
By: **Prince George's County Delegation and Montgomery County
Delegation**

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CHAPTER 248

1 AN ACT concerning

2 **Maryland-National Capital Park and Planning Commission - Park Police**
3 **Officers - Binding Arbitration**
4 **PG/MC 110-02**

5 FOR the purpose of establishing procedures for binding arbitration between the
6 Maryland-National Capital Park and Planning Commission and park police
7 officers; providing for the appointment of a labor relations administrator in a
8 certain manner; requiring that collective bargaining between the Commission
9 and the exclusive representative of the bargaining unit for park police officers to
10 begin not later than a certain date each year and to end not later than a certain
11 date each year; requiring that negotiations be conducted in good faith;
12 establishing a procedure for resolving a negotiability dispute; repealing certain
13 provisions authorizing the appointment of a fact finder and the use of
14 fact-finding procedures; establishing procedures for the appointment of an
15 arbitrator and for binding arbitration under certain circumstances; setting
16 certain deadlines; requiring the arbitrator to take certain actions in determining
17 a final reasonable offer; requiring the arbitrator to direct the parties to submit
18 certain memoranda; limiting the items which the arbitrator may consider in
19 selecting a final offer; prohibiting the arbitrator from compromising or altering
20 the final offer selected; providing that the parties need not ratify, but must
21 execute, the final offer; providing for the treatment of the final offer; providing
22 that the economic terms of the final offer are subject to being funded by the
23 Montgomery and Prince George's county councils; requiring the Commission to
24 request funds for all economic provisions of the final agreement in the
25 Commission's final budget; requiring the parties to reopen negotiations if the

1 county councils do not fund all provisions of the final agreement; requiring the
2 parties to share equally in paying the costs of arbitration; clarifying the rights
3 and responsibilities of the Commission; making certain stylistic changes;
4 defining certain terms; providing for the application of this Act; and generally
5 relating to collective bargaining between the Maryland-National Capital Park
6 and Planning Commission and the exclusive representative for park police
7 officers.

8 BY repealing and reenacting, with amendments,
9 Article 28 - Maryland-National Capital Park and Planning Commission
10 Section 5-114.1
11 Annotated Code of Maryland
12 (1997 Replacement Volume and 2001 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article 28 - Maryland-National Capital Park and Planning Commission**

16 5-114.1.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) "MNCPPC" means the Maryland-National Capital Park and
19 Planning Commission.

20 (3) "Agreement" means a written contract between the
21 Maryland-National Capital Park and Planning Commission and an employee
22 organization.

23 (4) "Arbitration" means a procedure whereby parties involved in a
24 grievance dispute submit their differences to an impartial 3rd party for a final and
25 binding decision.

26 (5) "Bargaining unit" includes all employees who are ranked as sergeant
27 or below the rank of sergeant, except a confidential employee.

28 (6) "Collective bargaining" means the performance by the certified
29 employee organization through its designated representative and the MNCPPC, of
30 their mutual obligations to negotiate in good faith with respect to wages, hours, and
31 other terms and conditions of employment.

32 (7) "Commissioner" means the State Commissioner of Labor and
33 Industry or his designee.

34 (8) "Confidential employee" means an employee who:

35 (i) Assists and acts in a confidential capacity;

1 (ii) Formulates and effectuates MNCPPC policies with regard to
2 collective bargaining with employees; or

3 (iii) Has access to confidential information not generally available to
4 employees regarding the formulation and effectuation of policies that concern
5 collective bargaining.

6 (9) "Employee" means a police officer who is ranked as a sergeant or
7 below the rank of sergeant employed by MNCPPC.

8 (10) "Employee organization" means any organization of employees which
9 has as one of its primary purposes representing law enforcement employees in
10 collective bargaining.

11 (11) "Exclusive representative" means an employee organization that has
12 been certified by the Commissioner as representing the employees of the bargaining
13 unit.

14 (12) ["Fact-finding" means identification of the major issues in a
15 particular impasse, review of the positions of the parties and resolution of factual
16 differences by an impartial individual or panel, and the making of recommendations
17 for settlement of the impasse.

18 (13)] "Grievance" means a dispute concerning the application or
19 interpretation of the terms of the collective bargaining agreement or the rules and
20 regulations of the MNCPPC.

21 [(14)] (13) "Impasse" means failure of the MNCPPC and an exclusive
22 representative to achieve agreement at least 30 days before the date that the
23 MNCPPC budget is due for submission to the Montgomery County Council and the
24 Prince George's County Council.

25 [(15)] (14) "LABOR RELATIONS ADMINISTRATOR" MEANS AN
26 EXPERIENCED NEUTRAL PARTY.

