relocation assistance as determined by executive regulation, ~~promulgated by~~ ADOPTED UNDER Method ~~(2)~~ (3) ~~pursuant to~~ OF Section ~~2A-14(c)(2)~~ 2A-15 of this ~~code~~ CODE, up to $750.00, provided that complaints regarding the application of this subsection may be filed with the office of landlord-tenant affairs.

53A 10. Administration of chapter.

The office of consumer affairs shall be responsible for administration of this chapter and the county executive shall, from time to time, issue such written regulations, ~~promulgated by~~ ADOPTED UNDER Method ~~(2)~~ (2) ~~pursuant to~~ (3) OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, as may be necessary to put into effect and to administer the provisions of this chapter.

Sec. 53. Sections 54-2, 54-15, 54-19 and 54-23 of Chapter 54, title

"Transient Lodging Facilities", be and hereby are amended to read as follows:

54-2. Authority of county executive to regulate and license.

The county executive, in order to implement the health standards and regulations of this chapter, is hereby authorized by law to adopt such regulations, ~~promulgated by~~ ADOPTED UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~15 of this ~~code~~ CODE, concerning the operation, maintenance and conduct of any of the types of establishments referred to in this chapter, including provision of such licenses and license fees for such establishments as he may deem appropriate. Neither the provisions of this chapter nor the provisions of any law adopted hereunder shall be applicable within the corporate limits of any incorporated municipality or special taxing area within the county which by law has authority to enact similar regulations.

54-15. Application.

Before an annual license for any establishment shall be issued by the director under this division, an application shall be filed by the owner or operator, or his duly authorized agent, in accordance with the [rules and] regulations prescribed by the [director] county executive ~~by~~ UNDER Method (3) ~~pursuant to~~ OF Section 2A-~~14(c)(3)~~ 15 OF of this ~~code~~ CODE.

54-19. Fees.

The annual fees for licenses under this division shall be established by the county executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) [pursuant to ~~[~~the procedure set forth in] OF section [54-2 of this chapter] 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE.

54-23. Change of location of establishment; transfer.

(a) Whenever an establishment changes its location, the current license held by such owner or operator under this division shall automatically become void.

(b) The director may, in his discretion, authorize the transfer of a license issued under this division to a new owner or operator upon an application for transfer of the license and payment of a transfer fee which shall be established by the county executive by written regulation ~~promulgated by~~ ADOPTED UNDER Method (3) [pursuant to ~~[~~the procedure set forth in~~]~~ section ~~[~~54-2 of this chapter] OF SECTION 2A-~~14(c)(3)~~ 15 of this ~~code~~ CODE.

Sec. 54. Sections 56-1, 56-2A, 56-6, 56-20 and 56-34 of Chapter 56, title "Urban Renewal and Community Development", be and hereby are amended to read as follows:

56-1. Rehabilitation loan fund.

The county council is hereby empowered and authorized by resolution to establish and thereafter to maintain a special fund to be known as the "rehabilitation loan fund" for the purpose of making loans to homeowners of low income to finance rehabilitation required to make their homes or mobile homes conform to applicable County Code requirements, provided such loans are not available on reasonable terms and conditions from other sources. The county executive shall prescribe from time to time such [terms, conditions, rules and] regulations [as it shall deem], ~~promulgated by~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, deemed appropriate for the making of such loans and the administration of the fund, including the right to contract with private organizations for the administration of such fund.

56-2A. Authority to establish.

The county council is hereby empowered and authorized by resolution to establish and thereafter to maintain a special fund to be known as the "homeowners' replacement loan fund" for the purpose of making direct loans to homeowners of low income, whose present homes cannot be rehabilitated to conform with applicable County Code requirements, to finance new homes, including prefabricated and mobile homes and to finance the purchase of land upon which a home is situated; provided, that such loans are not available on reasonable terms and conditions from other sources. The county executive shall [prescribe]~~,~~ ~~by~~ ADOPT UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, from time to time such [terms, conditions, rules and] regulations as he or shall she deem appropriate for the making of such loans and the administration of the fund, including the right to contract with private organizations for the administration of such fund; provided, that the loans available under this fund shall be limited to those individuals whose income and net worth preclude home financing through normal banking or other financial channels. In determining the availability to the property owner of adequate commerical financing, the following shall be taken into consideration:

* * *

56-6. Administration.

The homeowners replacement loan fund shall be administered by the director of housing and community development, pursuant to regulations to be adopted by the county executive, ~~promulgated by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE.

56-30. Powers and authority of county.

* * *

(h) Eligibility standards. [Promulgate] ADOPT and revise standards, by executive regulations ~~promulgated by~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(2)~~15 of this ~~code~~ CODE, for eligibility for renting or purchasing opportunity housing, and establish and revise the rents, sales prices or charges therefor; such rents, sales prices or charges to be based upon a set of maximum income or other financial limits to be established and revised by the county executive for eligibility and admission to such opportunity housing. In establishing and revising such income limits, the county executive shall consider all available statistical data indicating the minimum rentals and sales prices of dwelling units or housing available or being produced in the private market, including sales price data from the county's department of finance; the vacancy ratio in rental units; the currently prevailing prices at which private enterprise can and will produce sales and rental units; and any other statistical data which at the discretion of the county executive is deemed appropriate and relevant to the general market and economic conditions that currently exist.

56-34. Financial assistance.

(a) The county council is hereby empowered and authorized by resolution to establish and thereafter to maintain a special fund to be known as the "Tenant Displacement Aid Fund" for the purpose of making grants and loans to persons of eligible income, as follows:

(1) Down payment assistance loans

a. Down payment assistance loans may be made from the tenant displacement fund to persons who are eligible for the following reasons: a household member is 62 or older at the time of the application or is physically or mentally handicapped as defined by executive regulation ~~promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method (2)

~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~ CODE, and has an income within the moderately priced dwelling unit ordinance income limits and is being displaced or threatened by displacement as a result of a rental facility changing in status or use, including, but not limited to, the establishment of a condominium regime, the establishment of a cooperative housing project, the establishment of a commercial use of a facility, or partial or complete demolition.

* * *

(2) Rental Assistance Grant

a. Grants from the tenant displacement aid fund may be made for rent differential assistance, as defined by executive regulations ~~promulgated~~ ADOPTED by the county executive ~~by~~ UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~ CODE, to persons who are eligible for the following reasons: a household member is 62 or older at the time of the application or is physically or mentally handicapped as defined by executive regulation, and has an income within the moderately priced dwelling unit ordinance income limits, and is being displaced or threatened by displacement as a result of a rental facility changing in status or use, including, but not limited to, the establishment of a condominium regime, the establishment of a cooperative housing project, the establishment of a commercial use of a facility, or partial or complete demolition.

* * *

(b) Grant payments to the housing opportunities commission may be made for the purchase of rental units converting to condominium or other status. The county executive shall prescribe from time to time, such terms, conditions, [rules and] regulations, ~~promulgated by~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~ CODE, as he shall deem appropriate for the making of grants and the administration of the fund.

(c) The county executive shall prescribe from time to time [such terms, conditions, rules and] regulations, ~~promulgated by~~ ADOPTED UNDER Method (2) ~~pursuant to~~ OF Section 2A-~~14(c)(1)~~15 of this ~~code~~ CODE, as he shall deem appropriate for the making of all grants and loans and the administration of the fund.

* * *

Sec. 54A. Sections 56A-5(a)(2), 56A-8 and 56A-9(b) of Chapter 56A, title "Video Games", be and hereby are amended to read as follows:

56A-5. LICENSE FEES.

(A) THE FEE FOR A LICENSE ISSUED UNDER THIS CHAPTER IS:

(1) PAID TO THE DIRECTOR;

(2) IN THE AMOUNT THAT THE COUNTY EXECUTIVE BY REGULATION, ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE, SETS;

(3) NOT REFUNDABLE.

* * *

56A-8. REGISTRATION FEE.

THE FEE FOR A CERTIFICATE OR REGISTRATION ISSUED UNDER THIS CHAPTER IS:

(1) PAID TO THE DIRECTOR;

(2) IN THE AMOUNT THAT THE COUNTY EXECUTIVE BY REGULATION, ADOPTED UNDER METHOD (3) OF SECTION 2A-15 OF THIS CODE, SETS; AND

(3) NOT REFUNDABLE.

56A-9. ADMINISTRATION.

* * *

(B) THE COUNTY EXECUTIVE MAY ISSUE ANY NECESSARY REGULATION, ADOPTED UNDER METHOD (2) OF SECTION 2A-15 OF THIS CODE, TO IMPLEMENT THIS CHAPTER.

* * *

Sec. 55. Severability.

The provisions of this Act are severable and if any provision, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 56. Effective Date.

This Act shall take effect on the 91st day following the date on which

it becomes law.

Upon motion of Councilman Scull, duly seconded and without objection, the Council approved the following amendments to the title of the bill:

Page one, Line 20, substitute in 8A-18(f), (a) (6) for "(f)"; page two, line 7, delete "(c)" in 17 38(b)(c); page two, line 27, delete "316-(a)"; page two, last line, delete "33-13A"; and page three, line 1, delete "33-76 and".

Upon motion of Councilman Scull, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. Councilmembers Hanna, Potter, Gudis, Fosler, Scull and Gelman voting in the affirmative and Councilwoman Crenca being absent, Bill No. 46-83 was enacted, as amended.

MISCELLANEOUS BUSINESS:

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 10:20 A.M. to reconvene at 1:30 P.M. on Tuesday, January 17, 1983, or at the call of the President.

ATTEST:

Kathleen A. Freedman, Acting Secretary
of the County Council for
Montgomery County, Maryland

Montgomery County Lodge 35, Inc.

February 12, 1993

Honorable Marilyn Praisner
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

016326

RE: Emergency Bill 3-93, *Collective Bargaining - Process and Deadlines.*

Dear President Praisner:

On behalf of MCGEO Local 400, IAFF Local 1664 and FOP Lodge 35, I am submitting the following comments regarding Bill 3-93 *Collective Bargaining - Process and Deadlines.*

Emergency Bill 3-93 would amend sections of both the Police Labor Relations Law (Chapter 33, §33-80) and the County Collective Bargaining Law (Chapter 33 §33-108.) The amendments were prompted by a Charter amendment passed in the November 1992 General Election. As you know, all three unions participated on a summer work group and supported the Charter amendment then and later during the election. Our expectation at that time was that the two collective bargaining laws would be changed to adjust the respective dates for Council action/approval. However, the proposed legislation goes much further, hence our objection.

With one suggestion explained *infra*, we support the "conforming" changes proposed, i.e. date changes. It is the other "technical [and] stylistic" amendments we find objectionable. The existing laws were the subject of considerable Council debate and discussion when they were first written. Indeed, I was present during all work sessions on the Police Labor Relations Law and recall that every word was scrutinized, considered and carefully put into context. Moreover, there have been few problems with the other sections designated for "technical" and "stylistic" amendment and all the parties know, in practice, what existing laws mean. In addition, we have printed copies of these laws and trained our stewards and officials in them. While it is quite simple to issue an addendum to existing copies changing the Council action dates with a reason for the change, our task is much more complex and costly in terms of printing, resources, and time when other changes are made.

Of great concern to us is the insertion of the word "sufficient" before funds in both laws. This is a major change and is contrary to the spirit and intent of the Charter amendments which require these laws. And this change would create a conflict between existing law and Lodge 35's contract which expires on June 30, 1994. Sections 33-80(g) and 33-108(j)(2). Also, the provisions for "majority vote" were carefully considered in earlier Council work sessions. Sections 33-80(d) and 33-108(i). We do not know the true meaning of these changes or the effect they will have.

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It is also pointed out that arbitrators, the County Labor Relations Administrator, the Police Permanent Umpire, and union and County officials are familiar with current law and suggest that the unnecessary changes may create considerable confusion. And provisions proposed for change relate to other sections not considered by this bill. See, for example, §33-80(d) establishing a specific date for the end of bargaining. This date sets the framework for bargaining and serves to promote good faith negotiations. When the parties commence bargaining on November 1, they do not know when, or if, impasse will result. But, prior to November 10, an impasse neutral is selected and must "be available during the period January 20 to February 1." Cf. §33-81(a) and (b)(1).

Penultimately, if the dates for submission to Council are to be changed by 16 days for the County Collective Bargaining Law and six days for the Police Labor Relations Law, the dates for extended negotiations should be moved beyond the May 10 date in the proposed County Collective Bargaining Law and the existing Police Labor Relations Law. This suggestion is consistent with the Charter amendment.

Finally, while the date change may be legitimate reason for emergency legislation, we see no emergency in the need to make other changes, and note that while the Personnel Director was not emphatic in his testimony on behalf of the County Executive, he did state that the Executive supports the date changes. He did not testify in support of any other changes.

MFP and Council consideration of these comments will be greatly appreciated.

Sincerely,

Walt

Walter E. Bader
President

2/15/93

cc: Lanny Pippin
Gino Renne

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

EDUCATION COMMITTEE

Thursday, February 18, 1993
2:10 P.M. to 4:20 P.M.
Council Hearing Room

PRESENT

Michael L. Subin, Chair
Nancy Dacek Isiah Leggett

SUBJECT: Meeting with the Board of Trustees of Montgomery College

Dr. Parilla, President, Montgomery College, reviewed the FY 94 operating budget adopted by the Board of Trustees in accordance with the chart provided, noting the gap between the adopted budget and the Council's spending affordability guidelines. He asked that, if the Council is able to adjust its affordability guidelines, it consider the factors over which the College has no control, such as its obligations for the funding of social security payments and post-retirement health benefits. Mr. Locksley, Chair of the Board of Trustees, pointed out that most of the gap between the adopted budget and the affordability guidelines can be attributed to these obligations.

Mr. Subin said it had been his hope that there would be a way to distinguish between expenditure authority and appropriations for the school system and College. Mr. Lehman, member of the Board of Trustees, advised that including non-County revenues in the affordability limitations discourages efforts to identify new revenue sources or to increase revenues from other sources.

Mr. King, Finance Director, Montgomery College, provided information about the change in the standards with respect to the funding of post-retirement health benefits, noting that the College is now required to set funds aside for these benefits. He advised that the College proposes funding this liability over a 20-year period.

Discussion followed concerning the spending affordability process. Mr. King advised that the College does not receive a benefit if it acquires a grant or is able to increase revenues because it is constrained by the spending ceiling. Mr. Subin said he believes the distinction must be made between expenditure authority and appropriations, and expressed a willingness to sponsor legislation, if it is determined that such a distinction cannot be made without a legislative amendment. He proposed that Mr. Sherer determine whether an amendment to the spending affordability law is needed or whether modification to the process can be achieved through another mechanism, such as the adoption of a resolution. He noted that such a change would not impact

County appropriations but would provide an incentive for the College to explore other revenue sources, such as increased user fees. Ms. Dacek pointed out that other departments and agencies receive grants and revenues from sources other than County appropriations, and noted the need to develop a solution which addresses the general issue of the relationship of the spending affordability guidelines and other revenue sources for all budgets.

ACTION: Instructed Mr. Sherer to determine what actions must be taken to allow for the distinction to be made between County appropriations and other revenue resources when establishing the spending affordability guidelines.

Dr. Parilla responded to inquiries about the enrollment at the three campuses, and provided information on the increase in the number of students needing English skills. He noted that the College is considering establishing a multi-cultural resource center at the Takoma Park campus, and advised that it is interested in discussing the possibility with the County to determine whether a partnership can be established to develop such a center. Mr. Subin noted that some funding may be available from the private sector. Dr. Parilla advised that the College has received a contract to develop a video and other materials to train small businesses on how to do business in other countries. Mr. Subin said it may be useful to schedule a joint meeting of the Education and Planning, Housing, and Economic Development (PHED) Committees with representatives of the College and the private sector leadership to discuss the possibilities of a public-private partnership. Dr. Parilla advised that the College would be very interested in leading such an effort. Dr. Lehman noted that this proposal brings attention to the concerns raised earlier about the spending affordability process, and pointed out that any funds which the College may receive as a result of a partnership with the private sector will have an impact on the funds which can be expended in support of the general education program.

ACTION: Instructed Mr. Sherer to explore the possibility of scheduling a meeting with the Education and PHED Committees and representatives of the College and the private sector to discuss the interest of the College in establishing a multi-cultural resource center and in undertaking other efforts to assist businesses in their relationships with other countries and cultures, and to examine whether a public-private partnership to facilitate these efforts may be feasible.

SUBJECT: Supplemental Appropriation to the FY 93 Operating Budget of the Montgomery County Public Schools (MCPS) for the Adult Basic Education (ABE) Program. in the amount of $27.000

Ms. Hughes, MCPS staff, responded to inquiries about the funding of the ABE program, and advised that a condition of the grant is that no user fees be charged. She said she believes the higher cost to provide these services in Montgomery County accounts for the difference between the funding provided by the Federal Government and the total funding of the program.

ACTION: Requested that, prior to Council action on the supplemental appropriation request, MCPS staff provide information on the services which are mandated for the ABE program and additional services which the MCPS may be providing beyond those which are mandated, and requested that this information be provided in the future for mandated programs when funding requests are transmitted to the Council.

SUBJECT: Montgomery County Public Schools (MCPS) Enrollment Projections

Using graphics, Mr. Crispell, MCPS staff, reviewed the components of the enrollment forecast, enrollment history and projections for the County from 1980 through 2010, enrollment history and projections for Maryland and the United States, and data on enrollment by grade for the 1992-93 school year for the Blair, Paint Branch, Sherwood, Springbrook, Quince Orchard, and Seneca Valley Clusters. He responded to inquiries and provided information on the factors which impact migration into and out of the system.

Mr. Subin noted the impact of new construction on in-migration, and inquired about whether there may be ways to get a better determination of this impact. Mr. Crispell advised that builders are surveyed with respect to their expectations, and this information is incorporated by school into the data base which he uses to develop his projections. He noted that the regional forecasts which are developed by the Montgomery County Planning Board (MCPB) are also used.

Mr. Dedrick, MCPB staff, reviewed factors which indicate that the economy is improving, and expressed the view that the MCPS assumptions with respect to in-migration are conservative.

Mr. Huggins, representing the Board of Realtors, advised that the Board does not track the composition of families moving into and out of the County, but said it is his observation that more families with younger children are moving into the County. He provided data on the increase in the residential sales which occurred in 1992 by area of the County, and said it is clear that the economic recovery has begun. To assist the County in collecting data on family composition, he suggested that the County transfer form which is completed at the time of settlement be modified to include a question on the number and ages of children in the family. Mr. Subin said he believes the information would also be useful to Montgomery College.

ACTION: Instructed Mr. Sherer to request that the appropriate Executive Branch staff work with staff of the MCPB and MCPS to explore the possibility of using the transfer form to collect data on family composition to assist the MCPS in developing enrollment projections.

This is an accurate account of the meeting:

Kathleen A. Freedman

Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Sherry Homer, Assistant Secretary

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

PLANNING, HOUSING, AND ECONOMIC DEVELOPMENT COMMITTEE

Thursday, February 18, 1993
3:47 P.M. - 5:27 P.M.
PIC Conference Room in Silver Spring

PRESENT

William E. Hanna, Jr., Chair
Bruce Adams
Derick Berlage

SUBJECT: Private Industry Council (PIC) Job Training Programs

The Committee met with members of PIC and representatives of the Office of Economic Development (OED) to receive a briefing on the job training programs coordinated by PIC. Mr. Stewart, Chair; Mr. Bozarth; and Mr. Zeller, Executive Director, PIC, responded to questions of Committee members concerning the various programs and funding sources.

Mr. Adams stated that PIC and other organizations should develop a clear plan to be ready to take advantage of summer jobs programs and other Federal initiatives that will be funded as a result of President Clinton's economic stimulus plan.

Mr. Berlage requested information on the total amount of funding received by the various job training programs coordinated by PIC that is leveraged with County money. He requested that this information be displayed in the form of a pie chart. In response to an inquiry as to whether PIC has a breakdown of the client population in terms of different categories and groups of people served, Mr. Zeller stated that PIC can provide this information for the portion of the client population that is not funded by the County, and for portions of the County funding which is earmarked for specific populations.

Mr. Hanna stated that the Committee's direction to OED and PIC was to combine all of the County-funded programs into a single integrated system. He stated that each individual program has the administrative support necessary to make the program work, and, while administrative support is necessary, these funds could be devoted to job training programs if the administration was consolidated.

Mr. Bozarth stated that PIC does not have the intention of combining all of the programs under one name; PIC is coordinating the programs and creating efficiencies. He stated that PIC's development of a central point of intake could serve all of the various programs. He stated that there are other efficiencies that will be identified and implemented.

Mr. Adams stated that he agrees with Mr. Hanna in concept, but noted that a number of the job training programs have administrative overhead which is designed to serve a series of other programs and functions. It would not necessarily be more efficient to take the job training component out of each of these entities and combine them into a large training operation. He requested that PIC examine the question from this point of view in time for the Committee's review of job training programs in the operating budget.

Senior Legislative Analyst Orlin noted that many of the job training programs are individual efforts and not part of a large agency. He requested information on the number of administrative staff for each program, and whether it is a stand alone program or part of another agency.

Mr. Hanna stated that, in difficult economic times such as these, the establishment of priorities for government programs is the single most important thing the Council can do. Unfortunately, there will be many good programs eliminated as a result of budget cuts that meet the criteria of good programs but they are not a high priority when there are limited resources. He noted the variety of clients and population groups served by the various job training programs, and stated that, if the objective of PIC is to place the maximum number of people into jobs, it would be inappropriate to spend large amounts of money for job training programs for some segments of the population. Noting that some client categories are easier to train and place in jobs than others, if the objective is to place the greatest number of people in jobs, the Council should cut funding for certain groups because it would be better able to achieve its objective by directing these funds to other programs. He stated that that is the kind of issue that elected officials should address. Mr. Hanna stated that the Council will not abandon programs for some of these groups, but it does need to give consideration to whether it is wise to spread scare resources around to all the different categories of clients when substantial classes of clients can be identified that have a greater likelihood of being placed in jobs. Mr. Hanna noted that some client groups, such as women and senior citizens, may fall into more than one category of job training programs. Ideally, PIC would establish a cross classification system to track these clients, but he is not sure that funding is available for this purpose. If PIC could decide which categories are easiest to work with and represent the largest number of clients likely to be placed in jobs and then concentrate on what needs to be done to serve those different categories, PIC will be able to serve the greatest number of people for the least amount of money.

Mr. Hanna noted that yesterday he and a small group of elected officials were invited to meet with the new Secretary of the Federal Department of Housing and Urban Development (HUD). The Secretary provided insights on some new initiatives with which HUD is involved. For example, Mr. Hanna stated that all present recipients of Community Development Block Grant funds will be given a bonus in the amount of 50% to 60% of the amount of money normally appropriated to that jurisdiction. The idea is spend the money on job-producing programs and projects immediately. He stated that he has met with Mr. Ferrara, Director, County Department of Housing and Community Development, to determine whether the County has any projects which are ready to be implemented. Montgomery County will probably receive $1 million to

$3 million under this program. He stated that this will result in new construction contracts that may employ some of the clients that PIC Is trying to place. In addition, HUD will make available $450 million on a grant application basis for new programs to serve the homeless, including buildings and facilities, without exclusions. Projects that involve job production will be given favorable treatment. HUD is seeking new and creative ways of using this money and has not put any limitations on it. He asked Mr. Ferrara to talk to Mr. Short, the County's Secretary of Health and Human Services, to determine what Montgomery County can do to take advantage of this money. Mr. Hanna requested that PIC inform the County Government if it has any ideas on how it can use these new funds which will be made available.

Mr. Zeller stated that PIC will provide the Committee with information on the return on the investment of County funds and how expenditures for this purpose save other County expenditures, such as in the Department of Social Services, and the amount of revenue generated in income taxes.

Following the discussion, Committee members toured the PIC Office at 8500 Colesville Road in Silver Spring.

This is an accurate account of the meeting:

Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Kathleen A. Freedman, CMC

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

MANAGEMENT & FISCAL POLICY COMMITTEE

Thursday, February 18, 1993
9:05 A.M. - 9:16 A.M.
Council Conference Room

PRESENT

Michael L. Subin William E. Hanna, Jr.

ABSENT

Marilyn J. Praisner, Chair

Mr. Hanna stated that he has been asked to chair the meeting in the absence of Ms. Praisner who is ill.

SUBJECT: Bill 37-92. Construction Excise Tax (CET) - Postponement

The Committee had before it memoranda from Senior Legislative Attorney Faden, dated February 18, 1993, attaching the bill and related material.

Mr. Hanna stated the subject bill proposes to postpone the effective date, the sunset date, and the evaluation date of the CET for one year. The County Executive has indicated that he would accept a six-month delay in the effective date of the CET if the time of payment were advanced from issuance of the certificate of occupancy to an earlier point. Mr. Hanna stated that, although he would prefer that the bill be repealed, he will support it. Mr. Subin also agreed to support the bill.

ACTION: Recommended approval of Bill 37-92.

SUBJECT: Supplemental Appropriation and Amendment to the FY 93 Operating Budget of the Montgomery County Government (Management Systems Development Nondepartmental Account). Department of Information Systems & Telecommunications (DIST). for Construction Excise Tax Automation. in the Amount of $280.000

Mr. Hanna stated that he does not support the provision of funds to implement the CET. Therefore he will vote against the supplemental appropriation.

Mr. Subin stated that he believes it is unrealistic to establish an automation system for the CET. He suggested that, if the CET is implemented, the County include CET calculations in an automation system that is already being used by the County. He pointed out that there is already a system in place in connection with the development impact tax currently being levied in Germantown and Eastern Montgomery County.

Mr. Rasmussen, Director, DIST, stated that there is a mechanism in place for collecting the tax, but the calculation of the CET is different from the calculation of other taxes collected by the County. Mr. Hubbard, staff, Department of Environmental Protection, explained the complexities involved in the calculation of the CET. Mr. Subin suggested that, if the CET is implemented, a further examination of the County's automation systems should be examined to determine whether the process for calculating the CET could be incorporated into a process which is already in place.

ACTION: Recommended disapproval of the supplemental appropriation.

The Committee voted to disapprove the supplemental appropriation at this time because of the potential that the CET will be postponed for a year; in that case the funds for any system adjustment could be considered later.

SUBJECT: Bill 3-93. Collective Bargaining - Process and Deadlines

The Committee had before it a memorandum from Mr. Faden, dated February 18, 1993, setting forth issues for discussion, and attaching the subject bill.

Mr. Hanna referred to objections raised by Mr. Bader, President, Fraternal Order of Police, in his letter of February 12, 1993, regarding stylistic and technical changes made to the bill. He noted that Mr. Faden has responded to these issues in his memorandum.

ACTION: Recommended approval of Bill 3-93.

This is an accurate account of the meeting:

Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Mary A. Edgar, CMC
Senior Assistant Secretary

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

PUBLIC SAFETY COMMITTEE

Thursday, February 18, 1993
9:05 A.M. to 12:15 P.M.
Council Hearing Room

PRESENT

Betty Ann Krahnke, Chair
Nancy Dacek

ABSENT

Gail Ewing

Ms. Ewing was absent because of a family emergency, and a member of her staff attended the session on her behalf.

SUBJECT: Cabin John Fire Station #10 - Roof

Ms. Krahnke added this item to the agenda to discuss a recent newspaper report of an evacuation of the building due to severe roof leakage. She asked that the Committee be briefed on the incident. Neil Shorb, Staff Director, Fire and Rescue Commission, explained that the roof was in the process of being repaired and the contractor failed to cover his work properly prior to recent heavy rains. The contractor's insurance will cover the damage from this incident. He emphasized that the roof has had continual roof leaks since it was built in 1984, which was the reason for the repair work. Ms. Krahnke asked for information on why the contractor who built the original roof was not held responsible for the work. She believes that the Department of Facilities and Services should assure that work is done properly in the first place and that if it is not, the contractor must be held accountable for unacceptable work. It was explained that the County now has a roofing engineer to help assure that roofs are designed and built properly.

Ms. Krahnke asked that the Council be apprised of emergency situations before reading about them in the newspapers.

SUBJECT: Briefing - Underground Storage Tanks

The Committee reviewed a memorandum, dated February 16, 1993, from Legislative Analyst Davidson, which raised some issues for Committee consideration.

The Committee was advised that the Executive plans to conduct a public hearing on the Master Fire Defense Plan, and then the results and other documentation will be transmitted to the Council. More specific details will be provided at the Council's March 4 session on the Capital Improvements Program (CIP).

Mr. Shorb described the membership on the Underground Storage Tank Work Group and the procedures that were used to develop and solicit comments on its report. He said that four different fire corporations had technical concerns, and that Bethesda Station 26 advised that it did not want its tank removed. He said that the Fire and Rescue Commission was aware of their concerns, but was attempting to reduce the number of fueling sites.

Ms. Krahnke commented that it would be helpful to incorporate the recommendations on underground storage tanks and maintenance shop centralization into the Master Fire Defense Plan. On the issue of centralized maintenance, Mr. Shorb explained that a Commission steering committee has repeatedly recommended the implementation of a satellite vehicle maintenance program, but the Executive is not yet ready to commit funding to implement this approach. In the meantime, the Commission is trying to encourage departments to embrace the concept of standardized maintenance and development of a uniform reporting and maintenance plan on an informal basis. Ms. Krahnke recommended that data be collected on the cost effectiveness of converting to a satellite maintenance program. Mr. Solomon, President of the Bethesda Fire Department, said that proposed station closures in the area could seriously impact the ability of the Bethesda units to refuel if the Station's fuel tank is removed. Ms. Krahnke agreed with these concerns, and expressed concern about trying to make decisions on fuel storage tanks based on assumptions that are not yet approved policy.

There was discussion about the operational impact of off-site fueling. It was explained that the apparatus would have to make special trips, but it was noted that the refueling could sometimes be scheduled while the units are already out. The Committee was advised that underground storage tank replacements are coordinated with other projects in the CIP, and that the schedule is in place for the next two or three years. Mr. Fred Edwards, DFS, explained that changes to the CIP or the master plan would impact the replacement schedule. On the issue of making the fuel depots accessible for fire/rescue use on a 24-hour basis, it was clarified that the adjustments that would be required pertain to logistical operations as opposed to capital projects. Mr. Shorb explained that the work group is still considering whether or not to pursue centralized fuel procurement. It was explained that sometimes the corporations are able to purchase fuel cheaper than the rates the County can provide. On the issue of converting some stations from oil to gas or propane heating, it was explained that 20% to 40% of the operating costs could be saved depending on the energy efficiency of the building. The conversion costs would be approximately $90,000 per building, or lower if the fuel boiler can accommodate natural gas.

ACTION: Requested that Council staff be provided with a schedule of tank replacements, and information on other CIP projects planned for these stations as well.

SUBJECT: Executive Regulation 105-92. Pretrial Release Services Fee

The Committee had before it a memorandum, dated February 16, 1993, from Legislative Attorney Beninger, explaining the Executive's proposal to collect the administrative service fee ten days after the defendant's conviction in order to avoid administrative costs of providing refunds if there is no conviction.

The Committee discussed concerns about problems associated with the collection of these fees and what sanctions are possible if the fee is not paid. It was noted that Montgomery County is one of the only jurisdictions in the State moving forward in this effort. It may be determined that the administrative costs of this program will be prohibitive. The Committee members pointed out that the program will have to be monitored closely.

ACTION: Recommended approval as submitted.

SUBJECT: Executive Regulation 106-92. Procedure for Determining Fees for Weekend Prisoners

ACTION: Recommended approval as submitted.

SUBJECT: Briefing on Future Correctional Resource Needs

The Committee had before it a memorandum, dated February 11, 1993, from Legislative Analyst Davidson, which contained the following attachments for this briefing: Summary of December Briefing to the County Executive on Future Correctional Resource Needs; Briefing Summary of Future Correctional Resource Needs for the Department of Correction and Rehabilitation; and, Recidivism Rates Among a Work-Release Treatment Population in Montgomery County. Mr. Devon Brown, Director, Department of Correction and Rehabilitation (DCR), and members of his staff presented the briefing based on these materials, and were available to answer questions from the Committee members.

Ms. Krahnke asked for information on the possibility of the County receiving some of the additional State funding that is being considered by the Governor for alternative community services. Mr. Brown advised that it is unlikely that any additional State funding for this program would be coming to Montgomery County, since the County's program was designed as the model program. Additional State efforts would be directed at developing similar programs elsewhere in the State. He said that the Department is reviewing experiences in other jurisdictions with regard to day reporting as an interim sanction.

In the discussion on the Pretrial Services Unit (PTSU), Ms. Krahnke asked about the effect of the PTSU on reducing the inmate population in the Detention Center. Mr. Kent Mason, Director of Community Corrections, reported that between 100 and 130 jail beds are being saved through the PTSU, and between 30 and 60 beds are saved though the Community Accountability and

Reintegration Treatment (CART) program. He referred to the study performed by the Correctional Services Group, Inc., which concluded that the impact of the PTSU on jail bed days saved would be 10%, and noted that the actual results have been higher than the study projected. Responding to Ms. Krahnke's question about how the CART program saves beds in the Detention Center, Mr. Mason explained that when someone is moved from the PRC to CART it then allows someone from the jail to go into the PRC. He responded to Committee members' questions about staffing levels, average lengths of stays, etc., noting that more detailed information will be provided for the Committee's budget deliberations.

Ms. Claire Gunster-Kirby presented the briefing on the pre-trial day reporting and Ms. Debbie Lyons-Prince explained the post-trial reporting, as set forth in the summary. The Committee members questioned whether day reporting is being used by the judges for punitive purposes for probation violators, and asked where they would otherwise be sending these persons. It was noted that in most cases these persons would not be sent back to the Detention Center. Noting that day reporting should be used to reduce beds, Ms. Krahnke said that the issue of net widening needs to be closely analyzed to identify the benefits and to see if the day reporting program can be structured to avoid net widening. She said that the State is funding this function for other counties. Mr. Brown said that the State considers day reporting to be a State function, and would be elated if the County would take on the responsibility.

Dr. Jeanne Hansman, Department of Information Systems and Telecommunications (DIST) reviewed for the Committee the evaluation of the validity of the Institute for Law and Justice (ILJ) Population Projects, as described in the documentation. Ms. Krahnke noted that these projections should contain a caveat that they assume the existing alternative and community correction programs will continue and that bed space will continue to be reduced by the same number. It was pointed out that the earlier projections did not take into consideration that as the County's baby boom generation is getting older, it is being replaced by an immigrant population.

Mr. Brown explained the conclusions as described in the report. He said that the conclusions would be modified where necessary to reflect some of these discussions.

Ms. Krahnke said that she has asked the Executive for an update to the August 11, 1992 memorandum on the work plan for the new Detention Center project. The possibility of a one-year delay will be discussed by the Committee during the CIP deliberations. Ms. Dacek commented that this briefing was one part of the process. Ms. Krahnke expressed concern about the section in the report on the Detention Center capacity, and requested information on the source of the assumptions that were used. It was clarified that these findings and conclusions were not endorsed by the Executive, but rather were a department recommendation to the Executive, which he used to decide upon a one-year delay. Ms. Krahnke added that the issues relating to the new detention center have not yet been determined, such as whether there should be one or two facilities, how many beds are needed, and when they will be needed.

Ms. Rita Hughes, of the University of Maryland's Center for Substance Abuse Research, presented her study on Recidivism Rates Among Work Release/Treatment Population in Montgomery County. Mr. Mason explained that this is the first of a series of studies on recidivism that the Department will be conducting. Ms. Hughes explained that the purpose of the study was to get a better understanding of the PRC population findings. It was noted that the Detention Center rearrest rate will be included in the second part of the study. Ms. Krahnke suggested that the study include an analysis of the benefit of funding the General Education Diploma (GED) program at the Detention Center, i.e. what is the recidivism rate of those with diplomas compared to those without. She also asked for information about the impact that various staffing levels may have on recidivism rates; and an analysis of how recidivism is affected by the CART program.

The Committee members thanked all those who participated in preparing and presenting the material for this briefing.

This is an accurate account of the meeting:

Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Linda Lauer
Administrative Specialist

APPROVED

8612

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, March 2, 1993 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:58 A.M. on Tuesday, February 3, 1993.

PRESENT

Marilyn J. Praisner, President
William E. Hanna, Jr., Vice President
Bruce Adams
Derick Berlage
Nancy H. Dacek
Gail H. Ewing
Betty Ann Krahnke
Isiah Leggett
Michael L. Subin

The President in the Chair.

MISCELLANEOUS BUSINESS

SUBJECT: Approval of Journal

ACTION: The Journal of February 16, 1993, was approved

by motion of Councilmember Krahnke, without objection, Councilmember Leggett temporarily absent.

INTRODUCTION OF BILLS

SUBJECT: Bill No. 8-93. Animal Control - Aviaries

ACTION: Introduced Draft No. 3 sponsored by Councilmember Dacek.

Councilmember Dacek stated that the bill provides clarifying amendments to the County Animal Control law.

CALL OF BILLS FOR FINAL READING

SUBJECT: Bill 3-93. Collective Bargaining - Process and Deadlines

The Council had before it a memorandum from Senior Legislative Attorney Faden, dated March 2, 1993, presenting the Committee report and setting forth issues for discussion.

President Praisner stated that the bill revises the deadlines for Council action on the collective bargaining agreement to make them more consistent with the revised budget timetable adopted in last year's amendment to the County Charter. The bill also makes some technical and stylistic revisions. She stated that, due to illness, she was not present at the Management and Fiscal Policy (MFP) Committee meeting when the bill was discussed.

Councilmember Hanna stated that the MFP Committee considered the bill and recommended that it be enacted. With respect to the letter from Mr. Bader, President, Fraternal Order of Police (FOP), dated February 12, 1993, Mr. Hanna said the Committee carefully reviewed the concerns of the unions (Lodge 35 of the FOP, the Montgomery County Government Employees' Organization, Local 400, United Food and Commercial Workers, Local 400, and the International Association of Fire Fighters, Local 1664) and believed that the staff explanation concerning the revisions was a satisfactory response to the issues raised by the unions. Councilmember Subin added that, at the Committee meeting, representatives of the unions were not present and no objections to the bill were raised.

In response to questions raised, Mr. Faden directed the Council's attention to page 2 of his memorandum, noting that the unions objected to language added on page 3, lines 44-45, and on pages 4-5, lines 81-82, which clarifies that the Council's decision on funding wage and benefit adjustments is made on a year-to-year basis. The unions did not say exactly how they believe these revisions change the meaning of the law. Mr. Faden stated that the changes made reflect the generally accepted meaning of the law. He stated that he has not discussed these concerns with union representatives.

President Praisner stated that the amendment on page 4 which substitutes the word resolution for [majority vote] implies that a vote will be taken since the action is to be accomplished through a resolution. She stated that the unions would have preferred a later deadline date for submitting the results of the negotiations to the Council than May 10. Ms. Praisner expressed the view that the period between May 10 and the June 1 deadline for adoption of the budget is a short period of time, and moving the date beyond May 10 could result in midnight meetings which would be counterproductive and represent a disservice to the budget process and to employees. President Praisner stated that she supports the Committee's recommendation.

Councilmember Berlage requested and received assurance from Mr. Faden that the amendments in the bill do not change the substance of the law other than the deadline dates, and that neither the unions nor management will receive or lose rights as a result of these amendments.

With respect to concerns raised by the unions regarding the cost of printing the revised law, Councilmember Krahnke stated that the unions should be advised that only the amended sections would have to be reprinted.

ACTION: Enacted Bill 3-93

by recommendation of the MFP Committee, by a roll call vote:

YEAS: Subin, Dacek, Berlage, Leggett, Adams, Ewing, Krahnke, Hanna, Praisner.

SUBJECT: **Bill 2-93. Art in Public Facilities**

President Praisner stated that the subject bill defers for two years any additional appropriation for art in public facilities. She noted that changes proposed at the public hearing are outside of the scope of advertising for the subject bill, since the advertising addressed the effective date change only.

Councilmember Adams stated that he agrees with the comments made at the public hearing that the Council should not continue to defer the date for appropriating funds for the art in public facilities program. While he will vote for the bill, he hopes the Council will take the time to develop a program that is within the fiscal realities of the 1990s.

Councilmember Krahnke agreed that some of the ideas presented at the public hearing were well stated. She supported the concept of having architects look at new projects to determine whether art could be incorporated into the projects at the beginning of the design work and the raising of money from the private sector for quality art work for public facilities. She indicated her willingness to help develop legislation that would address these issues.

ACTION: Enacted Bill 2-93

by recommendation of the MFP Committee, by a roll call vote:

YEAS: Subin, Dacek, Berlage, Leggett, Adams, Ewing, Krahnke, Hanna, Praisner.

SUBJECT: **Bill 4-93. Parking Lot Districts - Mixed Use Projects**

Mr. Faden provided background information concerning the bill and an amendment to subsection (d) suggested by representatives of the Bethesda-Chevy Chase Chamber of Commerce in accordance with his memorandum, dated March 2, 1993.

ACTION: Adopted the following amendments as reflected in the bill:

AN EMERGENCY ACT to:

(1) authorize a transfer by the County of certain parking district funds to provide financial assistance to mixed-use parking facility projects; and

(2) generally amend the law governing the expenditure and transfer of funds by parking lot districts.

By amending

Montgomery County Code
Chapter 60, Parking Lot Districts
Section 60-16, Purpose of Parking Lot Funds

EXPLANATION: **Boldface** indicates a heading or a defined term
Underlining indicates text that is added to existing law by the original bill
[Single boldface brackets] indicate text that is deleted from existing law by the original bill
Double underlining indicates text that is added to the bill by amendment
[[Double boldface brackets]] indicate text that is deleted from existing law or the bill by amendment
* * * indicates existing law unaffected by the bill

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 60-16 is amended as follows:

60-16. Purpose of parking lot funds; loans to county, etc.

* * *

(c) (1) Notwithstanding the limitations in subsection (a) or (b) or any other provisions of this Chapter, the County Council may transfer revenue from parking fees:

(A) To the fund of any urban district from which the fees are collected, as limited by Section 68A-4(a)(2)b;

(B) To fund activities of the Department of Transportation to implement transportation system management under Section 42A-13. Parking fee revenue transferred to fund activities in a transportation system management district must not exceed parking fees collected in that transportation system management district; and

(C) To fund activities of the Department of Transportation in a parking lot district, other than any parking lot district where a transportation system management district is operating:

(i) To promote, develop, and implement transit and ridesharing incentive programs; and

(ii) To establish cooperative County and private sector programs to increase ridesharing and transit usage.

Parking fee revenue transferred to fund these

activities must derive only from parking fees collected in that parking lot district.

(2) In this subsection, "parking fee" means revenue from parking meters, parking permits, or any other user charge for parking.

(d) Notwithstanding the limitations in subsection (a) or (b) or any other provision of this Chapter, the County Council may transfer district funds from the unencumbered balance of the district fund set up under subsection (a) to assist mixed-use parking facility projects in the district as contemplated by Section 60-2(b). In this subsection, a mixed-use parking facility project means a mixed-use project that includes a significant public parking component and is approved in the County capital improvements program. Unless the County Council in the capital improvements program waives all or part of the repayment, each transfer of funds must be conditioned on a reasonable repayment agreement that is based on the nature of the mixed-use project.

Sec. 2. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

ACTION: Enacted Bill 4-93

by motion of Councilmember Krahnke, by a roll call vote:

YEAS: Subin, Dacek, Berlage, Leggett, Adams, Ewing, Krahnke, Hanna, Praisner.

The meeting adjourned at 10:08 A.M.

This is an accurate account of the meeting:

Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Mary A. Edgar, CMC
Senior Assistant Secretary

Expedited Bill No. 30-03
Concerning: Collective Bargaining – Schedule and Process
Revised: 9-22-03 Draft No. 1
Introduced: September 9, 2003
Enacted: September 30, 2003
Executive: October 9, 2003
Effective: October 9, 2003
Sunset Date: None
Ch. 22, Laws of Mont. Co. 2003

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Management and Fiscal Policy Committee

AN EXPEDITED ACT to:

(1) modify the process and schedule for collective bargaining with County bargaining units; and
(2) repeal obsolete provisions, update language, and generally amend the laws governing collective bargaining by County employees, including public safety employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-79, 33-80, 33-81, 33-106, 33-108, and 33-153

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-79, 33-80, 33-81, 33-106, 33-108, and 33-153 are amended as follows:

33-79. Selection, certification and decertification procedures.

(a) The certification or decertification of an employee organization as the unit's representative for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

* * *

(4) Petitions **[**may be filed between July 1, 1982, and July 31, 1982. Thereafter, petitions**]** may be filed between September 1 and September 30 of any year, but no sooner than **[**twenty-two (22)**]** 22 months following an election held pursuant to this section.

* * *

[(6) If, during the period of July 1 to July 31, 1982, a petition is filed by the incumbent representative of unit employees certified under the employer-employee relations article of this chapter, and no other employee organization files a valid petition, that incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the permanent umpire, of majority representation.**]**

* * *

33-80. Collective bargaining.

* * *

(g) *Submission to Council **[**review**]**.* A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. In each proposed annual operating budget, the County Executive shall describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. Any term or condition **[**thereof**]** of a collective bargaining agreement which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer **[**and the**]** by April 1, unless extenuating circumstances require a later

date. If a later submission is necessary, the employer shall specify the submission date and the reasons for delay to the Council President by April 1. The employer shall make a good faith effort to have such term or condition implemented by Council action. Each submission to the Council shall include:

(1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;

(2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and

(3) all side letters or other extraneous documents that are binding on the parties.

(h) *Council review.* On or before May 1, the County Council shall indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and shall state its reasons for any intent to reject any part of the agreement. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15. If the Council indicates its intention to reject any part, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days.

(i) *Adjustments.* Any agreement shall provide either for automatic reduction or elimination of conditional wage **[**and/**]**or benefits adjustments if:

(1) the Council **[**fails to**]** does not take action necessary to implement the agreement, or

(2) **[**if**]** sufficient funds are not appropriated for any fiscal year **[**in which**]** when the agreement is in effect.

(j) *Later years.* The process and timetable in subsection (h) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

(k) *Out-of-cycle amendments.* The process in subsection (h) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in subsection (h) do not apply. The Council President shall set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

33-81. Impasse procedure.

(a) **[**Prior to November**]** Before September 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an impasse neutral either by agreement or through the processes of the American Arbitration Association. The impasse neutral shall be required to be available during the period from January 20 to February 1. Fees, costs and expenses of the impasse neutral shall be shared equally by the employer and the certified representative.

* * *

33-106. Selection, certification, and decertification procedures.

* * *

[(e) If, during the thirty (30) days following the effective date of this article, a petition is filed by the incumbent representative of unit employees certified under article IV of this chapter, and no other employee organization files a valid petition, and no petition calling for an election signed by twenty (20) percent of unit employees has been filed with the labor relations administrator, the incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the labor relations administrator and dated after the enactment of this article, that a majority of the employees in the unit desire to be represented by the incumbent representative for the purposes of collective bargaining under the provisions of this article.**]**

33-108. Bargaining, impasse, and legislative procedures.

* * *

(d) Before **[**November**]** September 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator must appoint a mediator/arbitrator, who may be a person recommended by both parties. The mediator/arbitrator must be available from January 2 to June 30. Fees and

expenses of the mediator/arbitrator must be shared equally by the employer and the certified representative.

* * *

(g) In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The employer must submit to the Council by April 1, unless extenuating circumstances require a later date, any term or condition of the collective bargaining agreement that requires an appropriation of funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact. If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by April 1. The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. Each submission to the Council must include:

(1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;

(2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and

(3) all side letters or other extraneous documents that are binding on the parties.

The employer must make a good faith effort to have the Council approve all terms of the final agreement that require Council review.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

(i) The Council may accept or reject all or part of any term or condition that requires Council review under subsection (g). On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the items that require Council review or its intention not to do so, and must state its reasons for any intent to reject any such item. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15.

(j) If the Council indicates its intention to reject any item that requires Council review,

the Council must designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on items that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement, or its intention not to do so.

* * *

(m) *Later years.* The process and timetable in subsections (i) and (j) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

(n) *Out-of-cycle amendments.* The process in subsections (i) and (j) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in those subsections do not apply. The Council President must set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

33-153. Bargaining, impasse, and legislative procedures.

* * *

(d) Before **[**November**]** September 10 of any year in which the employer and the certified representative bargain collectively, they must choose an impasse neutral, either by agreement or through the processes of the American Arbitration Association. The impasse neutral must be available from January 15 to February 1. The impasse neutral's fees and expenses must be shared equally by the employer and the certified representative.

* * *

(l) In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The annual operating budget **[**which the employer submits to the County Council**]** must include sufficient funds to pay for the items in the parties' final agreement. The employer must expressly identify to the Council by April 1, unless extenuating circumstances require a later date, all terms and conditions in the agreement that:

(1) require an appropriation of funds, or

(2) are inconsistent with any County law or regulation, or

(3) require the enactment or adoption of any County law or regulation, or

(4) which have or may have a present or future fiscal impact.

If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by April 1. The employer must make a good faith effort to have the Council take action to implement all terms and conditions in the parties' final agreement.

(m) Each agreement submitted to the Council must include:

(1) all proposed legislation and regulations necessary to implement the agreement;

(2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and

(3) all side letters or other extraneous documents that are binding on the parties.

[(m)**]** (n) * * *

[(n)**]** (o) The Council may accept or reject all or part of any term or condition in the agreement which:

(1) requires an appropriation of funds, or

(2) is inconsistent with any County law or regulation, or

(3) requires the enactment or adoption of any County law or regulation, or

(4) which has or may have a present or future fiscal impact.

On or before May 1, the Council must indicate by resolution its intention to

appropriate funds for or otherwise implement the agreement or its intention not to do so, and must state its reasons for any intention to reject any part of the parties' final agreement. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15.

[(o)**]** (p) If the Council indicates its intention to reject any part of the parties' final agreement, it must select a representative to meet with the parties and present the Council's views in the parties' further negotiation on matters that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so.

[(p)**]** (q) * * *

(r) *Later years.* The process and timetable in subsections (o) and (p) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

(s) *Out-of-cycle amendments.* The process in subsections (o) and (p) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in those subsections do not apply. The Council President must set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

Michael L. Subin, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council Date

AGENDA ITEM 6
September 30, 2003
Action

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Action**: Expedited Bill 30-03, Collective Bargaining – Schedule and Process

Management and Fiscal Policy Committee recommendation: enact as introduced.

Expedited Bill 30-03, Collective Bargaining – Schedule and Process, sponsored by the Management and Fiscal Policy Committee, was introduced on September 9, 2003.

Background The collective bargaining calendar is set in the County labor relations laws that govern each bargaining unit (police: County Code §§33-75 through 33-85; County employees: §§33-101 through 33-112; firefighters: §§33-147 through 33-157). In particular, see County Code §33-80; §33-108; §33-153. Under all three laws the County Council must review any term or condition of each final collective bargaining agreement requiring an appropriation of funds or enactment, repeal, or modification of a county law or regulation. On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and state its reasons for any intent to reject any part of an agreement. If the Council indicates its intention to reject or opts not to fund any item, it must designate a representative to meet with the parties and present the Council's views in their further negotiations. The parties must submit the results of any further negotiations, or impasse procedures if the parties cannot agree on a revised contract, to the Council by May 10.

Summary Bill 30-03, which the Management and Fiscal Policy Committee recommended for introduction at its July 17 meeting, reflects a consensus of Committee member, union representative, and Office of Human Resources views. It does the following for each of the bargaining units:

- repeals obsolete certification provisions in the police and County employee bargaining unit laws;
- moves the date for selection of the impasse neutral/arbitrator from November 10 to September 10;
- directs the Executive to describe each new collective bargaining agreement and estimate its cost in the annual operating budget;

- directs the employer to submit each new contract to the Council by April 1, unless extenuating circumstances cause a delay;
- requires the employer's submission to the Council to attach any implementing bills or regulations, show the changes in the contract, and include any binding side letters;
- allows the Council by majority vote to defer its May 1 action deadline to any date up to May 15, with the parties' May 10 renegotiation deadline automatically deferred by the same number of days;
- clarifies that the same Council review process and deadlines apply to Council review of contract cost items in the second and third years of a contract; and
- clarifies that the same Council review process applies to out-of-cycle contract amendments, but with deadlines that reflect the date each amendment is submitted to the Council.

No speakers appeared at the public hearing on this bill, held on September 16.

At the Committee worksession on September 22, Jim Torgesen, Labor Relations Manager for the Office of Human Resources, and Bob Stewart of MCGEO noted their support for the bill, which the Committee recommended unanimously without further discussion.

This packet contains:	Circle #
Bill 30-03	1
Legislative Request Report	9

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Expedited Bill No. 30-03
Concerning: Collective Bargaining – Schedule and Process
Revised: 9-22-03 Draft No. 1
Introduced: September 9, 2003
Expires: March 9, 2005
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Management and Fiscal Policy Committee

AN EXPEDITED ACT to:

(1) modify the process and schedule for collective bargaining with County bargaining units; and
(2) repeal obsolete provisions, update language, and generally amend the laws governing collective bargaining by County employees, including public safety employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-79, 33-80, 33-81, 33-106, 33-108, and 33-153

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-79, 33-80, 33-81, 33-106, 33-108, and 33-153 are amended as follows:

33-79. Selection, certification and decertification procedures.

(a) The certification or decertification of an employee organization as the unit's representative for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

* * *

(4) Petitions [may be filed between July 1, 1982, and July 31, 1982. Thereafter, petitions] may be filed between September 1 and September 30 of any year, but no sooner than [twenty-two (22)] 22 months following an election held pursuant to this section.

* * *

[(6) If, during the period of July 1 to July 31, 1982, a petition is filed by the incumbent representative of unit employees certified under the employer-employee relations article of this chapter, and no other employee organization files a valid petition, that incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the permanent umpire, of majority representation.]

* * *

33-80. Collective bargaining.

* * *

(g) *Submission to Council [review].* A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. In each proposed annual operating budget, the County Executive shall describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. Any term or condition [thereof] of a collective bargaining agreement which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer [and the] by April 1, unless extenuating circumstances require a later

date. If a later submission is necessary, the employer shall specify the submission date and the reasons for delay to the Council President by April 1. The employer shall make a good faith effort to have such term or condition implemented by Council action. Each submission to the Council shall include:

(1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;

(2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and

(3) all side letters or other extraneous documents that are binding on the parties.

(h) *Council review.* On or before May 1, the County Council shall indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and shall state its reasons for any intent to reject any part of the agreement. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15. If the Council indicates its intention to reject any part, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days.

(i) *Adjustments.* Any agreement shall provide either for automatic reduction or elimination of conditional wage [and/]or benefits adjustments if:

(1) the Council [fails to] does not take action necessary to implement the agreement, or

(2) [if] sufficient funds are not appropriated for any fiscal year [in which] when the agreement is in effect.

(j) *Later years.* The process and timetable in subsection (h) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

(k) *Out-of-cycle amendments.* The process in subsection (h) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in subsection (h) do not apply. The Council President shall set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

33-81. Impasse procedure.

(a) [Prior to November] Before September 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an impasse neutral either by agreement or through the processes of the American Arbitration Association. The impasse neutral shall be required to be available during the period from January 20 to February 1. Fees, costs and expenses of the impasse neutral shall be shared equally by the employer and the certified representative.

* * *

33-106. Selection, certification, and decertification procedures.

* * *

[(e) If, during the thirty (30) days following the effective date of this article, a petition is filed by the incumbent representative of unit employees certified under article IV of this chapter, and no other employee organization files a valid petition, and no petition calling for an election signed by twenty (20) percent of unit employees has been filed with the labor relations administrator, the incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the labor relations administrator and dated after the enactment of this article, that a majority of the employees in the unit desire to be represented by the incumbent representative for the purposes of collective bargaining under the provisions of this article.]

33-108. Bargaining, impasse, and legislative procedures.

* * *

(d) Before [November] September 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator must appoint a mediator/arbitrator, who may be a person recommended by both parties. The mediator/arbitrator must be available from January 2 to June 30. Fees and

expenses of the mediator/arbitrator must be shared equally by the employer and the certified representative.

* * *

(g) In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The employer must submit to the Council by April 1, unless extenuating circumstances require a later date, any term or condition of the collective bargaining agreement that requires an appropriation of funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact. If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by April 1. The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. Each submission to the Council must include:

(1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;

(2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and

(3) all side letters or other extraneous documents that are binding on the parties.

The employer must make a good faith effort to have the Council approve all terms of the final agreement that require Council review.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

(i) The Council may accept or reject all or part of any term or condition that requires Council review under subsection (g). On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the items that require Council review or its intention not to do so, and must state its reasons for any intent to reject any such item. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15.

(j) If the Council indicates its intention to reject any item that requires Council review,

the Council must designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on items that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement, or its intention not to do so.

* * *

(m) *Later years.* The process and timetable in subsections (i) and (j) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

(n) *Out-of-cycle amendments.* The process in subsections (i) and (j) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in those subsections do not apply. The Council President must set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

33-153. Bargaining, impasse, and legislative procedures.

* * *

(d) Before [November] September 10 of any year in which the employer and the certified representative bargain collectively, they must choose an impasse neutral, either by agreement or through the processes of the American Arbitration Association. The impasse neutral must be available from January 15 to February 1. The impasse neutral's fees and expenses must be shared equally by the employer and the certified representative.

* * *

(l) In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The annual operating budget [which the employer submits to the County Council] must include sufficient funds to pay for the items in the parties' final agreement. The employer must expressly identify to the Council by April 1, unless extenuating circumstances require a later date, all terms and conditions in the agreement that:

(1) require an appropriation of funds, or

(2) are inconsistent with any County law or regulation, or

(3) require the enactment or adoption of any County law or regulation, or

(4) which have or may have a present or future fiscal impact.

If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by April 1. The employer must make a good faith effort to have the Council take action to implement all terms and conditions in the parties' final agreement.

(m) Each agreement submitted to the Council must include:

(1) all proposed legislation and regulations necessary to implement the agreement;

(2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and

(3) all side letters or other extraneous documents that are binding on the parties.

[(m)] (n) * * *

[(n)] (o) The Council may accept or reject all or part of any term or condition in the agreement which:

(1) requires an appropriation of funds, or

(2) is inconsistent with any County law or regulation, or

(3) requires the enactment or adoption of any County law or regulation, or

(4) which has or may have a present or future fiscal impact.

On or before May 1, the Council must indicate by resolution its intention to

appropriate funds for or otherwise implement the agreement or its intention not to do so, and must state its reasons for any intention to reject any part of the parties' final agreement. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15.

[(o)] (p) If the Council indicates its intention to reject any part of the parties' final agreement, it must select a representative to meet with the parties and present the Council's views in the parties' further negotiation on matters that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so.

[(p)] (q) * * *

(r) *Later years.* The process and timetable in subsections (o) and (p) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

(s) *Out-of-cycle amendments.* The process in subsections (o) and (p) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in those subsections do not apply. The Council President must set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 30-03

Collective Bargaining – Schedule and Process

DESCRIPTION: Repeals obsolete certification provisions in the police and County employee bargaining unit laws; moves the date for selection of the impasse neutral/arbitrator from November 10 to September 10; directs the Executive to describe each new collective bargaining agreement and estimate its cost in the annual operating budget; directs the employer to submit each new contract to the Council by April 1, unless extenuating circumstances cause a delay; requires the submission to the Council to include any implementing bills or regulations, show the changes in the contract, and include any binding side letters; allows the Council by majority vote to defer its May 1 action deadline to any date up to May 15, with the parties' May 10 deadline automatically deferred by the same number of days; clarifies that the same Council review process and deadlines apply to Council review of contract cost items in the second and third years of a contract; clarifies that the same Council review process applies to out-of-cycle contract amendments, but with deadlines that reflect the date each amendment is submitted to the Council.

PROBLEM: Experience has revealed the need to modify and clarify certain elements of the collective bargaining schedule and process in order to enhance the Council's ability to review approved collective bargaining agreements and receive more public input during the Council's review period.

GOALS AND OBJECTIVES: To improve the flow of information to the Council and give the Council more flexibility in reviewing approved collective bargaining agreements in the context of the annual County operating budget.

COORDINATION: Office of Human Resources, Office of Management and Budget, employee representatives

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: Applies only to County employee bargaining units.

PENALTIES: Not applicable

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Tuesday, September 30, 2003 Rockville, Md.

The County Council for Montgomery County, Maryland convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:18 A.M. on Tuesday, September 30, 2003.

PRESENT

Michael L. Subin, President	Steven A. Silverman, Vice President
Phil Andrews	Michael Knapp
Howard Denis	George Leventhal
Nancy Floreen	Thomas Perez

Marilyn J. Praisner

The President in the Chair.

The Council held a moment of silence.

SUBJECT: Councilmember Comments

Councilmember Floreen expressed concern over the recent fire and devastating destruction of the National Capital Trolley Museum. She said residents have many memories of their children riding the trolley cars, that this is a significant loss, and that she and her colleagues hope that the museum can be restored.

SUBJECT: Proclamation in Recognition of "Mentor Month"

The proclamation was presented by Councilmember Andrews to Mr. John Smith, President, Montgomery County Task Force on Mentoring. Also present were Richard Montgomery High School teacher Sally Rosner who initiated the program at the school, Special Education Instructional Assistant Tasha Kelly, and students involved in the program.

SUBJECT: Approval of Minutes

ACTION: Approved the minutes of September 11, 2003, as amended.

Councilmember Silverman made the motion.

SUBJECT: Receipt of Petitions

The Council received the following petition, identified by correspondence control number 005183, from the Montgomery County Bill of Rights Coalition urging the Council to adopt the civil liberties resolution.

SUBJECT: Consent Calendar

Speaking in reference to the supplemental appropriation to the FY 04 Operating Budget for the Federal FY 2003 State/Local Preparedness Equipment Grant, Councilmember Praisner said she received information from Executive Branch staff about the shelf life of equipment to be purchased, and that this raises the question of what the County will do after five years if State funds are not forthcoming. She expressed concern that Chief Administrative Officer Romer did not provide a comprehensive funding priority list because of limited staff resources, and questioned what resources or personnel are necessary to develop this list. Ms. Praisner expressed the view that the comprehensive priority list should be developed first so that it can be used in determining whether or not to take advantage of a grant opportunity.

President Subin concurred with Ms. Praisner's remarks, stating that the emergent response to hurricane Isabel was an example of the Emergency Management Group's outstanding response to an emergency situation, but what is lacking is the issue of prior planning. He said there was no pre-positioning of equipment, no pre-designation of shelters, no plans or contingencies. Mr. Subin acknowledged that there will be emergent grants, and the Council will need to be able to respond to them in context, which is why the priority list is of great importance. He noted that Councilmember Knapp will be addressing these issues in the Homeland Security Committee (HSC). Mr. Knapp commented that the Committee spent a great deal of time discussing this issue with the Assistant Chief Administrative Officer, is working toward a resolution, and will continue to follow up with Mr. Romer. Mr. Subin directed the Health and Human Services Committee, jointly with the HSC, to address the issue of generators at area hospitals, noting the generators' limited operating capacity of three to four days. He expressed concern that if a more lasting situation occurs, the limited capacity of the generators and the lack of spare parts to repair the equipment will have serious consequences.

ACTION: Adopted the consent calendar:

Introduced a resolution to amend the Ten-Year Comprehensive Solid Waste Management Plan;

Resolution 15-351, approving a supplemental appropriation to the FY 04 Operating Budget for Federal FY 2003 State/Local Preparedness Equipment Grant, in the amount of $361,754;

Resolution 15-352, approving a supplemental appropriation to the FY 04 Operating Budget of the Montgomery County Public Schools' (MCPS), for the 21st Century Community Learning Center Programs, in the amount of $600,000;

Resolution 15-353, approving Categorical Transfers for the FY 03 Operating Budget of the MCPS;

Resolution 15-354, approving the appointment of Robert C. Maddox as Council representative to the Nominating Committee for the Board of Trustees of Montgomery College;

Resolution 15-355, confirming the County Executive's appointment of Ryan Erenhouse to the East County Citizens Advisory Board.

Councilmember Praisner made the motion.

SUBJECT: Resolution to Support Protection of Civil Liberties

The Council had before it the memorandum from Councilmembers Leventhal, Perez, Floreen, and Silverman, dated September 17, 2003.

Councilmember Leventhal, sponsor of the resolution, thanked Councilmembers Floreen, Perez, and Silverman for joining him as cosponsors; Mr. Romer, CAO, who worked extensively to ensure that this resolution does not impede the County's ability to fight the war on terrorism, protect public safety, and enforce the law; and Ms. Henderson, Director, Montgomery County Public Libraries. He said he has met with proponents of the resolution, and that Councilmembers have received well over a thousand communications in support of the resolution, which he noted is a gesture, not a law, urging the U.S. Congress to review the USA PATRIOT Act and modify provisions of it that threaten individual liberties and civil rights, similar to resolutions passed in 176 communities around the country. Mr. Leventhal said he has heard from local government officials, including the Director of Libraries, expressing concern that the PATRIOT Act may force them to comply with Federal directives that place them in an ethical dilemma of having to choose between supporting the principles of community policing or professional standards for librarians, or complying with Federal law. Referring to legislation adopted by the House of Representatives amending the USA PATRIOT Act, he said the resolution before the Council today is very similar in that it asks Congress to reconsider portions of the Act. Noting that he has received many communications from residents of the Muslim faith who believe they have been unfairly targeted and suspect for actions for which they have no culpability, he said the resolution calls for all County departments, agencies, officials and employees to continue to respect all residents' freedoms of speech, religion, and assembly, and right to privacy, in keeping with Montgomery County's distinguished practice of protecting human rights.

Councilmember Floreen, noting that this resolution is an important and critical statement of support for fundamental civil liberties, stated that since last week, another eight communities across the nation have adopted a similar resolution, and that it reflects the views of millions of Americans across the country. She said that many County programs have been tailored to address a diverse community; that it is appropriate to reaffirm the County's commitment to civil liberties through the administration of County programs; and that she is especially proud of the community policing initiatives, and the accessibility of information and education to all residents through the library system. Quoting Thomas Payne, Ms. Floreen said that this resolution sends a powerful message that the County will preserve individual freedoms as the nation strives to protect itself from terrorist activity.

Recalling his work beginning in 1989 for the Department of Justice, Councilmember Perez said he was proud to work under the Attorney Generals for over ten years in the enforcement of the Bill of Rights. He said now, under the name of combating terrorism, the PATRIOT Act apparently is being used for purposes for which it was not intended, and communities have said enough is enough. He expressed concern that the country is creating a false dichotomy when in reality, the nation can protect itself from terrorism at the same time it protects civil liberties. Referring to the County's long tradition of community policing, Mr. Perez said it is based on developing relationships of trust with the community, which is an especially difficult challenge when there are immigrant communities who are inherently fearful of authority. Noting that District of Columbia Police Chief Ramsey stated that the police will not inquire into the immigration status of people with whom they come into contact on the street, Mr. Perez said this resolution reiterates the message that the immigrant population need not worry about local law enforcement becoming the immigration police. Stating that it sends an important message that everyone in the community is valued, and that the police are not going to be asking irrelevant questions and will be doing their job fighting crime and protecting residents of the County, Councilmember Perez said he is proud to be a cosponsor of the resolution.

Councilmember Andrews, in expressing his opposition to the resolution, stated that three years ago he wrote the first local law in the nation prohibiting genetic discrimination in employment, which both the Council and the State of Maryland enacted. He said he understands the importance of protecting privacy and civil rights, but that this resolution does not change County policy on privacy or civil liberties, and the only effect the resolution has is to put the Council on record in favor of changing the USA PATRIOT Act generally, and very specifically with regard to the Act's applicability to libraries and bookstores. Acknowledging the good intention of the resolution's sponsors and advocates, he expressed the view that the resolution should be rejected for three reasons: (1) the PATRIOT Act is a very complex law, and the Council, in the limited time it has to consider the Act, cannot make an informed decision as to how the PATRIOT Act should be revised, and that the Council does not have access to some intelligence information that may have been the basis for some of the decisions made in the Act; (2) the resolution contains language that is so vague as to be indecipherable to most people, such as the phrase that calls for the integrity of community policing programs to be protected; and (3) the resolution contains some language that is extremely specific, and broad, noting that the resolution says that libraries and bookstores should be exempt from the provisions of the PATRIOT Act, the word "exempt" is not qualified, and he is concerned about having a blanket exemption because of news reports that some of the 9/11 hijackers used computers in public libraries to communicate with each other. Mr. Andrews expressed the view that this is not the appropriate resolution for this Council to send, and that there is insufficient information available for the Council to comment intelligently on this issue. Councilmember Andrews said he will dissent on the resolution and urged his colleagues to do the same.

