

Article VII. County Collective Bargaining.

Sec. 33-101. Declaration of policy.

It is the public policy of Montgomery County to promote a harmonious, peaceful, and cooperative relationship between the county government and its employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of county government and services. Since unresolved disputes in public service are harmful to the public and to employees, adequate means should be available for preventing disputes and for resolving them when they occur. To that end, it is in the public interest that employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, as authorized by Charter section 511, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the county government and a representative of county employees bargain collectively in good faith without interference with the orderly process of government and that they implement any agreements reached through collective bargaining.

The county council also recognizes that employee organizations and the county government each possess substantial means for initiating actions on wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the public service, the county council states that once the employees voluntarily select a representative, collective 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).

See County Attorney Opinion dated [4/21/00](#) explaining that conducting union business on County property does not violate the ethics law, because union business is public, not personal.

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

County Collective Bargaining Law

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 for the County government, except:

- (A) a confidential aide to an elected official;
- (B) a person holding a position designated by law as a non-merit position;
- (C) a head of a principal department, office, or agency;
- (D) a deputy or assistant to a head of a principal department, office, or agency;
- (E) an employee who 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;
- (F) an employee who reports directly to, or whose immediate supervisor is:
 - (i) the County Executive;
 - (ii) the Chief Administrative Officer; or
 - (iii) a principal aide of the County Executive or Chief Administrative Officer;
- (G) an employee who works for:
 - (i) the Office of the County Executive;
 - (ii) the Office of the Chief Administrative Officer;
 - (iii) the County Council;
 - (iv) the Office of the County Attorney;
 - (v) the Office of Management and Budget;
 - (vi) the Office of Intergovernmental Relations;
 - (vii) the Office of Human Resources; or

County Collective Bargaining Law

(viii) the Merit System Protection Board;

(H) 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;

(I) a recently-hired employee who has not completed the probationary period;

(J) an employee in the police bargaining unit;

(K) an employee in the firefighter/rescuer bargaining unit;

(L) a uniformed officer in the Department of Correction & Rehabilitation at the rank of Lieutenant or higher;

(M) subject to any limitations in State law, a uniformed officer in the Office of the Sheriff at the rank of sergeant or higher;

(N) an employee who is a member of the State merit system;

(O) a supervisor, other than a Sergeant in the Department of Correction and Rehabilitation;

(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.

(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,

County Collective Bargaining Law

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) *Supervisor* means an employee who has the authority to:

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

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

(C) adjust or recommend adjustment of any grievance.

(11) *Unit* means either of the units defined in Section 33-105.(1986 L.M.C., ch. 70, § 3; 1994 L.M.C., ch. 16, § 1; 1996 L.M.C., ch. 21, § 1; [2002 L.M.C., ch. 8, § 1](#); [2005 L.M.C., ch. 8, § 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:

(1) Periodically adopt, amend, and rescind, under method (1) of section 2A-15 of this Code, regulations and procedures for the implementation and administration of the duties of the labor relations administrator under this article.

(2) Request from the employer or an employee organization, and the employer or such organization may at its discretion provide, any relevant assistance, service, and data that will enable her properly to carry out her duties under this article.

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents.

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue the certification or decertification.

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices. However, if the employer and a certified representative have negotiated a valid grievance procedure, the labor relations administrator shall defer to that procedure for the resolution of disputes properly submissible to the procedure absent a showing that the deferral results in the application of principles repugnant to this article. Furthermore, the labor relations administrator shall defer to state procedures in those matters which are governed by the Law-Enforcement Officers Bill of Rights, article 27, sections 727--734D, Annotated Code of Maryland.*

(6) Determine unresolved issues of a person's inclusion in or exclusion from the units.

County Collective Bargaining Law

(7) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County.

(8) Determine any issue regarding the negotiability of any collective bargaining proposal.

(9) Exercise any other powers and perform any other duties and functions specified in this Article.

(b) (1) The Administrator must be a person with experience as a neutral in the field of labor relations, and must not be a person who, because of vocation, employment, or affiliation, can be categorized as a representative of the interest of the employer or any employee organization.

(2) The County Executive must appoint, subject to confirmation by the County Council, the Administrator for a term of 5 years from a list of 5 nominees agreed upon by any certified representative(s) and the Chief Administrative Officer. The list may include the incumbent Administrator. If the Council does not confirm the appointment, the new appointment must be from a new agreed list of 5 nominees. If no certified representative has been selected, the Administrator must be appointed for a 4-year term by the Executive, subject to Council confirmation.

