MFP ITEM 7
May 1, 2002
Worksession

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 9-01, *County Employees - Collective Bargaining Units*

Background Councilmembers Subin, Council President Ewing, and Councilmembers Leggett, Berlage, Denis, Silverman, and Andrews introduced Bill 9-01, *County Employees - Collective Bargaining Units* on February 27, 2001. A public hearing was held on March 20, 2001, and an initial Committee worksession was held on April 25, 2001.

As introduced, Bill 9-01 would move certain employees into the County employees collective bargaining units by repealing the current law's exemptions for temporary, seasonal, or substitute employees; highly paid (Grade 27+) non-supervisory employees; and certain non-merit employees who are not department heads or deputies. For a list of currently exempt employees, see the excerpt from the County Code on ©5-7.

At the public hearing the only speakers represented the Municipal and County Government Employees Organization (MCGEO). See testimony, ©10-11. While Executive branch staff did not testify at the hearing, the Office of Human Resources (OHR) did respond later to questions posed by Council staff when the bill was introduced (see ©28-30). Just before the April 2001 worksession OMB submitted a fiscal impact statement, which estimated the cost of implementing this bill, if it results in extending health benefits to certain temporary employees, at about $900,000, and the economic impact on affected County employees (union dues or service fees paid) at about $250,000 (see ©31-33). The fiscal impact estimate does not include any salary increase that might be necessary to attract applicants to fill certain jobs affected by this bill; for arguable examples of this effect, see the emails on ©23-24 and 26.

Outreach Shortly before the hearing, Council staff notified County employees of this bill by email (see ©8) and sent postcards (see ©9) to about 2700 temporary, seasonal, and substitute employees (all those who received a County paycheck during the previous year). Response to these notices was uniformly negative, as the sample letters and emails on ©12-27 indicate; only one affected employee, a telephone caller, supported the bill without reservation. However, MCGEO attributed the negative response to the wording of the notice.

Activity after Committee worksession After the April 2001 worksession MCGEO's attorney submitted a memo on the issue of standards for accretion to the bargaining unit and

related issues (see ©36-42). Council staff distilled the Committee members' remaining questions into a memo to OHR and MCGEO (see ©43-44). Both parties responded in detail (see ©45-48 for MCGEO, ©49-54 for OHR). In addition, Sheila Sprague of the Office of Intergovernmental Relations (OIR) submitted a letter, proposing that upper-level OIR staff be exempted from the bargaining unit (see ©55-56). Finally, after conferring extensively with the Executive branch and MCGEO, Councilmember Denis, lead member for personnel issues, drafted a set of amendments -- essentially a substitute bill -- for the Committee to consider (see ©57-63).

Issues/pending amendment

This section of our memo will consider the issues raised by the bill as introduced and how Councilmember Denis' amendments would resolve those issues.

1) How many employees, in which job classifications, would be added to the bargaining units?

As introduced, the bill would bring 3 types of employees into the County employees collective bargaining units. Below are the categories, some subcategories and typical jobs, and approximate number of employees in each category (as estimated by OHR last year):

Temporary, seasonal, or substitute employees	**2700**
Minimum wage job classes (S1-S8; see ©35)	2250
(typical job: recreation/aquatics assistant, library page)	
Bargaining unit job classes	410
(typical job: seasonal highway construction supervisor, substitute nurse, librarian)	
Non-supervisory Grade 27 and up[1]	54
(typical job: DIST programmer)	

At the hearing MCGEO's President, Gino Renne, noted that many employees in this category who are in sensitive job classes can still be individually excluded from the bargaining unit by action of the OHR Director. His reason for wanting to cover them in this bill is to protect them from being excluded from the bargaining unit solely because of a reclassification or promotion.

Non-merit employees who are not department heads or deputies 0

Executive and Council staff have not identified anyone who would fall into this category. Many non-merit employees are in completely exempt offices, such as the Executive's, Chief Administrative Officer's, and Council offices, and virtually all other non-merit employees are exempt because they are supervisors. In addition, under the current law (see ©2, lines 5-6) the bargaining unit consists only of merit system employees, so the only apparent effect of this amendment (©2, lines 10-11) is to delete an error or anomaly from the law.

[1]Supervisors in all grades would still be exempt. See (S) on ©6.

Denis amendment: This amendment would add the following employees to the bargaining units:

- employees in positions classified in grade 27 or higher which before July 1, 2002, had been classified below grade 27 -- see (P) on ©60;
- temporary, seasonal, and substitute employees who work more than 6 months in a bargaining unit job class (now estimated to be about 470 employees) -- see (H) on ©58 and §33-105(c)(1) on ©60-61; and
- temporary, seasonal, and substitute employees who are not in bargaining unit job classes and who work at least 25 hours per pay period -- see §33-105(c)(2) on ©61 and §33-107(b) on ©63. This group includes what are usually considered the truly seasonal employees -- for example, the lifeguards, recreation workers, and leaf collectors. Two special provisions would apply to these "limited-scope" employees: they would be assessed lower union dues or service fees (see §33-105(c)(2)(B) on ©61), and the scope of bargaining for them would be limited essentially to wages (see §33-107(b) on ©63).

In Council staff's view, the first two groups are the most defensible inclusions, especially if the inclusion is accomplished by accretion (see next issue). These are the exempt employees who most closely resemble covered employees, and who have the fewest substantive reasons to be excluded. The inclusion of employees who are reclassified to grade 27 or higher after the bill takes effect responds to MCGEO's "grade creep" argument. However, these groups include many of the people who expressed strong opposition to membership in the bargaining unit (see e.g. ©12-17, 25).[2] The "limited-scope" seasonal employees -- such as lifeguards, recreation workers, leaf collectors -- who are classified in the Minimum Wage/Seasonal Salary Schedule (see ©35) arguably have a more remote relationship to current bargaining unit members, although MCGEO points out that they work with and are supervised by bargaining unit members.

2) Should the affected employees be able to vote on joining a bargaining unit?

In other words, should this bill amend County Code §33-106 to apply the petition and election procedures to substantial additions to a bargaining unit as well as certification and decertification of the bargaining agent? 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 County employees collective bargaining law[3] requires "the uncoerced signatures of thirty (30) percent of the employees within 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 incorporated in a bargaining unit only by majority vote.

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[2]Committee members may recall that the law does not require a bargaining unit member to be a member of MCGEO, but instead the employee must pay an agency fee unless exempt on religious grounds (see County Code §33-104(c)-(d), and definition of *agency shop* in §33-102(1) on ©5).

[3]County Code §33-106(a)(1).

By contrast, this bill would absorb covered employees in a bargaining unit by legislative fiat. (Before the Council in Bill 10-00 took a similar action to place 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.) When the only available gauge of employee sentiment -- communication with the Council -- runs almost unanimously *against* bargaining unit membership, that fact would seem to warrant greater legislative caution.

MCGEO argues that conducting a petition drive or an election among a shifting group of temporary, seasonal employees could be difficult or impractical. If so, that would raise the question whether it makes sense to place this employee group in a bargaining unit -- i.e., whether these employees have the requisite community of interest. In staff's view, the nature of the employee group governs both questions equally. OHR concluded that the reasons for excluding these employees from the bargaining units are still valid (see ©28, 49-51).

Denis amendment: This amendment would automatically include covered employees in the bargaining unit. For the smaller group of employees who are most like current bargaining unit members, in Council staff's view the community of interest is clearer and the objections to accretion by legislation lose much of their force. The same cannot easily be said for the larger group of "true seasonal" employees, who would be represented only for wages and would pay reduced dues (although the exact size of the reduction is determined by the union).

3) Should short-term employees be treated like other temporary employees for collective bargaining purposes?

OHR makes a case that the "true seasonal" employees either should not be merged into the bargaining unit, or should be represented only for purposes of bargaining wages (see ©29). As OHR also notes, wage increases are always passed through to these and other unrepresented employees. Council staff agrees with OHR that seasonal employees hired for a truly short term (e.g., less than 90 days) should be excluded from bargaining even if seasonal employees as a class are included. Excluding these employees (e.g. lifeguards, summer camp aides) would simplify the County's personnel administration and narrow the issue (discussed below) of proration of dues and service fees. The strongest argument for including them in a bargaining unit is their "free rider" status vis-à-vis wage adjustments, but in staff's view that argument carries less weight for truly transient workers.

Denis amendment: Includes in the bargaining unit, for wage bargaining only, short-term temporary, seasonal, and substitute employees who are not in bargaining unit job classes. Those employees become members of the bargaining unit when their County employment begins if they are scheduled to work at least 25 hours a pay period (assuming that the union has met the condition of reducing their dues commensurate with its narrower scope of representational responsibilities).

4) Should temporary, seasonal, or substitute employees be treated the same as other bargaining unit members for negotiation of employee benefits? Should the collective bargaining law limit benefits for short-term employees?

OHR proposed that these employees be represented only for bargaining wages (see ©29). OMB estimated the cost of providing health benefits to 50% of the eligible temporary employees at about $360,000 (the S series of minimum wage job classes on ©35) and about $425,000 for temporary employees in the bargaining unit classes. See fiscal estimate, ©32.

Denis amendment: This amendment does not restrict the scope of bargaining for those temporary, seasonal, and substitute employees in bargaining unit job classes, except that their probation period -- or any other employee's -- cannot be reduced below 6 months (see ©62-63), and they cannot be bargained into the current retirement systems or be eligible for binding grievance arbitration (see §33-107(a)(2) and (5) on ©62). It does limit the scope of bargaining for "true seasonal" employees to wages (see ©63).

5) Should dues or service fee payments be prorated for short-term employees? For low-paid employees?

As a number of affected employees noted (see letters, ©12-27), their already low pay would be made more regressive if union dues (or the alternative service fee) were withheld at the current rate, which is $12 a pay period. The County collective bargaining law does not govern the level of dues and service fees, and last year's MCGEO contract amendments deleted any mention of the amount of dues from the collective bargaining agreement. Thus the only constraints on the level of dues are the union members' willingness to re-elect its leadership or decertify the bargaining agent. However, the law could condition coverage of this particular group of employees on limiting (by dollar amount or percent of hourly wage) the amount of dues they would be charged. Federal labor law contains ample precedent for this kind of employee protection: the Taft-Hartley Act defines charging an excessive or discriminatory fee as a condition of union membership as a union unfair labor practice, and the Landrum-Griffin Act requires certain procedural safeguards before a union can raise dues, fees or assessments. MCGEO continues to maintain that members' dues are not a proper subject of legislation (see ©42, 46). In addition, depending on the scope of bargaining allowed for each group of temporary employees, it may be difficult to justify collecting full union dues or fees for less-than-full representation.

Denis amendment: Requires the union to reduce dues and service fees for "limited-scope" bargaining unit members commensurate with its narrower scope of representational responsibilities, but does not prescribe the exact amount to be reduced. Does not, for example, adjust the amount of dues charged to part-time or short-term employees based on the ratio of $312 (the current full amount of annual dues) to the average salary of represented employees.

6) Should OIR employees be excluded from the bargaining unit?

Sheila Sprague's letter on ©55 raises the issue whether Office of Intergovernmental Relations (OIR) employees, above grade 27 or generally, should be excluded from the bargaining units. **Denis amendment:** does not address this issue. **Council staff recommendation:** exclude all OIR employees from the bargaining process. In our view, OIR is a small, specialized office, whose employees are involved in sensitive policy issues and have a

unique relationship to elected officials, much like the Council staff, the Executive's office, and OMB, all of whose employees are entirely exempt from bargaining unit coverage.

7) **When should this bill take effect?**

Denis amendment: Essentially follows OHR's suggestion on ©29 to let the parties negotiate a transitional agreement covering temporary, seasonal, and substitute employees once this bill becomes law. Employees would become bargaining unit members (if they qualify by length of service) when the bill takes effect, 90 days after the Executive signs it. (See ©63.)

