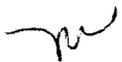


M E M O R A N D U M

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/c11  
248/8

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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  - [[Double Brackets]] indicate matter repealed from existing law.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.
  - ~~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:



01 Sec. 1. Section 33-76 of Chapter 33 is amended to read as follows:

02  
03 33-76. Definitions.

04 When used in this article:

05 (1) Agency shop means a provision in a collective bargaining  
06 agreement requiring, as a condition of continued employment,  
07 that bargaining unit employees pay a service fee not to exceed  
08 the monthly membership dues uniformly and regularly required by  
09 the employee organization of all of its members. An agency  
10 shop agreement shall not require the payment of initiation  
11 fees, an assessment, fines or any other collections or their  
12 equivalent, as a condition of continued employment.

13 (2) To bargain collectively means to meet at reasonable times and  
14 places and to negotiate in good faith with respect to  
15 appropriate subjects as set out in subsection 33-80(a) of this  
16 article.

17 (3) Certified representative means an employee organization  
18 selected in accordance with the procedures of this chapter to  
19 represent the unit.

20 (4) Employee means any police officer in the classification of  
21 master police officer I, master police officer II, police  
22 officer I, police officer II, police officer III, [[and]]  
23 police officer candidate, or equivalent nonsupervisory  
24 classifications and police sergeants, but not those in the  
25 classification of police [[sergeant]] lieutenant or any  
26 equivalent or higher classification.

27 (5) Employer means the county executive and his designees.



- 01           (6) Employee organization means any organization which admits to  
02 membership employees and which has as a primary purpose the  
03 representation of such employees in collective bargaining, and  
04 includes any person acting as an officer, representative or  
05 agent of said organization. Such organization shall not admit  
06 to membership any person other than law enforcement officers.
- 07           (7) Lockout means any action taken by the employer to interrupt  
08 or prevent the continuity of work properly and usually performed  
09 by the employee for the purpose and with the intent of either  
10 coercing the employees into relinquishing rights guaranteed by  
11 this article or of bringing economic pressure on employees for  
12 the purpose of securing the agreement of their certified  
13 representative to certain collective bargaining terms.
- 14           (8) Mediation means an effort by an impartial third party  
15 confidentially to assist in resolving, through interpretation,  
16 suggestion and advice, a dispute arising out of collective  
17 bargaining between the employer and the certified  
18 representative.
- 19           (9) Strike means a concerted failure to report for duty, absence,  
20 stoppage of work, or abstinence in whole or in part from the  
21 full and faithful performance of the duties of employment with  
22 the employer, or deviation from normal or proper work duties  
23 or activities, where any of the preceding are done in a  
24 concerted manner for the purpose of inducing, influencing or  
25 coercing the employer in the determination, implementation,  
26 interpretation, or administration of terms or conditions of  
27 employment or of the rights, privileges, or obligations of



01 employment or of the status, recognition or authority of the  
02 employee or an employee organization.

03 (10) Unit means [[all employees.]]:

04 (A) A bargaining group that is comprised of master police  
05 officers I, master police officers II, police officers I,  
06 police officers II, police officers III, and police officer  
07 candidates, or police officers of equivalent nonsupervisory  
08 classifications; or

09 (B) A bargaining group that is comprised of police sergeants.

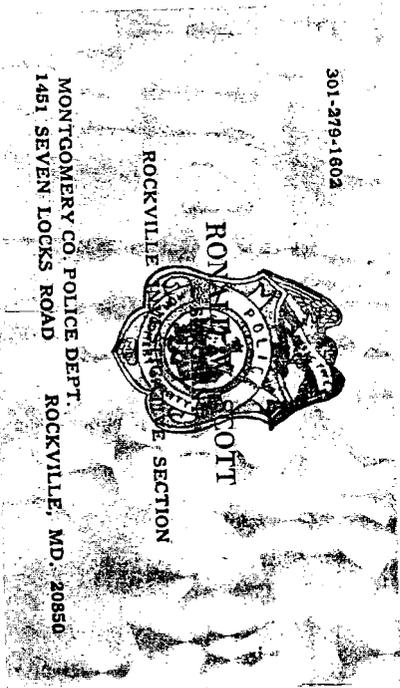
10

11 **Sec. 2. Severability.**

12 The provisions of this Act are severable. If a provision is held invalid  
13 or inapplicable the remainder of the Act remains in effect.