Councilmember Denis, citing events throughout history, said it is an age old question whether a nation dedicated to freedom can survive during times of crisis or war, and that it has been debated whether actions taken in the name of protecting the nation were justified. Mr. Denis said that the issue is being able to achieve an appropriate balance, that most legislation needs improvement over time, and that several sections of the PATRIOT Act may need reconsideration. Referring to the concept of community policing, he said local police survive from information provided by residents, and that the confidence of the community must be maintained. In expressing support for the resolution, Councilmember Denis said that while there

is some justification for the arguments raised by Mr. Andrews, the resolution is a nonbinding statement that does not affect County law, but reflects the Council's view on the general issue of civil liberties.

Councilmember Subin said the issue of civil rights and civil liberties is something that directly effects how the County implements its laws and how the people of this community live on a day-to-day basis, and that he believes this issue is properly before the Council. He said many things changed on September 11, 2001, but that the fundamental sense of fairness and justice in this country should not have changed. Referring to some sections of the PATRIOT Act, Mr. Subin expressed the view that the Doctrine of "Inevitable Discovery" already grants law enforcement authorities a lot of flexibility in terms of not abiding by the dictates of the fourth amendment, and that it is not right. Expressing support for the resolution, Mr. Subin referred to the internment camps established during World War II, noting that this was one of the greatest blights on this country and that the Council and the country should not do anything that leads down the "slippery slope" toward the actual or de facto spirit of what existed then, and that the PATRIOT Act allows that to happen.

ACTION: Adopted Resolution 15-356, expressing support for the protection of civil liberties.

Councilmember Andrews was opposed.

SUBJECT: **Resolution Regarding Spending Affordability Guidelines (SAG) for the FY 05 Capital Budget**

The Council had before it the memorandum and attachments from Deputy Council Staff Director Orlin, dated September 26, 2003.

Councilmember Praisner, Chair of the Management and Fiscal Policy (MFP) Committee, presented the Committee's report and recommendation. She explained that the Council's actions today do not increase the County's bond capacity, which is a reflection of a variety of measures and will not be known until the spring. She stated that today, a number is set for the SAG which sends a message and provides flexibility for action the Council will take in the spring, and noted that there is a cost and expenditure implication for everything the Council does. Ms. Praisner said there is a limit beyond which the Council cannot go because it cannot be sustained, and cautioned the Council on the multiple messages that are sent about what the Council would like to do, what it can do, and what it may have to do, and that there are many variables still outstanding at this point in time. She expressed the view that the County Executive recommended a reasonable number for the beginning of the bond capacity process.

Councilmember Silverman made a substitute motion, duly seconded, to adopt the following guidelines: $190 million for FY 05 and FY 06, respectively, and a total of $1.14 billion in FY 05-10. He expressed the view that this increase will not make a significant difference, and that everyone realizes that the County must significantly increase its capital budget expenditure beginning next year and continuing for the next several years. Noting that the resolution only sets guidelines by indicating to the public the direction the Council wants to go in the spring, Mr. Silverman, stated that the Council has been accused of "nibbling around the edges and working at the margins." He said it is important to recognize that the capital budget will probably approach $2 billion over six years, and that the "margins" will equal approximately

$30 million over six years which can pay for a middle school modernization, two new elementary schools, the addition of gymnasiums in all elementary school that lack those, three recreation centers, or would make a significant contribution toward the County's transportation system. He said the difference between his motion and recommendations of the MFP Committee and the County Executive is real money, and that the Council should send a signal that it is ready to invest in the community. He said he is basing his motion on the debt capacity analysis generated by Executive Branch and Council Staff, which shows virtually no difference each year in the debt service ratio guideline.

Councilmember Leventhal thanked Mr. Silverman for his motion, and the MFP Committee and its Chair for their leadership on fiscal matters. He expressed confidence that should the Council adopt Mr. Silverman's recommendation, it will not endanger the County's bond rating and will not put the County at risk over the long term. As the Council adopts the capital budget, Mr. Leventhal said the Council has several tools available to raise the funds necessary to meet the needs of the growing community including more classrooms, transportation improvements, and economic revitalization of some areas. He indicated that later today, he will vote in support of using recordation tax revenue for school Capital Improvement Program (CIP) items, and for the residential sprinkler bill, even though it will add to the cost of a new home in the County. Although he anticipates that the impact fees will be adopted by the Council, Mr. Leventhal said he continues to have reservations about the barrier the impact fees represent to young families that want to live in Montgomery County. Referring to the increased borrowing capacity proposed by Councilmember Silverman, Mr. Leventhal expressed the view that residents will be grateful in the future for the new and modernized schools, improved roads, and revitalized communities that can proceed because of the increased availability of revenue.

Councilmember Knapp requested and received information from Mr. Orlin that in the past, the Council has generally reached the maximum spending limit set; that the Council receives the County Executive's recommended CIP on January 15; that in February, the Council has the opportunity to revise the CIP; and that the FY 05 and FY 06 guidelines may be increased by as much as ten percent of the limit the Council establishes today. In expressing support for Councilmember Silverman's substitute motion, Mr. Knapp said that although he has significant concerns, the Council needs to maintain flexibility at this point in the process, that clear priorities must be identified, and that it is probably in the County's best interest not to reach the $190 million General Obligation bond level.

Councilmember Perez requested and received information that the ratio of debt service and lease payments to General Fund expenditures has exceeded ten percent in some prior years. Councilmember Subin pointed out that at one point the ratio reached eleven percent because the operating budgets did not increase as much as was projected and commitments had already been made. Mr. Perez expressed concern that raising the bond rates too high may create pressure to reduce the proposed impact tax rates , which he believes should not occur because the impact tax rates are necessary.

In expressing support for Councilmember Silverman's motion, Councilmember Floreen said she ran for Council office because she was particularly frustrated with the County's investment in transportation infrastructure. She said that previous CIPs contained a disproportionate percentage of funds not allocated for transportation. Ms. Floreen expressed the view that there is nothing in the data that shows that the $190 million level is not

sustainable, and that for the County to address all its transportation and educational infrastructure needs, the Council needs to be aggressive and assess all the factors this winter in order to make a responsible decision.

Councilmember Subin, indicating his preference to adopt the MFP Committee's recommendation, said that the Budget Savings Committee is meeting next week to address budget concerns. He noted that late income tax filings are significantly lower than expected and will decrease the County's reserve, as will cleanup costs from Hurricane Isabel. Mr. Subin agreed that the County has many needs, but that this process is about determining the affordability of funding for needed improvements. Mr. Subin, noting that the Council may exceed its established guideline by ten percent, said he is not opposed to $190 million, but that $209 million is not sustainable.

Councilmember Praisner reported the Committee's unanimous recommendation to set Park and Planning debt guidelines of $3.1 million for FY05, $3.1 million for FY06, and $18.6 million for FY 2005-2010.

ACTION: Approved the substitute motion to adopt General Obligation bond guidelines of $190 million for FY05, $190 million for FY06, and $1,140 million for FY 2005-1010.

Councilmember Silverman made the motion.

Councilmembers Andrews, Praisner, and Subin were opposed.

Approved the SAG guidelines as amended.

Councilmember Praisner was opposed.

SUBJECT: **Legislative Session**

See the legislative journal of this date for the minutes of the legislative session.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND SITTING AS A DISTRICT COUNCIL FOR THAT PORTION OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN MONTGOMERY COUNTY

SUBJECT: **Zoning Text Amendment 03-20, Permitted Uses - TS-R Zone**

The Council had before it the memorandum and attachments from Senior Legislative Analyst Wilson, dated September 23, 2003.

Councilmember Silverman, Chair, Planning Housing, and Economic Development (PHED) Committee, presented the Committee's report.

ACTION: Approved ZTA 03-20, as amended, enacting Ordinance 15-15.

The PHED Committee made the motion and the Ordinance was enacted by a roll call vote:

YEAS: Floreen, Perez, Leventhal, Knapp, Andrews, Praisner, Silverman, Subin.

ABSENT: Denis (temporarily).

SUBJECT: Zoning Text Amendment 03-22, Country Inn Zone

The Council had before it the memorandum and attachments from Senior Legislative Analyst Wilson, dated September 23, 2003.

Councilmember Silverman presented the PHED Committee's report.

ACTION: Approved ZTA 03-22, as amended, enacting Ordinance 15-16.

The PHED Committee made the motion and the Ordinance was enacted by a roll call vote:

YEAS: Floreen, Perez, Leventhal, Knapp, Andrews, Praisner, Silverman, Subin.

ABSENT: Denis (temporarily).

SUBJECT: Local Map Amendment (LMA) G-804

The Council had before it LMA G-804, filed on November 8, 2002 by Applicant Old Hundred Road LLC, requesting the reclassification from the R-200 Zone to the Country Inn Zone of 5.26 acres of land identified as Parcel P347 on Maryland Tax Map DW22 and located at 23900 Old Hundred Road in Dickerson, in the northwest quadrant of the intersection of Old Hundred Road and Comus Road in the 11th Election District.

Hearing Examiner Carrier stated that, as noted in the resolution granting the reclassification, the approval of ZTA 03-22 resolves the issue that she raised in her report.

ACTION: Adopted Resolution 15-358, granting LMA G-804.

Councilmember Praisner made the motion and the resolution was adopted by a roll call vote:

YEAS: Floreen, Perez, Leventhal, Knapp, Andrews, Praisner, Silverman, Subin.

ABSENT: Denis (temporarily).

Councilmember Denis was temporarily absent for the vote on ZTA 03-20, ZTA 03-22, and LMA G-804, but later in the day, he stated that had he been present for the vote, he would have voted in the affirmative on the ZTAs and the LMA.

The Vice President in the Chair.

SUBJECT: Worksession on an Amendment to the Master Plan of Highways and Other Related Plans to Add High-Occupancy-Vehicle (HOV) Lanes on the Capital Beltway (I-495) Between the I-270 West Spur and Virginia and to Construct a Grade-Separated Interchange at the Intersection of Veirs Mill Road (MD 586) and Randolph Road

The Committee had before it the memorandum and attachments from Deputy Council Staff Director Orlin, dated September 26, 2003. The Committee received a handout at the meeting from the Montgomery County Planning Board (MCPB) containing additional information concerning the subject amendment.

Councilmember Floreen, Chair, Transportation and Environment Committee, presented the Committee's report.

Mr. Hekimian, Planning Staff, MCPB, briefed the Council on the proposal to add to master plans the HOV lanes on the Capital Beltway between the American Legion Bridge and I-270 West Spur; and the Interchange at Randolph Road/Veirs Mill Road, in accordance with briefing information provided.

Councilmember Praisner referred to her memorandum on the Randolph Road/Veirs Mill Road project, dated September 16, 2003, included in the Council's packet on pages ©19 and 20. She also referred to a map on page ©9 of the Council's packet depicting the interchange, and noted that the extent of the impact on the community cannot be fully understood by looking at the innocuous circle on the map. Ms. Praisner said that as her memorandum indicates, there was community participation and engagement in the process when it was discussed during review of the Glenmont Master Plan. At that time, the community agreed that a grade separation was probably needed at that interchange, but when the interchange was being designed, the community became concerned regarding the magnitude of a grade-separated interchange and its impact on homes, businesses, and pedestrians both near and well beyond the interchange. Councilmember Praisner recalled comments made by Councilmember Floreen regarding the impact a grade-separated interchange can have on pedestrians because a grade-separated interchange not only involves through lanes but on and off ramps as well. Ms. Praisner said that although a grade-separated interchange may allow buses and traffic to move through the intersection more efficiently, it creates an impact on the neighborhood and makes it more difficult for people to walk across those intersections. She noted the similarities between mixed commercial/residential development in the Randolph Road/Veirs Mill Road area and the Glenmont area at Randolph Road/Georgia Avenue, the location of another proposed grade-separated interchange; pointed out that the topography also has to be considered in the design of the interchange; and expressed concern about the number of grade-separated interchanges on Randolph Road and the implications of this on residents who live along this road.

Councilmember Praisner discussed the need for community involvement in the project, noting that because this was not a full master plan process, residents in the community who are not involved in neighborhood issues may not be fully informed concerning the project. She recalled that no one spoke or presented testimony at the public hearing on the amendment, and she is concerned that the community was not notified in person or by letter concerning plans to move forward on the project.

With respect to the Committee's recommendation to delete "for further study" from the text of the amendment, Councilmember Praisner suggested that it would be more appropriate to leave the words in the text since the planning process might indicate that the project will not proceed. She said that she might be more comfortable with the statement if it were restated more clearly. Ms. Praisner said that she believes there has not been a full appreciation of the impact created by grade-separated interchanges because the grade-separated interchange at Route 29/Randolph Road is the only one that is currently under construction; and noted the dissimilarities between the grade-separated interchange at Route 29/Randolph Road and the one proposed for Randolph Road/Veirs Mill Road. She reiterated her concern about the Randolph Road/Veirs Mill Road project, and suggested that the text of the amendment indicate in the Master Plan that the intersection of Randolph Road/Veirs Mill Road will be examined as part of the process rather than indicate that a grade-separated interchange will be built. Ms. Praisner suggested the need to reexamine the need for the grade-separated interchanges on Randolph Road, noting that residents in the Glenmont area said that the design for the interchange at Randolph Road/Georgia Avenue that was finally settled on is very good at moving people through the intersection but that it does not help area residents cross the street.

Councilmember Silverman discussed with Planning Staff the outreach effort made by MCPB with respect to the Randolph Road/Veirs Mill Road interchange. Mr. Silverman expressed concern regarding the notification method used by MCPB through neighborhood organizations. He said that because this project involves a specific area, the residents of the area will be interested in it, and he believes that the notification process should have been broader and should have included property owners as well as small business owners.

Mr. Silverman requested and received information from Mr. Orlin on the need to extend the deadline for action on the Final Draft Master Plan Amendment. Mr. Silverman that he does not want to vote on the interchange until interested citizens have been provided an opportunity to comment.

The President in the Chair.

Councilmember Leventhal said that he would support delaying Council action on the Amendment in order to solicit greater input from people that are directly affected. He expressed the view that grade-separated interchanges are helpful in congested areas; and discussed the inclusion of a bikeway as part of the design of the interchange. With respect to the proposal to add HOV lanes on the Capital Beltway between the I-270 West Spur and Virginia, Councilmember Leventhal said that despite the benefits involved, he believes it will not be easy to extend the HOV lanes east of the I-270 spur and that it would increase the existing "bottleneck" at the intersection of I-270 and the Beltway. He said that he voted for both recommendations in Committee and is prepared to vote for them again, but he has concern about

allowing more traffic in the western segment of the Beltway and providing no traffic relief on the eastern segment. He said that he understands that the narrowness of the right-of-way and concern about the taking of homes makes it difficult to provide traffic relief, and he has heard from residents who live east of the I-270 spur who are opposed to any widening east of the I-270 spur.

Councilmember Floreen proposed that the Council defer action on the Amendment and work with Council and MCPB Staff to devise a more appropriate and detailed outreach process to make certain that affected property owners near the Veirs Mill/Randolph Road intersection are accorded clear notification and an opportunity to offer their input on the MCPB recommendation. Ms. Floreen said that she shares Ms. Praisner's concern about the impact of the project on communities in the vicinity of the Veirs Mill Road/Randolph Road intersection. She suggested the possibility of revisiting the project if the Intercounty Connector (ICC) project proceeds. She said that because of inaction on the ICC, Randolph Road has had to become the ICC of the County, and this is the reason why communities are being devastated with widening and major thoroughfare solutions. She expressed the hope that time and other transportation solutions will solve these problems, and in the meantime, she believes it is important for master plans to identify projects that the Council wants to move forward on unless there are extenuating circumstances that have to be considered. She said that there are many items that have been removed from the Master Plan of Highways and that is always a possibility. However, she believes the Council should address significant bottleneck areas when possible.

Councilmember Perez stated that the Committee had this conversation as well and his concerns are expressed in the Council's packet. He noted his appreciation for the institutional memory that Councilmembers brought to this discussion.

Councilmember Subin said that the issue will be deferred until Councilmember Floreen believes that it is ready for Council action.

Councilmember Subin emphasized the Council's policy with respect to community outreach, and the importance of making certain that items are ready for the Council's consideration to avoid having to bring the items back and increasing the Council's workload. Mr. Subin requested that Council Staff draft a letter to Mr. Berlage, Chair of the Park and Planning Commission, for the joint signature of the Chair of the PHED Committee and the President of the Council concerning the need to provide citizens with appropriate notification on all matters except in the case of an emergency.

SUBJECT: **Closed Session**

ACTION: Agreed to meet in closed session to discuss an issue related to the Housing Opportunities Commission.

The Council convened in the Council Conference Room in closed session from 12:00 Noon until 12:45 P.M. under authority of Section 10-508(a)(3), State Government Article, Annotated Code of Maryland.

The Council recessed at 12:45 P.M. and reconvened at 1:39 P.M.

SUBJECT: **Public Hearing on Bill 32-03, Retirement – FOP Labor Agreement**

ACTION: The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business October 7, 2003.

SUBJECT: **Public Hearing on Expedited Bill 33-03, Retirement – Amendments**

ACTION: The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business October 7, 2003.

Vice President Silverman in the Chair.

SUBJECT: **Bi-Annual Report of the Planning Board**

The Council received a PowerPoint presentation from Mr. Berlage, Chair, Montgomery County Planning Board, on the Bi-Annual Report of the Planning Board, in accordance with the memorandum and attachments from Senior Legislative Analyst Michaelson, dated September 26, 2003. Mr. Berlage spoke about the role of the Board, commented on the difficult challenges ahead, and highlighted the areas that have been negatively impacted by budget reductions.

Councilmember Leventhal expressed appreciation to Mr. Berlage and Park and Planning Staff for the service they provide to the community. Referring to the purple line light rail proposed between Bethesda and Silver Spring, he said that it is well defined in the master plan and includes the alignment, station locations, mode, the hiker-biker trail, the bridge over Connecticut Avenue, the tunnel under the CSX railroad, and other important characteristics. He said that although the Montgomery and Prince George's County Councils are on record in support of a light rail connection, not just from Bethesda to Silver Spring but east to New Carrolton, there is no master plan detail for the Purple Line east of the Silver Spring Central Business District (CBD) to Langley Park nor has any alignment been identified in Prince George's County. Mr. Leventhal stated that the general concept of the Purple Line east of Silver Spring is supported in the East Silver Spring, the Takoma Park, and the Silver Spring CBD Master Plans which were all updated in 2000. Mr. Leventhal said that there has been an ongoing dialogue with the State regarding the bicounty transitway study and although the State is evaluating a variety of options with no clarity about its intent, the Montgomery and Prince George's County Councils have expressed clarity about what should occur. He proposed that there is a need to specify the alignment, station locations, mode (presumably light rail), and other important characteristics of the Purple Line east of Silver Spring in order to provide adequate public notice and to reserve the right-of-way for the line. He suggested that the Planning Board prepare master plan amendments as needed and that the Prince George's County Council prepare master plan amendments that clarify that it is the intent of the two Councils to proceed in this area. He also suggested that the Montgomery and Prince George's Planning Boards coordinate their efforts with the Maryland Transit Administration as it continues to study a variety of options. Mr. Leventhal suggested that the Council explore with its colleagues in Prince George's

County and that Mr. Berlage explore with his colleagues on the Prince George's County side of the Maryland-National Capital Park and

Planning Commission a joint master planning effort for the Purple Line. He requested Mr. Berlage to prepare a scope of work and timeline identifying what effect the request would have on other items in the work program and present the report to the Planning, Housing, and Economic Development (PHED) Committee as soon as possible.

With respect to Councilmember Leventhal's request, Mr. Berlage said that the request can be accommodated but that it will have a significant impact on the work program. Mr. Berlage said that some items would have to be deferred and extra funds would be required to hire outside consultants for some portions of the request. He stated that the Planning Board Staff have been drawing up preliminary data which will be available in a few days, and that the master plan for light rail between Bethesda and Silver Spring is ten years old but it is still relevant.

Councilmember Silverman stated that the Council supports Councilmember Leventhal's request for the Park and Planning Staff to provide information on the scope and timeline of his proposal.

In response to Councilmember Perez's question related to the most recent review of each master plan, Ms. Michaelson referred him to page ©45 of the packet which lists both the adopted master plans and the dates. With respect to the "Carry-in/Carry-out" pilot program which was established in the summer of 2002 that would have park users carry out any trash they generated while visiting selected County parks, Mr. Perez said that, except for the correspondence his Office received regarding PEPCO and Hurricane Isabel, the Carry-in/Carry-out program has created more correspondence than any other subject. He said that his constituents are concerned about the noticeable increase in the amount of litter along Sligo Creek. It appears to Mr. Perez that the new program simply isn't working in certain urban parks such as Sligo Creek; and that we should not wait two years before coming to this conclusion. In response to his question regarding the timeline for evaluating the pilot program, Ms. Michaelson provided a history of the issue and stated that when the Council considered this item last spring one of the key elements was to develop an evaluation plan. She said that she agrees it would be beneficial to develop a plan so that Councilmembers can inform their constituents about how the plan will be evaluated.

Mr. Loehr, Director, Department of Park and Planning, said that Ms. Orlansky, Director, Office of Legislative Oversight, has agreed to assist with the development of an evaluation plan. He said that by December 2004 the program will be evaluated and preliminary recommendations will be made.

Mr. Berlage spoke about the problems associated with the program and noted that in other jurisdictions, it took one to two years before users became completely accustomed to the new system.

Councilmember Perez expressed concern that he had already informed his constituents that there would be an evaluation of the program after one year. Mr. Silverman said that he was also under the assumption that a determination would be made after one year as to whether the program was a success. In response to the concerns of Councilmembers, Ms. Michaelson said that the Council did discuss how the citizens' complaint

would be worse in first six months after implementation and that it would take between one to two years before there would be a positive turn around.

Councilmember Praisner stated that the Committee and Council agreed that it would be more beneficial to perform an evaluation after all of the parks are participating in the program.

Councilmember Floreen stated that the Committee reviewed data from other communities that implemented the program which revealed that there were problems at the beginning. She said that constituents have been informed that this is a learning experience and given the number of residents that use the parks, there are not as many complaints as expected. Ms. Floreen said that the Committee will review the pilot program in December or January and will address the program comprehensively in December 2004. She stated that results at this point are consistent with what the Committee reviewed when it recommended the Council take this approach.

Councilmember Silverman stated that at the end of the year, the PHED Committee will review with Park and Planning Staff their preliminary conclusions regarding the program. He suggested that Park and Planning Staff work with Ms. Michaelson to develop a mechanism for public input and that Staff explore whether there are any organizations that would be interested in adopting parks and being responsible for trash pick up. He noted that the Town of Chevy Chase is taking over the responsibility for trash pick up in Elm Street Park.

With respect to Councilmember Silverman's suggestion, Councilmember Praisner said that she agrees it would be beneficial to determine whether there are any organizations interested in adopting parks which would be similar to the "Adopt a Road" program. She spoke about the importance of establishing consistent rules in each park and commented on how to implement a successful program.

Councilmember Perez said that perhaps a part of the discontent is that there was insufficient notice to the public. Mr. Berlage agreed, and stated that advance notice is currently being provided prior to implementation of the countywide program in December.

Ms. Michaelson suggested that a short-term solution to the problem would be to have the maintenance crews pick up liter more frequently along Sligo Creek, noting that there are other areas that may not require the same amount of maintenance.

Councilmember Leventhal said that he hopes there will be some information available on the pilot program at the end of this calendar year so that the issue can be discussed. With respect to Ms. Michaelson's suggestion to have maintenance crews pick up the litter more frequently, he questioned the rationale for believing that it would be less expensive to proceed in that manner and suggested that if it is implemented, the results be included in the initial evaluation of the pilot program. Mr. Leventhal spoke about the negative comments that he is receiving from the community and expressed concern that the program is a highly visible example of what the County is taking away from its citizens. He said that during the budget discussions, the Council tried to reassure the public that their taxes were being increased to maintain a high level of service and now they see a deteriorating level of service.

Councilmember Praisner stated that every year the Council adopts a budget with many components that are not visible to the public until later in the year once the program is implemented.

Councilmember Denis expressed the view that the Council should scrutinize the budgets more carefully in the future to fully understand the implications of any reductions. He said that the Council approved the program when it was a budget issue and he is concerned because the program appears to have problems and the public and some Councilmembers do not support it. Mr. Denis suggested that at the first opportunity when sufficient resources are available, the original program should be restored.

Vice President Silverman requested Ms. Michaelson to make available the material the Committee reviewed during its budget discussions regarding the implementation of the program in other jurisdictions. Referring to the fact that trash bags will be eliminated when the full program is implemented in December 2004 and the conclusion of Park and Planning Staff that providing dispensers with trash bags at Carry-In, Carry-Out parks will be eliminated because it is contrary to the goals of the program and many park patrons leave the bags at the park, Mr. Silverman requested that the bags be eliminated as soon as possible. Councilmember Silverman stated that the PHED Committee will be discussing the pilot program and the possibility of organizations adopting local parks in December 2003, and that it is the intent of the Council that there will be an evaluation of the pilot program in December 2004.

In response to Councilmember Perez's request that Park and Planning Staff provide information on the location of affordable housing in the County, Mr. Berlage said that Staff is currently pursuing that issue and it will be completed in January of 2004.

Councilmember Silverman requested that Staff make available information on the location of the Moderately Priced Dwelling Units for the Upper Rock Creek Master Plan discussion.

In response to Councilmember Perez's question regarding Park and Planning's mapping capacity and the fact that PEPCO cannot determine who has power at any one specific time, Commissioner Robinson said that it costs approximately ten times as much to install underground cable as it does to install above ground cable, that the system in the lower part of the County was developed incrementally and is deteriorating, and that it is particularly vulnerable to outages. Mr. Robinson said that it would be an expensive undertaking but he believes, at a minimum, the utility companies should place the cable underground along major transportation corridors in the County. In response to concerns, Mr. Loehr said that he believes PEPCO has access to the same Geographic Information Systems data as the Park and Planning Department.

Councilmember Floreen expressed appreciation to the Planning Board and Staff for their outstanding work. With respect to the responsibilities of PEPCO, she requested Park and Planning Staff to contribute to the discussion when the Transportation and Environment Committee meets to review tree maintenance issues. She said that during the budget discussions, the Council did not provide the amount of funding for tree maintenance that the Department of Public works and Transportation requested. With respect to the "green building" issue identified in the Report, she said that is another issue the Committee will be addressing in November. In response to her concern about the savings plan and how the Department expects to meet those objectives, Mr. Loehr said that the Department will consider freezing positions. Ms. Floreen

requested that the PHED Committee be kept informed about the effects of the savings plan on the Department. With respect to her question about using development review fees in an enterprise type of fund, Mr. Loehr said that Council had instructed the Park and Planning to increase the development review fees to cover 100 percent of the costs which was the goal in setting fees for this year. Ms. Floreen suggested that the issue of whether there can be a special revenue fund, similar to an enterprise fund, which takes the funding outside the spending affordability range into a different category, be explored. In response to Ms. Floreen's questions related to the slippage of the master plan schedule, Mr. Loehr said that the Council was warned about the major slippage last spring. Referring to page ©35, she expressed concern about the process that is being used to list the requests from Councilmembers to do limited master plan amendments. Referring to the list, Mr. Berlage said that several years ago, the Council directed Staff to do a limited master plan amendment for the National Park Seminary and the two remaining amendments listed on the page were requests from Councilmembers and are under consideration.

Vice President Silverman said that he and other Councilmembers are interested in the Woodmont Triangle issue and suggested that there should be a more formalized process for requesting limited master plan amendments. He said that if those tasks are taken on and other projects are pushed into the future, there should be a mechanism for the Council to consider the trade offs. Ms. Michaelson clarified that the procedure has been that the Planning Board would not proceed with work on a master plan amendment until there is a formal change to the work program. She said that the list indicates the Department is considering whether they will need to do a master plan amendment and if the decision is made to move forward, they will present the option to the Council for consideration. Councilmember Praisner said that she was concerned about the list because it was included in the Report which gives it a certain amount of formality and credibility.

With respect to Councilmember Floreen's question regarding whether there was a recent study of streamlining the master plan process, Ms. Michaelson said that approximately four year ago the Department initiated an effort to streamline the master plan process and approximately one year ago performed an evaluation which was not presented to the Council. At Ms. Floreen's request, Mr. Loehr said that the evaluation is moving through the process and would be presented to the Council.

Councilmember Floreen suggested that the Planning Board's role and contribution to the Capital Improvements Program (CIP) needs to be reinforced. She said that as the Council works through a new approach to Annual Growth Policy (AGP), it is incumbent on the Planning Board to advise the Council of the critical infrastructure needs that extends to roadways, intersections, and school facilities. Ms. Floreen suggested that the role of the Planning Board in the CIP process be part of its work program and that the AGP reflect the suggestion as a Council directive and commitment. She said that she believes the link between planning and infrastructure is one that should be maintained and prioritized.

With respect to Councilmember Floreen's question regarding the Beach Drive traffic safety review study that was mentioned in the Report and her request for a copy of the study, Mr. Berlage said that the study was related to speeding issues. Referring to the Housing-O-Meter chart, she requested and received information that the number of countywide moderately priced dwelling units will be available shortly.

Councilmember Praisner expressed appreciation to the Planning Board and Staff for their work. She said that she believes Ms. Michaelson has raised a good point in her memorandum regarding whether the format of the Bi-Annual Report is the best way to convey information regarding the Park and Planning Department's accomplishments and activities during the reporting period and whether the length and volume of material submitted is appropriate. With respect to the master plan process, she said that she is pleased Ms. Floreen requested a copy of the evaluation. Ms. Praisner expressed concern about the increasing lack of understanding regarding the master plan process and requested that the PHED Committee review the master plan process and discuss how to engage the community, the interaction of community and staff, and how variations in the plan are addressed. Councilmember Silverman agreed with Ms. Praisner's request. Councilmember Praisner referred to the problems associated with providing access to information on line and the complexities of technology. With respect to the timing of when the material is available on line to the public, she said that the Council is more vulnerable to that criticism but she has begun to hear complaints about the Planning Board. Referring to the US 29 interchanges, Ms. Praisner stated that the first three interchanges are proceeding quickly and are needed because they are access roads, but she is concerned about the value of the remaining interchanges. She noted that the master plan calls for an evaluation of each interchange to determine whether the others should be built. She questioned how the three interchanges will be evaluated to determine whether the Planning Board or the County will want to comment on them to the State Highway Administration and requested that Planning Staff review that issue.

Councilmember Praisner expressed concern about legal issues associated with identifying vacant lots and the expectations for development associated with the lots. She said that her concern extends to whether the development of a government document that has data on the special needs population and special needs housing is consistent with the fair housing law. With respect to private public partnerships using public land as exemplified by the Blair High School baseball issue, Ms. Praisner requested that Planning Staff review the requirements related to the development of the land to assure there are no conflicts.

Councilmember Silverman expressed appreciation to the Planning Board and Staff and, in particular, the Staff of the Parks Department that work in the field. He requested that the Staff be informed that the Council will continue to try to provide sufficient resources.

With respect to Councilmember Silverman's question related to the maintenance facility at Black Hill Regional Park, Planning Staff advised that it is 30 percent complete. With respect to the issue that was discussed this morning regarding the construction of a grade-separated interchange at the intersection of Veirs Mill and Randolph Road, Mr. Silverman requested that in the future, if there is a situation in which there would be a major direct impact on local businesses and homeowners, Staff develop procedures for providing notice. He spoke about the importance of creating a method for the businesses and homeowners adjacent to interchange modifications to have input. Councilmember Praisner expressed concern that this was amendment to an intersection and notice was only provided to the civic associations.

In response to Councilmember Silverman's comment regarding the progress being made at the Rickman farm and questions related to the timeline, Mr. Berlage said that a nonprivate provider will soon be selected to run the facility and at that time, a timeline can be provided. Mr. Silverman requested Ms. Rother, Planning Manager, Planning Implementation Section, Office of the County Executive, to draft a timeline schedule for transferring available

publicly owned land, and requested that the issue be addressed from a legal standpoint to determine whether changes are need in the process.

Councilmember Praisner stated that the Management and Fiscal Policy Committee discussed the issues related to the disposition of property and the role of the Council and she is concerned that the language in the Report indicates that the sites will be given to the Department of Housing and Community Affairs for disposition for affordable housing which is inconsistent with law and possibly it is not the end conclusion for every parcel of land.

Referring to the Housing-O-Meter, Councilmember Floreen requested and received information from Mr. Berlage that the publicly owned site study has been completed and potential sites have been identified. In response to Ms. Floreen's request that the Council receive a briefing before the sites are transferred, Mr. Silverman stated that in the fall, the PHED Committee will address the entire issue of affordable housing. Mr. Silverman expressed concern about the amount of time that is required to transfer a site and questioned whether there is a method of expediting the process while still providing the opportunity for public input. Referring to page ©24 of the packet, under special studies, he requested that the Council be provided information that was received on the nationwide search of jurisdictional practices and polices for the disposition of publicly owned surplus land to private developers with affordable housing. Mr. Silverman requested that a process be created for engaging the development community in the disposition of some of the sites.

With respect to the Woodmont Triangle Study, Councilmember Silverman requested and received information from Mr. Carter, Chief, Community-Based Planning Division, that the community meetings are scheduled to be held in October and November and the recommendations will be presented to the Council at the end of December.

Councilmember Silverman stated that the PHED Committee and the Council will be addressing the Moderately Priced Dwelling Unit program at the beginning of 2004.

The Council recessed at 4:19 P.M. and reconvened at 7:37 P.M.

SUBJECT: **Public Hearing on a Resolution to Approve the Lease of the Former Montgomery Hills Junior High School**

ACTION: The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business October 7, 2003.

The meeting adjourned at 8:41 P.M.

This is an accurate account of the meeting:

_____

Mary A. Edgar, CMC
Clerk of the Council

19-04

AGENDA ITEM 8
July 13, 2004
Public Hearing/Action

Management and Fiscal Policy Committee members should also bring this packet to your July 12 worksession, where staff will answer any questions about this item.

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing/Action**: Expedited Bill 19-04, Personnel – Collective Bargaining - Police

Expedited Bill 19-04, Personnel – Collective Bargaining – Police, sponsored by the Council President at the request of the County Executive, was introduced on June 22, 2004.

Bill 19-04 will amend the law regarding collective bargaining with County police officers as provided in the most recent collective bargaining agreement with Fraternal Order of Police Lodge 35. Specifically, as the parties agreed in that collective bargaining agreement, the bill sets up a process to bargain and resolve impasses, out of the normal bargaining cycle, on reopener issues and issues regarding the effects of the exercise of management rights. In Council staff's view, the bill is drafted correctly to accomplish its purposes.

This packet contains:	Circle #
Bill 19-04	1
Legislative Request Report	7
Memo from County Executive	8

Expedited Bill No. 19-04
Concerning: Collective Bargaining – Police -
Revised: 6-18-04 Draft No. 1
Introduced: June 22, 2004
Expires: December 22, 2005
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

(1) provide a process to resolve bargaining impasses over reopener issues and the employer's exercise of management rights that have an impact on bargaining unit employees;
(2) make it a prohibited practice for the employer to refuse to participate in the impasse procedure after the employer implements a final offer on the effects of the exercise of an employer right; and
(3) generally amend the law regarding collective bargaining with County police officers.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-81 and 33-82

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-81 and 33-82 are amended as follows:

33-81. Impasse procedure.

* * *

(c) An impasse over a reopener matter or the effects on employees of an exercise of an employer right must be resolved under the procedures in this subsection. Any other impasse over a matter subject to collective bargaining must be resolved under the impasse procedure in subsections (a) and (b).

(1) *Reopener matters.*

(A) If the parties agree in a collective bargaining agreement to bargain over an identified issue on or before a specified date, the parties must bargain under those terms. Each identified issue must be designated as a "reopener matter".

(B) When the parties initiate collective bargaining under subparagraph (A), the parties must choose, by agreement or through the processes of the American Arbitration Association, an impasse neutral who agrees to be available for impasse resolution within 30 days.

(C) If, after bargaining in good faith, the parties are unable to reach agreement on a reopener matter by the deadline specified in the collective bargaining agreement, either party may declare an impasse.

(D) If an impasse is declared under subparagraph (C), the dispute must be submitted to the impasse neutral no later

than 10 days after impasse is declared.

(E) The impasse neutral must resolve the dispute under the impasse procedure in subsection (b), except that:

(i) the dates in that subsection do not apply;

(ii) each party must submit to the impasse neutral a final offer on only the reopener matter; and

(iii) the impasse neutral must select the most reasonable of the parties' final offers no later than 10 days after the impasse neutral receives the final offers.

(F) This subsection applies only if the parties in their collective bargaining agreement have designated:

(i) the specific reopener matter to be bargained;

(ii) the date by which bargaining on the reopener matter must begin; and

(iii) the deadline by which bargaining on the reopener matter must be completed and after which the impasse procedure must be implemented.

(2) *Bargaining over the effects of the exercise of an employer right.*

(A) If the employer notifies the employee organization that it intends to exercise a right listed in Section 33-80(b), the exercise of which will have an effect on members of the bargaining unit, the parties must choose by agreement or through the processes of the American Arbitration

Association an impasse neutral who agrees to be available for impasse resolution within 30 days.

(B) The parties must engage in good faith bargaining on the effects of the exercise of the employer right. If the parties, after good faith bargaining, are unable to agree on the effect on bargaining unit employees of the employer's exercise of its right, either party may declare an impasse.

(C) If the parties bargain to impasse over the effects on employees of an exercise of an employer right that has a demonstrated, significant effect on the safety of the public, the employer may implement its last offer before engaging in the impasse procedure. A party must not exceed a time requirement of the impasse procedure. A party must not use the procedure in this paragraph for a matter that is a mandatory subject of bargaining other than the effects of the exercise of an employer right.

(D) The parties must submit the dispute to the impasse neutral no later than 10 days after either party declares an impasse under subparagraph (B).

(E) The impasse neutral must resolve the dispute under the impasse procedures in subsection (b), except that:

(i) the dates in that subsection do not apply;

(ii) each party must submit to the impasse neutral a final offer only on the effect on employees of the employer's exercise of its right; and

(iii) the impasse neutral must select the most reasonable of the parties' final offers no later than 10 days after the impasse neutral receives the final offers and, if appropriate, must provide retroactive relief.

(F) If the impasse neutral has not issued a decision within 20 days after the impasse neutral receives the parties' final offers, the employer may implement its final offer until the impasse neutral issues a final decision.

33-82. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from:

* * *

(9) Engaging in a lockout of employees[.];

(10) delaying or refusing to participate in the impasse procedure in Section 33-81(c)(2) after the employer implements a final offer under Section 33-81(c)(2)(C).

* * *

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

Steven A. Silverman, President, County Council — Date

Approved:

Douglas M. Duncan, County Executive — Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council — Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 19-04, *Collective Bargaining - Police*

DESCRIPTION: The requested legislation amends the Police Labor Relations Law by adding an impasse procedure for resolving impasses over: 1) reopener matters; and 2) the employer's exercise of an employer right that has an impact on bargaining unit employees. The bill also makes it a prohibited practice for the employer to refuse to participate in the impasse procedure after the employer implements a final offer on the effects of the exercise of an employer right.

PROBLEM: The impasse procedure in Section 33-81 the Police Labor Relations Law provides a mechanism for resolving impasses that arise during negotiations for a new term agreement. The Fraternal Order of Police, Lodge #35 (FOP) and the County Executive agreed during bargaining that the parties would submit legislation to the Council to revise Sections 33-81 to include an impasse procedure for resolving impasses over reopener matters and the employer's exercise of an employer right that has an impact on bargaining unit employees and to revise Section 33-82 to make it a prohibited practice for the employer to refuse to participate in the impasse procedure after the employer implements a final offer on the effects of the exercise of an employer right.

GOALS AND OBJECTIVES: To implement Article 68, *Proposed Legislation Relating to Impasse Procedure*, of the July 1, 2004, through June 30, 2007, agreement with the FOP.

COORDINATION: Office of Human Resources

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: n/a

EVALUATION: n/a

EXPERIENCE ELSEWHERE: n/a

SOURCE OF INFORMATION: James Torgesen (240-777-5050) and Eric Wallmark, (241-777-5020), Office of Human Resources

APPLICATION WITHIN MUNICIPALITIES: n/a

PENALTIES: n/a

1) BILL
2) BILL

MF
CC
SBF
LL
LAM

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

MEMORANDUM

009757

May 26, 2004

TO: Stephen A. Silverman, President, County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT Proposed Legislation to Implement the Police Collective Bargaining Agreement

I am submitting for the Council's consideration and approval two bills which contain amendments to the Employee's Retirement System and the Police Labor Relations law. These amendments are the product of collective bargaining and were recently presented to the Council in draft form as a part of the collective bargaining changes. The Retirement Law amendments provide the opportunity for bargaining unit employees to be included in the existing trial retirement option and to also be eligible to voluntarily elect transfer to the Retirement Savings Plan. The Police Labor Relations Law amendments provide a process for resolving bargaining impasses over reopener issues and when there is an exercise of a management right that results in "effects" bargaining.

It is requested that the bill providing amendments to the Police Labor Relations Law be expedited, as there currently does not exist a mechanism whereby bargaining impasses resulting from a reopener or the effects on employees of an exercise of a management right can be initiated.

Cc: Walter Bader, President, Fraternal Order of Police, Lodge 35 Inc.

DMD: jet

Attachments

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2004 JUN -2 PM 12:10

8

AN ALL-AMERICA COMMUNITY

Expedited Bill No. 19-04
Concerning: Collective Bargaining – Police -
Revised: 6-18-04 Draft No. 1
Introduced: June 22, 2004
Enacted: July 13, 2004
Executive: July 16, 2004
Effective: July 16, 2004
Sunset Date: None
Ch. 15, Laws of Mont. Co. 2004

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

(1) provide a process to resolve bargaining impasses over reopener issues and the employer's exercise of management rights that have an impact on bargaining unit employees;
(2) make it a prohibited practice for the employer to refuse to participate in the impasse procedure after the employer implements a final offer on the effects of the exercise of an employer right; and
(3) generally amend the law regarding collective bargaining with County police officers.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-81 and 33-82

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-81 and 33-82 are amended as follows:

33-81. Impasse procedure.

* * *

(c) An impasse over a reopener matter or the effects on employees of an exercise of an employer right must be resolved under the procedures in this subsection. Any other impasse over a matter subject to collective bargaining must be resolved under the impasse procedure in subsections (a) and (b).

(1) *Reopener matters.*

(A) If the parties agree in a collective bargaining agreement to bargain over an identified issue on or before a specified date, the parties must bargain under those terms. Each identified issue must be designated as a "reopener matter".

(B) When the parties initiate collective bargaining under subparagraph (A), the parties must choose, by agreement or through the processes of the American Arbitration Association, an impasse neutral who agrees to be available for impasse resolution within 30 days.

(C) If, after bargaining in good faith, the parties are unable to reach agreement on a reopener matter by the deadline specified in the collective bargaining agreement, either party may declare an impasse.

(D) If an impasse is declared under subparagraph (C), the dispute must be submitted to the impasse neutral no later

than 10 days after impasse is declared.

(E) The impasse neutral must resolve the dispute under the impasse procedure in subsection (b), except that:

(i) the dates in that subsection do not apply;

(ii) each party must submit to the impasse neutral a final offer on only the reopener matter; and

(iii) the impasse neutral must select the most reasonable of the parties' final offers no later than 10 days after the impasse neutral receives the final offers.

(F) This subsection applies only if the parties in their collective bargaining agreement have designated:

(i) the specific reopener matter to be bargained;

(ii) the date by which bargaining on the reopener matter must begin; and

(iii) the deadline by which bargaining on the reopener matter must be completed and after which the impasse procedure must be implemented.

(2) *Bargaining over the effects of the exercise of an employer right.*

(A) If the employer notifies the employee organization that it intends to exercise a right listed in Section 33-80(b), the exercise of which will have an effect on members of the bargaining unit, the parties must choose by agreement or through the processes of the American Arbitration

Association an impasse neutral who agrees to be available for impasse resolution within 30 days.

(B) The parties must engage in good faith bargaining on the effects of the exercise of the employer right. If the parties, after good faith bargaining, are unable to agree on the effect on bargaining unit employees of the employer's exercise of its right, either party may declare an impasse.

(C) If the parties bargain to impasse over the effects on employees of an exercise of an employer right that has a demonstrated, significant effect on the safety of the public, the employer may implement its last offer before engaging in the impasse procedure. A party must not exceed a time requirement of the impasse procedure. A party must not use the procedure in this paragraph for a matter that is a mandatory subject of bargaining other than the effects of the exercise of an employer right.

(D) The parties must submit the dispute to the impasse neutral no later than 10 days after either party declares an impasse under subparagraph (B).

(E) The impasse neutral must resolve the dispute under the impasse procedures in subsection (b), except that:

(i) the dates in that subsection do not apply;

(ii) each party must submit to the impasse neutral a final offer only on the effect on employees of the employer's exercise of its right; and

(iii) the impasse neutral must select the most reasonable of the parties' final offers no later than 10 days after the impasse neutral receives the final offers and, if appropriate, must provide retroactive relief.

(F) If the impasse neutral has not issued a decision within 20 days after the impasse neutral receives the parties' final offers, the employer may implement its final offer until the impasse neutral issues a final decision.

33-82. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from:

* * *

(9) Engaging in a lockout of employees**[.]**;

(10) delaying or refusing to participate in the impasse procedure in Section 33-81(c)(2) after the employer implements a final offer under Section 33-81(c)(2)(C).

* * *

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

/s/ 7/15/04

Steven A. Silverman, President, County Council Date

Approved:

/s/ 7/16/04

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

/s/ 7/19/04

Mary A. Edgar, CMC, Clerk of the Council Date

an attorney who has been hired to serve the department or by an attorney from the County Attorney's Office through chargebacks to the department.

SUBJECT: Expedited Bill 19-04. Personnel – Collective Bargaining – Police

The Committee had before it the memorandum from Senior Legislative Attorney Faden, dated July 13, 2004.

ACTION: Discussed the bill which sets up a process to bargain and resolve impasses that occur out of the normal bargaining cycle on reopener issues and issues regarding the effects of the exercise of management rights.

Recommended approval of the bill.

SUBJECT: FY06 Budget Process and Budget Document

The Committee had before it the memoranda and attachments from Council Staff Director Farber and Legislative Analyst Sherer, dated July 8, 2004, respectively.

ACTION: Received an overview from Mr. Farber of the issues contained in his memorandum. Received comments from Ms. Swaim-Staley, Director, Office of Management and Budget (OMB), regarding the following OMB initiatives concerning the budget document and process: the provision of more information from OMB on grants and contracts; the elimination of redundant information in the budget documents; the provision of more information on key programs and important issues; the plans to align programs with the financial structure; the advice that will be given to Council staff to use the existing databases; plans to improve productivity and analyze leases and the use of the County's fleets; the comparison that will be done of actual to projected performance measures; the review that will be undertaken of the measures for relevancy, accuracy, and usefulness; and the intent to update the revenue database.

Noted the importance of defining the problem the Council is trying to resolve, determining what the Council is attempting to achieve, and what changes are needed to accomplish this; and that the budget document should address the needs of the general public and such groups as the Taxpayers League and the League of Women Voters.

Discussed the following issues associated with the review of the operating budget: the focus on the margins and on other issues Council staff identifies, not on the base; the budget document and process as part of the problem, and the need to find a more meaningful process; the need for reviews to be targeted since there is a limited amount of time available for budget review; the desire of advocates for a comprehensive review of a program, particularly when a program is reduced; the

Later in the meeting, Councilmember Praisner stated that had she been present for the vote, she would have voted in the affirmative.

SUBJECT: Expedited Bill 19-04, Personnel – Collective Bargaining - Police

The Council had before it the memorandum and attachments from Mr. Faden, dated July 13, 2004.

Councilmember Denis, Member of the Management and Fiscal Policy Committee, stated that the Committee recommended approval of the bill as drafted.

ACTION: Enacted Bill 19-04, as introduced.

The MFP Committee made the motion and the bill was enacted by a roll call vote:

YEAS: Denis, Floreen, Subin, Leventhal, Knapp, Andrews, Praisner, Perez, Silverman.

The Council recessed at 2:24 P.M. and reconvened at 2:40 P.M.

SUBJECT: Bill 29-03, Forest Conservation – Equestrian Facilities

The Council had before it the memorandum and attachments from Senior Legislative Attorney Faden, dated July 13, 2004.

Councilmember Silverman, Chair of the Planning, Housing, and Economic Development (PHED) Committee, stated that Councilmember Knapp's suggested amendments on ©37-38 attached to staff's memorandum are before the Council for consideration.

At the request of President Silverman, Mr. Berlage, Chair of the Planning Board and the original sponsor of the Forest Conservation Law that was enacted by the Council in 1991, provided background information regarding the intent of the legislation and commented on the Board's recommendations as it relates to Bill 29-03. Referring to the amendments submitted by the Sierra Club that are attached to Council staff's supplementary memorandum, Mr. Berlage stated that he and the Planning staff support Amendment 3, Equestrian support buildings and related activities are exempt only if built using best management practices; and Amendment 5, The limitations to this exemption will be enforced under the authority of Chapter 22A of the County Code. Mr. Berlage expressed the view that the remaining two amendments suggested by the Club would place extraordinary burdens on small equestrian facilities.

Councilmember Praisner requested and received information from Ms. Conlon, Forest Conservation Program Administrator, Department of Park and Planning, that most agricultural activities do not require platting or sediment control permits. Ms. Praisner, in expressing concern that the proposed exemption to the Forest Conservation Law for equestrian facilities is currently less restrictive than for agricultural activities, said that an agricultural activity has to be exempt from both the platting requirements and from the requirements to

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Tuesday, July 13, 2004 Rockville, Md.

The County Council for Montgomery County, Maryland convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:19 A.M. on Tuesday, July 13, 2004.

PRESENT

Steven A. Silverman, President	Thomas Perez, Vice President
Phil Andrews	Michael Knapp
Howard Denis	George Leventhal
Nancy Floreen	Marilyn J. Praisner

Michael L. Subin

The President in the Chair.

The invocation was presented by Father John Enzler, Our Lady of Mercy, Potomac.

President Silverman announced that Councilmember Leventhal is delayed on Council business and should arrive shortly.

SUBJECT: Proclamation to the Maryland-National Capital Park and Planning Commission, Recipient of the Congress for the New Urbanism's 2004 Charter Award of Excellence

The proclamation was presented by Councilmember Andrews to Mr. Berlage, Chair, Mr. Carter, Ms. Tallant, Ms. Clemens, M-NCPPC; Mr. Lawrence, Mr. Kraus, JBG Companies; Mr. Nichols, CHK Company; and Pat Harris, Holland and Knight Law firm.

SUBJECT: Proclamation to the Silver Spring Historical Society Proclaiming the Week of July 11-17, 2004, as Fort Stevens Week

The proclamation was presented by Councilmembers Denis and Perez to Ms. Slatick and Ms. Urban from the Silver Spring Historical Society.

SUBJECT: Agenda and Calendar Changes

Legislative Analyst Lauer directed attention to an addendum to the agenda, adding for introduction Bill 23-04, Contracts and Procurement – Local Small Business Reserve Program, sponsored by Council President Silverman and Councilmembers Leventhal, Perez, and Floreen. She noted that action will be taken on expedited Bill 19-04 during the afternoon legislative session.

SUBJECT: Approval of Minutes

ACTION: Approved the minutes of May 14, June 17, and June 22, 2004, as amended.

Councilmember Subin made the motion. Councilmember Leventhal was temporarily absent.

SUBJECT: Receipt of Petitions

The Council acknowledged receipt of petition 010145 from the business and property owners in the Burtonsville Business District in support of a proposal to amend the Fairland Master Plan.

Councilmember Praisner expressed the view that the request to reopen the Master Plan may not be necessary, noting that she has spoken with Planning Board Chair Berlage and the Chair of the Advisory Committee and believes that an approach can be developed which will address the concerns of the business and property owners in the Burtonsville Business District.

SUBJECT: Consent Calendar

Councilmember Denis spoke in support of the resolution to bring major league baseball to the Washington, D.C. area and referred to Walter Johnson, the Washington Senators pitcher, who lived in Bethesda, and served on the Board of County Commissioners which was the predecessor to the County Council. He pointed out that the County's hotels, restaurants, and tourist attractions would benefit from having a major league baseball team, as well as the children of all ages who have been deprived of major league baseball for thirty three years.

Speaking in support of the resolution, Councilmember Praisner said she would cosponsor it and expressed the hope that the Council can make a strong statement to bring major league baseball to the area.

ACTION: Adopted the consent calendar:

Introduced a resolution to support State Financing for the Rehabilitation of Spring Garden Apartments in Silver Spring;

Introduced a resolution to support State Financing for the Rehabilitation of Chevy Chase Lake Apartments in Chevy Chase;

Introduced a resolution to consolidate the issuance of certain authorized bonds;

Introduced a resolution to consolidate new authority to issue commercial paper bond anticipation notes with all previously authorized notes;

Introduced a resolution to approve the FY05 schedule of revenue estimates and appropriations;

Introduced a resolution to endorse the Maryland Economic Development Assistance Authority and Fund (MEDAAF) grant to the Mills Corporation;

Resolution 15-674, extending until October 4, 2004 Temporary Executive Regulation 8-04T, Emergency Taxicab Fare Surcharge;

Resolution 15-675, approving Executive Regulation 6-04AM, Amendments to Personnel Regulations – Sick Leave Donor Program;

Resolution 15-676, approving a supplemental appropriation to the FY04 Operating Budget and amendment to the FY03-08 Capital Improvements Program, Technology Investment Fund (TIF), for the Enterprise Resource Planning Requirements Study, in the amount of $395,000;

Resolution 15-677, confirming the County Executive appointments of the following persons to the Local Management Board for Children, Youth, and Families: David T. Jones, and Ellie N. Salour;

Resolution 15-678, confirming the County Executive appointment of the following persons to the Mental Health Advisory Committee: Miriam L. Yarmolinsky, Kim-Renee Allen, Celia Young, Denise Fay-Guthrie, Randall R. Myers, Officer Joan Logan, Myriam Schinazi, and Kenneth Ratcliffe;

Resolution 15-679, confirming the County Executive appointments of the following persons to the Silver Spring Urban District Advisory Committee: Bryant F. Foulger, Dale Mangum. Robert R. Middleton, and Charles Atwell;

Resolution 15-680, confirming the County Executive appointments of the following persons to the Upcounty Citizens Advisory Board: Heinz Bachmann and David Whitcomb;

Resolution 15-681, confirming the County Executive appointments of the following persons to the Wheaton Urban District Advisory Committee: Filippo Leo and Brett Schneider;

Resolution 15-682, supporting Major League Baseball in the District of Columbia;

Introduced a supplemental appropriation to the FY05 Operating Budget of the Support for the Arts and Recreation Nondepartmental Account, for the Partnership for Arts and Recreation Initiative, in the amount of $1,500,000.

Councilmember Knapp made the motion. Councilmember Leventhal was temporarily absent.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND SITTING AS A DISTRICT COUNCIL FOR THAT PORTION OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN MONTGOMERY COUNTY

SUBJECT: **Resolution to dismiss Development Plan Amendment (DPA) 01-2, Auto Park Investment Partnership No. II**

ACTION: Adopted Resolution 15-683, dismissing the subject DPA.

Councilmember Praisner made the motion. Councilmember Leventhal was temporarily absent.

Later in the day, Councilmember Leventhal stated that had he been present for the vote to dismiss DPA 01-2, he would have voted in the affirmative.

SUBJECT: **Resolutions to Approve Use of Advance Land Acquisition Revolving Fund (ALARF) for Acquisition of Real Property: Woodstock Equestrian Park Addition Lots 6,7, and 8, Beallsville Property; and Linthicum East Elementary School Site**

The Council had before it the memorandum and attachments from Senior Legislative Analyst Wilson, dated July 7, 2004.

ACTION: Introduced the subject resolutions.

Councilmember Praisner requested and received verification from Ms. Wilson, Board of Education, that this refers to the existing Clarksburg Elementary School and its relocation, noting that the Clarksburg Master Plan identifies the transitway as traversing the Clarksburg Elementary School site.

SUBJECT: Executive Regulation 26-03AM, Cable Modem Service Standards

The Council had before it the memorandum and attachments from Legislative Analyst Healy, dated July 9, 2004; and an addendum memorandum from Ms. Healy, dated July 12, 2004, attaching comments from the Office of Cable and Communication Services and the Office of the County Attorney on amendments to the Executive Regulation proposed by Councilmembers.

Councilmember Knapp provided background information concerning his preparation for the discussion on cable modem service standards, and noted that on June 29, when the cable modem issue was first scheduled for Council action, he was prepared to introduce his amendment, but the issue was deferred. He said that at Ms. Praisner's request at that meeting, he and other Councilmembers made their proposed amendments to the Executive Regulation available to Ms. Praisner. Mr. Knapp said that he was surprised to find that the Committee met on July 6 and reviewed the amendments and debated the issues involved without receiving feedback from Councilmembers who do not serve on the MFP Committee. Mr. Knapp expressed concern about the handling of this matter by the Committee, the press release that was issued by the Management and Fiscal Policy Committee (MFP) Committee on July 7, 2004, and the press conference that was held the next day. He said that he perceived the press release to indicate that the proposed amendments were anti-service, and he was concerned about this, especially since Councilmembers who offered the amendments had not had the opportunity to comment on them.

In discussing the fact that the Executive Regulation appears to be the first of its kind in the country, Mr. Knapp noted the challenge that this presents to the County to attempt to strike a balance on the requirement of a significant amount of telecommunication infrastructure and the needs of consumers whom Councilmembers represent. Mr. Knapp provided details regarding research that he undertook in connection with his proposed amendment, including actions by the Federal Communications Commission (FCC) related to cable modem service, and issues related to the response of the National Association of Counties (NACo) to the FCC action. Mr. Knapp stressed the importance of the cable modem regulation, stating it involves a significant national discussion and one in which the County is interested in pursuing in a productive way.

Councilmember Praisner, expressed concern regarding Councilmember Knapp's comments, and provided background information concerning the issue, including the previous Council's adoption of legislation that puts in place a consumer compliance structure and the decision made by the Council to address cable modem standards through executive regulations. With respect to the issue raised by Mr. Knapp, Ms. Praisner said that the MFP Committee functioned in the traditional manner of a Council committee in its review of the proposed amendments to the Executive Regulation. She said that in response to the Council's deferral of action on the Executive Regulation, as Chair of the MFP Committee, she requested that Councilmembers provide any amendments or suggestions to her so that a committee packet could be prepared for the Committee's review. She noted that this is the typical way issues that are brought before the Council are considered. With respect to the amendments recommended by three Councilmembers for consideration, Ms. Praisner said that they were similar to

amendments that the MFP Committee and the County Executive had already considered. Nevertheless, the Committee held a meeting on the proposed amendments and made recommendations. Ms. Praisner pointed out that the Committee's meeting was listed on the Council's Committee agenda, and that this was an open meeting with the Committee members in attendance who could be present at that time. Councilmember Praisner expressed the view that it is inappropriate to discuss motivations beyond customer service and County considerations and to introduce NACo into the issue, and that although other people have highlighted the fact that Montgomery County is the first county in the United States to address this issue through regulations, the regulation before the Council is intended to respond to the concerns of the County and its residents involving a the myriad of issues.

Councilmember Subin expressed the view that the chairs of Council committees have discretion in the management of the meetings they chair, but that he does not want his statement to be interpreted as for or against Mr. Knapp's comments but rather that they refer only to the authority of a Council committee chair to handle their committee meetings in the way the Committee chairs believe is most appropriate. In discussing related issues, Mr. Subin recalled actions he took previously regarding the FCC and the cable industry that resulted in legislation which made the County a more competitive environment for cable television. He discussed his concern about inappropriate accusations that are sometimes made when there is disagreement over issues, and expressed the view that Councilmembers should not be accused of being anti-consumer on the basis of their vote on an issue. Mr. Subin said that he supports some of the proposed amendments, a number of which are his, because he views some of the language in the Executive Regulation as legally questionable and anti-competitive.

Councilmember Andrews expressed the view that the County is fortunate to have Ms. Praisner serving as Chair of the MFP Committee because of her expertise on cable issues, and noted how much he appreciates working with her. He said that as Ms. Praisner mentioned, the Committee process followed the normal procedure in its review of the proposed amendment, and he believes that it is beneficial to the Council to have the Committee recommendation on the significant amendments that are offered. He said that he would not be surprised if Montgomery County is the first county in the country to adopt executive regulations on cable modem service, pointing out that Councilmember Praisner introduced the legislation two years ago, which the Council supported, that required the County Executive to issue the standards that are before the Council today.

Councilmember Floreen, in discussing her introduction to discussions on cable modem service, expressed the view that this is primarily about consumer protection for access to the internet and said that later in the meeting, she will share with Councilmembers her personal experience in this regard.

President Silverman directed attention to the proposed amendments set forth in the staff memorandum on pages 2-9; and comments from the Office of Cable and Communication Services and the Office of the County Attorney attached to the addendum staff memorandum. Mr. Silverman said that the proposed amendments are only suggestions to the County Executive, and if any of them are approved by the Council, they will be transmitted to the County Executive who will make a determination on whether to incorporate the amendments

into the Executive Regulation. Mr. Silverman said that the Executive Regulation is scheduled for final action by the Council on July 27, 2004.

In introductory comments related to the Council's review of the proposed amendments, Councilmember Praisner said that she has asked outside counsel to be available should Councilmembers have questions. She said that representatives of the Office of Cable and Communication Services (OCCS) and the Office of the County Attorney are present because they commented on the appropriateness of issues as the Committee considered them. Ms. Praisner noted that technical staff is also available at the meeting to respond to any issues or questions the Council may raise.

President Silverman directed the Council's attention to the proposed amendments and the MFP Committee's recommendations as summarized by Council staff in the staff memorandum.

With respect to the amendment proposed by Councilmember Subin for §3, Definitions – Normal Operating Conditions, Councilmember Praisner explained that the Committee rejected the proposed amendment for the reasons described on page 3 of the staff memorandum.

Councilmember Subin discussed his reasons for proposing the deletion of the words "and the unforeseeable" from §3, and suggested the need to clarify the language in this section. He expressed the view that the term "unforeseeable" is too vague. Mr. Subin said that in suggesting the need for clarity, his purpose is to avoid future problems, not because he is attempting to support either the consumer or cable companies on this issue.

Councilmember Silverman requested information regarding the number of cable modem subscribers that Comcast Cable Communications, Inc. serves in order to make a more accurate comparison between the number of complaints Comcast receives from subscribers for cable modem service and the number of Comcast's cable modem subscribers. Ms. Bogage, Director of Government and Community Affairs, Comcast Cable Communications, Inc., stated that a rough estimate of the number of cable modem customers served by Comcast is around 100,000, and that she cannot be more specific than this because Comcast considers this proprietary information.

With respect to Councilmember Silverman's question concerning the County Executive's response to Councilmember Subin's proposed amendment, Mr. Pasternak, Special Assistant to the County Executive, stated that as he mentioned in his email to the Council last week, the County Executive supports the amendment.

In response to Councilmember Silverman's question regarding the County Attorney's opinion on Mr. Subin's proposed amendment, Mr. Royalty, Associate County Attorney, said that he was not addressing a public policy issue when he suggested that the removal of the word "unforeseeable" could encourage the purchase of substandard equipment and software which might ultimately lead to an excuse to circumvent the regulations should the equipment fail. Mr. Royalty said that he views this as a possible "legal loophole." During

discussion, Councilmember Subin suggested substituting the word unpredictable for the word [unforeseeable].

During discussion, Ms. Bogage said that the language in the Executive Regulation concerning the failure of equipment or software would apply only to the owner or lessee of the equipment or software.

Councilmember Knapp expressed the view that the issue is whether Comcast should be held responsible for either predictable or unpredictable issues associated with equipment that has not been purchased by Comcast, and that he believes Comcast could not be held responsible for failure of equipment or software to operate properly that is not owned, leased or licensed by Comcast.

Councilmember Perez directed attention to the second page of a memorandum from Mr. Pasternak, dated June 9, 2004, and included in the Council's packet on page ©13. Mr. Perez said that in the first sentence, the first paragraph on ©13, it states that, "We would, however, support a change to the definition that adds 'the unforeseeable failure of equipment or software not owned, leased or licensed by the cable operator that provides access to the Internet'." During discussion, Mr. Perez noted that the County Attorney and the County Executive do not appear to be in agreement on the amendment, and requested Mr. Pasternak's comments in this regard.

Mr. Pasternak said that the positions held by Associate County Attorney Royalty and the County Executive differ because it is Mr. Royalty's responsibility to highlight legal issues and possible loopholes. He said that the Executive Regulation imposes customer service standards on items such as telephone availability, installation, and scheduling, and that cable operators are required to meet these standards under "normal working conditions." The Executive Regulation establishes a nonexclusive list of conditions that do not fall under the definition of normal operating conditions and are not within the control of the cable operator. One of those is whether the failure of equipment or software that is not leased, owned, or operated by the cable company is foreseeable. If that failure occurs, it is not within the control of the cable operator, it is not a normal operating condition, and the standards that must be met would not apply in those conditions. Mr. Pasternak noted the debate that might occur in the future if the word "unforeseeable" is retained, and said the memorandum he sent the Council in June 2004 was a response to a request to include for the first time the third party failure of equipment or software, and in incorporating the language into the Executive Regulation, he included the word "unforeseeable." He said that in considering the amendment, including whether a significant change should be made in the customer protection, he concluded that deleting the word "foreseeable" would have a minimal impact, if any, on the regulation.

Councilmember Perez pointed out that the term "foreseeable" has a legal connotation and implies that a person with reasonable prudence has to take appropriate steps, and a strong argument for its retention would be to ensure that an entity is doing aggressive monitoring of people with whom it subcontracts, and suggested that this might be part of the rationale behind the position of the Cable Administrator and the Cable Communications Advisory Committee (CCAC) on this issue.

Councilmember Leventhal reviewed the issues discussed and the positions presented thus far on Councilmember Subin's proposed amendment, and suggested that the Council attempt to reach some reasonable accommodation as to the meaning of the words in question. With respect to an issue raised by Councilmember Perez regarding subcontractors who were licensed to operate equipment, Mr. Leventhal expressed the view that this would not be a good argument either for retaining the word "unforeseeable."

Councilmember Floreen, in discussing comments made by Councilmember Knapp and Mr. Pasternak regarding the words "failure of equipment or software not owned, leased, or licensed by the cable operator," expressed the view that the use of the word "unforeseeable" in this context makes it a legal issue. Ms. Floreen described the experience that she and her husband had in obtaining and maintaining cable modem service, and stated that based on her experience, she believes this is a complicated set of arrangements in which it is easy for a person to blame one source or another for the problem, but that most people who are not experts on technology issues are dependent upon varying and often contradictory interpretations of equipment or software problems that may occur. She pointed out that this is a consumer protection issue and involves the question of who is responsible for equipment failure, and in the situation being discussed, Comcast would not be responsible. She said that there are many incidents that could be predicted and that that might affect someone's cable modem service, but it does not make sense to attempt to place this responsibility on an entity that is not responsible and who does not own the equipment or control it. Ms. Floreen said that she supports the deletion of the word "unforeseeable" because it suggests that one operator is going to anticipate, and be held responsible for, all equipment and software failures that might possibly occur. She said that she believes there is a limit to what the Council can expect to accomplish in its attempt to regulate business practices related to technology, and said that she believes the issue before the Council is what the Council can reasonably expect a company to control.