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Bill No. 9-01
Concerning: County Employees-Collective Bargaining Units
Revised: 2-7-01 Draft No. 2
Introduced: February 27, 2001
Expires: August 27, 2002
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Subin, Council President Ewing, and Councilmembers Leggett, Berlage, Denis, Silverman, and Andrews

AN ACT to:

(1) include certain County employees in a collective bargaining unit; and
(2) generally amend the law governing collective bargaining with County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-102

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

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

Sec. 1. Section 33-102 is amended as follows:

33-102. Definitions.

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

* * *

(4) **"Employee"** means any person who works under the County government merit system on a continuous full-time, career or part-time, career basis, or on a temporary, seasonal, or substitute basis, except:

* * *

[(B) All persons who are not covered by the County government merit system.]

[(C)] (B) * * *

[(D)] (C) * * *

[(E)] (D) * * *

[(F)] (E) * * *

[(G)] (F) * * *

[(H)] (G) * * *

[(I)] (H) * * *

[(J)] (I) * * *

[(K)] (J) * * *

[(L)] (K) * * *

[(M) Persons who work on a temporary, seasonal, or substitute basis.]

[(N)] (L) * * *

[(O)] (M) * * *

[(P)] (N) * * *

[(Q)] (O) * * *

[(R)] (P) * * *

[(S)] (Q) * * *

[(T) Persons in grade 27 or above, whether or not they are supervisors.]

* * *

Approved:

Blair G. Ewing, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

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

LEGISLATIVE REQUEST REPORT

Bill 9-01

County Employees - Collective Bargaining Units

DESCRIPTION:	Would move certain employees into the County employees collective bargaining units by repealing the current law's exemptions for temporary, seasonal, or substitute employees; highly paid (Grade 27+) non-supervisory employees; and certain non-merit employees who are not department heads or deputies.
PROBLEM:	Certain County employees are not currently subject to collective bargaining but deserve to be covered.
GOALS AND OBJECTIVES:	To expand the coverage of collective bargaining laws to currently excluded County 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 requested
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County employees
PENALTIES:	Not applicable

bargaining shall be used in place of, and not in addition to, existing means for initiating governmental action on subjects that are defined as appropriate for like collective bargaining in this article. (1986 L.M.C., ch. 70, § 3.)

Editor's note—The above section is cited in Dashiell v. Montgomery County, 925 F.2d 750 (4th Cir. 1991).

Sec. 33-102. Definitions.

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

(1) *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 greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require an employee to pay initiation fees, assessments, fines, or any other like collections or their equivalent as a condition of continued employment. A collective bargaining agreement shall not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the collective bargaining agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, with provision for dispute resolution if there is not agreement, and to give to the employer and the certified representative written proof of this payment. The certified representative shall adhere at all times to all federal constitutional requirements in its administration of any agency shop system maintained by it.

(2) *Certified representative* means an employee organization chosen to represent employees as their exclusive bargaining agent in one (1) or both units as defined in Section 33-105 in accordance with the procedures of this Article.

(3) *Collective bargaining* means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this Article. This Article shall not be interpreted to compel either party to agree to a proposal or make a concession.

(4) *Employee* means any person who works under the County government merit system on a continuous full-time, career or part-time, career basis, except:

(A) Confidential aides to elected officials.

(B) All persons who are not covered by the County government merit system.

(C) Heads of principal departments, offices, and agencies.

(D) Deputies and assistants to heads of principal departments, offices, and agencies.

(E) Persons who provide direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency.

(F) Persons who report directly to or whose immediate supervisor is the County Executive or the Chief Administrative Officer or their principal aides.

(G) Persons who work for the Office of the County Executive and the Office of the Chief Administrative Officer.

(H) Persons who work for the County Council.

(I) Persons who work for the Office of the County Attorney.

(J) Persons who work for the Office of Management and Budget.

(K) Persons who work for the Office of Human Resources.

(L) Persons who work for the Merit System Protection Board.

(M) Persons who work on a temporary, seasonal, or substitute basis.

(N) Newly hired persons on probationary status.

(O) Persons who work for the Police Department and are represented by a certified employee organization under Article V.

(P) Persons who work for the Department of Fire and Rescue Services and are represented by a certified employee organization under Article X.

(Q) Officers in the uniformed services (Corrections, Fire and Rescue, Police, Office of the Sheriff) in the rank of sergeant and above. Subject to any limitations in State law, deputy sheriffs below the rank of sergeant are employees.

(R) Persons who are members of the State merit system.

(S) Supervisors, which means persons having authority to:

(i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively recommend any of these actions;

(ii) direct the activity of 3 or more employees; or

(iii) adjust or recommend adjustment of grievances.

(T) Persons in grade 27 or above, whether or not they are supervisors.

(5) *Employee organization* means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining.

(6) *Employer* means the County Executive and his or her designees.

(7) *Lockout* means any action that the employer takes to interrupt or prevent the continuity of work properly and usually performed by the employees 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.

(8) *Mediation* means an effort by the mediator/fact-finder chosen under this Article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

(9) *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.

(10) *Unit* means either of the units defined in Section 33-105.

(11) When either the female or the male pronoun appears herein, it is to be read to include both genders. (1986 L.M.C., ch. 70, § 3; 1994 L.M.C., ch. 16, § 1; 1996 L.M.C., ch. 21, § 1.)

Sec. 33-103. Labor relations administrator.

(a) A Labor Relations Administrator 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 Administrator must:

(7)

Printed by: COGANM

Mail: Bill 9-01

From: MONT. CO. POSTMASTER
To: 7 recipients

--- Received from DIST.POSTMAST/SDD00E4 777- 01-04-10 16.45

-> DIST.CNTYALL county wide distribution list

****
*******PLEASE DO NOT RESPOND TO POSTMASTER*******
*****Questions may be directed to Council at*****
**********(240) 777-7900**********

The Management and Fiscal Policy Committee of the County Council will hold a worksession on Bill 9-01 on April 25 at 2:00 p.m. in the 7th floor hearing room of the Council Office Building. This worksession had been tentatively scheduled for April 20.

Bill 9-01 would move certain employees who are currently not covered by collective bargaining into the County employees collective bargaining units. The bill does this by repealing the current law's exemptions for temporary, seasonal, or substitute employees; highly paid (Grade 27+) non-supervisory employees; and certain non-merit employees who are not department heads or deputies.

For further information or to confirm the Committee schedule, please call (240) 777-7900.

Dear Montgomery County Temporary, Seasonal, or Substitute Employee:

A bill pending before the County Council, Bill 9-01, would move temporary, seasonal, and substitute employees, who currently are not covered by collective bargaining, into the County employees collective bargaining units. If this bill is enacted, affected employees would be represented for collective bargaining purposes by the Municipal and County Government Employees Organization (MCGEO), and could be assessed dues or a service fee by MCGEO.

The public hearing record on this bill is open until April 10. Written comments from employees and all others are welcome. Comments can be sent to the Council President at the address on the front of this card, or by e-mail to county.council@co.mo.md.us. The Council's Management and Fiscal Policy Committee is scheduled to consider Bill 9-01 on April 20 at 2 p.m. For further information, please call the Council's Legislative Information Service at (240) 777-7910.

County Council

Montgomery County Maryland

My name is Carey R. Butsavage of the law firm Butsavage & Associates of Washington, D.C. I am counsel for UFCW, Local 1994.

We appreciate and welcome this opportunity to address the County Council concerning the proposed amendment to the Collective Bargaining Law (33-101) to include temporary, seasonal and substitute employees in the currently authorized collective bargaining units. For the reasons set out below, we strongly believe that the proposed amendment will provide substantial benefits to the County, the affected employees and the citizens of Montgomery County.

We believe that since the passage of the initial Collective Bargaining law in 1986, there has been a growing sense and recognition that there is a substantial portion of this nation's work force that has been neglected, overlooked and taken for granted. That group includes the kind of temporary, seasonal and substitute workers employed in Montgomery County. It is the case in many State, County and municipal jurisdictions and it is certainly the case in the Private Sector. It is time that the individuals who comprise that group and provide the citizens of Montgomery County with valuable services are represented. Those workers help to make Montgomery County one of the best places to live in this nation, and they should have a seat at the collective bargaining table.

Under the current system, there are approximately 2,000 to 2,400 people who make up the temporary. seasonal and substitute work force in this County. The tasks they perform and services they provide are both varied and vital. They are the individuals who staff Park and Recreation facilities in the Summer, so that families and individuals can enjoy the many amenities that Department provides. They collect the leaves and beautify our roadways so as to

(10)

make our County a more pleasing and attractive place to live. Across the spectrum of County services, they are the substitute workers who ensure that our citizens' services remain uninterrupted and undiminished due to sickness, vacations or temporary unavailability in the regular work force. In short, they perform many of the services, often working side-by-side with Union workers, that help make this County such a desirable place to live.

Unfortunately, however, it is our view that the workers who provide this County and all of its citizens with the foregoing services have too often been overlooked, neglected and taken for granted. This is particularly evident, we submit, in their continuing exclusion from the enjoying the rights and benefits of collective bargaining.

Thus, under the current system, which excludes temporary, seasonal and substitute employees, the simple fact of the matter is that all of the thousands of workers cited above are wholly without the benefits, advantages and protections of collective bargaining and representation. In this regard, they have no collective voice to speak on their behalf in terms of their wages, hours and working conditions. They have no meaningful avenue to present grievances or have them adjusted and resolved. Even when they are terminated, they have only partial rights to challenge that action. In short, in terms of having a meaningful say in their work lives and being treated with the dignity and respect that is accorded their colleagues who work for this County, the temporary, seasonal and substitute employees are effectively treated as second class citizens and employees. In light of the first class services they provide and the first class contribution to the County that they make to the County their exclusion from collective bargaining rights is an inequity that should no longer be visited upon them.

We urge prompt approval of the proposed amendment.

MEMORANDUM

April 4, 2001

TO: Blair Ewing, President
Montgomery County Council

FROM: Elizabeth C. Notter, Highway Inspector
Division of Highway Services
Department of Public Works and Transportation

SUBJECT: Bill 9-01

I am sending this letter to the entire County Council, with only non-substantive modifications. My family and I are registered and voting Montgomery County Democrats, and I am a retired professional County employee. I returned to work as a temporary employee to supplement my income due to a family medical situation. At my current salary level, any additional levy on my check would be difficult. Many of my coworkers experience the same kinds of problems.

I understand that MCGEO has argued that increases in costs of living and other benefits derive from the union's efforts. However, management staff, as well as retirees and other non-union employees, enjoy these same increases without the comparable payment of dues or a "service" charge to the union that this bill would require. If temporary and/or seasonal workers must become union members and pay a "service" charge, it is only fair that all other classes should pay the same "service" charge, since they all benefit equally (except of course for the fact that most are currently receiving full benefits). Why should those with the least support those with the most?

If there is some belief that the union might negotiate for temporary employees any of the benefits such as health insurance, vacation, paid holidays, sick leave, etc., which none of us have under our current status, please consider the chances of changing the current personnel regulations, and adding sufficient funding to cover any or all of these benefits in this time of fiscal concern and highly reduced budgets. As I noted earlier, the union will claim that their negotiation of cost-of-living increases is a benefit for which we should pay. If so, so should everyone! Consider this: employees who earn $10.23/hour for six months will have to work for 1 ½ hours each pay period for the union, in return for benefits as yet unnamed, to be determined in a contract as yet unwritten. This is not fair.

I, and others to whom I've spoken, believe the impacts, fiscal and administrative, of this legislation have been underestimated, and, in some cases, entirely overlooked. The

representatives of the classes affected feel strongly that no benefits will accrue to their groups from such coverage, and that they are being treated unfairly under this legislation.