14

15





01

02

Sec. 3. Effective Date.

03

This Act takes effect on the 91st day following the date on which it becomes law.

05

06

Approved:

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\_\_\_\_\_  
Michael L. Gudis, President, County Council

\_\_\_\_\_  
Date

10

11

Approved:

12

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\_\_\_\_\_  
Charles W. Gilchrist, County Executive

\_\_\_\_\_  
Date

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20

This is a correct copy of Council action.

21

22

23

\_\_\_\_\_  
Kathleen A. Freedman, Acting Secretary, County Council

\_\_\_\_\_  
Date

24

25

26

27



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.



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





*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

MEMORANDUM

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.

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

112

60534J

POLICE ASSOCIATION OF MONTGOMERY COUNTY, MARYLAND, INC.



11222 Grandview Avenue, Wheaton, Maryland 20902 (301) 942-8543

RECEIVED COUNCIL

84 JUN 13 10: 57 June 11, 1984

MB  
CC  
DC

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,

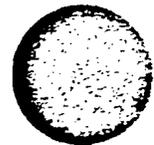
*Gary F. Smith* (4)  
Gary F. Smith  
President

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  
Sergeant  
20000 Aircraft Drive  
Germantown, Maryland 20874

Mark Miller  
Sergeant  
20000 Aircraft Drive  
Germantown, Maryland 20874

(5)



EST. - 1936

POLICE ASSOCIATION OF MONTGOMERY COUNTY, MARYLAND, INC.

11222 Grandview Avenue, Wheaton, Maryland 20902 - (301) 942-8543

August 20, 1984

Honorable Esther Gelman  
President  
Montgomery County Council  
Stella B Werner Council Building  
100 Maryland Avenue  
Rockville, Maryland 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



*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.

Hon. Esther P. Gelman  
Page Three

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<sup>1</sup>**

Police Department	Police Officer Rank	Representative
Boston, MA.	Patrolmen Supervisors	Boston Police Patrolm's Assn. Boston Police Super. Officers Federation
Cleveland, OH	Non-Supervisory Supervisors	Cleve. Patrolm's Assn. FOP
Detroit, MI	Non-Supervisory Sergeants & Lts.	Detroit Pol. Off. Assn. Detroit Pol. Lieut. & Sergeants Association
Elizabeth, N.J.	Rank & File Supervisors	Policem's Benevolent Assn. Local 4 Police Superior Offs' Association
Fort Wayne, Ind.	Officers Supervisors	PBA FOP Lodge 14
Los Angeles (Co.)	Non-Supervisory Middle Supervsry. High Supervisory	Assn. for L.A. Deputy Sheriffs Professional Peace Offs. Assn. Professional Peace Offs. Assn.
Los Angeles (City)	Rank & File Capts. & Commanders	LAP Prot. League LAP Prot. League
Macomb Co., Mich.	Rank & File Command	Macomb Co. Deputy Sheriff's Assn. AFSCME Local 1917
Madison, Wisc.	Rank & File Supervisors	Madison Prof. P.O. Assn. Assn. of Madison Police Supervisors
Milwaukee, Wisc	Non-Supervisors Supervisors	APL/CIA Local #21 Milw. Pol. Super. Assn.
Nassau Co., NY	Rank & File Supervisors	PBA PBA
Newark, NJ	Rank & File Supervisors	FOP Lodge 12 Police Super. Offs. Assn.
New Castle Co., DE	Officers Supervisors	FOP Lodge 5 AFSCME Local 3109
New Rochelle, NY	Rank & File Superior Officers	Pol. Assn. of N.R. N.R. Police Superior Officers Assn.
New York, NY	Non-Supervisory Detectives Sergeants Lieutenants Captains	PBA Dets. Endowment Assn. Sgts. Benov. Assn. Lts. Benov. Assn. Capts. Endow. Assn.