27 (15) "Mediation" means assistance by an impartial 3rd party to reconcile a
28 dispute arising out of collective bargaining through interpretation, suggestion, and
29 advice.

30 (16) "Strike" means an employee's refusal, in concerted action with others,
31 to report for duty, or willful absence from the position, or stoppage of work, or
32 abstinence in whole or in part from the proper performance of the duties of
33 employment, for the purpose of inducing, influencing, or coercing a change in the
34 wages, hours, or other terms and conditions of employment.

35 (17) "Supervisory employee" means an employee who serves at the rank
36 or title of captain and above.

1 (b) (1) (I) THE LABOR RELATIONS ADMINISTRATOR SHALL BE APPOINTED
2 FOR A 2-YEAR TERM BY THE MNCPPC AND THE EXCLUSIVE REPRESENTATIVE FROM
3 A LIST OF FIVE NOMINEES ON WHICH THEY AGREE.

4 (II) IF NO EXCLUSIVE REPRESENTATIVE HAS BEEN CERTIFIED TO
5 REPRESENT EMPLOYEES OF THE BARGAINING UNIT, THE MNCPPC SHALL APPOINT
6 THE LABOR RELATIONS ADMINISTRATOR FOR A TERM NOT TO EXCEED 1 YEAR.

7 (III) A LABOR RELATIONS ADMINISTRATOR IS ELIGIBLE FOR
8 REAPPOINTMENT AND MAY BE THE SAME PERSON AS THE LABOR RELATIONS
9 ADMINISTRATOR APPOINTED UNDER § 2-112.1 OF THIS ARTICLE.

10 (2) If a dispute exists that concerns the eligibility of an employee in the
11 bargaining unit, the dispute shall be submitted to [a neutral 3rd party who is
12 mutually agreed on from a list provided by the American Arbitration Association or
13 the Federal Mediation and Conciliation Service] THE LABOR RELATIONS
14 ADMINISTRATOR for a final and binding arbitration.

15 (c) (1) After July 1, 1986, an election for an exclusive representative shall be
16 conducted by the Commissioner.

17 (2) A petition for an election may be submitted by:

18 (i) An employee organization that demonstrates that 30 percent of
19 the police officers in a bargaining unit wish to be represented for collective bargaining
20 by an exclusive representative;

21 (ii) An employee, a group of employees, or an employee
22 organization that demonstrates that 35 percent of the employees certify that the
23 designated exclusive representative is no longer the representative of the majority of
24 the employees; or

25 (iii) The MNCPPC demonstrating that 1 or more employee
26 organizations has presented to it a claim, supported by substantial proof, to be
27 certified as the exclusive representative, and the Commissioner finds, on
28 investigation of the petition, that a valid question of representation exists.

29 (3) There shall be on the ballot:

30 (i) The name or names of the employee organization submitting
31 the valid petition;

32 (ii) The name of any other employee organization or organizations
33 designated on a valid petition signed by more than 10 percent of the bargaining unit;
34 and

35 (iii) A provision for "no representation".

36 (4) In an election where none of the choices on the ballot receives a
37 majority of the votes cast, a runoff election shall be conducted, with the ballot

1 providing for a selection between the 2 choices receiving the highest number of ballots
2 cast in the election. An employee organization that receives a majority of votes cast in
3 an election shall be certified by the Commissioner as the exclusive representative for
4 collective bargaining purposes. An employee organization may not be certified as an
5 exclusive representative, except pursuant to the provisions of this section.

6 (5) All elections shall be conducted:

7 (i) By secret ballot; and

8 (ii) By the Commissioner.

9 (6) Elections may not be conducted if a valid election has been held
10 within the preceding 2 years.

11 (d) (1) The MNCPPC shall extend to an employee organization certified as
12 the exclusive representative the right to represent the employees in collective
13 bargaining and in the settlement of grievances.

14 (2) An employee organization certified as the exclusive representative
15 shall serve as the bargaining agent for the bargaining unit. The organization shall
16 represent fairly and without discrimination all public employees without regard to
17 whether the employees are members of the employee organization.

18 (3) Every employee organization which has or seeks certification as an
19 exclusive representative shall file with the MNCPPC and the Commissioner, a copy of
20 the employee organization's constitution and bylaws. All changes and amendments to
21 the constitution and bylaws shall be promptly reported.

22 (4) Every employee organization shall file an annual report with the
23 MNCPPC and the Commissioner. The annual report shall include a financial report:

24 (i) Signed by its president and treasurer or corresponding principal
25 officers; and

26 (ii) Contain information in such detail as necessary to accurately
27 disclose its financial condition and operations.