When made aware of the bill, the temporary/seasonal inspectors with whom I spoke expressed very negative opinions on becoming union members. None had been contacted for input or opinion by the union in advance of this bill's submittal to the County Council. Some of us feel that the bill has been written in a vacuum, without any input either from those to be acted upon, or those who must administer the programs in which the employees work. We believe that the County Council cannot, in good conscience, act on a bill the details of which have not been shared with those affected, and the ramifications of which have not been examined.

I hope to attend the work session, although I would like to understand more clearly before that time how your sponsorship decision on this bill was reached.

I do appreciate your attention to this letter. I am not speaking only for myself.

ECN:

(13

cc

RECEIVED COUNCIL

037143

APR 3 A10 : 14

Printed by: CAPOBS

Mail: County Council, Bill 9-01

From:

To: MONTGOMERY COUNTY COUNCIL

From: WDJOY@aol.com
To: county.council@co.mo.md.us
Date: Mon, 2 Apr 2001 14:34:20 EDT
Subject: County Council, Bill 9-01

To Whom It May Concern

I wish to state my objection to the inclusion of temporary employees in (MCGEO). I retired after over 31 years as a County employee and was asked to come back to work part time in another agency.

I have worked there for 4 years on a part time basis no more than 20hrs a week. As a retired employee I receive no other benefits that an hourly wage.

I feel that inclusion in the union would be of no benefit to me and would result in me working one hour per pay period for the union. As far as I can determine no temporary, seasonal and/or substitute employee have requested or have been asked if they wanted to be included in this union.

I do not think this would be fair to me or other temporary employees to include our positions.

Bill 9-01

MF
cc

RECEIVED COUNCIL

01 APR 4 A 9:22

Franklin R. Hum
5519 McKinley Street
Bethesda, Maryland 20817-3729
(301) 530-4388

April 2, 2001

037197

Council President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Bill 9-01 County Employees-Collective Bargaining Units

I have received the post card sent to inform me that the Council is considering the referenced bill to move temporary, seasonal, and substitute employees, currently not covered by collective bargaining, into the County employees collective bargaining units. I am opposed to this proposed action by the Council.

I am currently a temporary, seasonal employee working as a Highway Construction Inspector 1 for the Division of Highway Services. I have been employed at this position since 1997. At the beginning of each construction season, I am hired as a new employee and at the end of the construction season I am terminated.

If the Municipal and County Government Employees Organization is so interested in our welfare, why don't they ask the County government to hire more full time employees instead of relying on staffing by using temporary, seasonal personnel. Then they can have more members to pay dues or fees instead of trying to force people into their organization who have not asked to join.

I realize that if we are made a part of the MCGEO they will bargain with the County Executive for benefits for us. However, I don't believe that we would be consulted on proposed benefits that the MCGEO would bargain for with the County Executive, especially since we weren't asked if we wanted to be included in a union. I can't imagine what types of benefits that we would receive since I and other inspectors at Highway Services are hired and terminated after working anywhere from eight to ten months depending on the weather and funding. Will the Finance Office be able to keep up with the changes in our status or the status of the hundreds of people that are employed for shorter periods? Will the Council find adequate funding for these additional expenses especially since you are currently considering raising taxes and fees to fund the next budget shortfall between the amount that the County Executive wants to spend and the Council's spending priorities.

I'm afraid that the temporary, seasonal employees will end up with little or no benefits and will be forced to pay MCGEO for the privilege of working for Montgomery County.

I also want express my disappointment at the way this Bill 9-01 has been introduced and the lack of notice for the public hearing that was held on March 20th. If the Council or the MCGEO were concerned with the welfare and interests of the temporary, seasonal and substitute employees, someone should have had the courtesy to notify those most affected of this proposed action. Instead the Bill was introduced by the sponsors and the only group that spoke at the meeting was the MCGEO which wrote the measure to begin with. We were notified by post card mailed three days afterwards that this Bill has been proposed and now was in the comment period. In addition, the Bill was not posted on the Council web site so anyone interested in learning of the provisions of the Bill could not get any information.

(15)

The sponsors of the Bill have the reputation of addressing and providing remedies for constituent concerns. Various members of the sponsoring council member have introduced Bills in the name of constituent services to deny monies to organizations that permit gun shows; restricting the activities of long established companies to lessen the noise and dirt that new homeowners adjacent to an existing quarry and public road have to endure; permitted municipalities in the county to pass laws restricting the use of tobacco in their jurisdiction or requiring homeowners to remove snow from the sidewalks in front of their homes. All these measures have a constituency and urgency that various Council members felt they have to address.

What is the constituency that this Bill addresses and is to serve? Certainly it is not the many temporary, seasonal and substitute employees who work for the County often at wages slightly above the federal minimum.

I have been a resident of this County since 1967 and have paid a lot of money to the County in the form of income and property taxes. Can the leadership of MCGEO say the same?

Franklin R. Hum

cc: Howard Denis

Bill 9-01

HF
OC

Elizabeth Triau
18056 Mill Creek Dr.
Derwood, MD 20855

037196

April 2, 2001

Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

Attention: Montgomery County Council President
Regarding: Bill 9-01

I am a retired school nurse currently working part time in the school Health Services Center. I was very upset to learn of the upcoming Bill 9-01 that would force temporary employees such as I to be members of the union (MCGEO) and be assessed dues or fees for something I do not wish to be a part of. I do not earn much money as I work only a few hours each week and it would be unfair to deduct union dues from my meager paycheck. Please do not allow this bill to pass.

Sincerely,

Elizabeth Triau

Elizabeth Triau

RECEIVED COUNCIL
01 APR 4 A10:18

(17)

RE: Bill 9-01

Bill 9-01

H/T

Land-CC

April 5, 2001

037430

Mr. Blair Ewing
Montgomery County Council President
100 Maryland Avenue
Rockville, MD 20850

Dear Mr. Ewing:

I am writing as a Montgomery County Temporary Seasonal employee who wishes to request the Council not make Temporary Seasonal employees join the MCGEO. I have worked for Montgomery County for three years now and would like to become a permanent employee who would have no problem joining the union at that time, however, as a Temporary Seasonal employee I must purchase my own health insurance plan, retirement, and save for the time I am out of work. I should not be burdened with union dues too. The cost of dues would be difficult to bear and is taxation without representation. The union would do nothing for me.

As someone who supervises contractors, I feel it would be a poor management move as well. The union tends to protect people who do not want to work. Being a union member, it would be difficult to weed out poor workers. The short season to accomplish the much needed work of the Sidewalk and Driveway program, would be burdened with further delays if my supervisor hires an individual who becomes complacent or an attendance problem. Please do not make their job more difficult.

Thank you for considering my request.

Sincerely,

Adam Derrick
308 Mt. Vernon Place
Rockville, MD 20852

RECEIVED COUNCIL
01 APR 10 A10:12

(18)

9-01

MF
CC

Auburn Avenue Liquor Store
4800 Auburn Avenue
Bethesda, Maryland 20814
301/986-4366
Retail Division 301/777-1930

037388

MARCH 29, 2001

TO: COUNTY COUNCIL

FROM: PART-TIME TEMPORARY CLERK, AUBURN STORE; DLC

SUBJECT: BILL 9-01

IF TEMPORARY EMPLOYEES, WHO ARE CURRENTLY NOT COVERED BY COLLECTIVE BARGAINING, AND, WHO ARE NOT RECEIVING ANY BENEFITS, ARE MOVED INTO COLLECTIVE BARGAINING UNITS, WILL THEY BE ENTITLED TO BENEFITS + RETIREMENT ?

IF TEMPORARY EMPLOYEES ARE MOVED INTO COLLECTIVE BARGAINING UNITS AND ARE NOT AFFORDED BENEFITS AND RETIREMENT, THEN I AM FIRMLY AGAINST THE BILL.

IF TEMPORARY EMPLOYEES WILL RECEIVE BENEFITS AND RETIREMENT WITH BILL 9-01 THEN I AM ALL FOR IT!

Thanks for listening

WILLIAM BRAGG

(19)

Bill 9-01

ME
CC

RECEIVED COUNCIL 037386

Printed by: CAPOBS 01 APR 9 A9:47

Mail: Bill 9-01

From: Charles Crickman
To: MONTGOMERY COUNTY COUNCIL

From: crickman@erols.com
To: county.council@co.mo.md.us
Date: Fri, 6 Apr 2001 17:16:06 -0400
Subject: Bill 9-01

Dear Mr. Ewing and other members of the Montgomery County Council,

I am opposed to Bill 9-01 pending before the Council. This appears to be an attempt by MCGEO to enrich the union coffers at the expense of temporary, seasonal and substitute employees, who are most unlikely to achieve any benefit through collective bargaining.

It is my understanding that a hearing has been held before the Council where no representatives from the affected categories, nor anyone on their behalf, gave testimony about this legislation. Only the union side was represented.. I have been unable even to determine what the details of this legislation are.

? What is the proposed fee structure and how would it be assessed from employees who are with the county for obviously short-term and intermittent employment?

? What does MCGEO expect to offer them as benefits?

? What specific representations have the union made that show a benefit for these employees?

Without such specific information available for public comment how can the Council possibly consider this bill fair or responsible? I hope that each council member will think hard about the implications of passing legislation so unfair to those it employs. The County should serve as a model employer

20

Printed by: CAPOBS **037101**

Mail: Bill 9-01

From: Margaret Zierdt
To: MONTGOMERY COUNTY COUNCIL

From: margaret.zierdt@juno.com
To: county.council@co.mo.md.us
Date: Sat, 31 Mar 2001 17:45:19 -0800
Subject: Bill 9-01

RECEIVED COUNCIL
01 APR 2 A9:37

To: County Council President

As a substitute shelving assistant (formerly known as "page") at the Rockville Library, recently I received notification of a public hearing on your proposed Bill 9-01. I have been working at minimum wage since 1996, so I am profoundly interested in your proposals.

However, I am mystified by the wording. The concept of imposing a particular bargaining agent without an affirmative vote of those affected is very bizarre to say the least. To assess dues again without consent of a majority sounds like company shops of the 1800s.

I am delighted with the prospect of collective bargaining. I would like to hear what MCGEO proposes., Other unions should also be invited to present proposals. The areas of pay scales, vacation time, health benefits, working conditions, transfers etc., are some of the concerns, I feel , of all substitute workers. And for all shelving assistants, substitute and regular, who now work at minimum wage, what relief will the bargaining agent provide to bring us closer to living wage?

Please share my concerns with other council members.

My address is 701 Roxboro, Rockville 20850; tele. 301-762-3001.
Margaret Zierdt

(21)

MF
CC

037033

Printed by: CAPOBS

Mail: UNION MEMBERSHIP

From: COUNCILMEMBER BLAIR EWING OFF.

To: MONTGOMERY COUNTY COUNCIL

--- Received from COUNCIL.EWINGOFF/MCC00VR -------- 01-03-28 17.11

-> COUNCIL.MCCMAIL MONTGOMERY COUNTY COUNCIL COUNCIL

forward

--- Received from COMWOMEN.ABRAMN 279-8300 01-03-28 17.06

-> COUNCIL.EWINGB *> Forwarded by

Dear Mr. Ewing,

I am a temporary part time employee at the Commission For Women. Last week I received a card from the Union informing me of their intention to include part time and temporary employees as part of the Union.

I am completely opposed to Union membership and to being forced to pay dues. I work 8 hours a week have no benefits and no leave. There is no benefit to joining the Union. As an 8 hour a week employee, I will never receive a benefit and will be forced into a reduction in salary or resigning from my position prior to the action. Being a Union member is a liability. The Commission for Women Counselors all work part time. This action will cause major recruiting problems and jeapordize the community counseling program provided by the Commission for Women.

I would appreciate your assistance in protecting my rights to work independently from the union.

Please let me know if there are other actions I need to take or other people I should contact.