Pittsburg, PA	Captain & Below	FOP Lodge 1
Riverside, CA	Non-Supervisory Supervisors	River. P.O. Assn. River. P.O. Assn.
Sacramento, CA	Non-Supervisory Others	S.C. Co. Deputy Sheriff's Assn. Peace Off's. Jt. Council
Saint Paul, Minn.	Rank & File Supervisors	Unknown Unknown
St. Petersburg, FL	Rank & File Supervisors	PBA PBA
San Bernardino, CA	Rank & File Supervisors	Pub. Empl's. Assn. None
Spokane, WA	Rank & File Supervisors	Spokane Police Guild Spokane Capt's & Lieutenant's Assn.
Springfield, MA	Rank & File Supervisors	IBPO Local 364 None
Toledo, OH	Officers Command	AFL/CIO Local 10 Toledo Command Officers Assn.
Ventura Co., CA	Sheriffs Supervisors	V.C. Sheriff's Assn. V.C. Sheriff's Assn.
Yonkers, NY	Rank & File Supervisors	PBA Police Capt's., Sgt's. Lieut's. Benov. Assn.

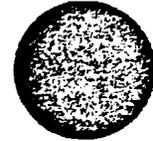
SOURCE: Police Executive Research Forum (1982)

- 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.

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A.W.S

# Montgomery County Government

## MEMORANDUM

August 31, 1984

81 SEP 4 P 2: 25

RECEIVED COUNCIL

TO: Myriam Marquez Bailey, Senior Attorney  
Office of Legislative Counsel

FROM: William P. Garrett *WPG*  
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 necessarily 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.

Personnel Office

Executive Office Building, 101 Monroe Street, 7th Floor, Rockville, Maryland 20850, 301/251-2284

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Myriam Marquez Bailey, Senior Attorney  
Office of Legislative Counsel  
Page 2

Information concerning the status of merit systems among the jurisdictions referenced above was not available. However, my Office did a complete survey of local jurisdictions which is provided in Attachment 3. The survey of local jurisdictions indicate that those jurisdictions 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.

WPG:ref  
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Attachments

cc: William Hanna  
Scott Fosler  
✓ Esther Gelman  
Gary Smith  
Walter Bader

A key to the notes appears on the last page of this chart.

1978  
Police Collective  
Bargaining Agreements

A National Management Survey

National League of City  
Police Executive Research  
Forum

City or County and State	Population and Census	Bargaining Agent	Description of Bargaining Unit	# of Employees in Bargaining Unit
Albany, NY	115,576	Albany Pol. Officers Loc. Union #2841	Pol. Off.	350
Albuquerque, NM	243,751	Co. 82 AFSCME, AFL-CIO P.O.A.	Pol. Comm. Off.	—
Allentown, PA	180,321	F.O.P.	Pol. Off.	180
Anaheim, CA	186,118	Anaheim Pol. Assoc.	Pol. Off. & Sergeants	271
Beaumont, TX	115,963	BPO Loc. #481	All Off. except Chief	182
Berkeley, CA	118,689	Berkeley Pol. Assoc.	Pol. & Comm. Off., Invest., Juv. Bar. Dir. Command Off.	181
Boston, MA (Supervisors)	641,053	Boston Pol. Superior Officer's Federation		380
Boston, MA (Rank & File)	641,053	Boston Pol. Patrol Off. Assoc., Inc.	Pol. Off. & Detectives	1,728
Bridgport, CT	158,548	AFSCME AFL-CIO Loc. #1159	Pol. & Comm. Off.	450
Buffalo, NY	425,000	P.S.A.	Pol., Detectives, Comm. Off. & Technicians Comm. Off.	1,168
Camden, NJ (Supervisors)	102,551	Camden City Pol. Superior Officer's Assoc.		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. F.O.P. Lodge #8	Pol. Off. & Comm. Off. Pol. Off.	1,000
Columbus, OH	539,377			1,100
Corpus Christi, TX	204,580	P.O.A.	Pol. Comm. Off. & Asst. Chiefs	295
Dade County, FL	1,267,782	Dade County P.S.A.	Pol. Off. Sergeants, Technicians, Disp., Crim.	1,778
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.S.A. Elizabeth Loc. #6	Pol. Off.	240
El Paso, TX	322,261	El Paso Municipal P.O.A.	Pol. Off. Comm. & Inspect.	850
Erie, PA	117,580	MAAS 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.	134
Evansville, IN	138,690	F.O.P.	Serv. Off. Disp. <sup>a</sup> Pol. & Comm. Off., Inspect., Detectives & Assist. Chiefs	261
Ft. MI (Lieutenants)	183,390	City of Ft. MI Lieutenants' Assoc.	Lieutenants & Captains	18