28 (5) The constitution or bylaws of every employee organization shall
29 provide:

30 (i) A pledge that the organization will accept members without
31 regard to age, race, sex, religion, marital status, or national origin;

32 (ii) Accurate accounts of all income and expenses and an annual
33 financial report. The accounts shall be open for inspection by any member of the
34 organization;

35 (iii) Periodic elections by secret ballot subject to recognized
36 safeguards;

1 (iv) That individual members have the right to participate in the
2 affairs of the organization; and

3 (v) Fair and equitable procedures in disciplinary actions.

4 (6) An employee organization that has not filed an annual report or
5 whose constitution and bylaws do not conform to the requirements of subsection (d)(5)
6 of this section may not be or remain certified for the purpose of negotiating with the
7 MNCPPC.

8 (e) (1) The certified employee organization and the MNCPPC have the
9 obligation to engage in collective bargaining. This obligation does not compel either
10 party to agree to a proposal or to make a concession to the other.

11 (2) [It is declared to be in the public interest that, in the course of
12 collective bargaining, the MNCPPC and the exclusive representative make every
13 reasonable effort to conclude negotiations prior to the budget submission date of the
14 MNCPPC, in order that the appropriate legislative body may act on the operating
15 budget of the MNCPPC.]

16 (I) 1. COLLECTIVE BARGAINING SHALL BEGIN NOT LATER
17 THAN SEPTEMBER 1 BEFORE THE BEGINNING OF AN ENTIRE FISCAL YEAR FOR
18 WHICH AN AGREEMENT HAS NOT BEEN REACHED BETWEEN THE MNCPPC AND THE
19 CERTIFIED EMPLOYEE ORGANIZATION.

20 2. COLLECTIVE BARGAINING SHALL CONCLUDE ON OR
21 BEFORE THE FOLLOWING FEBRUARY 4, OR ANY LATER DATE DETERMINED BY
22 MUTUAL AGREEMENT OF THE PARTIES.

23 (II) DURING THE PERIOD SET IN SUBPARAGRAPH (I)1 OF THIS
24 PARAGRAPH, THE PARTIES SHALL NEGOTIATE IN GOOD FAITH.

25 (3) (I) IF A PARTY CONSIDERS A BARGAINING PROPOSAL TO
26 CONTRAVENE THE RESPONSIBILITIES OF THE MNCPPC UNDER SUBSECTION (G) OF
27 THIS SECTION, OR THE RIGHTS OF EMPLOYEES OF THE MNCPPC UNDER SUBSECTION
28 (H) OF THIS SECTION, OR OTHERWISE TO VIOLATE THIS SECTION, THE PARTY SHALL
29 PETITION THE LABOR RELATIONS ADMINISTRATOR TO DETERMINE WHETHER THE
30 BARGAINING PROPOSAL CONSTITUTES A NEGOTIABILITY DISPUTE THAT
31 CONTRAVENES THIS SECTION.

32 (II) THE PROCEDURE FOR RESOLVING A NEGOTIABILITY DISPUTE
33 SHALL FOLLOW THE PROCESS FOR REVIEWING UNFAIR LABOR PRACTICE CHARGES,
34 EXCEPT THAT THE LABOR RELATIONS ADMINISTRATOR MAY SHORTEN THE TIME
35 PERIODS OR ORDER ANY EXPEDITED PROCEDURE APPROPRIATE UNDER THE
36 CIRCUMSTANCES.

37 (III) THE LABOR RELATIONS ADMINISTRATOR MAY ORDER A PARTY
38 TO WITHDRAW ALL OR PART OF A BARGAINING PROPOSAL THAT CONTRAVENES THIS
39 SECTION.

1 (IV) UNLESS APPEALED ON THE BASIS OF BEING ARBITRARY,
2 CAPRICIOUS, OR EXCEEDING THE AUTHORITY OF A PARTY, ANY DECISION AND
3 ORDER REACHED UNDER THIS SUBSECTION IS FINAL.

4 [(3)] (4) (i) A mediator may be utilized by the parties in collective
5 bargaining whenever the parties mutually agree or if an impasse exists whenever one
6 party requests mediation.

7 (ii) The mediator shall be selected by the parties from a list
8 supplied by either the American Arbitration Association or the Federal Mediation and
9 Conciliation Service.

10 [(4) (i) The parties by mutual agreement may engage in fact-finding. If
11 there is not mutual agreement, either party at impasse, may request the appointment
12 of a fact finder to initiate fact-finding. The fact finder shall be selected as provided in
13 subparagraph (ii) of this paragraph.

