

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 13-01, *Collective Bargaining - Fire/Rescue Employees*

The Council President at the request of the County Executive introduced Bill 13-01, *Collective Bargaining - Fire/Rescue Employees* on March 20, 2001. Bill 13-01 would include fire/rescue lieutenants and captains in the bargaining unit with lower ranking fire/rescue employees. It is similar to Bill 10-00, enacted last year, which incorporated police sergeants into the police collective bargaining unit. Currently, according to the Office of Human Resources (OHR), the bargaining unit has about 662 members (Firefighter/Rescuer I, II, III and Master Firefighter/Rescuer), and the Fire and Rescue Service has 110 captains and 89 lieutenants.

A public hearing was held on April 17. Along with the testimony on ©8-12 and Fire Board letter on ©13-15, a representative of the Career Fire and Rescue Officers Association supported the bill, and a fire lieutenant opposed it because, in his view, the affected employees should be able to vote on joining the bargaining unit rather than having that decision made for them.

Issues

1) Right to bargain: Should fire supervisors be able to bargain collectively?

Bill 13-01 extends collective bargaining to lieutenants, who are first-line supervisors, and fire captains. Until police sergeants were given collective bargaining rights by Bill 10-00, supervisors were not included in any County government bargaining unit.¹

On the merits, *any* group of employees (except the highest management ranks) has a strong argument for gaining the right to bargain collectively to have a mechanism for management to recognize and respond to their unique problems. (County policy has traditionally

¹See the definition of "employee" in Code §33-102(4) for County employees, especially §33-102(4)(S), which defines and excludes "supervisors"; the definition of "employee" in Code §33-148(4) for firefighters, which excludes Fire/Rescue Lieutenants and higher ranks.

been to pass through wage and benefit settlements to unrepresented employees, so supervisors' primary need for collective bargaining is not economic.) The central question then becomes: at what level of management is collective bargaining inappropriate because of the fundamental difference of roles between managers and line employees?

2) Nature of bargaining unit: What kind of bargaining unit should fire supervisors be placed in?

If fire supervisors are covered by collective bargaining, what bargaining unit is most suitable? Two options seem reasonable:

Supervisors-only unit Under this approach, the captains and lieutenants would be placed in a separate unit whose members would elect their own bargaining agent, which could be the bargaining agent for the current unit (the IAFF) or a different union.

"Rank and file" unit The bill as introduced places the captains and lieutenants in the "rank and file" bargaining unit, as was ultimately done for the police sergeants. The rationale for doing this centers on the need for a single fire service collective bargaining agreement, or at least the need to avoid inconsistent agreements. However, a single unit has been criticized because it places the first-line supervisors, who administer discipline and otherwise direct employee conduct, in the same unit as those they supervise.

3) Scope of bargaining unit: Which supervisors should be excluded?

The bill as introduced lists management personnel who would *not* be in the bargaining unit: any captain or lieutenant whose primary assignment involves sensitive issues such as labor relations, budget, personnel, internal affairs, public information, and quality assurance (see ©2, lines 17-24).

4) Process: Should the captains and lieutenants vote on their bargaining status?

The bill as introduced would automatically place the captains and lieutenants in the bargaining unit, without any opportunity to vote on the issue, as was done with the police sergeants. In effect, this treats the change as an accretion to the bargaining unit. However, the size of the affected employee cohort (the bill would increase the size of the bargaining unit by about 30%) and the nature of the employees (management rather than rank-and-file) contrasts with a normal accretion, which generally involves smaller numbers of more-or-less identical employees. These distinctions, in Council staff's view, argue for an independent process.

Normally employees are put in a collective bargaining unit only if they vote to do so or otherwise register their desire to be subject to collective bargaining. For example, the initial certification of a bargaining agent under the fire/rescue collective bargaining law (Code §33-151(a)) requires "the uncoerced signatures of 30 percent of the employees in the unit, signifying their desire to be represented by the employee organization for purposes of collective bargaining." After those signatures are validated, an election is held among "all eligible employees" and they are placed in a bargaining unit only by majority vote.

When the Council placed police sergeants in the police bargaining unit, the applicable union, the Fraternal Order of Police, had already enrolled a majority of the affected employees as non-represented members. Similarly (see IAFF testimony, ©11) the union representing this bargaining unit claims a majority of the captains and lieutenants as members.

One amendment the Committee could consider is to allow the supervisors to vote on several options for representation. Those options could include:

- Inclusion in the current fire/rescue bargaining unit;
- A stand-alone supervisors' bargaining unit;
- A single-rank bargaining unit, including only either lieutenants or captains.

