

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, June 5, 1986 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:15 A.M. on Thursday, June 5, 1986.

PRESENT

William E. Hanna, Jr., President  
Esther P. Gelman  
Rose Crenca

Neal Potter, Vice President  
Michael L. Gudis  
David L. Scull

ABSENT

Scott Fosler

The President in the Chair.

SUBJECT: Executive Regulation No. 145-85, Personnel Regulations

ISSUES DISCUSSED: The memorandum to the Council from Council Staff Director Spengler, dated June 3, 1986, setting forth the issues to be reviewed; the provision in Section 1-13(c) regarding the time frame for which an employee can receive a remedy from the date of filing the action; the position of the Personnel Office that no harm is done to the employee until a decision is made regarding the reclassification request, grievance, or appeal, and, therefore, there is no need for a retroactive provision; the concern of Mr. Thompson, attorney for the Montgomery County Government Employees' Organization (MCGEO) that the provision of Section 1-13 eliminates the retroactive provision for reallocations, which are likely to affect large classes of employees such as the nurses, but retains it for individual position reclassifications; concerns expressed by various Councilmembers that future reclassification/reallocation actions not take as long as it took to reclassify the nurses; the five-year cycle for reclassification reviews and the ability of the Personnel Office to keep up with that schedule; the opinion of Councilmember Gelman that it was inappropriate for the County to appeal a decision of the Merit System Protection Board regarding the reclassification of the nurses, and her desire for the County Attorney to brief and consult with the Council before initiating such action; the desire of Councilmember Potter to differentiate in Section 1-13 between those persons who file a request routinely at the beginning of a five-year reclassification review cycle in order to obtain the maximum benefit if their position is reclassified or reallocated upwards, and those cases where retroactivity is justified, and his inability to find the appropriate language to make the

distinction; the concern of Councilmember Scull that the provisions of Section 1-11, Prohibited Activities, does not include all of the activities which are prohibited under the ethics chapter of the law nor do they inform employees that there are further prohibitions and provisions for obtaining waivers from the Ethics Commission, and his suggestion that the regulations be amended to include a statement that "all County employees are subject to the ethics requirements of the Charter and Chapter 19A of the Montgomery County Code, and information is available from the Ethics Commission;" Councilmember Scull's concern regarding the definition of "family" in the Personnel Regulations and its apparent conflict with the definition of "family" in the ethics chapter of the Code; Councilmember Scull's concerns that certain sections of the Montgomery County Charter are reprinted in the Personnel Regulations and his statement that, in the Code revision process, the Council has decided not to repeat provisions of the Code; the provisions of Section 3-2 and 5-9 which define a "displaced homemaker" and allow the Chief Administrative Officer (CAO) to provide special scoring credits for a merit system examination for displaced homemakers; President Hanna's desire to delete the special credits for displaced homemakers; Councilmember Gelman's desire to retain special credits for displaced homemakers; Councilmember Fosler's belief that recognition be given to women who stay at home to care for their families but that, as a practical matter, he is concerned about how the system would be administered, and he does not believe that it can be done without the potential for abuse; Councilmember Scull's inquiry as to the statutory authority for the policy of preferential points for displaced homemakers, his belief that such a policy should not be instituted through the regulation process but rather through the legislative process, his suggestion that these provisions be deleted from the Personnel Regulations without the Council having made a final policy decision as to whether the County should have such a policy, and his statement that the preferential treatment for veterans is a matter of State law that cannot be repealed by the Council by removing it from the Personnel Regulations; the recommendation of the Personnel Committee that Section 6-4(d) be amended to delete the requirement that employees serving a probationary period must be advised of the steps to be taken to achieve an acceptable level of performance; President Hanna's belief that it is not necessary to advise a probationary employee in writing as to what must be done to achieve an acceptable level of performance; the statement by Mr. Garrett that the original draft required that employees be advised in writing but that it has been changed to require that the employees be "advised"; the opinion of Mr. Renne, President, MCGEO, that, if an employee is not working at an acceptable level of performance, he should be informed and given the opportunity to improve before the end of the probationary period.