Councilmember Andrews stated that the principle at issue is accountability, and that the term foreseeable or unforeseeable represents a well established legal concept that implies that an entity is accountable for something that is reasonably predictable. Mr. Andrews suggested that "foreseeability" would reasonably apply in a situation where a cable operator inadvertently seriously damages leased equipment that subsequently fails and causes loss of service. He expressed the view that the deletion of the word "unforeseeable" provides a loophole in the Executive Regulation.

President Silverman, responding to Councilmember Leventhal's question, stated that he intends to have the Council vote on both of Councilmember Subin's proposed changes in §3, Definitions – Normal Operating Conditions. Mr. Leventhal objected, pointing out that the Council has not discussed the second change which is the insertion in the first sentence, on page 3, of the staff memorandum, after the words "access to the internet," the words <u>and violations of subscriber agreements by the subscriber</u>. Councilmember Leventhal moved, duly seconded, to divide the two issues in the proposed amendment for voting purposes.

ACTION: Agreed to divide the two issues in Councilmember Subin's motion for voting purposes.

YEAS: Denis, Leventhal, Andrews, Praisner, Perez
NAYS: Floreen, Subin, Knapp, Silverman.

Councilmember Leventhal made the motion.

Approved Councilmember Subin's amendment to §3, Definitions – Normal Operating Conditions, in the Executive Regulation, to delete in the first sentence, on page 3, of the staff memorandum, after the word "attacks;" the words [and the unforeseeable].

YEAS: Floreen, Subin, Leventhal, Knapp, Silverman
NAYS: Denis, Andrews, Praisner, Perez.

Councilmember Subin made the motion.

The Council turned its attention to the second issue in Mr. Subin's proposed amendment to §3, Definitions – Normal Operating Conditions, the proposed insertion in the first sentence, after the word "Internet," the words and violations of subscriber agreements by the subscriber.

Councilmember Leventhal quoted the following sentences from page 2, the second paragraph, beginning with the fourth sentence, of the addendum staff memorandum, the responses to the proposed amendments from the Office of Cable and Communication Services. "If an individual subscriber violates a subscriber agreement, such an action already frees the cable company from responsibility with regard to the violation itself. That does not affect the time in which the cable company is able to answer their phones or contact customers or respond to service calls. Inserting 'violations of subscriber agreements by the subscriber' simply doesn't make sense." Ms. Lawton, responding to Councilmember Leventhal's question, explained the meaning of "normal operating conditions" and "abnormal operating conditions" and noted the lack of control the County has concerning subscriber agreements.

Councilmember Leventhal directed attention to page 3 of the staff memorandum, the third paragraph, the penultimate sentence: "On the other hand, a subscriber's use of the service in a business enterprise in violation of the subscriber agreement may very well affect 'Normal Operating Conditions' as it relates to the cable operator's ability to meet the standards for restoring service that goes down."

In response to Councilmember Leventhal's question, Mr. Pasternak stated that the regulation applies to residential use, and that his understanding is that business use of a cable modem would be in violation of the residential subscriber agreement. Ms. Bogage agreed that the operation of a home-based business on the cable modem service provided by Comcast would be a violation of the residential subscriber agreement. She said that Ms. Lawton is correct in that some of these violations would result in a single service interpretation which would not affect the compliance numbers on the larger scale, but that a subscriber could engage in an activity in violation of the residential subscriber agreement that might cause an outage and affect more than

one subscriber and impact Comcast's ability to respond. Ms. Bogage said that this is why the amendment is proposed. Ms. Lawton explained that although a home-based business is excluded under the residential subscriber agreement, the consumer operating such a business would be protected under the County's franchise agreement with Comcast. Mr. Royalty confirmed Ms. Lawton's statement, noting that he sees no exclusion pertaining to cable modem service in the franchise agreement, nor in Chapter 8A of the County Code.

Mr. Pasternak said that the issue of a violation of the residential subscriber agreements is the reflection of the fact that a third party could use the system in a manner that would violate the subscriber agreement and set in motion a series of circumstances beyond the control of the cable operator, and, therefore, could result in a situation in which the which the operator should not be required to meet the performance standards. The issue that the Executive Branch has with a blanket exclusion of the violation of subscriber agreements is that the violation may not be the cause of the condition that would excuse compliance. Referring to his memorandum, Mr. Pasternak said that if the violation by the subscriber could be tied to the condition which creates the inability to comply, then it is a situation not in control of the cable operator and it would not be a normal operating condition. In response to Councilmember Leventhal's observation that Councilmember Subin's proposed amendment does not address the issue, Mr. Pasternak suggested the need to retain Mr. Subin's concept and focus it on the fact that the violation would need to be the cause of the condition that creates the noncompliance.

During discussion, Mr. Royalty suggested that a failure of the system might be the result of customers adding servers, routers, and other equipment to their computer. Ms. Lawton questioned how that would impact the ability of Comcast to answer its telephone or achieve the established standards that represent responses to customers and do not relate to technology.

Councilmember Leventhal suggested amending Councilmember Subin's amendment to include language to state that violations of the subscriber agreements by the subscriber that create the condition would not be within the control of the cable operator. Councilmember Subin accepted the language change as a friendly amendment.

Discussion was held concerning the measurement of the customer service standards and reporting requirements as this relates to incidents that occur that are in violation of the subscriber agreements; the inclusion of internet access in the County's franchise agreement and comments from Ms. Bogage regarding her view that language in the County Code supersedes language in the franchise agreement.

ACTION: Approved Councilmember Subin's amendment, as amended by Councilmember Leventhal, to §3, Definitions – Normal Operating Conditions, to insert in the first paragraph, after the words "access to the internet" the words "and violations of the subscriber agreements by the subscriber that create or cause the condition.

Councilmember Subin made the motion.

With respect to the amendment proposed by Councilmember Subin for §3, Definitions – System Outage or Outage, Councilmember Praisner explained that the Committee rejected the proposed amendment for the reasons described on page 4 of the staff memorandum.

Councilmember Subin said that his rationale for the deletion of the words [or should be known] in the third line, under System Outage or Outage, is similar to the rationale for the previous proposed amendment. He explained that he believes the three words are ambiguous and could be easily challenged in court.

Mr. Pasternak said that he believes the question involves the attempt to strike a balance between technology and the expectation of consumers, and that he has been advised that the cable company cannot discern whether the consumer has gone off line or whether there is a system outage.

Ms. Bogage explained that areas covered by cable modem are divided into geographic nodes, and that if enough customers (sometimes ten or more) go off line at the same time, the company investigates to determine whether a system outage has occurred; otherwise, the company relies on consumers to notify the company of outages.

Mr. Afflerbach, engineer, Columbia Telecommunications, technical consultant for the Council, stated that other cable companies that he is familiar with have had the difficulty described by Ms. Bogage in determining whether consumers have gone off line or whether an outage has occurred. With respect to the problem of determining when outages occur, Mr. Afflerbach said that he believes the monitoring of outages should not be the sole responsibility of the consumer, that a higher threshold than ten subscribers might be used if the cable company is having difficulty with identifying outages for ten subscribers, and that the cable company should develop a system to monitor the outages.

Councilmember Perez suggested that Councilmember Subin's proposed amendment be modified to include language that reflects "a rule of reason," i.e., a reasonable entity standard. Mr. Perez suggested adding after the words "or should be known," the words through the exercise of ordinary due diligence. Councilmember Subin accepted Mr. Perez' suggestion as a friendly amendment.

Councilmember Knapp requested and received clarification from Mr. Pasternak regarding the definition of the words "known" or "should be known," as the terms are used in the Executive Regulation; and in response to his question about whether a higher threshold than ten subscribers should be used to identify outages, Mr. Pasternak stated that the higher the number, the more people would be without service before an investigation is undertaken of the outage. Ms. Lawton pointed out that ten is the number that is used in the Executive Regulation concerning video consumers.

During discussion, and in response to Councilmember Leventhal's question, Ms. Bogage noted her concern regarding how the term "ordinary due diligence" will be interpreted.

Councilmember Praisner stated that she agrees with the proposed amendment, as amended, and other members of the MFP Committee expressed no objection to the modified amendment.

ACTION: Approved Councilmember Subin's amendment, as amended by Councilmember Perez, to §3, Definitions –System Outage or Outage, to read: System Outage or Outage: A Service Interruption affecting more than ten (10) subscribers to a Cable Modem Service, as reported by the subscribers, or as otherwise becomes known or should be known through the exercise of ordinary due diligence to the cable operator, in the same node serving area.

Councilmember Subin made the motion.

With respect to the amendment proposed by Councilmember Silverman for §4, Cable Modem Service Standards – Scheduling and Completing Service, Councilmember Praisner explained that the Committee rejected the proposed amendment for the reasons described on page 5 of the staff memorandum.

Mr. Pasternak said that the Executive Branch's position is the approach used in the proposed amendment. He explained that the proposed regulation requires that 95% of the time, measured quarterly, repairs must be completed within 36 hours, and the proposed amendment breaks it down and requires that 95% of the time repairs must be initiated within 24 hours and 75% of the time repairs must be completed within 36 hours. Mr. Pasternak said that the proposed amendment recognizes technology difficulties and the incentive the company would have to complete repairs after the repairs are initiated within 24 hours. He said that this is the reason he believes the proposed amendment represents a reasonable approach.

In response to Councilmember Silverman's question regarding the business practice of Comcast, Ms. Bogage said that Comcast's business practice is "same day service." If a customer calls, even if it is not for service interruption, the goal of Comcast is to schedule service for the same day or the next day, and noted that Comcast's record indicates that this goal is being achieved. She said that Comcast is complying with the requirement on the video side of completing repairs within 24 hours, 95% of the time, and it has been in compliance with that requirement throughout 2004. Ms. Bogage explained that cable modem is a more complex service than video service, and that extensive repair work would take more time. She pointed out that the language in the proposed amendment that calls for initiating repairs within 24 hours 95% of the time is language that is taken from the FCC standard for cable television service. During discussion, Ms. Bogage said that when a customer calls the cable company to report a service interruption and a visit is scheduled to the customer's home, it is necessary for the customer to be home when the technician arrives even if the repair is found to be outside of the home. She said that the repair is completed on the initial visit when possible and if not, another visit is scheduled

which would require additional time. During discussion, Councilmember Perez noted that if the Council had the benefit of additional data, it could make a more informed judgment on this issue.

Mr. Miller, Miller and VanEaton, LLP, special counsel to the County Executive clarified issues raised regarding regulations that local exchange telephone companies face when they offer digital subscriber line (DSL) facilities and services in the County, in accordance with the information contained in his memorandum to Mr. Royalty, dated July 12, 2004.

ACTION: Defeated Councilmember Silverman's amendment to §4, Cable Modem Service Standards – Scheduling and Completing Service, as more particularly set forth on pages 4 and 5 of the staff memorandum.

YEAS: Floreen, Subin, Knapp, Silverman

NAYS: Denis, Leventhal, Andrews, Praisner, Perez.

With respect to the amendment proposed by Councilmember Knapp for §4(d), Interruption of Service, Councilmember Praisner explained that the Committee rejected the proposed amendment for the reasons described on page 6 of the staff memorandum.

Councilmember Knapp stated that he appreciates the Committee's perspective, and explained that he offered the amendment because of his previous experience at the Celera Genomics Group. He discussed the conclusion that he reached regarding the limitation of the timeframe in which planned maintenance would occur and the requirement that a specific entity would be notified in advance of the anticipated service interruption, so that subscribers to the service would have a point of contact should they have questions regarding a service interruption.

Ms. Lawton suggested the alternative of having subscribers request notification from the cable company when planned maintenance is scheduled.

Ms. Bogage said that it would not be possible at this time for Comcast to email customers since email service is not provided locally, but it might be possible in the future to post planned maintenance on Comcast's web site. With respect to Mr. Knapp's proposed amendment, Ms. Bogage said that Comcast is following this procedure currently. She said that this is the requirement under the franchise agreement and the practice that Comcast has followed since she has been employed by Comcast which is more than three years. Ms. Bogage said that only a few complaints have been received concerning this practice.

Councilmember Leventhal expressed the view that 24-hour notice for planned maintenance is adequate, and that Comcast should be able to email customers that request to be notified of service interruptions that are anticipated to occur. Mr. Leventhal discussed with Ms. Bogage issues related to service interruptions and notification to all customers, with Ms. Bogage expressing the view that it would be difficult to notify customers by mail of a system outage because of planned maintenance because it is usually not planned that far in

advance of the time it is scheduled, but it might be possible to provide notice to customers by a "crawl notification" on a television channel.

ACTION: Approved Councilmember Knapp's amendment to §4(d), Interruptions of Service, as more particularly set forth on page 5 of the staff memorandum.

YEAS: Floreen, Subin, Leventhal, Knapp, Silverman

NAYS: Denis, Andrews, Praisner, Perez

Councilmember Knapp made the motion.

With respect to the amendment proposed by Councilmember Subin for §4(e)(4), Notice to Subscribers, Councilmember Praisner explained that the Committee rejected the proposed amendment for the reasons described on page 6 of the staff memorandum.

Mr. Pasternak said that the Executive Branch has been working with Comcast for some time on notification, and that with respect to Councilmember Subin's proposed amendment, he suggested adding a provision that says that all forms and notices distributed to customers that describe customer service policies and procedures shall be submitted for County review. Mr. Pasternak said that the County has the ability under the franchise agreement to review customer service policies and procedures and if the County believes that there is a violation of the franchise agreement or the consumer protection laws, the County could pursue the matter even in the absence of a regulation.

Councilmember Subin accepted Mr. Pasternak's suggestion to require all forms and notices to be subject to County review within a five-day period. Mr. Subin expressed the view that this requirement sets a bad precedent by requiring forms and notices of businesses to be reviewed by the County, but in this case, the Executive Regulation should be consistent with the franchise agreement.

In response to Councilmember Silverman's question, Mr. Pasternak said that if the County does not have the opportunity to review the forms and notices within the five-day period, it can request an extension of time from the cable company. He said that if the County had approval rights, and the cable company refused to extend the time when requested, the company would be free to send the forms and notices without the County's involvement. However, this would not occur in this case since the forms and notices would be submitted to the County for review only.

Based on the discussion of this issue, Councilmember Subin suggested that the language be revised to read: <u>All forms and notices distributed to customers that describe customer service policies and procedures shall be subject to prior County review to ensure they do not violate the franchise agreement or any other applicable law</u>.

Councilmember Praisner said that she supports the proposed amendment with the stipulations that it does not change the County's approval authority for the cable franchise, and that the notice or distribution or information being provided is in a form not yet printed.

ACTION: Approved an amendment to §4(e)(4), Notice to Subscribers, as modified by Councilmember Subin to read: All forms and notices distributed to customers that describe customer service policies and procedures shall be subject to prior County review to ensure they do not violate the franchise agreement or any other applicable law.

Councilmember Subin made the motion.

With respect to the amendment proposed by Councilmember Subin for §4(g), Rebate Policy, Councilmember Praisner explained that the Committee rejected the proposed amendment for the reasons described on page 7 of the staff memorandum.

In discussing the proposed amendment, Mr. Pasternak expressed the view that the phrase "under normal operating conditions" is not necessary because compliance standards do not apply when "normal working conditions" do not exist, and force majeure provisions excuse compliance. He said that the proposed change requiring a customer to request a rebate is inconsistent with other industries that are regulated by the FCC, and that the Executive Branch is not opposed to the change. Mr. Pasternak suggested that if the Council approves the proposed amendment, the rebate apply to a 24 hour period, not 36.

Councilmember Andrews noted that a subscriber automatically receives a credit of 10% of the subscriber's normal bill for each 24 hour period that service is out after it was scheduled to be restored. He pointed out that under the proposed amendment, the rebate would be reduced to $1.66 for each 24 hour period based on a monthly bill of $50. Mr. Andrews said that in his opinion, few people would take the time to telephone the cable company to obtain a small rebate and he believes that cable modem customers should not be placed in this situation to obtain a rebate that they deserve to have credited to them automatically for service paid but not received. Ms. Bogage clarified that rebates for outages are not automatic and have to be initiated by Comcast's customers. She said, however, that customers do request rebates frequently and that Comcast agrees with Mr. Andrews that customers should not pay for what they are not receiving.

Councilmember Leventhal said based on Mr. Pasternak's comments and his own understanding of the proposed amendment, he believes the rebate should not have to be initiated by the subscriber, Comcast should estimate and pro-rate the credit for the period of time of the service outage, and the time period should be 24 hours, not 36. Councilmember Leventhal proposed that Councilmember Subin's amendment be amended to delete in the first line of the proposed amendment, on page 7 of the staff memorandum, the words [under normal working conditions] and in the last sentence of that paragraph, the words [upon request by the subscriber]. Councilmember Subin accepted Mr. Leventhal's proposed amendment as a friendly amendment. Councilmember Leventhal suggested adding introductory language, as recommended by Council staff, to make it clear that video and cable modem services are treated differently because they

pose different and unique challenges, and that the treatment of the cable modem service should not be interpreted as affecting video standards. There was no objection to his suggestion.

ACTION: Approved Councilmember Subin's amendment to §4(g), Rebate Policy, as amended by Councilmember Leventhal, to delete in the first line, the first paragraph, on page 7 of the staff memorandum, the words [under normal working conditions] and in the last sentence of that paragraph, the words [upon request by the subscriber].

Councilmember Subin made the motion.

With respect to the amendment proposed by Councilmember Silverman for §6, Enforcement, Councilmember Praisner explained the proposed amendment, the Committee's support for maintaining the existing remedies as provided under the franchise agreements, its request for information on the levels of fines and types of remedies currently provided, and on how the Office of Cable and Communication Services implements these remedies.

Councilmember Silverman said that the enforcement remedies in the Executive Regulation involve revoking or terminating the franchise agreement. He said that although he supports levying fines for violations of customer service standards, he is concerned that a large amount of complaints within a short period of time might trigger the revocation of the franchise under § 14(f) of the cable franchise agreements. Mr. Silverman noted the impact that this would have on all of Comcast's cable customers. He said that as an alternative, he is attempting to find a way to impose liquidated damages for violations.

Councilmember Praisner said that she understands Mr. Silverman's point and she cannot perceive of a situation in which she would want to terminate a franchise agreement but she would like the option of doing so. She said that in the event that something becomes so egregious, she believes it is important for the County to have the ability to exercise that right in exchange for the right that the County has given to the cable company to operate in the County. She said that she would like to incorporate that check and balance into the Executive Regulation, noting that it does not hurt the cable companies or the County.

Mr. Pasternak suggested as a reasonable alternative, the use of the increased fines for customer service standard violations that were imposed in the transfer agreement from Prime Communications to Comcast. He said that the fines were imposed on a sliding scale, beginning with $500 for the first violation and increased to $5,000 and $10,000 for violations occurring during a specified period of time.

Councilmember Praisner said that she is not opposed to increasing the fines for violations, but believes that the ability to terminate or revoke a franchise should be retained. During discussion, Ms. Praisner pointed out that the issue and debate of open access over cable modem predated the introduction of Bill 28-02, Cable Communications – Amendments, which required regulations to be written for cable modem service. Mr. Pasternak noted the need for the Council to consider the impact of standards and potential penalties on the ability of cable companies to operate and obtain financing in view of the fact that the County is likely to be one

of the first counties in the country to impose standards on cable modem service. Councilmember Silverman reiterated his concern about the impact on cable customers if the County should terminate or revoke the franchise agreement. He expressed the view that this is a remedy that the County will never use and he believes it should not be retained as a potential remedy. Councilmember Perez stated that he believes that the existence of a remedy that is unlikely to be used can be a good deterrent, but he will support the alternative proposed by Mr. Pasternak that provides for increased fines for customer service standard violations.

Councilmember Silverman revised his proposed amendment to substitute increased fines for customer service standard violations, to divide the language concerning written notice into two separate sentences as proposed by Council staff, and include language to ensure that the enforcement section of the Executive Regulation is not construed to preclude the rights of subscribers under County law.

ACTION: Defeated Councilmember Silverman's proposed amendment for §6, Enforcement, as amended and described above.

Councilmember Silverman made the motion.

YEAS: Floreen, Subin, Knapp, Silverman
NAYS: Denis, Leventhal, Andrews, Praisner, Perez

Councilmember Leventhal said that he voted against the motion because he believes his position on notification of customers and on penalties for violations for customer service standards should be the same. Mr. Leventhal noted that he voted in support of Councilmember Knapp's proposed amendment to §4 (d), Interruptions of Service, because he was persuaded by Comcast that its notification requirements should be the same for both internet and video customers.

The Council reviewed the proposed technical amendment on page 9 of the staff memorandum that proposes to delete §3(2)iv. Definitions.

ACTION: Approved the deletion of §3(2)iv. Definitions, as recommended by the MFP Committee and the Executive Branch.

The MFP Committee made the motion.

SUBJECT: **Legislative Session**

See the legislative journal of this date for the minutes of the legislative session.

The Council recessed at 1:30 P.M. and reconvened at 2:05 P.M.

SUBJECT: **Public Hearing on Bill 18-04, Personnel – Retirement – Police**

ACTION: The public hearing was conducted. Persons wishing to submit additional information for the Council's consideration should do so by the close of business July 19, 2004.

SUBJECT: **Public Hearing on Expedited Bill 19-04, Personnel – Collective Bargaining – Police**

ACTION: The public hearing was held and the record was closed.

SUBJECT: **Public Hearing on a Special Appropriation to the FY05 Operating Budget of the Montgomery County Fire and Rescue Service for Outreach and Recruitment, in the Amount of $200,000**

ACTION: The public hearing was held and the record was closed.

SUBJECT: **Legislative Session (Continued)**

See the legislative journal of this date for the minutes of the legislative session.

SUBJECT: **Public Hearing on a Special Appropriation to the FY05 Operating Budget of the Montgomery County Fire and Rescue Service for Outreach and Recruitment, in the Amount of $200,000**

Councilmember Knapp, Lead Member for Fire and Rescue Services on the Public Safety (PS) Committee, presented the report of the Committee, as outlined in the addendum from Legislative Analyst Davidson, dated July 12, 2004.

Councilmember Subin spoke in support of the Committee recommendation to approve the special appropriation. He said that because there are many needs within the Department that should be addressed, the Committee did not believe the Fire Administrator would be able to fund the $200,000 for outreach and recruitment without having a detrimental impact on the Department. Mr. Subin stated that the Committee did not support the County Executive's view that a special appropriation is not necessary at this time because it is early in FY05 and that he would make a determination in January on whether an appropriation is necessary. He said that outreach and recruitment is an important issue and one of the Council's top priorities.

Councilmember Praisner said that although she supports the recommendation to approve the special appropriator, she is concerned that within three weeks of the beginning of the fiscal year, the Council will be approving a special appropriation for $200,000. She stated that it is important to keep track of the supplementals that are introduced and adopted, to identify its

impact on the budget and the reserve balance, and to know the fiscal implications for the next fiscal year. Ms. Praisner requested that staff prepare a rolling chart that identifies the ongoing costs beyond the current budget, including its impact on both the reserve and the budget balance for the current fiscal year.

Councilmember Perez expressed appreciation to the Committee for considering the issue expeditiously. He said that he is convinced that there is a commitment that will be sustained in addressing the challenges of recruiting and hiring individuals who are both well qualified and racially and ethnically diverse. Mr. Perez said five years ago, the Council allocated $400,000 for outreach and recruitment efforts and now it is spending approximately one-half that amount. He said that the rescue side of the equation is 90% of the job, that community oriented fire and rescue works best, and that it is important that the County have a racially and ethnically diverse work force to carry out the education and prevention roles.

Councilmember Andrews spoke in support of the Committee recommendation, and expressed appreciation to Councilmember Perez for his initiative in this area. He said that the Committee concluded that the special appropriation was necessary in order to recruit and hire individuals who are well qualified and racially and ethnically diverse.

ACTION: Adopted Resolution 15-684, approving the subject special appropriation.

The Public Safety Committee made the motion.

SUBJECT: **Legislative Session (Continued)**

See the legislative journal of this date for the minutes of the legislative session.

The meeting adjourned at 4:00 P.M.

This is an accurate account of the meeting:

_____

Mary A. Edgar, CMC
Clerk of the Council

BILL 2-07

MF
CC
SBF
LL
LAM
EMC
KB

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

[redacted]

025466

Douglas M. Duncan
County Executive

MEMORANDUM

November 7, 2006

TO: George L. Leventhal, President, Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Expedited Bill to Clarify the Term of the Permanent Umpire under the Police Labor Relations Law

Last year, Louis Aronin, who, as Permanent Umpire, had administered the Police Labor Relations Law for many years, passed away in the middle of a 5-year term that was to expire on December 3, 2007. After much discussion, the County and the Fraternal Order of Police (FOP) have finally agreed on an individual to jointly recommend to the County Executive and the Council to succeed Mr. Aronin. The statute, however, is silent concerning whether a new Permanent Umpire must serve the remainder of Mr. Aronin's term or a new 5-year term.

The FOP favors amending the statute to provide that, when a vacancy occurs mid-term in the position of Permanent Umpire, the new Permanent Umpire must serve for the remainder of the predecessor's term. We concur in this approach because it will allow the parties to observe the performance of the new Permanent Umpire without being committed to that individual for 5 more years. Of course, under the law, the new appointee would be eligible for reappointment to a new 5-year term at the completion of the current term that ends in 2007.

The attached expedited bill provides that, if the Permanent Umpire dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve as Permanent Umpire, the County Executive must appoint a new Permanent Umpire to serve out the remainder of the previous appointee's 5-year term.

DMD:cmr

Attachments

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2006 NOV -9 AM 11:13

Expedited Bill No. _____
Concerning: Police Labor Relations – Permanent Umpire
Revised: _____ Draft No. _____
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

(1) clarify the procedure to be followed when a vacancy occurs mid-term in the position of permanent umpire to administer the Police Labor Relations Law;
(2) provide for the appointment of a replacement to serve the remainder of the 5-year term; and
(3) generally amend the law regarding the appointment of the permanent umpire.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-37

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

APPROVED AS TO FORM AND LEGALITY.
OFFICE OF COUNTY ATTORNEY
BY Marc Hansen
DATE 11/3/06

Sec. 1. Section 33-77 is amended, as follows:

33-77. Permanent umpire.

* * *

(d) If the permanent umpire dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve in the position, the County Executive must appoint a new permanent umpire, with the confirmation of the County Council, to serve out the remainder of the 5-year term. The newly appointed permanent umpire is eligible for reappointment under paragraph (b) above.

* * *

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

_____

George L. Leventhal, President, County Council Date

_____

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

_____

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill -06, *Police Labor Relations – Permanent Umpire*

DESCRIPTION: The requested legislation amends County Code Section 33-37, *Permanent Umpire*, to provide that if a vacancy occurs mid-term in the position of Permanent Umpire, the new Permanent Umpire must be appointed to serve out the remainder of the predecessor's term rather than serve a new 5-year term.

PROBLEM: For many years, Louis Aronin served as the Permanent Umpire under the Police Labor Relations Law. Mr. Aronin passed away last year in the middle of a 5-year term that expires on December 3, 2007. The statute is silent concerning whether a replacement must serve out the remainder of Mr. Aronin's term or serve a new 5-year term. The Fraternal Order of Police (FOP) and the County Executive jointly support legislation requiring that the new Permanent Umpire serve the remainder of the predecessor's term. This will allow the parties to observe the performance of the new Permanent Umpire without being committed to that individual for 5 years.

GOALS AND OBJECTIVES: To clarify the procedure to be followed when a vacancy occurs mid-term in the position of Permanent Umpire to administer the Police Labor Relations Law.

COORDINATION: Office of Human Resources

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: n/a

EVALUATION: n/a

EXPERIENCE ELSEWHERE: n/a

SOURCE OF INFORMATION: Stuart Weisberg, OHR (7-5154)

APPLICATION WITHIN MUNICIPALITIES: n/a

PENALTIES: n/a

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APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Tuesday, February 27, 2007

The County Council for Montgomery County, Maryland convened in the Council Conference Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:15A.M. on Tuesday, February 27, 2007.

PRESENT

Councilmember Marilyn Praisner, President
Councilmember Michael Knapp, Vice President
Councilmember Phil Andrews
Councilmember Roger Berliner
Councilmember Marc Elrich
Councilmember Valerie Ervin
Councilmember Nancy Floreen
Councilmember George Leventhal
Councilmember Duchy Trachtenberg

The President in the Chair.

SUBJECT: **Breakfast Meeting with the Washington Suburban Sanitary Commission (WSSC)**

The Council met with Mr. Brunhart, General Manager, and Commissioner Botts, Vice Chair, WSSC, and commented on WSSC's strategic priorities as outlined by Mr. Brunhart.

Ms. Praisner requested Council staff to include a reference to the WSSC's infrastructure plan in any findings of the interagency Infrastructure Maintenance Task Force Report.

The Council recessed at 10:00 A.M. and reconvened in the Council Hearing Room at 10:16 A.M.

The invocation was given by Venkataramany Balakrishnan, Sri Siva Vishnu Temple.

SUBJECT: **General Business**

Agenda and Calendar Changes

Ms. Lauer, Clerk of the Council, noted an addendum to the agenda, indicating that on April 10, the Council will announce a May hearing date for Capital budget and Capital Improvements Program (CIP) for the Montgomery County Public Schools; and that action will be scheduled at a later date on the resolution to designate sources of funding for annual appropriation to the Montgomery Housing Initiative Fund (HIF).

Receipt of Petitions

Acknowledged receipt of a petition in support of full funding for the public libraries FY08 operating budget.

Approval of Minutes

Approved the minutes of February 1, 5, and 6, 2007.

Mr. Andrews made the motion. Mr. Berliner and Mr. Elrich were temporarily absent.

SUBJECT: **Consent Calendar**
Reference: Agenda Item 3

Approved the Consent Calendar:

Introduced a resolution to designate sources of funding for annual appropriation to the Montgomery Housing Initiative Fund (HIF);

Introduced a supplemental appropriation to the Montgomery College's FY07 Capital Budget and amendment to the FY07-12 Capital Improvements Program - $1,300,000 for Takoma Park Campus Expansion;

Introduced a resolution to redesignate County's Local Management Board;

Received and released Office of Legislative Oversight Report 2007-6, Base Budget Review of the Montgomery County Fire and Rescue Service, Phase 1;

Approved Audit contract Amendment #4 with KPMG, LLP;

Resolution 16-57, approving the policy regarding loans from the General Fund to other funds within County Government;

Resolution 16-58, approving Executive/Council Memorandum of Understanding regarding County Cable Montgomery;

Deferred consideration of the supplemental appropriation to the County Government's FY07 Operating Budget, Montgomery County Fire and Rescue Service - $243,680 for Staffing for Adequate Fire and Emergency Response (SAFER) grant, pending receipt of additional cost information from Executive Branch staff. Mr. Andrews requested Executive Branch staff to provide a full accounting of costs associated with the SAFER grant.

Resolution 16-59, amending Council Rules of Procedure;

Resolution 16-60, approving a special appropriation to the County Government's FY07 Operating Budget, Department of Correction and Rehabilitation - $40,820 for Pre-Trial Services Division;

Resolution 16-61, approving Executive Regulation 20-06, Sidewalk Vendor Operation and License; and

Later in the meeting, Mr. Berliner brought to the Council's attention the request from the Village of Friendship Heights that it be notified by the Department of Permitting Services (DPS) when vendor permits are requested for areas within the Village of Friendship Heights. Council staff was directed to notify DPS staff of the request.

Resolution 16-62, approving Executive Regulation 24-06AM, Floodplains.

Mr. Knapp made the motion.

SUBJECT: **Legislative Session**

See the legislative journal for the minutes of this session.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND SITTING AS A DISTRICT COUNCIL FOR THAT PORTION OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN MONTGOMERY COUNTY

SUBJECT: **Resolution to Revise the Process for Consideration of Zoning Text Amendments**

Reference: Agenda Item 5

Ms. Praisner, Chair of the Planning, Housing, and Economic Development (PHED) Committee, reviewed the Committee report and recommendation.

Accepted Mr. Berliner's suggestion that the order of items 4 (d) and (e), shown on ©4 of staff's memorandum, be reversed.

Mr. Knapp suggested that the revised process be made available on the Council website.

Resolution 16-63 was adopted, revising the process for consideration of zoning text amendments.

The PHED Committee made the motion.

SUBJECT: **Receipt and Release – Office of Legislative Oversight (OLO) Report 2007-5, Key Fiscal Indicators for Montgomery County Public Schools**

Reference: Agenda Item 6

Received and released OLO Report 2007-5.

Mr. Elrich made the motion.

Mr. Elrich suggested that the correlation between the addition of staff and class size reduction be tracked, that an accurate definition of the term 'proficiency' be identified, and that Standard Aptitude Test (SAT) scores be used as a fiscal indicator.

Ms. Floreen suggested that OLO staff clarify the use of the terms 'cost' and 'expenditure' and expressed interest in a longer term analysis of successful student achievement.

Ms. Trachtenberg requested additional information on school-based services and recommended that costs associated with these services be utilized as a fiscal indicator.

The Council recessed at 11:55 A.M. and reconvened at 1:35 P.M.

SUBJECT: **Public Hearing on a Supplemental Appropriation to the FY07 Operating Budget, Montgomery County Fire and Rescue Service - $1,461,940 for Local Fire and Rescue Departments, FY06 Senator Amoss Fire, Rescue and Ambulance Fund**

Reference: **Agenda Item 7**

The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business March 2, 2007.

A Public Safety Committee worksession is tentatively scheduled for March 8, 2007 at 10:30 A.M.

SUBJECT: **Public Hearing on Expedited Bill 3-07, Planning Board – Salaries**
Reference: **Agenda Item 8**

The public hearing was conducted and the record was closed.

A Management and Fiscal Policy Committee worksession is tentatively for March 1, 2007 at 9:00 A.M.

SUBJECT: **BRIEFING - Events related to Charter House Evacuation**
Reference: Agenda Item 9

Received a briefing from Mr. Reilly, Assistant Chief Administrative Officer, on the events surrounding the Charter House evacuation; and comments from Mr. Cassidy, President, and Ms. Price, Corresponding Secretary, Mr. Ricketts, Coordinating Secretary and Ms. Holmes, Charter House Residents Association on the evacuation, interim housing and services, and re-occupation of the building.

Requested Executive staff provide a list of County multi-family residences that may be vulnerable in a similar type of situation.

Suggested the various issues related to the Charter House evacuation, conditions of the building, fund for improvement of the building, security, and other issues be reviewed by the Planning, Housing, and Economic Development, Public Safety, and Health and Human Services Committees.

SUBJECT: **Proposed Closed Session – Motion to Close**

ACTION: Agreed to meet in closed session for the purpose of consulting with counsel to obtain legal advice regarding pending or potential litigation, pursuant to Maryland Code, State Government Article, §10-508 (a) (7) and (8). Topic is appeals from Board of Appeals.

Mr. Berliner made the motion. Ms. Floreen and Mr. Knapp were temporarily absent.

The County Council convened in the Council Conference Room in closed session from 3:10 P.M. until 4:05 P.M.

The meeting adjourned at 4:05 P.M.

This is an accurate account of the meeting:

_____
Linda M. Lauer, Clerk of the Council

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APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Tuesday, February 27, 2007

The County Council for Montgomery County, Maryland convened in the Council Conference Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:15A.M. on Tuesday, February 27, 2007.

PRESENT

Councilmember Marilyn Praisner, President
Councilmember Michael Knapp, Vice President
Councilmember Phil Andrews
Councilmember Roger Berliner
Councilmember Marc Elrich
Councilmember Valerie Ervin
Councilmember Nancy Floreen
Councilmember George Leventhal
Councilmember Duchy Trachtenberg

The President in the Chair.

SUBJECT: **Breakfast Meeting with the Washington Suburban Sanitary Commission (WSSC)**

The Council met with Mr. Brunhart, General Manager, and Commissioner Botts, Vice Chair, WSSC, and commented on WSSC's strategic priorities as outlined by Mr. Brunhart.

Ms. Praisner requested Council staff to include a reference to the WSSC's infrastructure plan in any findings of the interagency Infrastructure Maintenance Task Force Report.

The Council recessed at 10:00 A.M. and reconvened in the Council Hearing Room at 10:16 A.M.

The invocation was given by Venkataramany Balakrishnan, Sri Siva Vishnu Temple.

SUBJECT: **General Business**

Agenda and Calendar Changes

Ms. Lauer, Clerk of the Council, noted an addendum to the agenda, indicating that on April 10, the Council will announce a May hearing date for Capital budget and Capital Improvements Program (CIP) for the Montgomery County Public Schools; and that action will be scheduled at a later date on the resolution to designate sources of funding for annual appropriation to the Montgomery Housing Initiative Fund (HIF).

Receipt of Petitions

Acknowledged receipt of a petition in support of full funding for the public libraries FY08 operating budget.

Approval of Minutes

Approved the minutes of February 1, 5, and 6, 2007.

Mr. Andrews made the motion. Mr. Berliner and Mr. Elrich were temporarily absent.

SUBJECT: **Consent Calendar**
Reference: Agenda Item 3

Approved the Consent Calendar:

Introduced a resolution to designate sources of funding for annual appropriation to the Montgomery Housing Initiative Fund (HIF);

Introduced a supplemental appropriation to the Montgomery College's FY07 Capital Budget and amendment to the FY07-12 Capital Improvements Program - $1,300,000 for Takoma Park Campus Expansion;

Introduced a resolution to redesignate County's Local Management Board;

Received and released Office of Legislative Oversight Report 2007-6, Base Budget Review of the Montgomery County Fire and Rescue Service, Phase 1;

Approved Audit contract Amendment #4 with KPMG, LLP;

Resolution 16-57, approving the policy regarding loans from the General Fund to other funds within County Government;

Resolution 16-58, approving Executive/Council Memorandum of Understanding regarding County Cable Montgomery;

Deferred consideration of the supplemental appropriation to the County Government's FY07 Operating Budget, Montgomery County Fire and Rescue Service - $243,680 for Staffing for Adequate Fire and Emergency Response (SAFER) grant, pending receipt of additional cost information from Executive Branch staff. Mr. Andrews requested Executive Branch staff to provide a full accounting of costs associated with the SAFER grant.

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Suggested the various issues related to the Charter House evacuation, conditions of the building, fund for improvement of the building, security, and other issues be reviewed by the Planning, Housing, and Economic Development, Public Safety, and Health and Human Services Committees.

SUBJECT: **Proposed Closed Session – Motion to Close**

ACTION: Agreed to meet in closed session for the purpose of consulting with counsel to obtain legal advice regarding pending or potential litigation, pursuant to Maryland Code, State Government Article, §10-508 (a) (7) and (8). Topic is appeals from Board of Appeals.

Mr. Berliner made the motion. Ms. Floreen and Mr. Knapp were temporarily absent.

The County Council convened in the Council Conference Room in closed session from 3:10 P.M. until 4:05 P.M.

The meeting adjourned at 4:05 P.M.

This is an accurate account of the meeting:

_____
Linda M. Lauer, Clerk of the Council

F / Hussmann

MY NAME IS WILLIAM H. HUSSMANN, CHIEF ADMINISTRATIVE OFFICER FOR MONTGOMERY COUNTY.

IN MAY OF THIS YEAR, I PRESENTED TO THE COUNTY COUNCIL A COMPREHENSIVE PROPOSAL FOR REVISING THE PAY PLAN FOR MONTGOMERY COUNTY EMPLOYEES. AS YOU WILL RECALL, THAT PAY PROPOSAL INVOLVED CURTAILMENT OF INCREMENTS FROM APPROXIMATELY FIVE PERCENT (5%) TO TWO PERCENT (2%), EXTENDING THE RANGE OF PAY BY ELIMINATING THE PROVISIONS FOR LONGEVITY INCREMENTS, AND ADJUSTING THE PAY PLAN ANNUALLY BY AN AMOUNT NOT LESS THAN SEVENTY-FIVE PERCENT (75%) OF THE CONSUMER PRICE INDEX. THAT PAY PLAN HAS BEEN SUCCESSFULLY IMPLEMENTED.

IT REMAINS FOR THE COUNCIL TO ADOPT INTO LAW PROVISIONS FOR ADJUSTING THE PAY PLAN ANNUALLY BY AN AMOUNT NOT LESS THAN SEVENTY-FIVE PERCENT (75%) OF THE CONSUMER PRICE INDEX.

IN ADOPTING RESOLUTION NO. 8-1935, ON MAY 9, 1978, THE COUNCIL RESOLVED THAT "IT SHALL BE THE POLICY OF THE MONTGOMERY COUNTY GOVERNMENT EFFECTIVE JULY 1, 1979, TO ADOPT ANNUALLY THE UNIFORM SALARY PLAN FOR ALL CLASSIFIED EMPLOYEES OF THE MERIT SYSTEM OF THE MONTGOMERY COUNTY GOVERNMENT BASED ON NOT LESS THAN SEVENTY-FIVE PERCENT (75%) OF THE NOVEMBER CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON, D.C. AREA: AND BE IT FURTHER RESOLVED THAT THE COUNTY COUNCIL REQUESTS THE COUNTY EXECUTIVE TO SUBMIT LEGISLATION FOR ITS CONSIDERATION TO PROVIDE BY LOCAL LAW FOR THE IMPLEMENTATION OF THE POLICY WITH REGARD TO THE ANNUAL UNIFORM SALARY PLAN ADJUSTMENT AS AFOREMENTIONED". IT IS MY RECOLLECTION THAT SUCH RESOLUTION WAS PASSED UNANIMOUSLY BY THE COUNTY COUNCIL.

THE SEVENTY-FIVE PERCENT (75%) CONSUMER PRICE INDEX ADJUSTMENT ANNUALLY IS AN EXTREMELY IMPORTANT PART OF OUR OVERALL PAY SYSTEM, AS I OUTLINED TO YOU IN MAY. THIS GOVERNMENT HAS TAKEN A RATHER EXTREME ACTION IN REDUCING THE AMOUNT OF OUR ANNUAL MERIT INCREMENTS FROM FIVE PERCENT (5%) [illegible] THE LOWEST IN THIS METROPOLITAN AREA AND AMONG THE

LOWEST AMONG LOCAL GOVERNMENTS IN THE COUNTRY.

THIS WAS DONE DELIBERATELY. YOU WILL RECALL THAT UNDER THE OLD PAY SYSTEM SOME FORTY PERCENT (40%) OF OUR EMPLOYEES HAD ALREADY REACHED THE MAXIMUM OF THE NORMAL STEPS OF THE PAY GRADE (EXCLUDING LONGEVITIES), RESULTING IN A SITUATION WHERE OUR MOST EXPERIENCED AND VALUED EMPLOYEES RECEIVED ONLY A COST-OF-LIVING ADJUSTMENT ANNUALLY, WHICH WAS NORMALLY PROVIDED AT THE "ELEVENTH HOUR" OF THE BUDGET DELIBERATION PROCESS, MANY TIMES INFLUENCED BY SPECIAL INTEREST AND OTHER PRESSURE GROUPS AND CERTAINLY WITHOUT A DELIBERATE SYSTEMATIC METHOD OF DEVELOPMENT.

WE THEN MADE A CONSCIOUS DECISION TO PLACE MOST OF OUR SALARY RESOURCES TOWARD MINIMIZING THE ADVERSE AFFECTS OF INFLATION BORNE BY ALL EMPLOYEES.

THE SEVENTY-FIVE PERCENT (75%) FIGURE IS AN ARBITRARY ONE. AN EMPLOYEE'S SALARY, HOWEVER, IS ONLY A PORTION OF THE TOTAL COMPENSATION RECEIVED. WHEN THE COST OF FRINGE BENEFITS IS CONSIDERED, SUCH AS GROUP INSURANCE, HOSPITALIZATION, ETC., SEVENTY-FIVE PERCENT (75%) IS AN EQUITABLE ANNUAL ADJUSTMENT. IT IS, INCIDENTALLY, THE SAME FIGURE RECEIVED BY OUR ELECTED OFFICIALS FOR THEIR ANNUAL PAY ADJUSTMENT.

THIS PAST YEAR, YOU APPROVED A 6.8% COST-OF-LIVING FIGURE FOR OUR EMPLOYEES. THIS FIGURE CORRESPONDED VERY WELL WITH THE INCREASE IN HOUSEHOLD BUDGETS FOR THE PERIOD AUGUST 1976 TO AUGUST 1977. SUCH HOUSEHOLD BUDGETS, WHEN MEDICAL CARE EXPENSES ARE EXCLUDED, FOR A FAMILY OF FOUR INCREASED BY 6.7% FOR LOWER-LEVEL FAMILY BUDGETS; BY 7.6% FOR INTERMEDIATE-LEVEL FAMILY BUDGETS; AND 6.8% FOR HIGHER-LEVEL FAMILY BUDGETS.

DURING THE SEVEN YEARS SINCE FY 73, THE CONSUMER PRICE INDEX FOR THE WASHINGTON METROPOLITAN AREA HAS RISEN BY 47.4%. HAD THE SEVENTY-FIVE PERCENT (75%) CONSUMER PRICE INDEX PROVISION BEEN IN EFFECT DURING THAT

PERIOD, OUR EMPLOYEES WOULD HAVE RECEIVED AGGREGATE INCREASES AMOUNTING TO 35.5%. IN FACT, THEY RECEIVED INCREASES AMOUNTING TO 33.3%, OR 70% OF THE CONSUMER PRICE INDEX. IT IS INTERESTING TO NOTE THAT THE FEDERAL GOVERNMENT SALARIES, WHICH HAVE A MAJOR IMPACT ON INCOME LEVELS IN THIS AREA, ROSE BY 38.15%, OR 80% OF THE CONSUMER PRICE INDEX. THEREFORE, WHEN CONSIDERING THE SIGNIFICANTLY DECREASED AMOUNT OF THE MERIT INCREMENT, THE SEVENTY-FIVE PERCENT (75%) COST-OF-LIVING ADJUSTMENT IS NOT AT ALL UNREALISTIC.

THE SEVENTY-FIVE PERCENT (75%) COST-OF-LIVING ADJUSTMENT ALSO IS REASONABLE WHEN WE COMPARE THE INCREASES IN THE AGGREGATE PERSONAL INCOME LEVELS OF OUR MONTGOMERY COUNTY CITIZENS AND WITH THE INCREASES IN PER CAPITA INCOME. FOR THE SEVEN CALENDAR YEARS FROM 1972 THRU 1978, PERSONAL INCOME IN MONTGOMERY COUNTY ROSE FROM $3.92 BILLION TO AN ESTIMATED $6.85 BILLION, OR 74%. FOR THE SAME PERIOD OF TIME, PER CAPITA INCOME INCREASED FROM $7,172 TO $11,520, OR 61%.

AS I INDICATED TO YOU IN MAY, OUR REDUCED INCREMENT POLICY RESULTS IN THE NEXT FIVE FISCAL YEARS SAVINGS AMOUNTING TO SOME SEVEN MILLION DOLLARS ($7,000,000). OUR EMPLOYEES HAVE BEEN INFORMED OF THIS AND UNDERSTAND IT. HOWEVER, IT IS EXTREMELY IMPORTANT THAT THEY BE ASSURED THAT THE POLICY OF THE COUNTY GOVERNMENT WILL BE TO AFFORD SOME PROTECTION AGAINST SOME OF THE RAVAGES OF INFLATION.

THE IMPACT OF THE SEVENTY-FIVE PERCENT (75%) COST-OF-LIVING POLICY FOR THE FY 80 OPERATING BUDGET WILL AMOUNT TO SOME $4.6 MILLION BASED ON AN ANTICIPATED CONSUMER PRICE INDEX INCREASE OF 7%, OR A 5.25% COST-OF-LIVING ADJUSTMENT. AN ADDITIONAL AMOUNT OF $2.2 MILLION FOR THE REDUCED INCREMENT POLICY AMOUNTS TO A TOTAL SALARY AND WAGE IMPACT OF $6.8 MILLION. UNDER THE OLD POLICIES, A 6% COST OF LIVING AND THE ALMOST 5% INCREMENT POLICY WOULD HAVE A TOTAL BUDGETARY IMPACT OF $8.4 MILLION.

ONE TECHNICAL POINT AS TO THE BILL ITSELF--THE LANGUAGE ON PAGE 2, LINES 2 THRU 4, PROVIDES THAT THE "PERCENTAGE CHANGE WILL BE BASED ON THE LATEST PUBLISHED INDEX FOR THE CALENDAR YEAR PRECEDING THE FISCAL YEAR IN WHICH THE ADJUSTMENT IS TO BE PAID." SUCH LANGUAGE CAUSES SOME PROBLEM IN TRYING TO PLAN THE BUDGET PROPERLY. HISTORICALLY, THE COUNTY HAS USED THE AUGUST-TO-AUGUST CONSUMER PRICE INDEX. HOWEVER, THE DEPARTMENT OF LABOR HAS RECENTLY CHANGED THE REPORTING PERIOD TO EVERY OTHER MONTH. TECHNICALLY, THEN, THE NOVEMBER-TO-NOVEMBER INDEX IS THE LATEST PUBLISHED INDEX FOR THE CALENDAR YEAR. I UNDERSTAND THAT THE REASON FOR THE GENERAL LANGUAGE IS TO PREVENT THE NECESSITY OF AMENDING THE LAW IN THE FUTURE IF THE INDEX PERIOD CHANGES. HOWEVER, TO ENSURE THAT WE HAVE PLENTY OF LEAD TIME IN PLANNING THE BUDGET, I STRONGLY SUGGEST THAT THE LANGUAGE BE CHANGED TO PROVIDE FOR AN ADJUSTMENT TO BE BASED ON THE SEPTEMBER-TO-SEPTEMBER CONSUMER PRICE INDEX CHANGE.

I HAVE NOTICED THAT THERE ARE SOME AMENDMENTS OFFERED TO BILL NO. 37-78 WHICH WOULD EMPHASIZE THAT ANY COST-OF-LIVING ADJUSTMENT IS SUBJECT TO THE AVAILABILITY OF FUNDS AS PROVIDED AND APPROVED BY THE COUNTY COUNCIL. THIS GOES WITHOUT SAYING, HOWEVER, TO INCLUDE SUCH LANGUAGE IN THE BILL SEEMS TO ME TO BE AN UNNECESSARY DIMINISHING OF THE STATED POLICY OF THE COUNTY GOVERNMENT AND MIGHT BE CONSTRUED BY FUTURE ELECTED OFFICIALS TO BE SOMETHING LESS THAN A DEDICATED COMMITMENT.

SINCE OUR COMMITMENT TO AN ANNUAL ADJUSTMENT TO THE PAY PLAN EQUAL TO SEVENTY-FIVE PERCENT (75%) OF THE CONSUMER PRICE INDEX AS PRESENTED DURING THE BUDGET DELIBERATIONS THIS YEAR, WE HAVE ALL BECOME ACUTELY AWARE OF EFFORTS TO LIMIT THE ANNUAL GROWTH OF OUR OPERATING BUDGET. THE QUESTION THEN ARISES, DOES A PLANNED ANNUAL ADJUSTMENT IN OUR WAGES AND SALARIES IN THE EVENT OF THE SUCCESSFUL PASSAGE OF AMENDMENTS TO OUR CHARTER UNNECESSARILY PRE-EMPT OUR DECISION MAKING IN ESTABLISHING PROGRAMS FOR OUR CITIZENS? THE ANSWER, I BELIEVE, IS THAT IT DOES NOT.

THE PROGRAMS AND SERVICES OFFERED TO THE COUNTY CITIZENS ARE NECESSARILY CARRIED OUT BY PEOPLE. EVEN IF THE SCOPE AND EXTENT OF SUCH SERVICES HAVE TO BE CURTAILED WITH THE RESULTING LAYOFF OF MANY EMPLOYEES, IT BECOMES MORE CRITICAL THAT THOSE WHO REMAIN TO CARRY OUT THE SERVICES AND PROGRAMS BE COMPENSATED ADEQUATELY AND FAIRLY. THERE IS NO DOUBT THAT SUCH POTENTIAL CURTAILMENTS WILL RESULT IN A DEMAND FOR EVEN GREATER WORK PRODUCTIVITY AND DEDICATION ON THE PART OF OUR EMPLOYEES.

I BELIEVE IT IS NOT ASKING TOO MUCH THEN TO PLACE AN ANNUAL COST-OF-LIVING ADJUSTMENT UP FRONT BEFORE ALL OTHER PRIORITIES HAVE BEEN ESTABLISHED AND TO RECOGNIZE THAT NO COUNTY PROGRAM OR SERVICE TO OUR CITIZENS CAN BE EFFECTIVE WITHOUT OUR BODY OF DEDICATED AND MOTIVATED PUBLIC SERVANTS.

I HEREBY CERTIFY THAT 25 COPIES OF THIS BILL ARE AVAILABLE TO THE PUBLIC AND PRESS AS OF 7/18/78

Deputy SECRETARY OF THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Bill No. 37-78

Draft No. & Date:

Introduced:

Expiration Date:

Enacted:

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

____ Legislative Session 1978

By: Council President at the request of the County Executive; Councilmembers Colman, Hovsepian

AN ACT to amend Chapter 33, title "Personnel," Article IV, title "Employer-Employee Relations Act," Montgomery County Code 1972, as amended, by adding a new Section 33-74 thereto, title "Cost-of-Living Adjustment" to provide for an annual cost-of-living adjustment for all County employees whose salaries are determined by the uniform salary plan /[schedule]

Be It Enacted by the County Council for Montgomery County, Maryland, that -

Sec. 1. Declaration of Policy and Legislative Intent.

It is hereby declared to be the policy of Montgomery County, Maryland, to provide for and ensure in an orderly, uniform manner as part of its budgetary process, guaranteed annual wage adjustments to merit system employees of the County Government to compensate those individuals and to equalize their wages due to increases in area-wide consumer prices and other cost-of-living factors.

It is further declared to be the public policy of Montgomery County, Maryland, that such wage increases are recognized as necessary to recruit and retain a high quality work force and prevent inflation and other invidious economic factors from undermining the compensation paid to members of its work force.

Sec. 2. Chapter 33, title "Personnel," Article IV, title "Employer-Employee Relations Act," of the Montgomery County Code 1972, as amended, is hereby amended by adding a new Section 33-74 thereto, title "Cost-of-Living Adjustment" to read as follows:

33-74. Cost-of-Living Adjustment.

The Chief Administrative Officer shall adjust the uniform salary plan /[schedule] for all classified employees of the Montgomery County Government beginning the first pay period on or after July 1, of each year by an amount

not less than seventy-five percent (75%) of the change in the Consumer Price Index for All Urban Consumers in the Washington, D.C. area. Such percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

Notwithstanding the above, Pay Grades 1 through 4 of the uniform salary plan /[schedule] to which minimum wage and certain seasonal employees are assigned will be adjusted by changes in minimum wage rates and salary surveys to determine the competitiveness of such salaries.

No provision of this law shall prohibit the Chief Administrative Officer from adjusting the uniform salary plan /[schedule] in excess of the base percentage of seventy-five percent (75%), provided funds are available and approved by the County Council for such purpose.

The County Executive shall submit to the County Council each year as part of the recommended Operating Budget for the County Government such sums as are necessary to fund the Cost-of-Living Adjustment set forth in Section 33-74 of this Chapter.

Sec. 3. Severability.

The provisions of this Act are severable and if any provision, clause, sentence, section, work or part thereof is held illegal, invalid, or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, section, work or part had not been included therein, and if the person or circumstances to which the Act or part thereof is inapplicable had been specifically exempted therefrom.

Sec. 4. Effective date.

The Council hereby declares that an emergency exists and that this legislation is necessary for the immediate protection of public health and

safety. Therefore, this Act shall become effective on the date on which it becomes law.

APPROVED:

President, Montgomery County Council — Date

County Executive — Date

ATTEST:

Secretary of the County Council — Date

APPROVED AS TO FORM AND LEGALITY.
OFFICE OF COUNTY ATTORNEY
BY
DATE 8/16/03

Resolution No. 8-1935

Introduced: May 9, 1978

Adopted: May 9, 1978

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

Subject: Changes to the Uniform Salary Plan and Establishment of a Cost-of-Living Policy

WHEREAS, the County Personnel Regulations authorize the Chief Administrative Officer, subject to the approval of the County Council, to establish a general salary schedule for all merit system positions consisting of not more than forty (40) grades with a minimum and maximum salary for each grade; and

WHEREAS, a recommended salary schedule has been included in the budget approved by the County Executive; and

WHEREAS, the said salary schedule includes a recommendation to the County Council for an across-the-board 6.8% increase in the cost-of-living adjustment for current employees of the County government and affords current employees of the County government who have not reached the "G" step of the current pay plan an increment in the amount of 4% for satisfactory performance, and such employees are eligible to receive 4% increments for the period beginning the first salary interval after July 1, 1978 until the salary interval just prior to June 30, 1980; and

WHEREAS, any employee in the County government in the G step of the current pay schedule or in a longevity step of the G step of the current pay schedule will be eligible for a 2% increment for satisfactory performance and, further, that employees who would have been eligible for a longevity increment of 10, 14 or 18 years service shall be awarded a one-time cash award of 2% of base salary for service for the two year period beginning July 1, 1978 and ending June 30, 1980, such amount to be payable on the employee's normal longevity date; and

WHEREAS, any new employee of the County hired on or after July 1, 1978 shall be eligible for a 2 % increment; and

WHEREAS, effective July 1, 1980, 2% increments shall be in effect for all employees; and

WHEREAS, it appears that inflationary trends shall continue to be part of andaffect all aspects of our community; and

WHEREAS, County employees, as all other wage earners, experience a continuing reduction in their purchasing power as the cost-of-living escalates; and

WHEREAS, the County Council recognizes that it has a continuing responsibility in attempting to minimize the impact of these increases; and

WHEREAS, the County Council also realizes its continuing responsibility to the taxpayers of this County to maintain a sound fiscal policy regarding government operations -

NOW, THEREFORE, BE IT RESOLVED by the County Council for Montgomery County, Maryland, that the uniform salary plan consisting of forty grades with a minimum and maximum salary for each grade

recommended by the Chief Administrative Officer pursuant to Section 33-7 (b) of the Personnel Regulations as amended on May 9, 1978 by the County Council be and hereby is approved, effective the first salary period beginning on or after July 1, 1978; and

BE IT FURTHER RESOLVED that the County Council accepts the recommendations of the Chief Administrative Officer and the County Executive for a 6.8% across-the-board cost-of-living adjustment for current employees of the County government, such adjustment to commence the first pay period on or after July 1, 1978; and

BE IT FURTHER RESOLVED that the County Council accepts the recommendation of the Chief Administrative Officer for the administration of the new uniform pay plan as that relates to the employees who have not reached the G step as well as those employees who have reached or exceeded in longevity steps G step of the current pay plan, and, further, that the Council approves a one-time cash award of 2% of base salary for those employees of Montgomery County, Maryland who would have been eligible for a longevity increment of 10, 14 or 18 year's service for a two year period beginning the first pay period on or after July 1, 1978 and ending the pay period immediately preceeding June 30, 1980; and

BE IT FURTHER RESOLVED that the County Council accepts the recommendation of the Chief Administrative Officer that all employees hired in the employ of the Montgomery County government on or after July 1, 1978 shall be eligible for a 2% annual increment for satisfactory performance; and

BE IT FURTHER RESOLVED that it shall be the policy of the Montgomery County government, effective July 1, 1979, to adjust annually the uniform salary plan for all classified employees of the merit system of the Montgomery County government based on not less than seventy-five percent (75.%) of the November Consumer Price Index for all urban consumers for the Washington, D.C. area; and

BE IT FURTHER RESOLVED that the County Council requests the County Executive to submit legislation for its consideration to provide by local law for the implementation of the policy with regard to the annual uniform salary plan adjustment as aforementioned.

A True Copy

ATTEST

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, November 14, 1978 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 10:20 A.M. on Tuesday, November 14, 1978.

PRESENT

Elizabeth L. Scull, President
Neal Potter, Vice President
Esther P. Gelman
John L. Menke
William G. Colman

ABSENT

Dickran Y. Hovsepian, President Pro Tem
Jane Ann Moore

The President in the Chair.

INTRODUCTION OF BILLS:

Re: Introduction of Bill No. 72-78, Towing Legislation

The Council had before it for consideration Bill No. 72-78, Towing Legislation.

Councilman Menke stated that the bill before the Council for introduction provides for the registration of towers of motor vehicles operating in Montgomery County. He believes that this is a good approach to a regulatory problem, in contrast to proposed legislation from the County Executive to license and inspect single family homes that are for rent. He believes that the approach regarding single family homes is in the wrong direction when there is not a clear, overriding, demonstrated need for government control of the service rendered. When that bill is before the Council, he requested that the Council not introduce it or introduce an amendment to provide for registration only. It is desirable to know how many single-family homes are being rented, and where they are, but he believes it is totally unnecessary to go beyond that.

Upon motion of Councilman Menke, duly seconded and without objection, the Council waived the reading of the title and introduced Bill No. 72-78 by the Council President at the request of the County Executive; and Councilman Menke:

AN ACT to repeal and re-enact with amendments, Chapter 31A, title "Motor Vehicle Repair Registration", to be retitled "Motor Vehicle Repair and Towing Registration", to require persons engaging in the business of towing motor vehicles to register with the Montgomery County Department of Environmental Protection; to make such registration subject to the same general provisions applicable to motor vehicle repair registration; to exclude from the requirements of this Chapter towing which both begins and ends outside Montgomery County; to require lettering of tow trucks; to require that rate schedules for towing services be filed with the Montgomery County Department of Environmental Protection and that they be carried in each tow truck and made available to the owner upon request; to require that written estimates of towing charges be furnished upon request; and to require that a copy of the registration required by this Chapter be carried in each tow truck.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

Re: Enactment of Bill No. 36-78, Comprehensive Merit System

Bill No. 36-78, Comprehensive Merit System, was called for final reading. The Council had before it for consideration Draft No. 6, dated November 9, 1978, of Bill No. 36-78.

Upon motion of Councilman Colman, duly seconded and without objection, the Council voted to waive the reading of the bill and proceed to consideration of amendments.

At the suggestion of Mr. Tierney and without objection, the Council deleted the word [damage] from line 11, page 4, and inserted in lieu thereof danger.

Legislative Counsel Tierney called the Council's attention to a memorandum from County Attorney McKernon, dated November 9, 1978, regarding language in the bill pertaining to appeals. Mr. Tierney stated that Draft No. 6 of Bill No. 36-78 has been modified to conform with the County Attorney's suggestions. He noted that the Council also has before it a paper from the Montgomery County Government Employees Organization (MCGEO) listing several amendments to the bill; and a memorandum from Anne Bledsoe, Maryland-Municipal Librarian, dated November 14, 1978, setting forth suggested amendments.

Councilman Colman noted that the Council has received a memorandum from Mr. Short, Director, Office of Budget and Research, dated November 13, 1978, setting forth the estimated fiscal impact of Bill No. 36-78. He referred to the Personnel Board's staff estimate that the "whistle blower" provision could require the addition of two or three staff positions, plus additional space. Councilman Colman stated that the Board's staff must imagine that the County has many employees who will be reporting wrong-doing and that their supervisors will be retaliating against them so that the Personnel Board and staff will be kept busy disciplining the retaliators. He expressed the strong belief that the impact of that section has been overestimated.

President Scull noted that additional expenses will be encountered with the use of hearing examiners by the Personnel Board; this was not taken into account in the fiscal impact statement.

Councilman Colman stated that the Personnel Board's workload may increase if the new Council and Executive find it necessary to reduce forces substantially and cases are appealed to the Board. However, a compensating factor was not mentioned. The Board's responsibility for the daily review of proposed changes in the classification allocations has been removed. This responsibility now rests entirely with the CAO.

Upon motion of Councilman Colman, duly seconded and without objection, the Council agreed that it would not amend Section 33-5, page 2, Statement of Legislative Intent, as suggested by Ms. Bledsoe.

With respect to the suggestion of Ms. Bledsoe that the words "appropriately qualified" on line 30, page 3, be clarified with respect to Merit System Review Commission membership, Councilman Colman stated that he would prefer to leave the specific qualifications to the determination of future Councils when each Commission is formed. The Council debated various forms of membership and decided in favor of a general citizens commission.

The Council agreed with Councilman Colman's suggestion that it not make a change in the qualifications, composition or method of appointment of the Merit System Review Commission.

Mr. Tierney called attention to a suggestion by MCGEO that the definition of "management" be deleted from page 4, and the word "supervisory" be substituted for "management" throughout the bill. He stated that, in most cases, "management" is the more appropriate word.

Councilman Colman suggested that the definition of "management" be kept in the bill, but that Mr. Tierney be authorized to make the substitution wherever he feels it is appropriate.

At the suggestion of Councilman Colman and without objection, the Council deleted the word [management] from line 32, and inserted in lieu thereof supervisory.

Upon motion of Councilman Colman, duly seconded and without objection, the Council authorized Mr. Tierney to change "management" to "supervisory" throughout the bill wherever he believes it is appropriate.

With respect to the suggestion by Ms. Bledsoe that a penalty provision be inserted in the whistle blower section, page 7, Councilman Colman stated that the Council discussed the possibility of a penalty provision, but was not able to reach a consensus with the Personnel Board, representatives of employees and the CAO. It was agreed that the Personnel Board would be required to develop a penalty provision through regulations, which will then come back to the new Council for approval.

Councilman Potter noted that the wording of lines 33 and 34, page 7, provides that employees are not protected if their charges of violation are found to be a mistake. He suggested that the word [or] be deleted from line 33, and the word and inserted in lieu thereof to clarify that the actions must have been "frivolous, unreasonable and without foundation, even though not brought in bad faith" before an employee loses the protection of the Merit System.

Upon motion of Councilman Potter, duly seconded and without objection, the Council deleted the word [or] from line 33, page 7, and inserted in lieu thereof and.

At the suggestion of Councilman Colman and without objection, the Council inserted a comma after the word "foundation" in line 34, page 7.

Councilman Menke referred to provisions in Section 33-10(e), page 7A, giving the Personnel Board's staff the power to determine whether probable cause exists and to dismiss complaints. He stated that he does not like the emphasis on staff power; the function of the staff is to carry out decisions of the Personnel Board. It should investigate complaints and bring its findings to the Personnel Board, which would then make a decision as to whether probable cause exists for the complaint.

Mr. Tierney stated that the Personnel Board should be kept insulated from any of the preparatory work before it conducts a hearing. When the Board conducts the hearing, it should be hearing the case for the first time. This is the procedure followed by the Human Relations Commission, Landlord-Tenant Commission, and the Consumer Affairs Advisory Committee.

President Scull pointed out that judges sometimes hold preliminary hearings prior to conducting a trial.

Mr. Tierney stated that the Board has the authority to review the staff's findings and send them back for further investigation; or, the Board can reverse the staff's decision. The provision in the bill is designed to protect the due process rights of the people being investigated.

President Scull expressed the view that language has been amended on lines 31 and 32 since the Council had its last worksession. At one time, the complainant was given the right to request reconsideration by the Personnel Board of the staff's decisions. Now, only the Board can request reconsideration.

Upon motion of Councilman Colman, duly seconded and without objection, the Council inserted the word Board prior to the word "reconsideration" on line 31, page 7A, and deleted the words [by the Board] from lines 31 and 32.

Councilman Menke expressed the view that the amendment just adopted is an improvement to Section 33-10(e), but does not address the whole problem.

Councilman Menke moved, duly seconded, that subsection (e), page 7A, be restructured to provide that the Personnel Board's staff shall investigate complaints and present the results to the Board. The Board will then determine whether to dismiss the complaint or follow it up with a full evaluation and hearing process.

Councilman Colman expressed the view that the amendment proposed by Councilman Menke would increase the workload of the Personnel Board by serious proportions. Under the amendment just adopted, employees would have access to the Board if they disagree with the staff's findings. There must be an effective complaint screening process so that the Personnel Board is not overwhelmed with paperwork and unfounded complaints. The system as proposed in the bill has worked satisfactorily with other bodies.

Councilman Menke's motion failed, Councilman Menke voting in the affirmative and Councilmembers Scull, Potter, Colman and Gelman voting in the negative.

Upon motion of Councilman Colman, duly seconded and without objection, the Council approved Section 33-10 (whistle blower) as amended.

At the suggestion of Councilman Colman and without objection, the Council agreed that it would not delete subsection (2) of Section 33-11(a), page 8, as recommended by Ms. Bledsoe and Mr. Ofsthun, Director of the Department of Recreation.