If the employees select either of the latter two options, the new bargaining unit would then hold another election to select a bargaining agent.

This packet contains:

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Bill No. 13-01
Concerning: Collective Bargaining –
Fire/Rescue Employees
Revised: 3/15/01 Draft No. 1
Introduced: March 20, 2001
Expires: September 20, 2001
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) include certain fire/rescue lieutenants and captains in the bargaining unit with certain fire/rescue employees for the purpose of collective bargaining; and
- (2) generally amend the law regarding collective bargaining for fire/rescue employees.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-148 and 33-151

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

①

1 **Sec. 1. Sections 33-148 and 33-151 are amended as follows:**

2 **33-148. Definitions.**

3 The following terms have the meaning indicated when used in this Article:

4 * * *

5 (2) **Certified representative** means an **employee** organization chosen to
6 represent the **unit** as the exclusive bargaining agent [in accordance
7 with] under this Article or Article VII.

8 * * *

9 (4) **Employee** means [any] a fire and rescue **employee** in the
10 classification of Fire/Rescue Captain, Fire/Rescue Lieutenant, Master
11 Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II,
12 and Firefighter/Rescuer I, but not [any **employee**]:

13 (A) an employee in a probationary status[, or];

14 (B) an employee in the classification of [Fire/Rescue Lieutenant]
15 District Chief or [any] an equivalent or higher classification[.];

16 or

17 (C) a Fire/Rescue Lieutenant or Captain whose primary assignment
18 is in:

19 (i) budget;

20 (ii) internal affairs;

21 (iii) labor relations;

22 (iv) human resources;

23 (v) public information; or

24 (vi) quality assurance.

25 * * *

26 **33-151. Selection, certification, and decertification procedures.**

27 (a) [Any] An employee organization seeking certification as
 28 representative of the **unit** must file a petition with the Labor Relations
 29 Administrator stating its name, address, and its desire to be certified.
 30 The **employee** organization must also send a copy of the petition,
 31 including a copy of the signatures of the supporting **employees** on the
 32 petition, to the employer. The petition must contain the uncoerced
 33 signatures of 30 percent of the **employees** in the **unit**, signifying
 34 [their] the employees' desire to be represented by the **employee**
 35 organization for purposes of collective bargaining.

* * *

37 *Approved:*

38 _____
 Blair G. Ewing, President, County Council Date

39 _____
 Douglas M. Duncan, County Executive Date

40 *This is a correct copy of Council action.*

41 _____
 Mary A. Edgar, CMC, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill -01

Collective Bargaining – Fire/Rescue Employees

DESCRIPTION:	Provides collective bargaining rights for fire/rescue lieutenants and captains by including them in the bargaining unit with non-supervisory uniformed fire/rescue employees.
PROBLEM:	County law does not currently allow fire/rescue lieutenants and captains to be represented for the purpose of collective bargaining.
GOALS AND OBJECTIVES:	To allow fire/rescue lieutenants and captains to be represented for collective bargaining purposes in a bargaining unit with non-supervisory fire/rescue employees.
COORDINATION:	Office of Human Resources and Fire & Rescue Services
FISCAL IMPACT:	Office of Management and Budget will provide a fiscal impact analysis.
ECONOMIC IMPACT:	n/a
EVALUATION:	n/a
EXPERIENCE ELSEWHERE:	In Baltimore County and the D.C. Government, fire/rescue employees at the rank of captain and below are included in a unit with non-supervisory employees; in Howard County fire/rescue employees at the rank of lieutenant and below are in a bargaining unit with non-supervisory employees; in Prince George's County, sergeants, lieutenants, and captains are in a separate unit; in Baltimore City, fire/rescue lieutenants, captains, and battalion chiefs are represented in a separate unit; and in Anne Arundel County, fire/rescue supervisors are not included in a bargaining unit (in July 1999, lieutenants and captains were removed from the unit because they have supervisory authority over unit members).
SOURCE OF INFORMATION:	James E. Torgesen, Office of Human Resources, 7-5050
APPLICATION WITHIN MUNICIPALITIES:	n/a
PENALTIES:	n/a

Bill



RECEIVED COUNCIL

FILE
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ME

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MAR 8 AIO: 02

Douglas M. Duncan
County Executive

March 7, 2001

036482



TO: Blair G. Ewing, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Collective Bargaining for Fire and Rescue Employees

I am pleased to transmit for your introduction, consideration, and approval legislation to extend collective bargaining rights to Fire and Rescue lieutenants and captains. Fire and Rescue lieutenants and captains have expressed an interest in having a more active role in determining their salaries, benefits, and other working conditions.

