COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

(1) add a definition of confidential employee to the County employees collective bargaining law, and exclude confidential employees from certain bargaining units;

(2) require the certified representative and employer to engage in fact-finding after an impasse is reached and to resume bargaining after receiving the fact-finding report of the mediator/arbitrator;

(3) revise the applicability of the collective bargaining law to certain temporary, seasonal, or substitute employees;

(4) revise the collective bargaining calendar for certain bargaining units; and

(5) generally amend the law regarding County collective bargaining.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-102, 33-105, 33-107, and 33-108

**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. Sections 33-102, 33-105, 33-107, and 33-108 are amended as follows:

33-102. Definitions.

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

[(1)] * * *
[(2)] * * *
[(3)] * * *

Confidential employee means an employee:

(A) who is required to develop or present management positions on collective bargaining issues; or

(B) whose duties normally require access to confidential information that contributes to the development of management positions on collective bargaining issues.

[(4)] Employee means any person who works for the County government, except:

* * *

(H) an employee in a temporary, seasonal, or substitute position, unless the position is in a job class in which one or more of the incumbents are [predominantly] career merit system employees; * * *

(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[].; or

(R) a confidential employee.

[(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] the County Executive’s designees.

[(7)] *

[(8)] Mediation means an effort by the [mediator/fact-finder] mediator/arbitrator 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)] *

[(10)] *

[(11)] *

33-105. Units for collective bargaining.

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

(1) A temporary, seasonal, or substitute employee in an occupational class in which one or more of 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 one or more of 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) 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):

*   *   *

(7) Amelioration of the effect on employees when the exercise of employer rights listed in subsection [(b)] (c) causes a loss of existing jobs in the unit.

*   *   *


(a) Collective bargaining must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and must be finished on or before February [1] 15.
(b) Any provision for automatic renewal or extension of a collective bargaining agreement is void. An agreement is not valid if it extends for less than one [(1)] year or for more than [(three (3)] 3 years. All agreements take effect July 1 and end June 30.

* * * * *

(d) Before September 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator must appoint a mediator/arbitrator, who may be a person recommended by both parties. The mediator/arbitrator must be available from January 2 to June 30. [Fees] The employer and the certified representative must share the fees and expenses of the mediator/arbitrator [must be shared] equally [by the employer and the certified representative].

(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/arbitrator[,] or the parties may jointly request those services before an impasse is declared. If the parties do not reach an agreement by [February 1] January 24, an impasse exists. [Any] An issue regarding the negotiability of [any] a bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) [Any] A dispute, except a dispute involving the negotiability of a bargaining proposal, must be submitted to the mediator/arbitrator whenever an impasse has been reached, or as provided in subsection (e)(1). The mediator/arbitrator must engage in mediation by bringing the parties together voluntarily
under such favorable circumstances as will encourage settlement of the dispute.

(3) If the mediator/arbitrator finds, in the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, or [as of] on February 1[ when an impasse is automatically reached], whichever occurs earlier, the dispute must be submitted to [binding arbitration] fact-finding.

(f) (1) In fact-finding, the mediator/arbitrator must not hold a full evidentiary hearing. Instead, each party must briefly explain to the mediator/arbitrator the party’s position on each proposal to which the parties have not agreed.

(2) After hearing the parties’ positions on each proposal in dispute, the mediator/arbitrator must issue a fact-finding report to the parties no later than February 6. In the fact-finding report, the mediator/arbitrator must state for each proposal whether the mediator/arbitrator favors the certified representative’s position, the employer’s position, or an alternative that does not exceed the parameters of either party’s position.

(3) After receiving the fact-finding report of the mediator/arbitrator, the parties must resume bargaining. If the parties do not reach agreement by February 15, they must submit their dispute to binding arbitration.

[(f)](g) (1) If binding arbitration is invoked, the mediator/arbitrator must not engage in further mediation. The mediator/arbitrator must require each party to submit a final offer, which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the
mediator/arbitrator directs. If [only complete package proposals are required,] the mediator/arbitrator [must require] directs the parties to submit complete package proposals, the parties [to submit] must jointly submit a memorandum of all items previously agreed on.

* * *

(3) On or before [February 15] March 1, the mediator/arbitrator must select, as a whole, the more reasonable of the final offers submitted by the parties. The mediator/arbitrator must not compromise or alter a final offer. The mediator/arbitrator must not consider or receive any argument or evidence related to the history of collective bargaining in the immediate dispute, including any previous settlement offer not contained in the final offers. However, the mediator/arbitrator must consider all previously agreed-on items, integrated with the disputed items, to decide which offer is the most reasonable.

(4) In making a determination under this subsection, the mediator/arbitrator may consider only the following factors:

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

(B) [Comparison] comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland[.];
(C) [Comparison] comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

(D) [Wages] wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

(E) [The] the interest and welfare of the public; and

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

(5) The offer selected by the mediator/arbitrator, integrated with all previously agreed on items, is the final agreement between the employer and the certified representative, need not be ratified by any party, and has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement. [and] The employer must include in the budget that the employer submits to the Council any provision that requires action in the County budget.

[(g)](h) In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The employer must submit to the Council by April 1, unless extenuating circumstances require a later date, any term or condition of the collective bargaining agreement that requires an appropriation of
funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact. If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by April 1. The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. Each submission to the Council must include:

* * *

[(h)](i) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

[(i)](j) The Council may accept or reject all or part of any term or condition that requires Council review under subsection [(g)](h). On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the items that require Council review or its intention not to do so, and must state its reasons for any intent to reject any such item. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15.

[(j)](k) If the Council indicates its intention to reject any item that requires Council review, the Council must designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on items that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must
submit the results of the negotiation, whether a complete or a partial
agreement, to the Council on or before May 10. If the Council has
defered the May 1 deadline, that action automatically postpones the
May 10 deadline by the same number of days. The Council then must
consider the agreement as renegotiated by the parties and indicate by
resolution its intention to appropriate funds for or otherwise
implement the agreement, or its intention not to do so.

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

* * *

[(l)][(m)] The Council must take any action required by the public interest
with respect to any matter still in dispute between the parties.
However, any action taken by the Council is not part of the agreement
between the parties unless the parties specifically incorporate it in the
agreement.

[(m)][(n)] Later years. The process and timetable in subsections [(i) and] [(j)
and (k)] apply to Council review of wage or benefits adjustments after
the first year of any multi-year agreement.

[(n)][(o)] Out-of-cycle amendments. The process in subsections [(i) and] [(j)
and (k)] applies to Council review of any amendment to a collective
bargaining agreement that the Council receives after May 15 of any
year, but the deadlines in those subsections do not apply. The Council
President must set action deadlines which result, to the extent feasible,
in a similar timetable relative to the date the Council received the
amendment.
Approved:

George L. Leventhal, President, County Council  Date

Douglas M. Duncan, County Executive  Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council  Date