

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, October 14, 1976 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Conference Room, County Office Building, Rockville, Maryland, at 8:10 P.M. on Thursday, October 14, 1976.

PRESENT

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

ABSENT

Jane Ann Moore

The President in the Chair.

Re: Worksession on Bills Nos. 11-76 & 23-76,
Employee/Employer Relations

The Council met in worksession on Legislative Bills Nos. 11-76 and 23-76, Employee/Employer Relations, with Director of the Office of Personnel Lloyd; Assistant County Attorney Hutt; Mr. James Mills, President of the Montgomery County Government Employees Organization; Council Staff Director McDonell; and Legislative Research Coordinator Schloo.

President Christeller noted that during the last worksession on Bills No. 11-76 and 23-76, the Council requested that Messrs. Lloyd and Mills prepare a listing of those positions in the Department of Transportation which they believe should be included and excluded from joining a meet and confer employee organization under the Council's revised definition of exclusions. Mr. Lloyd's list is before the Council; Mr. Mills was unable to obtain the necessary information from the Personnel Office. He suggested that the Council review the list and raise any questions they have regarding specific positions. President Christeller noted that the criteria used by Mr. Lloyd is that contained in Bill No. 11-76, proposed by the County Executive, and does not conform to the decisions made by the Council at the last worksession.

In response to questions as to why Mr. Lloyd would exclude the Information & Research Assistant in the Director's office from joining the organization, he stated that this specific position is a confidential employee. This class of positions is not always confidential, however. There are many gray areas that are questionable.

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President Christeller stated that the purpose of the list prepared by Mr. Lloyd was to give the Council an opportunity to see how its revised definition of employees to be excluded would be applied to one particular department. He noted that in Mr. Lloyd's listing, the Administrative Aide V would be excluded while the Administrative Aides I and IV would be permitted to be included in the organization. In a seven-member office, it is hard to handle confidential material that does not involve all the employees. The Administrative Aide IV is just as likely to be typing confidential papers as is the Administrative Aide V. The Director can learn to segregate the work, but that may be unwise. He expressed the view that all employees in the Director's Office should be excluded.

Mr. McDonnell stated that he attempted to develop language to solve the nomenclature problem associated with "administrative aides" and "administrative assistants." In the new definition of "employees eligible to join an employee organization" he suggested that the Council delete the phrase [administrative aides to director of department, deputy or assistant directors] and insert in lieu thereof: employees providing direct staff or administrative support to the director of the department, or deputy or assistant directors within the director's immediate office.

After discussion and without objection, the Council agreed that all positions in a department head's immediate office should be excluded from joining an employees organization.

A discussion was held regarding the inclusions and exclusions of specific positions within the Office of Right-of-Way Acquisition, Office of Administrative Services and the Office of Transportation Planning within the Department of Transportation. Mr. Lloyd stated that he and CAO Hussmann agree that all supervisory personnel should be excluded from the organization. This would include positions such as Accountant III and Planner IV.

Mr. Mills expressed the opinion that the director and assistant director of departments and offices should be excluded, but that no other employees should be excluded.

Councilwoman Scull stated that since the Council's last worksession on these bills, she attended a seminar on the subject of public sector labor relations. She came away with a strong feeling that supervisors must be on

the management team. One speaker made the point that during meet and confer sessions, the employees will bring in proposals for discussion; management should also have its own proposals to offer. Good proposals cannot be developed without input from supervisors from all levels. The speaker also felt that an effective management team must include middle and first line supervisors.

Councilman Menke stated that if the employee organization evolves into a collective bargaining system the County government will have an adversary relationship between two major groups of employees. This, to him, would be an undesirable situation, regardless of how good morale is. However, a meet and confer organization does not necessarily have to evolve into collective bargaining. He has hopes that the organization could develop into something that will provide employees with a strong method of reaching management with their problems without triggering an adversary relationship. Exclusion of supervisors from the organization, especially first and middle line supervisors, would be more likely to cause an adversary relationship. Exclusion of supervisors is a polarizing element.

Mr. Lloyd stated that once the membership of an employee organization has been established it will be difficult to exclude certain members if it evolves into a collective bargaining system. If collective bargaining is permitted by State law, the fact that certain employees were permitted to join the first organization becomes strong precedent for continuing their membership in the new organization.

