

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

1995 Legislative Session

Bill No. _____ CB-38-1995

Chapter No.

Proposed and Presented by _____ Council Member Del Giudice

Introduced by _____ Council Member Del Giudice

Co-Sponsors

Date of Introduction _____ May 16, 1995

EMERGENCY BILL

AN EMERGENCY ACT concerning

LABOR CODE

For the purpose of amending the Labor Code to provide that the employer may make certain changes in wages, hours, or working conditions during periods between the expiration of a labor agreement and the conclusion of bargaining or arbitration.

BY repealing and reenacting with amendments:

SUBTITLE 13A. LABOR CODE.

Sections 13A-111, and 13A-111.01,

The Prince George's County Code

(1991 Edition, 1994 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 13A-111 and 13A-111.01 of the Prince George's County Code be and the same are hereby repealed and reenacted with the following amendments:

SUBTITLE 13A. LABOR CODE.

DIVISION 1. COLLECTIVE BARGAINING GENERALLY.

Sec. 13A-111. Procedures pertaining to collective bargaining impasses other than those involving protective service employees.

(a) General.

(1) "Impasse" means the failure of the employer and the exclusive representative to reach a collective bargaining agreement despite good faith efforts to do so. However, the

Impasse Panel shall be empowered to provide such dispute resolution services as deemed needed either by the parties or as found by the Panel to be essential to the public interest and welfare, even if impasse has not been reached.

(2) An Impasse Panel member shall have power to mediate, hold hearings, compel the attendance of witnesses and the production of documents, review data, make public any recommendations or findings after notice to the parties and take whatever action he considers necessary to resolve the impasse, provided that such action does not impose a final and binding settlement on the parties except as mutually authorized by the parties, or except where the Impasse Panel has denied a labor organization the right to strike and has in its discretion required compulsory binding arbitration. In such cases, the decision of the Impasse Panel shall be submitted to the Council for approval. Unless the parties otherwise provide, a single Panel member rather than multiple members shall provide the services herein described, provided further that a member acting as a mediator shall not act as a fact finder or arbitrator in the same matter without the consent of the parties.

(3) Confidential information disclosed by the parties to a mediator in the performance of his mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him on behalf of any party to any case pending in any type of proceeding. A party shall have the right to bar a Panel member who becomes privy to confidential information about that party gained through mediation techniques, from serving in any fact finding or arbitration role relevant to that dispute.

(b) Action by the Parties.

(1) The employer shall have the power to enter into a written agreement with the exclusive representative setting forth an impasse procedure to resolve disputes over the terms or conditions of an initial or renewed collective bargaining agreement. The parties are not precluded from using third party neutrals other than on the impasse panel described in Section

13A-111(c)(4).

(2) The employer, by collective bargaining agreement or by written memorandum, may at any time agree to submit any or all of the issues in dispute to final and binding arbitration.

(3) Any final and binding settlement imposed upon the parties shall be subject to the same conditions for approval as set forth in Section 13A-110(f).

(c) **Procedures.**

(1) At least 30 days prior to the expiration date of any collective bargaining agreement but not later than March 1, or when 90 days have passed after the commencement of negotiations of an initial agreement, the parties shall notify the Panel of the status of negotiations. The Panel may on its own motion invoke mediation, except if the parties have provided otherwise pursuant to Section 13A-111(b)(1).

(2) The Panel, except as otherwise provided by mutual agreement of the parties, may return the parties to collective bargaining for any or all items in dispute or may refer such items as deemed necessary to the procedure outlines in Section 13A-111 with respect to deciding the negotiability of a matter within the meaning of this law, other applicable laws and the County Charter.

(3) Nothing shall preclude a third party neutral from returning to mediation even after the institution of fact finding or arbitration, or from utilizing such mediation techniques as may be appropriate while engaged in fact finding or arbitration.

(4) The Impasse Panel may not make recommendations or findings upon any matter which requires implementation by a body, agency or official which is not a party to the negotiations and who have not agreed to be a party to such impasse resolution.