City or County and State	Population and Census	Bargaining Agent	Description of Bargaining Unit	# of Employees in Bargaining Unit
Plant, MI (Sergeants)	183,380	Teamsters Local Union #214 (Sergeants)	Sergeants	86
Plant, MI (Rank & File)	183,380	Teamsters Local #214, Law Enf. Div.	Pol. Off.	206
Fresno, CA	186,800	Fresno P.O.A.	Pol. Off. Specialist, & Sergeant	308
Garden Grove, CA	122,560	Garden Grove Pol. Assoc. P.O.A.	Pol. Off.	134
Glendale, CA	129,684		Pol. Off. Sergeant & Detective	150
Grand Rapids, MI	—	—	—	—
Hartford, CT	158,617	IBPO Loc. #388	All positions below Captain	412
Hollywood, FL	702,136	Fla. St. Lodge F.O.P.	Pol. & Comm. Off.	207
Hollywood, FL	167,912	Hollywood Lodge #21 F.O.P.	Pol. Off. Sergeants & Lieutenants	250
Honolulu, HI	629,178	St. of Hawaii Org. of Pol. Off. P.O.A. Loc. #660	Pol. Off. Supv. & Non-Supv. Off.	1,425
Huntington Beach, CA	115,988	F.O.P. Loc. #68	Pol. & Comm. Off., Detain. Off. Comm. mgr.	430
Indianapolis, IN	744,570	F.O.P. Loc. #68	Pol. & Comm. Off., Chief & Asst.	1,084
Jacksonville, FL	538,865	Consolidated Lodge #5130	Pol. & Comm. Off.	886
Kalamazoo, MI	86,881	Kalamazoo Pol. Off. Union	Pol. Off. & Technicians (swarm), airport sec. & pol. serv. off. (not sworn)	157
Lansing, MI (Supervisors)	131,638	Supv. Div. Captains, City Lodge #141 F.O.P.	Sergeants, Lieutenants, Captains	55
Lansing, MI (Rank & File)	131,638	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 S.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.	288
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	556,647	Multnomah Co. Deputy Sheriff's Assoc.	Dpty. Sheriff, Sergeants, & Invest.	207
New Bedford, MA	101,759	Mess. Pol. Assoc.	Command & Pol. Off.	288