(c) If the Administrator dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve, the Executive must appoint a new Administrator, subject to Council confirmation, to serve the remainder of the previous Administrator's term. The Administrator appointed under this subsection may be reappointed as provided in subsection (b).

(d) The Administrator must be paid a daily fee as specified in a contract with the County, and must be reimbursed for necessary expenses incurred in performing the duties of Administrator. (1986 L.M.C., ch. 70, § 3; 2000 L.M.C., ch. 2, § 1; [2007 L.M.C., ch. 1, § 1.](#))

*Editor's note—Md. Ann. Code art 27, § 727, et seq. appears in Md. Code Ann., Public Safety, Title 3, Subtitle 1 (2003).

Sec. 33-104. Employee rights.

(a) Employees have the right to:

(1) Form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) Be represented fairly by their certified representative, if any.

(b) The employer has the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the

County Collective Bargaining Law

orderly processing and settlement of grievances as agreed by the parties in accordance with this article.

(c) A certified representative serves as the exclusive bargaining agent for all employees in the unit for which it is certified and has the duty to represent fairly and without discrimination all employees in the unit without regard to whether the employees are members of the employee organization, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of a certified representative to receive voluntary dues or service fee deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this article. A collective bargaining agreement may not include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision. (1986 L.M.C., ch. 70, § 3.)

Sec. 33-105. Units for collective bargaining.

(a) There are 2 units for collective bargaining and for purposes of certification and decertification. Members of these units are all County government employees, as defined in Section 33-102(4), and those employees who are limited-scope members of a bargaining unit under subsection (c)(2). The employees are divided into 2 units:

(1) *Service, labor, and trades (SLT) unit:* This unit is composed of all eligible classes that are associated with service/maintenance and skilled crafts. This means job classes in which workers perform duties that result in or contribute to the comfort and convenience of the general public or that contribute to the upkeep and care of buildings, facilities, or grounds of public property. Workers in this group may operate specialized machinery or heavy equipment. These job classes may also require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work that is acquired through on-the-job training and experience or through apprenticeship or other formal training programs.

(2) *Office, professional, and technical (OPT) unit:* This unit is composed of all eligible classes associated with office, professional, paraprofessional, and technical functions.

(A) *Office:* Job classes in which workers are responsible for internal and external communication, recording and retrieval of data and/or information, and other paperwork required in an office.

(B) *Professional:* Job classes that require special and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge.

(C) *Paraprofessional:* Job classes in which workers perform, in a supportive role, some of the duties of a professional or technician. These duties usually require less

County Collective Bargaining Law

formal training and/or experience than is normally required for professional or technical status.

(D) *Technical:* Job classes that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training.

(b) Specific job classes included in these units of representation, and not otherwise excluded under Section 33-102(4), shall be based on the designations made by the Chief Administrative Officer under the prior meet and confer process if the job class is not specified in this Article. In the event a new classification is created by the County, or an existing classification's duties and responsibilities are substantially changed, the County Personnel Director must place the classification in one of the units or state that the classification falls within one of the exceptions to the definition of employee under this Article within sixty (60) days of the creation or substantial alteration of the class and must publish the decision in the Montgomery County Register. Any individual or certified representative disagreeing with the decision of the Personnel Director may, within ten (10) days of publication, file objections to the decision with the labor relations administrator, with notice to the Personnel Director. The Labor Relations Administrator shall promptly decide the question on the basis of the duties and responsibilities of the job classification, the unit definition, and the community of interests between and among employees in the job classification and collective bargaining unit.

(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

County Collective Bargaining Law

is extended to other bargaining unit members. (1986 L.M.C., ch. 70, § 3; 1988 L.M.C., ch. 19, § 1; 1996 L.M.C., ch. 21, § 1; [2002 L.M.C., ch. 8](#), § 1.)

Editor's note—2002 L.M.C., ch. 8, § 2, states: The certified representative and the employer must bargain under Sec. 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 [May 20, 2002]. 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.

Sec. 33-106. Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for collective bargaining must comply with the following procedures:

(1) Any employee organization seeking certification as representative of a unit shall file a petition with the labor relations administrator stating its name, address, and its desire to be certified. The employee organization shall also send a copy of the petition, including a copy of the signatures of the supporting employees on the petition, to the employer. The petition shall contain 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.

(2) If an employee organization has been certified, an employee within the unit may file a petition with the labor relations administrator for decertification of this certified representative. The employee shall also send a copy of the petition to the employer and the certified representative, not including the names of the supporting employees. The petition shall contain the uncoerced signatures of thirty (30) percent of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) Petitions may be filed within ninety (90) days after any new bargaining unit is established. Thereafter, if a lawful collective bargaining agreement is not in effect, petitions may be filed between September 1 and September 30 of any year, but not sooner than twenty-two (22) months after an election held under this section.