At the suggestion of President Scull and without objection, the Council deleted the word [steps] from line 30, page 8.

The Council discussed a proposal by MCGEO that employees be given the choice of appealing their cases directly to the Circuit Court, Section 33-12, page 9A.

Mr. Tierney stated that the subject amendment would pose legal problems with respect to the administrative process. There is a tradition in Maryland law which provides that when one is involved in an administrative process one must exhaust that process before going to court. Bill No. 36-78 has an elaborate process that is designed to reduce legal costs for the employees. If appealed directly to the court, the employee would be appealing a matter on which there is no established record. He is not sure how a court would handle such a case.

Councilman Colman requested Assistant County Attorney Hall to review the Charter to determine whether the MCGEO amendment would conform to Charter provisions. He indicated that the Council should proceed with its review and give Mr. Hall a few minutes to review the situation.

Upon motion of Councilman Colman, duly seconded and without objection, the Council inserted the words <u>except for due process violations</u> after the word "allocations" on line 6, page 10.

Without objection, the Council deleted the word [and] from line 11, page 10.

Upon motion of Councilman Menke, duly seconded and without objection, the Council inserted the following words after the word "notice" on line 9, page 11: <u>special evidentiary proceedings in cases where the remedy of employee reinstatement was a contested and unresolved issue in an ordinary appeal hearing</u>.

In response to the earlier inquiry, Mr. Hall stated that Section 404 of the Charter provides that the Personnel Board shall conduct a hearing for any adverse personnel action and then that decision can be reviewed by the court if requested. The Charter provides that the court does not have jurisdiction over the matter until the Personnel Board has rendered its decision.

Mr. Tierney stated that if the Council is desirous of giving employees direct access to the courts, it should draft a provision creating a private right of action for court review, rather than the amendment suggested by MCGEO. In response to an inquiry as to whether such an amendment would be within the scope of advertising for the bill, Mr. Tierney stated that he hesitates to answer that question without reviewing the advertising. However, he did attempt to make the advertisement fairly broad.

Councilman Colman recommended against direct appeal to the courts, stating that the Council has been careful, throughout the process, to assure that employees are not disadvantaged in the general management-employee relationship. To allow the entire process to be avoided, with direct access to the court system, would not be good personnel administration. Such an appeal procedure would put a burden on judges who are not equipped to deal with these matters unless there are true constitutional or legal questions involved.

Mr. Overton stated that the employees had hoped to change the attitude of Personnel Board members during the worksessions on this bill. He expressed the view that a person's livelihood is too important to entrust to three part-time, non-professional Board members. He stated that the Board decided a dismissal case last Friday after three years and seven months. The cost of going to the Personnel Board is just as much as the cost of going to court.

Ms. Scull requested Mr. Overton not to discuss a specific case.

Mr. Potter indicated that he has some editorial amendments to the bill that he will give to the staff to incorporate into the final version of the bill.

At the suggestion of Councilman Potter and without objection, the Council deleted the word [while] from line 21, page 3, and inserted in lieu thereof and that it be.

At the suggestion of Councilman Potter, upon motion of Councilman Colman, duly seconded and without objection, the Council deleted the word [maintenance] from line 3; and inserted the words fringe and prior to the word "other" in the same line.

At the suggestion of Councilman Potter and without objection, the Council deleted the word [representative] from line 25, page 12, and inserted in lieu thereof representational.

Upon motion of Councilman Colman, duly seconded and without objection, the Council approved the following amendments to Bill No. 36-78 as reflected in

Draft No. 6, dated November 9, 1978, (underlining indicates language added to existing law; brackets indicate language deleted from existing law; capital letters indicate language added to the bill since introduction; and strike-throughs indicate language deleted from the bill since introduction):

Sec. 1. Sections 33-5 through 33-33, which are designated collectively as Article II, title "Personnel Regulations Generally", all of Chapter 33, title "Personnel" of the Montgomery County Code, 1972, as amended, are hereby transferred in their entirety without any change in text to ~~the Appendices of the Montgomery County Code, and designated therein as Appendix M, title~~ FROM CHAPTER 33 TO AN APPENDIX OF CHAPTER 33 TO FOLLOW IMMEDIATELY AFTER THAT CHAPTER AND TO BE DESIGNATED AS "County Personnel Regulations" and each section thereof renumbered as 1 through 29 respectively.

Sec. 2. A new Article II, title "Merit System" is hereby added to Chapter 33, title "Personnel" of the Montgomery County Code, 1972, as amended, to read as follows:

Article II. Merit System

33-5. Statement of Legislative Intent, MERIT SYSTEM ~~CHARACTERISTICS~~ PRINCIPLES, STATEMENT OF PURPOSE, Merit System Review Commission, Purpose and Applicability

(a) STATEMENT OF LEGISLATIVE INTENT. IT IS THE LEGISLATIVE INTENT OF THE COUNTY COUNCIL THAT THIS ARTICLE FOSTER EXCELLENCE IN THE PUBLIC SERVICE; HIGH INDIVIDUAL COMPETENCE AMONG EMPLOYEES; RECOGNITION THAT RESPECT FOR THE EMPLOYEE AS AN INDIVIDUAL IS FIRST REQUIRED FOR ACHIEVING SUCH EXCELLENCE AND COMPETENCE; AND HARMONIOUS AND EFFICIENT OPERATION WITHIN THE VARIOUS COMPONENTS OF COUNTY GOVERNMENT.

(b) MERIT SYSTEM ~~CHARACTERISTICS~~ PRINCIPLES. THE MERIT SYSTEM ESTABLISHED BY THIS ~~ARTICLE~~ CHAPTER ENCOMPASSES THE FOLLOWING ~~CHARACTERISTICS~~ PRINCIPLES:

(1) ALL COUNTY GOVERNMENT AUTHORITY, INCLUDING INTERNAL SUPERVISORY AUTHORITY IS FOR SERVICE TO THE PEOPLE, IS DERIVED FROM LAW AND THE PEOPLE, AND MUST NOT BE ABUSED;

(2) ~~(A)~~ THE RECRUITMENT, SELECTION AND ADVANCEMENT OF MERIT SYSTEM EMPLOYEES SHALL BE ON THE BASIS OF THEIR RELATIVE ABILITIES, KNOWLEDGE AND SKILLS, INCLUDING THE FULL AND OPEN COMPETITION OF QUALIFIED APPLICANTS FOR INITIAL APPOINTMENT;

~~(B)~~ (3) MERIT SYSTEM EMPLOYEES SHALL BE PROVIDED COMPENSATION CONSISTENT WITH STANDARDS OF COMPARABILITY WITH OTHER PUBLIC AGENCIES AND THE PRIVATE SECTOR;

~~(C)~~ (4) MERIT SYSTEM EMPLOYEES SHALL BE PROVIDED TRAINING AS NEEDED TO ASSURE HIGH QUALITY PERFORMANCE AND SUCH TRAINING WHERE POSSIBLE

Sec. 1. Sections 33-5 through 33-33, which are designated collectively as Article II, title "Personnel Regulations Generally", all of Chapter 33, title "Personnel" of the Montgomery County Code, 1972, as amended, are hereby transferred in their entirety without any change in text to ~~the Appendices of the Montgomery County Code, and designated therein as Appendix M, title~~ FROM CHAPTER 33 TO AN APPENDIX OF CHAPTER 33 TO FOLLOW IMMEDIATELY AFTER THAT CHAPTER AND TO BE DESIGNATED AS "County Personnel Regulations" and each section thereof renumbered as 1 through 29 respectively.

Sec. 2. A new Article II, title "merit System" is hereby added to Chapter 33, title "Personnel" of the Montgomery County Code, 1972, as amended, to read as follows:

Article II. Merit System

33-5 Statement of Legislative Intent, MERIT SYSTEM ~~CHARACTERISTICS~~ PRINCIPLES, STATEMENT OF PURPOSE, Merit System Review Commission, Purpose and Applicability

(a) STATEMENT OF LEGISLATIVE INTENT. IT IS THE LEGISLATIVE INTENT OF THE COUNTY COUNCIL THAT THIS ARTICLE FOSTER EXCELLENCE IN THE PUBLIC SERVICE; HIGH INDIVIDUAL COMPETENCE AMONG EMPLOYEES; RECOGNITION THAT RESPECT FOR THE EMPLOYEE AS AN INDIVIDUAL IS FIRST REQUIRED FOR ACHIEVING SUCH EXCELLENCE AND COMPETENCE; AND HARMONIOUS AND E EFFICIENT OPERATION WITHIN THE VARIOUS COMPONENTS OF COUNTY GOVERNMENT.

(b) MERIT SYSTEM ~~CHARACTERISTICS~~ PRINCIPLES. THE MERIT SYSTEM ESTABLISHED BY THIS ~~CHAPTER~~ ARTICLE ENCOMPASSES THE FOLLOWING ~~CHARACTERISTICS~~ PRINCIPLES:

(1) ALL COUNTY GOVERNMENT AUTHORITY, INCLUDING INTERNAL SUPERVISORY AUTHORITY IS FOR SERVICE TO THE PEOPLE, IS DERIVED FROM LAW AND THE PEOPLE, AND MUST NOT BE ABUSED;

(2) ~~(1)~~ THE RECRUITMENT, SELECTION AND ADVANCEMENT OF MERIT SYSTEM EMPLOYEES SHALL BE ON THE BASIS OF THEIR RELATIVE ABILITIES, KNOWLEDGE AND SKILLS, INCLUDING THE FULL AND OPEN CONSIDERATION OF QUALIFIED APPLICANTS FOR INITIAL APPOINTMENT;

(3) ~~(2)~~ MERIT SYSTEM EMPLOYEES SHALL BE PROVIDED COMPENSATION CONSISTENT WITH STANDARDS OF COMPARABILITY WITH OTHER PUBLIC AGENCIES AND THE PRIVATE SECTOR;

(4) ~~(3)~~ MERIT SYSTEM EMPLOYEES SHALL BE PROVIDED TRAINING AS NEEDED TO ASSURE HIGH QUALITY PERFORMANCE AND SUCH TRAINING WHERE POSSIBLE SHOULD ALSO PROVIDE INCREASED OPPORTUNITY TO FACILITATE THEIR CAREER

(5) ~~(4)~~ MERIT SYSTEM EMPLOYEES ARE ENCOURAGED TO EXCEL IN THEIR WORK PERFORMANCE ; THEY SHALL BE RETAINED IF THEY MEET STANDARDS OF SATISFACTORY OVERALL PERFORMANCE AND SHALL BE SEPARATED FROM MERIT SYSTEM SERVICE IF THEY DO NOT; BOTH MANAGEMENT AND EMPLOYEES HAVE AN EQUAL RESPONSIBILITY TO FACILITATE WORK PERFORMANCE CORRECTION AND IMPROVEMENT;

(6) ~~(5)~~ ALL APPLICANTS AND EMPLOYEES OF THE COUNTY MERIT SYSTEM SHALL BE ASSURED FAIR TREATMENT IN ALL ASPECTS OF PERSONNEL ADMINISTRATION IN ACCORDANCE WITH THE FAIR EMPLOYMENT PRACTICES REQUIRED UNDER CHAPTER 27 OF THIS CODE;

(7)~~(6)~~ MERIT SYSTEM EMPLOYEES SHALL BE PROTECTED ACAINST ANY COERCION TO ENGAGE IN ILLEGAL OR IMPROPER ACTIONS OR PARTISAN POLITICAL ACTIVITIES AND SHALL BE PROHIBITED FROM USING THEIR OFFICIAL AUTHORITY FOR THE PURPOSE OF INTERFERING WITH OR AFFECTING THE RESULT OF AN ELECTION OR NOMINATION FOR OFFICE;

(8) THE MERIT SYSTEM ESTABLISHED UNDER THIS CHAPTER SHALL BE INTERPRETED IN ACCORDANCE WITH THESE PRINCIPLES.

(c) STATEMENT OF PURPOSE. THE BASIC PURPOSE OF THIS ARTICLE IS TO DELINEATE THE RESPECTIVE RESPONSIBILITIES OF THE CHIEF ADMINISTRATIVE OFFICER AND THE PERSONNEL BOARD FOR PERSONNEL MANAGEMENT IN COUNTY GOVERNMENT. IT IS THE FURTHER ~~the~~ purpose of this Article ~~is~~ to implement by law the County Charter responsibilities of the County Council with respect to a merit system generally, including provisions for salaries and wages of all classified employees of the merit system under a uniform salary plan, ~~delineation of the administrative responsibilities of the Chief Administrative Officer under the merit system,~~ the Personnel Board's authority to exercise its regulatory and ~~hearing~~ APPELLATE functions, and promotion of the overall objectives that the integrity of the County Merit System be preserved while administered fairly and efficiently in the best interests of the County and its employees.

(d)/ IN ADDITION TO THE COUNTY COUNCIL'S LEGISLATIVE RESPONSIBILITIES AUTHORIZED UNDER SECTIONS 101 and 401 OF THE COUNTY CHARTER, THERE SHALL BE CONVENED NO LATER THAN JULY 1, 1980, AND, IF DETERMINED NECESSARY/ IN EACH INSTANCE BY COUNTY COUNCIL RESOLUTION, SUBSEQUENTLY AT INTERVALS OF 4 YEARS, A MERIT

SYSTEM REVIEW COMMISSION, THE FUNCTIONS OF WHICH ARE TO ~~PROVIDE FOR A~~ STRENGTHEN THE SYSTEM OF CHECKS AND BALANCES AMONG THOSE OFFICIALS AND AGENCIES OF COUNTY GOVERNMENT ~~WITH~~ HAVING MERIT SYSTEM RESPONSIBILITIES AND TO EXAMINE AND RECOMMEND LEGISLATIVE OR ADMINISTRATIVE REVISION TO THE MERIT SYSTEM IN KEEPING WITH THE INTENT OF THE COUNTY CHARTER AND THIS ARTICLE AND WITH NEW DEVELOPMENTS IN THE FIELD OF PUBLIC ADMINISTRATION AND PERSONNEL MANAGEMENT. THE COMMISSION SHALL BE AN 11-MEMBER BODY COMPOSED OF APPROPRIATELY QUALIFIED MONTGOMERY COUNTY CITIZENS AND ESTABLISHED BY A RESOLUTION OF THE COUNTY COUNCIL. THE COUNTY EXECUTIVE SHALL APPOINT 5 OF THE MEMBERS OF THIS COMMISSION AND THE COUNTY COUNCIL SHALL APPOINT THE REMAINING MEMBERS. EACH COMMISSION SHALL TERMINATE AFTER IT RENDERS TO THE COUNTY COUNCIL ITS FINAL REPORT.

(e) (1) This Article shall apply to all merit system employees defined herein. Not included under this Article unless specifically stated to the contrary are those positions excluded by Section 401 of the County Charter as amended and any other positions so excluded from the merit system under other provisions of County law.

33-6. Definitions.

The following words and phrases shall have the meaning respectively ascribed to them by this section:

County Employees - means all persons employed by the County regardless of merit system status.

ILLEGAL OR IMPROPER ACTIONS - MEANS ANY ACTIONS WHICH VIOLATE ANY LAW OR REGULATION, OR WHICH CONSTITUTE A GROSS WASTE OF FUNDS, AN ABUSE OF AUTHORITY OR A SUBSTANTIAL AND SPECIFIC DAMAGE TO PUBLIC HEALTH OR SAFETY.

MANAGEMENT MEANS COLLECTIVELY THE CHIEF ADMINISTRATIVE OFFICER AND ALL SUBORDINATE PERSONNEL EXERCISING SUPERVISORY FUNCTIONS IN THE CAPACITY OF A PUBLIC EMPLOYER.

Merit System Employees - means all persons who are ~~applicants for employment or employed~~ employed by the County in full-time or part-time year-round PERMANENT CAREER positions in any department/office/agency of the executive and legislative branches of the county government or IN ANY other position specifically so designated by law.

~~Grievances - means those complaints made in writing by a merit system employee claiming to be aggrieved by action of management in the promotion, compensation, classification, leave policies, or other terms, conditions or privileges of employment.~~

Removal - means the ~~involuntary~~ separation of a merit system employee through dismissal, ~~resignation, under duress~~, or abolishment of his or her position/ INVOLUNTARY) FOR REASONS OR CIRCUMSTANCES DETERMINED BY THE BOARD AS BEING OTHER THAN A BONA FIDE REDUCTION OF FUNDS OR WORK.

33-7. Personnel Board Responsibilities.

(a) GENERAL. IN PERFORMING ITS FUNCTIONS, THE BOARD IS EXPECTED TO ~~DEFEND~~/ PROTECT EMPLOYEE RIGHTS AS GUARANTEED UNDER THE MERIT SYSTEM AGAINST ARBITRARY AND CAPRICIOUS MANAGEMENT ACTIONS, UPHOLD MANAGEMENT ~~DISCIPLINARY~~ ACTIONS DEMONSTRATED BY THE FACTS TO BE PROPER, AND APPROACH THESE MATTERS WITHOUT ANY BIAS OR PREDILECTION TO EITHER MANAGEMENT OR EMPLOYEE. THE REMEDIAL AND ENFORCEMENT POWERS OF THE BOARD GRANTED HEREIN SHALL BE FULLY EXERCISED BY THE BOARD AS NEEDED TO RECTIFY PERSONNEL ACTIONS FOUND TO BE IMPROPER. EXCEPT

FOR EMERGENCY ACTIONS, ANY REGULATION OR RECOMMENDATION SUBMITTED BY THE BOARD TO THE COUNTY COUNCIL FOR ACTION SHOULD PERMIT THE PUBLIC AT LEAST A 30-DAY PERIOD FOR COMMENT BEFORE ENACTMENT. THE BOARD, SUBJECT TO THE APPROPRIATION PROCESS, SHALL BE RESPONSIBLE FOR ESTABLISHING ITS STAFFING REQUIREMENTS NECESSARY TO PROPERLY IMPLEMENT ITS DUTIES AND TO DEFINE THE DUTIES OF SUCH STAFF.

(b) ~~(a)~~ PERSONNEL REGULATIONS. THE BOARD SHALL Adopt, subject to Council approval, AND/ ~~WITH AN OPPORTUNITY~~ THE FOREGOING REQUIREMENT, FOR PUBLIC COMMENT/ Personnel Regulations ~~in the following areas which shall be codified with other County regulations in the Appendices to the Montgomery County Code~~ TO PROVIDE THE FRAMEWORK FOR:

1. the classification of all/positions in the Executive and Legislative branches ~~under the merit system~~ MERIT SYSTEM;
2. minimum qualifications for merit system positions, methods of determining qualifications, and methods of selection for any positions;
3. probationary periods, promotions, transfers;
4. causes for removal from any merit system position and methods

of removal, including demotions, furloughs and reduction of staff;

5. annual, sick and other leave;

6. prohibitions against political activity;

7. maintenance of personnel records; and

8. similar personnel matters as may be provided by law.

CLASSIFICATION STANDARDS. THE BOARD SHALL (c) / WITH RESPECT TO CLASSIFICATION MATTERS, /PROVIDE BY PERSONNEL REGULATION STANDARDS FOR ESTABLISHING AND MAINTAINING A CLASSIFICATION PLAN. THESE STANDARDS MAY INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING: (1) THE NECESSARY COMPONENTS OF CLASS SPECIFICATIONS; (2) CRITERIA FOR THE ESTABLISHMENT OF NEW CLASSES, MODIFICATION OR ELIMINATION OF EXISTING CLASSES; (3) CRITERIA FOR THE ASSIGNMENT OF POSITIONS TO CLASSES; (4) KINDS OF DATA REQUIRED TO SUBSTANTIATE ALLOCATION OF POSITIONS; (5) GUIDELINES FOR COMPARING LEVELS OF JOB DIFFICULTY AND COMPLEXITY; AND (6) CRITERIA FOR THE ESTABLISHMENT OR ABOLISHMENT OF POSITIONS. THE BOARD SHALL CONDUCT OR AUTHORIZE PERIODIC AUDITS OF CLASSIFICATION ASSIGNMENTS MADE BY THE CHIEF ADMINISTRATIVE OFFICER AND OF THE GENERAL STRUCTURE AND INTERNAL CONSISTENCY OF THE CLASSIFICATION PLAN, AND SHALL SUBMIT AUDIT FINDINGS AND RECOMMENDATIONS TO THE COUNTY EXECUTIVE AND COUNTY COUNCIL.

(d) PERSONNEL REGULATION AMENDMENTS: SUBSEQUENT TO PUBLIC HEARING, THE BOARD SHALL

~~(a)~~ /Propose amendments to Personnel Regulations AND ~~providing that prior to such proposal being forwarded to the County Council for approval, the~~ Board shall meet and confer with the Chief Administrative Officer /from time AND EMPLOYEES AND THEIR ORGANIZATIO to time to review the need to amend these regulations.

~~(b)~~ (e) ADJUDICATION. THE BOARD SHALL /Hear and decide DISCIPLINARY APPEALS OR grievances upon the request of a merit system employee who has been removed, demoted or suspended and in such other cases as required herein.

~~(c)~~ (f) RETIREMENT. THE BOARD SHALL /Prepare and recommend to the Council a system of retirement pay and may from time to time prepare and recommend modifications thereto.

~~(f)~~ (g). PERSONNEL MANAGEMENT OVERSIGHT. THE BOARD SHALL /Review and study the administration of the County CLASSIFICATION AND RETIREMENT PLANS AND OTHER ASPECTS OF /Merit System and transmit to the Chief Administrative Officer, /and the County Council its findings and recommendations. All County agencies, departments and offices AND/ ORGANIZATIONS ~~OF COUNTY EMPLOYEES~~ /THEREOF shall cooperate with the Board AND HAVE/AN OPPORTUNITY TO PARTICIPATE in any SUCH review

~~or study~~ initiated under this Section.

(h) PUBLICATION. CONSISTENT WITH THE REQUIREMENTS OF THE FREEDOM OF INFORMATION ACT, CONFIDENTIALITY, AND OTHER PROVISIONS OF LAW, THE BOARD SHALL Publish, at least annually, ABSTRACTS OF ITS DECISIONS, RULINGS, OPINIONS AND INTERPRETATIONS, and maintain a ~~codification~~ PERMANENT RECORD of its decisions, ~~rulings, opinions and interpretations~~.

(i) PUBLIC FORUM. THE BOARD SHALL CONVENE AT LEAST ANNUALLY A PUBLIC FORUM ON PERSONNEL MANAGEMENT IN THE COUNTY GOVERNMENT TO EXAMINE THE IMPLEMENTATION OF CHARTER REQUIREMENTS AND THE MERIT SYSTEM LAW.

33-8. Administrative Responsibilities of Chief Administrative Officer.

(a) The Chief Administrative Officer shall be responsible for the administration and enforcement of the Merit System, including any retirement law, labor relations laws, and the Personnel Regulations. The Chief Administrative Officer may designate a representative to implement any or

all of the provisions of law or the Personnel Regulations. The Chief Administrative Officer and all department heads are responsible for implementing all final decisions of the Personnel Board made after grievance appeals, although the Chief Administrative shall have the right to appeal any such decision in accordance with procedures recited elsewhere in this Article.

THE CHIEF ADMINISTRATIVE OFFICER SHALL INSURE THAT ALL SUPERVISORS RECEIVE CONTINUAL ORIENTATION AND TRAINING ABOUT THE INTENT, PURPOSE AND PRINCIPLES OF THE MERIT SYSTEM AND SHALL INSURE BY REGULATION THAT ALL SUPERVISORS IMPLEMENT THE OBJECTIVES OF THIS ARTICLE.

(b) The Chief Administrative Officer shall formulate administrative procedures to implement ~~standards and~~ requirements of the MERIT SYSTEM LAW AND Personnel Regulations AFTER PROVIDING REASONABLE PUBLIC NOTICE AND OPPORTUNITY FOR ~~EMPLOYEE~~ COMMENT. These administrative procedures shall be distributed IN A MANNER TO ~~to all department heads who shall~~ make them accessible to all employees.

33-9. Equal Employment Opportunity and Affirmative Action.

(a) Policy. ~~There is hereby established an equal employment opportunity and affirmative action program which will complete~~ It SHALL BE EMPLOYMENT the County's policy to recruit, employ, train and promote qualified persons in all job classifications

PERMANENT RECORD of its decisions, ~~rulings, opinions and interpretations~~.

(i) PUBLIC FORUM. THE BOARD SHALL CONVENE AT LEAST ANNUALLY A PUBLIC FORUM ON PERSONNEL MANAGEMENT IN THE COUNTY GOVERNMENT TO EXAMINE THE IMPLEMENTATION OF CHARTER REQUIREMENTS AND THE MERIT SYSTEM LAW.

33-8. Administrative Responsibilities of Chief Administrative Officer.

(a) The Chief Administrative Officer shall be responsible for the administration and enforcement of the Merit System, including any retirement laws, labor relations laws, and the Personnel Regulations. The Chief Administrative Officer may designate a representative to implement any or

all of the provisions of law or the Personnel Regulations. The Chief Administrative Officer and all department heads are responsible for implementing all final decisions of the Personnel Board made after grievance appeals, although the Chief Administrative shall have the right to appeal any such decision in accordance with procedures recited elsewhere in this Article.

THE CHIEF ADMINISTRATIVE OFFICER SHALL INSURE THAT ALL SUPERVISORS RECEIVE CONTINUAL ORIENTATION AND TRAINING ABOUT THE INTENT, PURPOSE AND PRINCIPLES OF THE MERIT SYSTEM AND SHALL INSURE BY REGULATION THAT ALL SUPERVISORS IMPLEMENT THE OBJECTIVES OF THIS ARTICLE.

(b) The Chief Administrative Officer shall formulate administrative procedures to implement ~~standards and~~ requirements of the MERIT SYSTEM LAW AND Personnel Regulations AFTER PROVIDING REASONABLE PUBLIC NOTICE AND OPPORTUNITY FOR ~~EMPLOYEE~~ COMMENT. These administrative procedures shall be distributed IN A MANNER TO ~~to all department heads who shall~~ make them accessible to all employees.

33-9. Equal Employment Opportunity and Affirmative Action.

(a) Policy. ~~There is hereby established an equal employment opportunity and affirmative action program which will consolute~~ IT SHALL BE THE EMPLOYMENT POLICY of the County to recruit, employ, train and promote qualified persons in all job classifications on the basis of merit and without regard to sex, marital status, race, religion, national origin, political affiliation, age, HANDICAP or other factors, as MAY BE provided for in Chapter 27, "Human Relations and Civil Liberties", of the Montgomery County Code, 1972, as amended.

~~(b) Administration.~~ The Chief Administrative Officer shall be responsible for initiating, developing and maintaining such an equal employment opportunity and affirmative action program as necessary to insure all persons an equal opportunity to enter and progress in the County's service on the basis of open competition and demonstrated ability. The Chief Administrative Officer is authorized to issue such rules or regulations as necessary to implement this policy ~~WITH PROVIDING AN OPPORTUNITY FOR EMPLOYEE AND PUBLIC COMMENT~~.

~~(c) Complaints. Any person aggrieved may file a complaint claiming a violation of the equal employment opportunity or affirmative action policy with the Chief Administrative Officer or his or her designee which shall also constitute a filing with the Human Relations Commission under the provision of Chapter 27 of this Code. The Chief Administrative Officer shall immediately notify the Human Relations Commission of any such filing.~~ (b) CONCILIATION. The Chief Administrative Officer is authorized to engage in consultation AND CONCILIATION EFFORTS WITH AGENCIES RESPONSIBLE FOR ENFORCEMENT OF EQUAL employment opportunity laws with the objective of resolving complaints and TO execute binding agreements with these agencies; provided however, that these conciliation efforts shall not be deemed to abate the procedures or requirements as recited in Chapter 27.

Should the complaint be determined to be a matter not properly within the jurisdiction ~~complaint be determined to be a matter not properly within the jurisdiction~~ of an equal employment opportunity enforcement agency, the complaint, as filed, shall be treated as a grievance and processed under the appropriate procedures established for grievances.

33-10./ DISCLOSURE OF ILLEGAL OR IMPROPER ACTIONS IN COUNTY GOVERNMENT; PROTECTION FOR MERIT SYSTEM EMPLOYEES AGAINST RETALIATION OR COERCION FOR DISCLOSING ILLEGAL OR IMPROPER ACTIONS IN COUNTY GOVERNMENT; PROHIBITED PRACTICES; COMPLAINT PROCEDURES; INVESTIGATION.

(a) DISCLOSURE OF ILLEGAL OR IMPROPER ACTIONS.

(1) EMPLOYEES ARE AUTHORIZED AND EXPECTED TO REPORT INSTANCES OF ILLEGAL OR IMPROPER ACTIONS IN COUNTY GOVERNMENT.

(2) EMPLOYEES SHOULD FIRST REPORT SUCH MATTERS TO THE INDIVIDUAL RESPONSIBLE FOR CORRECTIVE ACTION. SUCH PERSON MAY BE ANYONE FROM THE EMPLOYEE'S IMMEDIATE SUPERVISOR UP TO AND INCLUDING THE COUNTY EXECUTIVE, OR IN THE CASE OF LEGISLATIVE BRANCH EMPLOYEES, THE COUNTY COUNCIL.

(3) IN UNUSUAL CIRCUMSTANCES, OR IF A RETALIATORY ACTION OR COERCION HAS TAKEN PLACE, THE EMPLOYEE MAY FILE A REPORT DIRECTLY WITH EITHER THE PERSONNEL BOARD OR THE ETHICS COMMISSION. THE IDENTITY OF

BOTH THE EMPLOYEE FILING A REPORT AND THE COUNTY EMPLOYEE OR OFFICIAL WHO IS THE SUBJECT OF THIS REPORT SHALL BE KEPT CONFIDENTIAL UNLESS WAIVED IN WRITING BY THE PARTIES. THE PERSONNEL BOARD OR ETHICS COMMISSION SHALL CAUSE AN INQUIRY TO BE CONDUCTED OR REFER THE REPORT TO THE APPROPRIATE GOVERNMENT OFFICIAL OR AGENCY.

(b) PROTECTION FOR EMPLOYEE

ANY MERIT SYSTEM EMPLOYEE WHO REFUSES TO OBEY AN INSTRUCTION INVOLVING AN ILLEGAL OR IMPROPER ACTION OR WHO DISCLOSES INFORMATION CONCERNING ILLEGAL OR IMPROPER ACTION IN COUNTY GOVERNMENT WITH A REASONABLE GOOD-FAITH BELIEF THAT SUCH DISCLOSURES ARE TRUE AND ACCURATE SHALL BE PROTECTED UNDER PROCEDURES AUTHORIZED HEREIN FROM ANY RETALIATORY OR COERCIVE PERSONNEL ACTION. THIS PROVISION DOES NOT EXTEND PROTECTION TO A MERIT SYSTEM EMPLOYEE UPON A DETERMINATION THAT:

(1) THE EMPLOYEE'S ACTIONS WERE FRIVOLOUS, UNREASONABLE OR WITHOUT FOUNDATION EVEN THOUGH NOT BROUGHT IN BAD FAITH;

(2) THE EMPLOYEE WITHOUT GOOD CAUSE FAILED TO COMPLY WITH ADMINISTRATIVE REGULATIONS CONCERNING THE MAKING OF SUCH DISCLOSURES; OR

(3) THE EMPLOYEE WAS THE SUBJECT OF OTHERWISE PROPER PERSONNEL ACTIONS TAKEN FOR DISCIPLINARY REASONS AND NOT FOR RETALIATORY PURPOSES

PROHIBTED BY THIS SECTION.

A PERSONNEL ACTION SHALL MEAN ANY ADMINISTRATIVE ACT OR OMISSION WHICH HAS A SIGNIFICANT ADVERSE IMPACT UPON THE EMPLOYEE, OR A CHANGE IN THE EMPLOYEE'S DUTIES OR RESPONSIBILITIES INCONSISTENT WITH THE EMPLOYEE'S GRADE AND SALARY.

(c) PROHIBITED PRACTICES

IT SHALL BE UNLAWFUL FOR ANY PERSON TO COERCE ANY MERIT SYSTEM EMPLOYEE INTO TAKING AN ILLEGAL OR IMPROPER ACTION OR TAKE ANY RETALIATORY ACTION AGAINST ANY MERIT SYSTEM EMPLOYEES BECAUSE OF THAT EMPLOYEE'S DISCLOSURE OF INFORMATION RELATING TO ILLEGAL AND IMPROPER ACTION IN COUNTY GOVERNMENT.

[illegible] PROCEDURE

(b) PROTECTION FOR EMPLOYEE

ANY MERIT SYSTEM EMPLOYEE WHO REFUSES TO OBEY AN INSTRUCTION INVOLVING AN ILLEGAL OR IMPROPER ACTION OR WHO DISCLOSES INFORMATION CONCERNING ILLEGAL OR IMPROPER ACTION IN COUNTY GOVERNMENT WITH A REASONABLE GOOD-FAITH BELIEF THAT SUCH DISCLOSURES ARE TRUE AND ACCURATE SHALL BE PROTECTED UNDER PROCEDURES AUTHORIZED HEREIN FROM ANY RETALIATORY OR COERCIVE PERSONNEL ACTION. THIS PROVISION DOES NOT EXTEND PROTECTION TO A MERIT SYSTEM EMPLOYEE UPON A DETERMINATION THAT:

(1) THE EMPLOYEE'S ACTIONS WERE FRIVOLOUS, UNREASONABLE OR WITHOUT FOUNDATION EVEN THOUGH NOT BROUGHT IN BAD FAITH;

(2) THE EMPLOYEE WITHOUT GOOD CAUSE FAILED TO COMPLY WITH ADMINISTRATIVE REGULATIONS CONCERNING THE MAKING OF SUCH DISCLOSURES; OR

(3) THE EMPLOYEE WAS THE SUBJECT OF OTHERWISE PROPER PERSONNEL ACTIONS TAKEN FOR DISCIPLINARY REASONS AND NOT FOR RETALIATORY PURPOSES

PROHIBTED BY THIS SECTION.

A PERSONNEL ACTION SHALL MEAN ANY ADMINISTRATIVE ACT OR OMISSION WHICH HAS A SIGNIFICANT ADVERSE IMPACT UPON THE EMPLOYEE, OR A CHANGE IN THE EMPLOYEE'S DUTIES OR RESPONSIBILITIES INCONSISTENT WITH THE EMPLOYEE'S GRADE AND SALARY.

(c) PROHIBITED PRACTICES

IT SHALL BE UNLAWFUL FOR ANY PERSON TO COERCE ANY MERIT SYSTEM EMPLOYEE INTO TAKING AN ILLEGAL OR IMPROPER ACTION OR TAKE ANY RETALIATORY ACTION AGAINST ANY MERIT SYSTEM EMPLOYEES BECAUSE OF THAT EMPLOYEE'S DISCLOSURE OF INFORMATION RELATING TO ILLEGAL AND IMPROPER ACTION IN COUNTY GOVERNMENT.

(d) COMPLAINT PROCEDURE.

THE BOARD IS HEREBY AUTHORIZED AND DIRECTED TO ESTABLISH PROCEDURES IN THE PERSONNEL REGULATIONS TO PROCESS COMPLAINTS CLAIMING A VIOLATION OF SECTION 33-10(c) AND TO DEVELOP APPROPRIATE SANCTIONS AND PENALTIES TO BE ASSESSED UPON A PERSON FOUND TO HAVE VIOLATED THE PRO-

VISIONS OF SECTION 33-10(c). ANY PERSON MAY FILE A COMPLAINT WITH THE BOARD CHARGING A VIOLATION OF SECTION 33-10(c). THE BOARD SHALL ALSO HAVE AUTHORITY, WITH OR WITHOUT A COMPLAINT, TO INITIATE AN INQUIRY OF ANY PERSON SUSPECTED OF TAKING RETALIATORY OR COERCIVE PERSONNEL ACTION AGAINST AN EMPLOYEE AS PROHIBITED BY SECTION 33-10(c).

(e) INVESTIGATIONS

ALL COMPLAINTS CHARGING A VIOLATION OF SECTION 33-10(c) SHALL BE PROMPTLY INVESTIGATED BY THE BOARD'S STAFF WHO SHALL DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE A VIOLATION OF THAT SECTION HAS OCCURRED. SHOULD THE BOARD'S STAFF DETERMINE THAT THE SUBJECT MATTER OF THE COMPLAINT INVOLVED ALLEGATIONS MORE PROPERLY THE SUBJECT OF AN EMPLOYEE GRIEVANCE OR COMPLAINT TO BE FILED UNDER THE PROVISIONS OF THE PERSONNEL REGULATIONS OR OTHER LAWS OR REGULATIONS, THE COMPLAINANT SHALL BE SO ADVISED AND THE COMPLAINT DISMISSED. SHOULD THE BOARD'S STAFF DETERMINE THAT NO PROBABLE CAUSE EXISTS, THAT DETERMINATION SHALL BE FINAL AND THE COMPLAINT DISMISSED UNLESS RECONSIDERATION IS REQUESTED BY THE BOARD. SHOULD THE BOARD"S STAFF DETERMINE THAT PROBABLE CAUSE DOES EXIST, THE STAFF SHALL PREPARE AND CAUSE TO BE SERVED ON THE PERSON BELIEVED TO HAVE VIOLATED SECTION 33-10(c) A STATEMENT OF CHARGES FAIRLY DESCRIBING THE ALLEGED VIOLATION AND THE SANCTIONS SOUGHT TO BE IMPOSED FOR SUCH VIOLATION. THE CHARGES SHALL THEN BE CERTIFIED TO THE BOARD TO SCHEDULE AND CONDUCT HEARINGS IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER. THE CASE IN SUPPORT OF CHARGES SHALL BE PRESENTED BY THE BOARD'S STAFF.

33-11 Classification, Salary and Wage Plans.

(a) Classification ~~Plan~~

~~Subject to any classification standards set forth in the Personnel Regulations, the Chief Administrative Officer shall establish a plan for classes of all positions in the merit system and classify such positions therein and from time to time as may be necessary, amend said plan by providing for additional classes to which new positions are classified or combine or abolish all existing positions. The Chief Administrative Officer, subject to the direction of the County Executive or the County Council in the case of the legislative branch employees, shall have exclusive authority to administer the classification plan so established.~~

DEVELOPED PURSUANT TO SECTION 33-7 (c) AND

(1) SUBJECT TO THE CLASSIFICATION STANDARDS CONTAINED IN THE PERSONNEL REGULATIONS, THE CHIEF ADMINISTRATIVE OFFICER SHALL BE RESPONSIBLE FOR: ESTABLISHMENT AND ABOLITION OF POSITIONS AS NECESSARY FOR EFFECTIVE AND ECONOMICAL OPERATION OF THE COUNTY GOVERNMENT; ASSIGNMENT OF ALL POSITIONS IN THE MERIT SYSTEM TO PROPER CLASSES AND ASSIGNMENT OF PAY GRADES TO CLASSES INCLUDING THE ESTABLISHMENT OF AN ADMINISTRATIVE REVIEW PROCEDURE FOR HANDLING OBJECTIONS BY AFFECTED EMPLOYEES TO SUCH ASSIGNMENT ACTIONS; AND CREATION OF ADDITIONAL CLASSES PROVIDED THAT THE BOARD SHALL BE GIVEN REASONABLE OPPORTUNITY TO REVIEW AND COMMENT ON ANY SUCH PROPOSED NEW CLASSES.

(2) IN NO EVENT SHALL AN UPWARD RECLASSIFICATION BE PERMITTED BETWEEN JULY 1 and DECEMBER 31 OF ANY YEAR IN WHICH THE COUNTY EXECUTIVE IS ELECTED UNLESS THE CHIEF ADMINISTRATIVE OFFICER DETERMINES BY WRITTEN FINDING THAT SUCH RECLASSIFICATION IS NECESSARY FOR THE EFFICIENT AND EFFECTIVE OPERATION OF COUNTY GOVERNMENT.

(b) Uniform Salary Plan.

There is hereby established for all classes of positions in the merit system a uniform salary plan entitled the "General Salary Schedule" which shall contain grades, salary rates and ~~salary~~ RANGES steps for each grade. All classes of positions shall be assigned an appropriate grade under the general salary schedule by the Chief Administrative Officer. All positions involving comparable duties, experience, responsibilities, and authority shall be paid comparable salaries in accordance with the relative value of the services performed. In establishing salary rates,

consideration shall be given to experience, prevailing salary rates for comparable services in both the public and private sector, living costs, maintenance and other benefits received by the employee under the merit system. The Chief Administrative Officer shall, subject to the approval of the County Council, promulgate and from time to time amend the "General Salary Schedule". The Chief Administrative Officer shall also provide compensation procedures for overtime, ~~pay~~ PAY differential and other appropriate ~~wage~~ SALARY AND benefits.

(c) Salary Policies.

~~(1) THE COUNTY EXECUTIVE SHALL PROVIDE AS A PART OF THE ANNUAL~~ RECOMMENDED OPERATING BUDGET FOR THE COUNTY GOVERNMENT SUFFICIENT FUNDS TO IMPLEMENT THE COST-OF-LIVING ADJUSTMENT REQUIRED BY THIS SECTION. AFTER THE BUDGET IS APPROVED, THE CHIEF ADMINISTRATIVE OFFICER SHALL

ADJUST THE UNIFORM SALARY PLAN FOR ALL CLASSIFIED EMPLOYEES OF MONTGOMERY COUNTY GOVERNMENT BEGINNING ON THE FIRST PAY PERIOD ON OR AFTER JULY 1 OF EACH YEAR BY AN AMOUNT NOT LESS THAN SEVENTY-FIVE PERCENT (75%) OF THE CHANGE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS IN THE WASHINGTON, D.C. AREA ALTHOUGH PAY GRADES 1 THROUGH 4 OF THE UNIFORM SALARY PLAN TO WHICH MINIMUM WAGE AND CERTAIN SEASONAL EMPLOYEES ARE ASSIGNED WILL BE ADJUSTED BY CHANGES IN MINIMUM WAGE RATES AND SALARY SURVEYS TO DETERMINE THE COMPETITIVENESS OF SUCH SALARIES. THE PERCENTAGE CHANGE SHALL BE BASED ON THE LATEST PUBLISHED INDEX FOR THE CALENDAR YEAR PRECEDING THE FISCAL YEAR IN WHICH THE ADJUSTMENT IS TO BE PAID. THE CHIEF ADMINISTRATIVE OFFICER MAY ADJUST THE UNIFORM SALARY PLAN IN EXCESS OF THE BASE PERCENTAGE OF SEVENTY-FIVE PERCENT (75%), PROVIDED FUNDS ARE AVAILABLE AND APPROVED BY THE COUNTY COUNCIL FOR SUCH PURPOSE.

~~(2)~~ Employees are to be paid on a bi-weekly pay period basis. Except as specifically provided by federal, state or county law, the Chief Administrative Officer shall have the responsibility for determining payroll deductions and charges for such deductions, if any. Upon termination, if an employee is indebted to the County, the amount due may be set off and deducted from any unpaid salary, accrued annual or compensatory leave, or retirement contributions.

(d) Other Compensation Policies.

-9A

The Chief Administrative Officer may establish other compensation policies to recognize employees who perform in an extraordinary manner either on a sustained performance basis or in recognition of a specific act or service. These compensation policies may include monetary awards to employees making suggestions which result in better public service, cost savings or more efficient operations. Compensation policies may be in the form of cash awards or be part of the uniform salary plan.

33-12. APPEALS OF DISCIPLINARY ACTIONS, ~~Types of~~ Grievances AND PROCEDURES.

(a) APPEALS OF CERTAIN DISCIPLINARY ACTIONS: ~~Charter~~ Any merit system employee, [illegible] THOSE IN PROBATIONARY STATUS, who has been notified of impending removal, ~~[illegible] RESIGNATION IN THE FACE OF POSSIBLE REMOVAL~~, demotion, or suspension shall be

entitled to file an ~~direct~~ appeal to the Personnel Board which shall ~~promptly schedule and conduct~~ a hearing WITHOUT UNDUE DELAY UNLESS THE APPEAL HAS BEEN SETTLED DURING ADMINISTRATIVE REVIEW OF THE APPEAL BY THE CHIEF ADMINISTRATIVE OFFICER OR A DESIGNEE. ANY MERIT SYSTEM EMPLOYEE WHO IS THE SUBJECT OF OTHER DISCIPLINARY ACTION NOT SPECIFIED ABOVE MAY FILE AN APPEAL WITH THE PERSONNEL BOARD, BUT SUCH APPEAL MAY OR MAY NOT REQUIRE A HEARING AS THE BOARD MAY DETERMINE.

A GRIEVANCE IS A

(b) GRIEVANCES. ~~Non-Charter. Not inconsistent with other provisions of law, the Personnel Board shall prescribe in its Personnel Regulations those classes of non-Charter grievances which require hearings. Once a class is so designated, any merit system employee filing a grievance concerning that class shall be entitled to a hearing and determination by the Board after compliance with any administrative procedures required~~ FORMAL COMPLAINT ARISING OUT OF A MISUNDERSTANDING OR DISAGREEMENT BETWEEN A MERIT SYSTEM EMPLOYEE AND MANAGEMENT WITH REFERENCE TO A TERM OR CONDITION OF EMPLOYMENT. THE DETERMINATION OF THE BOARD AS TO WHAT CONSTITUTES A TERM OR CONDITION OF EMPLOYMENT SHALL BE FINAL. GRIEVANCES DO NOT INCLUDE THE FOLLOWING: CLASSIFICATION ALLOCATIONS, FAILURE TO RE-EMPLOY A PROBATIONARY EMPLOYEE OR OTHER EMPLOYMENT MATTERS FOR WHICH ANOTHER FORUM IS AVAILABLE TO PROVIDE RELIEF OR THE BOARD DETERMINES BY REGULATION ARE NOT SUITABLE MATTERS FOR THE GRIEVANCE RESOLUTION PROCESS. A GRIEVANCE SHALL INCLUDE TERMINATION BY RESIGNATION WHICH IS FOUND BY THE BOARD TO HAVE BEEN SUBMITTED UNDER CIRCUMSTANCES WHICH CAUSE THE RESIGNATION TO BE INVOLUNTARY; AND, IN THE EVENT OF SUCH A FINDING, THE BOARD SHALL REQUIRE THE APPOINTING AUTHORITY TO SUBSTANTIATE THE TERMINATION AS IN THE CASE OF A REMOVAL. THE BOARD SHALL PRESCRIBE IN THE PERSONNEL REGULATIONS PROCEDURES WHICH SEEK TO SECURE AT THE LOWEST POSSIBLE LEVEL A FAIR, PROMPT AND MUTUALLY SATISFACTORY RESOLUTION TO A GRIEVANCE. IN PROVIDING THESE PROCEDURES, THE BOARD SHALL INSURE THAT ANY GRIEVANCE BASED UPON AN ALLEGED IMPROPER APPLICATION OF A MERIT SYSTEM LAW OR REGULATION CONCERNING A DISPUTED ISSUE OF FACT IS ENTITLED TO RESOLUTION AFTER A FACT-FINDING INQUIRY AUTHORIZED BY THE BOARD. GRIEVANCES BASED UPON AN ALLEGED IMPROPER INTERPRETATION OF MERIT SYSTEM LAWS, OR REGULATIONS DO NOT REQUIRE A HEARING DURING THE GRIEVANCE RESOLUTION PROCESS.

~~by the Board.~~ The Board may utilize hearing officers to conduct ~~non-Charter~~ INVESTIGATIONS AND grievance hearings who shall make findings and recommendations subject to objection by the parties and final Board approval under such procedures as established by the Board.

~~(c) Administrative Procedures and Remedies.~~

~~(1) The Chief Administrative Officer shall prescribe administrative procedures and remedies for all classes of non-Charter grievances.~~

~~(b) These administrative remedies must be exhausted prior to any appeal to the Board.~~

~~(c) Except in cases of removal, demotion or suspension, the Personnel Board shall prescribe in the Personnel Regulations the procedure for grievance appeals to the board.~~

33-13. Appeal PROCEDURES.

~~(a) Appeals of all grievances properly before the Personnel Board must be filed therewith in writing within thirty days after the grievance begins to run. A copy of the appeal shall be provided to the Chief Administrative Officer. The appeal must be filed in a form and manner prescribed by the Board. In cases of removal, demotion or suspension, the grievance accrues immediately upon initial notification to the employee of such action. In all other cases, the grievance accrues upon completion of the required administrative procedure only.~~

THE PERSONNEL BOARD SHALL PRESCRIBE BY PERSONNEL REGULATIONS PROCEDURES COVERING GRIEVANCES WHICH SHALL INCLUDE APPEALS INCLUDING THE TIME LIMIT FOR FILING SUCH APPEAL, THE GRANTING OF ADMINISTRATIVE LEAVE PENDING APPEAL, FILING AND CONDUCT OF HEARINGS, COST OF THE ADMINISTRATIVE RECORD, REQUIREMENTS FOR WRITTEN NOTICE, AND PROVISIONS FOR SUMMARY ACTIONS BY THE PERSONNEL BOARD.

~~(b) Administrative Leave Pending Appeal.~~

~~In cases of removal, the Personnel Board may identify by Personnel Regulation those situations where administrative leave may be granted pending appeal for those cases determined to be of a non-frivolous nature.~~

~~(c) Administrative Record; Docket and Summary Action.~~

~~(1) After the filing of a notice of appeal with the Personnel Board, but not later than 15 days thereafter, the County department involved shall forward to the Board the complete administrative record of the case's system employee grievance which contains all relevant reports, papers and documents. The department, except for good cause shown, shall be prohibited from introducing at hearing any written evidence not contained in said record. The record so filed with the Board shall be available for inspection by all parties to the proceedings or their legal representatives at all reasonable times prior to hearing.~~

~~(2) In case of removal, demotion or suspension the Board shall examine the record to insure that it reflects that the merit system employee received in writing fair and reasonable notice of the charges against him or her.~~

~~(3) The Board may, without a hearing, summarily dismiss, or rule on an action or appeal when the examination of the record reveals adequate cause, and when the merit system employee appealing an action fails to request a hearing, or withdraws an appeal, or does not timely file written recommendations where such recommendations were not exhausted or other appeal procedures were not satisfied.~~

11A

~~33-14. Hearing Authority of the Personnel Board.~~
~~HEARING REQUIREMENTS.~~
~~(a) Hearings before the Personnel Board are quasi judicial in nature and shall be conducted in formal session in accordance with harmony recognized principles of administrative due process. The Board, or designated hearing officers, shall have the following authority with respect to cases to be heard:~~

~~(1) Administer oaths and issue subpoenas upon request of the parties~~

~~(2) Issue orders requiring the production of books, papers, or~~

THE PROVISIONS AND AUTHORITY CONTAINED IN THE COUNTY ADMINISTRATIVE PROCEDURES ACT.

BOARD MEMBERS SHALL BE PROVIDED ORIENTATION AND TRAINING AS REQUIRED TO PROPERLY IMPLEMENT THE REQUIREMENTS OF THE COUNTY ADMINISTRATIVE PROCEDURES ACT AND CONDUCT ADMINISTRATIVE EVIDENTIARY PROCEEDINGS. WITH RESPECT TO HEARINGS WHICH GO BEYOND ONE SESSION, THE BOARD SHALL ENDEAVOR TO SCHEDULE SUCH HEARINGS SO THAT A MINIMUM AMOUNT OF TIME ELAPSES BETWEEN SESSIONS. WHEN REQUIRED FOR CONTINUITY AND MINIMUM LOSS OF TIME IN CONCLUDING A CASE, THE BOARD SHALL ALSO ENDEAVOR TO SCHEDULE HEARINGS DURING DAYTIME, WEEKDAY HOURS.

- 12 -

~~any relevant thing, and issue subpoenas on its own initiative. Call and swear witnesses or seek additional evidence to be made part of the record as justice may require. All Board subpoenas shall be executed by the Board Chairperson and may be served by the Sheriff of the County or any person who could lawfully serve said subpoena in a civil case. Upon noncompliance with any Board subpoena duly issued hereunder, the Board may certify the matter to the County Attorney for enforcement.~~ The County Attorney shall promptly institute appropriate civil proceedings ~~in a court of competent jurisdiction as necessary to obtain compliance~~ with the Board's subpoena.

~~(2) Rule on petitions to grant or quash subpoenas.~~

~~(3) Rule on motions, offers of proof and receive relevant and~~ probative evidence, ~~and exclude incompetent, irrelevant, immaterial or unduly repetitious evidence and give effect to the rules of privilege recognized by law.~~

~~(4) Dispose of procedural requests or similar matters including~~ motions for continuance, ~~amend pre-hearing statements and order hearings~~ reopened, ~~consolidated or grant rehearings.~~

~~(5) Call, examine and cross examine witnesses and obtain and~~ introduce into the record documentary or other evidence.

~~(6) Accept evidence by stipulation of facts.~~

~~(7) Require~~ Hearings ~~be~~ SHALL be open to the public WITH REASONABLE NOTICE, if requested by the employee.

(b) BOARD COUNSEL. THE BOARD MAY REQUEST SPECIAL COUNSEL WHEN THE BOARD AND THE COUNTY ATTORNEY DETERMINE THAT A REPRESENTATIVE CONFLICT EXISTS WITHIN THE COUNTY ATTORNEY'S OFFICE. THE SPECIAL COUNSEL SHALL BE AN INDIVIDUAL ACCEPTABLE TO THE BOARD. THE COUNTY ATTORNEY MAY ASSIGN AN ATTORNEY TO THE BOARD AS ITS GENERAL COUNSEL WHO SHALL REPRESENT THE BOARD EXCLUSIVELY ON MATTERS CONCERNING THE MERIT SYSTEM.

~~(8) Take any other action authorized by law or necessary to a~~ ~~fair and impartial disposition of the case.~~

~~(b) The Personnel Board shall include in its Personnel Regulations~~ procedures governing such administrative hearings.

(c) Decisions.

Final decisions by the Personnel Board shall be in writing, setting forth necessary findings of fact and conclusions of law, ~~and shall be prepared in consultation with the County Attorney. In the event the County Attorney deems his or her representation would not be professionally appropriate, special counsel may be appointed in accordance~~

with the provisions of the County Charter. A copy of such decision shall be furnished to ~~the~~ ALL parties ~~by certified mail~~. The Board, upon a finding that the ~~grievance~~ APPEAL has no merit, shall dismiss the appeal. The Board upon finding that the ~~grievance~~ APPEAL is warranted, shall have authority to order appropriate relief to accomplish the remedial objectives of this Article including but not limited to the following:

(1) order retroactive promotion or reclassification with or without back pay;

(2) order change in position status; grade, work schedule, work conditions and work benefits;

(3) order priority consideration be given to an employee found qualified before consideration is given to other candidates;

(4) order REINSTATEMENT with or without back pay ~~reinstatement~~, although the Chief Administrative Officer may reinstate either to a position previously held or to a comparable position of equal pay, status and responsibility.

(5) order cancellation of personnel actions found in violation of law or Personnel Regulation provided that such action may not without due process, adversely affect the employment rights of another employee;

(6) grant employee participation in an employee benefit previously denied (training, educational program or assistance, preferential or limited work assignments and schedules, overtime pay or compensatory leave).

(7) order removal from administrative or personnel records any reference or document pertaining to an unwarranted disciplinary or adverse personnel action;

(8) order corrective measures as to any management procedure adversely affecting employee pay, status, work conditions, leave, or morale;

(9) ORDER THE COUNTY TO REIMBURSE OR PAY ALL OR PART OF THE EMPLOYEE'S REASONABLE ATTORNEY'S FEES. THE REASONABLENESS OF THE ATTORNEY FEES SHALL BE DETERMINED BY THE

FOLLOWING FACTORS:

a. TIME AND LABOR REQUIRED;

b. THE NOVELTY AND COMPLEXITY OF THE CASE;

c. THE SKILL REQUISITE TO PERFORM THE LEGAL SERVICE PROPERLY;

d. THE PRECLUSION OF OTHER EMPLOYMENT BY THE ATTORNEY DUE TO ACCEPTANCE OF THE CASE;

e. THE CUSTOMARY FEE;

f. WHETHER THE FEE IS FIXED OR CONTINGENT;

g. TIME LIMITATIONS IMPOSED BY THE CLIENT OR THE CIRCUMSTANCES;

h. THE EXPERIENCE, REPUTATION AND ABILITY OF THE ATTORNEYS; and

i. AWARDS IN SIMILAR CASES ; AND

(10) (9) order such other and further relief as may be deemed appropriate consistent with the Charter and laws of Montgomery County.

33-15. Judicial Review AND ENFORCEMENT.

(a) ANY AGGRIEVED MERIT SYSTEM EMPLOYEE OR THE CHIEF ADMINISTRATIVE OFFICER MAY OBTAIN JUDICIAL REVIEW OF A PERSONNEL BOARD ORDER OR DECISION FROM ~~(a) All final decisions of the Personnel Board may be appealed by the Chief Administrative Officer on behalf of the County or by any other party AGGRIEVED PARTY to the proceedings to~~ the Circuit Court FOR MONTGOMERY COUNTY in the manner prescribed under Chapter 1100, Subtitle B of the Maryland Rules of Procedure/, ~~AND SHALL~~ NOT BE DE ~~NOVO IN NATURE~~.

(b) THE COURT, IN HEARING THE CASE, SHALL APPLY THE JUDICIAL REVIEW STANDARDS AS SET FORTH IN THE MARYLAND ADMINISTRATIVE PROCEDURES ACT, ART. 41, MD. CODE ANN. S225. THE COURT REVIEW SHALL BE ON THE BASIS OF THE RECORD BEFORE THE BOARD. Judicial review of Board decisions issued hereunder also includes ~~all~~ appropriate appellate review ~~including~~ BY the Special Courts of Appeals of Maryland. ~~and the Court of Appeals of Maryland~~.

(c) WHEN THE CHIEF ADMINISTRATIVE OFFICER IS THE PARTY SEEKING JUDICIAL REVIEW OF A BOARD ORDER OR DECISION IN FAVOR OF A MERIT SYSTEM EMPLOYEE, THE COUNTY SHALL BE RESPONSIBLE FOR THE EMPLOYEE'S LEGAL EXPENSES, INCLUDING ATTORNEYS' FEES WHICH RESULT FROM THE JUDICIAL REVIEW AND ARE DETERMINED BY THE COUNTY TO BE REASONABLE UNDER THE CRITERIA SET FORTH IN SECTION 33-14(c)(9).

~~33-16. Penalties and Enforcement.~~

~~(a) In addition to any penalties provided by State law, or elsewhere in this Code, any person who violates any provision of this Article including decisions of the Personnel Board or who under oath intentionally falsifies material facts or willfully and falsely testifies before the Board or who tampers, intimidates, bribes, or in any way coerces or influences a witness to Board proceedings shall upon conviction be subject to a fine of $1,000 or six months imprisonment or both. Any such person who is a County employee shall, upon conviction, be subject to immediate dismissal from County employment.~~

(d) ~~(b)~~ Upon/THE FAILURE/OF A PARTY TO INVOKE THE ~~APPEAL~~ JUDICIAL REVIEW PROVISION OF SECTION 33-15 (a) OR THE EXHAUSTION THEREOF AND UPON noncompliance with any final DECISION OR ORDER of the Board, ~~after any judicial review thereof~~, the ~~Personnel~~ Board ~~SHALL may certify the matter to the County Attorney for enforcement~~ MAY CERTIFY THE MATTER TO THE COUNTY ATTORNEY FOR ENFORCEMENT. ~~The County Attorney shall promptly~~ THE COUNTY ATTORNEY SHALL PROMPTLY institute appropriate civil proceedings ~~in a court of competent jurisdiction as necessary~~ IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY to ENFORCE ~~obtain~~ compliance with ~~the Board's decision, ITS~~ THE DECISION OR ANY OTHER ORDER AND FOR APPROPRIATE ~~TEMPORARY~~ RELIEF. ~~THE FINDINGS OF THE BOARD WITH RESPECT TO QUESTIONS OF FACT SHALL BE CONCLUSIVE.~~

14A

33-16. Conflict.

In the event of any conflict between the provisions of this Article and any provisions of the Personnel Regulations or administrative rules or regulations, the provisions of this Article shall control.

- 15 -

Sec. 3. Section 27-21, title "Procedures for Complaint Against the County" of subtitle "Discrimination in Employment" of Article I, title "Commission on Human Relations" of Chapter 27, title "Human Relations and Civil Liberties" of the Montgomery County Code, 1972, as amended, is hereby repealed and reenacted with amendments to read as follows:

27-21. Procedure for Complaints Against County.

(a) In any case in which the County or any of its instrumentalities or agencies is alleged to be in violation of any of the provisions of this subtitle, a complaint may be filed with the Commission as hereafter provided or, at the sole discretion of the aggrieved party, directly with a court of competent jurisdiction. ANY MERIT SYSTEM EMPLOYEE WHO ELECTS TO FILE A COMPLAINT UNDER THIS SECTION SHALL NOT BE ENTITLED TO A DUPLICATIVE MERIT SYSTEM GRIEVANCE REVIEW AND SHALL BE, THEREFORE, DEEMED TO HAVE WAIVED THE RIGHT TO HAVE THE SAME MATTER REVIEWED BY THE PERSONNEL BOARD AS MAY BE OTHERWISE PROVIDED BY LAW OR REGULATION.

[Complaints received by the Commission against the County, its agencies or instrumentalities shall be expeditiously referred to the County Personnel Board. Any complaint referred to the Personnel Board by the Commission shall be treated as if it were a direct appeal pursuant to the Personnel Regulations. Upon receipt of any such referral, the Personnel Board shall consider the information and conduct a hearing thereon. The

Board shall then render a final decision on the referred complaint, which decision shall be expeditiously transmitted in writing to the complainant, the Human Relations Commission and the Chief Administrative Officer of the County. In the event that the Personnel Board fails to take any action on a referral from the Commission within thirty days from the date of such referral, the Commission may proceed as provided hereunder.]

(b) The complaint shall be processed in accordance with the procedures contained in Section 27-7. In addition to other remedies authorized by law, the Commission shall have authority upon completion of its process to forward to the Chief Administrative Officer an order requiring the County to grant to the employee such relief as the Commission deems appropriate and within its authority to order against private employers. The Chief Administrative Officer, SUBJECT TO ANY ENSUING JUDICIAL REVIEW, shall implement the order.

Sec. 4. The individual section numbers of Article III, title "Employees' Retirement System" and Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel" are hereby sequentially renumbered as appropriate without any change in text to conform with the provisions of this act.

Sec. 5. Section 33-3, title "Continuation and Administration of Merit System" of Article I, title "General" of Chapter 33, title "Personnel" of the Montgomery County Code, 1972, as amended, is repealed and reenacted with amendments to read as follows:

Sec. 33-3. Continuation and Administration of Merit System.

(a) The merit system for officers and employees of the county government established pursuant to the Charter for Montgomery County, Maryland, 1948, is hereby continued. All officers and employees of the county government, except FOR THOSE EXEMPTED POSITIONS SPECIFIED IN SECTION 401 OF THE CHARTER FOR MONTGOMERY COUNTY, 1968, AS AMENDED, ~~members of the Council, the County Executive, the Chief Administrative Officer, the County Attorney, the heads of the several departments, special legal counsel employed pursuant to the Charter for Montgomery County, 1968, and members of boards and commissions~~ and other officers authorized by law to be appointed to serve in a quasi-judicial capacity, shall be classified as merit system employees.

(b) The merit system shall be administered by the Chief Administrative Officer, under the direction of the County Executive, and shall be governed by and subject to the provisions of the Charter for Montgomery County, 1968, provisions of this Chapter, and the regulations adopted by the Personnel Board and approved by the County Council.

SEC. 6. REVISIONS TO PERSONNEL REGULATIONS.

THE PERSONNEL BOARD SHALL CONFORM THE PERSONNEL REGULATIONS TO THE REQUIREMENTS OF THIS ACT AS SOON AS THE AMENDMENT TO CHARTER SECTION 404 GOES INTO EFFECT, BUT IN NO EVENT TO INITIATE REVISIONS TO THE PERSONNEL REGULATIONS TO THE PERSONNEL REGULATIONS LATER THAN NINETY (90) DAYS FOLLOWING THE ENACTMENT OF THIS LAW

Sec. 7. Severability.

The provisions of this Act are severable and if any provision, sentence, clause, section or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 8. Effective date.

This Act shall take effect on the 76th day following the date on which it becomes law.

Upon motion of Councilman Colman, duly seconded and without objection, the Council amended the title of Bill No. 36-78 to read as follows:

AN ACT to amend Chapter 33, title "Personnel" of the Montgomery County Code, 1972, as amended, to transfer Sections 33-5 through 33-33, collectively designated as Article II, title "Personnel Regulations" to an Appendix of this Chapter and its component sections to be renumbered accordingly; to add a new Article II, title "Merit System" to Chapter 33 to provide for legislative intent, Merit System principles, statement of purpose, Merit System Review Commission and applicability; to define certain terms; to assign certain responsibilities to the Personnel Board; to assign certain responsibilities to the Chief Administrative Officer; to establish an Equal Employment Opportunity and Affirmative Action Program; to provide for protection for employees against

retaliation or coercion for refusal to obey illegal or improper instructions or for disclosure of illegal or improper actions in County government; to provide procedures for such disclosures; to prescribe complaint and investigation procedures and to prohibit certain conduct; to provide for classification, salary and wage plans; to provide for appeals of disciplinary actions, grievances and procedures; to require regulations concerning certain appeal procedures; to provide for the hearing authority of the Personnel Board concerning appeals; to provide for judicial review of Personnel Board decisions and judicial enforcement of Board decisions under certain circumstances; to provide for an interpretation in the event of conflict between the Article and any regulation; to repeal and reenact with amendments Section 27-21, title "Procedures for Complaint Against the County" of subtitle "Discrimination in Employment" of Article I, title "Commission on Human Relations" of Chapter 27, title "Human Relations and Civil Liberties" of the Montgomery County Code 1972, as amended, to establish revised procedures and remedies for employment discrimination and to provide for a waiver of Merit System rights upon election of the employment discrimination complaint procedure; to sequentially renumber the individual section numbers of Article III, title "Employees Retirement System" and Article IV, title "Employer-Employee Relations" of Chapter 33 as appropriate without any change in text; to make technical modifications to Section 33-3 of Chapter 33; to require the Personnel Board to conform its regulations to law within a certain time; and to make certain other technical changes consistent with other amendments of this Act.

Upon motion of Councilman Colman, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of Bill No. 36-78. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Menke and Scull voting in the affirmative and Councilmembers Hovsepian and Moore being absent, Bill No. 36-78, Comprehensive Merit System, was enacted, as amended.

Councilman Colman stated that the main purpose of Bill No. 36-78 is to delineate the responsibilities of the Executive Branch and Personnel Board with respect to personnel management in County government. This bill, coupled with Ballot Question A, clarifies a legal question that has surrounded the personnel management field in the County government for several years, i.e., the authority of the Council

to amend Personnel Regulations promulgated by the Personnel Board. During deliberations on the bill, it became apparent that it would be appropriate to enunciate certain policies and principles for the County government and its employees. Included in those is a clarification of the classification responsibilities, the requirement for conformity by the Personnel Board to the Administrative Procedures Act, and a section designed to prevent retaliation or coercion by management against employees who may identify improper or illegal activities in the County government. Councilman Colman stated that the bill has been improved very much since its introduction. It clarifies a great many problems with regard to personnel management. He expressed the hope that the County Executive will approve the bill.

On behalf of the Council, President Scull thanked all those Executive Branch personnel, Personnel Board staff, employee representatives and Council staff who worked on Bill No. 36-78. She stated that it was a fine job.

Re: Enactment of Bill No. 37-78, Cost-of-Living Adjustment

Bill No. 37-78, Cost-of-Living Adjustment, was called for final reading. The Council had before it for consideration Draft No. 2, dated November 8, 1978, of Bill No. 37-78.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the bill & proceed to consideration of amendments.

President Scull inquired as to whether this bill really needs to be emergency legislation. She noted that if it is not emergency legislation, it will only require 4 affirmative votes, instead of 5.

Mr. Tierney stated that he has checked this matter with the Executive Branch, and has found that an effective date 76 days after the bill becomes law will allow ample time for the preparation of the FY 1980 budget.