**ACTION:** Recommended that the County Executive make the following amendments to the Personnel Regulations:

On page 11 of the draft, dated 5/20/86, delete [effect] from line 13 and insert in lieu thereof the word affect;

On page 19, lines 7 through 16, delete Section 3-2 in its entirety; and page 27, delete the language on line 22 through the end of line 23, as follows: [and to County residents who are displaced homemakers (as defined in Section 3-2 of these regulations)];

On page 31, lines 13 through 17, delete subsection (d) of Section 6-4, Probationary Period, in its entirety;

Agreed to meet again to review the Personnel Regulations from 1:30 to 4:30 P.M. on June 6 and from 2:00 to 5:00 P.M. on June 19, with the day of June 27 being held for an additional worksession if needed.

(The Council recessed at 12:20 P.M. and reconvened at 2:14 P.M.

SUBJECT: Bill No. 19-86, County Employee Collective Bargaining

ISSUES DISCUSSED: The staff summary, dated June 5, 1986, setting forth issues on the subject continued from the last worksession of May 29, 1986; Issue 4.D. of the summary, Binding Grievance Arbitration; the proposed amendment to pages 19 and 20 of the subject bill that would require binding grievance arbitration for discipline and discharge cases and advisory arbitration for other cases, unless the parties agree that the decision in a particular case will be binding.

ACTION: Agreed to retain the language contained in the bill on pages 19 and 20 regarding binding arbitration.

ISSUES DISCUSSED: Issue 4.E. of the summary, "Effects" Bargaining; the proposed amendment to page 20, lines 4 through 6, that would substitute the broad language from the police collective bargaining law on "effects" bargaining for the language in the bill which confines "effects" bargaining to the exercise of management rights when the exercise of management rights causes the loss of bargaining unit jobs; the County Executive's opposition to the amendment, as set forth on pages three and seven of his memorandum of May 29, 1986; the statement by Mr. Thompson, attorney representing MCGEO (Local 400), that the broader language is usually included in collective bargaining legislation, and is needed in the subject bill; the statement by Mr. Rogers, representing the County Executive, that the amendment should not be included in the bill because it would limit the power of the government to act in emergency and security situations and to make changes within the government involving technology and standards; the statement by Mr. Torgesen, staff of the Personnel Office, that the broader language was included in the police law because, when it was written, management was unaware of the potential impact of "effects" bargaining; the opinion of Mr. Willcox, special attorney, that the inclusion of the amendment could delay the implementation of a government action which might result in litigation; President Hanna's belief that inclusion of the amendment might interfere with the government's ability to implement improvements; Councilmember Potter's suggestion that an amendment might be drafted that would distinguish between actions the government must take in carrying out its responsibilities and actions the government could take to harass employees; Councilmember Potter's belief that a broader definition of "grievance procedure" is needed; the statement by Councilmember Fosler concerning the need for continuous communication between employees and employers when collective bargaining for public employees is initiated to avoid misunderstandings, and his support of the provision

included in the bill on "effects" bargaining; whether a government action resulting in the relocation of an employee's work place should be a subject of collective bargaining; Councilmember Gelman's suggestion that the bill could be amended to provide priority transfer to other County positions for employees who are being relocated similar to the priority granted to County employees who have lost their jobs as a result of a reduction in force action.

**ACTION:** Agreed to support the language in the subject bill regarding "effects" bargaining (subsection 33-107(7)) unless an acceptable amendment is drafted, as suggested by Councilmember Potter, that would distinguish between employer rights that must be exercised by the government and employer rights that might be exercised by the government as a form of employee harassment.

Adopted the following amendment proposed by Mr. Thompson:

In subsection 33-107(b)(17), after "representative," substitute    for [.] and add unless another date for notification is agreed upon by the parties.

**ISSUES DISCUSSED:** Issue 6 of the summary, Bargaining Impasse to be Broken with Fact-finding, not Binding Arbitration (Section 33-108); the statement by Mr. Thompson in opposition to the procedure set forth in the subject bill for the submission of the recommendations of the mediator/fact-finder and both negotiating parties to the County Council because he believes negotiators will make a greater effort to reach an agreement on issues if only the report of the mediator/fact-finder is submitted to the Council when the parties fail to reach an agreement; Councilmember Hanna's observation that the subject bill provides that, after the mediator/fact-finder makes recommendations on dispute issues, the parties are permitted to bargain an additional 10 days before the report of the mediator/fact-finder and the position of the two parties are submitted to the Council; the statement by Councilmember Fosler concerning the Personnel Committee's review of this issue, and its support of Section 33-108, as written; Councilmember Scull's concern that the Council's role in the bargaining process under the subject legislation is too broad and should be limited to budgetary and legislative actions; the language in the law (subsection 33-108(k)) which indicates that actions taken by the Council in resolving issues that are in dispute shall not be part of the agreement between parties unless the parties specifically incorporate them in the agreement; Mr. Willcox's suggestion that additional language could be added to indicate that matters that are still in dispute or that do not involve legislation or significant expenditure of capital will not be included in the contract; Councilmember Potter's concern regarding the language in subsection 33-108(i) which indicates that the Council will state its reasons for any intent to reject any part of the items agreed to by the negotiating parties; Mr. Willcox's suggestion that subsection 33-108(i) could be revised for clarification; the need for a technical amendment in the last sentence of 33-108(g).

