

MEMORANDUM

June 10, 2011

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Bill 18-11, Police Labor Relations – Duty to Bargain

Bill 18-11, Police Labor Relations – Duty to Bargain, sponsored by the Council President on recommendation of the Organizational Reform Commission, is scheduled to be introduced on June 14, 2011. A public hearing is tentatively scheduled for July 12 at 1:30 p.m.

Bill 18-11 would make the scope of bargaining with the certified representative of police employees consistent with the scope of bargaining with unions representing other County employees. The Council delayed introducing this Bill until after finalizing the FY12 Budget because these process changes, if enacted, could not take effect until collective bargaining for FY13 begins in the fall.

Background

In its report to the Council dated January 31, 2011, the Organizational Reform Commission (ORC), in *Recommendation #21*, recommended amending the Police Labor Relations Law to make the scope of bargaining with the certified representative of police employees consistent with the scope of bargaining with unions representing other County employees.

The full text of the recommendation is below.

The Erosion of Management Rights

The Police Collective Bargaining law establishes the scope of collective bargaining in County Code §33-80. Similar to the collective bargaining laws for Fire and general County employees, the Police Collective Bargaining law requires the Executive to bargain over wages, benefits, and working conditions. Section 33-80(b) also establishes a list of “Employer rights” that the Executive does not need to bargain. However, unlike the collective bargaining laws for Fire and general County employees, §33-80(a)(7) requires the Executive to bargain over the “effect on

employees of the employer's exercise of rights listed in subsection (b)." This provision is generally referred to as "effects bargaining." For example, §33-80(b)(3) grants the Executive the employer's right to "determine the services to be rendered and the operations to be performed." However, under effects bargaining the Executive would have to bargain with the union over the effect on employees of the Executive's decision to modify the services performed. In practice, "effects bargaining" has become the exception that makes most management decisions subject to bargaining.

"Effects bargaining" has hampered the ability of the Police Department to issue directives to govern how police officers must operate. For example, several years ago, the Police Department had to bargain with the FOP over a directive to implement the new computerized police report writing system. This bargaining delayed the implementation of a new system that County management established to improve efficiency. The FOP has recently delayed the implementation of all directives by refusing to respond to them.

- *We recommend amending §33-80(a)(7) to make the scope of bargaining consistent with the scope of bargaining in the collective bargaining laws for Fire and general County employees.*

Executive's Response

In a memorandum to the Council President dated February 21, 2011, the Executive responded to each of the 28 recommendations in the ORC report. The Executive did not take a position on this recommendation. He stated:

21. Make the scope of bargaining consistent for all County agencies.

The ORC report includes several recommendations concerning the collective bargaining process. Since we are in the midst of bargaining with all three of our employee unions, I do not think it is appropriate to comment on the Commission's recommendations at this time.

Bill 18-11, sponsored by the Council President on recommendation of the ORC would implement ORC Recommendations #21.

This packet contains:

Bill 18-11

Legislative Request Report

Circle #

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Bill No. 18-11
Concerning: Police Labor Relations –
Duty to Bargain
Revised: June 3, 2011 Draft No. 1
Introduced: June 14, 2011
Expires: December 14, 2012
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President on the recommendation of the Organizational Reform Commission

AN ACT to:

- (1) modify the scope of bargaining with the certified representative of police employees;
and
- (2) generally amend County collective bargaining laws.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-80 and 33-81

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

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

Sec. 1. Sections 33-80 and 33-81 are amended as follows:

33-80. Collective bargaining.

(a) Duty to bargain; matters subject to bargaining. A certified employee organization and the employer must bargain collectively on the following subjects:

- (1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;
- (2) Pension and retirement benefits for active employees only;
- (3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;
- (4) Hours and working conditions, including the availability and use of personal patrol vehicles;
- (5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;
- (6) Matters affecting the health and safety of employees; and
- (7) Amelioration of the [The] effect on employees when the employer's exercise of rights listed in subsection (b) causes a loss of existing jobs in the unit.

* * *

33-81. Impasse procedure.

* * *

(b) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the impasse neutral. If the parties have not reached agreement by January 20, an impasse exists.

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(3) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral [shall] must require each party to submit a final offer which [shall] must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the impasse neutral [shall choose] chooses. If only complete package proposals are required, the impasse neutral [shall] must require the parties to submit jointly a memorandum of all items previously agreed upon.

(4) The impasse neutral may, in the impasse neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The impasse neutral may hold a hearing for this purpose at a time, date and place selected by the impasse neutral. Said hearing [shall] must not be open to the public.