Sincerely,
Nancy Abramson

RECEIVED COUNCIL 01 MAR 28 A8:40

22

036928

Printed by: CAPOBS

Mail: Bill 9-01 is a bad idea

From: Doris and Charlie Auer
To: MONTGOMERY COUNTY COUNCIL

From: auer.charles@erols.com
To: county.council@co.mo.md.us
Date: Sun, 25 Mar 2001 13:26:56 -0500
Subject: Bill 9-01 is a bad idea

Dear Sir:

We understand that County Council Bill 9-01, currently being considered, would force seasonal employees into the County employees collective bargaining unit. We have been the parent representatives for the Poolesville Swim Team in the Montgomery County Swim League for the last 5 seasons. We are opposed to this bill which would adversely affect the operation of the swim team and pool. Every year MCRD has a hard time recruiting qualified staff to handle the swim team coaching responsibilities. The pay at county pools does not compare very well with that which is available at private pools and this bill would further increase the pay differential and make this task even more difficult.

The main effect of this bill if passed will be to fund the union on the backs of temporary workers while making it harder to fill county pool jobs - before you vote on this bill ask MCRD about their chronic problems in recruiting adequate numbers of life guards and other pool workers to meet the need. Beyond numbers, it is also difficult to find quality employees who can capably uphold their responsibilities. With a decline in take home pay attributable to union fees, these problems will increase and the quality of service provided to pool patrons will further decline which will eventually have an adverse impact on pool patronage .

This bill is inadvised and will have a negative impact on the operation of county pools and the swim teams which are associated with those

RECEIVED COUNCIL
01 MAR 26 A 8:37

pools. We call on you to vote against this bill and its negative effect on the operation of county pools.

Sincerely,

Doris and Charles Auer, Parent Reps for Poolesville Swim Team, MCSL

(24)

PH
INC HB 7 CC

037311

Printed by: CAPOBS

Mail: Objection to Bill 9-01

From: DERI MOEIS
To: MONTGOMERY COUNTY COUNCIL

--- Received from DIST.MOEISD 240-777-2957 01-04-05 15.53

-> COUNCIL.MCCMAIL MONTGOMERY COUNTY COUNCIL COUNCIL

RECEIVED COUNCIL
APR 6 A9:16

Dear Councilmembers,

I am a grade 27 career employee with 15 years of service with the County. I work for the Department of Information Systems and Telecommunications as a Computer Systems Programmer. I am writing this e-mail to state my objection to being forced to join the union. My reasons include the following:
I Have been at the top of my grade for several years. My only salary increase has been a percentage of the COLA every year. I have nothing to gain with any salary negotiations MCGEO enters into with the County. If there were ever any personal issues between the County and myself I would go to the Merit Protection Board. I don't need union protection. Forcing me to join the union will change the membership group in my retirement plan from Non-represented to Represented without my consent. Although this doesn't appear to alter my retirement benefits yet, it has the possibility of doing so in the future. In the past any changes to an employees retirement plan has been grandfathered and is an employee option. My County Retirement Plan is very important to me and is one of the many reasons I stayed with the County. Finally there's the matter of being forced to pay union dues. Since I will derive no benefits from joining the union, this is little more than a forced pay cut. Given the fact that I only get a reduced cost of living increase every year as it is, decreasing my salary further by taking out money to hand over to the union is an additional burden to me.

To summarize, what I see here is a bill that will force me to join a union which offers me no salary benefits and no personal negotiating benefits with the County. A bill that could possibly alter my retirement plan. And finally, a bill that will force me to support a union with money that I see as being garnished from my salary.

(25)

Printed by: CAPOBS

Mail: Bill 9-01

From: "OLeary, Tim"
To: MONTGOMERY COUNTY COUNCIL

From: Tim.OLeary@Calvert.com
To: county.council@co.mo.md.us
Date: Mon, 26 Mar 2001 12:15:21 -0500
Subject: Bill 9-01

I am responding to the postcard I received regarding Bill 9-01. I think, if I am reading the information correctly, that assessing dues or service fees to employees who don't voluntarily want to be covered by the collective bargaining units, would deter a large portion of your part time and seasonal employees from seeking further employment from the County. I think that your recreational programs would be deeply wounded, due to the fact that a large number of the employees that fill these positions are college and high school students working as a summer job. The part time wage competition also comes into play. The average wage being paid to these summer workers, is right around the lower end of the pay scale, then to pay extra fees or dues on top of that, wouldn't be very prudent.

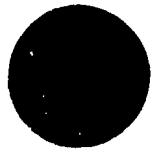
I know that I personally will no longer offer my services to the county as a temporary employee when asked. I have a regular full time job, and would not need, nor want to pay the fees to be covered under this unit. I only work for the county, when asked and needed, for an approximate total of 40 to 50 hours per year. The passing of this bill would give me the absolute reason for saying no to the hours.

Thank you for your time and consideration

Timothy A O'Leary

MF
CC

RECEIVED COUNCIL 037144



ted by: CAPOBS 01 APR 3 A10 : 14
il: (no subject)
rom: STEVEN F MAZER
To: MONTGOMERY COUNTY COUNCIL

From: STEVEDIVMD@GWOG.COM
To: county.council@co.mo.md.us
Date: Sun, 1 Apr 2001 15:42:59 -0400
Subject: (no subject)

COUNCIL PRESIDENT:

I AM A STUDENT AND PART TIME SUMMER EMPLOYEE. BEING A MINIMUM WAGE EMPLOYEE I DO NOT WANT TO HAVE DUES OR FEES ASSESSED FROM MY PAYCHECK,
WHICH WOULD PROVIDE NO BENEFIT TO ME. I THEREFORE AM AGAINST HAVING MY
POSITION PUT INTO A COLLECTIVE BARGAINING UNIT. STUDENT PART TIME EMPLOYEES SHOULD NOT BE COMPELLED TO PARTICIPATE IN SUCH A PROGRAM.

ALEXANDER M. MAZER

OFFICE OF HUMAN RESOURCES

Douglas M. Duncan
County Executive

Marta Brito Perez
Director

MEMORANDUM

April 23, 2001

TO: Michael Faden, Senior Legislative Attorney

FROM: Marta Brito Perez, Director Office of Human Resources

SUBJECT: Issues List - County Employees- Collective Bargaining Units

The following is a response to the several questions that you raised in your February 23, 2001 correspondence concerning the above referenced Bill.

1. **How many employees, in which job classifications, would be affected?**

Data concerning the affected job classes was transmitted to the Council Staff Director on April 9, 2001.

2. **What were the original reasons for excluding these classes of employees from the bargaining unit?**

Historically, temporary employees have been excluded from collective bargaining because various forms of compensation, insurance, retirement, leave benefits, and other subjects that are negotiable under the collective bargaining law were not extended to temporary employees. Also, the limited, transient nature of temporary positions did not focus concern for working conditions. Moreover, the County did not deem it prudent to make the significant fiscal investment required by collective bargaining for employees who, by the nature of their appointment, did not have a career focus in County employment. Finally, these benefits have not been extended to temporary employees of other local governments in this region.

Are those reasons still valid?

Yes, for the most part the incumbents of temporary positions remain transient in nature. 1600 of the seasonal employees (S1-S8 job classes) that approximate 2300 of the 2700 temporary employees have two seasonal years or less with the County. It is also important to note that the wage rates for temporary employees have increased as the product of "pass through."

3. **Should short term employees (e.g., less than 90 days) be treated like other employees for collective bargaining purposes?**

The average number of hours worked for the seasonal classes (S1-S8) last year were 302, which approximates 40 workdays. Extending traditional bargaining rights to these employees will pose tracking and transitional issues that will increase administrative costs associated with benefit eligibility and accrual. In addition, as noted above there is minimal focus on a long-term employment relationship. For these reasons the practicality of extending collective bargaining rights, if at all, should be limited solely to wages.

Temporaries in existing bargaining unit classes number about 400 and on average worked 600 hours last year which approximates 75 work days. While many of the same tracking and transitional problems will exist with this group, the number of employees in these job classes will significantly diminish such issues. Nevertheless, the limited number of workdays that these employees worked last year exemplifies the temporary nature of their work and lack of a career focus. These job classes should also have limited bargaining rights.

4. **Should dues or service fee payments be prorated for short-term employees? For lower paid employees?**

This is a question for the Union to answer.

5. **Should this Bill, if enacted, take effect on July 1, when the next collective bargaining agreement for these units takes effect? If not, will incorporating these employees into a bargaining unit during the current agreement affect their salaries or benefits?**

The bill could take effect on or after July 1; however, as noted below, application of the new agreements does not extend to temporary employees.

In reference to the second question, the new collective bargaining agreements would not have application to the newly accreted job classes. The recognition article of the agreements extends the benefits of the collective bargaining agreement to "*any person who works under the County government merit system on a continuous full-time, or career part-time career basis in the certified bargaining unit.*" Since the agreements are between the Executive and the Certified Representative, the Council has no authority to amend the agreements. However, the Council through legislative amendment may adopt transitional language that would permit the parties to negotiate a transitional agreement until such time as the accreted employees are folded into the agreement for the collective bargaining units.

6. **Should temporary, seasonal, or substitute employees be treated the same as other bargaining unit members for negotiation of employee benefits? Should collective bargaining law restrict access to benefits for short-term employees?**

See response to question # 3.

If there are any questions concerning this matter please contact Jim Torgesen, 7-5050.

cc: Blair C. Ewing, Council President
Bruce Romer, Chief Administrative Officer

OFFICE OF MANAGEMENT AND BUDGET

Douglas M. Duncan
County Executive

Robert K. Kendal
Director

MEMORANDUM

April 24, 2001

TO: Blair G. Ewing, Council President
Montgomery County Council

VIA: Bruce Romer
Chief Administrative Officer

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

SUBJECT: Council Bill 9-01, County Employees – Collective Bargaining Units

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

LEGISLATION SUMMARY

The County Council proposed legislation amends Chapter 33 of the Montgomery County Code, Personnel and Human Resources. The proposed amendment would include temporary, seasonal, or substitute County employees and non-supervisory employees currently in grade 27 or above in the Office Professional and Technical and Service Labor and Trades Bargaining Units currently represented by the Municipal and County Government Employees Organization (MCGEO), United Food and Commercial Workers, Local 1994.

FISCAL SUMMARY

The Office of Human Resources will require an additional Human Resource Specialist II (1.0 workyear) and a part time Principal Administrative Aide (0.5 workyear) to handle the additional workload created by adding approximately 2,700 temporary positions which currently are not tracked by OHR. OHR administers benefits and union status by employee. Adding 2,700 employees to these systems is a substantial workload impact particularly since turnover with these types of positions is frequent. The fiscal impact of adding 1.5 workyears to the OHR personnel complement is $81,270 assuming the positions are hired at the mid-point salary range at the beginning of FY02.

Placing temporary employees in bargaining units could make them eligible at some level for health benefits, which are currently unavailable to them. OHR and OMB estimate approximately 50 percent of these employees could take advantage of these benefits. There are two general classes of temporary employees: minimum wage job classes, (currently 2,248 employees), and bargaining unit job classes, (currently 410 employees and unrepresented due to their temporary job status).

The minimum wage job classes typically work a four pay period equivalent per year. The health benefit fiscal impact for half of these employees (1,124) at an average County contribution of $80 per pay period per employee and assuming an average equivalent of four pay periods worked, is $359,680 for FY02. The temporaries in bargaining unit classes work an average of 660 hours per year, an average of 25 hours per pay period. The health benefit fiscal impact for half of these employees (205) at an average County contribution of $80 per pay period per employee and assuming employment over 26 pay periods is $426,400 for FY02.

The Office of Human Resources anticipates $35,000 of additional operating costs to cover consultant services and costs associated with any renegotiation of the existing terms of agreements effective FY02 through FY04, and their applicability to temporary employees.