14 (ii) The MNCPPC and the exclusive representative may select their
15 own fact finder from a list supplied by the American Arbitration Association or the
16 Federal Mediation and Conciliation Service. If the parties are unable to reach
17 agreement on fact-finding, a fact finder shall be selected pursuant to the rules of the
18 agency that provides the list. The cost of fact-finding shall be paid equally by
19 MNCPPC and the employee organization.

20 (iii) The fact finder shall conduct hearings and may administer
21 oaths. The fact finder shall make written findings of fact and recommendations for
22 resolution of the impasse. No later than 30 days from the date of appointment the fact
23 finder shall transmit the findings to the MNCPPC and the exclusive representative.
24 If the impasse continues 10 days after the report is submitted to the parties, the
25 report shall be made available to the public.

26 (iv) Costs of fact-finding shall be borne equally by the parties.]

27 (5) (I) IF THE PARTIES HAVE NOT REACHED AN AGREEMENT ON OR
28 BEFORE DECEMBER 1, OR ANY LATER DATE DETERMINED BY MUTUAL AGREEMENT
29 OF THE PARTIES ON A COLLECTIVE BARGAINING AGREEMENT THAT WOULD
30 SUCCEED THE EXISTING AGREEMENT, EITHER PARTY MAY DECLARE A BARGAINING
31 IMPASSE AND THE PARTIES JOINTLY SHALL APPOINT AN ARBITRATOR.

32 (II) IF THE PARTIES ARE UNABLE TO AGREE ON AN ARBITRATOR,
33 THE LABOR RELATIONS ADMINISTRATOR SHALL NAME THE ARBITRATOR ON OR
34 BEFORE DECEMBER 7, OR ANY LATER DATE DETERMINED BY MUTUAL AGREEMENT
35 OF THE PARTIES.

36 (III) NOTWITHSTANDING APPOINTMENT OF THE ARBITRATOR,
37 NOTHING IN THIS SECTION SHALL REQUIRE COMMENCEMENT OF ARBITRATION
38 PRIOR TO FEBRUARY 1, OR ANY LATER DATE DETERMINED BY MUTUAL AGREEMENT
39 OF THE PARTIES.

1 (IV) ON OR BEFORE FEBRUARY 1, OR ANY LATER DATE DETERMINED
2 BY MUTUAL AGREEMENT OF THE PARTIES, THE ARBITRATOR SHALL DIRECT THE
3 PARTIES TO SUBMIT:

4 1. A JOINT MEMORANDUM LISTING ALL ITEMS TO WHICH
5 THE PARTIES PREVIOUSLY AGREED; AND

6 2. A SEPARATE MEMORANDUM OF THE PARTY'S LAST FINAL
7 OFFER PRESENTED IN NEGOTIATIONS ON ALL ITEMS TO WHICH THE PARTIES DID
8 NOT PREVIOUSLY AGREE.

9 (V) 1. ON OR BEFORE FEBRUARY 10, OR ANY LATER DATE
10 DETERMINED BY MUTUAL AGREEMENT OF THE PARTIES, THE ARBITRATOR SHALL
11 HOLD A NONPUBLIC HEARING ON THE PARTIES' PROPOSALS AT A TIME, DATE, AND
12 PLACE SELECTED BY THE ARBITRATOR.

13 2. EACH PARTY SHALL SUBMIT EVIDENCE OR MAKE ORAL
14 AND WRITTEN ARGUMENTS IN SUPPORT OF THE PARTY'S LAST FINAL OFFER.

15 3. THE ARBITRATOR MAY NOT OPEN THE HEARING TO A
16 PERSON WHO IS NOT A PARTY TO THE ARBITRATION.

17 (VI) 1. ON OR BEFORE FEBRUARY 15, OR ANY LATER DATE
18 DETERMINED BY MUTUAL AGREEMENT OF THE PARTIES, THE ARBITRATOR SHALL
19 ISSUE A REPORT SELECTING BETWEEN THE FINAL OFFERS SUBMITTED BY THE
20 PARTIES THAT THE ARBITRATOR DETERMINES TO BE MORE REASONABLE, VIEWED
21 AS A WHOLE.