Councilman Menke agreed that supervisors cannot be permitted to join a collective bargaining unit; however, he is not convinced that collective bargaining is desirable, and believes that many real benefits can be achieved through a less adversary-style process. He inquired as to whether it is reasonable to set a different standard for membership in a meet and confer organization.

President Christeller noted that during the last worksession on these bills, the Council proceeded on the assumption that decisions as to membership would continue if a collective bargaining system is developed.

Mr. McDonell suggested that perhaps the Council could include a caveat in the law that recognizes that the membership will have to be changed if a collective bargaining system is instituted.

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Councilman Menke inquired as to whether supervisors could make a legal claim that they have vested rights and should be permitted to join a collective bargaining unit.

Mr. Lloyd stated that courts have been very strongly influenced by "past practices", which would include membership of organizations, personnel policies and working conditions. He stated that loyalty is a key issue in this matter. A program should be developed to improve supervisors' attitudes towards their positions so that they feel they are a part of management.

Councilman Menke stated that if supervisors are excluded from joining the meet and confer organization, the County would be obligated to implement a program such as Mr. Lloyd suggested. However, this would be a polarizing element, and would build momentum towards collective bargaining.

Mr. Tull, MCGEO, urged the Council to experiment with a process that is not typical unionism to see whether, in fact, supervisors can participate in a meet and confer organization without conflict. He expressed the view that Mr. Lloyd's list of employees to be included and excluded is more strict than the usual industrial application of exclusions.

President Christeller stated that he would support Councilman Menke's approach of not excluding all supervisors from the meet and confer organization, with a caveat as suggested by Mr. McDonell to the effect that decisions as to inclusions and exclusions are being made with a conscious recognition of the fact that this is not a collective bargaining situation, and that the membership should not be construed in any way to establish a precedent with regard to County policy as to which positions to exclude from a collective bargaining unit.

Councilman Hovsepian suggested that the Council provide that employees excluded from the meet and confer organization may organize separately. Supervisors frequently have different sets of problems than the employees. President Christeller stated that this approach would be more desirable in a collective bargaining situation.

Councilman Menke stated that he would prefer to begin the process with a single organization; however, a separate organization for supervisors may be desirable in a collective bargaining situation.

Mr. McDonnell stated that, in changing the basis for membership in a collective bargaining unit, the County may have to bargain away a lot of things. It is a matter of economics to the organization; a lot of dues-paying members would be excluded from the organization.

Mr. Mills stated that many people within MCCEO share Councilman Menke's viewpoint that it would be desirable to avoid a collective bargaining situation. It is hoped that the meet and confer organization will work effectively, but there has to be a meaningful effort on the part of management to see that it does. If the Council excludes first line supervisors from the meet and confer organization, he is almost certain that the employees would not want recognition under those conditions.

In response to questions, Mr. Lloyd stated that he would consider section heads to be middle management; Mr. Mills stated that he would not consider them as middle management.

Councilman Hovsepian stated that in the Department of Transportation there is one very large section with as many employees as a number of other departments. The size of a section or division is not a criterion for inclusion or exclusion from the organization; it is the level of responsibility that the section head has. He inquired as to whether section heads would be excluded from the organization.

Councilman Menke expressed the view that section heads would have to be excluded. They are an identifiable head of an office with a constant set of responsibilities. Perhaps in the case of a very large section, the assistant section head should be excluded. However, he would not exclude the positions of Work Force Leader II, as Mr. Lloyd has.

Councilman Hovsepian agreed that section heads should be excluded from joining the organization, but not assistant section heads.

Mr. Tull recommended that if section heads are excluded from the organization, the Council permit a separate unit for supervisory personnel.

Councilmembers Christeller and Hovsepian indicated that they cannot support two separate units because there are a lot of supervisory personnel who are not excluded from joining.

President Christeller recommended that the Council's definition of "employee eligible to join an employee organization" be amended in the final

phrase to add the words and sections following the words "heads of the constituent offices and divisions", deleting the word [and] between the words "offices" and "divisions". He suggested that the specific names of the offices, divisions and sections within the Department of Transportation be listed in the bill.

Mr. Mills urged the Council not to go below the division level in its exclusions.

Without objection, the Council agreed with President Christeller's suggestion.

(The Council recessed at 9:30 P.M., and reconvened at 9:40 P.M.)