Councilman Menke stated that the wording of Section 33-74 on page 2 of the bill provides that the CAO shall increase the salary of County employees by at least 75% of the Consumer Price Index (CPI). He must do so or be in violation of the law. If the Council does not approve sufficient funds to provide the cost-of-living adjustment, the CAO will be forced to cut programs and services and to lay off some employees in order to give a cost-of-living increase to others. He

stated that the Council had not made a commitment for such a process. The intent of the Council was to legislate that the County Executive shall recommend such an increase in his budget and other matters as might be needed to implement the cost-of-living policy.

Councilman Menke moved, duly seconded, that the words [After the budget is approved] be deleted from line 5, page 2, and the following inserted in lieu thereof: To the extent funds are provided in the approved budget,.

In response to an inquiry from President Scull as to whether the proposed amendment would destroy the purpose of the bill, Councilman Menke stated that he does not believe it will. He does not believe that this Council can adopt a law that binds future Councils to appropriate funds to provide a cost-of-living adjustment that is 75% of the CPI. However, after the budget is adopted, it is proper to require that the CAO carry out the intent of the Council. The County Council, answerable to the voters, must be the body that decides the major policy issue of salary increases for County employees. He stated that his amendment will protect the CAO from performing an illegal act if the Council has not provided the funds, and it will avoid raising false hopes that employees will receive 75% of the CPI no matter what happens with respect to funding.

Councilman Potter stated that the language of the bill sets a standard for cost-of-living increases and forces the presentation of a budget by the County Executive which takes into account changes in the cost-of-living. He believes that is a proper approach to the situation. The ultimate consideration and decision by the Council must take into account the many factors involved, such as a national policy for curbing inflation. He expressed the view that the amendment offered by Councilman Menke provides for full consideration of the major aspects of the fiscal situation by the Council. If the Council wants to cut the budget, it must decide whether to cut the cost-of-living allowance, or to cut employment and services. He stated that such decisions should not be left to the CAO.

Councilman Colman stated that, without Councilman Menke's amendment, if the Council does not provide adequate funds in the budget, there would be a requirement that the full 75% of CPI cost-of-living be provided and the shortfall compensated by reductions-in-force (RIFs). With at least a $20 million shortfall facing the next Council for FY 1980, the layoff problem will be serious enough without destroying or precluding some flexibility between the cost-of-living increase and employee layoffs. He expressed the view that the amendment is desirable.

Director of Personnel Lloyd pointed out that the provision for an automatic cost-of-living increase that is 75% of the CPI was part of a comprehensive pay package proposed by the County Executive last spring. There are two major factors in the pay system, the annual increments and the cost-of-living adjustment. It was agreed that the variable would be the annual cost-of-living increase, and, accordingly, the annual merit increments were reduced significantly to a very modest amount. The intent at that time was to put into law a requirement that the cost-of-living adjustment would be 75% of the CPI each year. Mr. Lloyd stated that if the cost-of-living adjustment is to be limited by the availability of funds, the Executive Branch will have to reconsider its action to reduce the annual increments.

Councilman Menke stated that if the Council does not provide the funds for a 75% of CPI cost-of-living adjustment, or if there is a depression and fall-off of tax revenues, the CAO is faced with violating the law or involving RIFs.

President Scull suggested that the law could be amended by the Council in the event of an emergency situation such as a depression to avoid violation of the law by the CAO. She stated that enactment of this bill, without the amendment offered by Councilman Menke, is a major step that the Council agreed to take last spring.

Councilman Menke stated that during the spring when the Council is making decisions on the budget, it would not have time to amend the law if it is necessary due to the lack of funds. He believes that the Council is already taking a major step by writing into law what the Executive must present in his budget, and that the CAO must implement the cost-of-living adjustment. He also believes it is clear that the intent of the Council is to grant a 75% of CPI cost-of-living increase. He does not believe, however, that it is legal to constrain what future Councils may decide. Neither is it appropriate to put the CAO in a position of violating the law or laying off employees. He expressed the view that the Council's commitment last spring was to introduce and consider this legislation.

Councilman Colman stated that if it is the opinion of the Executive Branch that the amendment offered by Councilman Menke violates agreements with employees, then he no longer desires to support the amendment. However, he stated that no legislative body can bind the next one. If a situation did occur where the

CAO would be in violation of the law, the Council would have to enact emergency legislation to amend this law.

Councilman Potter agreed that there was a commitment with employees, and expressed the view that that commitment is the approach that should be taken in the budget. He recalled past budgets wherein there was considerable controversy over the cost-of-living adjustment. He stated that there will remain considerable pressure on succeeding Councils to reduce services and employment to whatever extent necessary to provide the full cost-of-living provision. If the Council does not provide sufficient funds, he does not believe that the CAO should be required to make the cuts necessary to provide a 75% of CPI cost-of-living increase.

Councilmembers Menke and Potter voting in the affirmative and Councilmembers Scull, Colman and Gelman voting in the negative, Councilman Menke's amendment failed.

Councilman Menke indicated that he will vote against the bill in its present form. He stated that it is poor legislation and does not protect the public interest.

Councilman Potter indicated that he will vote for the bill, noting that the next Council can amend the law if required to avoid the CAO being in violation of the law. He pointed out that the next Council will have to anticipate the situation well before May 15 in order to either provide the funds or amend the law. This could create considerable anxiety in a situation where five votes are needed to increase the budget by more than the change in the CPI, and to enact emergency legislation.

Upon motion of Councilman Potter, duly seconded and without objection, the Council deleted the emergency effective date provision from lines 8 through 11, page 3, and inserted in lieu thereof: <u>This Act shall take effect on the 76th day following the date on which it becomes law.</u>

Councilwoman Gelman requested that enactment of Bill No. 37-78 be postponed until after the luncheon break so that she may have an opportunity to think about the implications of needing five votes to enact emergency legislation should that become necessary.

Councilman Menke moved, duly seconded, that enactment of Bill No. 37-78 be tabled until after the luncheon recess. His motion was adopted, Councilmembers Gelman, Menke and Potter voting in the affirmative and Councilmembers Colman and Scull voting in the negative.

Councilman Menke requested that Mr. Lloyd ascertain the County Executive's position on the amendment he had proposed to Section 33-74.

(The Council recessed at 12:15 P.M., and reconvened at 1:30 P.M.)

At the request of Councilwoman Gelman, upon motion of Councilman Colman, duly seconded, Councilmembers Colman, Gelman, Potter and Menke voting in the affirmative and President Scull voting in the negative, the Council agreed to reconsider the amendment to Section 33-74 offered by Councilman Menke.

Councilman Potter stated that 75% of the current increase in the CPI is 6 3/8%. That amount, added to the average 2 1/2% annual increments, would give County employees wage increases of 8 7/8%, which is considerably above the President's guideline of 7% increase for wages. Amendment D to the County Charter, approved at the November election, requires five votes of the Council to increase expenditures by more than the CPI. This amendment makes no allowance for growth in the County or its services. If wages were to increase 8 7/8%, the Council would be facing a difficult situation, since salaries are 70% of the County Operating Budget. In addition, the oil producing nations are expected to increase prices by 10% this winter. It appears that the Council will be facing the five vote requirement for the FY 1980 budget. The Council is committed to cutting $21 million worth of services, but even that may not bring expenditures down to within the CPI increase. In view of these difficulties, the Council must have room for reflection and evaluation of the fiscal situation as it exists at the time of budget adoption. Councilman Potter stated that if inflation continues to accelerate it will be necessary to increase the cost-of-living adjustment above the 6 3/8% because of the pressure on County employees. On the other hand, if the President is successful in reducing the rate of inflation below 7%, the Council can lower the cost-of-living adjustment because less would be required to accommodate the needs of employees. If this is the situation, the County government should conform to the President's wage-price guidelines. Councilman Potter stated that the Council should have flexibility to meet any situation that arises, and should not be forced into an emergency revision of the law in order to conform to national policy and actual facts.

Councilman Colman stated that there is a provision in the recently enacted Bill No. 36-78, Comprehensive Merit System, that the CAO shall, subject to the approval of the County Council, promulgate and amend the general salary schedule. This is the method by which the CAO would implement the annual cost-of-living adjustment. If the County Council does not provide adequate funds in

the budget for the 75% of CPI cost-of-living adjustment, the Council can avoid the CAO being in violation of the law by disapproving the amendment to the general salary schedule. Such an action would require an ordinary majority vote of the Council.

Councilman Menke stated that County law is generally interpreted such that when the Council only has "approval" power over something, it can either approve it or disapprove it, but cannot amend it or substitute anything. If the Council simply disapproved the salary schedule, the CAO would still be required to implement the 75% of CPI cost-of-living adjustment. He expressed the view that the amendment that was considered earlier is necessary in order to provide flexibility.

Councilwoman Gelman stated that the Council did not have Amendment D to the County Charter before it when it discussed this issue previously. She stated that she did not support that amendment, but it is law and it must be upheld. The new Council will require a year to work under the new law to determine how it will affect the County. She expressed the view that it would be unwise to restrict a new Council to the five vote requirement on salary issues as well as Amendment D. She stated that the five vote requirement provides for government by a minority; it is not majority rule. Councilwoman Gelman stated that she cannot support Bill No. 37-78 in view of the amendment to the County Charter which requires five votes to increase the budget beyond the change in the CPI.

Councilman Colman pointed out that five votes of the Council are also required to enact emergency legislation, override a veto, or to adopt an emergency appropriation. It is not an unusual situation in County government. He stated that he will vote against the amendment offered by Councilman Menke. He expressed the view that this Council owes it to the CAO and employee groups to honor the agreement worked out last spring.

With respect to the President's wage-price guidelines, Mr. Lloyd stated that the wage guidelines do not apply in situations where there is an existing agreement or oral commitment made prior to October 1978. The Council's resolution of last May, No. 8-1935, represents such an agreement, and he is fairly satisfied that an action to grant more than a 7% cost-of-living adjustment would be within the guidelines.

Councilman Menke stated that Resolution No. 8-1935 adopted as policy the 75% of CPI cost-of-living adjustment, and stated that the Council would (and has) introduce legislation to implement that policy. The agreement of the Council, and the discussion today, makes it clear that the policy is to grant a cost-of-living adjustment that is 75% of the CPI; the bill clearly implements that policy. The issue here is not whether the Council is abrogating its agreement; the issue is how to implement it. In the past, the Council has at times received a budget recommendation from the County Executive with no cost-of-living adjustment at all in it. The Council had to take the initiative and add to the budget to provide a cost-of-living increase. That situation will no longer occur under the provisions of Bill No. 37-78. The bill will also remove the issue of the cost-of-living increase from last-minute considerations as it had been in the past. He expressed the view that his amendment is necessary in order to promote orderly government, not because of wage-price guidelines or the recent amendment to the Charter.

Councilman Potter expressed the view that the law cannot demand that the County Executive recommend a certain cost-of-living increase if he does not believe that is the proper thing to do.

Mr. Gibson, representing an association of minority employees, expressed the view that County employees are always being considered as the "bastard children" of the County government. Last spring, the County Executive presented a package to the Council regarding employee salary changes; it was never treated as a package. The new pay plan, with reduced increments, was implemented, but the cost-of-living provision was left until now. He noted that MCPS employees have a contract with the Board of Education calling for a 5% cost-of-living increase in FY 1980. That, combined with their 5% annual increments, will give them a 10% salary increase. The County employees are constantly being held back with lesser increases. He does not believe that this is proper. If Bill No. 37-78 cannot be enacted without Councilman Menke's amendment, he believes that employees would prefer to have their old pay plan, with 5% increments, and take their chances on the cost-of-living increase each year. He noted that MNCPPC and WSSC also have 5% annual increments.

Councilman Menke emphasized that the issue is not whether there should be a cost-of-living increase adjustment that is 75% of the CPI. He has not heard

any Councilmember indicate that such an adjustment would be unreasonable. The question is how to implement that policy. The proposed law does not demand that the Council provide funds to implement a 75% of CPI cost-of-living increase. If the Council did not, the CAO would have to make RIFs in order to give the remaining employees their cost-of-living adjustment. The Council and CAO should not be put in that position.

President Scull pointed out that the 75% of CPI cost-of-living increase was part of a package which represented a very significant reform of the pay plan. Annual merit increments were reduced, and were to be based on employee evaluations and recognition of superior performance, with outstanding employees receiving a higher increment than average employees. That part of the package was never implemented either. She looked at this package as a step in the direction that the people of the County have been urging for many years. It is with disbelief and heartbreak that she watches the County Council sabotage its own reform before it can go into effect.

Councilman Menke repeated his motion which is now before the Council, i.e., to delete the words [After the budget is approved] from line 5, page 2, and to insert in lieu thereof To the extent funds are provided in the approved budget,.

Councilwoman Gelman stated that the amendment offered by Councilman Menke will eliminate the legal step of enacting emergency legislation to protect the CAO should the Council not be able to provide adequate funds in a future year.

Councilmembers Menke, Gelman and Potter voting in the affirmative and Councilmembers Colman and Scull voting in the negative, Councilman Menke's motion was adopted.

Upon motion of Councilman Colman, duly seconded and without objection, the final sentence of Section 33-74 was revised to read as follows: Such percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

Upon motion of Councilman Colman, duly seconded and without objection, the Council approved the following amendments to Bill No. 37-78, as reflected in Draft No. 2:

Page 2, insert a new first sentence in Section 33-74: The County Executive shall provide as a part of the annual recommended operating budget for the County government sufficient funds to implement the cost-of-living adjustment required by this Section.;

Page 2, line 10, after the word "area", add: although pay grades 1 through 4 of the uniform salary plan to which minimum wage and certain seasonal employees are assigned will be adjusted by changes in the minimum wage rates and salary surveys to determine the competitiveness of such salaries.;

Page 2, lines 18 through 21, delete all of the language;

Page 2, line 23, delete [No provision of this law shall prohibit];

Page 2, line 24, delete [from adjusting] and insert in lieu thereof may adjust; delete [schedule] and insert in lieu thereof plan.

Page 2, line 25, insert the following phrase after the word "available": and approved by the County Council;

Page 2, lines 27 through 30, delete all of the language.

Upon motion of Councilman Colman, duly seconded and without objection, the Council deleted the word [schedule] from the sixth line of the title of the bill, and inserted the word plan in lieu thereof.

Upon motion of Councilman Colman, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of Bill No. 37-78. By a yea and nay vote, Councilmembers Gelman, Colman, Potter and Menke voting in the affirmative, President Scull voting in the negative and Councilmembers Hovsepian and Moore being absent, Bill No. 37-78, Cost-of-Living Increase, was enacted, as amended.

Re: Enactment of Bill No. 50-78, Declaration of State of Emergency

Bill No. 50-78, Declaration of State of Emergency, was called for final reading. The Council had before it for consideration Draft No. 1 of Bill No. 50-78.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of Bill No. 50-78. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Menke and Scull voting in the affirmative and Councilmembers Hovsepian and Moore being absent, Bill No. 50-78, Declaration of State of Emergency, was enacted.

Re: Enactment of Bill No. 52-78, Pepco Pollution Control Bonds

Bill No. 52-78, Pepco Pollution Control Bonds, was called for final reading. The Council had before it for consideration Draft No. 1 of Bill No. 52-78.

stated that the Council seems to be favoring public regulation of CATV since it is restoring much of the language that was deleted previously. If this is the case, he believes that the Council should address the issues and provide more guidance in the law for the people who will be negotiating the agreements.

Upon motion of Councilman Colman, duly seconded, Councilmembers Colman, Scull, Gelman and Menke voting in the affirmative and Councilman Potter voting in the negative, the Council restored the deleted language of subsection (b), page 23, added a requirement for a public hearing prior to the extension of construction schedules, and deleted the capitalized language on lines 16 and 17.

Due to the lateness of the hour, the Council recessed its Legislative Session until later in the day.

(The Council recessed at 3:35 P.M., and reconvened in Legislative Session at 5:40 P.M.)

Due to the lateness of the hour, the Council agreed to continue its worksession on Bill No. 6-77 on Friday, November 17, 1978.

Resolution No. 8-2277 Re: Extension of Life of Bill No. 6-77, CATV

Upon motion of Councilman Menke, duly seconded and without objection, Resolution No. 8-2277 was adopted, extending the life of Bill No. 6-77, CATV, until July 1, 1979.

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 5:41 P.M., to reconvene at 1:30 P.M. on Friday, November 17, 1978, or at the call of the President.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

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Office Of The County Executive

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MEMORANDUM

Date November 15, 1978

To Elizabeth L. Scull, President, County Council

From James P. Gleason, County Executive

Subject Bill No. 37-78, Cost-of-Living Adjustments

I was shocked to learn of the Council's action yesterday in supporting an amendment to Bill No. 37-78 which effectively removes any guarantee to the employees of the County Government of an essential part of our overall compensation policies. The amendment supported by Council Members Menke, Potter and Gelman, I believe, seriously undermines some important initiatives taken by the administration and heretofore supported by the County Council.

In May of this year, the Chief Administrative Officer presented to the Council a comprehensive proposal for revising the pay plan for Montgomery County employees. As you will recall, that pay proposal involved curtailment of increments from approximately five percent (5%) to two percent (2%), extending the range of pay by eliminating the provisions for longevity increments, and adjusting the pay plan annually by an amount not less than seventy-five percent (75%) of the Consumer Price Index. That pay plan has been successfully implemented.

It remained only for the County Council to adopt into law provisions for adjusting the pay plan annually by an amount not less than seventy-five percent (75%) of the Consumer Price Index.

In adopting Resolution No. 8-1935, on May 9, 1978, the Council resolved that "It shall be the policy of the Montgomery County Government effective July 1, 1979, to adopt annually the uniform salary plan for all classified employees of the merit system of the Montgomery County Government based on not less than seventy-five percent (75%) of the November Consumer Price Index for All Urban Consumers for the Washington, D. C. Area: and be it further resolved that the County Council requests the County Executive to submit legislation for its consideration to provide by local law for the implementation of the policy with regard to the annual uniform salary plan adjustment as aforementioned." It is my recollection that such resolution was passed unanimously by the County Council.

The seventy-five percent (75%) Consumer Price Index adjustment annually is an extremely important part of our overall pay system, as I outlined to you in May. This government has taken a rather extreme action in reducing the amount of our annual merit increments from five percent (5%) to two percent (2%)--the lowest in this metropolitan area and among the lowest among local governments in the country. No other agency supported by County tax resources has made similar efforts.

This was done deliberately. You will recall that under the old pay system some forty percent (40%) of our employees had already reached the maximum of the normal steps of the pay grade (excluding longevities), resulting in a situation where our most experienced and valued employees received only a cost-of-living adjustment annually, which was normally provided at the "eleventh hour" of the budget deliberation process, many times influenced by special interest and other pressure groups and certainly without a deliverate systematic method of development.

We then made a conscious decision to place most of our salary resources toward minimizing the adverse affects of inflation borne by all employees.

As I indicated to you in May, our reduced increment policy results in the next five fiscal years savings amounting to some seven million dollars ($7,000,000). Our employees have been informed of this and understand it. However, it is extremely important that they be assured that the policy of the County Government will be to afford some protection against some of the ravages of inflation.

I am not persuaded by the arguments that an unconditional adjustment to the salary schedule unnecessarily preempts the flexibility for future Councils and other elected officials.

To include the limiting language making such adjustment subject to availability of funds seems to me to be an unnecessary diminishment of the stated policy of the County Government and seriously jeopardizes the other segments of a comprehensive pay policy.

The programs and services offered to the County citizens are necessarily carried out by people. Even if the scope and extent of such services have to be curtailed with the resulting layoff of some employees, it becomes more critical that those who remain to carry out the services and programs be compensated adequately and fairly. There is no doubt that such potential curtailments will result in a demand for even greater work productivity and dedication on the part of our employees.

Therefore, I strongly request and implore the Council to reconsider their action at the next possible legislative opportunity. Without such reconsideration, I intend to veto Bill No. 37-78 in its present form since this administration cannot be a party to violating an implicit promise made to all our County employees. Further, I will ask the Chief Administrative Officer to prepare, for your approval, an amended general pay schedule restoring the former pay policies concerning increments and longevities.

Concerning the question of reconsideration, I have asked the County Attorney to comment on the circumstances on which reconsideration could be effected. I have attached such comments for your consideration.

I believe it is not asking too much then to place an unconditional annual cost-of-living adjustment up front before all other priorities have been established and to recognize that no County program or service to our citizens can be effective without our body of dedicated and motivated public servants.

JPG:rjl

Attachment

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Friday, November 17, 1978 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, County Office Building, Rockville, Maryland, at 1:45 P.M. on Friday, November 17, 1978.

PRESENT

Elizabeth L. Scull, President
Neal Potter, Vice President
Jane Ann Moore
Esther P. Gelman
William G. Colman
John L. Menke

ABSENT

Dickran Y. Hovsepian, President Pro Tem

The President in the Chair.

INTRODUCTION OF BILLS:

There were no bills for introduction.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

Re: Enactment of Bill No. 59-78, Bond Authorization for General County Facilities

Bill No. 59-78, $10,940,000 Bond Authorization for General County Facilities, was called for final reading.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Moore, Menke and Scull voting in the affirmative and Councilman Hovsepian being absent, Bill No. 59-78, Bond Authorization for General County Facilities, was enacted.

Re: Enactment of Bill No. 60-78, Bond Authorization for Roads & Storm Drains

Bill No. 60-78, $5,622,000 Bond Authorization for Roads and Storm Drainage Facilities, was called for final reading.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a yea

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Moore, Menke and Scull voting in the affirmative and Councilman Hovsepian being absent, Bill No. 64-78 was enacted.

Re: Enactment of Bill No. 65-78, Bond Authorization for Community College Facilities

Bill No. 65-78, $5,015,000 Bond Authroization for Community College Facilities, was called for final reading.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Moore, Menke and Scull voting in the affirmative and Councilman Hovsepian being absent, Bill No. 65-78 was enacted.

Re: Enactment of Bill No. 66-78, Bond Authorization for Consolidated Fire District Projects

Bill No. 66-78, $1,124,500 Bond Authorization for Consolidated Fire District Projects, was called for final reading.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Moore, Menke and Scull voting in the affirmative and Councilman Hovsepian being absent, Bill No. 66-78 was enacted.

Re: Reconsideration and Reenactment of Bill No. 37-78, Cost-of-Living Adjustment

President Scull stated that on November 15, 1978 the County Council received a memorandum from County Executive Gleason asking that the Council reconsider its enactment of Bill No. 37-78, Cost-of-Living Adjustment for County Employees. The Council met the evening of November 15, 1978, and made a motion to reconsider the bill and all amendments thereto. The votes on the two motions will be called today. She stated that, prior to the vote, she would like to give Mr. Jardeleza the opportunity, at his request, to explain why so many County employees are present today.

Mr. Jardeleza, President, Montgomery County Government Employees Organization, made the following statement:

With your permission, I would like to address the County Council to clarify what our presence here is intended to convey.

I am not here to make pretty speeches nor am I here to take up much of your time. I merely point out that there are no less than 500 people here and they are here on their own time. For each hour that they are here, it represents $2,500 at the average hourly wage of $5. an hour. As our Budget Director would say, "These are conservative ball park estimates."

To be brief:

We do not understand why certain members of the County Council are failing to live up to their commitment of last May. Mr. Gleason has clearly stated the quid pro quo package deal in his memorandum dated November 15 and I refer you to it. We thought we were dealing with honorable people.

Mr. Menke has thoroughly confused us. He predicts a depression next year, and therefore he feels justified in reneging on his commitment. Don't you think this is a rather poor excuse? We think that this is entirely beside the point! This matter was thoroughly discussed at the pay plan hearings. If you will recall, all of the County employees stated their position against the new pay plan and yet, Mr. Menke, as did all the other members of the Council, voted for it and the 75% CPI, cost-of-living package.

Mr. Menke has repeatedly said that his amendment doesn't really change the law and actually makes no difference. If this is true, then why did he submit his amendment in the first place? Is it to play games?--to waste the Council's precious time?

Mr. Menke has repeatedly said that he considers this a bad law to pass. If this is so bad, why hasn't he done something to change the "bad laws" that have been on the books during his long term in office as member and President of the County Council? Is Mr. Menke saying that 75% CPI cost-of-living law for employees is bad, whereas the same laws already on the books for the County Executive and County Council are good laws? What's the difference?

Lastly, and most confounding of all questions is this one:

Why have Council persons Gelman and Potter followed in what appears to be the vindictive footsteps of Menke?

We admire the character and integrity demonstrated to us by Mr. Colman, Mrs. Scull and Mr. Gleason. (Dr. Moore has not been present and therefore we must exclude her from all remarks that we have made.)

On behalf of the County employees you see here today, and for those who stayed behind to keep the County functions barely moving even though they would have preferred to have been here with us, I ask you for the following actions to be taken today before moving on to any other business on your agenda. We are prepared to stay here until you do so.

First--we ask you to pass the motion to reconsider Bill No. 37-78 and to pass the motion to reconsider amendments to the CAO's salary plan responsibility.

Second--we ask you for a motion to restore the language on line 5 of page 2 as it appeared in its unaltered form in Draft No. 2 of Bill No. 37-78 and further, to pass this motion.

Third--we ask you to enact the bill as it stands after you have accomplished the first and second requests as stated above.

We understand that this is not the only way to achieve the ultimate objective of enacting Bill No. 37-78 as it appeared in its unaltered form in Draft No. 2, and whatever way you choose to accomplish this would be fine with us.

We make no threats, we bear no anger, and we have come in the Lord's peace. We have hope that you will in some measure revive our faith in the integrity and honor of the entire Council. We thank you.

Councilman Colman stated that he regrets very much that employees and their representatives have attacked the integrity and character of individual Councilmembers.

Councilman Potter made the following statement:

Madam President, I think the problem we have before us is a misunderstanding with respect to the Council's position in May and now. It has been said that the Council agreed to a guarantee in May, and is now reversing that commitment. It has even been said that the Council agreed to an annual cost-of-living allowance of 75% of CPI and is taking away that increase. As I will show, the Council has never provided a guarantee, and it has not changed its commitment and it has not taken away anything whatever, and it is not proposing to take anything away.

With respect to the guarantee question, most of us realize that the thing to do with a guarantee is to look at the text of the document and see what it says. Therefore, let me read the relevant paragraphs in the Resolved section of Resolution 8-1935, adopted by the Council on May 9, 1978:

"BE IT FURTHER RESOLVED that it shall be the policy of the Montgomery County government, effective July 1, 1979, to adjust annually the uniform salary plan for all classified employees of the merit system of the Montgomery County government based on not less that seventy-five percent (75.%) of the November Consumer Price Index for all urban consumers for the Washington, D. C. area; and

"BE IT FURTHER RESOLVED that the County Council requests the County Executive to submit legislation for its consideration to provide by local law for the implementation of the policy with regard to the annual uniform salary plan adjustment as aforementioned."

This text makes it clear that the Council committed to a policy, effective next July, that the salary plan for classified employees shall show an increase of at least 75% of the change in the Consumer Price Index each year. It also requests the County Executive to submit legislation for the Council's consideration to implement this policy.

Note that it does not say that the legislation should guarantee the 75%; it says that the legislation should provide for "implementation of the policy." That leaves the question of how it shall be implemented to the drafting, amendment, and adoption of the requested legislation.

However, it is argued that despite the clear language of the resolution that there was an understanding of some sort that there would be a guarantee. Perhaps someone has some document that there was a decision or agreement for a guarantee which was to be provided despite any fiscal situation, but I have not seen it. If anyone can produce such evidence, I would be truly grateful.

However, the County Executive has claimed that the Council's position is different in November from what it was in May. I have examined the minutes of the discussion which occurred on May 9, when the above Resolution was adopted. Let me read from those minutes, as follows:

"Mr. Colman noted that enactment of legislation sets a floor for the cost-of-living increases until some Council changes it; that is different from bargaining each year. Even if the question were dealt with in the Personnel Regulations, a future Council could, by making its strong views known, manage to get them changed. While there are some arguments against binding future Councils, a law with a 75% of CPI cost-of-living floor would be, from the point of view of the employees, a stronger protection for dealing with their needs.

"President Scull noted that, if run-away inflation occurs, County employees, along with everyone else, would have to bear the brunt of such inflation and could not continue to receive a 75% of CPI COL increase. Mr. Potter added that no one can guarantee employees future salary increases.

"Councilwoman Moore asked whether the legislative bill to be considered would not have within it some provision which in the last analysis leaves to the annual financial situation of the County the decision regarding cost-of-living increases so that there will not be a guarantee to the employee in this regard during the time that law is in effect. Mr. Potter said he thought that had to be there and was there, anyway.

"To Dr. Moore's point that the legislation will not change the 'iffy' situation regarding pay policies, Mr. Potter said the Council can establish policy and that is about all it can do realistically. He added that he thinks that Mr. Menke's concern about having the Council involved each year cannot be prevented since this is a fiscal matter. Matters might be smoothed out by requiring Council action each year at least a month before adoption of the budget. Ms. Gelman added that this would also help to eliminate the feeling that 'whatever is left over the employees get.'

"Mr. Hovsepian indicated that the cost-of-living matter must be dealt with in the context of the budget and the resolution should be written so that would be a separate action."

Madam President, you will note that the minutes reflect a position on the part of at least 4 Council members that the decision with respect to cost-of-living increases had to be made in the light of the fiscal situation at the time, and/or as a part of the budget process. The reference to Mr. Colman's statement might be interpreted as saying that the legislation should bind the Council regardless of the fiscal situation, or it might be interpreted as simply indicating that the legislation would be some sort of commitment for future Councils, not necessarily by-passing the budgetary decision process. The report on the remarks of Councilmembers Scull, Moore, Hovsepian, and myself seem very clear that the matter would have to be considered in conjunction with the budget and the fiscal situation at the time the budget is adopted. Four members make up a majority of the Council; and the four I have cited does not include Mr. Menke nor Mrs. Gelman.

The statement that the Council has changed its position with respect to a guarantee is totally contradicted by the record of the discussion at the time. The Council has not reversed its position, but has maintained a constant course, insisting that the legislative body must make the decisions in the budgetary process, in the light of all of the facts at the time the decision is made.

It might be well to note that the Council's decision on May 9 preceded any significant attention, at least on the East Coast, to Proposition 13 and the "Taxpayers Revolt". That event occurred a month later, and the TRIM amendment and Question E came into discussion some weeks after that. The Council's position was, and is, based on the proposition that decisions should not be made until all the facts are in. It also adheres to the principle that the legislative body should make budgetary decisons, and not leave them up to the Executive, by failure to decide priorities of needs, or which needs shall be met and to what extent.

So much for the question whether the Council has changeditts position with respect to a guarantee. Now let us turn to the question of the Council's position as to a policy on cost-of-living increases.

As all discussions on this matter, last May and last week, have indicated, the Council is unanimously in support of the position that the cost-of-living must be taken into account annually in setting the pay scale, and that a minimum of

75% of the consumer price index adjustment is a fair policy to set, with the strong expectation that it can and will be met. The wording of the Resolution in May I have already read to you. That policy statement is almost identical to that set forth in the bill before us. To make the wording correspond still more closely, I will propose a change in language so that there can be no doubt whatever that the policy is the same now as then, and that the commitment of this legislation will be adhered to by the incumbenets who carry over to the next Council; and I trust the four new members of the Council will support that same policy without hesitation.

Thus, the policy and the commitment is the same in November as it was in May. The only argument we have at all is over the machinery and process for implementing that policy.

There has been expressed a fear that the cost-of-living allowance will be provided only if there is some money left over at the end of the decision-making process with respect to the various programs requiring expenditures. I am afraid that there is some justification for this fear, since the Executive has in most years proposed a cost-of-living adjustment much less than the rate of inflation, and in two years of severe inflation, proposed a zero (0%) provision for cost-of-living admustment. While the Council has in each of those years provided a more adequate cost-of-living allowance, the difficulties of the budget adoption for fiscal 1978 left the Council providing only a little more than the Executive had recommended, and less than the School Board contract provided, and less than the cost-of-living index would have called for.

The bill before us tries to insure against this kind of record: First, by providing that the Executive must provide in his budget, for at least a 75% cost-of-living adjustment. Therefore, furture recommendations for no allowance or an inadequate allowance on the part of the Executive are prevented.

Second, the bill provides that the Chief Administrative Officer shall adjust the salary scale by 75% of the change in the Consumer Price Index.

The question that remains before us is what procedures should the Council follow in the sequence of events. Should it write such provision for cost-of-living admustment into law now, or deal with the situation as it arises each year?

There are many reasons why the situation may differ markedly from year to year and make legislation which tends to provide a guarantee a serious obstacle to rational and fair decision-making. The reference has been made to the possibility of a severe depression. I would add that the rate of inflation should also be looked at. An inflation which is increasing its speed over time should be dealt with by making an allowance larger than 75% of the past year's change in the CPI, simply because the appropriations are for next year's salaries, not last year's. On the other hand, if the inflation is slowing down, there may be less need to provide the full 75%, because the prospect is that the inflation will be easing its burdens instead of increasing them.

In addition, the acts of the Legislature, usually in the month of April when we are approaching our final budget decisions, sometimes change our fiscal situation drastically, by changing our property tax base, limiting changes in assessments which have already been made during the past year, changing the size of grants for aid to education or other public services -- and other matters and actions which can seriously affect the fiscal situation.

In addition, we sometimes receive very late in the budget season a notice of change in the cost of fringe benefits, whether for health benefits, unemployment, or retirement. The increase in the cost of fringe benefits over the past five years appears to have been about 6% of the payroll. Most of that increase occurred in one year. When such changes come about, they amount to a change in compensation so far as the employee and the taxpayers are concerned, and the pay scale itself should not be required to change without regard to the change in other compensation. There are also other considerations to take into account, such as the Nation's policies for fighting inflation.

There are, therefore, sound and equitable reasons for not deciding the issue before the facts are available to the Council.

I do think however, that there has been a least one experience in which the Council left the cost-of-living allowance to the end of the budget decisions, resulting in an inadequate allowance. Therefore, I will suggest wording that puts the Council on a schedule and process of decision-making which puts the cost-of-living adjustment up front among the priorities, and provides that it shall not be left to the end.

I hope that these changes will insure that the Executive and Council in the future will give the cost-of-living adjustment the attention it deserves, and will be as fair and equitable as possible. We must maintain an attractive salary scale for the retention of an excellent work force.

I hope it will also make it abundantly clear that this bill provides procedures and standards which are far more definite and demanding than those set forth in the Resolution and discussion of last May. Far from taking away a guarantee, this bill would provide for the first time in the history of the County, procedural requirments to insure that the cost-of-living adjustment is in no way neglected. This is a principle for which this Council has fought for four years, and for which I trust the next Executive and Council will stand firm.

Certainly there has been no taking away of a salary increase on the part of the Council, because that issue is not before the Council at the present time. It can only come up in the budget season, and this bill sets a framework for that period of decision-making which will highlight the need to make fair adjustments to the ravages of inflation, and protect as far as humanly possible both the public servants and the taxpayers.

Councilman Menke made the following statement:

One of the recent newspaper stories -- a fairly accurate one -- stated that my reaction to the outburst over this bill was that I was "visibly upset". That is entirely accurate; however, I am not upset over persons disagreeing with my particular judgement on any issue. That may arise from different values or mistaken information, and it is something we can deal with as reasonable people. I am, however, upset and depressed with the willingness shown by so many who ought to know better, on the basis of hearsay and inflammatory rhetoric, immediately to assume the most nefarious motives on the part of the Council.

Every county employee, and every Council member, is familiar with the surprisingly large number of citizens of Montgomery County (again, ones who ought to know better) who approach county employees as stupid, ignorant, on the take, or all three. The Council has seen such cases where, in spite of a long history of careful and sensitive decision-making on, for example, zoning or planning issues, citizens allow themselves to be misled and used by others and convinced easily that the Council has suddenly philosophically "sold-out". In summary, there is too little willingness even to withhold judgements, until investigation of what is involved, and too much willingness to assume the worst motives. This is a sad and depressing commentary on our whole community.

In this case, county employees, at least those who represent themselves as the employee representatives, have been quick to the mark with angry rhetoric designed to inflame and not to encourage communication: "We'll sue the _____"; "They're stabbing us in the back" are examples. There is an immediate willingness to assume the worst motives, while forgetting that in the past two years of four, this Council, in spite of terrific tax and political pressures, added on a COL increase (not just approved, but added on) to a County Executive recommended budget which provided for no cost-of-living increase for county employees. The Council has taken plenty of heat for this, with no public thanks from these same employee representatives. Only two short years ago, I led several Council members in a bitter debate on the Council, trying to protect county employee benefits from being reduced, a debate in which my neck was very much on the line. And they forget a Council which only this year, in the face of strong pressures, agreed to expand the expensive Police Take-Home-Car program in order to keep the commitment made to it in the meet-and-confer negotiation process between police and the County Executive.

It is upsetting and depressing that, in spite of all this, there is no willingness to trust the motives, much less the judgement, of this Council. I am afraid it foretells a long period of bitterness and deepening division in which the demand is "what have you done for me lately?" -- a situation which will in the long run harm the employee as well as the public interest.

Turning to the issue at hand, my amendment has been characterized as removing the guaranteed cost-of-living salary increase and reneging our "commitment". My amendment, states "to the extent funds are available in the approved budget" the Chief Administrative Officer will grant the 75% COL. What does it mean and what would it do?

There is no way to guarantee against a depression, or other fiscal disaster (for example, State legislation reducing assessments, thereby reducing property tax revenues). If funds are insufficient, if the amendment is not present, the Chief Administrative Officer must, by law, still give the 75% no matter what the impact on the public, no matter how many employees need to be fired, no matter what! If this is the "commitment" that was made, I never saw it, and I will not be a party to such a policy. This legislation must work in bad times as well as good, and in the crisis of bad times, we cannot simply rely on emergency legislation to cure the problems we can already foresee may happen. The burden of deciding such questions belongs with the Council, not an administrative person, and my amendment is intended to place such burden where it should be, ie, on the Council.

Except for this effect, which only deals with the mechanics and responsibilities involved in a fiscal crisis, the amendment does not reduce the commitment or the likelihood of a proper cost-of-living increase. The cost-of-living policy is reasonable and fair and necessary, especially in view of the changes already made in the County pay system. I am convinced that the cost-of-living increase is affordable, and will be funded by future Councils. I would note that the bill provides that the County Executive must provide for the cost-of-living in his budget (he has not done so in past years as noted above), and that the Chief Administrative Officer must spend the budget funds for the proper purpose.

In view of what seems to be a desire that this legislation be passed now, I am certainly willing to consider other amendments which deal with the issue I have here identified: I have no resistance to changing the amendment. I hope and believe that we can find wording acceptable to employees and to other Council members, while producing legislation which is in fact workable in all reasonable circumstances. Failing that, I believe the bill should be held over for more careful discussion by the employees, the next Council and Executive.

Councilwoman Gelman expressed regret that the words chosen for the amendment to Bill No. 37-78 did not convey properly the intent of the Council. It was her understanding that the amendment meant that the Council would approve a 75% of CPI cost-of-living adjustment for County employees and that the Council would be forced to focus on making the funds available. The Council, which sets the tax rate, cannot tell a future Chief Administrative Officer that he or she must find the money in the budget to amend the salary schedule to reflect a 75% of CPI increase. Therefore, the Council must be party to the decision. Unfortunately, she has heard over and over that the Council did not negotiate the school employees contract and therefore has no obligation to fund it. Councilwoman Gelman stated that she disagrees with that

philosophy. The Council has an obligation to fund a contract that was negotiated legally. She expressed the view that the issue with respect to the cost-of-living adjustment has been blown out of proportion, and expressed the hope that clear words can be found which clearly convey the Council's intent.

Without objection, the Council adopted Councilman Menke's motion (made at the meeting of November 15, 1978) that the Council reconsider Bill No. 37-78, Cost-of-Living Adjustment.

Without objection, the Council adopted Councilman Menke's motion (made at the meeting of November 15, 1978) that the Council reconsider all amendments to Bill No. 37-78.

The Council had before it for consideration Draft No. 1 of Bill No. 37-78.

Councilman Potter moved, duly seconded, that the phrase [those individuals and to equalize their wages due to] be deleted from lines 5 and 6, page 1, and the following inserted in lieu thereof: them for; and that the Council insert the following phrase after the word "increases" in line 8: shall be at least 75% of the increase in the November Consumer Price Index for all Urban Consumers for the Washington, D.C. Area; and such increases.

Councilman Potter expressed the view that his motion will clarify the intent of the Declaration of Policy and Intent section of the bill.

Councilman Colman requested that Councilman Potter's motion be reduced to writing as this is a delicate situation before the Council and he does not want to vote for an amendment without seeing it in writing. He expressed the view that the original wording of the bill is quite satisfactory. The bill provides for a certain procedure; any Council at any time can enact an amendment to the law in order to deal with a budgetary crisis if it occurs. It has been said that it may be difficult to get four or five Councilmembers to vote to change the law, but he pointed out that this is the normal situation for a legislative body. The Council would have to undertake a very overt and highly visible act in order to avoid giving County employees a 75% of CPI cost-of-living adjustment. Councilman Colman expressed the view that the bill should be reenacted as it was prior to the amendment offered by Councilman Menke.

President Scull stated that the conversation of last May that was quoted by Councilman Potter this morning was to the issue of how to provide an

"escape clause" for emergency situations. She believes, however, that the amendment to Bill No. 37-78 that was adopted on November 14 had that kind of emergency provision in mind, but it made an escape clause possible every year. The purpose of the bill was to take the issue of the amount of the cost-of-living increase out of the realm of public debate during budget deliberations and to make it an obligation to provide at least 75% of the CPI just as the Council has an obligation to fund the salaries of County employees. If an escape clause is needed for emergency situations, there should be a separate sentence describing the anticipated emergencies and how and when the escape clause should be used. President Scull stated that the Council has received a memorandum from Deputy Director Hansman, Department of Community and Economic Development, dated November 16, 1978, suggesting that a proper amendment to Bill No. 37-78 would clearly provide that the Executive shall include in his recommended budget funds for a cost-of-living increase of at least three-fourths of the CPI; that the Council shall approve and fund a cost-of-living increase of at least three-fourths of the CPI; and that the CAO shall include the approved amount in the pay plan. She stated that she agrees with this approach, and would add a separate sentence permitting an escape clause during times of real fiscal crisis.

Councilwoman Moore added her objections to Councilman Potter's interpretation of the May minutes to the objections stated by Mrs. Scull. She pointed out that Councilman Potter's quotes of her were in the form of questions and that she was requesting legal opinion from an attorney, but the only answer she received was a lay opinion from her fellow Councilman. She hopes he will correct his printed statement with its inferred misrepresentation. Dr. Moore stated that the bargain made with employees last spring with respect to the 75% of CPI cost-of-living increase was a result of the reduction of annual increments from 5% to 2%; therefore, the employees' request, and the Council's promise, for at least 75% of the CPI is fair and fundable in most foreseeable circumstances. Salary increases for County employees always compete with various levels of services; different people would pick different services to cut. She noted that WMATA's budget will add $6 million to County expenses next year. While this budget is approved by the WMATA Board of Directors, it is paid for by County citizens. She noted that last spring the County Executive pointed out $500,000 worth of services at the Germantown Campus of Montgomery College which duplicate unnecessarily those at Rockville and Takoma Park. She expressed the view that it will be extremely difficult for the Council to adopt a budget next year. The Council has made commitments to Metro, a third campus, to employees, and it will be difficult to fund them all. However, Councilwoman Moore stated that the supporters of the TRIM proposal are quoted in the Journal today as saying that they did not mean to take budget cuts out of the

salaries of employees. Citizens of the County want frugality, but not at the expense of breaking a commitment to County employees.

Legislative Counsel Tierney recommended that the word "November" be taken out of Councilman Potter's motion, and the phrase "latest published index for the calendar year preceding the fiscal year in which the adjustment is to be made" inserted therefor.

In order that the Council can work from Draft No. 2 of Bill No. 37-78, the draft before the Council on November 14 when Councilman Menke offered his amendment, Councilman Potter withdrew his motion to allow a motion to bring Draft No. 2 before the Council.

Upon motion of Councilman Menke, duly seconded and without objection, the Council adopted the following amendments to Bill No. 37-78, as reflected in Draft No. 2, dated November 8, 1978, with underlining indicating additions to current law, capital letters indicating additions to the bill as introduced, and strike-throughs indicating deletions from the bill as introduced:

Be It Enacted by the County Council for Montgomery County, Maryland, that -

Sec. 1. Declaration of Policy and Legislative Intent.

It is hereby declared to be the policy of Montgomery County, Maryland, to provide for and ensure in an orderly, uniform manner as part of its budgetary process, guaranteed annual wage adjustments to merit system employees of the County Government to compensate those individuals and to equalize their wages due to increases in area-wide consumer prices and other cost-of-living factors.

It is further declared to be the public policy of Montgomery County, Maryland, that such wage increases are recognized as necessary to recruit and retain a high quality work force and prevent inflation and other invidious economic factors from undermining the compensation paid to members of its work force.

Sec. 2. Chapter 33, title "Personnel," Article IV, title "Employer-Employee Relations Act," of the Montgomery County Code 1972, as amended, is hereby amended by adding a new Section 33-74 thereto, title "Cost-of-Living Adjustment" to read as follows:

33-74. Cost-of-Living Adjustment.

THE COUNTY EXECUTIVE SHALL PROVIDE AS A PART OF THE ANNUAL RECOMMENDED OPERATING BUDGET FOR THE COUNTY GOVERNMENT SUFFICIENT FUNDS TO IMPLEMENT THE COST-OF-LIVING ADJUSTMENT REQUIRED BY THIS SECTION. AFTER THE BUDGET IS APPROVED, The Chief Administrative Officer shall adjust the uniform salary [schedule] plan for all classified employees of the Montgomery County Government beginning the first pay period on or after July 1, of each year by an amount not less than seventy-five percent (75%) of the change in the Consumer Price Index for All Urban Consumers in the Washington, D.C. area ALTHOUGH PAY GRADES 1 THROUGH 4 OF THE UNIFORM SALARY PLAN TO WHICH MINIMUM WAGE AND CERTAIN SEASONAL EMPLOYEES ARE ASSIGNED WILL BE ADJUSTED BY CHANGES IN THE MINIMUM WAGE RATES AND SALARY SURVEYS TO DETERMINE THE COMPETITIVENESS OF SUCH SALARIES. Such THE percentage change shall be based on the DIFFERENCE BETWEEN THE SEPTEMBER ~~latest-published~~ index for the calendar year IMMEDIATELY preceding the fiscal year in which the adjustment is to be paid AND THE SEPTEMBER INDEX FOR THE NEXT PRECEDING CALENDAR YEAR.

~~Notwithstanding the above, Pay Grades 1 through 4 of the uniform salary plan [schedule] to which minimum wage and certain seasonal employees are assigned will be adjusted by changes in minimum wage rates and salary surveys to determine the competitiveness of such salaries.~~

~~No provision of this law shall prohibit~~ The Chief Administrative Officer ~~from adjusting~~ MAY ADJUST the uniform salary plan ~~[schedule]~~ in excess of the base percentage of seventy-five percent (75%), provided funds are available and approved by the County Council for such purpose.

~~The County Executive shall submit to the County Council each year as part of the recommended Operating Budget for the County Government such sums as are necessary to fund the Cost-of-Living Adjustment set forth in Section 33-74 of this Chapter~~.

Sec. 3. Severability.

The provisions of this Act are severable and if any provision, clause, sentence, section, work or part thereof is held illegal, invalid, or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of the Act or their application to other persons or circumstances. It is here-

by declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, section, work or part had not been included therein, and if the person or circumstances to which the Act or part thereof is inapplicable had been specifically exempted therefrom.

Sec. 4. Effective date.

The Council hereby declares that an emergency exists and that this legislation is necessary for the immediate protection of public health and safety. Therefore, this Act shall become effective on the date on which it becomes law.

Councilman Potter moved, duly seconded, that the Council delete the phrase [those individuals and to equalize their wages due to] from lines 5 and 6, page 1, and insert in lieu thereof them for; and that the following phrase be inserted after the word "increases" in line 8: shall be at least 75% of the increase in the Consumer Price Index for All Urban Consumers for the Washington, D.C. Area as reflected in the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid; and such increases.

It was pointed out that the declaration of policy and intent section of the bill does not need to be specific with respect to which Consumer Price Index shall be used. There is language on page 2 of the bill that sets forth that information.

Councilman Potter amended his motion by deleting the amendment to line 8, page 1.

Without objection, Councilman Potter's motion was adopted, as amended.

The Council agreed that all suggested amendments to Section 33-74, page 2, should be offered before any are voted upon so that Councilmembers will be able to make informed decisions.

Councilman Potter suggested that the words [After the budget is approved,] be deleted from line 5, page 2, Section 33-74, and the following inserted therefor: The County Council shall consider the cost-of-living provisions in the recommended budget as one of the highest priorities, and shall take express action thereon, not later than May 1 of each year.

Councilman Menke suggested that the Council delete the words [After the budget is approved] from line 5, Section 33-74, page 2, and insert in lieu thereof: The Council shall accord a very high priority to the full funding of the cost-of-living adjustment, shall fund fully the 75% of CPI cost-of-living adjustment except as otherwise provided in law, and shall make a finding in the budget resolution as to the sufficiency of the funding being provided. Unless otherwise provided by terms of the budget resolution approved by the Council supported by a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to County government employees,.

Mr. Tierney stated that there are legal problems with the wording of Mr. Hansman's suggested amendment in that it provides that "the Council shall fund" the 75% of CPI cost-of-living increase. He believes that the amendment offered by Councilman Potter to Section 33-74 is as restrictive as the Council can get without interfering with its legislative discretion. The amendment to Section 33-74 offered by Councilman Menke also provides that the Council "shall" fund fully the 75% of CPI cost-of-living increase. This is probably unconstitutional. Bill No. 37-78, as enacted on November 14, 1978, did not impose any restrictions on the appropriation process. He suggested use of the phrase "Unless otherwise provided by legislative act, the Council shall fund . . . ." After further discussion, Mr. Tierney stated that the wording of Councilman Menke's amendment is probably legally defensible after all because it contains the provision that the Council can make a finding that sufficient monies are not available to fund the full 75% of CPI cost-of-living increase.

Councilman Colman stated that he would prefer to reenact Bill No. 37-78 as reflected in Draft No. 2 without any further change. If a majority of the Council does not agree, his next preference is Councilman Menke's amendment to Section 33-74 because it requires the Council to make a finding as to why it cannot fully fund the 75% of CPI cost-of-living increase.

Director of Personnel Lloyd stated that the Executive Branch also prefers the wording of Draft No. 2 without further change. It is felt that it goes without saying that if the Council does not fully fund the 75% of CPI cost-of-living increase that some further steps must be taken. The intent is to assure County employees that a 75% of CPI cost-of-living increase will be provided. He

stated that the services of the County government are provided by people. There may be circumstances when some employees will be laid off. In such a situation, the government should recognize the greater workload involved and make sure that those who are left to provide the essential services are compensated at a minimum level. He pointed out that the County's Retirement Law requires mandatory funding of the retirement system, and inquired as to what would happen if there were not sufficient resources for this account.

Mr. Tierney urged strongly that the Council allow time for full, careful legal examination of the language that is being proposed to amend Bill No. 37-78. He is not comfortable with the language as it comes very close to infringing on the Council's legislative discretion. He would not want to make a judgment on it without giving it careful attention. In addition, the County Attorney should have an opportunity to review it.

Upon motion of Councilman Menke, duly seconded and without objection, the Council restored the original language of lines 14 through 17, page 2, Section 33-74, such lines to read as follows: of such salaries. Such percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

Upon motion of Councilman Menke, duly seconded and without objection, the Council deleted the language in lines 8 through 11, page 3, and inserted in lieu thereof: This legislation shall take effect on the 76th day following the date on which it becomes law.

Councilman Colman moved, duly seconded, that the Council waive the reading of the title of Bill No. 37-78 and proceed to enactment.

At the request of Councilwoman Gelman and without objection, the Council agreed to recess the meeting so that the Council Secretary can prepare a clean copy of Bill No. 37-78 as amended for the Council's consideration.

(The Council recessed at 3:35 P.M., and reconvened at 4:15 P.M.)

The Council had before it for consideration copies of Bill No. 37-78 as amended to this point.

At the suggestion of Councilman Potter and without objection, the Council deleted the comma after "July 1" in the sixth line of Section 33-74, page 2.

Councilman Potter addressed the language of Section 33-74 that describes the Consumer Price Index that shall be used as the indicator for the cost-of-living increase, stating that it should refer to the November to November index.

Mr. Tierney stated that the language referred to by Councilman Potter is in conformance with language elsewhere in the Code referring to the CPI formula, and it can be interpreted consistently with Charter Amendment D that was on the November ballot.

Councilman Colman withdrew his motion that Bill No. 37-78 be enacted, for the purpose of making further amendments.

At the suggestion of Councilman Potter and without objection, the Council deleted the word [Such] from the eleventh line of Section 33-74, page 2, and inserted in lieu thereof The.

Councilman Colman moved, duly seconded, that the Council consider enactment of Bill No. 37-78 without any further amendments. His motion failed, Councilmembers Colman, Scull and Moore voting in the affirmative and Councilmembers Gelman, Menke and Potter voting in the negative.

Councilman Potter moved, duly seconded, that the Council delete [After the budget is approved] from the third and fourth lines of Section 33-74 and insert in lieu thereof: The County Council shall consider the cost-of-living provisions in the recommended budget as one of the highest priorities, and shall take express action thereon, not later than May 1 of each year.

Councilwoman Gelman expressed the view that Councilman Potter's motion clearly puts the burden on the Council to put money in the budget for the cost-of-living increase and not say to the CAO that he or she must find it.

President Scull stated that it is "nonsense" to imply that the Council would not provide sufficient funds for the cost-of-living increase that it had approved. The Council also has the option not to fund the full salaries of employees, but funds them. If it did not, the money would be taken out of other programs so that the salaries could be paid. She stated that the same reasoning applies to the 75% of CPI cost-of-living increase.

Councilman Colman stated that he would prefer the language offered by Councilman Menke earlier as an amendment to Section 33-74 over that offered by Councilman Potter. He pointed out that to have both amendments would be confusing.

Councilman Potter expressed the view that his amendment offers a clear procedure by which the Council must address the cost-of-living issue each year. The bill as it stands would permit the Council to ignore the issue. The bill should not be left so that no matter what the Council does the CAO must provide a 75% of CPI cost-of-living increase. The Council must determine the effect of a cost-of-living increase, and the CAO must implement it.

Councilwoman Moore expressed the view that Councilman Potter's amendment does not change the present practice of the Council with respect to the cost-of-living increase.

President Scull stated that she would prefer to add a separate sentence providing that during emergencies when the Council cannot fund the full 75% of CPI cost-of-living increase it shall remove the requirement on the CAO to amend the salary schedule to reflect a 75% of CPI increase. That is all that is needed at this point.

Councilman Menke stated that the Council cannot legislate now that in five years the Council will enact an emergency bill to repeal the requirement on the CAO. He suggested an escape clause which says that the CAO does not have to implement the 75% of CPI increase under certain conditions. This is what his suggested amendment to Section 33-74 would do.

President Scull expressed the view that the language offered by Councilmembers Potter and Menke will cause the cost-of-living increase to be an issue each year. The purpose of this bill was to take it out of the realm of a debatable issue. She stated that she will vote against the motion.

Councilman Colman stated that he will vote against the motion, preferring the language offered by Councilman Menke. That language clearly makes the Council face the situation and requires full funding of the cost-of-living increase unless there are compelling reasons to the contrary. He believes that it comes closer to the spirit of assuring, as far as possible, full funding of the cost-of-living increase.

Councilman Potter's motion failed, Councilmembers Potter, Gelman and Menke voting in the affirmative and Councilmembers Colman, Scull and Moore voting in the negative.

With respect to Councilman Menke's suggested amendment to Section 33-74, Mr. Tierney advised the Council against putting examples of hardship situations in the law, as this could infringe upon the Council's legislative discretion. The

language should simply require the Council to state its reasons for not funding the full 75% of CPI cost-of-living increase.

A discussion was held regarding the language suggested by Councilman Menke as an amendment to Section 33-74, and Mr. Tierney's interpretation thereof.

Mr. Lloyd expressed the view that the requirement on the Council to state its reasons in writing is "silly," stating that the budget public hearings and worksessions are open to the public and that if the Council does not fully fund the 75% of CPI cost-of-living increase, the employees will know it and know the reasons therefor. He stated that he does not want to see the Council limit its legislative authority. The Council has ample opportunity to examine priorities and state its reasons for not funding the cost-of-living increase or any other program.

Councilman Menke moved, duly seconded, that the Council delete the phrase [After the budget is approved,] from the third and fourth lines, page 2, and insert in lieu thereof: The Council shall accord one of the highest priorities to the full funding of the cost-of-living adjustment, shall fund fully the 75% of CPI cost-of-living adjustment unless reasons are given for not doing so, and shall make a finding in the budget resolution as to the extent to which full funding is achieved. Unless otherwise provided by terms of the budget resolution approved by the Council supported by a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to County government employees,.

President Scull stated that the language of Councilman Menke's motion seems to be the best the Council can do. It is a change in the thrust of the Council's decision last May. Although it is not legal to impose a requirement on the Council that it fund a 75% of CPI cost-of-living increase, by saying that the Executive must recommend such increase and the CAO must implement it, it was understood that the Council would also approve and fund the 75% of CPI cost-of-living increase. This is what she and the employees understood last May. Perhaps they were mistaken, but this was the understanding. She stated that the County Executive may veto the bill with this amendment in it.

Councilman Potter questioned the assumption that the Council would approve the budget as proposed by the County Executive, stating that it has never been

done before. Salaries are far greater as a result. During the past eight years, the Council has approved cost-of-living increases at a rate higher than that recommended by theExecutive.

Councilman Menke's motion was adopted, Councilmembers Menke, Colman, Scull, Potter and Gelman voting in the affirmative and Councilwoman Moore voting in the negative.

Councilman Menke expressed the view that the bill is significantly more restrictive on the Council than the original proposal. He believes that the bill as amended is within the scope of advertising, and that it protects the employees because it forces the Council to face the issues. It provides a minimum, reasonable escape clause for the CAO. He stated that he is not entirely happy with the bill, but he will support it.

Councilman Potter indicated that he will vote in favor of the bill, stating that the Council must provide for the implementation of the policy.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of Bill No. 37-78. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Moore, Menke and Scull voting in the affirmative and Councilman Hovsepian being absent, Bill No. 37-78, Cost-of-Living Adjustment, was reenacted, as amended.

Councilwoman Moore stated that she would like to know how much of the legal problem with restricting the Council's discretion was explained to employees in the beginning when the trade-off was proposed. The employees gave away more than they realized (in terms of certainty) when the annual increments were reduced to 2%. She stated that voting for the bill would make it appear that she thinks the bill is good enough, providing sufficient certainty that the Council will stick to its commitment to employees, when in fact she does not think it is good enough. However, to vote aginst it would make it appear that she does not want to provide a 75% of CPI cost-of-living increase for the employees, when she does. Therefore, whe will vote in favor of the bill and the certainty of commitment even though she believes it is too weakly stated.

President Scull stated that she agrees with Councilwoman Moore.

Councilman Potter expressed the view that a review of the history of the past few years will indicate that this bill will provide more for the employees than the Executive would propose. Therefore, it is a gain and not a loss.

Councilman Menke stated that he will vote for the bill only if most of the regulatory measures are taken out, allowing free enterprise to operate. He suggested that Bill No. 6-77 be held over for consideration of the next County Council.

Without objection, the Council agreed to take no further action on Bill No. 6-77, CATV.

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 5:40 P.M., to reconvene at 1:30 P.M. on Tuesday, November 21, 1978, or at the call of the President.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

BILL NO. 37-78

Introduced: July 18, 1978
Enacted: November 17, 1978
Executive: Returned Unsigned
Effective: February 14, 1979

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

July Legislative Session 1978

Chapter 39

AN ACT to amend Chapter 33, title "Personnel," Article IV, title "Employer-Employee Relations Act," Montgomery County Code 1972, as amended, by adding a new Section 33-74 thereto, title "Cost-of-Living Adjustment" to provide for an annual cost-of-living adjustment for all County employees whose salaries are determined by the uniform salary plan.

Be It Enacted by the County Council for Montgomery County, Maryland, that -

Sec. 1. Declaration of Policy and Legislative Intent.

It is hereby declared to be the policy of Montgomery County, Maryland, to provide for and ensure in an orderly, uniform manner as part of its budgetary process, guaranteed annual wage adjustments to merit system employees of the County Government to compensate them for increases in area-wide consumer prices and other cost-of-living factors.

It is further declared to be the public policy of Montgomery County, Maryland, that such wage increases shall be a least 75% of the change in the Consumer Price Index for All Urban Consumers for the Washington, D.C. Area; and such increases are recognized as necessary to recruit and retain a high quality work force and prevent inflation and other invidious economic factors from undermining the compensation paid to members of its work force.

Sec. 2. Chapter 33, title "Personnel, Article IV, title "Employer-Employee Relations Act," of the Montgomery County Code 1972, as amended, is

hereby amended by adding a new Section 33-74 thereto, title "Cost-of-Living Adjustment" to read as follows:

33-74. Cost-of-Living Adjustment.

The County Executive shall provide as a part of the annual recommended operating budget for the County Government sufficient funds to implement the cost-of-living adjustment required by this Section. The Council shall accord one of the highest priorities to the full funding of the cost-of-living adjustment, shall fund fully the 75% of Consumer Price Index cost-of-living adjustment unless reasons are given for not doing so, and shall make a finding in the budget resolution as to the extent to which full funding is achieved. Unless otherwise provided in the approved budget resolution which includes a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to County Government employees, the Chief Administrative Officer shall adjust the uniform salary plan for all classified employees of the Montgomery County government beginning the first pay period on or after July 1 of each year by an amount not less than seventy-five percent (75%) of the change in the Consumer Price Index for All Urban Consumers in the Washington, D. C. Area, although pay grades 1 through 4 of the uniform salary plan to which minimum wage and certain seasonal employees are assigned will be adjusted by changes in the minimum wage rates and salary surveys to determine the competitiveness of such salaries. The percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

The Chief Administrative Officer may adjust the uniform salary plan in excess of the base percentage of seventy-five percent (75%), provided funds are available and approved by the County Council for such purpose.

Sec. 3. Severability.

The provisions of this Act are severable and if any provision, clause, sentence, section, word or part thereof is held illegal, invalid, or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of the Act or their application to other persons

or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, section, word or part thereof had not been included therein, and if the person or circumstances to which the Act or part thereof is inapplicable had been specifically exempted therefrom.

Sec. 4. Effective date.

This Act shall take effect on the 76th day following the date on which it becomes law.

Approved:

Elizabeth P. Scull — 11/20/78

President, Montgomery County Council — Date

Approved:

Returned Unsigned — 11/29/78

County Executive

(Bill became law 14 days after enactment on Dec. 1, 197-

ATTEST:

Anna P. Spates — 11/29/78

Secretary of the County Council — Date

37-78 C.C.M. 36099

Office Of The County Executive

MEMORANDUM

Date November 29, 1978

To Elizabeth L. Scull, President, County Council

From James P. Gleason, County Executive

Subject Bill No. 37-78 - Cost of Living Adjustments

I am retunring Bill 37-78 without my signature.

I have previously expressed my feelings to you in detail and continue to believe that this legislation is a failure on the part of the Council to honor a long standing commitment to the employees of the County Government.

It is best that the final resolution of this issue be handled by the new administration.

JPG:ih
Attachment

37-78

Agenda Item No. 4

BILL NO. 16-81

Introduced: March 10, 1981
Enacted: May 15, 1981
Executive: May 15, 1981
Effective May 15, 1981

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

March Legislative Session 1981

Chapter 45

AN EMERGENCY ACT to amend Section 33-74, title "Cost-of-living adjustment" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, to add a new subsection (b) authorizing the Chief Administrative Officer for FY-82 to provide for cost-of-living increases of certain merit system employees at less than seventy-five (75) percent of the consumer price index.

Be It Enacted by the County Council for Montgomery County, Maryland, that -

Sec. 1. Section 33-74, title "Cost-of-living adjustment" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended is hereby repealed and reenacted with amendments to read as follows:

33-74. Cost-of-living adjustment.

(a) The county executive shall provide as a part of the annual recommended operating budget for the county government sufficient funds to implement the cost-of-living adjustment required by this section. The council shall accord one of the highest priorities to the full funding of the cost-of-living adjustment, shall fund fully the seventy-five (75) percent of Consumer Price Index cost-of-living adjustment unless reasons are given for not doing so, and shall make a finding in the budget resolution as to the extent to which full funding is achieved. Unless otherwise provided in the approved budget resolution which includes a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to county government employees, the chief administrative officer shall adjust the uniform salary plan for all classified employees of the county government beginning the first pay period on or after July 1 of each year by an amount not less than seventy-five (75) percent of the change in the Consumer Price Index for all urban consumers in the Washington, D.C. area, although pay grades one through four of the uniform salary plan to which mimimum wage and certain seasonal employees are assigned will

be adjusted by changes in the minimum wage rates and salary surveys to determine the competitiveness of such salaries. The percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

The chief administrative officer may adjust the uniform salary plan in excess of the base percentage of seventy-five (75) percent, provided funds are available and approved by the county council for such purpose.

(b) Notwithstanding the provisions in (a) above, for FY-82 only the following salary controls shall apply:

1. Salary maxima of grades 5 through 31 will be adjusted by the full cost-of-living granted by the County Council.
2. The salary maximum for grade 40 shall be $70,000.00.
3. The salary maxima for grades 32 through 39 shall be adjusted by the Chief Administrative Officer so that the dollar difference between the salary maxima of grades 31 through 40 is the same.
4. The salary for each merit employee in grades 5-31 will be adjusted by the full cost-of-living granted by the County Council to the extent that such salary adjustment does not exceed the maximum of the employee's grade.
5. The salaries for merit employees in grades 32 through 39 will be adjusted by the full cost-of-living granted by the County Council only to the extent that such salary adjustment does not exceed the maximum of the employee's grade.
6. The cost-of-living adjustment to the salaries of non-merit employees shall be determined by the County Executive but shall not exceed the cost-of-living granted merit employees.
7. No employee's salary is to be reduced below its level as of June 30, 1981 as a result of implementation of the provisions contained in paragraphs 1-6 above.

Sec. 2. Severability.

The provisions of this Act are severable and if any provision, sentence, clause, section word or part thereof is held illegal, invalid or unconstitutional

or inapplicable to any person or circumstnaces, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provisions, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 3. Termination.

The provisions of this law shall remain effective only for FY-82 and shall be of no effect after June 30, 1982. Upon termination, Section 33-74 as it existed immediately prior to the effective date of this law, shall be reinstated.

Sec. 4. Effective Date.

The County Council hereby declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health, safety and welfare. Therefore, this Act shall take effect on the date on which it becomes law.

Approved:

Ruth Spector — May 15, 1981
President, Montgomery County Council — Date

Approved:

Charles W. Gilchrist — May 15, 1981
County Executive — Date

ATTEST:

Anna P. Spates — May 15 1981
Secretary of the County Council — Date

906472

Montgomery County Government

ROCKVILLE, MARYLAND 20850

P5: 00

M E M O R A N D U M

February 13, 1981

TO: Montgomery County Council

FROM: Charles W. Gilchrist, County Executive

SUBJECT: Compensation for Senior County Employees

Last year, the Ad Hoc Committee on Top Level Salaries (Colman Committee) reported that, while the salaries earned by top level employees in the County Government were competitive with comparable private and public sector salaries, the salary range was excessive, leading to the possibility over time that salaries earned in certain positions would exceed considerably those of other comparable organizations. This analysis has merit, and I believe that a new compensation system must be explored for these employees. Our compensation policy for senior level employees should provide the County with the salary flexibility it needs to continue to attract top-flight experienced personnel, should tie salary increases to executive performance, and should provide the accountability needed for effective management, while at the same time keep salary costs within acceptable limits.

In order to move forward with compensation policy improvements, I have taken two actions. First, I am presenting here for your consideration, legislation which will provide a salary ceiling for high-level County employees during FY 82. Second, I have formed a task force which will examine longer-range alternatives to the present compensation system for these County positions.