(5) From the date on which a collective bargaining notice is filed and ending on the date on which a collective bargaining agreement is concluded or, if impasse procedures have been invoked, until such time as the Panel has certified that it or other authorized parties have terminated efforts to resolve the dispute, the labor organization party to the negotiations and the public employees it represents, shall not induce or engage in any strikes, and the

employer shall refrain from unilateral changes in wages, hours or working conditions.

(d) Notwithstanding any other provision of this section or title, any clause in a collective bargaining agreement which guarantees against a reduction in force or a furlough of public employees, or which provides for annual step or cost of living increase for public employees subject to that agreement shall expire on the date that agreement expires by its express terms.

[(d)] (e) **Costs.** The costs for mediation shall be borne by the County. All other costs shall be borne equally by the parties involved in the dispute, except in the unusual event that the National Center or an arbitrator appointed by it shall find pursuant to such rules as it shall issue, that the impasse has been caused or prolonged by flagrant conduct of one of the parties.

Sec. 13A-111.1. Procedures pertaining to collective bargaining impasses involving protective service employees.

(a) An impasse in collective bargaining shall exist if, by March 1 of the calendar year in which a collective bargaining agreement covering sworn police officers, uniformed fire fighters, correctional officers, and deputy sheriffs (hereinafter "protective service employees") expires, the County and the organization recognized as the exclusive collective bargaining representative for such employees (hereinafter "Exclusive Representative") have failed to reach agreement in regard to wages, hours, and other terms and conditions of employment, provided that the County and the exclusive representative may, by written agreement, extend the period for collective bargaining beyond the last day of February, in which event an impasse shall exist if, by the first calendar day after the end of any period of extension, the parties have failed to reach agreement.

(b) Within three (3) calendar days after there is an impasse in collective bargaining, the County Executive shall send a written notice to the American Arbitration Association (hereinafter "AAA"), with a copy to the exclusive representative, informing them of the impasse and requesting that the disputed matters be submitted to an arbitrator who shall make findings of fact and propose terms of settlement which shall be binding upon the parties. If the County Executive fails to send the aforesaid notice within the time allowed, the exclusive representative may send such a notice to the AAA and, for purposes of this Section, the notice

shall have the same effect as if it had been sent by the County Executive.

(c) Within five (5) calendar days after receipt of the written notice provided for in Subsection (b), above, the AAA shall designate an arbitrator. Said designation shall be made in accordance with the general rules of the AAA for the designation of arbitrators, provided that the person designated shall be a member of a special panel of three (3) arbitrators that the AAA shall maintain to perform the functions provided for in this Section. The members of this panel shall be designated by the County Executive, from among persons recommended to him by the AAA, and shall be subject to approval by a majority vote of the full County Council. Said designation shall stand approved if not acted upon by the County Council within thirty (30) working days. The County Council shall consider the views of the County Executive and all exclusive representatives in deciding whether to approve a panel nominee. Panel members shall be selected to serve for a period of three (3) years and shall be eligible for reappointment. A member of the panel may be removed upon recommendation of the County Executive and approval by a majority vote of the full County Council for just cause. A vacancy on the panel, whether created by removal, resignation or otherwise, shall be filled by the County Executive with the approval of the County Council promptly in accordance with the procedure set forth herein, and the person appointed to fill a vacancy shall serve pursuant to such appointment only for the unexpired period of the member whom he or she succeeds. Arbitrators shall be compensated for actual services performed on a case by case basis in accordance with the prevailing rates for such service in the Washington Metropolitan Area. The prevailing rate shall be established in the annual budget based upon information supplied to the County from AAA not later than March 1 of each year.

(d) Following notice of an impasse the AAA, within two (2) calendar days after an arbitrator has been designated, shall send a written notice to the County Executive and the exclusive representative informing them, among other things, of the name and address of the arbitrator. Within five (5) calendar days after receipt of said notice, the County Executive and the exclusive representative each shall submit to the arbitrator and the other party, a list which sets forth:

(1) Any agreement which that party contends the parties have reached in regard to any position of each subject of bargaining, the party's understanding of such agreement, and if the agreement has been reduced to writing, a copy of the document in question; and

(2) Any portion of each subject of bargaining in regard to which it contends the parties have not reached agreement and its position in regard to such disputed portion. As used in this Section, the phrase "subject of bargaining" means a subject matter area (e.g., a grievance procedure) and not the specific items within a subject matter area (e.g., a grievance procedure) and not the specific items within a subject matter area (e.g., the number and nature of the steps in a grievance procedure).