(4) If a lawful collective bargaining agreement is in effect, a petition filed under this section shall not be entertained unless it is filed during September of the final year of the agreement.

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

County Collective Bargaining Law

(b) If the labor relations administrator determines that a petition is properly supported and timely filed, she shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of any year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the labor relations administrator and shall be conducted by secret ballot at the time and place that she directs. The labor relations administrator may select and retain the services of an agency of the State of Maryland responsible for conducting labor elections, or a similarly neutral body, to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten (10) days before the election of at least ten (10) percent representation of the employees within the unit in the same manner as described in paragraph (a)(1) of this section, and a choice that the employee does not desire to be represented by any of the named employee organizations.

(3) The employer and each party to the election may be represented by observers selected in accordance with limitations and conditions that the labor relations administrator may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of the challenge or the labor relations administrator's decision as to the validity of the challenge, unless the number of challenges is not determinative, in which case the challenged ballots shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the labor relations administrator in the presence of the observers.

(6) The labor relations administrator shall immediately prepare and serve upon the employer and each of the parties a report certifying the results of the election. If an employee organization receives the votes of a majority of the employees who voted, the labor relations administrator shall certify the employee organization so elected as the exclusive agent.

(7) If no employee organization receives the votes of a majority of the employees who voted, the labor relations administrator shall not certify a representative. Unless a majority of the employees who vote choose "no representative," a runoff election shall be conducted. The runoff election shall contain the two (2) choices that received the largest and second largest number of votes in the original election.

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee

County Collective Bargaining Law

organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

(c) The labor relations administrator's certification of results is final unless, within seven (7) days after service of the report and the certification, any party serves on all other parties and files with the labor relations administrator objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds for the objections. The labor relations administrator shall investigate the objections and, if substantial factual issues exist, shall hold a hearing. Otherwise, she may determine the matter without a hearing. The labor relations administrator may invite, either by rule or by invitation, written or oral argument to assist her in determining the merits of the objections. If the labor relations administrator finds that the election was conducted in substantial conformity with this article, she shall confirm the certification initially issued. If the labor relations administrator finds that the election was not held in substantial conformity with this article, then she shall hold another election under this section.

(d) The cost of conducting an election shall be paid by the county. (1986 L.M.C., ch. 70, § 3; 1988 L.M.C., ch. 19, § 2; 2000 L.M.C., ch. 2, § 1; [2003 L.M.C., ch. 22](#), § 1.)

Sec. 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):

(1) Salary and wages, including the percentage of the increase in the salary and wages budget that will be devoted to merit increments and cash awards, provided that salaries and wages shall be uniform for all employees in the same classification.

(2) Pension and other retirement benefits for active employees only, 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.

(3) Employee benefits such as insurance, leave, holidays, and vacations.

(4) Hours and working conditions.

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

(A) Binding third party arbitration for employees other than members of the bargaining unit under Section 33-105(c)(1), but the arbitrator must not amend, add to, or subtract from the provisions of the collective bargaining agreement; and

County Collective Bargaining Law

(B) Provisions for exclusivity of forum.

(6) Matters affecting the health and safety of employees.

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

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.

(c) *Employer rights.* This article and any agreement made under it shall not impair the right and responsibility of the employer to perform the following:

(1) Determine the overall budget and mission of the employer and any agency of county government.

(2) Maintain and improve the efficiency and effectiveness of operations.

(3) Determine the services to be rendered and the operations to be performed.

(4) Determine the overall organizational structure, methods, processes, means, job classifications, and personnel by which operations are to be conducted and the location of facilities.

(5) Direct and supervise employees.

(6) Hire, select, and establish the standards governing promotion of employees, and classify positions.

(7) Relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive.

(8) Take actions to carry out the mission of government in situations of emergency.

(9) Transfer, assign, and schedule employees.

County Collective Bargaining Law

- (10) Determine the size, grades, and composition of the work force.
- (11) Set the standards of productivity and technology.
- (12) Establish employee performance standards and evaluate employees, except that evaluation procedures shall be a subject for bargaining.
- (13) Make and implement systems for awarding outstanding service increments, extraordinary performance awards, and other merit awards.
- (14) Introduce new or improved technology, research, development, and services.
- (15) Control and regulate the use of machinery, equipment, and other property and facilities of the employer, subject to subsection (a)(6) of this section.
- (16) Maintain internal security standards.
- (17) Create, alter, combine, contract out, or abolish any job classification, department, operation, unit, or other division or service, provided that no contracting of work which will displace employees may be undertaken by the employer unless ninety (90) days prior to signing the contract, or such other date of notice as agreed by parties, written notice has been given to the certified representative.
- (18) Suspend, discharge, or otherwise discipline employees for cause, except that, subject to Charter section 404, any such action may be subject to the grievance procedure set forth in the collective bargaining agreement.
- (19) Issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this article, federal or state law, or the terms of the collective bargaining agreement.