City or County and State	Population and Census	Bargaining Agent	Description of Bargaining Unit	# of Employees in Bargaining Unit
Newark, NJ (Supervisors)	282,777	Superior Off. Assoc.	Comm. Off.	—
Newark, NJ (Rank & File)	282,777	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	368,734	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 Dist. Sergeant	210
Oakland, CA	381,813	P.O.A.	Comm., Sepv. Pol. Off.	985
Orlando, FL	98,985	Orange County P.B.A.	Pol. Off. Sergeants	400
Pasadena, CA	113,254	P.O.A.	Pol. Off.	159
Peterborough, NJ	144,830	P.B.A. Loc. #1	Pol. & Comm. Off.	425
Phoenix, AZ	870,000	Pol. Law Enforcement Assn.	Pol. Off.	1,270
Pittsburgh, PA	520,167	F.O.P. Fort Pitt Lodge	Pol. Off. & Rank Supr. to Captain Civilians	1,400
Prince George's Co., MD	660,567	Pol. Civilian Employees Assoc. P.O.A.	Pol. Employees Pol. Comm. Off.	232
Riverside, CA	139,769			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	254,384	P.O.A.	Pol. Off. Sergeants & Lieutenants	480
St. Paul, MN (Supervisors)	309,940	St. Paul Supr. Group	Pol. Off. Sergeants, Detectives & Lieutenants	4
St. Paul, MN (Rank & File)	309,940	St. Paul Pol. Federation	Det. Pol. Chief	550
St. Petersburg, FL (Supervisors)	216,067	Pinellas County P.B.A.	Pol. Off. & Technicians	67
St. Petersburg, FL (Rank & File)	216,067	Pinellas County P.B.A.	Command Off.	399
San Antonio, TX	854,289	P.O.A.	All Cert. Peace Off. except Chief	1,149
San Bernardino, CA	104,394	San Bernardino Pol. Chapter of the San Bernardino Public Employees Assoc. P.O.A.	Pol. Off. Invest. Comm. Off.	192
San Francisco, CA	715,674		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	178,516	Spokane Pol. Guild	Pol. Off.	201
Stamford, CT	108,853	Stamford P.O.A.	Comm. & Pol. Off.	218
Stockton, CA	167,498	P.O.A.	Pol. Off. & Pol. Sergeants	208
Syracuse, NY	187,270	P.B.A. Benevolent	Pol. Comm. Off. & Insp.	478
Tacoma, WA	154,855	Tacoma Pol. Loc. #228	Pol. & Comm. Off., Technicians & Masters	258
Tampa, FL	278,008	Hills County	Pol. Off. Detectives, Corporate, Private	305 budgeted
Toledo, OH (Supervisors)	385,818			—
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 Supr. Off. Assoc.	Comm. Off.	65
Trenton, NJ (Rank & File)	104,578			—
Tulsa, OK	331,800	F.O.P. Lodge #83	Off., Corporal, Sergeant, 1st line division Sergeants, Lieutenants & Inspect.	654
Warren, MI (Supervisors)	179,234	Lodge #124 Com. of Assoc.		40
Warren, MI (Rank & File)	179,234	P.O.A.	Pol. Off.	178
Washington, DC	758,310	Loc. #422 I.B.P.O.	Pol. & Comm. Off. Detectives & Invest. Comm. Off. Technicians & Inspect.	4,022
Wayne County, MI (Supervisors)	2,668,751	AFCME, AFL-CIO Loc. #23, 409, 1659, 1905, 1917, Council 23		—
Wayne County, MI (Rank & File)	2,688,751	National Union of Pol. Off. Loc. #502 AFL-CIO	Pol. Off. Detectives & Dispatch.	600
Wichita, KS	278,688	F.O.P. Lodge #5	Pol. Off. Detectives, Invest.	312
Worcester, MA (Supervisors)	178,803	BPPO	Comm. Off.	88
Worcester, MA (Rank & File)	178,803	P.O.A.	Pol. Off.	253
Youngstown, OH	138,702	F.O.P. Ohio Lodge #28	Pol. Off. & Parts & 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 must 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 1/2 of unused sick leave and pay 50¢  
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, pd and identification employees are represented by Teamsters Local #461. Local #2 DC = discipline cases.  
11 signifies inclusion of a particular category or type of clause in a contract; a dash means either that the information applies.

