

Bill No. 2-06  
Concerning: Collective Bargaining –  
County Employees - Fact-finding  
Revised: 2-3-06 Draft No. 2  
Introduced: February 7, 2006  
Expires: August 7, 2007  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**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

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

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

1           **Sec. 1. Sections 33-102, 33-105, 33-107, and 33-108 are amended as**  
2 **follows:**

3 **33-102.       Definitions.**

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

5           [(1)] \*       \*       \*

6           [(2)] \*       \*       \*

7           [(3)] \*       \*       \*

8           Confidential employee means an employee:

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

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

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

16   \*       \*       \*

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

20   \*       \*       \*

21                   (P) an employee in a position classified at grade 27 or above unless  
22                   the employee’s position is reclassified or reallocated on or after  
23                   July 1, 2002, to a non-supervisory position at grade 27 or  
24                   above; [or]

25 (Q) an employee in a position classified in the Management  
26 Leadership Service[.]; or

27 (R) a confidential employee.

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

31 [(6)] *Employer* means the County Executive and [his or her] the County  
32 Executive's designees.

33 [(7)] \* \* \*

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

39 [(9)] \* \* \*

40 [(10)] \* \* \*

41 [(11)] \* \* \*

42 **33-105. Units for collective bargaining.**

43 \* \* \*

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

45 (1) A temporary, seasonal, or substitute employee in an  
46 occupational class in which one or more of the incumbents are  
47 [predominantly] career merit system employees becomes a  
48 member of the applicable bargaining unit when the employee  
49 has worked 6 months in a position in that occupational class.  
50 However, the employee may be terminated for any cause or  
51 without cause and without any right of grievance until the

52 employee has completed 1040 hours of service in that position  
 53 in any 12-month period.

54 (2) A temporary, seasonal, or substitute employee who is excluded  
 55 from the definition of “employee” under Section 33-102(4)(H)  
 56 because the employee is not in an occupational class in which  
 57 one or more of the incumbents are [predominantly] career merit  
 58 system employees becomes a limited-scope member of the  
 59 applicable bargaining unit immediately after the employee  
 60 begins employment if:

61 \* \* \*

62 **33-107. Collective bargaining.**

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

68 \* \* \*

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

72 \* \* \*

73 **33-108. Bargaining, impasse, and legislative procedures.**

74 (a) Collective bargaining must begin no later than November 1 before the  
 75 beginning of a fiscal year for which there is no agreement between the  
 76 employer and the certified representative, and must be finished on or  
 77 before February [1] 15.

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

82 \* \* \*

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

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

99 (2) [Any] A dispute, except a dispute involving the negotiability of  
 100 a bargaining proposal, must be submitted to the mediator/  
 101 arbitrator whenever an impasse has been reached, or as  
 102 provided in subsection (e)(1). The mediator/arbitrator must  
 103 engage in mediation by bringing the parties together voluntarily

104 under such favorable circumstances as will encourage  
105 settlement of the dispute.

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

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

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

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

126 [(f)](g) (1) If binding arbitration is invoked, the mediator/arbitrator must  
127 not engage in further mediation. The mediator/arbitrator must  
128 require each party to submit a final offer, which must consist  
129 either of a complete draft of a proposed collective bargaining  
130 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[.];

158 (C) [Comparison] comparison of wages, hours, benefits, and  
 159 conditions of employment of other Montgomery County  
 160 personnel[.];

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

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

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

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

178 [(g)](h) In each proposed annual operating budget, the County Executive  
 179 must describe any collective bargaining agreement or amendment to  
 180 an agreement that is scheduled to take effect in the next fiscal year  
 181 and estimate the cost of implementing that agreement. The employer  
 182 must submit to the Council by April 1, unless extenuating  
 183 circumstances require a later date, any term or condition of the  
 184 collective bargaining agreement that requires an appropriation of



185 funds, or the enactment or adoption of any County law or regulation,  
 186 or which has or may have a present or future fiscal impact. If a later  
 187 submission is necessary, the employer must specify the submission  
 188 date and the reasons for delay to the Council President by April 1.  
 189 The employer must expressly identify to the Council and the certified  
 190 representative any term or condition that requires Council review.  
 191 Each submission to the Council must include:

192 \* \* \*

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

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

203 [(j)](k) If the Council indicates its intention to reject any item that requires  
 204 Council review, the Council must designate a representative to meet  
 205 with the parties and present the Council's views in the parties' further  
 206 negotiation on items that the Council has indicated its intention to  
 207 reject. This representative must also participate fully in stating the  
 208 Council's position in any ensuing impasse procedure. The parties  
 209 must meet as promptly as possible and attempt to negotiate an  
 210 agreement acceptable to the Council. Either party may at this time  
 211 initiate impasse procedures under this Section. The parties must

212 submit the results of the negotiation, whether a complete or a partial  
 213 agreement, to the Council on or before May 10. If the Council has  
 214 deferred the May 1 deadline, that action automatically postpones the  
 215 May 10 deadline by the same number of days. The Council then must  
 216 consider the agreement as renegotiated by the parties and indicate by  
 217 resolution its intention to appropriate funds for or otherwise  
 218 implement the agreement, or its intention not to do so.

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

221 \* \* \*

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

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

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

237 *Approved:*

238 \_\_\_\_\_  
George L. Leventhal, President, County Council Date

239 \_\_\_\_\_  
Douglas M. Duncan, County Executive Date

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

241 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council Date