(d) *Exemption.* This article shall not be construed to limit the discretion of the employer voluntarily to discuss with the representatives of its employees any matter concerning the employer's exercise of any of the rights set forth in this section. However, these matters shall not be subject to bargaining.

(e) *Agreement.* The public employer rights set forth in this section are to be considered a part of every agreement reached between the employer and an employee organization. (1986 L.M.C., ch. 70, § 3; [2002 L.M.C., ch. 8](#), § 1.)

Editor's note—Section 33-107 is quoted in Haub v. Montgomery County, 353 Md. 448, 727 A.2d 369 (1999).

See County Attorney Opinion dated [10/9/91](#) supplementing the legal analysis given 9/23/91 regarding privatizing liquor control operations. See County Attorney Opinion dated [9/23/91](#) explaining that State law does not prohibit the Department of Liquor Control from entering into contracts with private entities to operate the liquor stores. See supplemental memo dated 10/9/91.

County Collective Bargaining Law

2002 L.M.C., ch. 8, § 2, states: The certified representative and the employer must bargain under Sec. 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 [May 20, 2002]. 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.

Sec. 33-108. Bargaining, impasse, and legislative procedures.

(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.

(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) years. All agreements take effect July 1 and end June 30.

(c) A collective bargaining agreement takes effect only after ratification by the employer and the certified representative. The certified representative may adopt its own ratification procedures.

(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 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, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) Any 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 February 1 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

County Collective Bargaining Law

(f) (1) If binding arbitration is invoked, the mediator/aritrator 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 the parties to submit jointly a memorandum of all items previously agreed on.

(2) The mediator/arbitrator may require the parties to submit oral or written evidence and arguments in support of their proposals. The mediator/arbitrator may hold a hearing for this purpose at a time, date, and place selected by the mediator/arbitrator. This hearing must not be open to the public.

(3) On or before February 15, 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 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 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 of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

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

(E) The interest and welfare of the public.

(F) 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 any provision which requires action in the County budget must be included in the budget which the employer submits to the County Council.

County Collective Bargaining Law

(g) 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:

(1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;

(2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and

(3) all side letters or other extraneous documents that are binding on the parties.

The employer must make a good faith effort to have the Council approve all terms of the final agreement that require Council review.

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

(i) The Council may accept or reject all or part of any term or condition that requires Council review under subsection (g). 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) 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 deferred 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) Any agreement must provide for automatic reduction or elimination of wage or benefits adjustments if:

County Collective Bargaining Law

(1) The Council does not take action necessary to implement the agreement or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year when the agreement is in effect.

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

(n) Out-of-cycle amendments. The process in subsections (i) and (j) 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. (1986 L.M.C., ch. 70, § 3.; 1993 L.M.C., ch. 12, § 1; 2000 L.M.C., ch. 2; § 1; [2003 L.M.C., ch. 22](#), § 1.)

Editor's note—2002 L.M.C., ch. 8, § 2, states: The certified representative and the employer must bargain under Sec. 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 [May 20, 2002]. 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.

Sec. 33-109. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from any of the following:

(1) Interfering with, restraining, or coercing employees in the exercise of any rights granted to them under this article.

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it, under an agreement or otherwise. However, the employer and a certified representative may agree to and apply an agency shop provision under this article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of county facilities for communicating with employees.

(3) Encouraging or discouraging membership in any employee organization by discriminating in hiring, tenure, wages, hours, or conditions of employment. However,

County Collective Bargaining Law

nothing in this article precludes an agreement from containing a provision for an agency shop.

(4) Discharging or discriminating against a public employee because she or he files charges, gives testimony, or otherwise lawfully aids in the administration of this article.

(5) Refusing to bargain collectively with the certified representative.

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement that has been agreed to in all respects.

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement.

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the county council to implement an agreement reached between the employer and the certified representative under this article.

(9) Engaging in a lockout of employees.

(b) Employee organizations, their agents, representatives, and person who work for them are prohibited from any of the following:

(1) Interfering with, restraining, or coercing the employer or employees in the exercise of any rights granted under this article.