(e) Within seven (7) calendar days after receipt of the submissions provided for in Subsection (d), above, the arbitrator shall hold a prehearing conference with the County Executive and the exclusive representative in order to identify any portion of each subject of bargaining in regard to which the parties:

(1) Have reached agreement and the nature of such agreement; and

(2) Have not reached agreement and the nature of the dispute.

At this prehearing conference, the arbitrator also shall obtain from the County Executive and the exclusive representative, their position in regard to any portion of each subject of bargaining as to which the parties have not reached agreement. This position shall be referred to as the party's "final position" and need not be the same as the position set forth in the list submitted pursuant to Subsection (d), above.

(f) If the impasse is not resolved prior to the conclusion of the prehearing conference, the arbitrator shall schedule a hearing in Prince George's County to begin as soon thereafter as possible, but in no event more than twenty (20) calendar days after the conclusion of the prehearing conference. Said hearing shall be open to the public and shall be conducted in accordance with rules and regulations adopted by the AAA for such purpose, provided that the arbitrator shall have the power, at the request of either party or at his or her own initiative, to request the County Council to issue subpoenas pursuant to rules established by the Council for the issuance of subpoenas, requesting the attendance and testimony of witnesses and the

production of any records, papers or other information relating to any matter in issue before the arbitrator. The arbitrator shall have the power to request that testimony be under oath and may administer the oath or affirmation of the witness.

(g) If the impasse is not resolved prior to the conclusion of the hearing, the arbitrator shall prepare a written report, which shall include findings of fact and conclusions to which shall be attached a collective bargaining agreement between the County and the exclusive representative. This collective bargaining agreement shall include all agreements reached by the parties at any time prior to the conclusion of the hearing in regard to any portion of each subject of bargaining or other matter, and the final position of either the County or the exclusive representative in regard to the entire disputed portion of each separate subject of bargaining. In determining, for each separate subject of bargaining, whether to include in the collective bargaining agreement the final position of the County or the exclusive representative in regard to the entire disputed portion of each such subject of bargaining, the arbitrator shall consider, among other relevant factors, the following:

- (1) The existing terms and conditions of employment of the employees in the bargaining unit;
- (2) The ability of the County to meet costs, including both available financial resources and sources of additional financial resources;
- (3) (A) The annual increase or decrease in consumer prices for goods and services as reflected in the most recent Consumer Price Index for the Washington Metropolitan Area published by the Bureau of Labor Statistics, United States Department of Labor, commonly known as the cost of living;
(B) The cost of living in the Washington, D.C. Metropolitan Area as compared to the national average and to other comparable metropolitan areas;
- (4) The developments in regard to the wages and terms and conditions of employment of other employees performing similar services in other jurisdictions in the Washington Standard Metropolitan Statistical Area and comparable communities;
- (5) The special nature of the work performed by the employees in the bargaining

unit, including specifically, hazards of employment, physical requirements, educational qualifications, job training and skills, shift assignments and the demands placed upon such employees as compared to other County employees; and

(6) The interest and welfare of the public and the employees in the bargaining unit.

The contract as arbitrated shall not, under any circumstances, provide for salaries and other benefits, which exceed the County's ability to pay or fund.

(h) (1) The arbitrator shall submit the report to the County Executive and the exclusive representative within twenty (20) calendar days after the conclusion of the hearing, or the date established for the submission of post-hearing briefs, whichever is later, but in no event more than ninety (90) calendar days from the date of submission of the impasse to arbitration pursuant to Subsection (b), above, provided that for a good cause shown, the arbitrator may defer the aforesaid submission for up to thirty (30) additional calendar days.

(2) At the request of either party, the arbitrator may extend by one week the seven (7) day time limit in Subsection (e), the 20 day time limit in Subsection (f) or the 20 day time limit in Subsection (h)(1) so long as the arbitrator stays within the overall time limits contained in Subsection h(1), above.