22 2. IN DETERMINING THE MORE REASONABLE OFFER, THE
23 ARBITRATOR MAY CONSIDER ONLY THE FOLLOWING FACTORS:

24 A. PAST COLLECTIVE BARGAINING CONTRACTS BETWEEN
25 THE PARTIES, INCLUDING THE PAST BARGAINING HISTORY THAT LED TO THE
26 AGREEMENT OR THE PRECOLLECTIVE BARGAINING HISTORY OF EMPLOYEE WAGES,
27 HOURS, BENEFITS, AND OTHER WORKING CONDITIONS;

28 B. A COMPARISON OF WAGES, HOURS, BENEFITS, AND
29 OTHER CONDITIONS OF EMPLOYMENT OF POLICE OFFICERS IN MONTGOMERY
30 COUNTY AND PRINCE GEORGE'S COUNTY;

31 C. THE PUBLIC INTEREST AND WELFARE;

32 D. THE ABILITY OF THE EMPLOYER TO FINANCE ANY
33 ECONOMIC ADJUSTMENTS REQUIRED UNDER THE PROPOSED AGREEMENT; AND

34 E. THE EFFECTS OF ANY ECONOMIC ADJUSTMENTS ON THE
35 STANDARD OF PUBLIC SERVICES NORMALLY PROVIDED BY THE EMPLOYER.

1 3. IN DETERMINING THE MOST REASONABLE OFFER, THE
2 ARBITRATOR SHALL CONSIDER TO BE INTEGRATED WITH EACH OFFER ALL ITEMS ON
3 WHICH THE PARTIES AGREED PRIOR TO THE ARBITRATION.

4 4. THE ARBITRATOR MAY NOT RECEIVE OR CONSIDER THE
5 HISTORY OF COLLECTIVE BARGAINING RELATING TO THE IMMEDIATE DISPUTE,
6 INCLUDING ANY OFFERS OF SETTLEMENT NOT CONTAINED IN THE OFFER
7 SUBMITTED TO THE ARBITRATOR.

8 (VII) THE ARBITRATOR MAY NOT COMPROMISE OR ALTER THE FINAL
9 OFFER THAT THE ARBITRATOR SELECTS.

10 (VIII) SUBJECT TO SUBSECTION (F)(5) OF THIS SECTION, WITHOUT
11 RATIFICATION BY THE PARTIES, THE OFFER SELECTED BY THE ARBITRATOR,
12 INTEGRATED WITH THE ITEMS TO WHICH THE PARTIES PREVIOUSLY AGREED, SHALL
13 BE THE FINAL AGREEMENT BETWEEN THE MNCPPC AND THE EXCLUSIVE
14 REPRESENTATIVE.

15 (IX) THE PARTIES SHALL EXECUTE AN AGREEMENT
16 INCORPORATING THE FINAL AGREEMENT, INCLUDING ARBITRATION AWARDS AND
17 ALL ISSUES AGREED TO UNDER THIS PARAGRAPH.

18 (X) THE MNCPPC AND THE EMPLOYEE ORGANIZATION SHALL
19 SHARE EQUALLY IN PAYING THE COSTS OF THE ARBITRATOR'S SERVICES.

20 [(5)] (6) Employees may not engage in a strike.

21 [(6)] (7) If a strike of employees occurs, a court of competent jurisdiction
22 may, upon request of the MNCPPC, enjoin the strike.

23 [(7)] (8) An employee may not receive pay or compensation from the
24 MNCPPC for any period during which the employee is engaged in a strike.

25 [(8)] (9) If an employee organization certified as an exclusive
26 representative engages in a strike, its certification as exclusive representative shall
27 be revoked by the Commissioner, and that employee organization or any other
28 employee organization which engages in a strike shall be ineligible to be certified as
29 an exclusive representative for a period of 1 year following the end of the strike.

30 (f) (1) A collective bargaining agreement shall be executed by the MNCPPC
31 and the exclusive representative incorporating any matters of agreement reached on
32 wages, hours, and other terms and conditions of employment, and may include dues
33 and maintenance or service fees taken from payroll deduction.

34 (2) A collective bargaining agreement may include a provision for the
35 arbitration of grievances arising under an agreement.

36 (3) A discussion of the terms of employee retirement systems is
37 permitted in the course of collective bargaining, but the discussion of the hiring
38 practices of MNCPPC is prohibited.

1 (4) The terms of the agreement shall supersede any conflicting rules,
2 regulations, and administrative policies of the MNCPPC.

3 (5) [Any request for funds necessary to implement the agreement shall
4 be submitted by the MNCPPC in a timely fashion for consideration in the budget
5 process of Prince George's County and Montgomery County.]

6 (I) THE ECONOMIC PROVISIONS OF A FINAL AGREEMENT ARE
7 SUBJECT TO FUNDING BY THE MONTGOMERY AND PRINCE GEORGE'S COUNTY
8 COUNCILS.

9 (II) THE MNCPPC SHALL REQUEST FUNDS IN THE MNCPPC'S FINAL
10 BUDGET FROM THE COUNTY COUNCILS FOR ALL ECONOMIC PROVISIONS OF A FINAL
11 AGREEMENT.