(2) Restraining, coercing, or interfering with the employer in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Refusing to bargain collectively with the employer if the employee organization is the certified representative.

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects.

(5) Hindering or preventing, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or exit from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance by any person, public or private.

(6) Hindering or preventing by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the employer.

(7) Taking or retaining unauthorized possession of property of the employer, or refusing to do work or use certain goods or materials as lawfully required by the employer.

County Collective Bargaining Law

(8) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed nor to be performed.

(c) A charge of prohibited practice may be filed by the employer, an employee organization, or any individual employee. The charge or charges shall be filed with the labor relations administrator, and copies shall be sent to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the labor relations administrator to investigate the charge. The labor relations administrator may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The labor relations administrator has the authority to maintain whatever independent investigation she determines is necessary and to develop regulations for an independent investigation. If, upon investigation, the labor relations administrator finds that a charge is sufficiently supported to raise an issue of fact or law, she shall, if she is unable to achieve settlement or resolution of the matter, hold a hearing on the charge after notification to the parties. In any hearing, charging parties shall present evidence in support of the charges; and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise, and to present evidence in defense against the charges.

(d) If the labor relations administrator determines that the person charged has committed a prohibited practice, she shall make findings of fact and conclusions of law and may issue an order requiring the person charged to cease and desist from the prohibited practice, and may take affirmative actions that will remedy the violation of this article. Remedies of the labor relations administrator include reinstating employees with or without back pay, making employees whole for any loss relating to county employment suffered as a result of any prohibited practices, or withdrawing or suspending the employee organization's authority to negotiate or continue an agency shop provision or a voluntary dues or service fee deduction provision. If the labor relations administrator finds that the party charged has not committed any prohibited practices, she shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The labor relations administrator shall not receive or entertain charges based upon an alleged prohibited practice occurring more than six (6) months before the filing of the charge. (1986 L.M.C., ch. 70, § 3.)

Editor's note—See County Attorney Opinion dated [4/21/00](#) explaining that conducting union business on County property does not violate the ethics law, because union business is public, not personal.

Sec. 33-110. Expression of views.

(a) The expression or dissemination of any views, argument, or opinion, whether orally, in writing, or otherwise, does not constitute and is not evidence of a prohibited practice under any of the provisions of this article, nor is it grounds for invalidating any election conducted under this article if the expression or dissemination does not contain a threat of reprisal or promise of benefit.

County Collective Bargaining Law

(b) Recognizing an employee organization does not preclude the county from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of the associations or are of particular applicability to it or its members. (1986 L.M.C., ch. 70, § 3.)

Sec. 33-111. Strikes and lockouts.

(a) An employee or employee organization shall not either directly or indirectly cause, instigate, encourage, condone, or engage in any strike, nor the employer in any lockout. An employee or employee organization shall not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole, or otherwise compensate any employee for or during the period when that employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during the strike.

(c) If an employee or employee organization violates the provisions of this section, the employer, after adequate notice and a fair hearing before the labor relations administrator who finds that the violations have occurred and finds that any or all of the following actions are necessary in the public interest, may impose any of the following sanctions, subject to the Law-Enforcement Officers Bill of Rights, article 27, sections 727--734D, Annotated Code of Maryland.*

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in the conduct.

(2) Terminate or suspend the employee organization's dues deduction privilege, if any.

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of two (2) years.

(d) This article does not prohibit an employer or a certified employee organization from seeking any remedy available in a court of competent jurisdiction. (1986 L.M.C., ch. 70, § 3.)

*Editor's note—Md. Ann. Code art 27, § 727 et seq. appears in Md. Code Ann., Public Safety, Title 3, Subtitle 1 (2003).

Sec. 33-112. Effect of prior enactments.

(a) Nothing contained in this article shall be construed to repeal any law, executive order, rule, or regulation adopted by the county or any of its departments or agencies that is not inconsistent with the provisions of this article.

(b) Any executive order, rule, or regulation of the county or any of its departments or agencies that regulates any subject that is bargainable under this article shall not be held to be repealed or modified by a provision of a collective bargaining agreement negotiated under this article except to the extent that the application of the order, rule, or

County Collective Bargaining Law

regulation is inconsistent with the provision in the collective bargaining agreement. However, if the inconsistent order, rule, or regulation is subject to and has received council approval, the collective bargaining agreement shall not govern unless the order, rule, or regulation was identified to the council by the parties prior to the council's ratification of the collective bargaining agreement, as required by section 33-108(g); or unless the order, rule, or regulation is repealed or modified by the council. (1986 L.M.C., ch. 70, § 2.)