This legislation will allow the lieutenants and captains of the Fire and Rescue Services to organize and be represented for the purpose of collective bargaining.

My staff and I look forward to working together with you towards favorable consideration of this legislation. Thank you.

Attachments

Bill 13-01

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OFFICE OF MANAGEMENT AND BUDGET

Douglas M. Duncan
County Executive

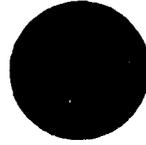
Robert K. Kendal
Director

MEMORANDUM

March 30, 2001

TO: Blair G. Ewing, President
Montgomery County Council

037421



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RECEIVED COUNCIL

VIA: Bruce Romer
Chief Administrative Officer

FROM: Robert K. Kendal, Director
Office of Management and Budget

Martha O. Lombardi for Kendal

SUBJECT: Collective Bargaining – Uniformed Fire and Rescue Lieutenants and Captains

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the aforementioned proposed legislation.

SUMMARY

The County Executive proposed legislation amends Chapter 33 of the Montgomery County Code, Personnel and Human Resources. The proposed amendment would include supervisory uniformed Fire and Rescue employees classified as Lieutenants and Captains in the International Association of Firefighters, Local 1664, which currently includes non-supervisory uniformed fire and rescue employees.

FIRE/RESCUE SUPERVISORS - FISCAL SUMMARY

During FY02, County labor negotiations would begin with the existing International Association of Firefighters, Local 1664, in which the proposed legislation would include employees within the Fire and Rescue Lieutenant and Captain job classes. The Office of Human Resources anticipates \$10,000 of additional operating costs to cover consultant services and costs associated with the implementation of these classes during the FY02 collective bargaining process.

Office of the Director

(2)

Blair G. Ewing, Council President
March 30, 2001
Page 2

		FY 02
Personnel Cost	None	\$0
Operating Expenses		\$10,000
Total		\$10,000

Jim Torgesen, Office of Human Resources, contributed and concurred with this analysis.

RKK: jab

cc: Marta Brito Perez, Director, Office of Human Resources

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TESTIMONY OF JAMES TORGESEN
LABOR/EMPLOYEE RELATIONS MANAGER, OFFICE OF HUMAN
RESOURCES
BEFORE THE MONTGOMERY COUNTY COUNCIL
ON BILL NO. 13-01, APRIL 17, 2001

GOOD MORNING, MY NAME IS JAMES TORGESEN AND I AM
HERE ON BEHALF OF THE COUNTY EXECUTIVE TO EXPRESS SUPPORT
FOR BILL NO. 13-01.

THE COUNTY EXECUTIVE DESIRES TO PROVIDE AN
OPPORTUNITY FOR LIEUTENANTS AND CAPTAINS WITHIN THE
COUNTY'S DEPARTMENT OF FIRE AND RESCUE SERVICES TO
COLLECTIVELY BARGAIN OVER THEIR WAGES, HOURS AND
WORKING CONDITIONS. THIS BILL WOULD INCLUDE EMPLOYEES IN
THESE TWO JOB CLASSES IN THE EXISTING BARGAINING UNIT OF
EMPLOYEES IN THE RANK OF MASTER FIRE FIGHTER/RESCUER AND
BELOW. AS EMPLOYEES IN THESE TWO CLASSES WORK CLOSELY
WITH EXISTING BARGAINING UNIT MEMBERS IN THE DAY TO DAY
OPERATIONS OF THE DEPARTMENT THERE IS EVIDENCE OF A
COMMUNITY OF INTEREST IN THE TERMS AND CONDITIONS OF
EMPLOYMENT BETWEEN THE TWO GROUPS. MOREOVER, MANY OF

THE TERMS OF THE EXISTING AGREEMENT HAVE BEEN PASSED THROUGH TO THESE EMPLOYEES.

EXTENDING COLLECTIVE BARGAINING RIGHTS TO THIS GROUP OF EMPLOYEES IS NOT INCONSISTENT WITH THE TREATMENT OF SIMILAR EMPLOYEES IN OTHER LOCAL GOVERNMENT JURISDICTIONS IN THE WASHINGTON/BALTIMORE METROPOLITAN AREA." AS NOTED IN THE LEGISLATIVE REQUEST REPORT, THE SAME STRUCTURE AS PROPOSED EXISTS IN BALTIMORE COUNTY AND THE DISTRICT OF COLUMBIA. OTHER JURISDICTIONS INCLUDING HOWARD COUNTY, PRINCE GEORGES COUNTY AND BALTIMORE CITY EXTEND BARGAINING RIGHTS TO SIMILAR CLASSES AS A PART OF A NON-SUPERVISORY UNIT OR AS A SEPARATE UNIT.