12 (6) If the request for funds necessary to implement the agreement is
13 reduced, modified, or rejected by the governing bodies of Prince George's County and
14 Montgomery County, either party to the agreement [may], no later than [20] 5 days
15 after final budget action by the governing bodies, SHALL reopen the NEGOTIATED
16 agreement AND BARGAIN WITH RESPECT TO THE PROVISIONS OF THE AGREEMENT
17 NOT APPROVED BY THE COUNTY COUNCILS.

18 (7) IF A PROVISION IN A COLLECTIVE BARGAINING AGREEMENT IS
19 RULED INVALID OR IS NOT FUNDED BY MONTGOMERY COUNTY AND PRINCE
20 GEORGE'S COUNTY, THE REMAINDER OF THE AGREEMENT REMAINS IN EFFECT
21 UNLESS REOPENED UNDER PARAGRAPH (6) OF THIS SUBSECTION.

22 (g) [The MNCPPC may:

23 (1) Determine how the statutory mandate and goals of the MNCPPC,
24 including but not limited to the functions and programs of the MNCPPC, its overall
25 budget and its organizational structure, are to be carried out; and

26 (2) Direct personnel, subject to the collective bargaining agreement.]

27 (1) SUBJECT TO THE APPLICABLE LAWS AND REGULATIONS, THIS
28 SECTION AND ANY AGREEMENT MADE UNDER IT MAY NOT IMPAIR THE RIGHTS AND
29 RESPONSIBILITIES OF THE MNCPPC TO:

30 (I) DETERMINE THE OVERALL BUDGET AND MISSION OF THE
31 MNCPPC;

32 (II) MAINTAIN AND IMPROVE THE EFFICIENCY AND
33 EFFECTIVENESS OF OPERATIONS;

34 (III) DETERMINE THE SERVICES TO BE RENDERED AND THE
35 OPERATIONS TO BE PERFORMED;

36 (IV) DETERMINE THE LOCATION OF THE FACILITIES AND OVERALL
37 ORGANIZATIONAL STRUCTURE, METHODS, PROCESSES, MEANS, JOB

1 CLASSIFICATIONS, AND PERSONNEL BY WHICH OPERATIONS ARE TO BE
2 CONDUCTED;

3 (V) DIRECT AND SUPERVISE EMPLOYEES;

4 (VI) HIRE, SELECT, AND ESTABLISH THE STANDARDS GOVERNING
5 PROMOTION OF EMPLOYEES AND CLASSIFYING POSITIONS;

6 (VII) RELIEVE EMPLOYEES FROM DUTIES BECAUSE OF LACK OF
7 WORK OR FUNDS OR WHEN THE MNCPPC DETERMINES CONTINUED WORK WOULD
8 BE INEFFICIENT OR NONPRODUCTIVE;

9 (VIII) TRANSFER AND SCHEDULE EMPLOYEES;

10 (IX) DETERMINE THE SIZES, GRADES, AND COMPOSITION OF THE
11 WORKFORCE;

12 (X) SET THE STANDARDS OF PRODUCTIVITY AND TECHNOLOGY;

13 (XI) ESTABLISH EMPLOYEE PERFORMANCE STANDARDS AND
14 EVALUATE AND ASSIGN EXCEPT THAT EVALUATION AND ASSIGNMENT PROCEDURES
15 ARE SUBJECTS FOR BARGAINING;

16 (XII) MAKE AND IMPLEMENT SYSTEMS FOR AWARDING
17 OUTSTANDING SERVICE INCREMENTS, EXTRAORDINARY PERFORMANCE AWARDS,
18 AND OTHER MERIT AWARDS;

19 (XIII) INTRODUCE NEW OR IMPROVED TECHNOLOGY, RESEARCH
20 DEVELOPMENT, AND SERVICES;

21 (XIV) CONTROL AND REGULATE THE USE OF MACHINERY
22 EQUIPMENT, AND OTHER PROPERTY AND FACILITIES OF THE MNCPPC SUBJECT TO
23 NEGOTIATION RELATED TO MATTERS AFFECTING THE HEALTH AND SAFETY OF
24 EMPLOYEES;

25 (XV) MAINTAIN INTERNAL SECURITY STANDARDS;

26 (XVI) CREATE, ALTER, COMBINE, CONTRACT OUT, OR ABOLISH ANY
27 JOB CLASSIFICATION, DEPARTMENT, OPERATION, UNIT, OR OTHER DIVISION OR
28 SERVICE, PROVIDED THAT NO CONTRACTING OF WORK THAT WILL DISPLACE
29 EMPLOYEES MAY BE UNDERTAKEN BY THE MNCPPC UNLESS THE MNCPPC GIVES
30 WRITTEN NOTICE TO THE CERTIFIED REPRESENTATIVE AT LEAST 90 DAYS BEFORE
31 SIGNING THE CONTRACT OR WITHIN A DIFFERENT PERIOD OF TIME AS AGREED BY
32 THE PARTIES;