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit
Akron, Ohio	240,000	F.O.P.	406
Alameda County, Calif.	1,090,000	Deputy Sheriff's 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)	572,623	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
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
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 Sheriff's Assn.	375
Corpus Christi, Texas	NR	Corpus Christi Police Officers Assn.	NR
Dade County, Fla.	1,600,000	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
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

1981  
Police Collective  
Bargaining Agreements  
A National Management Survey  
National League of City  
Police Executive Research  
Forum

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	280
Elizabeth, N.J. (Supervisors)	113,000	Police Superior Officers' Assn.	86
Erie, PA.	120,000	Haas Memorial Lodge #7	200
Evanston Ill.	60,000	Combined Counties Police Assn., Evanston Chapter	NR
Evansville, Ind.	140,000	F.O.P.	241
Ft. Mich.	159,611	Teamster's Local #214	217
Fort, Wayne, Ind. (Officers)	165,000	Police Benevolent Assn.	185
Fort Wayne, Ind. (Supervisors)	165,000	F.O.P. #14	85
Franklin County, Ohio (Sheriff)	1,651,096	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)	490,800	Fresno Deputy Sheriff's Assn. Unit #1	300
Fresno County, Calif. (Sheriffs)	490,800	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	290
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	250

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.	895,055	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.	390,000	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' Association	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)	1,310,447	Superior Officer's Assn.	485
Nassau County, N.Y. (Rank & File)	1,310,447	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.	16,652
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.	388,000	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.	650
Prince George County, Md. (Sheriffs)	750,000	F.O.P. Lodge #99	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.	66
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)	170,848	Spokane Police Guild	234
Spokane, Wash. (Supervisors)	170,848	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 Employed Bargaining U.
Springfield, Mass. (Supervisors)	178,000	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.	480
Tacoma, Wash.	158,500	Tacoma Police Union Local #6	243
Tampa, Fla.	254,000	Hillsborough County Police Benevolent Assn.	508
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	228
Trenton, N.J.	184,800	Police Benevolent Assn.	328
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	800
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

POLICE OFFICER COLLECTIVE BARGAINING RIGHTS  
 MARYLAND COUNTIES AND DISTRICT OF COLUMBIA

<u>Police Department</u>	<u>Police Officer Rank</u>	<u>Merit System Application</u>
Anne Arundel County	Sergeants & Below	Yes
Baltimore County (Unit 1)	Non-Supervisory	Yes
(Unit 2)	Sergeant & Lieut.	Yes
Baltimore City (Unit 1)	Police Officers & Agents	Yes
(Unit 2)	Sergeants & Lieutenants	Yes
Montgomery County	Non-Supervisory	Yes
Prince Georges Co. (Unit 1)	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.

RECEIVED COUNCIL

11222 Grandview Avenue, Wheaton, Maryland 20902 — (301) 942-8543

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.

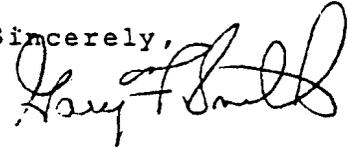
The Personnel Regulations For Merit System Employees, appendix to chapter 33, Montgomery County Code 1972, as amended December 2, 1980, Section 13, entitled Special Leave, states in paragraph 13.5 that employees in positions of Division Chief or higher, or equivalent ranks, shall not be entitled to overtime 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.

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 adversarial 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

DEPARTMENT OF POLICE  
MONTGOMERY COUNTY, MARYLAND

SUBJECT: OVERTIME COMPENSATION

DD 82-56  
FUNCTION CODE: 316  
DISTRIBUTION: A  
EFFECTIVE DATE: 12-01-82

400 POLICE UNIFORMS,  
EQUIPMENT, AND  
PROPERTY

500 TRAINING, RESEARCH  
AND DEVELOPMENT

600 INVESTIGATIONS  
AND INTERROGATIONS

500 ARRESTS, WARRANTS  
AND WARNINGS

Purpose: To establish guidelines for overtime compensation.

Policy: 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.

Items:

- I. Compensation
- II. Restrictions
- III. Overtime Approval/Scheduling
- IV. Procedure for Requesting Overtime Compensation
- V. Working on an Official County Holiday
- VI. Cancellation

Compensation

- I. 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.

Indicates 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

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, 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 collective 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, Acting Secretary  
of the County Council for  
Montgomery County, Maryland

Minutes prepared by: Donna Brand

ARTICLE V. POLICE LABOR RELATIONS.<sup>1</sup>

## 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. 33-3. 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 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 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 employer 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.)