* * *

(c) An impasse over a reopener matter [or the effects on employees of an exercise of an employers right] must be resolved under the procedures in this subsection. Any other impasse over a matter subject to collective bargaining must be resolved under the impasse procedure in subsections (a) and (b).

(1) [Reopener matters. (A)] If the parties agree in a collective bargaining agreement to bargain over an identified issue on or before a specified date, the parties must bargain under those terms. Each identified issue must be designated as a "reopener matter."

55 [(B)] 2. When the parties initiate collective bargaining under
 56 [subparagraph (A)] paragraph 1, the parties must choose, by
 57 agreement or through the processes of the American Arbitration
 58 Association, an impasse neutral who agrees to be available for
 59 impasse resolution within 30 days.

60 [(C)] 3. If, after bargaining in good faith, the parties are unable to
 61 reach agreement on a reopener matter by the deadline specified in
 62 the collective bargaining agreement, either party may declare an
 63 impasse.

64 [(D)] 4. If an impasse is declared under [subparagraph (C)] paragraph
 65 3, the dispute must be submitted to the impasse neutral no later
 66 than 10 days after impasse is declared.

67 [(E)] 5. The impasse neutral must resolve the dispute under the
 68 impasse procedure in subsection (b), except that:

- 69 [(i)] A. the dates in that subsection do not apply;
- 70 [(ii)] B. each party must submit to the impasse neutral a final
 71 offer on only the reopener matter; and
- 72 [(iii)] C. the impasse neutral must select the most reasonable of
 73 the parties' final offers no later than 10 days after the
 74 impasse neutral receives the final offers.

75 [(F)] 6. This subsection applies only if the parties in their collective
 76 bargaining agreement have designated:

- 77 [(i)] A. the specific reopener matter to be bargained;
- 78 [(ii)] B. the date by which bargaining on the reopener matter
 79 must begin; and

- 80 [(iii)] C. the deadline by which bargaining on the reopener
81 matter must be completed and after which the impasse
82 procedure must be implemented.
- 83 [(2) Bargaining over the effects of the exercise of an employer right.]
- 84 [(A) If the employer notifies the employee organization that it
85 intends to exercise a right listed in Section 33-80(b), the
86 exercise of which will have an effect on members of the
87 bargaining unit, the parties must choose by agreement or
88 through the process of the American Arbitration
89 Association an impasse neutral who agrees to be available
90 for impasse resolution within 30 days.]
- 91 [(B) The parties must engage in good faith bargaining on the
92 effects of the exercise of the employer right. If the parties,
93 after good faith bargaining, are unable to agree on the
94 effect on bargaining unit employees of the employer's
95 exercise of its right, either party may declare an impasse.]
- 96 [(C) If the parties bargain to impasse over the effects on
97 employees of an exercise of an employer right that has a
98 demonstrated, significant effect on the safety of the public,
99 the employer may implement its last offer before engaging
100 in the impasse procedure. A party must not exceed a time
101 requirement of the impasse procedure. A party must not
102 use the procedure in this paragraph for a matter that is a
103 mandatory subject of bargaining other than the effects of
104 the exercise of an employer right.]

105 [(D) The parties must submit the dispute to the impasse neutral
106 no later than 10 days after either party declares an impasse
107 under subparagraph (B).]

108 [(E) The impasse neutral must resolve the dispute under the
109 impasse procedures in subsection (b), except that:

110 (i) the dates in that subsection do not apply;

111 (ii) each party must submit to the impasse neutral a final
112 offer only on the effect on employees of the
113 employer's exercise of its right; and

114 (iii) the impasse neutral must select the most reasonable
115 of the parties' final offers no later than 10 days after
116 the impasse neutral receives the final offers and, if
117 appropriate, must provide retroactive relief.]

118 [(F) If the impasse neutral has not issued a decision within 20
119 days after the impasse neutral receives the parties' final
120 offers, the employer may implement its final offer until the
121 impasse neutral issues a final decision.]

122 *Approved:*

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Valerie Ervin, President, County Council

Date

124 *Approved:*

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Isiah Leggett, County Executive

Date

LEGISLATIVE REQUEST REPORT

Bill 18-11

Police Labor Relations – Duty to Bargain

DESCRIPTION: Bill 18-11 would make the scope of bargaining with the certified representative of police employees consistent with the scope of bargaining with unions representing other County employees.

PROBLEM: The Organizational Reform Commission recommended this change to the Police Labor Relations Law.

GOALS AND OBJECTIVES: To increase the authority of the Chief of Police to exercise management rights.

COORDINATION: County Executive, County Attorney, Human Resources

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Organizational Reform Commission Report.
Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: None.

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