COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin and Silverman

AN ACT to:

(1) modify certain functions of the Labor Relations Administrator;
(2) revise the process for certifying employee organizations;
(3) revise the timetable for certain collective bargaining actions;
(4) require binding arbitration of certain collective bargaining agreements; and
(5) generally amend the law governing collective bargaining for certain County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-103, 33-106, and 33-108

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:

33-103. Labor Relations Administrator.

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

* * *

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

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

33-106 Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for collective bargaining [shall be initiated in accordance with] must comply with the following procedures:
If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor to any collective bargaining agreement that the previous employee organization was a party to.

If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

(a) Collective bargaining [shall] must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and [shall] must be finished on or before [January] February 15. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]

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

(c) A collective bargaining agreement [becomes effective] takes effect only after ratification by the employer and [by] the certified representative. The certified representative may [provide] adopt its own [rules for] ratification procedures.

(d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator [shall] must appoint a mediator/[fact-finder] arbitrator, who may be a person recommended [to her] by both parties. The mediator/[fact-finder] arbitrator [shall] must be available [during the
period] from January 2 to [February 1] June 30. Fees and expenses of
the mediator/[fact-finder] arbitrator [shall] must be shared equally by
the employer and the certified representative.

(e) (1) During the course of collective bargaining, either party may
declare an impasse and request the services of the
mediator/[fact-finder] arbitrator, or the parties may jointly
request [his] those services before [declaration of] an impasse
is declared. If the parties do not reach an agreement by
[January] February 15, an impasse exists. Any issue regarding
the negotiability of any bargaining proposal must be referred to
the Labor Relations Administrator for an expedited
determination.

(2) This dispute [shall] must be submitted to the mediator/[fact-
finder] arbitrator whenever an impasse has been reached, or
[before that] as provided in subsection (e)(1). The
mediator/[fact-finder] arbitrator [shall] must engage in
mediation by bringing the parties together voluntarily under
such favorable circumstances as will [tend to bring about the]
encourage settlement of the dispute.
(3) If [and when] the mediator/fact-finder arbitrator finds, in [his]
the mediator/arbitrator's sole discretion, that the parties are at a
bona fide impasse, [he shall implement the following fact-
finding process:] or as of February 15 when an impasse is
automatically reached, whichever occurs earlier, the dispute
must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of
all items previously agreed upon, and separate memoranda of
their proposals on all items not previously agreed upon.]

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

[(b.) (2)] The mediator/arbitrator may require the parties to submit
oral or written evidence [or make oral or written] and
arguments in support of their proposals. [He] The
mediator/arbitrator may hold a hearing for this purpose at a
time, date, and place selected by [him] the mediator/arbitrator.
This hearing [shall] must not be open to the public.

[(c.) (3)] On or before February 1, the mediator/fact-finder shall issue a
report of his findings of fact and recommendations on those
matters still in dispute between the parties. The report shall be
submitted to the parties but shall not be made public at this
time."

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

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

[(i)] (A) Past collective bargaining agreements between the
parties, including the past bargaining history that led to
the agreements, or the pre-collective bargaining history
of employee wages, hours, benefits, and working
conditions.

[(ii)] (B) Comparison of wages, hours, benefits, and conditions of
employment of similar employees of other public
employers in the Washington Metropolitan Area and in Maryland.

Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

The interest and welfare of the public.

The ability of the employer to finance economic adjustments, and the effect of the adjustments [upon] on the normal standard of public services provided by the employer.

The economic offer selected by the mediator/arbitrator, together with the mediator/arbitrator’s conclusion on each non-economic proposal, integrated with all previously agreed on items, is the final agreement between the employer and the certified representative, need not be ratified by any party, and has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement, and any provision which requires action in the County budget must
be included in the budget which the employer submits to the County Council.

(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator-fact-finder, the report of the mediator-fact-finder, with recommendations on agreed items deleted, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.

(g) The budget that the employer submits to the Council [shall] must include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed term or condition submitted to the Council that requires an appropriation of funds, or the enactment, repeal, or modification or adoption of any County law or regulation, or which has or may have a present or future fiscal impact, may be accepted or rejected in whole or in part by the Council. [Such terms or conditions shall be identified to the
Council by either or both parties.] The employer must expressly identify any term or condition that requires Council review. The employer [shall] must make a good faith effort to have the Council take action to implement [any term or condition to which the parties have agreed] all terms of the final agreement.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement [and the recommendations for resolving bargaining disputes].

(i) On or before May 1, the Council [shall] must indicate by resolution its intention to appropriate funds for or otherwise implement the [items that have been agreed to] agreement or its intention not to do so, and [shall] must state its reasons for any intent to reject any [items of the kind specified in subsection (g) that have been agreed to] item of the final agreement. [The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]

(j) [Then] If the Council indicates its intention to reject any item of the final agreement, the Council [shall] must designate a representative to
meet with the parties and present the Council’s views in the parties’
further negotiation on [disputed matters and/or agreed upon] matters
that the Council has indicated its intention to reject. The parties must
submit the results of the negotiation, whether a complete or a partial
agreement, [shall be submitted] to the Council on or before May 10.

(k) Any agreement [shall] must provide for automatic reduction or
elimination of wage [and/or] benefits adjustments if:

(1) The Council does not take action necessary to implement the
agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year [in
which] when the agreement is in effect.

[(k)] (1) The Council [shall] must take [whatever actions it considers] any
action required by the public interest with respect to [matters] any
matter still in dispute between the parties. However, [those actions
shall not be] any action taken by the Council is not part of the
agreement between the parties unless the parties specifically
incorporate [them] it in the agreement.

Approved:

Isiah Leggett, President, County Council  Date
Approved:

Douglas M. Duncan, County Executive

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council
LEGISLATIVE REQUEST REPORT
Bill 26-99
Collective Bargaining - Amendments

DESCRIPTION: Requires binding arbitration of collective bargaining agreements for County government employees. The form of binding arbitration is last best offer for the entire economic package, and last best offer item-by-item for non-economic items. The arbitrator would decide which issues are economic or non-economic. Also revises the process for certifying employee organizations and the timetable for certain collective bargaining actions.

PROBLEM: Need for other County government employees to have the same right to bargaining arbitration as County public safety employees now have.

GOALS AND OBJECTIVES: To make the collective bargaining process fairer to employees.

COORDINATION: Office of Human Resources, Office of Management and Budget

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: Applies only to County government.

PENALTIES: None