There is no wage fiscal impact for the addition of either of these employee groups to the bargaining unit, because the negotiated general wage adjustment, (GWA), was recommended to be passed through in the County Executive's Recommended FY02 Operating Budget. The fiscal impact for other bargaining unit items such as shift differential, multi-lingual pay differential, tuition assistance, holidays, leave, etc., are deemed insignificant for the job classes affected and the number of annual hours worked.

There is no fiscal impact for the addition of the non-supervisory positions grade 27 and above, because these positions already receive health and retirement benefits. The negotiated GWA was recommended to be passed through in the County Executive's Recommended FY02 Operating Budget. The chart below shows the cost breakout.

FY02 Fiscal Impact	
OHR Staff	$ 81,270
Health Benefits	
• Minimum Wage Job Classes	$359,680
• Temporaries in Bargaining Unit Classes	$426,400
Total Personnel	$867,350
Operating Expenses (Consultant)	$ 35,000
Total	$902,350

It should be noted that depending on the amount of union dues or service fee that will be collected, there could be a significant economic impact on these temporary, seasonal and non supervisory employees. Assuming the current $12 union dues per pay period, each temporary employee working eight weeks during the summer would pay $48 in union dues. The

total annual amount for 2,248 employees would be $108,000. Temporary employees who are in job classes that are currently bargaining unit job classes would pay $312 union dues per year ($12 union dues for 26 pay periods). The total annual amount for these 410 employees would be $128,000. Non-supervisory employees Grade 27 and above would pay $312 union dues per year ($12 union dues for 26 pay periods). The total annual amount for these 54 employees would be $16,848.

Possible Economic Impact	
Minimum Wage Job Classes	$108,000
Temporaries in Bargaining Unit Classes	$128,000
Non-supervisory Employees Grade 27 and above	$ 16,848
Total	$252,848

Jo Ann Byrum of OMB and Jim Torgeson of OHR contributed to this analysis.

RKK: jab

cc: Marta Brito Perez, Director, OHR
Jim Torgesen, OHR
Philip Weeda, OMB

m:\Fis\Legislation\Fy01\CB9-01 Collective Bargaining - revised

MONTGOMERY COUNTY GOVERNMENT

GENERAL SALARY SCHEDULE

FISCAL YEAR 2002

NON-REPRESENTED EMPLOYEES

[Schedule 01]

GRADE	MINIMUM SALARY	MAXIMUM SALARY
5	$19,046	$29,424
6	$19,776	$30,649
7	$20,547	$31,962
8	$21,346	$33,415
9	$22,189	$34,945
10	$23,080	$36,594
11	$24,013	$38,317
12	$24,987	$40,128
13	$26,016	$42,029
14	$27,098	$44,031
15	$28,228	$46,124
16	$29,435	$48,330
17	$30,772	$50,643
18	$32,180	$53,073
19	$33,699	$55,619
20	$35,284	$58,296
21	$36,957	$61,107
22	$38,707	$64,060
23	$40,548	$67,164
24	$42,479	$70,412
25	$44,505	$73,830
26	$46,637	$77,421
27	$48,854	$81,189
28	$51,050	$85,147
29	$53,353	$89,300
30	$55,774	$93,665
31	$58,316	$98,245
32	$60,983	$101,254
33	$63,783	$104,260
34	$66,725	$107,272
35	$69,816	$110,279
36	$73,061	$113,289
37	$76,464	$116,295
38	$80,041	$118,970
39	$83,793	$120,725
40	$87,737	$122,473

Effective: July 1, 2001 3.25 percent GWA

MONTGOMERY COUNTY GOVERNMENT

BARGAINED UNION SALARY SCHEDULE

FISCAL YEAR 2002

MCGEO

Municipal and County Government Employees Organization

Service, Labor and Trades Bargaining Unit

[SLT - Schedule 02]

Office, Professional and Technical Bargaining Unit

[OPT - Schedule 03]

GRADE	MINIMUM SALARY	MAXIMUM SALARY
5	$19,046	$29,424
6	$19,776	$30,649
7	$20,547	$31,962
8	$21,346	$33,415
9	$22,189	$34,945
10	$23,080	$36,594
11	$24,013	$38,317
12	$24,987	$40,128
13	$26,016	$42,029
14	$27,098	$44,031
15	$28,228	$46,124
16	$29,435	$48,330
17	$30,772	$50,643
18	$32,180	$53,073
19	$33,699	$55,619
20	$35,284	$58,296
21	$36,957	$61,107
22	$38,707	$64,060
23	$40,548	$67,164
24	$42,479	$70,412
25	$44,505	$73,830
26	$46,637	$77,421

Effective: July 1, 2001 3.25 percent GWA

MONTGOMERY COUNTY GOVERNMENT

EXECUTIVE RECOMMENDED SALARY SCHEDULE

FISCAL YEAR 2002

Minimum Wage/Seasonal Salary Schedule

[Schedule 08]

GRADE	MINIMUM ANNUAL	MINIMUM HOURLY	MAXIMUM ANNUAL	MAXIMUM HOURLY
S1	$10,712	$5.150	$14,533	$6.987
S2	$12,997	$6.248	$16,893	$8.122
S3	$14,944	$7.185	$19,427	$9.340
S4	$16,893	$8.122	$21,962	$10.559
S5	$19,493	$9.372	$25,339	$12.182
S6	$24,690	$11.870	$32,094	$15.430
S7	$29,966	$14.407	$38,956	$18.729
S8	$35,413	$17.026	$46,038	$22.133

Effective: July 1, 2001 3.25 percent GWA

MONTGOMERY COUNTY GOVERNMENT

MANAGEMENT LEADERSHIP SERVICE SALARY SCHEDULE

[Schedule 09]

FISCAL YEAR 2002

GRADE	Level	MINIMUM	CONTROL POINT	MAXIMUM
M1	Management Level I	$65,034	$110,463	$115,510
M2	Management Level II	$56,869	$98,602	$103,239
M3	Management Level III	$48,854	$85,256	$89,300

Effective: July 1, 2001 3.25 percent GWA

Bill 9-01

BUTSAVAGE & ASSOCIATES, P.C.

ATTORNEYS AT LAW
1920 L STREET, N.W., SUITE 510
WASHINGTON, D.C. 20036
202/861-9700
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Carey R. Butsavage
Marc A. Stefan
Mark H. Reynolds*
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*Admitted in Maryland Only

May 29, 2001

The Honorable Blair Ewing
President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Bill 9-01
County Employees

Dear President Ewing:

In accordance with discussions between representatives of MCGEO and members of the County Council at a working session conducted on April 25, 2001, MCGEO submits the attached memorandum with regard to questions raised concerning Bill 9-01 (County Employees).

We very much appreciate the opportunity to present the views of the men and women of MCGEO to the County Council, and would be glad to answer any further questions or concerns you or any Council member might have. Thank you for your consideration.

Very truly yours,

Carey R. Butsavage
Counsel to MCGEO

cc: All County Council Members

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STATEMENT OF MCGEO
With Regard To Bill 9-01, County Employees

During the working session on April 25, 2001, concerning Bill 9-01, questions were raised about various aspects of the Bill. This statement constitutes MCGEO's response to those questions and issues.

A. Is A Vote Among The Additional Employees Necessary or Appropriate? --

One of the main questions concerned whether or not it is appropriate or necessary to conduct a vote among the additional employees before they can be included in the existing units. For the reasons set out below, the answer is, no. That is so because the inclusion of the new employees is consistent with basic concepts and principles or unit composition and community of interest and because the inclusion is properly viewed as an "accretion".

Community of Interest

In American labor law, unit composition issues involve application of what is termed "community of interest" principles to determine the appropriate groupings of employees for collective bargaining purposes. Thus, "Community of interest is the fundamental factor in bargaining unit determination ...." and "[c]ommunity of interest controls the appropriateness of all bargaining units ...." Hardin, The Developing Labor Law, p. 451 (3rd Ed. 1992). See also, *NLRB v. Action Automotive,* 469 U.S. 490 (1985).

More specifically:

> [T]he ... basic function in determining the appropriateness of a potential bargaining unit is to decide whether or not the employees in a proposed unit share a sufficient "community of interest" and to group together for purposes of collective bargaining employees who share common interests in wages, hours and other conditions of employment. Community of interest is not susceptible to precise definition or a mechanical definition.

Id. at 452. In this connection, employees termed "regular part time" employees are invariably included in a unit or units comprised of full time employees, as are employees who employees who have a reasonable expectation of continued employment and "a substantial interest in working conditions at the employer's place of business." *Id.* at 422 (footnote omitted).

Accretion

Accretion issues arise when there is some change in circumstances that give rise to the question of whether a group or group of employees should properly be included in an existing unit or unit of employees or whether such employees are properly deemed a separate and distinct unit or units. Accretion is defined by the National Labor Relations Board as:

> [T]he addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity. The additional employees are then properly governed by the unit's choice of bargaining representative.

Safeway Stores, 256 NLRB 918, 924 (1981). See also, *Progressive Service Die Co,* 323 NLRB 183, 186 (1997). When accretion is appropriate, the new employees are simply included with the existing unit without an election. See, e.g., *Southwestern Bell Telephone Company,* 254 NLRB 451 (1981). Conversely, it is only when the new employees would properly constitute a separate and distinct unit or units unto themselves that a separate election is necessary or appropriate. See, e.g., *Gould, Inc.,* 263 NLRB 445 (1982).

Accretion issues can arise in a variety of circumstances. Most commonly, they occur when the employer opens or secures a new facility that is separate from the exiting facility or facilities. Accretion is also an issue in other instances, however, such as following a reorganization, a change in operations or other altered circumstances that require resolution of whether a "new" group of employees should be included with a larger group of employees in an already existing unit or units. The latter circumstances include situations where, as here, a previously existing impediment to the employees being included in the unit at issue ceases to exist. *Southwestern Bell,* 254 NLRB at 452.

While cases are necessarily determined on a case by case basis, the basic guidelines for determining whether an accretion is appropriate include the following: (1) the degree of interchange among the employees; (2) geographic proximity; (3) integration of operations; (4) integration of machinery and tools or services; (5) centralized administrative control; (6) similarity of working conditions, skills and functions; (7) common control of labor relations; (8) collective bargaining history; and (9) the number of employees proposed for accretion as compared to the number of employees in the already existing unit(s). See generally, Hardin, at p. 405.; See also, *Gould, Inc.,* 263 NLRB 445 (1982); *Towne Ford Sales,* 270 NLRB 311, 312 (1984). Generally speaking, Agencies which administer and decide such issues tend to find accretion inappropriate where: (a) the employees at issue are hired specifically for a wholly autonomous operation; (b) the operations are separately managed; (c) there is no interchange of employees; (d) the new operations are substantially distant from each other or operated wholly autonomously. Hardin, at p. 406.

Application of the foregoing guidelines is really nothing new to Montgomery County and MCGEO. For instance, in 1996, the Maryland legislature passed a bill which "accreted" some 325 employees from the Maryland Department of Social Services into the existing MCGEO unit without an election and without a vote. Indeed that accretion is directly analogous to the situation presented here, inasmuch as the job titles there, which were similar (but not identical) to MCGEO job titles were integrated into the existing MCGEO unit.

Analysis

Applying the foregoing concepts and guidelines to the present situation, it is readily apparent that accretion and related principles operate to include the new groups proposed by 9-01 in the existing units. Accordingly, no election is necessary or appropriate.

As a threshold matter, core concepts of unit composition and community of interest plainly demonstrate that inclusion of the additional employees in the existing units is appropriate. In this regard (although the issue is addressed more directly elsewhere) the additional group(s) are most akin to regular part-time employees -- a grouping that invariably is included in with full time employees. In this sense, had the initial unit composition been with the potential inclusion of the additional employees in mind, there can be no meaningful dispute over the fact that they would have been included, along with the present included employees, in the two broad units on whose behalf bargaining takes place at the present time.