The attached legislation which I am proposing for FY 82 will place a temporary ceiling on top-level salaries in order to prevent the salary ranges from escalating to unacceptable levels. Specifically, my proposal calls for:

-- an adjustment in the salary range maxima for grades 5 through 31 equal to the cost-of-living adjustment which is approved for FY 82;

-- a maximum salary range for grade 40 of $62,000, with equal dollar difference between the maxima for grades 31 through 40;

-- a single salary schedule to apply to both merit and exempt employees;

-- a cost-of-living adjustment to each merit employee's salary at the approved rate for FY 82 up to the maximum of the salary range for his or her grade; and

-- salary adjustments for exempt employees to be determined by me.

If adopted, these proposals would mean that maximum salaries for grades 32 through 40 would range from $52,440 to $62,000. Without these changes, and assuming a 9.4% COL adjustment, the maxima would range from $53,740 to $78,890.

In order for this bill to take effect by the beginning of the new pay year (July 1, 1981), I am recommending that it be enacted as emergency legislation. I feel this is justified in view of the serious fiscal situation confronting us and the need to demonstrate to the community our equally serious determination to manage our resources carefully.

I am proposing this legislation for County employees only, but strongly suggest that the Council recommend comparable action governing senior level employee positions in other agencies over which Council has jurisdiction.

The longer-range Management Compensation Task Force, which I have established, will have representatives from Executive Management, the Office of Personnel, the Office of Management and Budget, and County departments. In developing alternatives to the present compensation system for senior-level employees, the Task Force will draw on the experience of other State and local jurisdictions, and the Federal government.

The recommendations of the Task Force will be presented to me this summer. I will review these recommendations and incorporate those of the Merit System Review Commission, also due this summer. After reviewing these proposals with affected parties, I will present a plan for dealing with senior employee compensation to you by early fall. Through our joint efforts, I would hope that this plan could be enacted in FY 82 and incorporated into the FY 83 budget for implementation on July 1, 1983.

CWG:sah

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Friday, May 15, 1981 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 2:45 P.M. on Friday, May 15, 1981.

PRESENT

Ruth Spector, President
Rose Crenca
Esther P. Gelman
Elizabeth L. Scull, Vice President
Neal Potter
Michael L. Gudis
Scott Fosler

The President in the Chair.

INTRODUCTION OF BILLS:

There were no bills for introduction.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

Re: Enactment of Bill No. 16-81, Salary Cap for Senior County Employees

Bill No. 16-81, Salary Cap for Senior County Employees, was called for final reading. The Council had before it for consideration Draft No. 2, dated May 13, 1981, reflecting amendments approved by the Council in worksession.

After discussion, upon motion of Councilman Potter, duly seconded and without objection, the Council added the words below its level as of June 30, 1981 after the word "reduced" in the first line of subparagraph (7), page 3.

In response to inquiries, Dr. Rogers, Director, Office of Management and Budget, stated that the Executive's committee that is considering the salary scale issue should issue its report approximately September 1. She indicated that she would send the Council a memorandum in this regard.

At the suggestion of Legislative Counsel Frankel and without objection, the Council deleted the word [salaries] from line 15, page 3, and inserted in lieu thereof salary.

In response to inquiries, Mr. Kendal, Assistant CAO, stated that the Personnel Regulations provide for extraordinary performance awards of 2% to 4% of salary as a one-time bonus. These awards can be made to senior County employees notwithstanding the salary cap.

Councilwoman Gelman inquired as to the procedures followed when the County Executive adjusts the salaries of his non-merit system department heads and assistants. She requested that the Council be kept informed of these adjustments during the year. She noted that she has a long-standing request that the Council be kept informed of those employees of the Executive Branch who receive meritorious increases so that the Council can congratulate the employees.

Mr. Kendal indicated that he would make the County Executive aware of Councilwoman Gelman's request.

With respect to the provisions of Bill No. 16-81, President Spector pointed out that the majority of County employees are below grade 32 and will not be affected by the bill.

It was noted that the Council had agreed during worksession to amend Bill No. 16-81 so that it does not apply to non-merit system employees. However, Draft No. 2 does not reflect that amendment. Mr. Short, Director, Office of Budget and Research, pointed out that the bill pertains only to the cost-of-living increase and paragraph 6, page 3, provides that the cost-of-living increase for non-merit employees will not exceed that for merit system employees. It does not restrict the Executive's ability to pay his non-merit system employees any salary he wants. Assistant County Attorney Hutt agreed with Mr. Short's interpretation, and stated that enactment of the bill with that provision will not conflict with the Charter.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council approved the following amendments to Bill No. 16-81:

Page 3, line 10, delete [$62,000.00] and insert in lieu thereof $7[illegible],000.00;

Page 3, line 30, add a new paragraph 7 to read as follows: 7. No employee's salary is to be reduced below its level as of June 30, 1981 as a result of implementation of the provisions contained in paragraphs 1-6 above.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of Bill No. 16-81. By a yea and nay vote, Councilmembers Gudis, Crenca, Fosler, Gelman, Potter and Spector voting in the affirmative and Councilwoman Scull being temporarily absent, Bill No. 16-81, Compensation of Senior County Employees, was enacted, as amended.

MISCALLANEOUS BUSINESS:

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 3:15 P.M., to reconvene at 1:30 P.M. on Tuesday, May 19, 1981, or at the call of the President.

ATTEST:

Anna P. Spates

Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

COPIES SENT TO
ALL COUNCILMEMBERS

3-82

RECEIVED / COUNCIL

Montgomery County Government

82 FEB 2 P1: 03

ROCKVILLE, MARYLAND 20850

Charles W. Gilchrist
County Executive
(301) 279-1284
TTY 279-1083

909963

MEMORANDUM

February 2, 1982

TO: Neal Potter, President, Montgomery County Council

FROM: Charles W. Gilchrist, County Executive

SUBJECT: Compensation Proposals for FY 83

Last spring I recommended, and the Council enacted, legislation which modified the County's general cost-of-living adjustment policy to restrain the rate of increase in senior-level salaries. My original recommendation was that the salary range maximum for the highest County grade should be $62,000. Council revised this figure to $70,000, and while I thought this figure somewhat high, it was an acceptable compromise. I proposed this restraint because of my belief, based on findings by the Ad Hoc Committee on Top-Level Salaries (the Colman Committee) that the salary range maxima for upper grades would soon become excessive, unless some limitations were imposed.

At the same time, I formed a Management Compensation Task Force to examine the complex issues of senior-level compensation in a more thorough fashion than was possible last spring. The work of this Task Force over the past nine months was directed towards formulating senior management pay policy proposals for FY 83 and beyond. The Task Force effort builds on work done by the Colman Committee in 1980 and on discussions with members of the County's Economic Advisory Council.

I am pleased to transmit to you the report of this Task Force, as well as my proposed FY 83 salary policy which differs in some respects from the Task Force recommendations. In my judgment, the Task Force has done an excellent job of exploring alternatives to our present pay policies. Its work included an examination of the practices of many other organizations, both public and private, and long hours of deliberation seeking ways to make needed improvements without disrupting our personnel and pay systems unnecessarily.

The Task Force has proposed restraining the rate of increase in salary maxima for senior-level pay by replacing annual pay plan adjustments based on the 75%-of-CPI approach with adjustments based on an analysis of pay for comparable positions in comparable jurisdictions. Furthermore, the Task Force has recommended that a stronger emphasis be placed on pay-for-performance by removing Department Heads and Assistant CAO's (FY 83) and Division Chiefs (FY 84) from the annual COLA and substituting pay awards based on the individual's prior-year performance.

The Task Force has recommended continuation of the current 75%-of-CPI legislation for all employees other than senior managers. I support this recommendation.

While I agree with the Task Force that revisions in our pay policies for senior-level managers are needed and that the two principal proposals have substantial merit, I do not think the implementation schedule is realistic. I do believe that we must continue the restraint on upper-level salary ranges begun in FY 82 and, to that end, I think the proposed comparability analysis is an excellent method for aiding us in choosing salary maxima that are more in line with those in comparable jurisdictions. This analysis is already underway, and I will provide the results to the Council in the very near future, when I submit my specific FY 83 pay level proposals to you.

Preliminary data indicates that the maxima for grade 39 will fall below my recommended maximum of $70,000 for grade 40.

I cannot agree, however, with the rapid implementation of a performance-based pay system for senior managers as proposed by the Task Force. As you know, I support careful performance planning and appraisal and the recognition of superior performance. I have placed all my Department heads on FY 82 performance plans and have already scheduled time this summer for appraisal sessions. In addition, I directed that the Resources Management Team assign major emphasis to the creation of performance planning and appraisal policies for use by all County departments.

The rewards from successful performance planning and appraisal can be substantial, but the administration of such systems can be very difficult. In my opinion, we need more time to learn to use these techniques wisely, efficiently, and fairly. Consequently, I believe it is premature to replace the present COLA-based system for making individual salary changes for senior managers with a performance-based pay system as early as FY 83.

This does not mean that, during the interim, outstanding performers in County service cannot be recognized. Present regulations provide for both cash awards and increases to base pay for outstanding performance. In the past, I have made such awards when justified, and I expect to do so in the future. I have encouraged County Department Heads to do likewise. Outstanding performers should be recognized and rewarded at all levels of County government and special compensation for those persons is to the benefit of the County in attracting and retaining productive, well-qualified employees.

The Task Force and I also differ on one other point. The Task Force has recommended that the Chief Administrative Officer position be removed from the salary schedule and that the salary for this position be independently negotiated. While I understand the Task Force's recommendation as being in line with the policies of many jurisdictions, and with similar high-paying positions in many school systems, I do not believe that such a change would be appropriate for Montgomery County now. If the County does move at some future date to a performance-based pay system for senior managers, then such an arrangement, in combination with an employment contract, may be more appropriate for the Chief Administrative Officer. For now, I feel this position should remain on the salary schedule, and I am recommending that the salary range maximum for grade 40 should remain at $70,000 for FY 83.

As you will recall, the current statute governing the cost-of-living pay adjustments expires on June 30, 1982. The attached establishes for FY 83 that a comparability analysis will be a major factor in determining the maxima for grades 32-39. The maxima for all other grades 5-31 would continue to be adjusted by the approved COLA. Because comparability analysis is a technique which is new to the County, I am proposing that this legislation be temporary, for a one-year period covering FY 83. If the use of this technique proves successful, I will recommend that the legislation be made permanent, beginning in FY 84. As a part of my FY 83 recommended Budget, I will transmit a specific FY 83 pay plan for approval by the Council which will reflect the comparability data that have been received and analyzed.

The enclosed bill also continues the current practice of adjusting the salaries of all merit employees by the approved COLA, up to the maximum of the grade. I also intend to follow these same procedure for Executive Branch non-merit employees. Substitution of pay-for-performance would, therefore, be deferred until some time in the future.

Your staff was briefed twice in the past nine months on these compensation matters. Robert K. Kendal, Assistant Chief Administrative

Officer, chaired the Management Compensation Task Force, and will be available to assist the Council itself during deliberations on the enclosed legislative proposals

CWG:rk

Enclosures(2):
Management Compensation Task Force Report
Legislative Bill

GENERAL BACKGROUND MATERIAL
PROPOSED AMENDMENTS TO
COST-OF-LIVING LAW

1. DESCRIPTION: This bill modifies the County's general salary adjustment policy by specifying a method for changing the salary range maxima of grades 32-39 that is different from the method to be used for grades 5-31. Under this bill, the salary range maxima for grades 5-31 would be increased by 75% of the CPI, as at present. The maxima for grades 32-39, however, would be related to the maximum of grade 39 which would be based in large measure on the results of an annual analysis of pay data for positions in other jurisdictions comparable to those in Montgomery County's grade 39. The salaries of all merit employees (grades 5-40) would be adjusted by the approved COLA up to the maximum of the grade. While not a part of the bill, salary adjustments for executive branch non-merit employees would also conform to this procedure. The salary of the Chief Administrative Officer (at Grade 40) will be set at $70,000.

2. PROBLEM: Salary range maxima for upper grades have reached, or may soon reach, levels that are excessive in comparison to those of other jurisdictions. The primary force driving salary maxima to this high point is the automatic COLA of 75% of the CPI.

3. GOAL AND OBJECTIVE: The objective of the bill is to restrain the rate of increase in upper-level salaries by substituting a comparability-based determination of salary range maxima for grades 32-39 for the automatic 75%-of-CPI method.

4. COORDINATION: Legislatively, enactment of this bill needs to be coordinated with the expiration of the current COLA law on June 30, 1982. Organizationally, this bill has been fully coordinated with the Offices of Personnel, Management and Budget, County Attorney, and Chief Administrative Officer.

5. FISCAL IMPACT: There will be no impact on the capital programs or budget. The precise impact on the operating budget cannot be determined until such time as the actual salary range maxima for FY 83 are established. If the FY 83 maxima for grades 32-39 are established at roughly the FY 82 level, there will be a saving of approximately $65,000 over what would be paid out in COLA and increments if no restraints at all were placed on the maxima of upper grades.

6. ECONOMIC IMPACT: There will be no economic impact from this bill.

7. EVALUATION: This bill will be evaluated by determining the degree to which salary range maxima for grades 32-39 are lower than they would be under the full 75%-of-CPI method. The Personnel Office will conduct the evaluation annually after the comparability data are available and after the Council approves the CAO's proposed salary plan.

8. EXPERIENCE ELSEWHERE Many jurisdictions have imposed "caps" on escalating salary ranges. Both private and public agencies utilize comparability studies to determine the appropriate salary ranges for positions. See the Management Compensation Task Force Report for additional information.

9. SOURCES OF INFORMATION: Requests for additional information should be directed to:
Robert K. Kendal, Assistant Chief Administrative Officer
Executive Office Building
Montgomery County, Maryland 20850

Telephone 251-2500

BILL NO. _____

Introduced:
Enacted:
Executive:
Effective:

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

January Legislative Session 1982

AN ACT to amend subsection (b) of Section 33-74, title "Cost-of-living adjustment" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, to allow the Chief Administrative Officer to establish salary maxima for grades 32 thru 39 by utilizing a comparability study for FY-83 and to provide that no County employee's salary is reduced below its level as of June 30, 1982.

Be It Enacted by the County Council for Montgomery County, Maryland, that -

Sec. 1. Section 33-74, title "Cost-of-living adjustment" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended is hereby repealed and reenacted with amendments to read as follows:

33-74. Cost-of-living adjustment.

(a) * * * *

(b) Not withstanding the provisions in (a) above, for FY-8[2]3 only the following salary controls shall apply:

1. Salary maxima of grades 5 through 31 will be adjusted by the full cost-of-living granted by the County Council.

2. The salary maximum for grade 40 shall be $70,000.00.

3. The Chief Administrative Officer shall set the maximum for grade 39 at a level less than the salary maximum for grade 40 by utilizing a comparability survey which shall include a review of comparable jurisdictions nationwide similar in size and socio-economic characteristics, and comparable positions in those jurisidictions as to job function and scope, and salaries and other benefits. The salary maxima for grades 32 through 39 shall be adjusted by the Chief Administrative Officer so that the dollar difference between the salary maxima of grades 31 through [40]39 is the same.

4. The salary for [each] all merit employees [in grades 5-31] will be adjusted by the full cost-of-living granted by the County Council to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

[5. The salaries for merit employees in grades 32 through 39 will be adjusted by the full cost-of-living granted by the County Council only to the extent that such salary adjustment does not exceed the maximum of the employee's grade.]

[6. The cost-of-living adjustment to the salaries of non-merit employees shall be determined by the County Executive but shall not exceed the cost-of-living granted merit employees.]

[7.]5. No employee's salary is to be reduced below its level as of June 30, 198[1]2 as a result of implementation of the provisions contained in paragraphs 1-[6]4 above.

Sec. 2. Severability.

The provisions of this Act are severable and if any provision, sentence, clause, section, word or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses,

sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provisions, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 3. Termination.

The provisions of this law shall remain effective only for FY-8[2]3 and shall be of no effect after June 30, 198[2]3. Upon termination, Section 33-74 as it existed [immediately] prior to [the effective date of this law,] May 15, 1981 shall be reinstated.

Sec. 4. Effective Date.

This Act shall take effect on the 91st day following the date on which it becomes law.

Approved:

_____

President, Montgomery County Council Date

Approved:

_____

County Executive Date

ATTEST:

_____

Secretary of the County Council Date

BILL NO. 3-82

Introduced: February 9, 1982
Enacted: March 30, 1982
Executive: March 31, 1982
Effective: June 30, 1982

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

February Legislative Session 1982

Chapter 47

Laws of Montgomery County, 1982

AN ACT to amend Subsection (b) of Section 33-74, title "Cost-of-living adjustment" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, to allow the Chief Administrative Officer to establish salary maxima for grades 32 through 39 by utilizing a comparability study for Fiscal Year 1983 and to provide that no County employee's salary is reduced below its level as of June 30, 1982.

Be It Enacted by the County Council for Montgomery County, Maryland, that -

Sec. 1. Section 33-74, title "Cost-of-living adjustment" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby repealed and reenacted with amendments to read as follows:

33-74. Cost-of-living adjustment.

(a) * * *

(b) Not withstanding the provisions in (a) above, for Fiscal Year 1983 only the following salary controls shall apply:

1. Salary maxima of grades 5 through 31 will be adjusted by the full cost-of-living granted by the County Council.

2. The salary maximum for grade 40 shall be $70,000.00.

3. The Chief Administrative Officer shall set the maximum for grade 39 at a level less than the salary maximum for grade 40 by utilizing a comparability survey which shall include a review of comparable jurisdictions nationwide similar in size and socio-economic characteristics, and comparable

positions in those jurisidictions as to job function and scope, and salaries and other benefits. The salary maxima for grades 32 through 39 shall be adjusted by the Chief Administrative Officer so that the dollar difference between the salary maxima of grades 31 through 39 is the same.

4. The salary for all merit employees will be adjusted by the full cost-of-living granted by the County Council to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

5. No employee's salary is to be reduced below its level as of June 30, 1982 as a result of implementation of the provisions contained in paragraphs 1-4 above.

Sec. 2. Severability.

The provisions of this Act are severable and if any provision, sentence, clause, section, word or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid or unconstitutional provisions, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 3. Termination.

The provisions of this law shall remain effective only for Fiscal Year 1983 and shall be of no effect after June 30, 1983. Upon termination, Section 33-74 as it existed prior to May 15, 1981 shall be reinstated.

Sec. 4. Effective Date.

This Act shall take effect on the 91st day following the date on which it becomes law.

Approved:

Neal Potter — Mar. 30, 1982
President, Montgomery County Council — Date

Approved:

Charles W. Gilchrist — March 31, 1982
County Executive — Date

ATTEST:

Anna P. Gratis — March 31, 1982
Secretary of the County Council — Date

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, March 30, 1982 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 10:20 A.M. on Tuesday, March 30, 1982.

PRESENT

Neal Potter, President	Michael L. Gudis, Vice President
Esther P. Gelman	Ruth Spector
Rose Crenca	David L. Scull

ABSENT

Scott Fosler

The President in the Chair.

The Journals of March 9 and 16, 1982 were approved as amended.

INTRODUCTION OF BILLS:

There were no bills for introduction.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

Re: Enactment of Bill No. 2-82, Recreation Advisory Boards

Bill No. 2-82, Recreation Advisory Boards, was called for final reading. The Council had before it for consideration Draft No. 3, dated March 23, 1982.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council approved the following amendment to the bill:

Page 2, line 13, insert the following words at the end of the line: unless serving on the Board in another capacity.

Upon motion of Councilman Gudis, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment.

Councilmembers Spector, Crenca, Gelman, Scull, Gudis and Potter voting in the affirmative and Councilman Fosler being absent, Bill No. 2-82, Recreation Advisory Boards, was enacted, as amended.

Re: Enactment of Bill No. 3-82, Cost-of-Living Adjustment for Senior-Level Employees

Bill No. 3-82, Cost-of-Living Adjustment for Senior-Level County Employees, was called for final reading.

Councilwoman Gelman noted that this bill has not been referred to a Council committee, nor has it been the subject of a worksession by the Council. She referred to a memorandum to the Council from Deputy Staff Director Spengler, dated March 24, 1982, reviewing the background and issues connected to Bill No. 3-82, and stated that he has prepared an excellent report that should be reviewed by a committee. She stated that she objects to the provision in Bill No. 3-82 which would have the Chief Administrative Officer gather information and make compensation decisions at his sole discretion. Councilwoman Gelman expressed the view that the formula proposed in the bill is too flexible and leaves too much to one person's discretion. She noted that the Council has been asking the Executive Branch for a comprehensive review of the pay plan for three years and has not gotten it yet. She noted that the pay comparability data which was presented by the Executive Branch shows that very few jurisdictions have employer-contribution deferred compensation plans, in contrast to the representations made by the Executive Branch when it recommended that the Council approve such a plan for senior-level employees.

President Potter stated that the pay plan is included in the operating budget and must be approved by the Council. If the Council does not like what is presented, it can approach it in a different way. He noted that Bill No. 3-82 would remain in effect for one year only; it is not a permanent arrangement.

Upon motion of Councilwoman Crenca, duly seconded, Councilmembers Potter, Gudis, Spector and Crenca voting in the affirmative, Councilwoman Gelman voting in the negative, Councilman Scull being temporarily absent and

Councilman Fosler being absent, the Council voted to waive the reading of the title of Bill No. 3-82 and proceed to enactment.

Councilwoman Gelman indicated that she would like to have a Council worksession on this bill before it is enacted.

Councilman Scull stated that at the appropriate time during the Council's budget deliberations he intends to recommend that the Council fund a cost-of-living increase for County employees in the amount of 50% of the Consumer Price Index (CPI), rather than 75%. He noted that implementation of this proposal would not require a legislative bill, and inquired as to the procedure to be used to give people an opportunity to comment on the proposal. He further noted that Mr. Spengler has pointed out that the County could save $900,000 by freezing the maximum salary in all of the grades, not just grades 32 and above as proposed by Bill No. 3-82. This proposal would require legislation. Councilman Scull expressed the view that the Council should consider these proposals, and inquired as to the appropriate procedure.

A discussion was held concerning the procedures to be used to consider the foregoing proposals, including the need to readvertise Bill No. 3-82 if it is to be amended, the time necessary to prepare, introduce and advertise a new bill and the need to act prior to July 1, 1982. Members of the Council objected to the time that would have to be devoted to such an undertaking.

Councilwoman Gelman expressed the view that the material presented by Mr. Spengler has raised many new issues and she does not believe the Council should proceed before considering them thoroughly.

Councilman Scull stated that he does not object to the provisions of Bill No. 3-82. However, he believes that the decisions on the comparability studies and pay plans should come back to the Council. In addition, he believes that it would be inappropriate for the Council to forego its opportunity to address the major, long-range fiscal issues that have been presented to the Council. The Colman Report of a few years ago and material presented by Mr. Spengler indicate that the County's pay scale is higher than that of other jurisdictions. Perhaps it should be that way, but the Council should have an opportunity to discuss it as part of the budget process. Councilman Scull suggested that the Council not enact Bill No. 3-82 today, but introduce an amendment that would freeze the maximum salary in all of the grades and allow an extra two weeks for comment.

President Potter disagreed that the effect of this bill would be to make the pay plan an administrative matter. The law, which is being enacted by the Council, specifies the formula for FY 1983, and the Council is not giving up its authority to approve the pay plan. He expressed the view that comparability with other jurisdictions is not necessarily desirable; the question to be examined is whether the County is getting its money's worth. The quality of the workforce must be examined as well as the cost. He noted that he has expressed doubts about this subject in the past. With respect to Councilman Scull's proposal, he stated that that would be a major undertaking to be accomplished prior to May 15. He does not know that the Council has the time to devote to such a major issue.

Councilwoman Crenca expressed the view that the Council should enact Bill No. 3-82 today and then address the other issues that have been raised. She inquired as to whether the Council can reduce its salary also if it only funds a 50% of CPI cost-of-living increase for employees.

It was noted that the Council cannot affect its own salary but it could reduce the salary of the next County Council. Councilman Scull stated that individual Councilmembers can return the excess salary above a 50% of CPI cost-of-living increase to the County treasury. He intends to make such a recommendation. He noted that such a contribution would be a charitable deduction on one's income tax.

Councilwoman Gelman stated that she has not taken a position for or against Bill No. 3-82. She believes that it deserves in-depth study and analysis. Although it is late in the budget process, the Council was in this position last year and requested that the Executive study the matter and present a recommendation to the Council in time to be considered and implemented for FY 83. She expressed the view that this important matter is deserving of more attention than the Council is giving it.

Councilman Scull expressed the view that it would be very logical to consider a freeze on the maximum salary in grades 5 through 31 at the same time it is considering a freeze on the maximum salary in grades 32 through 39.

Councilman Scull moved, duly seconded, that the Council reconsider its motion to waive the reading of the title of Bill No. 3-82 and proceed to enactment.

Councilmembers Scull, Gelman, Gudis, Hanna and Potter voting in the affirmative, Councilman Fosler not voting and Councilwoman Crenca being temporarily absent, Bill No. 12-83 was enacted.

Re: Enactment of Bill No. 13-83, FY84 Salary Maxima

Bill No. 13-83, FY 1984 Salary Maxima, was called for final reading. The Council had before it for consideration Draft No. 3, dated March 25, 1983.

Vice President Gelman, Chairwoman of the Personnel Committee, stated that the Committee reviewed this bill and recommends that it be amended to establish the maximum for grade 39 at $69,000 and for grade 38 at $68,000, in addition to the $70,000 maximum for grade 40, so that there will be a $1,000 differential between these three grades. The Committee also recommends that the effective date clause be amended so that the bill becomes effective upon signature of the County Executive and will be in place for the start of Fiscal Year 1984.

Vice President Gelman stated that she would like to know whether the County Executive can change the grade of a department head, whom the Council has confirmed at a certain grade, without obtaining the Council's approval.

Councilman Potter stated that he is concerned with the fundamentals of this bill because it establishes a salary which is best negotiated. Establishing the maximum for grade 40 by law makes it impossible to hire a new Chief Administrative Officer who is already earning more than $70,000. He stated that he does not object to the maxima recommended for grades 38 and 39 because the figures are reasonable and these salaries are not negotiated. Although the salary maximum for grade 40 has been set by law for the past three years, the only position in County government in that grade was occupied. The situation is different now that the County Executive will be recruiting for a new CAO.

Vice President Gelman stated that she basically agrees with Councilman Potter's concerns, and noted that she voted against the salary maxima law when it was first proposed several years ago. However, the County government has been operating under this system for some time, and Bill No. 13-83 is a small adjustment to continue the system.

Councilwoman Gelman moved, duly seconded, that the Council adopt the amendments to Bill No. 13-83 recommended by the Personnel Committee.

In response to an inquiry as to the objection to a maximum for grade 40 greater than $70,000, Vice President Gelman stated that the Council is working with the program that the Executive proposed several years ago. If the Executive negotiates a salary package for a new CAO that is higher than $70,000, he can come back to the Council and ask for an amendment to the law. She expressed the view that this maximum will not limit the Executive in his recruitment efforts; he is not obligated to place the CAO's position within the uniform salary schedule.

Councilmembers Potter, Gudis and Scull indicated that the fact that the CAO's position does not have to be within the uniform salary schedule eliminates their concerns about Bill No. 13-83.

Councilman Fosler stated that, although the Executive is not legally bound to place the CAO within the uniform salary scale, the position has been placed there traditionally, and the Executive has expressed his intention to abide by that tradition by not negotiating a salary that is higher than the maximum of grade 40. He suggested that the Council verify the Executive's position in this regard. Councilman Fosler stated that, by capping the top salaries in the salary schedule, they are no longer competitive with other local jurisdictions nor private industry. He expressed concern that the Council is about to establish caps on grades 38 and 39, further compounding the compression problem created by establishing the caps in the first place. Now the Council is attempting to correct the problem by capping lower grades. The uniform salary schedule is no longer uniform and does not have the same logic it started with. Since the new Compensation Task Force will address this problem, he believes that the County can live with the problem for another year. Although each change to the salary schedule can be justified, they create a problem when compounded.

Councilman Potter stated that he agrees with Councilman Fosler as to the effects of compression and the issue of whether the CAO should be paid more than the maximum of grade 40. In response to a statement that the Council is not addressing salaries at a deprivation level, Councilman Potter stated that it is not a question of deprivation as much as competitiveness. Government salaries are traditionally not competitive with corporate

salaries. The Council must be aware of this aspect, and the most critical position in this regard is the CAO. He stated that he is glad to be reassured by Section 210 of the Charter that the compensation of the CAO is to be determined by the County Executive subject to approval by the Council. The Executive must have the freedom to negotiate whenever he finds a good candidate for the position.

President Scull stated that he also has concerns about compression in the salary scale; however, in the current economic climate, he believes it is appropriate to continue the concept that the Council put into law several years ago. He expressed the view that Montgomery County's salaries are competitive within the universe of likely applicants for the high-level positions.

Councilman Fosler pointed out that the General Manager of WMATA, who recently resigned, was earning $78,000 per year; there was an indication that he is taking another position with a higher salary. In order to get good people in the top positions, the County must be willing to pay competitive salaries. He stated that it will always be possible to find people willing to fill these positions; the question is whether the County will attract the high quality people it wants.

Councilmembers Gelman, Scull, Gudis and Hanna voting in the affirmative, Councilman Fosler voting in the negative, Councilman Potter not voting and Councilwoman Crenca being absent, Councilwoman Gelman's motion was adopted, approving the following amendments to Bill No. 13-83:

Page 2, line 11, delete [39] and insert 37;

Page 2, line 14, delete the word [grade] and insert in lieu thereof grades 38, 39 and;

Page 2, line 15, delete [$72,000] and insert in lieu thereof $68,000, $69,000 and $70,000, respectively;

Page 3, lines 18 and 19, delete the language in its entirety and insert in lieu thereof: The Council hereby declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. Therefore, this Act shall take effect on the date on which it becomes law.

Councilman Fosler stated that he would like to determine the County Executive's intent with respect to whether or not he feels bound by tradition to limit the salary of the CAO to the maximum of grade 40 before enacting Bill No. 13-83. In the past, the Council has indicated that the maximum salary it

would approve is the maximum of grade 40. If the Council is no longer taking that position, it should indicate a range of salary it would approve so that the Executive does not negotiate a salary that the Council is not likely to approve.

Vice President Gelman stated that the Council is not binding the Executive; if he feels bound by tradition, that is his decision.

President Scull expressed the view that the tone of the Council's discussion today indicates that the Council is not likely to vote against a salary for the CAO that is greater than $70,000.

Upon motion of Councilwoman Gelman, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. Councilmembers Scull, Gelman, Gudis, Hanna and Potter voting in the affirmative, Councilman Fosler voting in the negative and Councilwoman Crenca being absent, Bill No. 13-83, Salary Maxima, was enacted, as amended.

Councilman Potter indicated that he voted for the bill, even though he does not approve of the concept, because the lack of five votes to enact it would cause a sizeable increase in the salaries that have been capped. He looks forward to the work of the Compensation Task Force to correct the situation that has been caused by actions such as this over the past several years.

Vice President Gelman expressed the view that Bill No. 13-83 does not impose a hardship on anyone. It restrains the top level salaries and allows an increase for all County employees.

Councilman Fosler stated that the Council has other choices in addition to enacting this bill or letting salaries increase to what they would have been without the caps having been imposed in the past. He would have preferred that the Council defer action on the bill to ascertain the Executive's position in this regard. If the Council means what it says when it says that it is no longer establishing a de facto cap for government salaries at grade 40, it is also not saying what it thinks that cap should be. That is a change from present policy, and the Council should consider the implications of such a change. Councilman Fosler noted that the U.S. Senate recently went through the agonizing process of increasing the salaries of Senators and Representatives. The general public has the perception that the salaries are already much too high and they are higher than that of the average wage earner

in the U.S. However, they are not high for these top-level positions. Senator Tsongas said that it is wonderful for people who are independently wealthy or who have other sources of income to vote to keep salaries low. However, it is a hardship for people who have only the one source of income. By taking such an action, many people are excluded from going into public service; they cannot afford to make the choice to do so. Councilman Fosler stated that he understands the political popularity of voting to cap salaries. It is a problem that faces all elected bodies and public officials around the country. He expressed the hope that it will not become a problem in Montgomery County.

(The Council recessed at 11:05 A.M., and reconvened at 1:05 P.M.)

Re: Enactment of Bill No. 14-83, Remedies for Violation of Chapter 11, Consumer Protection

Bill No. 14-83, Remedies for Violations of Chapter 11, Consumer Protection, was called for final reading. The Council had before it for consideration Draft No. 1, dated February 22, 1983.

Upon motion of Councilman Gudis, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. Councilmembers Scull, Fosler, Gelman, Gudis, Hanna and Potter voting in the affirmative and Councilwoman Crenca being absent, Bill No. 14-83 was enacted.

Re: Enactment of Bill No. 15-83, Motor Vehicle Repair & Towing Registration

Bill No. 15-83, Motor Vehicle Repair & Towing Registration, was called for final reading. The Council had before it for consideration Draft No. 2, dated March 31, 1983.

Upon motion of Councilman Gudis, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. Councilmembers Scull, Fosler, Gelman, Gudis, Hanna and Potter voting in the affirmative and Councilwoman Crenca being absent, Bill No. 15-83 was enacted.

Re: Enactment of Bill No. 16-83, Radio, Television & Electrical Appliance Installation & Repairs

Bill No. 16-83, Radio, Television and Electrical Appliance Installation and Repairs, was called for final reading. The Council had before it for consideration Draft No. 1, dated February 22, 1983.

Upon motion of Councilman Gudis, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. Councilmembers Scull, Fosler, Gelman, Gudis, Hanna and Potter voting in the affirmative and Councilwoman Crenca being absent, Bill No. 16-83 was enacted.

Re: Enactment of Bill No. 17-83, Taxicabs & Limousines

Bill No. 17-83, Taxicabs and Limousines, was called for final reading. The Council had before it for consideration Draft No. 1, dated February 22, 1983.

Upon motion of Councilman Gudis, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. Councilmembers Scull, Fosler, Gelman, Gudis, Hanna and Potter voting in the affirmative and Councilwoman Crenca being absent, Bill No. 16-83 was enacted.

Re: Enactment of Bill No. 24-83, Clarification of Interest on Revised Tax Bills

Bill No. 24-83, Clarification of Interest on Revised Tax Bills, was called for final reading. The Council had before it for consideration Draft No. 1, dated March 17, 1983.

Assistant County Attorney Malone proposed an amendment to Section 52-2(g) to further indicate that the purpose of this bill is to clarify existing law.

After discussion, upon motion of Councilman Potter and without objection, the Council added the following language to the end of line 29, page 2: for all bills and revised bills paid after April 1, 1980.

At the suggestion of Mr. Malone, after discussion, upon motion of Councilman Gudis, duly seconded and without objection, the Council deleted the

BILL NO. 13-

Introduced: March 1, 1983
Enacted: April 5, 1983
Executive: April 18, 1983
Effective: April 18, 1983

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

March Legislative Session 1983

Chapter 40

Laws of Montgomery County, 1983

AN EMERGENCY ACT to amend Subsection (b) of Section 33-74, title "Cost-of-living adjustment" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, to allow the Chief Administrative Officer to establish salary maxima for grades 5 through 40.

Be It Enacted By The County Council for Montgomery County, Maryland, that -

Sec. 1. Subsection (b) of Section 33-74, title "Cost-of-living adjustment" of Article IV, title "Employer-Employee Relations" of Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, is hereby amended to read as follows:

33-74. Cost-of-Living Adjustment.

* * *

(b) Notwithstanding the provisions in (a) above, for Fiscal Year 1984 only, the following salary controls shall apply:

(1) The Chief Administrative Officer shall adjust the salary maxima in effect as of June 30, 1983 for grades 5 through 37 by the full cost-of-living granted by the County Council.

(2) The salary maxima for grades 38, 39 and 40 shall be $68,000, $69,000 and $70,000, respectively.

(3) The salary for all merit employees will be adjusted by the full cost-of-living granted by the County Council to the extent that such salary adjustment does not exceed the maximum of the employee's grade.

* * *

Sec. 2. The termination provisions of Chapter 45 of the Laws of Montgomery County 1981 (Sec. 3 of Bill 16-81) and Chapter 47 of the Laws of Montgomery County 1982 (Sec. 3 of Bill 3-82) be and hereby are repealed.

Sec. 3. Severability.

The provisions of this Act are severable and if any provision, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, word or part had not been included therein, and if the person or circumstances to which the Act or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 4. Termination.

The provisions of subsection 33-74(b) shall remain effective only for Fiscal Year 1984 and shall be repealed and of no further force or effect on or after July 1, 1984.

Sec. 5. Effective Date.

The Council hereby declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. Therefore, this Act shall take effect on the date on which it becomes law.

Approved:

President, Montgomery County Council — April 7, 1983
Date

Approved:

County Executive — April 18, 1983
Date

ATTEST:

Secretary of the County Council — April 18, 1983
Date

BILL NO. 18-81

Introduced: April 21, 1981
Enacted: December 1, 1981
Executive: December 10, 1981
Effective: December 10, 1981

COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

April Legislative Session 1981

Chapter 40
Laws of Montgomery County 1982

AN EMERGENCY ACT to amend Chapter 2, title "Administration", Chapter 11B, title "Contracts, Procurement Matters and Public Ethics"; Chapter 21, title "Fire and rescue services"; Chapter 27, title "Human relations and civil liberties", and Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, by amending Section 2-64I of Division 15, title "Office of personnel" of Chapter 2; Section 11B-67, title "Confidentiality; penalty provisions" of Chapter 11B; Section 21-4M, title "Personnel administration - For career employees of corporations"; of Chapter 21; Section 27-21, title "Procedure for complaints against county" of Chapter 27; and Section 33-1, title "County personnel board . . .", Section 33-3, title "Continuation and administration of merit system", Section 33-4, title "Salaries of chairman and members of personnel board", Section 33-5, title "Statement of legislative intent . . .", Section 33-6, title "Definitions", Section 33-7, title "Personnel board responsibilities", Section 33-8, title "Administrative responsibilities of chief adminiatrative officer", Section 33-9, title "Equal employment opportunity and affirmative action", Section 33-10, title "Disclosure of illegal or improper actions in county government . . .", Section 33-12, title "Appeals of disciplinary actions . . .", Section 33-13, title "Appeal procedures", Section 33-14, title "Hearing authority of personnel board", Section 33-15, title "Judicial review and enforcement", Section 33-35, title "Definitions", Section 33-48, title

"Disability retirement hearing board", Section 33-51, title "Reports and audits", Section 33-56, title "Interpretations", Section 33-63, title "Definitions", and Section 33-71, title "Disputes", of Chapter 33; for the purpose of implementing recently approved amendments to Sections 402, 403 and 404 of the Montgomery County Charter which, among other things, change the name of the Personnel Board to the Merit System Protection Board, transfer authority to promulgate personnel regulations from the Board to the County Executive, provide for the assignment of certain matters to a hearing examiner, and require the Board to comment on proposed changes in the merit system law or regulations; establishing certain procedures and penalties; providing for the filing of certain complaints and appeals; permitting the Chief Administrative Officer to render certain decisions; specifying the manner for promulgation of Personnel Regulations; and relating generally to personnel.

Be It Enacted by the County Council for Montgomery County, Maryland, that -

Sec. 1. Section 2-64I of Chapter 2 of the Montgomery County Code 1972, as amended, be and hereby is amended to read as follows:

2-64I. Generally.

There is hereby established as a principal office of the Executive Branch an Office of Personnel under the immediate direction of a Director who shall be appointed by the County Executive subject to confirmation by the County Council. The Personnel Office shall have the following functions:

* * *

(b) Assist all appointing authorities in the implementation of merit system Charter provisions and the Personnel Regulations of the County Executive.

* * *

Sec. 2. Section 11B-67 of Chapter 11B, title "Contracts, Procurement Matters and Public Ethics" of the Montgomery County Code 1972, as amended, be and hereby is amended to read as follows:

11B-67. Confidentiality; penalty provisions.

(a) All confidential reports submitted under this Chapter shall be held strictly confidential except that:

(1) Said reports may be released at any time to federal, State or County law enforcement officials in connection with any duly authorized investigation.

(2) Said report may be released at any time to County personnel officers or the Merit System Protection Board in connection with any proceedings conducted pursuant to the County Personnel Regulations. However, nothing contained hereinabove shall permit the federal, State, or County law enforcement officials, County personnel officials, or the Merit System Protection Board to disclose publicly information in the report which they obtain unless the disclosure is made during the course of a grand jury investigation, trial or administrative hearing conducted by the Merit System Protection Board.

* * *

Sec. 3. Section 21-4M of Chapter 21, title "Fire and Rescue Services", of the Montgomery County Code 1972, as amended, be and hereby is amended to read as follows:

21-4M. Personnel Administration - For Career Employees of Corporations.

(a) Personnel services. The Commission shall arrange with the County to provide as a service to local corporations the following services:

* * *

(5) Use of the Merit System Protection Board.

* * *

(c) Processing personnel transactions. The review required by subsection (a)(4) of this Section shall be performed within fourteen days after receipt of notice of the personnel transaction to be reviewed. The Commission shall be responsible for correcting inconsistent personnel actions. Any dispute arising out of this review process shall be resolved by the Merit System Protection Board as a service to the Commission and the local corporations under procedures established by the Board. Within six months after the assignment of its initial staff, the Commission, with the advice of the Personnel Director, shall:

(1) Establish procedures by which data shall be provided by the local corporations; and

(2) Designate such data as required to carry out the review of personnel transactions.

(d) Procedures concerning disclosure of illegal and improper actions and protection from retaliatory action.

* * *

(2) In the event the Commission fails to adopt the procedures required by subsection (d)(1) of this Section, the provisions of Section 33-10 of the Merit System Law, enacted as Chapter 24, Laws of Montgomery County, 1979, and any regulations adopted to implement these provisions shall be deemed to apply to the local corporations and its employees paid with tax funds.

(e) Grievances. For purposes of the grievance procedures, the head of the local corporation shall be accorded the same status as a department head of the County government.

(f) Disciplinary appeals. Any career employee who is removed, demoted or suspended may, as a matter of right, appeal directly to the Merit System Protection Board in accordance with law and with procedures established by the Board. The decision of the Merit System Protection Board shall be final and binding, and shall not be subject to review except by a court of competent jurisdiction upon appeal taken within thirty days. The decision of the Merit System Protection Board, or if appealed, the decree of the court, shall be enforceable by the Commission and by the Chief Administrative Officer.

* * *

(h) Annual review. The Merit System Protection Board shall annually review all personnel-related actions of the Commission and local corporations to insure reasonable uniformity.

* * *

Sec. 4. Section 27-21 of Chapter 27, title "Human Relations and Civil Liberties", of the Montgomery County Code 1972, as amended, be and hereby is amended to read as follows:

27-21. Procedures for Complaints Against County.

(a) In any case in which the County or any of its instrumentalities or agencies is alleged to be in violation of any of the provisions of this Division, a complaint may be filed with the Commission as hereafter provided or, at the sole discretion of the aggrieved party, directly with a court of competent jurisdiction. Any merit system employee who elects to file a complaint under this Section shall not be entitled to a duplicative merit system grievance review and shall be, therefore, deemed to have waived the right to have the same matter reviewed by the Merit System Protection Board as may be otherwise provided by law or regulation.

* * *

Sec. 5. Chapter 33, title "Personnel", of the Montgomery County Code 1972, as amended, be and hereby is amended to read as follows, and existing Sections 33-5(b)(6), (7) and (8) are renumbered (7), (8) and (9) respectively:

PERSONNEL

Article 1. In General.

33-1. Merit System Protection Board to Have All Powers and Duties of Police Civil Service Commissioner and Police Trial Board.

The Office of the Police Civil Service Commissioner and the Police Trial Board are hereby abolished and all references in the Code of Public Local Laws of Montgomery County (1947 Edition) to the Office of the Police Civil Service Commissioner or the Police Trial Board shall henceforth be construed so as to refer to the Merit System Protection Board, and the Board shall henceforth have all the powers and duties of the Police Civil Service Commissioner and the Police Trial Board, insofar as such powers and duties are prescribed in such Code of Public Local Laws and are consistent with the Montgomery County Charter and public general laws.

* * *

33-3. Continuation and Administration of Merit System.

* * *

(b) The merit system shall be administered by the Chief Administrative Officer, under the direction of the County Executive, and shall be governed by

and subject to the provisions of the Charter for Montgomery County, Maryland, 1978, as amended, provisions of this Chapter, and the Personnel Regulations adopted by the County Executive and approved by the County Council.

33-4. Salaries of Chairman and Members of Merit System Protection Board.

For members of the Merit System Protection Board appointed after December 31, 1979, the annual salary of the Chairman of the Merit System Protection Board shall be six thousand eight hundred dollars, adjusted as provided for below. The annual salary of the other two members of the Merit System Protection Board shall be six thousand dollars adjusted as provided for below. The members of the Merit System Protection Board and the Chairman shall be paid as indicated above for the first ten months this law is in effect. Thereafter, these salaries shall be changed, beginning on the first Monday in December of each year, by a percentage which is fifty percent of the percentage which the Consumer Price Index for All Urban Consumers for the Washington Metropolitan Area for the previous September shall have changed from the September of the previous year.

* * *

33-5. Statement of Legislative Intent; Merit System Principles; Statement of Purpose; Merit System Review Commission; Applicability of Article.

* * *

(b) Merit System Principles.

* * *

(6) All applicants to and employees of the County merit system shall be assured fair treatment without regard to political affiliation or other non-merit factors in all aspects of personnel administration.

* * *

(c) Statement of Purpose.

The basic purpose of this Article is to delineate the respective responsibilities of the County Executive, the Chief Administrative Officer and the Merit System Protection Board for personnel management in County government. It is the further purpose of this Article to implement by law the County Charter responsibilities of the County Council with respect to a

merit system generally, including provisions for salaries and wages of all classified employees of the merit system under a uniform salary plan, the Merit System Protection Board's authority to exercise its appellate functions, and promotion of the overall objective that the integrity of the County merit system be preserved and that it be administered fairly and efficiently in the best interests of the County and its employees.

* * *

33-6. Definitions.

For the purposes of this Article, the following words and phrases shall have the meaning respectively ascribed to them by this Section:

Board. The Merit System Protection Board as described in Section 403 of the County Charter.

* * *

33-7. County Executive and Merit System Protection Board Responsibilities.

(a) Generally. In performing its functions, the board is expected to protect the merit system and to protect employee and applicant rights guaranteed under the merit system, including protection against arbitrary and capricious recruitment and supervisory actions, support for recruitment and supervisory actions demonstrated by the facts to be proper, and to approach these matters without any bias or predilection to either supervisors or subordinates. The remedial and enforcement powers of the Board granted herein shall be fully exercised by the Board as needed to rectify personnel actions found to be improper. The Board shall comment on any proposed changes in the merit system law or regulations, at or before the public hearing thereon. The Board, subject to the appropriation process, shall be responsible for establishing its staffing requirements necessary to properly implement its duties and to define the duties of such staff.

(b) Personnel Regulations. The County Executive, after a public hearing, shall adopt or amend Personnel Regulations, subject to County Council approval. The Regulations shall be deemed approved 45 days following receipt by the Council if by that time the Council has not acted upon the Regulations in some manner, including a resolution to extend, for not more than 30 days, the time for its

consideration. Personnel Regulations shall be effective on the first day following approval. Promptly following approval, the County Executive shall cause to be published once in one newspaper of general circulation published in the County a brief summary of the regulation so adopted, together with a statement of its effective date and of the place where a copy thereof may be promptly obtained. The requirement of public hearing, County Council approval and publication shall not apply to regulations adopted upon declaration of an emergency, unless the substance of the regulations had been the subject of previous emergency regulations. A summary of emergency regulations shall be published promptly after adoption and in the same manner described above. Emergency regulations shall cease to be effective and shall be of no further force or effect on or after the 61st day following their adoption.

The Personnel Regulations shall provide the framework for:

(1) The classification of all merit system positions in the Executive and Legislative Branches;

(2) Minimum qualifications for merit system positions, methods of determining qualifications and methods of selection for any positions;

(3) Probationary periods, promotions, transfers;

(4) Causes for removal from any merit system position and methods of removal, including demotions, furloughs and reduction of staff;

(5) Annual, sick and other leave;

(6) Prohibitions against political activity;

(7) Maintenance of personnel records; and

(8) Similar personnel matters as may be provided by law.

(c) Classification standards. With respect to classification matters, the County Executive shall provide by Personnel Regulation, adopted in the manner specified above, standards for establishing and maintaining a classification plan. These standards may include but are not limited to the following:

(1) The necessary components of class specifications;

(2) Criteria for the establishment of new classes, modification or elimination of existing classes;

(3) Criteria for the aasignment of positions to classes;

(4) Kinds of data required to substantiate allocation of positions;

(5) Guidelines for comparing levels of job difficulty and complexity; and,

(6) Criteria for the establishment or abolishment of positions.

The Board shall conduct or authorize periodic audits of classification assignments made by the Chief Administrative Officer and of the general structure and internal consistency of the classification plan, and shall submit audit findings and recommendations to the County Executive and County Council.

(d) Personnel Regulation Review. The Merit System Protection Board shall meet and confer with the Chief Administrative Officer and employees and their organizations from time to time to review the need to amend these Regulations.

(e) Adjudication. The Board shall hear and decide disciplinary appeals or grievances upon the request of a merit system employee who has been removed, demoted or suspended and in such other cases as required herein.

(f) Retirement. The Board may from time to time prepare and recommend to the Council modifications to the County's system of retirement pay.

(g) Personnel Management Oversight. The Board shall review and study the administration of the County classification and retirement plans and other aspects of the merit system and transmit to the Chief Administrative Officer, County Executive and the County Council its findings and recommendations. The Board shall conduct such special studies and audits on any matter relating to personnel as may be periodically requested by the County Council. All County agencies, departments and offices and County employees and organizations thereof shall cooperate with the Board and have adequate notice and an opportunity to participate in any such review initiated under this Section.

(h) Publication. Consistent with the requirements of the Freedom of Information Act, confidentiality and other provisions of law, the Board shall publish, at least annually, abstracts of its decisions, rulings, opinions and interpretations, and maintain a permanent record of its decisions.

(i) Public Forum. The Board shall convene at least annually a public forum on personnel management in the County government to examine the implementation of Charter requirements and the merit system law.

33-8. Administrative Responsibilities of the Chief Administrative Officer.

(a) The Chief Administrative Officer shall be responsible for the administration and enforcement of the merit system, including any retirement laws, labor relations laws and the Personnel Regulations. The Chief Administrative Officer may designate a representative to implement any or all of the provisions of law or the Personnel Regulations. The Chief Administrative Officer and all department heads are responsible for implementing all final decisions of the Merit System Protection Board made after grievance appeals, although the Chief Administrative Officer shall have the right to appeal any such decision in accordance with procedures recited elsewhere in this Article. The Chief Administrative Officer shall insure that all supervisors receive continual orientation and training about the intent, purpose and principles of the merit system and shall insure that all supervisors implement the objectives of this Article.

(b) The Chief Administrative Officer shall formulate administrative procedures to implement requirements of the merit system law and Personnel Regulations after providing reasonable public notice and opportunity for comment. These administrative procedures shall be distributed in a manner to make them accessible to all employees.

33-9. Equal Employment Opportunity and Affirmative Action.

(a) Policy. The County's policy shall be to take all personnel actions on the basis of merit and fitness without regard to political affiliation or non-merit factors, and without regard to other factors as may be provided for in Chapter 27 "Human Relations and Civil Liberties" such as sex, marital status, race, religion, national origin, age or handicap. The Chief Administrative Officer shall be responsible for initiating, developing and maintaining such an equal employment opportunity and affirmative action program as necessary to insure all persons an equal opportunity to enter and progress in the County's service on the basis of open competition and demonstrated ability. The County Executive is authorized to issue such rules and regulations as necessary to implement this policy. Such regulations shall provide that an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in an alternate work schedule in

order to meet those religious requirements. The regulation shall include provision for any employee who elects to work an alternate schedule to be obligated to work an equal period of time to that taken off for such religious reasons.

(b) Conciliation. The Chief Administrative Officer is authorized to engage in consultation and conciliation efforts with agencies responsible for enforcement of equal employment opportunity laws with the objective of resolving complaints and to execute binding agreements with these agencies; provided, however, that these conciliation efforts shall not be deemed to abate the procedures or requirements as recited in Chapter 27. Should the complaint be determined to be a matter not properly within the jurisdiction of an equal employment opportunity enforcement agency, the complaint, as filed, shall be treated as a grievance and processed under the appropriate procedures established for grievances.

(c) Appeals by applicants. Any applicant for employment or promotion to a merit system position may appeal decisions of the Chief Administrative Officer with respect to their application for appointment or promotion. Appeals alleging discrimination prohibited by Chapter 27, "Human Relations and Civil Liberties", of the Code, may be filed in the manner prescribed therein. Appeals alleging that the decisions of the Chief Administrative Officer were arbitrary and capricious, illegal, based on political affiliation, failure to follow announced examination and scoring procedures, or non-merit factors, may be filed directly with the Merit System Protection Board. Appeals filed with the Merit System Protection Board shall be considered pursuant to procedures adopted by the Board. The Board may order such relief as is provided by law or regulation.

33-10. Disclosure of Illegal or Improper Actions in County Government; Protection for Merit System Employees Against Retaliation or Coercion for Disclosing Illegal or Improper Actions in County Government; Prohibited Practices; Complaint Procedures; Investigations; Penalties; Appeals.

(a) Disclosure of Illegal or Improper Actions.

(1) Employees are authorized and expected to report instances of illegal or improper actions in County government.

(2) Employees should first report such matters to the individual responsible for corrective action. Such person may be anyone from the employee's

immediate supervisor up to and including the County Executive, or in the case of Legislative Branch employees, the County Council.

(3) In unusual circumstances, or if a retaliatory action or coercion has taken place, the employee may file a report directly with either the Board or the Ethics Commission. The identity of both the employee filing a report and the County employee or official who is the subject of this report shall be kept confidential unless waived in writing by the parties. The Board or Ethics Commission shall cause an inquiry to be conducted or refer the report to the appropriate government official or agency.

* * *

(b) Protection for Employees. Any merit system employee who refuses to obey an instruction involving an illegal or improper action or who discloses information concerning illegal or improper action in County government with a reasonable good-faith belief that such disclosures are true and accurate shall be protected under procedures authorized herein from any retaliatory or coercive personnel action. This provision does not extend protection to a merit system employee upon a determination that:

(1) The employee's actions were frivolous, unreasonable and without foundation, even though not brought in bad faith;

(2) The employee without good cause failed to comply with administrative regulations concerning the making of such disclosures; or

(3) The employee was the subject of otherwise proper personnel actions taken for disciplinary reasons and not for retaliatory purposes prohibited by this Section.

A personnel action shall mean any administrative act or omission which has a significant adverse impact upon the employee, or a change in the employee's duties or responsibilities inconsistent with the employee's grade and salary.

(c) Prohibited Practices. It shall be unlawful for any person to coerce any merit system employee into taking an illegal or improper action or take any retaliatory action against any merit system employee because of that employee's disclosure of information relating to illegal and improper action in County government.

(d) Filing of Complaints. If an employee believes a retaliatory action or coercion has taken place or been attempted because of his refusal to obey an illegal or improper instruction or disclosure of same, the employee may file a written complaint with the Board. The complaint must be filed within 60 days of the alleged violation or action and must contain:

(1) The employee's name and signature;

(2) The employee's home address and telephone number;

(3) The name of the individual who allegedly took the action;

(4) A concise description of the alleged coercion or retaliatory action and reasons for believing it to be so. The identity of all parties shall be kept confidential unless and until there is a finding of probable cause or all parties waive such confidentiality in writing.

The Board may initiate an inquiry of any person suspected of taking retaliatory or coercive action, with or without a written complaint from an employee.

(e) Investigations. All complaints charging a violation of subsection (c) shall be promptly investigated by the Board's staff who shall determine whether probable cause exists to believe a violation of that Section has occurred. Should the Board's staff determine that the subject matter of the complaint involved allegations more properly the subject of an employee grievance or complaint to be filed under the provisions of the Personnel Regulations or other laws or regulations, the complainant shall be so advised and the complaint dismissed, and the period of limitations for the bringing of such other action shall be deemed to run from the date of the dismissal. Should the Board's staff determine that no probable cause exists, that determination shall be final and the complaint dismissed unless Board reconsideration is requested. Should the Board's staff determine that probable cause does exist, the staff shall prepare and cause to be served on the person believed to have violated subsection (c) a statement of charges fairly describing the alleged violation and the sanctions sought to be imposed for such violation. The charges shall then be certified to the Board to schedule and conduct hearings in accordance with the provisions of this Chapter. The case in support of charges shall be presented by the Board's staff.

(f) Penalties. If a County employee is found guilty of coercion, harassment or retaliation, the Merit System Protection Board may order the imposition of one or more of the following penalties:

(1) Any disciplinary action provided for in the Personnel Regulations up to and including dismissal;

(2) A monetary fine in any amount up to $2,000.00;

(3) Reimbursement of expenses incurred by all parties;

(4) Other penalties as may be deemed appropriate and consistent with the Charter and laws of Montgomery County, Maryland.

(g) Appeals. An employee subject to the foregoing penalties based on the Merit System Protection Board's findings and decision may appeal to a court of competent jurisdiction.

33-12. Appeals of Disciplinary Actions; Grievance Procedures.

(a) Appeals of Certain Disciplinary Actions. Any merit system employee, excluding those in probationary status, who has been notified of impending removal, demotion or suspension shall be entitled to file an appeal to the Board which shall cause a hearing to be scheduled without undue delay unless the appeal has been settled during administrative review of the appeal by the Chief Administrative Officer or a designee. Any merit system employee who is the subject of other disciplinary action not specified above may file an appeal with the Board, but such appeal may or may not require a hearing as the Board may determine.

(b) Grievances. A grievance is a formal complaint arising out of a misunderstanding or disagreement between a merit system employee and supervisor with reference to a term or condition of employment. The determination of the Board as to what constitutes a term or condition of employment shall be final. Grievances do not include the following: classification allocations, except due process violations; failure to re-employ a probationary employee; or other employment matters for which another forum is available to provide relief or the Board determines are not suitable matters for the grievance resolution process. A grievance shall include termination by resignation which is found by the Board to have been submitted under circumstances which cause the

resignation to be involuntary; in the event of such a finding, the Board shall require the appointing authority to substantiate the termination as in the case of a removal. The County Executive shall prescribe in the Personnel Regulations procedures which seek to secure at the lowest possible level a fair, prompt and mutually satisfactory resolution to a grievance. In providing these procedures, the County Executive shall insure that any grievance based upon an alleged improper application of a merit system law or regulation concerning a disputed issue of fact is entitled to resolution after a fact-finding inquiry authorized by the Board. Grievances based upon an alleged improper interpretation of merit system laws or regulation do not require a hearing during the grievance resolution process.

(c) Hearing Examiners. The Board may utilize hearing examiners to conduct grievance investigations and other hearings, authorized under this Section, who shall make findings and recommendations subject to objection by the parties and final Board approval under such procedures as established by the Board. A party to any proceeding which has been assigned to a Hearing Examiner shall be afforded the opportunity to present an oral argument on the record before the Board prior to a final decision.

33-13. Appeal Procedures.

The County Executive shall prescribe by Personnel Regulations procedures covering appeals including grievances which shall include the time limit for filing such appeal, the granting of administrative leave pending appeal, filing and cost of the administrative record, conduct of hearings, requirements for written notice, special evidentiary proceedings in cases where the remedy of employee reinstatement was a contested and unresolved issue in an ordinary appeal hearing and provisions for summary actions by the Board.

33-14. Hearing authority of Board.

(a) Hearing Requirements. Hearings before the Board are quasi-judicial in nature and shall be conducted in formal session in accordance with the provisions and authority contained in the County Administrative Procedures Act.

* * *

(c) Decisions. Final decisions by the Board shall be in writing, setting forth necessary findings of fact and conclusions of law.

* * *

33-15. Judicial Review and Enforcement.

(a) Any aggrieved merit system employee, or applicant, or the Chief Administrative Officer, may obtain judicial review of a Merit System Protection Board order or decision from the Circuit Court for the County in the manner prescribed under Chapter 1100, Subtitle B of the Maryland Rules of Procedure.

* * *

33-35. Definitions.

The following words and phrases, as used in this Article, shall have the following meanings:

* * *

County Merit System Protection Board or Board. The Merit System Protection Board as defined in the Charter of Montgomery County, Maryland.

* * *

33-48. Disability Retirement Hearing Board.

* * *

(g) Appeals to the Merit System Protection Board. A member who disagrees with the Disability Retirement Hearing Board's decision shall have the right of appeal to the Merit System Protection Board within fifteen days of receipt of written notification of the decision. The Merit System Protection Board will review the appeal in accordance with the procedures outlined in the Personnel Regulations.

(h) Judicial Appeal. A final decision rendered by the Merit System Protection Board on an appeal may be appealed to any court of competent jurisdiction in accordance with the Maryland Rules of Procedure, Chapter 1100, Subtitle B.

* * *

33-51. Reports and Audits.

(a) Annual Report. The Chief Administrative Officer shall submit to the County Council, County Executive and the Merit System Protection Board by the second week of February each year an annual report on the status of the retirement system for the preceding fiscal year. Copies of this report shall be available to all interested County officials, each member of the retirement system, and the public.

* * *

33-56. Interpretations.

The Chief Administrative Officer shall have the responsibility for rendering decisions on questions arising under this Article. Any member of the County's retirement system and any retiree or designated beneficiary, eligible to receive benefits from the retirement system, may request, in writing, a decision on questions arising under this Article from the Chief Administrative Officer, who shall respond in writing to such request within 60 days. The response shall include a statement of appeal rights. Decisions by the Chief Administrative Officer may be appealed within 15 days to the Merit System Protection Board in accordance with procedures established by the Board. The decisions of the Board shall be final.

* * *

33-63. Definitions.

* * *

(c) Employee. Any County merit system employee working on a continuous full-time, career or part-time, career basis, eligible to be included in a unit of recognition except for the following:

* * *

(11) Employees of the Merit System Protection Board;

* * *

33-71. Disputes.

All decisions of the Chief Administrative Officer under the provisions of this Article shall be final, subject to appeal to the Merit System Protection Board where provided by law.

Sec. 6. Severability

The provisions of this Act are severable and if any provision, sentence, clause, section, word or part thereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, words or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal,

invalid, or unconstitutional provision, sentence, clause, section, word or part had not been included therein, and if the persons or circumstances to which the Act or part thereof is inapplicable had been specifically exempted therefrom.

Sec. 7. Effective Date.

The Council hereby declares that an emergency exists and that this legislation is necessary for the immediate protection of public health and safety. Therefore, this Act shall take effect on the date on which it becomes law.

Approved:

Neal Potter — Dec. 3, 1981
President, Montgomery County Council — Date

Approved:

[signature] — December 10, 1981
County Executive — Date

ATTEST:

Anna P. Spates — December 10, 1981
Secretary of the County Council — Date

Emergency Bill No: 19-94
Concerning: Name Change for Personnel Office
Draft No. & Date: 2 - 7/5/94
Introduced: June 21, 1994
Enacted: July 5, 1994
Executive: July 13, 1994
Effective: July 13, 1994
Sunset Date: None
Ch. 16, Laws of Mont. Co. 1994

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive, and Councilmember Praisner

---

AN EMERGENCY ACT to change the name of the Personnel Office to Office of Human Resources.

By amending
Montgomery County Code
Chapter 1A, Establishing the structure of County Government
Section 1A-201, Establishing departments and principal offices

Chapter 2, Administration
Section 2-64I, Functions

Chapter 33, Personnel
Sections 33-59 and 33-102

EXPLANATION: **Boldface** indicates a heading or a defined term
Underlining indicates text that is added to existing law by the original bill
[Single boldface brackets] indicate text that is deleted from existing law by the original bill
Double underlining indicates text that is added to the bill by amendment
[[Double boldface brackets]] indicate text that is deleted from existing law or the bill by amendment
* * * indicates existing law unaffected by the bill

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Sections 1A-201, 2-64I, 33-59, and 33-102 are amended as follows:

1A-201. Establishing departments and principal offices.

(a) Executive Branch.

(1) These are the departments and principal offices of the Executive Branch.

* * *

Housing and Community Development (section 2-27 et seq.)

Human Resources (section 2-64I; ch. 33)

* * *

[Personnel (section 2-64I; ch. 33)]

* * *

DIVISION 15. OFFICE OF [PERSONNEL] HUMAN RESOURCES

2-64I. Functions.

The [personnel office shall have] Office of Human Resources has the following functions:

* * *

Chapter 33.

[PERSONNEL] PERSONNEL AND HUMAN RESOURCES

33-59. Board of investment trustees.

* * *

(b) The board consists of [nine (9)] 9 trustees. The county executive must appoint:

(1) The director of [personnel] human resources or acting director;

* * *

33-102. Definitions.

The following terms have the meaning indicated when used in this article:

* * *

(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 for the following:

* * *

k. Persons who work for the [personnel office] office of human resources.

Sec. 2. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

Approved:

William E. Hanna, Jr. 7/7/94

William E. Hanna, Jr., President, County Council — Date

Approved:

Neal Potter 7/13/94

Neal Potter, County Executive — Date

This is a correct copy of Council action.

Kathleen A. Freedman 7/13/94

Kathleen A. Freedman, CMC — Date

Secretary of the Council

Agenda # 2
3/19/85

M E M O R A N D U M

TO: County Council

FROM: Myriam Marquez Bailey, Senior Attorney
Office of Legislative Counsel

SUBJECT: Introduction - Bill 9-85, Collective Bargaining for Police Sergeants

The subject bill, sponsored by Councilmember Esther Gelman, is scheduled for introduction on March 19, 1985.

The issue of providing police sergeants and lieutenants collective bargaining rights was considered by the Personnel Committee. After several meetings, the Committee agreed to refer the issue to the Council. On December 18, 1984, the Council decided not to consider the issue at that time, but to wait until legislation was introduced.

A copy of the packet prepared for the Council on that date is included in this packet. That packet contains the history of the issue.

Attached for your consideration are:

1.	Bill 9-85	(Circle 1)
2.	Legislative Request Report	(Circle 6)
3.	Council packet dated 12/18/84	(Circle 7)

Attachment
MMB/cll
248/8

lr 84 129

Bill No.: 9-85
Concerning: Collective Bargaining - Police Sergeants
Draft No. & Date: 2 - 2/27/85
Introduced: March 19, 1985
Expiration Date: September 12, 1986
Enacted:
Executive:
Effective:
Sunset Date:
Ch. ____, Laws of Mont. Co., FY ___

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Esther Gelman

AN ACT to include police sergeants in collective bargaining under the Police Labor Relations Law.

By amending
Chapter 33, Personnel
Section 33-76
Montgomery County Code

EXPLANATION:
- **Boldface** indicates matter that is a heading or a defined term.
- Underlining indicates matter added to existing law.
- [[Double Brackets]] indicate matter repealed from existing law.
- CAPITALS indicate matter quoted from existing law which is added to the bill by amendment.
- UNDERLINED CAPITALS indicate matter added to existing law by amendment to the bill.
- ~~STRIKEOUT~~ indicate matter deleted from the bill by amendment.
- * * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 33-76 of Chapter 33 is amended to read as follows:

33-76. Definitions.

When used in this article:

(1) **Agency shop** means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

(2) **To bargain collectively** means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this article.

(3) **Certified representative** means an employee organization selected in accordance with the procedures of this chapter to represent the unit.

(4) **Employee** means any police officer in the classification of master police officer I, master police officer II, police officer I, police officer II, police officer III, [[and]] police officer candidate, or equivalent nonsupervisory classifications and police sergeants, but not those in the classification of police [[sergeant]] lieutenant or any equivalent or higher classification.

(5) **Employer** means the county executive and his designees.

(2)

(6) Employee organization means any organization which admits to membership employees and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization. Such organization shall not admit to membership any person other than law enforcement officers.

(7) Lockout means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

(8) Mediation means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) Strike means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of

employment or of the status, recognition or authority of the employee or an employee organization.