THE BILL DOES CONTAIN A SERIES OF EXCLUSIONS WHICH WE FEEL ARE NECESSARY FOR THE EFFECTIVE OPERATION OF THE DEPARTMENT AND WILL HELP AVOID THE POTENTIAL FOR CONFLICTS OF INTEREST. IN THE MAIN, THESE ASSIGNMENTS HAVE TO DO WITH THE PERSONNEL, FINANCIAL AND POLICY ADMINISTRATION WITHIN THE DEPARTMENT.

AS THE COUNTY IS COMPLETING THE SECOND YEAR OF A THREE YEAR AGREEMENT WITH THE MONTGOMERY COUNTY CAREER FIRE FIGHTERS ASSOCIATION, IAFF LOCAL 1664, THE

(9)

PASSAGE OF THIS BILL WOULD EXTEND THE OPPORTUNITY FOR LIEUTENANTS AND CAPTAINS TO PARTICIPATE IN THE BARGAINING PROCESS THIS FALL. COVERAGE UNDER A COLLECTIVE BARGAINING AGREEMENT WOULD THEN TAKE EFFECT WITH THE IMPLEMENTATION OF A NEW AGREEMENT AS OF JULY 1, 2002.

THANK YOU FOR THE OPPORTUNITY TO PROVIDE TESTIMONY ON THIS PROPOSED BILL AND WE WOULD REQUEST THAT YOU FAVORABLY CONSIDER ITS PASSAGE.



LOCAL 1664

Montgomery County Career Fire Fighters Ass'n., Inc.

TESTIMONY OF JOHN J. SPARKS, PRESIDENT, MONTGOMERY COUNTY
CAREER FIRE FIGHTERS ASSOCIATION IAFF LOCAL 1664

PUBLIC HEARING - BILL 13-01
April 17, 2001

President Ewing, County Council members, thank you for the opportunity to speak to you on Bill 13 – 01 Collective Bargaining for Fire/ Rescue Employees. We applaud County Executive Doug Duncan for recognizing the importance of extending collective bargaining rights to Fire/ Rescue Lieutenants and Captains. Representation for these employees is long overdue.

As you know, our collective bargaining law restricts the subjects that represented employees may bargain over.
These subjects are:

- Salary and Wages
- Pension and other retirement benefits
- Insurance, leave, holiday and vacations
- Hours and working conditions
- Settlement of grievances
- Matters affecting health and safety and
- The amelioration of the effect on employees when the exercise of employer rights cause a loss of existing jobs

These subjects are just as important to Lieutenants and Captains as they are to Master Fire Fighters and Fire Fighter Rescuers. None of these subjects impact the job duties and job requirements of any rank in the fire/ rescue service. In fact, when our Local negotiates changes that affect these subjects they are passed through to Lieutenants and Captains. Wage increases, changes to retirement, pensions, insurance, leave, hours of work and working conditions, they mean the same to each of us regardless of our rank. The only difference is in the settlement of grievances, where they currently follow a different process.

Currently there are 191 combined Lieutenants and Captains. Of those 191 personnel, 118 of them are and have been members of our Local for years, paying dues voluntarily. They pay their dues even though they are not “officially” represented however, knowingly aware that they will reap the benefits of the collective bargaining process. It is time to bring them out of the closet and to extend the basic rights of representation to these ranks as those employees that they work side by side with currently enjoy.

Please note: the website printed below is incorrect; it should read as www.iafflocal1664.com.

11

We ask that you support Bill 13 – 01. Thank you very much.

B13-01



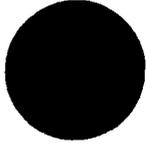
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MONTGOMERY COUNTY FIRE BOARD

April 17, 2001

Honorable Council Members
Montgomery County Council
Stella Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850



037973

RE: Testimony to Bill 13-01 Collective Bargaining -- Fire/Rescue Employees

Dear Council Members:

The Montgomery County Fire Board, representing the nineteen Local Fire and Rescue Departments, appreciates the opportunity provided by law to comment on proposed legislation contemplated by the Montgomery County Council. To that end, we are pleased to advise the Montgomery County Council on matters concerning the Bill 13-01, Collective Bargaining -- Fire/Rescue Employees.

This proposed amendment to the County Code would modify Chapter 33, Sections 33-148 and 33-151, wherein the career fire and rescue lieutenants and captains would become part of the same collective bargaining unit as other fire and rescue employees whom they supervise. The Fire Board has concerns and is opposed to such action that would place management and supervisory personnel in a position that would compromise their ability to effectively manage those whom they are responsible for supervising.