**ACTION:** Amended, without objection, subsection 33-108(g), the last sentence, to substitute to which the parties have for [that has been agreed] and to add    after "to."

ISSUES DISCUSSED: Issue 7 of the summary, Timing of Bargaining (Section 33-108); the statement by Mr. Thompson withdrawing the amendment proposed by MCGEO that would provide for bargaining of a short contract for 1986-87 that would contain only non-economic items; Issue 8 of the summary, Labor Relations Administrator (Section 33-103); the proposed amendment that makes the first term of the Labor Relations Administrator five years, deletes the list of future appointees agreed upon by any certified employee representative(s) and the Chief Administrative Officer, and limits the participation in appointments by any certified employee representative(s) to the right to veto any reappointment; statements by Messrs. Thompson and Rogers indicating their support of the language included in the bill for Section 33-103 rather than the proposed amendment; Issue 9 of the summary, Repeal of the Mandated 75% Cost-of-Living Law (subsection 33-74(d)); the effect of the repeal upon County employees excluded from collective bargaining under subsection 33-102(4); Issue 10 of the summary, Meet and Confer (subsection-33-63A); the provision in this section which indicates that "meet and confer" representation will not be applicable to any person upon certification that the employees in the units are represented for collective bargaining; the proposed amendment that provides that State Merit System employees, who are excluded from collective bargaining under the bill, would retain "meet and confer" rights; the following amendment proposed by MCGEO to Section 33-112, Effect of Prior Enactments:

(a) Nothing contained in this article shall be construed to repeal any laws, executive orders, rules, or regulations adopted by the County and any department or agency thereof not inconsistent with the provisions of this article.

(b) Any executive orders, rules or regulations of the County and any department or agency of the County which concern any subject for bargaining pursuant to the provisions of this article shall not be held to be repealed or modified except to the extent that their subject matter is governed by the provisions of a collective bargaining agreement between the County and a certified exclusive employee representative.;

the statement by Mr. Thompson that the (b) paragraph of the proposed amendment provides that the collective bargaining agreement supersedes any executive order, rule or regulation of the County which is a subject for bargaining and is in conflict with the agreement; the statement by Mr. Willcox that the amendment might interfere with the implementation of subsection 33-108(g) which provides for the identification of any term or condition agreed to in the contract that requires an appropriation of funds or the enactment, repeal, or modification of any County law or regulation; the statement by Councilmember Potter that clarifying language needs to be added to this section to indicate that the agreement will not supersede any order, rule, or regulation which is in conflict with the collective bargaining agreement if it has not been identified as being in conflict; the need to add clarifying language to subsection 33-108(g) and to redraft the (b) paragraph of the amendment proposed by MCGEO.

ACTION: Asked that clarifying amendments be made to subsection 33-108(g) to emphasize the need for identification of County orders, rules or regulations that are in conflict with the collective bargaining agreement;

Approved the amendment proposed by MCGEO for Section 33-112, as redrafted to conform to subsection 33-108(g), as amended.

Approved Bill No. 19-86, as amended, by a straw vote.

by motion of Councilmember Gelman, without objection.

(SECRETARY'S NOTE: The bill is scheduled for final reading by the Council on June 24, 1986.)

(The Council recessed at 4:55 P.M. and reconvened at 7:30 P.M.)

SUBJECT: Public Hearing on Zoning Text Amendment No. 86007, Prohibiting Off-Site Commercial Signs

ACTION: The public hearing was conducted as reflected in the transcript of the hearing. The Council instructed that the record be kept open until close of business on June 19, 1986.

The meeting adjourned at 8:20 P.M.

This is an accurate account of the meeting:



Kathleen A. Freedman, Secretary  
County Council