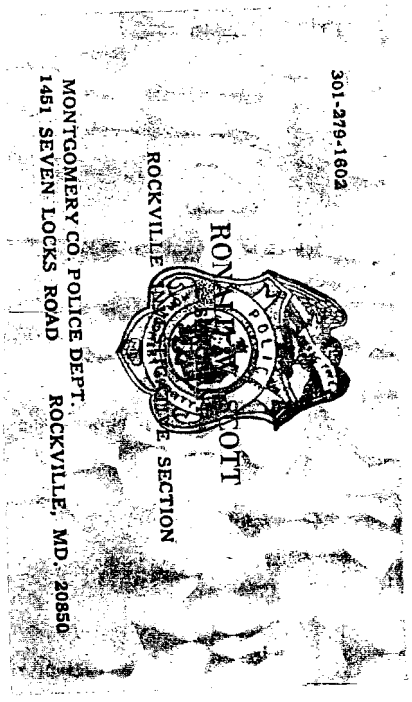
(10) Unit means [[all employees.]]:

(A) A bargaining group that is comprised of master police officers I, master police officers II, police officers I, police officers II, police officers III, and police officer candidates, or police officers of equivalent nonsupervisory classifications; or

(B) A bargaining group that is comprised of police sergeants.

Sec. 2. Severability.

The provisions of this Act are severable. If a provision is held invalid or inapplicable the remainder of the Act remains in effect.



(4)

Sec. 3. **Effective Date.**

This Act takes effect on the 91st day following the date on which it becomes law.

Approved:

_____ _____

Michael L. Gudis, President, County Council — Date

Approved:

_____ _____

Charles W. Gilchrist, County Executive — Date

This is a correct copy of Council action.

_____ _____

Kathleen A. Freedman, Acting Secretary, County Council — Date

lr 84 129

LEGISLATIVE REQUEST REPORT

Bill 9-85
Collective Bargaining - Police Sergeants

DESCRIPTION:	This bill authorizes police sergeants to form their own bargaining unit to collectively negotiate with the County under the Police Labor Relations Law.
PROBLEM:	Presently police sergeants are not included in the collective negotiations with the County over wages, hours, and other terms and conditions of employment. As a result, there is a loss of equity between police officers that are included in collective negotiations and police sergeants.
GOALS AND OBJECTIVES:	To give police sergeants collective bargaining rights in order to assure equity among nonsupervisory police officers and police sergeants.
COORDINATION:	Not applicable.
FISCAL IMPACT:	Requested.
ECONOMIC IMPACT:	Requested.
EVALUATION:	Requested.
EXPERIENCE ELSEWHERE:	Anne Arundel County, Baltimore County, Baltimore City, Prince George's County, Washington D.C.
SOURCE OF INFORMATION:	Myriam Marquez Bailey, Senior Attorney Office of Legislative Counsel (251-7900)
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	Not applicable.

Agenda Item #14
12/18/84

M E M O R A N D U M

TO: County Council

VIA: Councilmember Gelman, Chair, Personnel Committee

FROM: Myriam Marquez Bailey, Senior Attorney
Office of Legislative Counsel

SUBJECT: Collective Bargaining Rights for Police Sergeants and Lieutenants

Without objection, the Personnel Committee agreed to refer the issue of collective bargaining rights for police sergeants and lieutenants to the Council. Action by the Council is scheduled for December 18, 1984.

HISTORY

November, 1980 - The voters of the County passed a referendum question amending the County Charter requiring the Council to provide by law for collective bargaining for police officers.

April, 1982 - The Council enacted legislation implementing the Charter amendment. In the law, the Council defined "police officers" to include only officers of the rank of corporal and below. Police officers of the rank of sergeant and above were excluded because of their supervisory functions in order to insure "that proper management control was presented in the workplace". (See circle 2).

October 18, 1983 - The Council received a petition from police sergeants requesting that the collective bargaining law be amended to include sergeants.

January 10, 1984 - The Council acknowledged receipt of the petition of the police sergeants.

August 8, 1984 - The Council received a petition from police lieutenants requesting that the collective bargaining law be amended to include lieutenants also.

August 20, 1984 - The Personnel Committee held a worksession. The police sergeants and lieutenants contended that the Council is not abiding by the Charter language that authorizes collective bargaining for "police officers". Their claim is that sergeants and lieutenants are within the Charter's use of the term "police officers". Legal staff stated that research indicate that the Council has the authority to define "police officers" as long as the definition is rational and reasonable. (See circle 30).

September 18, 1984 - The Council acknowledged receipt of the petition of the police lieutenants.

October 1, 1984 - The Personnel Committee held another worksession. The Committee considered what ranks within the Police Department are considered supervisory in light of the National Labor Relations Act specifically excluding supervisory employees from bargaining units. A representative of the Police Association of Montgomery County stated that it is the belief of his organization that the supervisory line between management and labor can be drawn at the rank of captain. (See circles 26 and 32).

November 26, 1984 - The Personnel Committee held another worksession. The discussion on whether sergeants and lieutenants are supervisory employees continued. The representative of the Police Association stated that sergeants and lieutenants are a buffer between management and the labor force as they do not set policy but are charged with implementing it. A representative of the County Executive stated that the County Executive is opposed to bargaining rights for supervisors, but if the Council determined to grant those rights, the rights should be extended to a separate unit for sergeants and lieutenants. Chief Crooke stated his opinion that sergeants and lieutenants are part of management. He would prefer that they do not have collective bargaining rights but can understand why they have organized. Without objection, the Committee decided to send the issue to the Council for further consideration. (See the Personnel Committee minutes to be approved by the Council on December 18, which should be in your packets.)

MAIN ISSUE

Should there be legislation to give collective bargaining rights to Montgomery County police sergeants and lieutenants?

SUB-ISSUES

1. Is the Council required to include police sergeants and lieutenants in the collective bargaining law?

Apparently not. Case law holds that when a term is vague, a legislative body may define the term as long as the definition is reasonable and rational. In this case the Charter states that the "Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County police officers."

Because the Charter is not explicit as to what is meant by "police officers", the Council may determine what is meant. In this case, police officers with the rank of sergeant and above were excluded as being a part of management.

2. Are police sergeants and lieutenants supervisors?

A survey of local jurisdictions shows that all jurisdictions, except Montgomery County, include sergeants in their collective bargaining law (see circle 25) and half of those jurisdictions include lieutenants. A national survey shows that at least 54% of cities and counties provide for police supervisor bargaining rights. (See circle 13).

The Police Association states that management personnel are salaried and that non-management personnel are compensated by an hourly wage with overtime. A Police Department directive states that lieutenants and below are entitled to overtime. The Association believes that the Department directive defines management for compensation purposes as those who hold the rank of captain or above. (See circle 26).

According to the Personnel Department, the federal government has adopted a standard definition of a supervisor as anyone who has the authority to hire, fire, transfer, or promote or specifically recommend such actions.

The Police Department considers sergeants as the first level of supervisory personnel because they evaluate those of lesser rank.

The County Executive considers sergeants as first line supervisors who are responsible for directing the work force, maintaining discipline, evaluating subordinate personnel, and processing routine grievances, and may at times be the sole management representative on duty within a police districts. (See circle 2).

3. Does the new Charter amendment giving County employees collective bargaining rights define "supervisor"?

No, it does not. A similar problem may arise in enacting legislation implementing that Charter amendment. Consideration should be given as to whether granting collective bargaining rights to police sergeants and lieutenants would create an unwanted precedent.

Attached for your consideration are:

1.	10/17/83 petition letter from sergeants	(Circle 1)
2.	2/17/84 memo from Lewis Roberts	(Circle 2)
3.	6/11/84 letter from Sergeant Smith	(Circle 4)
4.	3/28/84 letter from Sergeants Smith and Miller	(Circle 5)
5.	8/20/84 petition letter from lieutenants	(Circle 6)
6.	8/21/84 letter from Walter Bader	(Circle 7)
7.	8/31/84 Personnel Department survey	(Circle 13)
8.	9/27/84 letter from Sergeant Smith	(Circle 26)
9.	Personnel Committee minutes	(Circles 30 and 32)
10.	Police Collective Bargaining Law	(Circle 34)

Attachments
MMB/c11
93/55

FRATERNAL ORDER OF POLICE

Montgomery County Lodge 35, Inc.

October 17, 1983

Honorable David L. Scull
President
Montgomery County Council
County Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Mr. Scull:

As you know, in 1980 the voters of Montgomery County approved a referendum which required the Montgomery County Council to "provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County police officers." [Charter § 510].

In 1982, legislation was enacted pursuant to the Charter amendment. [Chapter 33, § 33-75, et seq., L.M.C., 1982]. However, this legislation provided for collective bargaining only for those police officers holding the rank of MPO II and below. Police officers of the rank of sergeant are not covered by any current collective bargaining legislation.

This situation is the subject of vital concern to at least 80% of the police sergeants employed by Montgomery County. Consequently, these sergeants have given me petitions addressed to the Council asking for collective bargaining rights pursuant to Charter § 510.

The purpose of this letter is to request that you afford me an opportunity to present these petitions to the council on behalf of the police sergeants of the Montgomery County Police Department.

Your consideration of this request is greatly appreciated.

Sincerely,

Walter E. Bader

Walter E. Bader
President
FOP Lodge 35, Inc.

(1)

Montgomery County Government

ROCKVILLE, MARYLAND 20850

M E M O R A N D U M

February 17, 1984

TO: Myriam Bailey, Senior Attorney, Office of Legislative Counsel

FROM: Lewis T. Roberts, Chief Administrative Officer

SUBJECT: Police Sergeant Petition for Collective Bargaining Rights

You have requested that the Executive Branch provide background information relative to the decision to exclude sergeants from collective bargaining under the Police Labor Relations Law, which currently provides bargaining rights for sworn police officers below the rank of sergeant.

Formal labor relations with sworn police officers were first initiated in the County in June, 1977, with the certification of the Fraternal Order of Police to represent a unit of police officers in the ranks of Corporal and below. The Chief Administrative Officer established this unit based upon 33-65(d), Determination of employee units, of the County's Employer-Employee Relations Act which states:

> "Units for employees of the uniformed services shall be limited to employees in the ranks of Corporal or equivalent rank and below."

At that time, the rank of Corporal was the highest non-supervisory rank among the uniformed services (police, fire, corrections and sheriff). This language, therefore, effectively excluded supervisors in the uniformed services from participating in the meet and confer process.

The policy of excluding police supervisory personnel from formal participation in recognized employee organizations was carried over from the meet and confer process to collective bargaining. The shift from meet and confer to bargaining also increased the importance of insuring that proper management control was present in the workplace. Sergeants, as first line supervisors, are responsible for directing the workforce, maintaining discipline, evaluating subordinate personnel and processing routine grievances. In addition, there are times when the sergeant is the sole management representative on duty within a police district. Sergeants could not properly carry out these responsibilities if they were included in the existing police bargaining unit.

(2)

Participation by sergeants in the existing bargaining unit would create a divided loyalty. If sergeants were in the same unit as those whom they supervise they would be required to enforce the terms of an agreement which directly affects them. The enforcement of the agreement, as directed by management, may be viewed as having a negative impact on all members of the unit, including sergeants. Such a perception, by sergeants, would weaken management's enforcement capability. In addition, sergeants would be put in a conflicting position of enforcing contract provisions which may require action against a fellow union member. It is important, that supervisors in daily contact with the workforce, identify and remain loyal to management and its objectives.

An alternative to including sergeants in the existing unit is to provide a separate unit structure. If, however, the same union which represents the non-supervisory employees represented the sergeants, the observations enumerated above concerning divided loyalties would still apply. A separate unit structure will also diminish a sense of loyalty to management's objectives and create the potential for a rift between supervisors in the bargaining unit and those outside the unit. The bargaining process is adversarial, as a result it is difficult to maintain the loyalty necessary for the effective management of operations when supervisors are given bargaining rights in this process.

0842B

cc: Bernard Crooke, Chief of Police
Paul McGuckian, County Attorney

C05345

POLICE ASSOCIATION OF MONTGOMERY COUNTY, MARYLAND, INC.

11222 Grandview Avenue, Wheaton, Maryland 20902 (301) 942-8543

EST. - 1936

RECEIVED COUNCIL

84 JUN 13 A10: 57

MB
CC
DC

June 11, 1984

Honorable Esther Gelman
President
Montgomery County Council
Stella B Werner Council Building
100 Maryland Avenue
Rockville, Maryland 20850

re: Collective Bargaining

Dear Mrs Gelman,

On December 18, 1983, Walt Bader presented you with petitions signed by 80% of the Montgomery County Police Sergeants asking for bargaining rights pursuant to Charter Section 510.

On January 23rd, 1984, you informed Walt and I that the petitions had been officially received by the Council and that you had instructed the Office of Legislative Council to research the issue to determine if legislation is needed in order to include in the Collective Bargaining law those persons who hold the rank of sergeant.

Subsequent to that letter, there have been several developments which caused me to ask Myriam Bailey to hold the project in abeyance. On April 9, 1984 a meeting of Montgomery County Police Sergeants and Lieutenants was held at which time those present voted to form a new Labor Organization to be known as the Alliance of Police Supervisors.

As a result of numerous inquiries from lieutenants, a petition drive was conducted of the lieutenants to determine if the lieutenants wished to join with the sergeants in asking for bargaining rights.

That drive is now complete. 25 of the 27 police lieutenants have signed the petitions asking for bargaining rights. I respectfully request that you afford me the opportunity to formally present these petitions to the Council, and further request that you direct Myriam Bailey to draft emergency legislation providing bargaining rights to police sergeants and lieutenants. As stated in previous communication, we are asking for emergency legislation because it is our belief that we are being illegally denied bargaining rights afforded to us by the County Charter, Section 510.

Sincerely,

Gary F. Smith
President

(4)

0.552

March 28, 1984

SR
CC
MK
MB

The Honorable Esther Gelman
President
Montgomery County Council
Stella B Werner Council Building
100 Maryland Avenue
Rockville, Maryland 20850

RE: Collective Bargaining

Dear Mrs Gelman,

After our brief telephone conversation last week, it is apparent that some clarification is needed regarding the petition presented to the council by Walt Bader on behalf of the Montgomery County Police sergeants.

The petition is a formal request from police officers of the rank of sergeant that collective bargaining rights be granted to them. The sergeants are not asking to be included in the existing bargaining unit. In fact, the overwhelming majority do not want to be included in that unit, but instead, wish to form a separate unit apart from the unit now in existence.

It is our position that the voters of Montgomery County granted us the right to bargain collectively when they approved a referendum to that effect in the last general election. That referendum granted collective bargaining and binding arbitration rights to all police officers in Montgomery County- not just officers below the rank of sergeant, as is the case at the present time. The sergeants are prepared to file suit, if necessary, to avail ourselves of the rights afforded us by the voters.

Our only purpose at this time is to require the council to comply with the dictates of the voter referendum. To that end, we request that emergency legislation be introduced at the earliest date amending the current police-labor relations law in a manner that grants sergeants the same rights afforded officers of lesser rank. We are asking that the action be considered emergency legislation since the current law illegally deprives us of a right afforded by the voters of Montgomery County.

We would appreciate hearing from you at the earliest date possible regarding this very important issue.

Sincerely,

Gary F. Smith

Gary F. Smith
Sergeant
20000 Aircraft Drive
Germantown, Maryland 20874

Mark Miller

Mark Miller
Sergeant
20000 Aircraft Drive
Germantown, Maryland 20874

5

POLICE ASSOCIATION OF MONTGOMERY COUNTY, MARYLAND, INC.

11222 Grandview Avenue, Wheaton, Maryland 20902 — (301) 942-8543

EST. - 1936

August 20, 1984

Honorable Esther Gelman
President
Montgomery County Council
Stella B Werner Council Building
100 Maryland Avenue
Rockville, Marylard 20850

Dear Mrs Gelman,

Attached are petitions signed by 25 of 27 existing Montgomery County Police Officers of the rank of Lieutenant requesting Collective Bargaining with binding arbitration pursuant to Section 510 of the Montgomery County Charter.

On behalf of the lieutenants I am formally presenting these petitions and am requesting that they be joined with the petitions previously presented to you by Walter Bader on behalf of the sergeants.

The attention of the Council to this matter is appreciated.

Sincerely,

Gary F. Smith
President

(6)



FRATERNAL ORDER OF POLICE

Montgomery County Lodge 35, Inc.

August 21, 1984

Honorable Esther P. Gelman
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Mrs. Gelman:

As you are well aware, the Council Personnel Committee met on Monday, August 19, 1984, to consider petitions submitted to the County Council on January 10, 1984, on behalf of the majority of Montgomery County Police sergeants requesting that they be afforded collective bargaining rights. At that time, I promised to provide the committee with information concerning collective bargaining rights of police supervisors in Maryland, other states and the District of Columbia.

Please find enclosed two lists which demonstrate that other jurisdictions have provided for collective bargaining for police supervisors of various ranks. Of particular significance is the fact that Montgomery County is the only Maryland county which affords collective bargaining rights to non-supervisory police officers, but denies the same to supervisors.

I would now like to respond to the Chief Administrative Officer's February 17, 1984, memorandum to Myriam Bailey, Senior Attorney, Office of Legislative Counsel. The CAO advises that "[f]ormal labor relations with sworn police officers were first initiated in the County in June, 1977, with certification of the Fraternal Order of Police to represent a unit of police officers in the ranks of Corporal and below. The [former] Chief Administrative Officer established this unit based upon ... the County's Employer-Employee Relations Act which state[d] ... that 'units for employees of the uniformed services shall be limited to employees in the ranks of Corporal or equivalent rank and below.'" There is no disagreement with that statement, however, Mr. Roberts goes on to state that "[a]t that time, the rank of Corporal was the highest non-supervisory rank among the [police] ... therefore, [supervisors were] effectively excluded ... from participating in the meet and confer process." I disagree with this statement.

702 Russell Avenue, Suite 400-A Gaithersburg, Maryland 20877

(301) 948-4286

In 1977, many police corporals were in fact supervisors. They were assigned such traditional supervisory duties as evaluating subordinate work performance, assigning work, initiating disciplinary action, directing subordinate activity, etc. This rank was abolished in 1979 and replaced with the non-supervisory position of Master Police Officer I. At about the same time all corporals were afforded an opportunity to participate in a promotional process for the rank of sergeant. All former corporals who passed the examination process were promoted to sergeant.

Mr. Robert's hollow statement that "[s]ergeants could not properly carry out [their] responsibilities if they were included in the existing police bargaining unit" is lacking in sound reasoning. There is no basis whatever for this opinion. Sergeants have been represented by FOP Lodge 35 in employment matters under the existing merit system and grievance procedures for many years, without affecting their ability to execute any action. Furthermore, the immediate past president of FOP Lodge 35 was a police sergeant. Moreover, the sergeants are not now petitioning to have FOP Lodge 35 represent them under a collective bargaining law, as they have recently formed their own organization which is getting off the ground to represent their interests.

The CAO's argument that "[p]articipation by sergeants in the existing bargaining unit would create a divided loyalty" is an unfounded assumption. Even if this were to be accurate, the council is empowered to do what Baltimore City has done; that is to provide for two separate and distinct bargaining units, each having its own contract. I fail to see how there could be any more of "a negative impact" or a "conflict" under a collective agreement than ever existed when sergeants and below were covered under the same merit system and grievance procedure.

Mr. Roberts does propose an "alternative to including sergeants in the existing unit", i.e. "a separate unit structure". I see no objection to this proposal. However, his observations relative to having the same union represent a separate supervisors' unit are absolutely ludicrous and nothing more than an indication of anti-union sentiment. I hope that the Council will see through this transparent rhetoric.

I would ask the Personnel Committee to look more toward the immediate issues. These include the intent of the 1980 Charter Amendment [Charter Section 510] and the will of the voters; the equity factor; the experience in other jurisdictions; the desires of police supervisors; and, whether the Montgomery County Government is willing to sit down with its police supervisors to bargain over matters affecting their compensation, benefits, terms and conditions of employment, and working conditions. Other concerns, such as who would represent supervisors, can be addressed once a decision is made to enact legislation.

It is my hope that the Council will decide to provide collective bargaining rights to police supervisors in the near future. I think that once all the myths are shattered, it will be realized that the quality of police service in Montgomery County will not suffer (and may be enhanced) if these police officers are afforded those rights which they most certainly deserve.

Sincerely,

FRATERNAL ORDER OF POLICE
MONTGOMERY COUNTY LODGE 35

Walter E. Bader

Walter E. Bader
President

WEB/saw

cc: Mr. Fosler
Mr. Hanna
Myriam Bailey, Esq.
Gary Smith

Enclosures (2)

POLICE OFFICER COLLECTIVE BARGAINING RIGHTS

MARYLAND COUNTY AND DISTRICT OF COLUMBIA

Police Department	Police Officer Rank	Representative
Anne Arundel Co.	Sgt. & Below	FOP Lodge 70
Baltimore County		
[Unit 1]	Non-Supervisory	FOP Lodge 4
[Unit 2]	Sergeant & Lieut.	FOP Lodge 4
Baltimore City		
[Unit 1]	Police Officers & Agents	FOP Lodge 3
[Unit 2]	Sergeants & Lieutenants	FOP Lodge 3
Montgomery County	Non-Supervisory	FOP Lodge 35
Prince Georges Co.		
[Unit 1]	Corporal & Below	FOP Lodge 89
[Unit 2]	Sergeant & Lieut.	FOP Lodge 89
Washington, DC	Sergeant & Below	FOP Lodge DC-1

SOURCES: MD FOP Lodges 3, 4, 35, 70, and 89; DC Lodge 1

FOP 35/08-21-84
web

POLICE OFFICER COLLECTIVE BARGAINING RIGHTS

SELECTED UNITED STATES POLICE DEPARTMENTS[1]

Police Department	Police Officer Rank	Representative
Boston, MA	Patrolmen	Boston Police Patrolm's Assn.
	Supervisors	Boston Police Super. Officers Federation
Cleveland, OH	Non-Supervisory	Cleve. Patrolm's Assn.
	Supervisors	FOP
Detroit, MI	Non-Supervisory	Detroit Pol. Off. Assn.
	Sergeants & Lts.	Detroit Pol. Lieut. & Sergeants Association
Elizabeth, N.J.	Rank & File	Policem's Benevolent Assn. Local 4
	Supervisors	Police Superior Offs' Association
Fort Wayne, Ind.	Officers	PBA
	Supervisors	FOP Lodge 14
Los Angeles (Co.)	Non-Supervisory	Assn. for L.A. Deputy Sheriffs
	Middle Supervsry.	Professional Peace Offs. Assn.
	High Supervisory	Professional Peace Offs. Assn.
Los Angeles (City)	Rank & File	LAP Prot. League
	Capts. & Commanders	LAP Prot. League
Macomb Co., Mich.	Rank & File	Macomb Co. Deputy Sheriff's Assn.
	Command	AFSCME Local 1917
Madison, Wisc.	Rank & File	Madison Prof. P.O. Assn.
	Supervisors	Assn. of Madison Police Supervisors
Milwaukee, Wisc	Non-Supervisors	AFL/CIA Local #21
	Supervisors	Milw. Pol. Super. Assn.
Nassau Co., NY	Rank & File	PBA
	Supervisors	PBA
Newark, NJ	Rank & File	FOP Lodge 12
	Supervisors	Police Super. Offs. Assn.
New Castle Co., DE	Officers	FOP Lodge 5
	Supervisors	AFSCME Local 3109
New Rochelle, NY	Rank & File	Pol. Assn. of N.R.
	Superior Officers	N.R. Police Superior Officers Assn.
New York, NY	Non-Supervisory	PBA
	Detectives	Dets. Endowment Assn.
	Sergeants	Sgts. Benov. Assn.
	Lieutenants	Lts. Benov. Assn.
	Captains	Capts. Endow. Assn.

Pittsburg, PA	Captain & Below	FOP Lodge 1
Riverside, CA	Non-Supervisory	River. P.O. Assn.
	Supervisors	River. P.O. Assn.
Sacramento, CA	Non-Supervisory	S.C. Co. Deputy Sheriff's Assn.
	Others	Peace Off's. Jt. Council
Saint Paul, Minn.	Rank & File	Unknown
	Supervisors	Unknown
St. Petersburg, FL	Rank & File	PBA
	Supervisors	PBA
San Bernandino, CA	Rank & File	Pub. Empl's. Assn.
	Supervisors	None
Spokane, WA	Rank & File	Spokane Police Guild
	Supervisors	Spokane Capt's & Lieutenant's Assn.
Springfield, MA	Rank & File	IBPO Local 364
	Supervisors	None
Toledo, OH	Officers	AFL/CIO Local 10
	Command	Toledo Command Officers Assn.
Ventura Co., CA	Sheriffs	V.C. Sheriff's Assn.
	Supervisors	V.C. Sheriff's Assn.
Yonkers, NY	Rank & File	PBA
	Supervisors	Police Capt's.,Sgt's. Lieut's. Benov. Assn.

SOURCE: Police Executive Research Forum (1982)

NOTES:

[1] These jurisdictions were selected from PERF material because bargaining units are readily distinguishable between supervisory and non-supervisory ranks. Many jurisdictions do not provide for separate bargaining units for supervisors and non-supervisors.

[2] Several States provide collective bargaining rights to police officers by state law. Maryland is not one of these states. [However, several Maryland Counties have local laws which provide for collective bargaining for police officers.]

[3] Washington, DC and Maryland Counties do not appear here. Please refer to separate document.

FOP 35/08-21-84
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AWS

Montgomery County Government

MEMORANDUM

August 31, 1984

RECEIVED COUNCIL
84 SEP 4 P2:25

TO: Myriam Marquez Bailey, Senior Attorney
Office of Legislative Counsel

FROM: William P. Garrett
Personnel Director

SUBJECT: Information Request/Collective Bargaining for
Police Sergeants and Lieutenants

This is a response to the Personnel Sub-Committee request for additional information relating to Police supervisor bargaining rights in other jurisdictions.

Attached please find copies of two surveys completed in 1978 and 1981 entitled Police Collective Bargaining Agreement-National Management Survey. These surveys resulted from a joint study by the National League of Cities and the Police Executive Research Forum. The information provided by Mr. Bader in his August 21st letter to Ms. Gelman is taken from the 1981 survey. I am providing you with the complete survey for both years as I believe it will give Council members a better understanding of police supervisor representation in collective bargaining units throughout the United States. Further, the 1978 survey gives a description of the bargaining unit of each of the cities surveyed. Although the surveys were conducted by the same organizations, they did not necessarly include the same cities and counties. Between the two surveys, the total number of cities and counties surveyed was 123, of that number it could be determined that at least 67 or 54% provided for police supervisor bargaining rights.

Information concerning the status of merit systems among the jurisdictions referenced above was not available. However, my Office did a complete survey of local jurisdications which is provided in Attachment 3. The survey of local jurisdications indicate that those jurisdications with collective bargaining for police supervisors also permit participation in the merit system by police officers. Where a conflict exists between the merit system and a negotiated agreement, the agreement prevails.

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Attachments

cc: William Hanna
Scott Fosler
Esther Gelman
Gary Smith
Walter Bader

ATTACHMENT 1

1978
Police Collective
Bargaining Agreements

A National Management Survey

National League of City
Police Executive Research
Forum

A key to the notes appears on the last page of this chart.

City or County and State	Population and Census	Bargaining Agent	Description of Bargaining Unit	# of Employees in Bargaining Unit
Albany, NY	115,876	Albany Pol. Officers Loc. Union #2841 Co. 82 AFSCME, AFL-CIO	Pol. Off.	350
Albuquerque, NM	243,751	P.O.A.	Pol. Comm. Off.	—
Allentown, PA	110,321	F.O.P.	Pol. Off.	160
Anaheim, CA	166,118	Anaheim Pol. Assoc.	Pol. Off. & Sergeants	271
Beaumont, TX	115,965	IBPO Loc. #491	All Off. except Chief	102
Berkeley, CA	116,689	Berkeley Pol. Assoc.	Pol. & Comm. Off., Invest., Juv. Bur. Dir.	181
Boston, MA (Supervisors)	641,053	Boston Pol. Superior Officer's Federation	Command Off.	380
Boston, MA (Rank & File)	641,053	Boston Pol. Patrol Off. Assoc., Inc.	Pol. Off. & Detectives	1,729
Bridgeport, CT	156,548	AFSCME AFL-CIO Loc. #1159	Pol. & Comm. Off.	450
Buffalo, NY	425,000	P.B.A.	Pol., Detectives, Comm. Off. & Technicians	1,168
Camden, NJ (Supervisors)	102,551	Camden City Pol. Superior Officer's Assoc.	Comm. Off.	70
Camden, NJ (Rank & File)	102,551	F.O.P #1	Pol. Off.	200
Cincinnati, OH	452,550	Queen City Lodge #69 F.O.P.	Pol. Off. & Comm. Off.	1,000
Columbus, OH	539,377	F.O.P. Lodge #9	Pol. Off.	1,100
Corpus Christi, TX	204,580	P.O.A.	Pol. Comm. Off. & Asst. Chiefs	295
Dade County, FL	1,267,792	Dade County P.B.A.	Pol. Off. Sergeants, Technicians, Disp., Crim.	1,779
Dayton, OH	243,459	F.O.P. John C. Post Lodge #44	Pol. Off.	402
Des Moines, IA	200,772	D.M. Pol. Protective & Burial Assoc.	Pol. Off., Matrons, Detectives, Sr. Pol. Off.	210
Detroit, MI (Supervisors)	—	—	—	—
Detroit, MI (Rank & File)	—	—	—	—
Elizabeth, NJ (Supervisors)	112,713	Pol.Superior Off. Assoc.	Comm. Off.	55
Elizabeth, NJ (Rank & File)	112,713	P.B.A. Elizabeth Loc. #4	Pol. Off.	240
El Paso, TX	322,261	El Paso Municipal P.O.A.	Pol. Off. Comm. & Inspect.	850
Erie, PA	117,560	HAAS Memorial Lodge #7 F.O.P.	Pol. Comm. Off.	214
Eugene, OR	100,000	Eugene Pol. Patrol Officer's Assoc.	Pol. Off. & Agent, Records Clerk, Comm. Serv. Off. Disp.*	134
Evansville, IN	138,690	F.O.P.	Pol. & Comm. Off., Inspect., Detectives & Assist. Chiefs	261
Flint, MI (Lieutenants)	193,380	City of Flint Lieutenants' Assoc.	Lieutenants & Captains	16

City or County and State	Population and Census	Bargaining Agent	Description of Bargaining Unit	# of Employees in Bargaining Unit	
Flint, MI (Sergeants)	193,380	Teamsters Local Union #214 (Sergeants)	Sergeants	88	✓
Flint, MI (Rank & File)	193,380	Teamsters Local #214, Law Enf. Div.	Pol. Off.	209	
Fresno, CA	166,800	Fresno P.O.A.	Pol. Off. Specialist, & Sergeant	308	✓
Garden Grove, CA	122,580	Garden Grove Pol. Assoc.	Pol. Off.	134	
Glendale, CA	132,664	P.O.A.	Pol. Off. Sergeant & Detective	150	✓
Grand Rapids, MI	—	—	—	—	
Hartford, CT	158,017	BPO Loc. #308	All positions below Captain	412	✓
Hialeah, FL	102,136	Fla. St. Lodge F.O.P.	Pol. & Comm. Off.	327	✓
Hollywood, FL	167,012	Hollywood Lodge #21 F.O.P.	Pol. Off. Sergeants & Lieutenants	250	✓
Honolulu, HI	629,176	St. of Hawaii Org. of Pol. Off.	Pol. Off. Supv. & Non-Supv. Off.	1,425	✓
Huntington Beach, CA	115,960	P.O.A. Loc. #660	Pol. & Comm. Off., Deten. Off. Comm. opr.	430	✓
Indianapolis, IN	744,570	F.O.P. Loc. #86	Pol. & Comm. Off., Chief & Assist.	1,084	✓
Jacksonville, FL	538,965	Consolidated Lodge #5130	Pol. & Comm. Off.	896	✓
Kalamazoo, MI	86,661	Kalamazoo Pol. Off. Union	Pol. Off. & Technicians (sworn), airport sec. & pat. serv. off. (not sworn)	157	
Lansing, MI (Supervisors)	131,636	Supv. Div. Captains, City Lodge #141 F.O.P.	Sergeants, Lieutenants, Captains	55	✓
Lansing, MI (Rank & File)	131,636	Non-Supv. Park Sec. Div. Captains Lodge #141 F.O.P.	Pol. Off. & Park Security	217	
Lincoln, NE	149,518	Lincoln Pol. Union Loc. #544 B.P.O.	Pol. Off. Sergeants, Lieutenants & Detectives	218	✓
Long Beach, CA	358,673	P.O.A.	Basic Unit, Supv. Unit	624	✓
Madison, WI (Supervisors)	173,242	Assoc. of Madison Pol. Supv.	Pol. Off., Sergeants, Invest. Detectives	27	
Madison, WI (Rank & File)	173,242	Madison Prof. P.O.A.	Lieutenants, Captains & Inspect.	269	✓
Miami, FL	335,075	F.O.P. Lodge #20	Pol. Off., Sergeants, Lieutenants & Captains	721	✓
Milwaukee, WI	717,124	Mil. Pol. Assoc.	Pol. Off., Detectives & non-supv. ranks	1,890	
Multnomah Co., OR	556,667	Multnomah Co Deputy Sheriff's Assoc.	Dpty. Sheriff, Sergeants, & Invest.	207	✓
New Bedford, MA	101,759	Mass. Pol. Assoc.	Command & Pol. Off.	280	✓

City or County and State	Population and Census	Bargaining Agent	Description of Bargaining Unit	# of Employees in Bargaining Unit	
Newark, NJ (Supervisors)	382,777	Superior Off. Assoc.	Comm. Off.	—	✓
Newark, NJ (Rank & File)	382,777	Patrol Off. Benefit Assoc. Loc. #3	Pol. Off. Technicians & Staff	1,522	
New York, NY	7,894,851	P.B.A.	Pol. Off.	18,000	✓
Oklahoma City, OK	366,734	F.O.P. Lodge #123	Pol. Off. Detectives & Comm. Off.	659	✓
Oakland Co., MI	907,871	AFSCME Loc. #1445 AFL-CIO Council 23	Sheriff's Deputies thru Sergeant	210	✓
Oakland, CA	361,613	P.O.A.	Comm., Supv. Pol. Off.	885	✓
Orlando, FL	99,985	Orange County P.B.A.	Pol. Off. Sergeants	400	✓
Pasadena, CA	113,254	P.O.A.	Pol. Off.	159	✓
Paterson, NJ	144,830	P.B.A. Loc. #1	Pol. & Comm. Off.	425	✓
Phoenix, AZ	670,000	Pol. Law Enforcement Assn.	Pol. Off.	1,270	
Pittsburgh, PA	520,167	F.O.P. Fort Pitt. Lodge	Pol.Off. & Rank Supr. to Captain	1,400	✓
Prince George's Co., MD	660,567	Pol. Civilian Employees Assoc.	Civilians, Pol. Employers	232	✓
Riverside, CA	139,769	P.O.A.	Pol. Comm. Off.	232	
Rochester, NY	296,233	Rochester Pol. Locust Club, Inc.	Pol. & Comm. Off.	819	✓
Rockford, IL	147,205	Unit of Pol. Benevolent & Protective Assoc. of Illinois	Lieutenants & below	267	✓
Sacramento, CA	254,364	P.O.A.	Pol. Off. Sergeants & Lieutenants	480	✓
St. Paul, MN (Supervisors)	309,940	St. Paul Supv. Group	Pol. Off. Sergeants, Detectives & Lieutenants	4	✓
St. Paul, MN (Rank & File)	309,940	St. Paul Pol. Federation	Dept. Pol. Chief	550	
St. Petersburg, FL (Supervisors)	216,087	Pinellas County P.B.A.	Pol. Off. & Technicians	67	✓
St. Petersburg, FL (Rank & File)	216,087	Pinellas County P.B.A.	Command Off.	399	
San Antonio, TX	654,289	P.O.A.	All Cert. Peace Off. except Chief	1,149	✓
San Bernardino, CA	104,394	San Bernadino Pol. Chapter of the San Bernadino Public Employees Assoc.	Pol. Off. Invest. Comm. Off.	192	✓
San Francisco, CA	715,674	P.O.A.	Pol. Off.	1,550	
San Jose, CA	446,504	Jose Peace Off Assoc.	Pol. & Comm. Off & Technicians	800	✓
Seattle, WA	530,890	Seattle Officer's Guild	Pol. Off. up to Sergeant rank	981	

City or County and State	Population and Census	Bargaining Agent	Description of Bargaining Unit	# of Employees in Bargaining Unit
Spokane, WA	170,516	Spokane Pol. Guild	Pol. Off.	241
Stamford, CT	108,853	Stamford P.O.A.	Comm. & Pol. Off.	218
Stockton, CA	107,469	P.O.A.	Pol. Off. & Pol. Sergeants	200
Syracuse, NY	197,270	P.B.A. Benevolent	Pol. Comm. Off. & Insp.	478
Tacoma, WA	154,595	Tacoma Pol. Loc. #224	Pol. & Comm.[10] Off., Technicians & Matrons	250
Tampa, FL	278,000	Hills County	Pol. Off. Detectives., Corporals, Privates	905 budgeted
Toledo, OH (Supervisors)	384,818		—	—
Toledo, OH (Rank & File)	384,015	Toledo Pol. Patrol Officer's Assoc.	Pol. Off.	545
Torrance, CA	134,507	P.O.A.	Pol. & Comm. Off.	200
Trenton, NJ (Supervisors)	104,578	Trenton Supv. Off. Assoc.	Comm. Off.	65
Trenton, NJ (Rank & File)	104,578	—	—	—
Tulsa, OK	331,800	F.O.P. Lodge #93	Off., Corporal, Sergtant, 1st line division	654
Warren, MI (Supervisors)	179,234	Lodge #124 Com. of Assoc.	Sergeants, Lieutenants & Inspect.	40
Warren, MI (Rank & File)	179,234	P.O.A.	Pol. Off.	179
Washington, DC	756,510	Loc. #422 I.B.P.O.	Pol. & Comm. Off. Detectives & Invest.	4,022
Wayne County, MI (Supervisors)	2,668,751	AFSCME, AFL-CIO Loc. #25, 409,1659,1905,1917, Council 23	Comm. Off. Technicians & Inspect.	—
Wayne County, MI (Rank & File)	2,668,751	National Union of Pol. Off. Loc. #502 AFL-CIO	Pol. Off. Detectives & Dispatch.	600
Wichita, KS	276,698	F.O.P. Lodge #5	Pol. Off. Detectives, Invest.	312
Worcester, MA (Supervisors)	176,603	IBPO	Comm. Off.	80
Worcester, MA (Rank & File)	176,603	P.O.A.	Pol. Off.	353
Youngstown, OH	139,702	F.O.P. Ohio Lodge #28	Pol.Off. & Parks & Rec.Dept.	315

[1] "Primary Matters" include transfers, staff reductions, shift assignments, etc.
[2] "Secondary Matters" include vacation, personal leave, etc.
[3] Disputes involving implementation or application of rules or regulations can be handled by this procedure. Such
unrest enforcement, etc.
[4] Not Expressly Required
[5] 1 hour pay for each 8 hours unused sick leave up to 320 hours. 1 hour pay for each 4 hours unused sick leave
[6] Data Clerk, Dispatcher, Lab Technician
[7] 25% of accumulated days upon retirement or on yearly basis city will bank ½ of unused sick leave and pay 50c
[8] If at least 240 hours accumulated 20% hourly rate excess over 480 hours.
[9] Full pay for full period of incapacity whether or not service connected.
[10] Non-commissioned clerical, jail and identification employees are represented by Teamsters Local #461. Local #22
DC = discipline cases.
λ signifies inclusion of a particular category or type of clause in a contract; a dash means either that the information
applies.

ATTACHMENT 2

1981
Police Collective Bargaining Agreements

A National Management Surve

National League of City

Police Executive Research Forum

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit	D e
Akron, Ohio	240,000	F.O.P.	405	
Alameda County, Calif.	1,090,000	Deputy Sheriffs' Assn. AFL/CIO Local #3	573	
Albuquerque, NM	316,000	Albuquerque Police Officers' Assn.	590	
Allentown, Pa. (Supervisors)	105,000	F.O.P. Lodge #10	150	(
Anaheim, Calif.	211,700	Anaheim Police Assn.	282	(
Baltimore County, Md. (Sheriff)	672,623	F.O.P. Lodge #4	1264	(
Beaumont, Texas	130,000	International Brotherhood of Police Officers	216	
Boston, Mass. (Patrolmen)	563,000	Boston Police Patrolmen's Assn.	NR	La
Boston, Mass. (Supervisors)	563,000	Boston Police Superior Officers Federation	NR	
Bridgeport, Conn.	120,000	AFSCME Local 1159	371	(
Buffalo, NY	348,000	Buffalo Police Benevolent Assn.	1,062	(
Cincinnati	410,000	F.O.P. Queen City Lodge #69	NR	1
Cleveland, Ohio (Rank & File)	550,000	Cleveland Patrolmen's Assn.	1400	(
Cleveland, Ohio (Supervisors)	550,000	F.O.P.	300	(
Columbus, Ohio	622,000	F.O.P. Lodge #9	1100	(
Contra Costa County, Calif.	232,000	Deputy Sheriffs' Assn.	375	
Corpus Christi, Texas	NR	Corpus Christi Police Officers Assn.	NR	(
Dade County, Fla.	1,500,000	Police Benevolent Assn.	2,200	(
Davenport, IA	101,900	Iowa State Policemen's Assn. Collective Bargaining Unit Local #2	NR	
Dayton, Ohio	203,600	F.O.P. Lodge #44	378	(2
Des Moines, Iowa	201,000	Police Unit Bargaining Assn.	250	(
Detroit Mich. (Rank & File)	1,314,208	Detroit Police Officers' Assn	3,700	(

*Per County Ordinance Code

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit
Detroit, Mich. (Supervisors)	1,314,208	Detroit Police Lieutenants & Sergeants Assn.	1,128
Elizabeth, N.J. (Rank & File)	113,000	Policemen's Benevolent Assn. Local #4	260
Elizabeth, N.J. (Supervisors)	113,000	Police Superior Officers' Assn.	56
Erie, PA.	129,000	Haas Memorial Lodge #7	209
Evanston Ill.	69,000	Combined Counties Police Assn., Evanston Chapter	NR
Evansville, Ind.	140,000	F.O.P.	241
Flint, Mich.	159,611	Teamster's Local #214	217
Fort, Wayne, Ind. (Officers)	163,000	Police Benevolent Assn.	185
Fort Wayne, Ind. (Supervisors)	165,000	F.O.P. #14	85
Franklin County, Ohio (Sheriff)	1,851,056	F.O.P. Lodge #9	213
Fremont, Calif.	132,000	Fremont Police Officer's Assn.	141
Fresno, Calif.	200,000	Fresno Police Officer's Assn.	303
Fresno County, Calif. (Deputy Sheriffs)	490,600	Fresno Deputy Sheriff's Assn. Unit #1	300
Fresno County, Calif. (Sheriffs)	490,600	Fresno Sheriff's Assn.—Unit #35	25
Garden Grove, Calif.	123,000	Garden Grove Police Assn.	142
Genesee, County, Mich. (Sheriff)	NR	F.O.P. Lodge #145	NR
Glendale, Calif.	140,000	Glendale Police Officer's Assn.	151
Grand Rapids, Mich.	188,000	F.O.P.	239
Hartford, Conn.	124,000	International Brotherhood of Police Officers, Local 308	398
Hayward, Wis.	1,600	Hayward Pol. Assoc.	NR
Hialeah, Fla.	135,000	F.O.P. Lodge #12	215
Hollywood, Fla.	120,000	International Brotherhood of Police Officers Local #621	258

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit
Honolulu, Hawaii	729,100	Hawaii Organization of Police Officers	1,400
Huntington Beach, Calif.	175,000	Huntington Beach Police Officers Assn.	230
Indianapolis, Ind.	440,000	F.O.P.	1,050
Jacksonville, Fla.	591,282	F.O.P.	881
Jefferson County, Ky.	695,055	F.O.P. Lodge #14	430
Lansing, Mich.	133,000	F.O.P. Lodge #141	214
Lincoln, Neb.	150,000	International Brotherhood of Police Assn.	220
Livonia Mich.	104,000	Livonia Police Officers Assn.	100
Long Beach, Calif.	351,000	Police Officer's Assn. AFL/CIO	610
Los Angeles, Calif. (Captains & Commanders)	2,957,052	Los Angeles Police Protective League	89
Los Angeles, Calif. (Rank & File)	2,957,052	Los Angeles Police Protective League	6,614
Los Angeles County, Calif. (Non-supervisory)	7,225,000	Assn. for LA Deputy Sheriffs	4,399
Los Angeles County, Calif. (Middle Supervisory)	7,225,000	Professional Peace Officers Assn.	1,300
Los Angeles County, Calif. (High Supervisory)	7,225,000	Professional Peace Officers Assn.	72
Macomb County, Mich. (Rank & File)	670,000	Macomb County Deputy Sheriff's Assn.	200
Macomb County, Mich. (Command)	670,000	AFSCME Local #1917	37
Madison, Wisc. (Rank & File)	173,051	Madison Professional Police Officer's Assn.	265
Madison, Wisc. (Supervisors)	173,051	Assn. of Madison Police Supervisors	NR
Memphis, Tenn.	750,000	Memphis Police Assn.	1,100
Miami, Fla.	380,000	F.O.P.	700
Milwaukee, Wisc (Non-supervisors)	616,000	Milw., Police Assn. AFL/CIO—Local #21	1,730
Milwaukee, Wisc. (Supervisors)	616,000	Milw. Police Supervisors' Organization	250
Milwaukee County, Wisc. (Deputy Sheriffs)	938,638	Milwaukee Deputy Sheriffs' Assn.	389
Minneapolis, Minn.	375,000	Police Officers'	725

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit
Multnomah County, Ore. (Sheriff)	143,350	Multnomah County Deputy Sheriffs' Assn.	206
Nassau County, N.Y. (Supervisors)	1,318,447	Superior Officer's Assn.	485
Nassau County, N.Y. (Rank & File)	1,318,447	Patrolmen's Benevolent Assn.	3,000
Newark, N.J. (Supervisors)	329,250	Police Superior Officers Assn.	NR
Newark, N.J. (Rank & File)	329,250	F.O.P. Lodge #12	970
New Bedford, Mass.	101,000	Mass. Police Assn.	270
New Castle County, Del. (Supervisors)	400,000	AFSCME Local #3109	5
New Castle County, Del. (Officers)	400,000	F.O.P. Lodge #5	225
New Rochelle (Rank & File)	70,800	Police Assn. of New Rochelle	NR
New Rochelle, N.Y. (Superior Officers)	70,800	New Rochelle Police Superior Officers Assn.	NR
New York, N.Y. (Detectives)	7,149,300	Detectives Endowment Assn.	2783
New York, N.Y. (Police Officers)	7,149,300	Patrolmen's Benevolent Assn.	18,652
New York, N.Y. (Sergeants)	7,149,300	Sergeant's Benevolent Assn.	2312
New York, N.Y. (Lieutenants)	7,149,300	Lieutenant's Benevolent Assn.	811
New York, N.Y. (Captains)	7,149,300	Captains' Endowment Assn.	360
Oakland, Calif.	339,200	Oakland Police Officers Assn.	600
Oklahoma City, Okla.	386,000	F.O.P. Lodge #123	850
Omaha, Neb.	365,000	Omaha Police Union Local #1	524
Orlando, Fla.	130,000	Orange County Police Benevolent Assn.	265
Phoenix, Ariz.	770,000	Phoenix Law Enforcement Assn.	1270
Pittsburg, PA.	424,000	F.O.P. Lodge #1	1,447
Portland, Ore.	366,383	Portland Police Assn.	850
Prince George County, Md. (Sheriffs)	750,000	F.O.P. Lodge #89	813
Racine, Wis.	98,000	Racine Policemen's Professional Benevolent	NR

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit	
Ramsey County, Minn. (Sheriffs)	476,225	Teamster's Local #320	140	
Riverside, Calif. (Police Officers)	165,000	Riverside Police Officer's Assn.	240	
Riverside, Calif. (Supervisors)	165,000	Riverside Police Officer's Assn.	Part of 240 Above	
Rochester, N.Y.	275,000	Locust Club, Inc.	627	
Sacramento, Calif.	254,413	Police Officer's Assn.	512	
Sacramento County, Calif. (Nonsupervisory)	749,000	Sacramento County Deputy Sheriff's Assn.	784	
Sacramento County, Calif. (Others)	749,000	Peace Officer's Joint Council	125	
Saint Paul, Minn. (Supervisors)	290,000	None	3	
Saint Paul, Minn. (Rank & File)	290,000	None	550	
Saint Petersburg, Fla. (Rank & File)	250,000	Police Benevolent Assn.	338	
Saint Petersburg, Fla. (Supervisors)	250,000	Police Benevolent Assn.	68	
Salem, Ore.	90,400	Salem Police Assn.	95	
Salt Lake City, Utah	159,759	International Brotherhood of Police Officers, Local 470	400	
San Antonio, Texas	813,500	San Antonio Police Officer's Assn.	1115	
San Bernadino, Calif. (Rank & File)	109,000	Public Employees Assn., Police Chapter	191	
San Bernadino, Calif. (Supervisors)	109,000	None	4	
San Diego, Calif.	845,000	San Diego Police Officer's Assn.	1238	
San Diego County Calif.	454,000	Deputy Sheriff's Assn.	803	
San Mateo County Calif.	574,000	Deputy Sheriff's Organization	316	
Santa Ana, Calif.	189,000	Santa Ana Police Benevolent Assn.	347	
Santa Monica, Calif.	90,000	Santa Monica Police Officer's Assn.	130	
Seattle, Wash.	498,000	Seattle Police Officer's Guild	980	
Southfield, Mich.	75,500	Police Officer's Assn.	NR	
Spokane, Wash. (Rank & File)	170,846	Spokane Police Guild	234	
Spokane, Wash. (Supervisors)	170,846	Spokane Captains and Lieutenants Assn.	16	
Springfield, Mass. (Rank & File)	170,000	IBPO Local #364	400	

City or County	Population	Name of Bargaining Unit	Number Employ Bargaining U.
Springfield, Mass. (Supervisors)	170,000	None	50
Stamford, Conn.	102,400	Stamford Police Assn.	280
Stockton, Calif.	131,000	Police Officers' Assn.	214
Sunnyvale, Calif.	107,000	Sunnyvale Public Safety Officers Assn.	190
Syracuse, NY	173,400	Police Benevolent Assn.	460
Tacoma, Wash.	158,500	Tacoma Police Union Local #6	243
Tampa, Fla.	254,000	Hillsborough County Police Benevolent Assn.	509
Toledo, Ohio (Command)	350,000	Toledo Command Officers Assn.	157
Toledo, Ohio (Police Officers)	350,000	Toledo Police Patrolmen's Assn. AFL/CIO Local #10	508
Topeka, Kan.	123,000	F.O.P. Lodge #3	225
Trenton, N.J.	104,600	Police Benevolent Assn.	329
Tucson, Ariz.	313,000	F.O.P.	488
Tulsa County, Okla.	366,000	F.O.P.	618
Ventura County, Calif. (Sheriffs)	488,000	Ventura County Sheriff's Assn.	408
Ventura County, Calif. (Supervisors)	488,000	Ventura County Sheriff's Assn.	27
Washington, D.C.	635,000	International Brotherhood of Police Officers Local #442	3650
Wayne County, Mich.	NR	AFL/CIO Local #502	600
Westmoreland County, Pa. (County Park Police)	400,000	Teamsters Local #38	12
White Plains, N.Y.	50,000	White Plains Police Benevolent Assn.	206
Wichita, Kansas	261,000	F.O.P. Lodge #5	305
Yonkers, N.Y. (Rank & File)	200,000	Police Benevolent Assn.	418
Yonkers, N.Y. (Supervisors)	200,000	Police Captains, Sergeants, Lieutenants, Benevolent Assn.	88

ATTACHMENT 3

POLICE OFFICER COLLECTIVE BARGAINING RIGHTS

MARYLAND COUNTIES AND DISTRICT OF COLUMBIA

Police Departmen	Police Officer Rank	Merit System Application
Anne Arundel County	Sergeants & Below	Yes
Baltimore County		
(Unit I)	Non-Supervisory	Yes
(Unit 2)	Sergeant & Lieut.	Yes
Baltimore City		
(Unit I)	Police Officers & Agents	Yes
(Unit 2)	Sergeants & Lieutenants	Yes
Montgomery County	Non-Supervisory	Yes
Prince Georges Co.		
(Unit I)	Corporal & Below	Yes
(Unit 2)	Sergeant & Lieutenants	Yes
Washington, D.C.	Sergeant & Below	Yes
Howard County	Non-Supervisory	Yes

POLICE ASSOCIATION OF MONTGOMERY COUNTY, MARYLAND, INC.

11222 Grandview Avenue, Wheaton, Maryland 20902 — (301) 942-8543

EST. - 1936

RECEIVED COUNCIL

84 SEP 27 A10: 42

September 27, 1984

Esther Gelman
Chairperson
Personnel Committee
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Mrs Gelman,

I appreciated the opportunity to meet with the committee on August 13th, for the initial discussion on the subject of collective bargaining for sergeants and lieutenants. I remain hopeful that we can find a resolution to this problem that will be acceptable to both the Council and our members.

If you'll recall, much was made at the last meeting of the contention by Mr Hanna that sergeants and lieutenants are management personnel, and, thus, not entitled to bargaining rights. If the committee can accept the statement that, historically, management personnel have been salaried, and the labor force has been compensated by an hourly wage with overtime, then I believe the following information will be helpful.

Police Department Directive 82-56, titled OVERTIME COMPENSATION, states in part that sworn personnel of the rank of lieutenant and below shall be entitled to overtime compensation at the rate of time and a half, regardless of duty assignment. The directive states further that officers of the rank of captain and above are not entitled to overtime compensation in accordance with the County Personnel Regulations.

The Personnel Regulations For Merit System Employees, appendix to chapter 33, Montgomery County Code 1972, as amended December 2, 1980, Section 13, entitled Special Leave, states in paragraph 13.5 that employees in positions of Division Chief or higher, or equivelent ranks, shall not be entiteld to overtime compensation except for holidays, etc. The CAO is charged with the responsibility for deciding which supervisory employees are considered to be of a rank equivalent or higher than Division Chief.

(26)

It is clear to me, based on the Personnel Regulations and the Departmental Directive, that the County has defined management personnel for compensation purposes as those officers who hold the rank of Captain or higher. The appropriate sections of these documents are enclosed for your consideration. I hope you find them helpful.

I would also like to take this opportunity to clarify a statement I previously made to the Council. My letter to you dated March 28, 1984, stated the "... sergeants are prepared to file suit, if necessary, to avail ourselves of the rights granted us by the voters." Please be assured that my statement was not intended to be offensive or threatening in nature. My only purpose was to convey to you how strongly the sergeants feel about the subject of bargaining rights. Unfortunately, I feel that statement made our first meeting somewhat adverarial in nature. That was not my intent nor my desire. I am confident that we can work harmoniously and professionally now, just as I am confident we can bargain collectively in a professional manner in the future.

Thank you for your interest and be assured of our continued cooperation in this, and other matters of mutual interest.

Sincerely,

Gary F. Smith
President

...TMENT OF POLICE
...ERY COUNTY, MARYLAND

DD 82-56
FUNCTION CODE: 316
DISTRICTION: A
EFFECTIVE DATE: 12-01-82

SUBJECT: OVERTIME COMPENSATION

...se: To establish guidelines for overtime compensation.

...y: The policy of the department is to compensate employees, regardless of duty assignment, for working in excess of a normal work day, on an official county holiday, or while scheduled for regular leave. For purposes of this directive, court appearances are included and are compensable when an officer appears in connection with duties as an employee of the police department. These appearances include both criminal and civil actions.

...ents:

I. Compensation
II. Restrictions
III. Overtime Approval/Scheduling
IV. Procedure for Requesting Overtime Compensation
V. Working on an Official County Holiday
VI. Cancellation

I. Compensation

A. Overtime compensation at the rate of time and one-half shall be authorized for personnel in the following categories:

1. Sworn personnel of the rank of lieutenant and below, regardless of duty assignment.
2. Non-sworn personnel.
3. The overtime provisions of this directive will not apply to officers of the rank of captain or above in accordance with the County Personnel Regulations. Officers in this category required to work on an official county holiday will receive an amount of compensatory leave equivalent to the number of hours actually worked.

...dicates significant additions/revisions.

considered as immediate family of the employee. In extenuating circumstances, the Chief Administrative Officer may approve such leave for other relatives not included herein.

13.4 Court Leave. Court leave is paid leave granted to an employee who is subpoenaed as a witness in a civil or criminal case, or is to serve on a jury.

13.5 Compensatory Leave. An employee who is required by a supervisor to work overtime shall be credited with compensatory leave at the rate of one and one-half hours for each hour of overtime work performed whenever the employee does not receive overtime compensation for such work.

(a) Limitations on Crediting of Compensatory Leave for Overtime Work. Division chiefs and other supervisory employees of a level equivalent or higher than a division chief are eligible to be credited with compensatory leave on an hour-for-hour basis for overtime work during periods of general emergency leave, holidays and on the employee's regular days off. Such employees shall not be eligible for compensatory leave credits, except for holiday work, for the first five hours of overtime work on a regular work day or in a regular work week. An employee may begin receiving compensatory leave credit in multiples of not less than one hour commencing with the forty-sixth hour of work in a work week. For other employees compensatory leave credits of less than one-half hour shall not be counted. The Chief Administrative Officer shall decide which supervisory employees are considered to be of a level equivalent or higher than division

(X) ADVANCE PUBLIC NOTICE GIVEN APPROVED COMMITTEE MINUTES

All Committee meetings are open to all Councilmembers and members of the public. Minutes are kept in compliance with the Sunshine Law.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

August 20, 1984	11:40 A.M. to 12:20 P.M.	Sixth Floor Conf. Rm
(Date)	(Time meeting convened & adjourned)	(Place)

COUNTY COUNCIL COMMITTEE: Personnel

COMMITTEE CHAIRPERSON: Esther Gelman MEMBERS: William Hanna, Scott Fosler

ADDITIONAL COUNCILMEMBERS PRESENT:

Present from Council Staff: Gail Ewing, Margaret Knill

Present from Executive Branch: County Attorney's Office: Bruce P. Sherman; Office of Management and Budget: Timothy Firestine; Personnel Department: W. Garrett, Martha Kamlot

Present from Other Agencies:

Consultants, or Others:

Members of the Public Present: Gary Smith, Pres., Police Assoc. of Montgomery County; Walter E. Bader, FOP Lodge 35; Jean Byars, Montgomery Sentinel

Included in File of Meeting: Agenda of meeting; background & information papers; sign-up sheet.

ISSUES DISCUSSED & AGREEMENTS REACHED DURING COMMITTEE MEETING:

Re: Collective Bargaining Rights for Police Sergeants and Lieutenants

Senior Staff Attorney Myriam Bailey stated that police sergeants have requested, by petition, to be included in the collective bargaining law for police officers; police lieutenants are also requesting to be included in the law.

Mr. Fosler commented there is a legal question in that the sergeants and lieutenants contend that the County is not abiding by the Charter language that authorizes collective bargaining for all police officers. Responding to Mr. Fosler's question as to whether there is a legal opinion from the County Attorney, Ms. Bailey said there is not; however, the weight of legal opinion is that the County Council has the authority to define "police officers." The law is ambiguous in this regard.

Mr. Smith said that the sergeants and lieutenants are now in the process of forming a new labor organization known as the Alliance of Police

Supervisors; membership is limited to sergeants and lieutenants. He characterized sergeants and lieutenants as supervisors, not managers as they do not write policy. Mr. Sherman said he agreed with that interpretation. Mr. Hanna said he does not believe sergeants and those above that rank should be included in collective bargaining as he considers them part of management. Mr. Fosler commented that there have to be members of management in order to bargain. Mr. Smith stated that the argument is that sergeants and lieutenants are included under the definition of "officers." Mr. Fosler asked whether that definition includes the police chief. Mr. Smith expressed the opinion that it is unreasonable to include all management and indicated that the wording of the Charter includes sergeants and lieutenants because it refers to all police officers. Responding to Mr. Fosler's question as to whether it is believed by the sergeants and lieutenants that the law should include the police chief, Mr. Smith answered in the negative. Mr. Smith stated that Prince George's County has sergeants and lieutenants in bargaining units.

Mr. Fosler commented that the County could deny collective bargaining for sergeants and lieutenants because the County considers them part of management. However, if these officers believe strongly that they should have additional bargaining rights, it suggests that there are problems with the system.

Mr. Sherman commented that the Charter authorized the Council to enact legislation providing for collective bargaining and allows the County to define the level of management. Reading from the Charter, Mr. Fosler commented that one organization will represent the police officers; it is not clear whether the Charter recognizes bargaining with more than one organization. Ms. Bailey commented there may be a related issue if the Charter amendment is passed granting County employees the right of collective bargaining.

Mr. Sherman suggested that additional information is needed concerning employees who have collective bargaining rights and whether they also have merit system rights.

The Committee agreed to allow three weeks for the staff to gather additional information on the issues discussed at the meeting.

ATTEST:

Kathleen A. Freedman

Kathleen A. Freedman, Acting Secretary
of the County Council for
Montgomery County, Maryland

Minutes prepared by: Donna Brand

Re: Collective Bargaining Rights for Police Sergeants and Lieutenants

Ms. Bailey called the Committee's attention to the survey describing bargaining units in local jurisdictions and in other cities throughout the country.

Mr. Smith stated that it is the belief of his organization that the supervisory line between management and labor can be drawn at the rank of captain. He said those of the rank of sergeant or above are not entitled to compensation for overtime and similar benefits. Sergeant Scott said that one concern is that officers of lesser rank earn more money because they receive a shift differential.

Mr. Fosler said that the real question is whether the County is required to grant bargaining rights to all police officers. Mr. Sherman commented that the Charter amendment authorizes it but does not require it. He said this will be the subject of a memorandum forthcoming to the Committee within the week. Mr. Sherman indicated that there is a Charter amendment on the November ballot which, if approved, would bring all County employees under collective bargaining. It is his understanding that the police officers in question will be covered if the new amendment passes even if they are not covered now.

Mr. Fosler asked Mr. Garrett for his recommendations for establishing bargaining units for management and others if the Charter amendment becomes law. Mr. Garrett commented that one of the first tasks would be to separate the duties in order to determine areas of responsibility. Mr. Fosler expressed the opinion that it would be wise to consider some degree of compatibility between police officers and other departments in the County government.

Mr. Torgesen stated that the National Labor Relations Act specifically excludes supervisory employees from bargaining units. The standard definition of a supervisor is one who has the authority to hire, fire, transfer or promote or specifically recommend such actions. He said that the Federal government has adopted this as a rule of thumb.

Mr. Fosler suggested discussing the matter with police management to get a perspective in determining to what extent to include supervisory personnel in a bargaining unit.

Major Chaney said that he believes that colletive bargaining has become an issue for sergeants and lieutenants after the collective bargaining was negotiated with police officers who acquired certain benefits, including shift differential. He said the Police Department considers sergeants as the first level of supervisory personnel because they evaluate those of lesser rank.

Mr. Fosler commented that management has certain benefits that come with responsibilities; the question is whether the benefits match the responsibilities. Major Chaney commented that, if the sergeants and lieutenants organize, they will constitute most of the work force along with the rank and file. Mr. Smith commented that sergeants and lieutenants are just trying to establish the same bargaining rights as the other police officers. Mr. Hanna said he opposes the movement by the police sergeants and lieutenants to obtain bargaining rights. He expressed the view that the public could be at risk if the sergeants and lieutenants come under the collective bargaining provision because unhappiness with working conditions could prompt them to withhold services.

Mr. Fosler said that the issue of bargaining for police sergeants and lieutenants should be looked at carefully because if they feel the need to have bargaining rights, there must be some issues that are not being resolved to their satisfaction.

The Committee directed staff to schedule a meeting with police officials to discuss the issue further.

ATTEST:

Kathleen A. Freedman

Kathleen A. Freedman, Acting Secretary
of the County Council for
Montgomery County, Maryland

Minutes prepared by: Donna Brand

ARTICLE V. POLICE LABOR RELATIONS.[1]

Sec. 33-75. Declaration of policy.

It is the public policy of this county, pursuant to charter section 510, enacted as a result of citizen initiative, and purpose of this article to promote a harmonious, peaceful and cooperative relationship between the county government and its police employees and to protect the public by assuring, at all times, the responsive, orderly and efficient operation of the police department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment through a representative of their choice or to refrain therefrom; and that any collective bargaining between the county government and a representative of those police employees be done in good faith with no interference with the orderly process of government and furthermore, that agreements reached through collective bargaining be implemented.

It is also recognized, however, that police employee organizations and the county government each possess substantial means by which they may initiate actions regarding the wages, hours and working conditions of employees. Consequently, in order to preserve an appropriate balance between labor and management in the police service, the council hereby declares that once a representative has been voluntarily selected, collective bargaining shall be utilized in place of, but not in addition to, existing means of initiating governmental action as to those subjects which are defined as appropriate for collective bargaining in this article. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-76. Definitions.

When used in this article:

Agency shop means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

To bargain collectively means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this article.

Certified representative means an employee organization selected in accordance with the procedures of this chapter to represent the unit.

Employee means any police officer in the classification of master police officer I, master police officer II, police officer I, police officer II, police officer III, and police officer candidate, or equivalent nonsupervisory classifications, but not those in the classification of police sergeant or any equivalent or higher classification.

Employer means the county executive and his designees.

Employee organization means any organization which admits to membership employees and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization. Such organization shall not admit to membership any person other than law enforcement officers.

Lockout means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

Mediation means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

Strike means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition or authority of the employee or an employee organization.

Unit means all employees. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-77. Permanent umpire.

(a) There is hereby created the position of permanent umpire, so as to provide for the effective implementation and administration of sections 33-79 and 33-82 of this article concerning selection, certification and decertification procedures and prohibited practices. The permanent umpire shall exercise the following powers and perform the following duties and functions:

(1) Adopt, amend and rescind, from time to time, such rules, regulations and procedures for the implementation and administration of sections 33-79 and 33-82 as are consistent with this article;

(2) Request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the permanent umpire to properly carry out his functions;

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue said certification or decertification;

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices; however, if the employer and a certified representative have negotiated a valid grievance procedure, the permanent umpire must defer to that procedure for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this article; furthermore, the permanent umpire shall

defer to state procedures in those matters which are governed by the Law Enforcement Officers Bill of Rights, article 27, sections 727 et seq., Annotated Code of Maryland;

(6) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and

(7) Exercise any other powers and perform any other duties and functions as may be specified in sections 33-79 and 33-82 of this article.

(b) The permanent umpire shall be appointed by the county executive, with the confirmation of the county council, shall serve for a term of five years and shall be eligible for reappointment; provided, however, that the permanent umpire shall not be reappointed if, during the period between sixty days and thirty days prior to the expiration of his term, the certified representative files a written objection to such reappointment with the county executive. The permanent umpire shall be a person with experience as a neutral in the field of labor relations and shall not be a person who, on account of vocation, employment or affiliation, can be classed as a representative of the interests of the employer or any employee organization.

(c) The permanent umpire shall be paid a per diem fee as set forth by contract with the county and shall be reimbursed for necessary expenses. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-78. Employee rights.

(a) Employees shall have the right:

(1) To form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) To be fairly represented by their certified representative, if any.

(b) The employer shall have the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative shall serve as the bargaining agent for all employees and shall have the duty to represent fairly and without discrimination all employees without regard to whether the employees are or are not members of the employee organization or are paying dues or other contributions to it or participating in its affairs; provided, however, that it shall not be deemed a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of the certified representative to receive membership dues deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate such provisions has been suspended under section 33-84. No collective bargaining agreement may include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-79. Selection, certification and decertification procedures.