33 (XVII) SUSPEND, DISCHARGE, OR OTHERWISE DISCIPLINE
34 EMPLOYEES FOR CAUSE, SUBJECT TO THE GRIEVANCE PROCEDURE SET FORTH IN
35 THE COLLECTIVE BARGAINING AGREEMENT;

1 (XVIII) ISSUE AND ENFORCE RULES, POLICIES, AND REGULATIONS
2 NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBSECTION AND ALL OTHER
3 MANAGERIAL FUNCTIONS THAT ARE CONSISTENT WITH THIS ARTICLE, FEDERAL OR
4 STATE LAW, OR THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT.

5 (2) THIS SUBSECTION MAY NOT PRECLUDE OR IMPAIR COLLECTIVE
6 BARGAINING OR NEGOTIABILITY AS TO ANY SUBJECT MATTER INCLUDED WITHIN
7 ANY WRITTEN AGREEMENT MADE BETWEEN MNCPPC AND THE EXCLUSIVE
8 REPRESENTATIVE ON OR BEFORE DECEMBER 31, 2001.

9 (h) (1) Employees have the right to form, join, or assist any employee
10 organization, to bargain collectively through representatives they have chosen, and to
11 engage in other lawful concerted activities for the purpose of collective bargaining and
12 also shall have the right to refrain from any or all of these activities.

13 (2) Any employee or group of employees has the right at any time to
14 present grievances arising under the terms of the agreement to the MNCPPC and to
15 have the grievances adjusted without the intervention of the exclusive representative.
16 The MNCPPC has the duty to hear those grievances and participate in their
17 adjustment. However, the adjustment may not be inconsistent with the terms of a
18 collective bargaining agreement then in effect. The MNCPPC shall give prompt notice
19 of all adjustments to the exclusive representative.

20 (3) The MNCPPC and a public employee organization shall not interfere
21 with, intimidate, restrain, coerce, or discriminate against public employees because of
22 the exercise of their rights under paragraphs (1) and (2) of this subsection.

23 (i) (1) The MNCPPC, its agents, or its representatives may not:

24 (i) Interfere with, intimidate, restrain, coerce, or discriminate
25 against public employees because of the exercise of their rights under the provisions
26 of this section;

27 (ii) Dominate, interfere with, or assist in the formation, existence,
28 or administration of a labor organization, or contribute financial or any other support
29 to a labor organization;

30 (iii) Be prohibited from permitting employees to negotiate or confer
31 with [it] A LABOR ORGANIZATION during work hours without loss of time or pay;

32 (iv) Discriminate against public employees with regard to hiring or
33 tenure of employment or any term or condition of employment to encourage or
34 discourage membership in any labor organization;

35 (v) Discharge or otherwise discriminate against an employee
36 because the employee has signed or filed an affidavit, petition, or complaint or given
37 any information or testimony under the provisions of this section;

38 (vi) Refuse to collectively bargain in good faith with a certified
39 employee organization as provided in subsection (e)(1) of this section; OR

1 (vii) [Refuse to participate in good faith in the procedures for
2 fact-finding as provided in subsection (e)(4) of this section; or

3 (viii)] Refuse or fail to comply with any provision of this section.

4 (2) Employees of the MNCPPC, a labor organization, its agents, or its
5 representatives may not:

6 (i) Interfere with, intimidate, restrain, coerce, or discriminate
7 against an employee in the exercise of the employee's rights provided under this
8 section;

9 (ii) Cause or attempt to cause the MNCPPC to discriminate against
10 a public employee in violation of paragraph (1)(iv) of this subsection;

11 (iii) Refuse to collectively bargain in good faith with the MNCPPC
12 as provided in subsection (e)(1) of this section, if a labor organization has been
13 designated as the exclusive representative of employees in a unit in accordance with
14 the provisions of subsection (c) of this section;

15 (iv) [Refuse to participate in good faith in the procedures for
16 fact-finding as provided in subsection (e)(4) of this section;

17 (v)] Engage in a strike in violation of subsection [(e)(5)] (E)(6) of this
18 section; or

19 [(vi)] (V) Refuse or fail to comply with any provision of this section.