In that same context, community of interest principles also dictate inclusion of the additional group(s) with the existing ones. As we set out in our initial testimony on this matter, the so-called casual, temporary and substitute employees share a substantial community of interest with the currently included employees. Thus, whether one looks to wages, hours, supervision, work rules or any other terms and conditions of employment, the community of interest between existing employees and the additional group(s) is common and pervasive.

Viewed from the obverse perspective -- whether the additional group would constitute a separate appropriate unit on its own, the answer would be, obviously not. Here again, whether one looks to wages, hours, working conditions, benefits, work rules, supervision or any of the other applicable factors, it simply is illogical and inappropriate to conclude that the additional groups could, under traditional principles of unit determination and community of interest, constitute a separate and appropriate unit or units.

As for application of the technical accretion guidelines, analysis there overwhelmingly demonstrates that "accretion" is appropriate and, accordingly, that no separate election is either necessary or appropriate. Indeed, all of the guidelines that counsel in favor of accretion are fully and comfortably present.

Thus, there is substantial and pervasive "interchange among the employees". Indeed, "interchange" itself is a bit of a misnomer in these circumstances, because many of the employees in the additional group work, literally, side-by-side with unit employees. Those who

do not are in frequent and regular contact with unit employees in performing their jobs. The same can be said of "geographic proximity". In this regard, the "work sites" for the additional employees and the existing unit employees are often exactly the same. Even in instances where the work sites are physically separate, they are all within the County and, therefore, proximate to each other.

"Integration of operations" also argues in favor of accretion. This is so because the various work tasks being performed by both existing unit employees and the additional employees are the manifestation of the integrated and interdependent County services that are being provided. Precisely the same can be said about "integration of machinery and tools or services".

"Centralized administrative control" and "common control of labor relations" are also present, and, in fact, are a key components of the County structure and its provision of services. As for "similarity of working conditions, skills and functions" the included and additional groups are virtually synonymous. While there is not a preexisting "history of collective bargaining" for the additional employees, there is a long and fruitful history of collective bargaining involving employees who often work side-by-side with the additional employees or who perform integrated or similar tasks with them. Finally, in this regard, the relative numbers of existing unit employees easily predominate over the relatively smaller number of additional employees thereby rendering both accretion and reliance on the existing choice concerning representation appropriate.

Regarding the factors that traditionally militate against accretion, none are even arguably present to a degree that would render accretion inappropriate. Thus, while some of the additional employees are hired to perform specific, seasonal tasks, they are hired on a regular an repeated basis and, as noted above, they perform not autonomous tasks, but functions that are fully integrated with and/or a part of the county functions and services performed by existing unit employees. On the remaining three factors that militate against accretion, it simply is not the case that "operations are separately managed", nor that there is "no interchange of employees" nor that the "new operations are substantially distant from each other or operated wholly autonomously". In short, this manifestly is not a situation where accretion principles mandate a separate unit or units or a separate election regarding inclusion.

In short, as we stated at the working session of the Management and Fiscal Policy Subcommittee, a "vote" among the employees who are the subject of 9-01 is neither necessary nor appropriate.

Additional questions raised include the following.[1]

[1] We would note that with regard to references concerning employee "response" to the purported "outreach" effort, adverse conclusions that might be drawn from such "responses" are premature and not well founded. As noted at the hearing, employees were told only that they would be included under the Collective Bargaining law and assessed dues. That an adverse response to such "information" would be negative is not surprising. If employees had been told, as would be the case if the appropriate amendments are made, that inclusion would provide them with collective bargaining rights they did not previously have, that they would begin to have a say in their work and its conditions, that they could gain the right to file grievances over wrongful treatment and gain the opportunity to

B. Treatment of "Short term employees", Exclusion of Employees Who Work Less Than 90 Days per Year --

As an initial matter, this section of the report reflects certain, and perhaps even understandable, confusion about the appropriate terminology for specific groups of employees. In this regard, there are two options that could serve to avoid confusion in the analysis and in the administration of the amendments if passed. Thus, the terms temporary, seasonal and substitute need to be defined. That can be done directly, or, as we recommend by simply defining "part-time employees" in a manner that includes those portions of the additional group who properly should be included in the existing units. Our recommended language is set out at the end of this submission.

Beyond definitions, the report recommends that employees who work less than 90 days in a calendar year be excluded. In traditional labor law terms, such a definition would render people who worked less than the prescribed amount of days "casual" employees. We strongly disagree with the recommendation.

To begin with, 90 days of work -- based on a five day work week amounts to 18 full weeks of work. That, we submit is hardly a negligible amount of time or commitment on the part of the employees. Indeed, under the National Labor Relations Act, "casual" employees generally are excluded from a unit only if they work, on average, less than four (4) hours per week in a given calendar quarter (i.e., less than 52 hours within a three month period). Accordingly, the recommendation's proposal is completely out of step with established labor law definitions and guidelines.

Beyond the numbers, however, the real issue is one of contribution, commitment and expectation on the part of the employees. In this regard, 18 weeks of work (or even longer in a less than five day work week) is a substantial commitment of time, skill and effort on the part of a worker. And, it is in large part because of that commitment that employees in that group both need and are entitled to representation and the right to engage in collective bargaining. Moreover, the commitment of that time skill and effort results in a substantial benefit to the County and its residents. To term that commitment and contribution "casual" is unfair not only to the worker but to the County and the residents it serves.

C. Limited Bargaining --

OHR recommends that the newly included group of employees be represented only for purposes of bargaining wages. We strongly disagree.

While wages are significant matters -- and matters on which the employees at issue are entitled to engage in collective bargaining -- they are not the only maters of employee concerns. Just some of those include grievance and complaint mechanisms, benefits, opportunities for

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bargain improvements in their wages, benefits and working conditions, there is little doubt the response would have been substantially more positive.

promotions and a myriad of other working conditions. Each and all of those are significant matters to workers and their families and are matters on which workers are entitled to the rights of collective bargaining and having a say in their daily lives and careers. to artificially truncate those matters and limit them merely to wages is, we believe, inappropriate and unnecessary.

This is particularly true, we might add, for employees whose wages already are near the bottom of the overall wage scale and for whom meaningful pay increases are unlikely in any event. Indeed, it is perhaps those employees most of all who both need and are entitled to representation and collective bargaining that will respectively protect their rights and advance their work interests.

Finally, in this regard, we suspect that an underlying concern that may have prompted this limited bargaining recommendation is the perceived chances of increased costs to the County. to that concern, we would say two things. First, if fair and appropriate treatment of County employees as gained through good faith collective bargaining increases the County's costs, it is an increase in costs that is both necessary and appropriate. Second, The notion of dealing with limited budgets, revenues and other sources of income for the County is nothing new to MCGEO and, in fact, is a part of the overall collective bargaining process to begin with. In that regard, part of the Union's job and the service it provides to its members is to represent them collectively in a manner that weighs and balances options, alternatives and priorities -- monetary and otherwise. Adding an additional group of workers to that equation is nothing new. Indeed, the only thing "new" is granting a seat at the table to employees who have been excluded for too long.

D. Dues --

As stated at the working session, MCGEO's **members** vote on the dues structure of the organization. As we believe we made clear at the hearing, MCGEO will, to the extent it is necessary, assure the County Council that it will continue to structure and administer its dues scale in a manner that is appropriate and fair to its members.

PROPOSED AMENDMENT LANGUAGE

"For purposes of this section, "part-time" and, therefore, included employees means, among other things: employees who are listed or qualified to work on a regular basis as a substitute in unit positions; employees whose hours of work over a given calendar quarter exceed an average of four (4) per week for the period; and, employees who work on a "seasonal" basis so long as the seasonal period for which they are hired lasts more than 30 days."

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

August 27, 2001

TO: Marta Perez, Director, Office of Human Resources
Gino Renne, President, Municipal and County Government Employees Organization

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: Bill 9-01 -- remaining questions

Both your staffs have asked me what questions raised at the April 25 Management and Fiscal Policy Committee worksession on Bill 9-01 remain to be answered. On May 29, MCGEO's counsel, Mr. Butsavage, submitted to the Council a detailed memo on accretion and other issues, which Council staff sent a copy of to Mr. Torgesen. To allow further consideration of this bill by the MFP Committee, it would help if each of you could respectively answer the following questions.

Questions for OHR

- Do you support or oppose the thrust of the amendment drafted by Mr. Butsavage (at the end of his memo) which would include certain "part-time" employees in the bargaining unit? Which short-term positions should continue to be excluded from the bargaining unit?
- Is there a viable way to measure the views of affected employees regarding their inclusion in the bargaining unit? Are those employees' views relevant to this decision?
- Do you generally agree with Mr. Butsavage's memo or have any other comments on it?

Questions for MCGEO

- Does MCGEO contend that the views of the affected employees are irrelevant to the decision whether to include them in a bargaining unit? If not, how should their views be measured?
- At the Committee worksession Mr. Renne said you would provide amendment language to address the continued inclusion of bargaining unit positions that are reclassified upward to Grade 27 or higher. Is that amendment drafted?
- In response to Councilmember Denis, Mr. Renne said you would provide an amendment to "clarify the scope of bargaining" on health benefits -- in other words, to define which employees are not eligible to bargain health benefits. Is that amendment drafted?
- At the worksession Mr. Butsavage said that short-term employees are often included in collective bargaining units elsewhere. Can you provide examples of other local governments, preferably in this area, with similar collective bargaining structures that include short-term employees in their bargaining units?
- Responding to Council staff's memo, Mr. Butsavage notes that "MCGEO will...continue to structure and administer its dues scale in a manner that is appropriate and fair to its members." What does that mean, specifically, for dues payments by short-term and low-paid employees? Does MCGEO intend to offer any adjustments for those employees if they are included in the bargaining unit?

If anything in this memo needs to be clarified, feel free to call me at 240-777-7905 or email me at mike.faden@co.mo.md.us. I look forward to receiving your answers.

C: Members, Management and Fiscal Policy Committee
Jim Torgesen
Carey Butsavage

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MCGEO
WWW.MCGEO.ORG
UNITED FOOD & COMMERCIAL WORKERS LOCAL 1994, AFL-CIO/CLC
■ GINO RENNE PRESIDENT ■ YVETTE CUFFIE SECRETARY-TREASURER ■ TYRONE WILLS RECORDER

MUNICIPAL & COUNTY GOVERNMENT EMPLOYEES ORGANIZATION ■ 108 OLDE TOWNE AVENUE ■ SUITE 13 ■ GAITHERSBURG, MD 20877 ■ 301-977-2447 ■ 800-948-0654 ■ FAX 301-977-6752

November 5, 2001

VIA FACSIMILE

Michael Faden, Esquire
Senior Legislative Attorney
Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Dear Mr. Faden:

The most compelling argument for accretion is Montgomery County's own past practice. In 1998, the state legislature, at the urging of County Executive Doug Duncan, passed legislation which "accreted"former employees of the Maryland State Department of Social Services to the MCGEO Bargaining Unit and made them employees of Montgomery County. Their employer benefit structure, and employee rights were changed through legislation and they were accreted, all without a vote, based on the same principle.

In response to your memo and its questions, MCGEO UFCW Local 1994 responds as follows:

1. As we have explained in our previous submissions, to the extent it is determined that the employees at issue are–because of their common job duties, common supervision and other factors that establish the requisite and extensive community of interest with unit employees–a true accretion to the existing unit, then, the "views" of the affected employees are, as a matter of law, not determinative on the inclusion issue. We submit, however, that the question of employee sentiments is effectively moot and a bit of a red herring. Thus, as an organization that values, respects and honors its members' views and sentiments, MCGEO is certain that–when presented with a fair and balanced picture of the advantages of inclusion in the bargaining unit–the affected employees will overwhelmingly support inclusion, just as their co-workers in the unit now overwhelmingly support and enjoy the advantages of

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Unionization. Our "measure" of that is already reflected in the current membership and their sentiments. We submit that regarding the "measure" for the newly included employees, the proof will be in the pudding–the degree to which a fully and fairly informed component of the work force will overwhelmingly recognize and embrace the advantages of joining their brothers and sisters as Union members.