(a) The certification or decertification of an employee organization as the unit's representative for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) Any employee organization seeking certification as representative of the unit shall file a petition stating its name, address and its desire to be certified with the permanent umpire, and shall transmit forthwith a copy of such, not including the names of the supporting employees, to the employer. Said petition must contain the uncoerced signatures of thirty percent of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) Where an employee organization has been certified, an employee within the unit may file a petition with the permanent umpire and shall transmit forthwith a copy of such to the employer and the certified representative, not including the names of the supporting employees, for decertification of the certified representative. The petition must contain the uncoerced signatures of at least thirty percent of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) The employer may file a petition with the permanent umpire seeking an election for certification of an employee organization or, where an employee organization is so certified, to cause decertification of the representative where the employer has reason to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, and shall transmit a copy of such to the employee organization seeking to obtain or retain certification.

(4) Petitions may be filed between July 1, 1982, and July 31, 1982. Thereafter, petitions may be filed between September 1 and September 30 of any year, but no sooner than twenty-two months following an election held pursuant to this section.

(5) If a lawful collective bargaining agreement is in effect, no petition shall be entertained unless filed during September of the final year of the agreement.

(6) If, during the period of July 1 to July 31, 1982, a petition is filed by the incumbent representative of unit employees certified under the employer-employee relations article of this chapter, and no other employee organization files a valid petition, that incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the permanent umpire, of majority representation.

(b) If the permanent umpire determines that a petition is properly supported and timely filed, the permanent umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the permanent umpire and shall be conducted by secret ballot at such time and place as the permanent umpire may direct. The permanent umpire may select and retain services of an agency of the State of Maryland, or similarly neutral body to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten days before the election of at least ten percent representation of the employees within the unit, and a choice that the employee does not desire to be represented by any of the named employee organization(s).

(3) The employer and each party to the election may be represented by observers selected in accordance with such limitations and conditions as the permanent umpire may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenge or the permanent umpire's decision thereon, unless the number of challenges is not determinative, in which latter event the challenged ballot(s) shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the permanent umpire in the presence of the observers.

(6) The permanent umpire immediately shall prepare and serve upon the employer and each of the parties a report certifying the results of the election. If, and only if, an employee organization has received the votes of a majority of the employees who voted, the permanent umpire shall certify the employee organization so elected as the exclusive agent. If no employee organization has received the votes of a majority of the employees, the permanent umpire shall certify no representative, but if a majority of the employees do not vote for no representation, a runoff election shall be conducted. The runoff election shall contain the two choices which received the largest and second largest number of votes in the original election.

(c) The aforesaid certification of results shall be final unless, within seven days after service of the report and certification, the employer or any other party serves on all parties and files with the permanent umpire objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds thereof. The permanent umpire shall investigate the objections and, if substantial factual issues exist, the permanent umpire shall hold a hearing thereon. Otherwise, the permanent umpire may determine the matter without hearing. The permanent umpire may invite, either by rule or by invitation, written or oral argument to assist in determination of the merits of the objections. If the permanent umpire finds that the election was conducted in substantial conformity with this article, the permanent umpire shall confirm the certification initially issued. If the permanent umpire finds that the election was not held in substantial conformity with this article, the permanent umpire shall cause another election to be held pursuant to the provisions of this section.

(d) The cost of conducting an election shall be paid by the county.

(e) Voluntary recognition is prohibited under this article, and no certification may be issued without an election except as provided for in subsection 33-79(a)(6). (1982 L.M.C., ch. 53, § 3.)

Sec. 33-80. Collective bargaining.

(a) Upon certification of an employee organization, as provided in section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;

(2) Pension and retirement benefits for active employees only;

(3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;

(4) Hours and working conditions, including the availability and use of personal patrol vehicles;

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;

(6) Matters affecting the health and safety of employees; and

(7) The effect on employees of the employer's exercise of rights enumerated in subsection (b) hereof.

(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.

(c) 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.

(d) Collective bargaining shall commence no later than November 1 preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties.

(e) Any provision for automatic renewal or extension of a collective bargaining agreement shall be void. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end June 30.

(f) Any collective bargaining agreement shall become effective only after ratification of the agreement by the employer and the certified representative, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures.

(g) A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a county law shall be timely submitted to the county council by the employer; and the employer shall make a good faith effort to have such term or condition implemented by council action. On or before April 25, the county council shall indicate by a majority vote its intention to appropriate or otherwise implement the agreement, or its intention not to do so, and shall state its reasons for any intent to reject any part or parts of the agreement. In the event the council indicates its intention to reject, it shall designate a representative to meet with the parties and present the council's views in their further negotiations. This representative shall also participate fully in stating the council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible in an attempt to negotiate an agreement acceptable to the council. Either of the parties may initiate the impasse procedure set forth in section 33-81. The results of the negotiation or impasse procedure shall be submitted to the council on or before May 10. Any agreement shall provide either for automatic reduction or elimination of such conditional wage and/or benefits adjustments if the council fails to take action necessary to implement the agreement, or if funds are not appropriated, or if a lesser amount is appropriated. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-81. Impasse procedure.

(a) Prior to November 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an impasse neutral either by agreement or through the processes of the American Arbitration Association. The impasse neutral shall be required to be available during the period from January 20 to February 1. Fees, costs and expenses of the impasse neutral shall be shared equally by the employer and the certified representative.

(b)(1) During the course of collective bargaining, either party may declare an impasse and request the services of the impasse neutral. If the parties have not reached agreement by January 20, an impasse shall be deemed to exist.

(2) Whenever an impasse has been reached, the dispute shall be submitted to the impasse neutral. The impasse neutral shall attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

(3) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral shall require each party to submit a final offer which shall consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the impasse neutral shall choose. If only complete package proposals are required, the impasse neutral shall require the parties to submit jointly a memorandum of all items previously agreed upon.

(4) The impasse neutral may, in the impasse neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The impasse neutral may hold a hearing for this purpose at a time, date and place selected by the impasse neutral. Said hearing shall not be open to the public.

(5) On February 1 or prior thereto, the impasse neutral shall select, as a whole, the more reasonable, in the impasse neutral's judgment, of the final offers submitted by the parties. The impasse neutral may take into account only the following factors:

a. Past collective bargaining contracts between the parties, including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits and working conditions;

b. Comparison of wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;

c. Comparison of wages, hours, benefits and conditions of employment of other Montgomery County personnel;

d. Wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County;

e. The interest and welfare of the public;

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

(6) The impasse neutral shall not compromise or alter the final offer that he selects. Selection of an offer shall be based on the contents of that offer. No consideration shall be given to, nor shall any evidence or argument be received concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the impasse neutral. However, the impasse neutral shall consider all previously agreed upon items integrated with the specific disputed items to determine the single most reasonable offer.

(7) The offer selected by the impasse neutral, integrated with the previously agreed upon items, shall be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and shall have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(g) above. The parties shall execute such agreement. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-82. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of any rights granted to them under the provisions of this article;

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it, pursuant to contract or otherwise; provided that the employer and a certified representative may agree to and apply a membership dues deduction provision as provided herein and to reasonable use of county facilities for communicating with employees;

(3) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, wages,

hours or conditions of employment, provided that nothing in this article shall preclude an agreement from containing a provision for an agency shop;

(4) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this article;

(5) Refusing to bargain collectively with a certified representative;

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the county council to implement an agreement reached between the employer and the certified representative pursuant to this article;

(9) Engaging in a lockout of employees.

(b) Employee organizations, and their agents, representatives and employees, are prohibited from:

(1) Interfering with, restraining or coercing the employer or employees in the exercise of any rights granted under this article;

(2) Restraining, coercing or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) Refusing to bargain collectively with the employer if such employee organization is the certified representative;

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(5) Hindering or preventing, by threats of violence, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or egress from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance by any person, public or private;

(6) Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, supplies, equipment or services by the employer;

(7) Taking or retaining unauthorized possession of property of the employer or refusing to do work or use certain goods or materials as lawfully required by the employer;

(8) Forcing or requiring the employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification;

(9) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed or to be performed.

(c) A charge of prohibited practice may be filed by the employer, employee organization, or any individual employee. The charge

or cha[illegible], shall be filed with the permanent umpire, with copies to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the permanent umpire to investigate the charge. The permanent umpire may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The permanent umpire shall have authority to maintain such independent investigation as the permanent umpire determines necessary and to develop rules and regulations therefor. If, upon investigation, the permanent umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the permanent umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the permanent umpire determines that the person charged has committed a prohibited practice, the permanent umpire shall make findings of fact and conclusions of law and shall be empowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this article. Remedies of the permanent umpire may include, but shall not be limited to, reinstating employees with or without back pay, making employees whole for any loss relating to county employment suffered as a result of any prohibited practice, withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits. If the permanent umpire finds that the party or parties charged have not committed any prohibited practices, the permanent umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The permanent umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than six months prior to the filing of the charge. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-83. Expression of views.

The expression of any views, argument or opinion, or the dissemination thereof, whether orally, in writing or otherwise, shall not constitute or be evidence of a prohibited practice under any of the provisions of this law nor be grounds for invalidating any election conducted under this law if such expression or dissemination contains no threat of reprisal or promise of benefit. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-84. Strikes and lockouts.

(a) No employee or employee organization shall either directly or indirectly cause, instigate, encourage, condone or engage in any strike, nor the employer in any lockout. No employee or employee organization shall obstruct, impede or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole or otherwise compensate any employee for or during the period when said employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during such strike.

(c) If an employee or employee organization shall violate the provisions of this section, the employer, after adequate notice and a fair hearing before the permanent umpire who finds that the aforesaid violations have occurred and finds that any or all of the following actions are necessary in the public interest, may, subject to the Law Enforcement Officer's Bill of Rights, article 27, section 727 et seq., Annotated Code of Maryland:

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in such conduct;

(2) Terminate or suspend employee organization's dues deduction privilege, if any;

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of two (2) years.

(d) Nothing contained herein shall prohibit an employer from seeking any remedy available in a court of competent jurisdiction. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-85. Effect of prior enactments.

Nothing contained in this article shall be construed to repeal any laws, executive orders, legislation, rules or regulations adopted by the county and any department or agency thereof not inconsistent with the provisions of this article. (1982 L.M.C., ch. 53, § 3.)

Approved

5512

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, March 19, 1985 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:58 A.M. on Tuesday, March 19, 1985.

PRESENT

Michael L. Gudis, President
William E. Hanna, Jr., Vice President
Neal Potter, President Pro Tem
Scott Fosler
Rose Crenca
David L. Scull
Esther P. Gelman

The President in the Chair.

INTRODUCTION OF BILLS:

Re: Introduction of Bill No. 9-85. Collective Bargaining for Police Sergeants

The Council had before it for introduction Bill No. 9-85.

Councilwoman Gelman briefed the Council concerning the history of the proposed legislation. She referred to Section 510 of the Montgomery County Charter which provided the enabling authority for collective bargaining legislation for County police officers. She said the question that has been raised is whether sergeants in the police force are part of management and therefore ineligible for collective bargaining. The County Council enacted legislation in 1982 defining "police officer" to include only officers of the rank of corporal and below. Both sergeants and lieutenants of the police force have said they have suffered under this ruling; however, she has reached the conclusion that lieutenants are definitely part of management. She said that the subject bill would provide for collective bargaining for police sergeants and would allow them to form a separate collective bargaining unit.

Councilman Hanna said that he is opposed to this legislation. He said that the County Executive, the Police Chief, and he agree that police

sergeants are part of management. He believes that placing them in a bargaining unit will destroy the management structure. He believes the line is properly drawn now at the corporal level and urged the Council not to proceed with this bill.

Councilman Fosler said that, beyond the issue of whether collective bargaining should be granted to police sergeants, there is the broader issue in government management involving mid-level management positions. The Council needs to address the question of the most effective way to handle the question of collective bargaining as it relates to police officers within the Police Department and other employees in County agencies at the mid-management level. In doing this, the Council also needs to recognize the burdens placed on the mid-level management positions. Whatever action the Council takes with respect to this legislation will have a long standing effect on the Police Department and have implications on and be precedent setting for the rest of the County management in the future.

Councilman Scull directed attention to Section 511 of the County Code which provides enabling authority for legislation for collective bargaining for County employees other than employees of the Police Department. He expressed the view that consideration should be given to whether sergeants and other police officers not covered by the collective bargaining legislation for police officers should be considered under a broader County collective bargaining law which is provided for in Section 511. He suggested that the Council might wish to defer the scheduling of a public hearing on this bill to provide the opportunity for examining other options. He does not believe it is urgent to act on the subject legislation at this time; therefore, it would be more appropriate to consider it in connection with the larger subject of collective bargaining for other County employees.

Councilwoman Crenca said that, in reading the background material and the technical data provided, she has reached the conclusion that the subject legislation should be submitted to the Compensation Task Force for its review. She noted that the subject bill has a bearing on what the Compensation Task Force is discussing.

Councilwoman Crenca moved, duly seconded, to submit the bill to the Compensation Task Force for consideration.

Councilman Potter expressed the view that comments from the Compensation Task Force would be helpful.

Councilman Fosler said that he believes the suggestion is a good one. The Compensation Task Force considers principles the Council should apply in determining how County employees should be paid. The bill proposes to extend collective bargaining into management ranks and he believes that this could substantially alter the entire compensation system of the County government; therefore, it would be useful to have the comments of the Compensation Task Force.

Councilwoman Gelman agreed that the Compensation Task Force should examine the subject legislation. She said that if the Task Force believes

this is outside of its purview, it will so inform the Council. She noted, however, that the Task Force is attempting to complete its work and has been somewhat disheartened because of some expressions of impatience with the pace of its work, which has resulted in actions being taken which conflict with the Task Force findings. She believes if the Council values the assistance it is receiving from the Task Force, it will exercise patience and allow the Task Force the time to accomplish the work it is given.

Councilman Potter requested clarification concerning the broader connotation of Section 511 as it relates to the subject bill.

Councilman Scull said that Section 510 is more restrictive than Section 511. He said that it is incumbent on the Council to consider other employees in any collective bargaining law it enacts. There is more flexibility in Section 511, which provides a different impasse procedure than binding arbitration. With respect to submitting this to the Compensation Task Force, Mr. Scull said that he believes it would be useful to receive its comments. He believes the Council should ask the Compensation Task Force if it wishes to comment, but he recalls that the Compensation Task Force did not wish to address the way job benefits and pay are determined. He recalled that when the Council reviewed the collective bargaining Charter amendment last year, it did not refer it to the Compensation Task Force. There was some discussion about it then, and it was decided to proceed with the structural question. He said that if the Compensation Task Force is requested to provide comments on the subject legislation, he would like this request to be extended to comments on legislation to be introduced in the near future under the provisions of Section 511.

Councilman Potter expressed the view that legislation under Section 511 might be too broad to encompass the objectives of the subject legislation.

Councilman Fosler said that he does not believe the Compensation Task Force should review all the mechanics of collective bargaining because it is complex and involves more than compensation. However, the Council should ask them to examine the extension of collective bargaining to County employees. He said it is understandable that the Compensation Task Force has taken longer than anticipated because of the many issues it had to address. Because the Task Force has taken that long, it has brought interim findings to the Council and the Council has acted on them. He noted that one example of this is the disability legislation. He said that another important part of the Compensation Task Force's work is the issue of comparable worth. A report has been provided to the Council on this subject, and he believes the Council should act on comparable worth as a separate issue in the same manner it did on disability.

President Gudis said that he will vote against the motion to submit the subject legislation to the Task Force because he believes the Task Force is attempting to complete its work.

Councilman Fosler proposed an amendment to Councilwoman Crenca's motion to include the point raised by Mr. Scull to request that the

Compensation Task Force examine the broader issues of collective bargaining for all employees. Councilwoman Crenca indicated her acceptance of the amendment if it is interpreted to mean that the Compensation Task Force will not be obliged to comment.

President Gudis voting in the negative, the Council adopted Ms. Crenca's motion.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council voted to waive the reading of the title of Bill No. 9-85.

Bill No. 9-85, sponsored by Councilwoman Gelman, was introduced. The title of the bill is set forth below:

AN ACT to include police sergeants in collective bargaining under the Police Labor Relations Law, by amending Chapter 33, Personnel, Section 33-76, Montgomery County Code.

Re: Introduction of Bill No. 10-85. Appointment of Director of Animal Control and Humane Treatment

The Council had before it for introduction Bill No. 10-85.

Councilwoman Crenca requested and received information concerning the effect of this legislation on the incumbent Director of the Department of Animal Control and Humane Treatment who is presently a Merit System employee.

Upon motion of Councilman Scull, duly seconded and without objection, the Council voted to waive the reading of the title of Bill No. 10-85.

Bill No. 10-85, sponsored by the Council President at the request of the County Executive, was introduced. The title of the bill is set forth below:

AN ACT to designate the Director of the Department of Animal Control and Humane Treatment as an appointee of the County Executive, by amending Chapter 2, Administration, Section 2-58C of the Montgomery County Code.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 11:02 A.M. to reconvene at 1:30 P.M. on Tuesday, March 26, 1985, or at the call of the President.

This is an accurate account of the Council's proceedings:

Kathleen A. Freedman, Acting Secretary
County Council

January 19, 1988
Agenda Item 11

MEMORANDUM

TO: County Council

FROM: MF Michael Faden, Senior Legislative Attorney

SUBJECT: Introduction: Emergency Bill 2-88, Collective Bargaining - Pensions

Emergency Bill 2-88, Collective Bargaining - Pensions, is scheduled to be introduced on January 19, 1988 by Councilmember Hanna. It eliminates pensions and retirement benefits from the mandatory subjects for collective bargaining. The Personnel Committee held a worksession on this legislation on December 7, 1987, and voted 2-1 not to recommend it.

If this bill were enacted, it would need a transition provision making it clear that bargaining currently in progress on pension issues would be terminated when the bill takes effect -- or, conversely, that any bargaining in progress would be allowed to take its course before this bill takes effect.

This packet contains:

Emergency Bill 2-88	Circle 1
Legislative request report	Circle 5

Bill No.: 2-88
Concerning: Collective Bargaining - Pensions
Draft No. & Date: 1 - 12/2/87
Introduced: January 19, 1988
Expires: July 19, 1989
Enacted:
Executive:
Effective:
Sunset Date: none
Ch. ____, Laws of Mont. Co., FY ___

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Hanna

AN EMERGENCY ACT to provide that pension and retirement benefits for police officers and other County employees are not subject to collective bargaining.

By amending
Montgomery County Code
Chapter 33, Personnel
Sections 33-80, 33-107

EXPLANATION: Boldface indicates a heading or a defined term.
Underlining indicates text that is added to existing law by the original bill.
[Single boldface brackets] indicate text that is deleted from existing law by the original bill.
Double underlining indicates text that is added to the bill by amendment.
[[Double boldface brackets]] indicate text that is deleted from existing law or the bill by amendment.
* * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 33-80 is amended to read as follows:

33-80. Collective bargaining.

(a) Duty to bargain; matters subject to bargaining. Upon certification of an employee organization, as provided in section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;

[(2) Pension and retirement benefits for active employees only;]

[(3)](2) * * *

[(4)](3) * * *

[(5)](4) * * *

[(6)](5) * * *

[(7)](6) * * *

* * *

Sec. 2. Section 33-107 is amended to read as follows:

33-107. Collective bargaining.

(a) Duty to bargain; matters subject to bargaining. Upon certification of an employee organization, the employer and the the certified representative have the duty to bargain collectively with respect to the following subjects:

(1) 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, provided that salaries and wages shall be uniform for all employees in the same

classification.

[(2) Pension and retirement benefits shall be negotiable, for active employees only, one (1) year after the effective date of this article;]

[(3)](2) * * *

[(4)](3) * * *

[(5)](4) * * *

[(6)](5) * * *

[(7)](6) * * *

* * *

Sec. 3. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

Approved:

_____ _____

Michael L. Subin, President, County Council — Date

Approved:

_____ _____

Sidney Kramer, County Executive — Date

This is a correct copy of Council action.

_____ _____

Kathleen A. Freedman, CMC — Date

Secretary of the Council

lr

LEGISLATIVE REQUEST REPORT

Bill 2-88
Collective Bargaining - Pensions

DESCRIPTION:	Eliminates pensions and retirement benefits from the mandatory subjects for collective bargaining under the County collective bargaining law.
PROBLEM:	If pensions and retirement benefits are subject to bargaining, the County's long-term commitments might increase beyond prudent levels.
GOALS AND OBJECTIVES:	To retain control of the County's retirement obligations by removing pensions as a subject of bargaining.
COORDINATION:	OMB, Personnel
FISCAL IMPACT:	To be requested
ECONOMIC IMPACT:	To be requested
EVALUATION:	To be requested
EXPERIENCE ELSEWHERE:	Details disputed; can be researched.
SOURCE OF INFORMATION:	Michael Faden, Council staff, 217-7900
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County employees.
PENALTIES:	None

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

PERSONNEL COMMITTEE

Monday, December 7, 1987
2:10 to 2:50 P.M.
Council Hearing Room

PRESENT

Isiah Leggett, Chairman
William E. Hanna, Jr. Michael L. Subin

SUBJECT: Bill No. 39-87. Trial Retirement for Certain County Government Employees

The Committee had before it a memorandum, packet date December 7, 1987, with attachments, from Senior Legislative Attorney Faden, outlining the issues with regard to Bill No. 39-87.

Mr. Hanna addressed the issues raised at the public hearing by Mr. Garrett, Director, Personnel Office, including the advisability of enacting the bill at a time when negotiations are about to begin with the union on pension issues, the adequacy of present regulations relating to noncompetitive appointments of employees who retire, the possibility of employee manipulation of the provision for the purposes of taking unscheduled vacations or sabbaticals, and possible strain on the personnel system created by retirees returning to work after the trial period.

Mr. Hanna pointed out the benefits of a trial retirement period. He said that providing the employee with the opportunity to retire on a trial basis eliminates the stress which usually accompanies an irrevocable decision to retire. He said that retirement benefits would be adjusted based on the benefits received during the trial period, should the individual return to work.

Responding to Mr. Leggett's concern that a large number of employees may decide to exercise the option to return, Mr. Hanna said that experience indicates that only a small number of people return to work during the trial period.

Mr. Subin noted his support of the bill, stating that studies indicate there is considerable stress associated with retirement decisions, and he expressed the view that the administrative issues which have been raised can be easily addressed.

ACTION: Recommended approval of Bill No. 39-87.

SUBJECT: Draft Bill: Collective Bargaining--Pensions

Mr. Hanna explained the proposed bill which would eliminate pension and retirement benefits from the mandatory subjects for collective bargaining, and he cited instances where the financial security of an organization has been undermined because of the cost of funding pension plans. He expressed the view that all employees should receive the same pension benefits which will not be the case if these benefits are subject to the collective bargaining process. He also noted that a single pension plan for all employees is more easily administered than several.

Mr. Rogers, Personnel Office, advised the Committee of the County Executive's opposition to the bill. He said that negotiations have been completed with the Fraternal Order of Police and that negotiations are beginning with Local 400 on pension issues. He noted that the present system is working successfully. Since there were different understandings among those present of the Executive's position, Mr. Leggett suggested that Mr. Rogers clarify the Executive's position for the record prior to Council consideration of the bill.

Mr. Subin pointed out that last year the Council, Executive, and union agreed to defer resolution of the pension issues until a complete review of the issues was conducted, and he expressed the view that it was inappropriate to consider a change in that agreement now that it is coming to closure. He expressed confidence in the County's bargaining team as well as the bargaining team for the union and said he believed that the issues will be successfully resolved. He noted that the agreements reached by the Executive are not binding on the Council if it does not wish to accept them. With regard to the financial issues, Mr. Subin said that the Board of Investment Trustees was established to manage the retirement funds and, if the County continues to appoint diligent members to the Board, he does not believe there is reason to be concerned about Montgomery County's financial security.

ACTION: Requested Mr. Garrett to provide updated information concerning the study being conducted by the Office of Management and Budget on pension issues.

Recommended against approval of the bill, Mr. Hanna voting in the negative.

Agreed to bring the bill before the Council with a negative Committee recommendation.

This is an accurate account of the meeting:

Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Sherry Homer, Assistant Secretary

AGENDA ITEM #22.1
July 26, 1994

M E M O R A N D U M

July 22, 1994

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 29-94, Collective Bargaining - Fire/Rescue Unit - Impasse Resolution

Bill 29-94, Collective Bargaining - Fire/Rescue Unit - Impasse Resolution, sponsored by Councilmember Leggett, is scheduled for introduction on July 26, 1994. The bill requires impasses in the fire/rescue collective bargaining unit to be settled by last best offer binding arbitration, either for the contract as a whole or an issue-by-issue basis.

This packet contains:

	Circle #
Bill 29-94	1
Legislative Request Report	4

667/LAW/5

Bill No.: 29-94
Concerning: Collective Bargaining
- Fire/Rescue Unit
- Impasse Resolution
Draft No. & Date: 3 7/21/94
Introduced: July 26, 1994
Expires: January 26, 1996
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co.

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Leggett

AN ACT to:

(1) require binding arbitration of certain impasses in collective bargaining for the fire/rescue collective bargaining unit; and
(2) generally amend the process for resolving collective bargaining impasses in the fire/rescue collective bargaining unit.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-108

EXPLANATION: **Boldface** indicates a heading or a defined term
Underlining indicates text that is added to existing law by the original bill
[Single boldface brackets] indicate text that is deleted from existing law by the original bill
Double underlining indicates text that is added to the bill by amendment
[[Double boldface brackets]] indicate text that is deleted from existing law or the bill by amendment
* * * indicates existing law unaffected by the bill

The County Council for Montgomery County, Maryland, approves the following act:

Sec. 1. Section 33-108 is amended as follows:

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

* * *

(g) (1) With respect to the fire/rescue bargaining unit, when an impasse is reached, instead of the process required by subsections (e)-(f), the mediator/fact-finder must require each party to submit a final offer, consisting either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the mediator/fact-finder directs. If only complete package proposals are required, the parties must submit jointly a memorandum of all items previously agreed upon.

(2) The mediator/fact-finder may, in the mediator/fact-finder's discretion, require the parties to submit evidence or argue orally or in writing in support of their proposals. The mediator/fact-finder may hold a hearing on the proposals at a time, date and place selected by the mediator/fact-finder. This hearing must not be open to the public.

(3) The mediator/fact-finder must select the more reasonable final offer, in the mediator/fact-finder's judgment, as a whole or on each issue in dispute. The offer or offers selected by the mediator/fact-finder, integrated with previously agreed upon items, becomes the final agreement between the employer and the certified representative without ratification by the

(2)

parties, and has the force and effect of a contract voluntarily entered into.

[(g)] (h) * * *

[(h)] (i) * * *

[(i)] (j) * * *

[(j)] (k) * * *

[(k)] (l) * * *

Approved:

_____ _____

William E. Hanna, Jr., President, County Council Date

Approved:

_____ _____

Neal Potter, County Executive Date

This is a correct copy of Council action.

_____ _____

Kathleen A. Freedman, CMC Date

Secretary of the Council

667/LAW/1-3

LEGISLATIVE REQUEST REPORT

Bill 29-94
Collective Bargaining - Fire/Rescue Unit - Impasse Resolution

DESCRIPTION:	Requires impasses in the fire/rescue collective bargaining unit to be settled by last best offer binding arbitration, either for the contract as a whole or an issue-by-issue basis.
PROBLEM:	Need to improve the bargaining process for fire/rescue employees and make it consistent with other public safety personnel.
GOALS AND OBJECTIVES:	To adapt the collective bargaining process for fire/rescue employees to a more appropriate model for public safety personnel.
COORDINATION:	Office of Human Resources, Office of Management and Budget, Department of Fire and Rescue Services, Fire and Rescue Commission
FISCAL IMPACT:	to be requested
ECONOMIC IMPACT:	to be requested
EVALUATION:	to be requested
EXPERIENCE ELSEWHERE:	to be researched
SOURCE OF INFORMATION:	Michael Faden, Council staff, 217-7905
APPLICATION WITHIN MUNICIPALITIES:	Applicable Countywide
PENALTIES:	None

667/LAW/4

Montgomery County Career Fire Fighters Ass'n., Inc.

LOCAL 1664

January 11, 1995

BILL 29-94

Isaiah Leggett, Council Member
Montgomery County Council
100 Maryland Ave
Rockville, MD 20850

000386

NAN
CC
SBF
MF

Re: Bill 29-94 - Binding Arbitration

Dear Ike:

We are greatly appreciative of your support for binding arbitration and are well aware that Bill 29-94 is on a fast track.

With that in mind, we have met with county labor relations representatives and with Mr. Duncan personally. As a result of those meetings we have reached an agreement with Mr. Duncan to forego binding arbitration for this current bargaining cycle in favor of working together to formulate a completely separate and more comprehensive bargaining law for fire fighters.

We are convinced that Mr. Duncan will work with us so that together we can submit a joint legislative request to the Council that will hopefully provide a more meaningful and productive bargaining process.

For this reason, I request that Bill 29-94 be set aside pending what I expect to be a joint submission for amendment by Mr. Duncan and Local 1664. If you have any questions on this issue please don't hesitate to call. In any case, I would appreciate your response.

Sincerely,

Landon D. Pippin, President

cc: Douglas M. Duncan, County Executive
Derrick Berlage, President Montgomery County Council

m95-105.ldp

RECEIVED COUNCIL
95 JAN 12 P2:01

932 Hungerford Drive, Suite 33A, Rockville, MD 20850-1713 • Telephone: (301) 762-6611 • FAX: (301) 762-7390

AGENDA ITEM #6
December 9, 1997
Introduction

MEMORANDUM

December 5, 1997

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 45-97, Collective Bargaining - Amendments

Bill 45-97, Collective Bargaining - Amendments, sponsored by Council President Leggett and Councilmembers Berlage, Ewing, and Subin, is scheduled to be introduced on December 9. A public hearing is tentatively scheduled for January 20, 1998, at 1:30 pm.

This bill requires binding arbitration of collective bargaining agreements for County employees; requires the County to bargain with employee representatives before contracting with private parties to provide certain services or assume certain functions; repeals certain provisions governing the role of the County Council in the collective bargaining process; and modifies several other provisions governing collective bargaining with County employees.

This packet contains:	Circle #
Bill 45-97	1
Legislative Request Report	22

f:\law\bills\9745coll\intro.doc

Bill No. 45-97
Concerning: Collective Bargaining - amendments
Revised: 12-3-97 Draft No. 2
Introduced: December 9, 1997
Expires: June 9, 1999
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Leggett and Councilmembers Berlage, Ewing, and Subin

AN ACT to:

(1) require the Chief Administrative Officer to follow certain procedures and consult with certain employee organizations before the County contracts with a private party to perform certain services or functions, and restrict the County from entering into certain contracts for services;
(2) include certain employees in a collective bargaining unit;
(3) modify certain functions of the Labor Relations Administrator;
(4) modify the process for certifying employee organizations;
(5) clarify the scope of matters subject to collective bargaining;
(6) amend the timetable for certain collective bargaining actions;
(7) require binding arbitration of certain collective bargaining agreements;
(8) repeal certain provisions governing the role of the County Council in the collective bargaining process; and
(9) generally amend the law governing collective bargaining for certain County employees.

By adding
Montgomery County Code
Chapter 11B, Contracts, Procurement Matters, and Public Ethics
Article XV, Service Contracts
Sections 11B-65 through 11B-69

By amending
Chapter 33, Personnel and Human Resources
Sections 33-102, 33-103, 33-106, 33-107, and 33-108

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 11B is amended by adding Article XV as follows:

ARTICLE XV. SERVICE CONTRACTS.

11B-65. Scope of Article.

Service contract, as used in this Article, means a procurement contract for services that will:

(a) be provided to a County government department, office, or agency;

(b) exceed an annual cost of $50,000; and

(c) duplicate or replace services or functions which are being performed by County employees, or which traditionally have been performed by government employees.

11B-66. Policy.

The policy of this County is to use County employees to perform all County services or functions in County-operated facilities, in preference to contracting with the private sector to perform those services or functions.

11B-67. Approval of service contract.

(a) A County government department, office, or agency may enter into a service contract only if the contract is approved under this Article.

(b) Except as provided in subsection (c), a service contract may be entered into only after the Chief Administrative Officer certifies to

the County Council and any affected certified collective bargaining representative that:

(1) the service contract is exempt under Section 11B-68(b); or

(2) the service contract complies with Section 11B-68(c).

(c) If the County Council authorizes or requires that an independent contractor perform certain services for it, a service contract may be approved for those services without the certification required by subsection (b).

11B-68. Certifications by the Chief Administrative Officer.

(a) The Chief Administrative Officer may certify a service contract to the County Council and an affected certified collective bargaining representative as provided in this section.

(b) The Chief Administrative Officer may certify a service contract as exempt from the requirements of this Article if:

(1) (A) County employees are not available to perform the function or service;

(B) that function or service has not been performed by County employees; and

(C) that function or service has not traditionally been performed by government employees;

(2) a conflict of interest would result if a County employee were to perform the function or service;

(3) the nature of the function or service meets the requirement for emergency purchase of temporary functions or services;

(4) the function or service is incidental to the purchase or lease of personal or real property, such as a service agreement associated with the purchase or rental of computers or office equipment; or

(5) a clear need exists to obtain an unbiased finding or opinion, such as an expert witness in litigation.

(c) The Chief Administrative Officer may certify a service contract which is not exempt under subsection (b) only if:

(1) the contract has complied with Section 11B-69; and

(2) the Chief Administrative Officer finds that:

(A) the policy stated in Section 11B-66 does not outweigh the potential economic advantage of entering into the contract;

(B) the contract does not adversely affect the County's affirmative action efforts;

(C) the contract includes adequate control mechanisms to ensure that the function or service will be performed in accordance with the contract; and

(D) the contract complies with all requirements of this Article and any regulations adopted under it.

11B-69. Information regarding proposed non-exempt service contracts.

Before certifying a service contract that is not exempt under Section 11B-67(c) or 11B-68(b), the Chief Administrative Officer must also submit to the County Council and each affected certified collective bargaining representative the following information:

(a) **Consideration of alternatives.** A demonstration that the affected County department or office has taken formal and positive steps to consider alternatives to the service contract, including reorganization, reevaluation of service, and reevaluation of performance, and has consulted with any affected certified collective bargaining representative.

(b) **Cost comparison.**

(1) Calculations that:

(A) compare the cost of the service contract with the cost of using County employees to perform the service or function; and

(B) show savings to the County, over the duration of the service contract, of at least 20% of the value of the contract or $200,000.

(2) The cost comparison required by this subsection must include:

(A) direct costs, including fringe benefits;

(B) indirect overhead costs, including the proportional share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials, but only to the extent that those costs are attributed solely to the service or function in question and would not exist if the service or function were not performed by County employees;

(C) any continuing or transitional costs directly associated with contracting for the service or function, including unemployment compensation and the cost of transitional services; and

(D) additional costs of performance of the service or function by County employees, including salaries and benefits of additional staff and the cost of additional space, equipment, and materials needed to perform the service or function.

(c) **Plan of assistance.** A formal proposed plan of assistance for all County employees who will be adversely affected by the service contract, which must include:

(1) efforts to place affected employees in vacant positions in the same or another unit of government;

(2) provisions in the service contract, if feasible, for hiring by the contractor of displaced employees; and

(3) prior notification to affected employees 6 months before each adverse effect will occur.

A final plan of assistance must only be adopted after bargaining with any affected certified collective bargaining representative.

Sec. 2. Sections 33-102, 33-103, 33-106, 33-107, and 33-108 are amended as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

* * *

(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:

* * *

[(T) Persons in grade 27 or above, whether or not they are supervisors.]

* * *

33-103. Labor Relations Administrator.

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

* * *

(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.

33-106 Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

* * *

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b) * * *

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed within the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit

desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

* * *

33-107. Collective bargaining.

(a) **Duty to bargain; matters subject to bargaining.** Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects:

* * *

(7) [Amelioration of the] The effect on employees [when the exercise] of the employer's exercise of rights listed in subsection (b) [causes a loss of existing jobs in the unit].

(b) **Employer rights.** This Article and any agreement made under it [shall] must not impair the right and responsibility of the employer to [perform the following]:

* * *

(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] but the employer must not take any such action unless [ninety (90)] 90 days [prior to the signing of the contract] before any such action, or [such other] another date of notice [as] agreed by the parties, written notice has been given to the certified representative. The employer must also certify in writing to the certified representative and the County Council that any proposed contracting of work completely conforms to the requirements of Chapter 11B, Article XV.

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

(a) Collective bargaining [shall] must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and [shall] must be finished on or before [January] February 15. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]

(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 year or for more than 3 years. All agreements [become effective] take effect July 1 and end June 30.

(c) A collective bargaining agreement [becomes effective] takes effect only after ratification by the employer and [by] the certified representative. The certified representative may [provide] adopt its own [rules for] ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator [shall] must appoint a mediator/[fact-finder] arbitrator, who may be a person recommended [to her] by both parties. The mediator/[fact-finder] arbitrator [shall] must be available [during the period] from January 2 to [February 1] June 30. Fees and expenses of the mediator/[fact-finder] arbitrator [shall] must be shared equally by the employer and the certified representative.

(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 15, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) This dispute [shall] must be submitted to the mediator/[fact-finder] arbitrator whenever an impasse has been reached, or [before that] as provided in subsection (e)(1). The mediator/[fact-finder] arbitrator [shall] must engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will [tend to bring about the] encourage settlement of the dispute.

(3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his] the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, [he shall implement the following fact-finding process:] or as of February 15 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

(f)(1) If binding arbitration of the parties' dispute 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 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.

[(b.)] (2) [He] The mediator/arbitrator may require the parties to submit oral or written evidence [or make oral or written] and

arguments in support of their proposals. [He] The mediator/arbitrator may hold a hearing for this purpose at a time, date, and place selected by [him] the mediator/arbitrator. This hearing [shall] must not be open to the public.

[(c.)] (3) On or before [February] March 1, the mediator/[fact-finder] arbitrator [shall] must issue a report of [his] findings of fact and recommendations on those matters still in dispute between the parties. The report [shall] must be submitted to the parties but [shall] must not be made public at this time.

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

[(i)] (A) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

[(ii)] (B) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public

employers in the Washington Metropolitan Area and in Maryland.

[(iii)](C) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

[(iv)] (D) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

[(v)] (E) The interest and welfare of the public.

[(vi)] (F) The ability of the employer to finance economic adjustments, and the effect of the adjustments upon the normal standard of public services provided by the employer.

[(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator-fact-finder, the report of the mediator-fact-finder, with recommendations on agreed items deleted, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the

joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.]

[(g) The budget that the employer submits to the Council shall include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed term or condition submitted to the Council that requires an appropriation of funds, or the enactment, repeal, or modification of any County law or regulation, or which has or may have a present or future fiscal impact, may be accepted or rejected in whole or in part by the Council. Such terms or conditions shall be identified to the Council by either or both parties. The employer shall make a good faith effort to have the Council take action to implement any term or condition to which the parties have agreed.]

[(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement and the recommendations for resolving bargaining disputes.]

[(i) On or before May 1, the Council shall indicate by resolution its intention to appropriate funds for or otherwise implement the items

that have been agreed to or its intention not to do so, and shall state its reasons for any intent to reject any items of the kind specified in subsection (g) that have been agreed to. The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]

[(j) Then the Council shall designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on disputed matters and/or agreed upon matters that the Council has indicated its intention to reject. The results of the negotiation, whether a complete or a partial agreement, shall be submitted to the Council on or before May 10. Any agreement shall provide for automatic reduction or elimination of wage and/or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year in which the agreement is in effect.

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

MANAGEMENT AND FISCAL POLICY COMMITTEE

Thursday, July 30, 1998
9:05 A.M. – 11:40 A.M.
Council Conference Room

PRESENT

Marilyn J. Praisner, Chair

William E. Hanna, Jr. Neal Potter

OTHER COUNCILMEMBER PRESENT

Michael L. Subin

SUBJECT: Office of Legislative Oversight FY 99 Work Program

The Committee had before it the memorandum and attachments from Ms. Orlansky, Director, Office of Legislative Oversight (OLO) on the Status Report and FY 99 Work Program, dated July 28, 1998.

ACTION: Reviewed OLO's Work Program, including a detailed review of the components of the Police Department's Response to Citizen's Complaints Concerning the Conduct of Department Employees project. Discussed the issues that relate to the Office of Legislative Oversight Resource Committee, including the survey that will be conducted with individuals who interacted with the Police Department within the past year; and requested that a copy of the survey be provided to the Council prior to its implementation.

Discussed the time table of the aforementioned project identified on page ©26 of OLO Staff's packet, the selection process for appointment to the Resource Committee, and the role of the Committee; noted the importance of informing applicants applying for membership on the Resource Committee of the commitment that will be expected; and agreed that the resolution will be clarified to indicate that the Council appoints the members of the Resource Committee.

Noted the request of Councilmember Subin that the Resource Committee should be given an official monitoring and tracking role in the process to assure the citizens that action is being taken in the interim while research is being conducted.

Received comments from Staff of the Police Department related to the project; and comments from Mr. Nix, interested citizen, related to his opposition to the scope of the project, the establishment of a Resource Committee, and his request to establish a relationship between the citizens and the Police Department. Noted the comments of Ms. Plummer, President, Montgomery County Chapter of the National Association for the Advancement of Colored People, on the scope of the project, and her concern regarding the operations of the Office of Internal Affairs and the need for an additional forum to be held, and her desire for a civilian review board to be established in Montgomery County.

Agreed with Councilmember Praisner's view that there is a need for feedback and communication within the community throughout the process, and that the data collected by the Resource Committee will be provided to OLO; and noted her comment on the importance of the role of the police-community facilitator.

Agreed that the language in Project #4 may require additional modification.

Continued review of the OLO projects, and noted Councilmember Hanna's opposition to Project 6, A Study of Extending Employee Benefits to Domestic Partners, and Councilmember Praisner's concern that identifying specific examples of other programs could lead to the development of a model. Agreed to amend page ©6 of the attachments by deleting the following language in the third bullet: [Provide specific examples of domestic partner benefit plans, including the fiscal impact in other jurisdictions (if known) of implementation.]

Recommended approval of the OLO FY 99 Work Program, as amended.

SUBJECT: Bill 45-97, Collective Bargaining – Amendments

The Committee had before it the memorandum and attachments from Senior Legislative Attorney Faden, dated July 30, 1998, providing background information and issues for discussion related to the subject bill.

ACTION: Discussed the service contract provision of the legislation; expressed concern about the excessive restrictions and procedures, and the opportunities for litigation; and agreed that the provisions of the legislation are already provided under the current law.

Discussed the collective bargaining amendments and agreed to oppose extending binding arbitration to non-public safety employees.

Agreed that if the Council approves the binding arbitration provisions of the bill, it be amended to reinstate the Council's role in the process.

Recommended disapproval of the bill.

Agreed that if the Council does not disapprove Bill 45-97, it be remanded to the Committee for further consideration of the amendments, noting that the Committee did not have the opportunity to review the details of the legislation.

SUBJECT: **Bill 43-97, Cable Communications – Franchise Procedures**

The Committee had before it the memorandum from Legislative Attorney Cogan, dated July 28, 1998, providing background information and issues for discussion related to the subject bill.

ACTION: Noted that the Committee previously agreed to delete the language under Section 8A-9(F)(2) which was not intended as a substantive change but was subsumed within the five items under (e) or the two additional items under (f), and that the County has the ability to determine the effect on the existing franchisee's operations or service when an applicant proposes to overbuild an existing cable system.

Reviewed the previous Committee recommendations for Bill 43-97.

Agreed to amend Section 8A-9(f)(2) of the bill, after the word "public" by deleting the following language: [, including any disruption to the public right-of-way].

Discussed whether the deadlines for Council action should be more flexible and suspended when the Council is in recess; and agreed to amend the bill by providing that the 60-day period for Council action on a franchise not include any week when the Council is not in session, by providing the Council the option to extend the 60 day deadline for Council action when Council approval is required, and by limiting the number of extensions the Council can approve for an overbuild application to no more than one additional 60-day period.

Agreed to amend the bill, Section 8A-8)e)(4) as follows: Any other information necessary for the County to [make a determination on] [[consider]] determine whether to approve the [requested franchise] modification.

Agreed with the remaining amendments that were previously approved by the Committee and identified in Council Staff's memorandum.

Recommended approval of Bill 43-97, as amended.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Secretary of the Council

Minutes written by: Elda Dodson, Assistant Secretary

AGENDA ITEM 14
August 4, 1998
Action

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Bill 45-97, Collective Bargaining - Amendments

Management and Fiscal Policy Committee recommendation (3-0): disapprove Bill 45-97.

For details on the bill and issues it raises, see the attached Committee packet.

At its July 30 worksession, the Management and Fiscal Policy Committee separately considered both parts of Bill 45-97, the service contract provision and the collective bargaining amendments. No representative of the Municipal & County Government Employees Organization (MCGEO), whose attorneys originally drafted Bill 45-97, attended the worksession, and Executive branch representatives attended only to serve as technical resources. With respect to each part, the Committee voted unanimously to recommend disapproval.

With respect to the service contract provision, Committee members expressed strong reservations about the detailed procedures that the bill mandates, and the opportunities for extended litigation and delay of government procurements that would ensue. Committee members agreed that much of what the bill seeks to do could be accomplished under current laws and procedures without the excessive restrictions that it calls for.

With respect to the collective bargaining amendments, Committee members opposed extending binding arbitration to non-public safety employees. Councilmember Potter emphasized that binding arbitration generally diminishes the willingness of employee organizations to reach agreement.

The Committee did not have the opportunity at its worksession, because other items took more time than anticipated, to review the detailed collective bargaining amendments in Bill 45-97, several of which (in addition to binding arbitration) would

make very significant changes in the current bargaining process. If the Council does not reject this bill as the Committee recommends, but rather approves either or both parts of it in concept, the Committee recommends that the Council remand the bill to it to further consider the specific amendments, after providing any direction the Council finds appropriate.

In any case, if the Council is inclined to approve the binding arbitration provisions, they should be amended to reinstate the Council's approval power over the resulting collective bargaining agreement. This can be done in "quick and dirty" fashion by deleting all brackets from ©18, line 292 to ©20, line 331; moving ©20, lines 332-340 to ©18, line 292; and relettering subsections accordingly.

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APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, August 4, 1998 Rockville, Md.

The County Council for Montgomery County, Maryland convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:50 A.M. on Tuesday, August 4, 1998.

PRESENT

Isiah Leggett, President	William E. Hanna, Jr., Vice President
Derick Berlage	Nancy H. Dacek
Gail H. Ewing	Betty Ann Krahnke
Neal Potter	Marilyn J. Praisner

Michael L. Subin

The President in the Chair.

CALL OF BILLS FOR FINAL READING

SUBJECT: Bill 33-97, Building Permits - Notice

The Council had before it the memorandum from Senior Legislative Analyst Faden, dated August 4, 1998, containing background information, and attaching the subject bill.

Mr. Faden stated that the Planning, Housing, and Economic Development (PHED) Committee recommends approval of the subject bill with amendments. He directed attention to line 83 of the bill, stating that the bill should be further amended to delete on line 83 the number and words [30 days after].

ACTION: Adopted the following amendments as reflected in the bill:

ACTION: Enacted Bill 22-98, as amended

by recommendation of the Public Safety Committee, by a roll call vote:

YEAS: Subin, Dacek, Berlage, Ewing, Praisner, Potter, Krahnke, Hanna, Leggett.

SUBJECT: Bill 45-97, Collective Bargaining Amendments

The Council considered the memorandum from Mr. Faden, dated August 4, 1998, providing background information and informing the Council that the bill requires binding arbitration of collective bargaining agreements for County employees; requires the County to bargain with employee representatives before contracting with private parties to provide certain services or assume certain functions; repeals certain provisions governing the role of the County Council in the collective bargaining process; and modifies several other provisions governing collective bargaining with County employees.

Councilmember Potter, Lead Councilmember for Personnel, MFP Committee, presented the Committee's report, stated that the Committee believed that the service contract provision in the bill provided opportunities for extended litigation and delay of government procurements, and agreed that much of what the bill would do could be accomplished under current law and procedures. With respect to the requirements in the bill that provisions be added in the service contract for hiring displaced employees by the contractor, and for six months advance notice to affected employees, Mr. Potter expressed the view that these provisions are generally provided for under existing County procedures. Commenting on the issue of binding arbitration, Councilmember Potter expressed the view that this provision makes it more difficult to bring people together and reach mutual agreements. The provision would delete the Council's authority to approve or reject a collective bargaining agreement submitted by the County Executive. Mr. Potter said that the MFP Committee recommended disapproval of the subject bill on the basis that the provisions in the bill are not sound.

Councilmember Praisner stated that the MFP Committee had planned to review all of the provisions included in the legislation and propose language changes, but because of a busy schedule, there was insufficient time to have such a review. However, the Committee included the recommendation that the Council send the bill back to the Committee for review of all of the provisions if the Council should reject the Committee's recommendation and be inclined to enact the bill.

Councilmember Berlage said that the provision for binding arbitration would be an extension of the system that already exists for some County employees. He said that he would be ready to vote on the binding arbitration portion of the legislation today, but agrees that the service contract provisions need more work. Mr. Berlage suggested that the separate votes could be taken on the two parts of the bill, the binding arbitration provision, and the service contract provisions, and depending upon the outcome of the votes, one or both of the two parts of the bill could be returned to the MFP Committee for extensive review.

Councilmember Subin expressed the view that binding arbitration will result eventually in a reasonable resolution. He said that the processes work well for the Fraternal Order of Police and he believes it will work well for the International Association of Fire Fighters. Mr. Subin said that binding arbitration will ensure that agreements are reached through modification and consultation.

Councilmember Ewing moved, duly seconded, a substitute motion to separate the service contract provisions from the remainder of the bill and send the remainder of the bill back to the Committee for extensive review in order that the binding arbitration issues can be fully addressed. Ms. Ewing suggested that the Committee begin its review by addressing Section 2 of the bill, beginning on page 4 of Mr. Faden's memorandum.

Councilmember Hanna expressed opposition to Ms. Ewing's motion, stating that he sees no reason for it. He noted that the MFP Committee has unanimously recommended disapproval of the bill. In his opinion, unless one of the major provisions of the bill would be approved by the Council, it would not be worthwhile to return it to the Committee. He said that he believes there are three parts to the subject bill: the service contracts, privatization, and binding arbitration.

ACTION: Defeated Councilmember Ewing's substitute motion:

YEAS: Subin, Ewing, Leggett
NAYS: Praisner, Potter, Krahnke, Hanna, Dacek.
ABSENT: Berlage (temporarily).

Disapproved Bill 45-97

by recommendation of the MFP Committee, by a roll call vote:

YEAS: Dacek, Praisner, Potter, Krahnke, Hanna
NAYS: Subin, Ewing, Leggett
ABSENT: Berlage (temporarily).

President Leggett announced that Councilmember Berlage was temporarily absent for the vote on the bill due to a family emergency.

The meeting adjourned at 12:04 P.M.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Secretary of the Council

Minutes written by: Mary A. Edgar

Not passed

AGENDA ITEM 8
February 7, 2006
Introduction

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction**: Bill 2-06, Collective Bargaining – County Employees - Fact Finding

Bill 2-06, Collective Bargaining – County Employees - Fact Finding, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on February 7, 2006. A public hearing is tentatively scheduled for March 7 at 1:30 p.m.

The central feature of Bill 2-06 would insert issue-by-issue fact-finding as an interim step before the Executive and the County employees' union submit their final offers on unresolved issues to the mediator/arbitrator. In Council staff's view this change would move the collective bargaining process from the current last-best-offer, total package arbitration much closer to issue-by-issue arbitration, which the County government has previously resisted.

Bill 2-06 would also shift an estimated 163 temporary, seasonal, and substitute employees from their limited scope bargaining unit to the regular County employees bargaining unit (see memo's from Carol Rollins of OHR on ©13-14), slightly modify the bargaining calendar, and exempt certain confidential employees from the bargaining unit.

This packet contains:	Circle #
Bill 2-06	1
Legislative Request Report	11
Memo from County Executive	12
Memo's from Carol Rollins of OHR	13

F:\LAW\BILLS\0602 Collective Bargaining - Fact Finding\Intro Memo.Doc

Bill No. 2-06
Concerning: Collective Bargaining – County Employees - Fact-finding
Revised: 2-3-06 Draft No. 2
Introduced: February 7, 2006
Expires: August 7, 2007
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

(1) add a definition of *confidential employee* to the County employees collective bargaining law, and exclude confidential employees from certain bargaining units;
(2) require the certified representative and employer to engage in fact-finding after an impasse is reached and to resume bargaining after receiving the fact-finding report of the mediator/arbitrator;
(3) revise the applicability of the collective bargaining law to certain temporary, seasonal, or substitute employees;
(4) revise the collective bargaining calendar for certain bargaining units; and
(5) generally amend the law regarding County collective bargaining.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-102, 33-105, 33-107, and 33-108

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-102, 33-105, 33-107, and 33-108 are amended as follows:

33-102. Definitions.

The following terms have the meaning indicated when used in this Article:

[(1)] * * *

[(2)] * * *

[(3)] * * *

Confidential employee means an employee:

(A) who is required to develop or present management positions on collective bargaining issues; or

(B) whose duties normally require access to confidential information that contributes to the development of management positions on collective bargaining issues.

[(4)] *Employee* means any person who works for the County government, except:

* * *

(H) an employee in a temporary, seasonal, or substitute position, unless the position is in a job class in which one or more of the incumbents are [predominantly] career merit system employees;

* * *

(P) an employee in a position classified at grade 27 or above unless the employee's position is reclassified or reallocated on or after July 1, 2002, to a non-supervisory position at grade 27 or above; [or]

(Q) an employee in a position classified in the Management Leadership Service[.]; or

(R) a confidential employee.

[(5)] *Employee organization* means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining.

[(6)] *Employer* means the County Executive and [his or her] the County Executive's designees.

[(7)] * * *

[(8)] *Mediation* means an effort by the [mediator/fact-finder] mediator/arbitrator chosen under this Article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

[(9)] * * *

[(10)] * * *

[(11)] * * *

33-105. Units for collective bargaining.

* * *

(c) *Temporary, seasonal, and substitute employees.*

(1) A temporary, seasonal, or substitute employee in an occupational class in which one or more of the incumbents are [predominantly] career merit system employees becomes a member of the applicable bargaining unit when the employee has worked 6 months in a position in that occupational class. However, the employee may be terminated for any cause or without cause and without any right of grievance until the

employee has completed 1040 hours of service in that position in any 12-month period.

(2) A temporary, seasonal, or substitute employee who is excluded from the definition of "employee" under Section 33-102(4)(H) because the employee is not in an occupational class in which one or more of the incumbents are [predominantly] career merit system employees becomes a limited-scope member of the applicable bargaining unit immediately after the employee begins employment if:

* * *

33-107. Collective bargaining.

(a) *Duty to bargain; matters subject to bargaining.* Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects for employees other than limited-scope members of the bargaining unit under Section 33-105(c)(2):

* * *

(7) Amelioration of the effect on employees when the exercise of employer rights listed in subsection [(b)] (c) causes a loss of existing jobs in the unit.

* * *

33-108. Bargaining, impasse, and legislative procedures.

(a) Collective bargaining must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and must be finished on or before February [1] 15.

(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)] 3 years. All agreements take effect July 1 and end June 30.

* * *

(d) Before September 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator must appoint a mediator/arbitrator, who may be a person recommended by both parties. The mediator/arbitrator must be available from January 2 to June 30. [Fees] The employer and the certified representative must share the fees and expenses of the mediator/arbitrator [must be shared] equally [by the employer and the certified representative].

(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/arbitrator[,] or the parties may jointly request those services before an impasse is declared. If the parties do not reach an agreement by [February 1] January 24, an impasse exists. [Any] An issue regarding the negotiability of [any] a bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) [Any] A dispute, except a dispute involving the negotiability of a bargaining proposal, must be submitted to the mediator/arbitrator whenever an impasse has been reached, or as provided in subsection (e)(1). The mediator/arbitrator must engage in mediation by bringing the parties together voluntarily

under such favorable circumstances as will encourage settlement of the dispute.

(3) If the mediator/arbitrator finds, in the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, or [as of] on February 1[when an impasse is automatically reached], whichever occurs earlier, the dispute must be submitted to [binding arbitration] fact-finding.

(f) (1) In fact-finding, the mediator/arbitrator must not hold a full evidentiary hearing. Instead, each party must briefly explain to the mediator/arbitrator the party's position on each proposal to which the parties have not agreed.

(2) After hearing the parties' positions on each proposal in dispute, the mediator/arbitrator must issue a fact-finding report to the parties no later than February 6. In the fact-finding report, the mediator/arbitrator must state for each proposal whether the mediator/arbitrator favors the certified representative's position, the employer's position, or an alternative that does not exceed the parameters of either party's position.

(3) After receiving the fact-finding report of the mediator/arbitrator, the parties must resume bargaining. If the parties do not reach agreement by February 15, they must submit their dispute to binding arbitration.

[(f)](g) (1) If binding arbitration is invoked, the mediator/arbitrator must not engage in further mediation. 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] directs the parties to submit complete package proposals, the parties [to submit] must jointly submit a memorandum of all items previously agreed on.

* * *

(3) On or before [February 15] March 1, the mediator/arbitrator must select, as a whole, the more reasonable of the final offers submitted by the parties. 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 items, integrated with the disputed items, to decide which offer is the most reasonable.

(4) In making a determination under this subsection, the mediator/arbitrator may consider only the following factors:

(A) [Past] past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions[.];

(B) [Comparison] comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland[.];

(C) [Comparison] comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel[.];

(D) [Wages] wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County[.];

(E) [The] the interest and welfare of the public[.]; and

(F) [The] the ability of the employer to finance economic adjustments, and the effect of the adjustments on the normal standard of public services provided by the employer.

(5) The offer selected by the mediator/arbitrator, integrated with all previously agreed on items, is the final agreement between the employer and the certified representative, need not be ratified by any party, and has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement[,]. [and] The employer must include in the budget that the employer submits to the Council any provision [which] that requires action in the County budget[must be included in the budget which the employer submits to the County Council[.

[(g)](h) In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The employer must submit to the Council by April 1, unless extenuating circumstances require a later date, any term or condition of the collective bargaining agreement that requires an appropriation of

funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact. If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by April 1. The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. Each submission to the Council must include:

* * *

[(h)](i) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

[(i)](j)The Council may accept or reject all or part of any term or condition that requires Council review under subsection [(g)] (h). On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the items that require Council review or its intention not to do so, and must state its reasons for any intent to reject any such item. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15.

[(j)](k) If the Council indicates its intention to reject any item that requires Council review, the Council must designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on items that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must

submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement, or its intention not to do so.

[(k)](l) Any agreement must provide for automatic reduction or elimination of wage or benefits adjustments if:

* * *

[(l)](m) The Council must take any action required by the public interest with respect to any matter still in dispute between the parties. However, any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate it in the agreement.

[(m)](n) *Later years.* The process and timetable in subsections [(i) and] (j) and (k) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

[(n)](o) *Out-of-cycle amendments.* The process in subsections [(i) and] (j) and (k) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in those subsections do not apply. The Council President must set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

LEGISLATIVE REQUEST REPORT

Bill 2-06, *Collective Bargaining – County Employees - Fact-finding*

DESCRIPTION: The requested legislation amends the County Collective Bargaining Law to add a definition of *confidential employee*, exclude confidential employees from the definition of *employee* for the purpose of collective bargaining, and require that the employer and certified representative engage in fact-finding after a bargaining impasse is reached and resume bargaining after receiving the mediator/arbitrator's fact-finding report.

PROBLEM: The current collective bargaining law does not exclude from the OPT and SLT bargaining units certain employees who perform confidential duties related to collective bargaining. This creates a conflict of interest for these employees and problems for management. Also, when the employer and certified representative are at impasse, they must submit their dispute to binding arbitration with no information about how the mediator/arbitrator will decide the dispute. If the parties were armed with more information about how the mediator/arbitrator would decide the dispute, they would be more likely to resolve more issues instead of including them in the issues submitted to interest arbitration.

GOALS AND OBJECTIVES: To exclude confidential employees from the OPT and SLT bargaining units; and, to add fact-finding to the collective bargaining process as a catalyst to bring about agreement on more issues.

COORDINATION: Office of Human Resources

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: n/a

EVALUATION: n/a

EXPERIENCE ELSEWHERE: n/a

SOURCE OF INFORMATION: Joseph Adler (240-777-5050), Director, Office of Human Resources; Carol Rollins, OHR (240-777-5052); Michael Faden, Senior Legislative Attorney (240-777-7905)

APPLICATION WITHIN MUNICIPALITIES: n/a

PENALTIES: n/a

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

MEMORANDUM

July 5, 2005

TO: Thomas E. Perez, President, Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Bill to Amend the County Collective Bargaining Law to Exclude Confidential Employees and Include Fact-finding in the Collective Bargaining Process

I am requesting that the Council review and approve the attached bill. The bill addresses two primary issues. The first issue is that certain employees who perform duties related to collective bargaining on behalf of the employer are included in the current Office, Professional and Technical or Service, Labor, and Trades bargaining units. Such employees, who are generally referred to as *confidential employees*, are usually excluded from bargaining units because of the inherent conflict of interest created by their duties and responsibilities. The attached bill addresses this problem by including a definition of *confidential employee* and excluding confidential employees from the definition of *employee* for the purpose of collective bargaining.

The draft bill also enhances the collective bargaining process by including fact-finding as an interim step before the County and the Union take the issues on which they cannot agree to arbitration. Under the current collective bargaining process, when the parties are at impasse, they must submit their final offers on unresolved issues to the mediator/arbitrator who, after attempting to mediate the dispute, must then chose either the County's or the Union's package of final offers. Under the bill, when the parties are at impasse, the mediator/arbitrator would conduct a fact-finding meeting at which each party would briefly state its position on each issue in dispute. Then the mediator/arbitrator would issue a report stating which party's position the mediator/arbitrator favors on each issue. Both the County and the Union believe that the fact-finder's report would act as a catalyst, leading the parties to resolve most, if not all, issues by agreement instead of resorting to arbitration. I do not believe that the amendments in the bill will have any significant fiscal impact. Because fact-finding will take less of the mediator/arbitrator's time than an arbitration hearing, the mediator/arbitrator's fee would be slightly reduced if the parties reach agreement without resorting to arbitration. If the parties still go to arbitration, there would probably be fewer items at impasse, resulting in a shorter arbitration hearing and decision and, presumably, a lower fee.

DMD:cmr

Attachments

Faden, Michael

From: Rollins, Carol

Sent: Thursday, October 13, 2005 6:42 PM

To: Faden, Michael

Cc: Adler, Joseph

Subject: Rationale for Requested Amendment to Sec. 33-105

Mike—Joe's off today and asked me to send this to you. This is more detail on the rationale for requesting the amendment to Sec. 33-105 on temporary, seasonal, and substitute employees.

The current wording of Section 33-105 states that a temporary, seasonal, or substitute employee becomes a bargaining unit member after 6 months in a class in which the incumbents are predominantly career merit system employees. We propose to change the wording of Section 33-105 to state that a temporary, seasonal, or substitute employee becomes a member of the bargaining unit when the employee has worked 6 months in a position in an occupational class in which one or more of the incumbents are career merit system employees.

There are two principal reasons for changing the language. The first was to avoid shifts in wages and working conditions for temporary, seasonal, and substitute employees that could result if the number of merit system positions changes from "predominate" to half or less in a given job class. The "predominant" language could result in positions being frequently changed from full scope to limited scope depending upon the makeup of the personnel compliment in any given year. The second reason is that "limited scope" bargaining was really intended to be a distinction in bargaining rights for seasonal employees based on the fact that they typically perform different work than merit system employees. Also, the full scope application to any temporary position for which there is at least one merit system position in the job class addresses the equal pay concern (applied also to working conditions) because it will permit some parity in wages and working conditions for positions that require the same type of work.

Carol M. Rollins, Manager III
Office of Human Resources
Montgomery County Government
carol.rollins@montgomerycountymd.gov
240-777-5052

Faden, Michael

From: Rollins, Carol
Sent: Tuesday, October 25, 2005 3:19 PM
To: Faden, Michael
Cc: Vargas, Carlos; Adler, Joseph
Subject: RE: Rationale for Amendment to Section 33-105

Mike–After a temporary employee has worked for 6 mos, the employee pays $18.50 in dues as a full-scope unit member, while a temporary employee who's a limited-scope unit member pays $8.86 in a pay period in which he or she worked at least 25 hours, so an employee who goes from a limited-scope to a full-scope bargaining unit status will pay $9.64 more in a pay period in which the employee works 25 or more hours and $18.50 more in a pay period in which the employee works 24 hours or less.

Carol M. Rollins, Manager III
Office of Human Resources
Montgomery County Government
carol.rollins@montgomerycountymd.gov
240-777-5052

-----Original Message-----
From: Faden, Michael
Sent: Tuesday, October 25, 2005 12:50 PM
To: Rollins, Carol
Subject: RE: Rationale for Amendment to Section 33-105

Carol-

Thanks. This is what I needed. One follow-up question: how much would each employee's dues increase because of this move into the bargaining unit?

-----Original Message-----
From: Rollins, Carol
Sent: Tuesday, October 25, 2005 11:36 AM
To: Faden, Michael
Cc: Adler, Joseph; Vargas, Carlos
Subject: Rationale for Amendment to Section 33-105

Mike—You had asked how many current employees would be automatically moved into the bargaining unit if this would pass as proposed. Here's the answer. Based on 8/05 stats, a total of 163 temporary employees would become full scope bargaining unit members in the following classes:

Library Desk Assistant: 33 permanent/48 temps
Public Service Worker II: 19 permanent/18 temps
Liquor Store Clerk: 24 permanent/77 temps
Warehouse Worker: 10 permanent/19 temps
Emergency Services Instructor: 1 permanent/1 temp.

Carol M. Rollins, Manager III
Office of Human Resources
Montgomery County Government

(14)

TRANSCRIPT
February 7, 2006

MONTGOMERY COUNTY COUNCIL

PRESENT

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman

Michael Subin

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Council President Leventhal,
The motion is made by Ms. Praisner and seconded by Ms. Floreen. A single vote to establish public hearings on Zoning Text Amendment 06-01: Rural Village Center Overlay Zone, Zoning Text Amendment 06-02: Mixed Use Town Center Zone, Zoning Text Amendment 06-03: Rural Neighborhood Cluster Zone TDR option, Zoning Text Amendment 06-04: Rural Neighborhood Cluster Zone, Rural Open Space. All four ZTA's will be heard if this resolution passes on March 7th at 1:30 p.m. Those in favor of the resolution will signify by raising their hands. It is unanimous among those present. The Council moves into Legislative Session. Do we have Legislative Journal for approval?

Mary Ann Paradise - Deputy Council Clerk,
Yes, you have the journal of January 24th.

Councilmember Praisner,
Move approval.

Council President Leventhal,
Vice President Praisner has moved approval and Mr. Perez has seconded approval of the Legislative Journal of January 24th. Those in favor will signify by raising their hands. It is unanimous among those present. We have introduction of Bill 2-06: Collective Bargaining, County Employees, fact-finding sponsored by the President at the request of the County Executive. A public hearing. Do we need a motion? We've got it. A public hearing is scheduled for March 7th, at 1:30 p.m. We have call of bills for final reading. Bill 44-05: Motor Vehicles, Parking Violations. Chairwoman Floreen.

Councilmember Floreen,
Thank you, Mr. President. The T&E Committee recommends approval of this legislation. It was introduced apparently because of the concern that maximum -- the current requirement that a maximum parking fines be assessed against people who park in handicapped and fire lanes are routinely not imposed by the District Court because of the District Court's discomfort with that high number. I'm not sure that this will really fix the problem but we say maybe it will. Basically the Committee recommends approval with some minor adjustments to repeal the District Court review requirement. We're told by the District Court they don't review these things. Rearrange the reference to DPWT instead of the Department of Finance, and require quarterly report on waivers and refunds rather than the monthly report as well. There needs to be a [concord] adjustment that we anticipate. And with that, we will recommend approval.

Council President Leventhal,
Okay. The T&E Committee's recommendations is before the Council. The clerk will call the roll.

Mary Ann Paradise - Deputy Council Clerk,
Mr. Denis?

This transcript has been prepared from television closed captioning and is not certified for its form or content. Please note that errors and/or omissions may have occurred.