We are disappointed that the County Executive forwarded this bill for consideration without thoughtful consideration and contact with appropriate Montgomery County Fire and Rescue Service (MCFRS) stakeholders, especially the Fire and Rescue Commission, the County's regulatory authority for the Service. It is also troublesome to see that such a measure would be introduced to Council without first seeking input from the Local Fire and Rescue Departments' Boards of Directors, which comprise the County's private management partners.

We are concerned that without management representation within the Local Fire and Rescue Department stations, the interests of both partners, County Government and the corporate entity of the Local Fire and Rescue Departments, will not be served under this measure. This initiative is believed to have a number of shortcomings associated with it.

With that in mind, the Fire Board has several specific points to be considered:

- No. 1 The County would do well to look to the structure of the National Labor Relations Act (NLRA), which governs private sector employment. It contemplates that management is to have the right to demand the absolute loyalty of its supervisors. Towards that end, the employer has the absolute right to keep supervisors out of any bargaining unit. The point under the NLRA, therefore, is that supervisors should owe complete allegiance to management, which they cannot have if they also have allegiance to the union, which marches in the opposite direction. The only ones left who can be depended on to tow management's position, will be the chiefs who, effectively, will be turned into micromanagers rather than leaders.
- No. 2 The above point is underscored by virtue of the power of the union to sanction its members for violation of union rules. So, for instance, if the union enacts an internal rule to ban captains from chastising a subordinate fellow member, the union would then be able to sanction the captain for disciplining a firefighter who, for instance, failed to follow an order to wear his/her protective clothing properly. The net effect can be to allow the union to control the management and supervision of the department through the union's power to sanction and discipline supervisors as mere members. Followed to its inexorable end, the union would be able to completely cripple management simply through its union power to control members for not following union policy.
- No. 3 In theory, the object of collective bargaining is to equalize the power of labor to that of management. But, when management jumps into the union side of the seesaw, the desired equilibrium is destroyed.

There unfortunately already exists in Montgomery County, the situation where many of the present lieutenants and captains are already dues paying members of the union, thus, calling to question their loyalties as managers in the Service. The lack of any consistent discipline at the field level in the fire service is testament to the argument that supervisors should not be in the same bargaining unit as those they are paid to supervise. To make matters even worse, even the highest level of management continues to be allowed to participate in the union, even if the collective bargaining does not apply. Even a past Director of the Department of Fire and Rescue Services remarked that he was still a dues paying member of the union. The Council not only needs to defeat this bill, but also should consider a measure prohibiting the practice of any manager remaining affiliated with the union representing those whom they are assigned to manage.

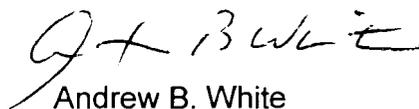
No. 4 If the County, notwithstanding, wants to give the lieutenants and captains "a say in wages and benefits," there are alternatives. The County could, with relative ease, form a committee of captains and lieutenants and solicit their input in determining wages and benefits (without bargaining and without putting them in their subordinates' bargaining unit).

The County would be wise to learn from the mistakes made in our neighboring counties. For instance, Ann Arundel County, according to information contained in County Executive Douglas M. Duncan's letter to the Council introducing this bill, at one time allowed lieutenants and captains to be members of the collective bargaining unit, and later rescinded that practice. When the Fire Board inquired as to why this practice was discontinued, Fire Administrator Gordon Aoyagi, on April 4, 2001, reasoned that it was likely because the lieutenants and captains are supervisors. When asked further if Montgomery County's lieutenants and captains are considered supervisors, he answered that they indeed are. That recent exchange of questions and answers again demonstrates how Montgomery County, and specifically the fire and rescue service, fails to properly distinguish the relationship between management and labor.

In closing, it has been brought to our attention that even some of the lieutenants and captains who would supposedly "benefit" from enactment of this bill are publicly opposed to it for some of the very reasons listed above. Those officers should be commended for their leadership and ability to recognize what is best for the County and its citizenry. They clearly recognize that what has been characterized as a "side-by-side" working relationship with their subordinates never relieves them of their responsibility to make effective management and supervisory decisions and represent the management ideals of County Government.

Therefore, the Fire Board recommends that the Montgomery County Council **REJECT Bill 13-01, Collective Bargaining -- Fire/Rescue Employees**, as it is not in the best interests of the Montgomery County Fire and Rescue Service, nor is it consistent with the needs of the citizens of Montgomery County. Should you wish to discuss this further, please feel free to contact me on 301-929-8000.

Sincerely,


Andrew B. White
Chairperson