With respect to the issue of whether or not "professional employees" should be included in the organization, Mr. Lloyd stated that Bill No. 11-76 provides that professional employees should not be in the same organization as other employees unless they so elect. Professional employees are unique in that they are not necessarily managers and neither are they "rank and file" employees. They are well-paid employees and typically identify with management, yet they are technicians doing specific tasks.

Councilman Hovsepian pointed out that a definition of "professional employee" is unnecessary with the Council's definition of "employees eligible to join an employees organization". He stated that no one has to join the organization if she or he does not want to.

President Christeller stated that it should be left to the discretion of professional employees as to whether or not they want to form a separate unit.

After discussion and without objection, the Council agreed to delete the definition of "professional employee", lines 62 through 74, page 4, Bill No. 11-76, and to delete paragraph d, lines 123 through 125, page 5.

In response to a question regarding the meaning of "employees of the uniform services", Mr. Lloyd stated that that would include police, firefighters, the Sheriff's Office and corrections officers.

President Christeller stated that since the fire departments are independent entities, the firefighters are not County employees and would not be covered by this bill. He stated that the term "uniform services" should be defined.

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Mr. Whitney, Executive Vice President of the International Brotherhood of Police Officers, suggested that, within the Police Department, the membership be limited to corporals, privates first class and privates. He stated that he views the organizations permitted by these bills as the forerunners of collective bargaining. It is not workable, nor effective, to include supervisors in the same unit with employees; it results in a lot of conflicts. The entire Department was polled and the results were decisive. The police officers do not want a mix of supervisors and employees. He stated that his organization represents 350 police departments around the country, and he has seen systems that have included officers up to the position of assistant chief of police. This results in situations where employees file grievances against the people who are active members of the organization.

Mr. Lloyd stated that in the uniformed services channels of supervision are more clear than they are in other departments.

Without objection, the Council agreed to delete the word [sergeant] in line 127, Bill No. 11-76, and insert in lieu thereof corporal. The Council also agreed that the term "uniformed services" should be defined.

Mr. Lloyd noted that in the Sheriff's Office, the position of Deputy Sheriff III is the same rank as a corporal in the Police Department.

The Council did not agree with Mr. Lloyd's suggestion that the Council substitute the Personnel Director for the Chief Administrative Officer as the person who shall make the final determination as to the composition of employee units.

In response to a question as to why the Personnel Board recommended that it make the final determination as to the composition of the units, Mr. Lloyd stated that it is common practice to provide for an appeal to a third party. The Executive Branch wanted the procedure to remain within the County government.

Councilman Hovsepian stated that such action would put the Personnel Board in a conflicting situation, as it is the body that hears employee grievances. He noted that non-merit system employees will be excluded from the organization. The CAO is responsible for administration of the merit system and should have the final decision.

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President Christeller expressed the view that the Personnel Board is not in a position to make a judgment on the issue of unit determination or composition. The CAO should perform this management function. He would not propose that the decision be appealable to the courts. He suggested that the following language be added to the end of line 129: provided that he has given full opportunity for persons disputing the determination to make their case. President Christeller stated that there should be a method whereby people can be sure that the CAO has personally heard their arguments for unit determination. He further suggested that the law provide that undisputed cases shall be determined within 30 days.

Mr. Hutt stated that regardless of language in the bill, there is an inherent right to appeal arbitrary and capricious decisions to the courts.

After discussion and without objection, the Council added the following language to the end of line 129, Bill No. 11-76: after opportunity is provided for those disputing the determination to be heard by the CAO.

In response to questions regarding Mr. Lloyd's suggested language that the number of employee units certified shall not be greater than five, Mr. Lloyd stated that he tried to anticipate what a normal breakdown of employee units might be. He believes that employees may organize into the following groups: police, service and maintenance, clerical, professional and technical, and one additional unit for unforeseen circumstances. He stated that it is important to avoid a proliferation of units.

President Christeller stated that the Council should not attempt to set a precise number, but should include a number in the law with the understanding that it is an attempt to discourage proliferation of units. If there is a valid reason for having an additional unit, the CAO would have to say to those employees that the Executive Branch will send the Council a bill to amend the law to permit one more unit, and that the employees should explain the need therefor to the Council. He recommended that the law specify no more than six employee units.

After discussion and without objection, the Council agreed to add to the statement of legislative intent a statement to the effect that the bill limits the number of employee units, but does so with the understanding that

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the Council would always consider changing that limitation upon a recommendation of the Chief Administrative Officer or a group of employees. The Council agreed that the statement of legislative intent would be a part of the bill rather than a separate resolution.