20 (3) An expression of any views, arguments, or opinions, whether oral or
21 written, printed, graphic, or visual form, may not constitute or be evidence of an
22 unfair labor practice under any of the provisions of this section, if the expression does
23 not contain a threat of reprisal or force, a promise of benefit, or a misrepresentation of
24 fact.

25 (j) (1) Nothing in this section or in any other federal or State law may
26 preclude the MNCPPC from making a collective bargaining agreement with an
27 exclusive representative that requires an employee, as a condition of employment, to
28 pay a maintenance or service fee as a contribution towards the cost of the negotiation
29 and administration of the agreement, in an amount not greater than the regular
30 annual dues paid to the exclusive representative.

31 (2) Before the MNCPPC discharges an employee who fails to pay a
32 maintenance or service fee, it shall give the employee:

33 (i) Written notice of the delinquent payment; and

34 (ii) Adequate time to correct the delinquency.

1 (3) If the MNCPPC and the employee are unable to resolve the fee issue,
2 the issue shall be submitted to an umpire in accordance with the provisions of
3 subsection (k) of this section.

4 (k) (1) Any charge that the MNCPPC, a public employee, or a labor
5 organization has engaged in an unfair labor practice shall:

6 (i) Be in writing;

7 (ii) State concisely and simply the facts that are asserted or if the
8 facts cannot be stated in detail, the issues that are involved; and

9 (iii) Be served personally on the party alleged to have engaged in
10 the violation within 180 days of the alleged violation.

11 (2) If the charging party and the charged party are unable to resolve the
12 matter, the charge shall be submitted to an umpire selected according to the following
13 rules:

14 (i) The [Commission] MNCPPC shall appoint the umpire from a
15 list of 5 nominees agreed upon by the exclusive representative and the Executive
16 Director of the [Commission] MNCPPC.

17 (ii) The umpire shall serve for 2 years and be eligible for
18 reappointment.

19 (iii) 1. The fees and expenses of the umpire shall be paid as set
20 forth by agreement of the parties.

21 2. Unless otherwise provided by agreement, the parties shall
22 share equally the umpire's costs.

23 (iv) The umpire may not be otherwise employed by either the
24 [Commission] MNCPPC or the exclusive representative.

25 (3) The power of the umpire is exclusive.

26 (4) The umpire may not require compliance with the technical rules of
27 evidence.

28 (5) The umpire:

29 (i) Shall investigate and attempt to resolve or settle, as provided in
30 this section, charges of engaging in prohibited practices;

31 (ii) Shall defer to any valid grievance procedure adopted by the
32 [Commission] MNCPPC and the exclusive representative for the resolution of
33 disputes subject to the grievance procedure, unless the deferral would result in a
34 violation of the purposes of this section;

1 (iii) Shall defer to the Maryland Law Enforcement Officers' Bill of
2 Rights for the resolution of disputes subject to that subtitle;

3 (iv) Shall recognize fundamental distinctions between private and
4 public employment; and

5 (v) May not regard federal and State law that is applicable wholly
6 or in part to private employment as controlling precedent.

7 (6) Based on the preponderance of the evidence, the umpire shall submit
8 written findings of fact and conclusions of law to the parties no later than 40 days
9 from the date of appointment.

10 (7) If the umpire determines that a party named in the complaint has
11 engaged or is engaging in an unfair labor practice, the umpire shall issue an order
12 requiring the party to cease the practice.

13 (8) An order may:

14 (i) Include any remedies, including reinstatement of a public
15 employee with or without back pay;

16 (ii) Require periodic reports on the extent to which the party has
17 complied with an order; and

18 (iii) Be designed to prevent future unfair labor practices.

19 (9) A party who is aggrieved by a final decision of an umpire is entitled to
20 judicial review of the decision as provided in paragraph (10) of this subsection.

21 (10) (i) Within 30 days after the issuance of a final order, a petition for
22 judicial review shall be filed with the Circuit Court for Prince George's County or the
23 Circuit Court for Montgomery County.

24 (ii) The Circuit Court may not consider evidence that was not
25 offered in the proceeding before the umpire unless the court determines that the
26 failure to offer the evidence shall be excused because of extraordinary circumstances.

27 (iii) The Circuit Court may not overturn the umpire's decision
28 unless the court finds that the umpire's decision is not supported by substantial
29 evidence.

30 (11) (i) A charging party may petition the Circuit Court for Prince
31 George's County or the Circuit Court for Montgomery County for enforcement of an
32 order of an umpire.

33 (ii) Unless a petition for judicial review has been filed in accordance
34 with paragraph (10) of this subsection, a petition for enforcement of an order of an
35 umpire may not be used to appeal the final decision of the umpire.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2002 and shall apply to all bargaining cycles that begin after the effective
3 date of this Act.