Moreover, we note that despite what we consider to have been a "loaded" question sent to temporary employees by your staff, only a handful of employees replied to that memo with negative responses. To a certain extent, the measure of the temporary employees has already been taken by you.

2. See attached Exhibit A for the draft amendment language.

3. See attached Exhibit B for the draft amendment language.

4. In response to your questions concerning dues, we reiterate that we will structure our dues in a manner that is appropriate and fair to our members, including part-time employees. We note that the matter of dues is an internal Union matter which is, and properly should be, between the Union and its members.

Please do not hesitate to contact us if you have any further questions.

Very truly yours,

Gino

Gino Renne
President
MCGEO UFCW Local 1994

EXHIBIT A

Nothing in this legislation shall affect the status of those current bargaining unit members who would otherwise have been excluded for the bargaining unit as a result of an upgrade in their job classification. Those employees whose jobs have been reclassified to Grade 27 or higher shall remain included in the bargaining unit. Unless their job duties and responsibilities are changed in a manner which would require exclusion form the unit in accordance with the collective bargaining laws.

MUNICIPAL & COUNTY GOVERNMENT EMPLOYEES ORGANIZATION ■ 18310 MONTGOMERY VILLAGE AVENUE ■ SUITE 220 ■ GAITHERSBURG, MD 20879

EXHIBIT B

Employees who work a regular part-time schedule will be eligible for health benefits in the same manner as those current employees who are regular part-time employees.

OFFICE OF HUMAN RESOURCES

Douglas M. Duncan
County Executive

MEMORANDUM

Marta Brito Perez
Director

November 29, 2001

TO: Michael Faden, Senior Legislative Attorney

FROM: Marta Brito Perez, Director
Office of Human Resources

SUBJECT: Bill 9-01 -- remaining questions

This is a response to your August 27 correspondence concerning the above referenced topic. You posed three questions to this Office concerning matters raised by Mr. Butsavage in his May 29th correspondence to the County Council.

1. Do you (OHR) support or oppose the thrust of the amendment drafted by Mr. Butsavage which would include certain part-time employees in the bargaining unit? Which short term positions should continue to be excluded from the bargaining unit?

For reasons specified in our analysis of the arguments made by Mr. Butsavage for including all job classes of temporary employees in existing bargaining units, we would limit eligibility of temporary employees to those employees in **existing bargaining unit classes**. The Butsavage amendment would set an eligibility standard for intermittent/substitute employees of 4 or more hours per week over a calendar quarter; and, for seasonal employees continuous employment of 30 or more days.

Temporary employees are of three types: full or part-time working no more than 12 months, intermittent/substitute, and seasonal. For temporary employees in existing bargaining unit classes we would propose that eligibility be based upon satisfying a minimum of twenty-five hours of scheduled work per pay period. This is the current minimum number of hours worked by bargaining unit employees.

As noted above, those temporary positions which should be excluded from bargaining unit eligibility include all non-bargaining unit job classes not on the general salary schedule and presently under the S1-S8 salary schedule. In addition to having a different pay structure than bargaining unit employees the majority of employees perform work that is seasonal in nature and of short duration. Thus, they have no reasonable expectation of continued employment. The S1-S8 non-bargaining unit job classes include the following:

(49)

Conservation/Service Corp Trainee
County Government Aide
Recreation Assistant I-VIII
Library Page
Community Correction Intern
Public Service Guide
Nutrition Program Aide

2. Is there a viable way to measure the views of affected employees regarding inclusion in the bargaining unit? Are those employees relevant to this decision?

Labor relations principles generally are premised on the basic right of employees to express their desire to be represented for the purposes of collective bargaining. However, in certain circumstances, unrepresented employees may be accreted into an existing bargaining unit wherein the majority of those voting have previously cast their vote in favor of representation. Incumbents of accreted positions do not have the opportunity to express an interest in representation through voting, as they become a part of an existing bargaining unit for which representation has previously been determined. Because the accretion process adds employees to an existing unit without according these employees any representational voting rights, the accretion doctrine has been narrowly applied in both the private sector and federal sector cases. As noted in item #3, below, analysis of Mr. Butsavage's correspondence, the private sector case law has developed criteria to help guide the determination of job classes appropriate for accretion into existing bargaining units. One of the significant elements in making this determination is the number of employees proposed for accretion compared to the number of employees in the already existing bargaining unit. This is an important factor to consider so as to preserve, where possible, the opportunity for large numbers of employees to express their desire for representation. There are a substantial number of temporary employees who, if considered eligible, should have the right to express an interest in representation, and if there is sufficient interest have the opportunity to cast a vote.

Another significant factor is community of interest; elements of work, compensation and the work environment common to the positions in question. As further detailed below, when dealing with the eligibility of temporary employees inclusion in an existing bargaining unit private sector case law sets a higher bar for the accretion of temporary employees requiring an "overwhelming" community of interest to apply.

For these reasons, we do not agree with the Union that all temporary job classes should be accreted into existing bargaining units. Temporary employees in non-bargaining unit classes **should be excluded** from bargaining rights for the reasons stated under item #3. Our views notwithstanding, if it is determined that such employees are to have bargaining rights, we do **not** believe it appropriate for these employees to be accreted into an existing unit. More appropriately, temporary employees in non-bargaining unit classes should be grouped in a separate bargaining unit and be given the opportunity to demonstrate through a showing of interest {thirty (30) percent of those eligible} a desire to be represented. If there is a sufficient showing of interest, a secret ballot election of those eligible is conducted and the majority of

those voting determine whether they will be represented. These employees should then have a separate bargaining unit status for collective bargaining purposes.

3. Do you generally agree with Mr. Butsavage's memo or have any other comments on it?

We do **not** generally agree with the conclusions reached in his May 29, 2001 memo regarding the proposed treatment of temporary employees. Two separate, but related, questions are addressed in the correspondence: a) Are temporary employees and their associated job classes appropriate for accretion into existing bargaining units? and, b) What are appropriate eligibility requirements for temporary employees to be included within a bargaining unit?

a) Mr. Butsavage has referenced the following definition of accretion:

> **[T]he addition of a relatively small group of employees to an existing unit** where these additional employees share a sufficient community of interest with the unit employees and have no separate identity. The additional employees are then properly governed by the unit's choice of bargaining representative. (Emphasis added.)

Based upon the information on the number of employees in temporary positions that we have previously provided Council staff, the total number of temporary employees approximates 2,660 employees. This does not represent a "relatively small group of employees" in relation to the total number of bargaining unit employees (3,942) in the existing Office, Professional and Technical (2,937) and Service Labor and Trades (1,005) bargaining units. (All employees combined, temporary employees represent forty (40) percent of the total.) For a group of this size it is not reasonable to expect them to forego an opportunity to determine if they want representation. Accretion contemplates the inclusion of a sufficiently small group of employees so as not to have an impact on the right of self-determination by the majority of the bargaining unit.

MCGEO requests that the County's temporary employees be treated the same as previously accreted State/County merit system employees that were brought into the Department of Health and Human Services in 1996. The treatment of those employees accreted into the Office, Professional and Technical Unit is not analogous to the issue at hand. First, the number of employees, approximately 350, represented a much smaller portion of the bargaining unit to which they were accreted (OPT unit approximated 2,600). Second, there are substantial differences in the community of interest as the majority of temporary employees are not in existing bargaining unit classes.

As noted earlier, community of interest with unit employees is also identified within the definition of accretion as a factor of consideration. However, because accretion precludes employee self-determination, accretion will be found only where the employees to be accreted share an **overwhelming** community of interest with the preexisting unit and have little or no separate identity. *Passavant Retirement & Health Center, 313 NLRB 1216, 1218 (1994).* Elements of community of interest would include commonality among employees in

compensation, hours and working conditions. This is further reflected in additional guidelines identified in the Union's argument which clarify community of interest issues to include; the degree of interchange between employees; geographic proximity; integration of operations; similarity of working conditions, skills and functions; common control of labor relations; and collective bargaining history.

There is merit in considering for accretion those temporary employees occupying existing bargaining unit job classes. The elements of a community of interest are relevant to these employees. These are employees who have a general wage structure similar to the bargaining unit and whose work is integrated with bargaining unit employees with whom there is a high degree of interchange. The performance of work is also in geographic proximity to other bargaining unit employees. They often perform the same duties as bargaining unit employees, thus skill and functions are similar. This number approximates 410 employees. This group is therefore more appropriately considered a "small group of employees" in relation to the size of the two units into which they would be accreted.

Temporary employees in **non-bargaining unit** classes, however, should not be accreted to the existing unit because they do not share a sufficient community of interest, let alone meet the higher standard of an overwhelming community of interest, with the regular employees in the bargaining unit. These employees do not share the same skills and job functions with unit employees. Their pay schedules are not comparable to those of unit employees. Many of these employees are hired to perform specific, seasonal tasks. Their work is of short duration, often limited and sporadic, and they have no reasonable expectation of continued employment.

b) The Union argues that ninety (90) working days per year as a threshold to determine eligibility for unit inclusion is unreasonable in view of private sector practices with regard to "casual employees." While private sector principles provide insight into the treatment of temporary employees and bargaining unit rights this should not be the sole standard for consideration. It is noted in this instance that the private sector model is most likely utilized because of the absence of local government precedent. Certainly, this is true in our own immediate region. We are not aware of State or any local government employers in our area that extend collective bargaining rights to temporary employees. Nevertheless, private sector principles established through National Labor Relations Board (NLRB) decisions and the Federal Sector through the Federal Labor Relations Authority (FLRA) focus eligibility of temporary employees on the nature of their employment tenure. The following are examples of some general principles that have been established through case law.

> If temporary employees are employed for one job only, or for a set duration, or have not substantial expectancy of continued employment and are notified of this fact, and there have been no recalls, such employees are excluded from bargaining unit eligibility. *Indiana Bottled Gas Co., 128 NLRB 1441fn.4 (1960); Owens-Corning Fiberglass Corp., 140 NLRB 1323(1963); Sealite, Inc. 125NLRB 619 (1959).*

Temporary employees who are retained beyond their original term of employment, and whose employment is thereafter for an indefinite period are considered eligible for bargaining unit status. *Orchard Industries, 118 NLRB 798(1957)*

Temporary employees who have worked for substantial periods where there is no likelihood that their employment will end in the immediate foreseeable future have been included in the bargaining unit. *Horizon House 1 Inc, 151 NLRB 1433*

(1958); Textile Workers UTWA, 138 NLRB 269 fn. 3(1962); Lloyd A. Fry Roofing Co., 121 NLRB 1433(1958)

Temporary summer seasonal employees are generally excluded from an appropriate unit; such employees are only deemed eligible if, upon returning to school, their employment evidences regular part-time status. This should be distinguished from intermittent, sporadic employment. *Crest Wine & Spirits, Ltd. 168 NLRB 754(1968; Beverly Manor Nursing Home, 310 NLRB 538 fn.3(1993).*

Case law from the Federal Sector also follows similar trends.