After further discussion, the Council agreed to add the following language to the end of line 122: The provisions of this Section shall not preclude the establishment of one unit to represent all eligible employees. The number of units certified shall not be greater than seven.

At the suggestion of Mr. Lloyd and without objection, the Council deleted the language contained in lines 148 through 151, page 6, Bill No. 11-76, and inserted in lieu thereof: Elections will be conducted by the Personnel Office which may use the services of the Maryland State Department of Labor and Industry or any other third party having similar qualifications. Mr. Lloyd indicated that the Personnel Office would coordinate with employee groups before using a third party.

With respect to the percentage of employees necessary to validate an election, Mr. Lloyd stated that 60% of the employees eligible to participate in the election is commonly used elsewhere, but he does not know the historical reasons therefor. He would be reluctant to require a simple majority.

Mr. Whitney stated that a lot of time and money are put into the election process, and often 60% participation is not achieved. It would be undesirable to have to have another election because only 59% of the eligible employees voted.

Councilwoman Scull stated that she does not understand the requirement for 60% participation, noting that a very small percentage of the electorate participate in primary elections. She further noted that Presidential elections are not invalidated because less than 60% of the electorate participated.

In response to questions as to how the Personnel Office would conduct the elections, Mr. Lloyd stated that voting would be done at multiple work sites, and monitored by either the Personnel Office or a third party.

Councilman Hovsepian suggested that the Council agree to 60%, provided that the balloting takes place at places of employment and other convenient locations. He stated that if employees have to drive several miles to cast their vote, it will cut down on the number participating. He suggested that the

statement of legislative intent contain a statement that the procedures for elections and balloting shall be so designed to provide maximum participation and the elections should be held at convenient locations for employees.

President Christeller stated that if only two units are formed, it will be difficult to achieve 60% voter turn-out. There will be some people who do not want any representation or who do not want to become involved in the process. He stated that the bill does not have to provide that balloting shall be convenient to employees. It will be convenient, or there will have to be another election.

Mr. Lloyd added that 10% of the employees are absent at any one time. Mr. Whitney noted that Bill No. 11-76 does not provide for a second election.

In response to questions regarding the intent of lines 178 and 179, page 7, Mr. Lloyd stated that a majority of those voting could vote to have no representation.

At the suggestion of President Christeller and without objection, the Council deleted the language in line 179, page 7, and inserted in lieu thereof: a majority of employees voting voted for no representation.

With respect to the issue of payroll deductions for membership dues, Mr. Lloyd stated that the issue should not be determined at this time. It is normally an item of discussion between the employee unit and management, and should be worked out in that context. He noted that the County government will not be in a position to enforce the payment of dues.

Mr. Mills stated that the position that Mr. Lloyd has taken is totally unacceptable to MCGEO. The law should provide for mandatory collection of dues. Mr. Tull added that the Executive Branch feels no compulsion to negotiate this item.

Councilwoman Scull suggested that the Council agree to provide this service under the meet and confer situation, but indicate in the law that if a collective bargaining situation evolves, it would be an item for negotiation.

In response to a statement that the authority for dues collection exists without writing it into the law, Mr. Mills stated that there has been a total unwillingness on the part of County government to discuss the matter.

President Christeller expressed the view that the Legislative Branch should not grant things that should be bargained for.

Mr. Lloyd stated that if collection of dues is mandated, the Council should address the question of who will pay the cost of collection.

Councilman Hovsepian agreed with Councilwoman Scull's suggestion that payroll collection of dues should be provided for in a meet and confer situation, but that the law should state clearly that this does not set a precedent for collective bargaining situations. The law should also indicate that the expenses will be paid by the organization by agreement.

Mr. Tull noted that the paragraph beginning on line 229, Bill No. 11-76, specifies that no agreements shall be binding on any of the parties.

President Christeller suggested that the statement of legislative intent indicate that the Council recognizes the desirability of payroll collection of dues, but did not include provisions for it in the law because it should not set a precedent for collective bargaining situations that may evolve. The legislative intent should acknowledge that the County government has this authority, but the bill should not make it mandatory. He stated that he supports Mr. Lloyd's suggestion for the addition of a new paragraph j. in Section 33-66, page 7, to read as follows: j. The County may, after discussions with an employee organization and on the basis of a written authorization from each employee, provide for the deduction from the pay of such employee monies in payment of membership dues in a duly certified employee organization. Such deduction shall not be obligatory.