(i) The County Executive and the exclusive representative shall have ten (10) calendar days after receipt of the report of the arbitrator pursuant to Subsection (h), above, within which to agree in writing upon any modifications in collective bargaining agreement attached to such report. At the end of said ten (10) day period, the collective bargaining agreement, with any agreed-upon modifications, shall become binding upon the County and the exclusive representative (including the individual employees in the bargaining unit), and each shall be required to take all actions necessary to implement said agreement.

(j) Within thirty (30) calendar days after receipt of the arbitrator's report pursuant to Subsection (h), above, the County or the exclusive representative may file a complaint in the Circuit Court for Prince George's County challenging said report, or any part thereof. The filing of such complaint shall not stay the implementation of the report, or any part thereof. The Court shall affirm the report unless the challenging party makes a clear and convincing

showing that its rights or interests have been prejudiced because the report, or any part thereof, is:

- (1) In violation of a constitutional or statutory provision;
- (2) In excess of the authority conferred upon the arbitrator by this Section;
- (3) Arbitrary or capricious; or
- (4) The result of a hearing which was conducted in such a biased or unfair manner

as to deny due process to the challenging party. The Court, upon notice and hearing, may vacate the arbitrator's report, or any part thereof, for one or more of the above reasons and remand the matter to the AAA for further proceedings, provided that if the AAA returns the matter to arbitration, the person designated as the arbitrator shall not, without the consent of the County and the exclusive representative, be the same person who served as arbitrator previously. If any provision of the arbitrator's report shall be vacated by the Court, such action shall not affect the validity or enforceability of any other provisions of the arbitrator's report. The Court shall have no power to enjoin the implementation of any part of the report that has not been vacated, or to itself modify the report, or any part thereof.

(k) If no complaint challenging the arbitrator's report (award) is filed within 30 calendar days after receipt of such report, the arbitrator's findings and award shall be conclusive and shall not thereafter be subject to challenge in any judicial proceeding. At any time after said 30 day period, the exclusive representative or the County may apply to enforce said arbitrator's award.

(l) Nothing contained in this Section shall prevent a court from granting a restraining order or temporary or permanent injunction in a case involving a strike by protective service employees for the purpose of resolving a dispute that is subject to arbitration under this Section.

(m) If a collective bargaining agreement covering protective service employees expires after the exclusive representative has given the County notice of its desire to enter into collective bargaining for a successor agreement but before a successor agreement becomes effective, the County shall not, without the written approval of the exclusive representative,

make any changes in the wages and terms and conditions of employment of the employees in the bargaining unit between the aforesaid expiration and the effective dates.

(n) Notwithstanding any other provision of this section or title, any clause in a collective bargaining agreement which guarantees against a reduction in force or a furlough of public employees, or which provides for annual step or cost of living increase for public employees subject to that agreement shall expire on the date that agreement expires by its express terms.

[(n)] (o) The AAA is authorized to adopt, amend, and rescind such rules and regulations as may be necessary for it to carry out its functions under this Section, and such rules and regulations shall be controlling to the extent that they do not conflict with the provisions of this Section.

[(o)] (p) All hearings referred to herein shall be held within the territorial jurisdiction of the County. The records incidental to such hearing and decisions shall be maintained within the County under the supervision and control of the AAA. Upon termination of a case, all records shall become property of the County and shall be maintained in the Public Documents Library.

SECTION 2. BE IT FURTHER ENACTED that in accordance with the provisions of Section 317 of the Charter, the County Council hereby declares that a public emergency exists affecting the public health, safety, and welfare; said emergency being the need to amend the labor code to allow changes to the terms of expired collective bargaining agreements in order to effectively and timely meet the fiscal reductions which must be undertaken in response to the operating budget for FY96 which takes effect on July 1, 1995.

SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect on the date it becomes law.

Adopted this ____ day of _____, 1995, by an affirmative vote of two-thirds of the members of the full County Council.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY:
Anne T. MacKinnon
Chairwoman

ATTEST:

Joyce T. Sweeney
Clerk of the Council

APPROVED:

DATE: _____ BY:
Wayne K. Curry
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.