Temporary employees, including summer hires, who are not promised permanent positions or subsequent employment, are excluded from the unit. F*ederal Mediation and Conciliation Service and NAGE Local R3-118, 5 FLRA 28 (1981).*

Temporary disaster employees were included in a unit. They had a reasonable expectancy of continued employment beyond their initial six-month appointment, shared general supervision, work schedules, office conditions and common working environment with other unit employees, and performed some of the same duties as other employees. *SBA Lower Rio Grande Valley District Office and AFGE Local 3904, 16FLRA 180 (1984).*

Actually employed individuals working without a fixed schedule from day to day, paid only for hours worked are to be included in a unit if serving appointments full time and over 90 days. *Panama Canal Comm'n and AFGE Local 1805, 5 FLRA 104, 121 (1981).*

To have a community of interest with unit employees, a temporary employee must have a reasonable expectation of continued employment in the unit. *Headquarters, XVIII Airborne Corp and Fort Bragg, Fort Bragg, North Carolina, 36 FLRA 237(1990).*

Employees appointed for six months with no guarantee of reappointment, serving in a special program, not subject to merit promotion or the Federal Retirement program, who received no differentials, holiday pay, insurance benefits, or sick or annual leave and did not have competitive status, were not considered to share sufficient community of interest with other regular employees to be included in the unit. *Dept. of Agriculture, Animal*

Plant Health Inspection Service, Plant Protection Quarantine, Pink Bollwarm Rearing Facility and NFFE Local 376, 6 FLRA 261 (1981).

In view of the above, we believe a more appropriate criteria for determining employee eligibility is one that demonstrates a reasonable expectation of continued employment. Where it may be appropriate to accrete temporary employees because of the relatively small size of the employee group and an overwhelming community of interest, we propose to condition their continuing eligibility for bargaining unit representation on working a minimum of twenty-five (25) hours per pay period; the minimum eligibility standard for existing bargaining unit employees.

3. Temporary employees accreted to an existing bargaining unit should have limited bargaining rights.

The scope of bargaining for temporary employees is another critical issue that must be addressed. The Union argues for a full range of bargaining rights for these employees to include compensation, grievance rights, benefits, opportunities for promotion and a "myriad" of other working conditions. While temporary employees are hired through merit system processes, they are not merit system employees. Therefore, they have not been extended the same regulatory protections, benefits and compensation as merit system employees. Because of their limited and sporadic employment we do not support full bargaining rights for these employees. We believe bargaining for temporary employees in bargaining unit classes should be limited to general wage adjustments and union security issues (dues and service fee check-off).

I trust this discussion of the bargaining unit status and bargaining rights of temporary employees has been responsive to your queries. Please let me know if I can be of further assistance on this matter.

cc: Bruce Romer, Chief Administrative Officer

OFFICE OF INTERGOVERNMENTAL RELATIONS

Douglas M. Duncan
County Executive

Ben Bialek
Director

April 26, 2001

The Honorable Blair Ewing, President
Montgomery County Council
COB 6th Floor
100 Maryland Avenue
Rockville, Maryland 20850

RE: Bill 9-101, County Employees – Collective Bargaining Units

Dear President Ewing:

I write to express my concern with the above-referenced bill as it would apply to non-supervisory Grade 27 employees in the Office of Intergovernmental Relations (OIR). The bill raises several issues which, I believe, warrant an exemption for these OIR employees. Because of the General Assembly session in Annapolis, it was impossible to testify at the public hearing in Rockville.

There are two specific reasons to request the exemption. First, there is a potential for conflict of interest problems since OIR may be requested to handle matters pertaining to collective bargaining before the State legislature. In the recent past, for example, we have worked on legislation affecting MCGEO representation at the Housing Opportunities Commission and the Maryland-National Park and Planning Commission. It is conceivable that amendments to laws pertaining to collective bargaining at the independent agencies will again be introduced. Being members of the union may place the OIR employee in a difficult position when representing the County Council and County Executive before our State elected officials.

Secondly, as you know, many of the issues we deal with are of a politically sensitive nature. For this reason, I believe that the OIR non-supervisory Grade 27 employees should be considered in the same manner as persons who work for the County Council and for the Office of the County Executive ~ that is, exempted from the provisions of Bill 9-101.

(55)

101 Monroe Street • Rockville, Maryland 20850-2589 • 240/777-6550, FAX 240/777-6551
47 State Circle • Annapolis, Maryland 21401 • 301/261-2461, FAX 301/261-2820
MAILING ADDRESS: 101 Monroe Street • Rockville, Maryland 20850

Thank you for your consideration. I can be reached at 240-777-6555 should you wish to discuss this further.

Sincerely,

Sheila Sullivan Sprague
Legislative Analyst

Cc: The Honorable Marilyn Praisner, Chair
Management and Fiscal Policy Committee

Michael Faden, Senior Legislative Attorney

Stephen Farber, Council Staff Director

Amendments to Bill 9-01

By Councilmember Denis

Replace text of introduced bill with the following:

Sec. 1. [[Section 33-102]] Chapter 33 is amended as follows:

33-102. Definitions.

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

* * *

(4) Employee means any person who works [[under]] for the County government [[merit system on a continuous full-time, career or part-time, career basis, or an a temporary, seasonal, or substitute basis]], except:

(A) [[Confidential aides]] a confidential aide to an elected [[officials.]] official;

(B) [[All persons who are not covered by the County government merit system.]] a person holding a position designated by law as a non-merit position;

(C) [[Heads]] a head of a principal [[departments, offices, and agencies.]] department, office, or agency;

(D) [[Deputies and assistants]] a deputy or assistant to [[heads]] a head of a principal [[departments, offices, and agencies.]] department, office, or agency;

(E) [[Persons]] an employee who [[provide]] provides direct staff or administrative support to the head of a principal department, office, or agency, or to a deputy or assistant within the immediate office of a head of a principal department, office, or agency[[.]];

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(F) [[Persons]] an employee who [[report]] reports directly to, or whose immediate supervisor is;

(i) the County Executive [[or]];

(ii) the Chief Administrative Officer; or

(iii) [[their principal aides.]] a principal aide of the County Executive or Chief Administrative Officer;

(G) [[Persons]] an employee who [[work]] works for:

(i) the Office of the County Executive [[and]];

(ii) the Office of the Chief Administrative Officer[[.]];

[(H)] (iii) [[Persons who work for]] the County Council[[.]];

[(I)] (iv) [[Persons who work for]] the Office of the County Attorney[[.]];

[(J)] (v) [[Persons who work for]] the Office of Management and Budget[[.]];

[(K)] (vi) [[Persons who work for]] the Office of Human Resources[[.]]; or

[(L)] (vii) [[Persons who work for]] the Merit System Protection Board[[.]];

[(M)] (H) [Persons who work on a temporary, seasonal, or substitute basis.] an employee in a temporary, seasonal, or substitute position, unless the position is in a job class in which the incumbents are predominantly career merit system employees;

[(N)] (I) [[Newly hired persons on probationary status.]] a recently-hired employee who has not completed the probationary period;

[(O)] (J) [[Persons who work for the Police Department and are represented by a certified employee organization under Article V.]] an employee in the police bargaining unit;

[(P)] (K) [[Persons who work for the Department of Fire and Rescue Services and are represented by a certified employee organization under Article X.]] an employee in the firefighter/rescuer bargaining unit;

[(Q)] (L) [[Officers in the uniformed services (Corrections, Fire and Rescue, Police, Office of the Sheriff) in the rank of sergeant and above.]] a uniformed officer in the Department of Correction & Rehabilitation at the rank of sergeant or higher;

(M) [[Subject]] subject to any limitations in State law, [[deputy sheriffs below the rank of sergeant are employees.]] a uniformed officer in the Office of the Sheriff at the rank of sergeant or higher;

[(R)] (N) [[Persons]] an employee who [[are members]] is a member of the State merit system[[.]];

[(S)] (O) [[Supervisors, which means persons having]] a supervisor, meaning an employee who has the authority to:

(i) hire, assign, transfer, lay off, recall, promote, evaluate, reward, discipline, suspend, or discharge employees, or effectively recommend any of these actions;

(ii) direct the activity of 3 or more employees; or

(iii) adjust or recommend adjustment of grievances[[.]];

[(T) Persons grade 27 or above, whether or not they are supervisors.]

(P) an employee in a position classified at grade 27 or above unless the employee's position is reclassified or reallocated on or after July 1, 2002, to a non-supervisory position at grade 27 or above; or

(Q) an employee in a position classified in the Management Leadership Service.

* * *

33-105. Units for collective bargaining.

(a) There are 2 units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees [[working on a continuous full-time, career or part-time, career basis]], except any person who is not defined as an employee in Section 33-102(4). The employees are divided into 2 units:

* * *

(2) * * *

[[a.]] (A) * * *

[[b.]] (B) * * *

[[c.]] (C) * * *

[[d.]] (D) * * *

* * *

(c) *Temporary, seasonal, and substitute employees.*

(1) A temporary, seasonal, or substitute employee in an occupational class in which the incumbents are predominantly career merit system employees becomes a member of the

applicable bargaining unit when the employee has worked 6 months in a position in that occupational class. However, the employee may be terminated for any cause or without cause and without any right of grievance until the employee has completed 1040 hours of service in that position in any 12-month period.

(2) A temporary, seasonal, or substitute employee who is excluded from the definition of "employee" under Section 33-102(4)(H) because the employee is not in an occupational class in which the incumbents are predominantly career merit system employees becomes a limited-scope member of the applicable bargaining unit immediately after the employee begins employment if:

(A) the employee works at least 25 hours per pay period; and

(B) the employee organization which represents that bargaining unit has adopted a reduced scale of dues and service fees for employees in the limited-scope membership group that is generally proportional to the organization's representational responsibilities for employees in that group relative to the organization's representational responsibilities for other bargaining unit members, as determined by the employee organization.

Membership in a bargaining unit on a limited-scope basis must not carry any right to continued employment or access to any grievance procedure or other benefit that is extended to other bargaining unit members.

33-107. Collective bargaining.

(a) *Duty to bargain; matters subject to bargaining.* Upon certification of an employee organization, the employer and the certified representative have the duty to bargain collectively with respect to the following subjects for employees other than limited-scope members of the bargaining unit under Section 33-105(c)(2):

* * *

(2) Pension and other retirement benefits [[shall be negotiable,]] for active employees only, [[one (1) year after the effective date of this article]] but the parties must not bargain over the participation by any employee who is a member of the bargaining unit under Section 33-105(c)(1) in either the Integrated Retirement Plan or the Retirement Savings Plan.

* * *

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of a collective bargaining agreement, which may include:

[[a.]] (A) Binding third party arbitration for employees other than members of the bargaining unit under Section 33-105(c)(1), [[provided that]] but the arbitrator [[shall have no authority to]] must not amend, add to, or subtract from the provisions of the collective bargaining agreement; and

[[b.]] (B) Provisions for exclusivity of forum.

The duty to bargain under this subsection, and any agreement reached as a result of bargaining, must not limit the employer's authority to require a newly-hired employee to remain in probationary status, during which the employee may be terminated for any cause or

without cause and without any right of grievance, for a period that does not exceed 6 months. Unless a specific probationary period is required by law, the parties may agree on any probationary period that is not less than 6 months.

(b) *Duty to bargain for limited-scope employees.* The employer and the certified representative have the duty to bargain collectively on only the following subjects with respect to employees who are limited-scope members of the bargaining unit under Section 33-105(c)(2):

(1) wage scales and general wage adjustments; and

(2) dues or service fee deductions.

[[(b)]] (c) * * *

[[(c)]] (d) * * *

[[(d)]] (e) *Agreement.* * * *

Sec. 2. Transition.

The certified representative and the employer must bargain under Section 33-107 with respect to temporary, seasonal, and substitute employees who are members of a bargaining unit, including limited-scope employees, immediately after this Act becomes law. The procedures for impasse resolution under Section 33-108 apply to this bargaining process, but the specific action deadlines in that section do not apply. An initial agreement between the certified representative and the employer with respect to temporary, seasonal, and substitute employees must expire on the same date as the existing agreements for the SLT and OPT bargaining units.