Mr. Tull suggested the addition of the following language to the end of the suggested new paragraph j.: Such monies shall be remitted to the employee organization.

In response to statements that the Executive Branch has been unwilling in the past to provide this service after saying it would, President Christeller stated that the County government has no established mechanism for recognizing employee organizations. Mr. Lloyd added that there are several employee organizations at the present time; some are based on sex and race.

Councilman Menke stated that if the County Executive refuses to provide this service, the Council could amend the law to mandate it.

President Christeller suggested that the final sentence of suggested new paragraph j. be deleted as it is negative.

Due to the absence of a quorum, the Council instructed that the bill be prepared with the suggested paragraph j., with the mandatory language referring to dues collection from Bill No. 23-76 shown as an amendment to the bill. The full Council will take a vote on the matter.

With respect to the issue of who shall bear the cost of conducting elections, Mr. Whitney stated that a recent election to choose a bargaining unit for 4,100 police officers, held at nine different locations, cost \$4,000 to \$5,000.

Mr. Mills stated that the method by which the election is conducted will affect its cost. A double envelope system would cost considerably less than having a third party conduct the election.

President Christeller stated that if the cost is borne solely by the County, there could be frivolous requests for elections.

Councilman Menke stated that even if the County split the cost with the organization, it would still be a big burden on the organization. He requested specific information as to the cost of an election.

President Christeller inquired as to who would pay the cost if it is to be split between the County and the organization if the organization loses the election. The organization may not be anything other than a group of people who collected enough signatures on a petition to get on the ballot. He suggested that perhaps the County could require a bond from the group submitting the petition. He further suggested that the cost be split, with 50% to be paid by the County, and the remainder to be borne equally by all organizations on the ballot.

Without objection, the Council agreed that the cost of elections would be borne 50% by the County and 50% between the employee organization(s) on the ballot.

Without objection, the Council agreed with Mr. Lloyd's suggestion to delete at least [once every two years] from line 209, page 8, and insert in lieu thereof: two times annually.

With respect to the issue of matters to be discussed with employee organizations, President Christeller expressed the view that Bill No. 11-76 contains too many exclusions.

Mr. Lloyd stated that, once again, he is concerned with setting precedents. The exclusions listed in the bill are typically excluded from collective bargaining agreements. They are items that are the prerogative of management.

Councilman Menke referred to the exclusion of discussions of "technology of performing County work", stating that he understands the Executive Branch does not want to get into discussions of whether a faster printing press should be used, for example. However, the issue of closing the incinerator was a matter of technology which affected many employees. The employee organization should have the right to question how management will take care of the affected employees and make suggestions for constructive changes.

After discussion and without objection, the Council agreed to delete paragraph b., lines 211 through 223, page 8 of Bill No. 11-76, stating that the law should not specify or prohibit items to be discussed. Paragraph a. covers in a broad fashion the types of items to be discussed.

At the suggestion of Mr. Whitney and without objection, the Council added the words or representative after the word "member" on line 237, page 9.

A discussion was held regarding the issue of the responsibilities of the employee organization. It was noted that Bill No. 11-76 prohibits the condoning of strikes, work stoppages or picketing by failing to take affirmative action to stop it. Bill No. 23-76 contains no such prohibition.

Mr. Tull stated that the subject provision was not included in Bill No. 23-76 because it is meaningless. The officers of the organization could say to the employees, "Go back to work!" and would be complying with the law.

Councilman Menke referred back to the requirement that the County is required to meet with the employee organizations at least twice a year, and stated that the employee organization should have the same obligation. Councilman Novsepien stated that if conditions are satisfactory and the employee organization does not have anything to discuss, there should not be a requirement for a meeting.

At the suggestion of President Christeller and without objection, the Council added the words upon request by the County after the word "County" in line 284, page 10.

Mr. Whitney noted that the prohibition in line 278, page 10, for picketing the County has been declared unconstitutional by the courts; it interferes with freedom of speech. However, picketing can be prohibited in connection with a strike or work stoppage. Picketing in itself can be in the nature of providing information.

Without objection, the Council agreed to add the words in connection with a strike, work stoppage or slowdown in lieu of the words [in a County-employee dispute] on line 278, page 10.

The meeting adjourned at midnight.

ATTEST:



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