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

Introduced and read first time: February 6, 2002
Assigned to: Commerce and Government Matters

A BILL ENTITLED

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
26 county councils do not fund all provisions of the final agreement; requiring the
27 parties to share equally in paying the costs of arbitration; clarifying the rights
28 and responsibilities of the Commission; making certain stylistic changes;
29 defining certain terms; providing for the application of this Act; and generally
30 relating to collective bargaining between the Maryland-National Capital Park
31 and Planning Commission and the exclusive representative for park police
32 officers.

33 BY repealing and reenacting, with amendments,

1 Article 28 - Maryland-National Capital Park and Planning Commission
2 Section 5-114.1
3 Annotated Code of Maryland
4 (1997 Replacement Volume and 2001 Supplement)

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

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

8 5-114.1.

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

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

12 (3) "Agreement" means a written contract between the
13 Maryland-National Capital Park and Planning Commission and an employee
14 organization.

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

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

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

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

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

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

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

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

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

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

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

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

11 (13) "Grievance" means a dispute concerning the application or
12 interpretation of the terms of the collective bargaining agreement or the rules and
13 regulations of the MNCPPC.

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

18 [(15)] (14) "LABOR RELATIONS ADMINISTRATOR" MEANS AN
19 EXPERIENCED NEUTRAL PARTY.

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

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

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

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

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

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

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

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

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

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

12 (ii) An employee, a group of employees, or an employee
13 organization that demonstrates that 35 percent of the employees certify that the
14 designated exclusive representative is no longer the representative of the majority of
15 the employees; or

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

20 (3) There shall be on the ballot:

21 (i) The name or names of the employee organization submitting
22 the valid petition;

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

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

27 (4) In an election where none of the choices on the ballot receives a
28 majority of the votes cast, a runoff election shall be conducted, with the ballot
29 providing for a selection between the 2 choices receiving the highest number of ballots
30 cast in the election. An employee organization that receives a majority of votes cast in
31 an election shall be certified by the Commissioner as the exclusive representative for
32 collective bargaining purposes. An employee organization may not be certified as an
33 exclusive representative, except pursuant to the provisions of this section.

34 (5) All elections shall be conducted:

35 (i) By secret ballot; and

36 (ii) By the Commissioner.

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

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

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

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

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

16 (i) Signed by its president and treasurer or corresponding principal
17 officers; and

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

20 (5) The constitution or bylaws of every employee organization shall
21 provide:

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

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

27 (iii) Periodic elections by secret ballot subject to recognized
28 safeguards;

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

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

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

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

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

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

13 2. COLLECTIVE BARGAINING SHALL CONCLUDE ON OR
14 BEFORE THE FOLLOWING FEBRUARY 4, OR ANY LATER DATE DETERMINED BY
15 MUTUAL AGREEMENT OF THE PARTIES.

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

18 (3) (I) IF A PARTY CONSIDERS A BARGAINING PROPOSAL TO
19 CONTRAVENE THE RESPONSIBILITIES OF THE MNCPPC UNDER SUBSECTION (G) OF
20 THIS SECTION, OR THE RIGHTS OF EMPLOYEES OF THE MNCPPC UNDER SUBSECTION
21 (H) OF THIS SECTION, OR OTHERWISE TO VIOLATE THIS SECTION, THE PARTY SHALL
22 PETITION THE LABOR RELATIONS ADMINISTRATOR TO DETERMINE WHETHER THE
23 BARGAINING PROPOSAL CONSTITUTES A NEGOTIABILITY DISPUTE THAT
24 CONTRAVENES THIS SECTION.

25 (II) THE PROCEDURE FOR RESOLVING A NEGOTIABILITY DISPUTE
26 SHALL FOLLOW THE PROCESS FOR REVIEWING UNFAIR LABOR PRACTICE CHARGES,
27 EXCEPT THAT THE LABOR RELATIONS ADMINISTRATOR MAY SHORTEN THE TIME
28 PERIODS OR ORDER ANY EXPEDITED PROCEDURE APPROPRIATE UNDER THE
29 CIRCUMSTANCES.

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

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

36 [(3)] (4) (i) A mediator may be utilized by the parties in collective
37 bargaining whenever the parties mutually agree or if an impasse exists whenever one
38 party requests mediation.

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

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

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

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

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

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

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

30 (III) NOTWITHSTANDING APPOINTMENT OF THE ARBITRATOR,
31 NOTHING IN THIS SECTION SHALL REQUIRE COMMENCEMENT OF ARBITRATION
32 PRIOR TO FEBRUARY 1, OR ANY LATER DATE DETERMINED BY MUTUAL AGREEMENT
33 OF THE PARTIES.

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

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

1 (VII) THE ARBITRATOR MAY NOT COMPROMISE OR ALTER THE FINAL
2 OFFER THAT THE ARBITRATOR SELECTS.

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

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

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

13 [(5)] (6) Employees may not engage in a strike.

14 [(6)] (7) If a strike of employees occurs, a court of competent jurisdiction
15 may, upon request of the MNCPPC, enjoin the strike.

16 [(7)] (8) An employee may not receive pay or compensation from the
17 MNCPPC for any period during which the employee is engaged in a strike.

18 [(8)] (9) If an employee organization certified as an exclusive
19 representative engages in a strike, its certification as exclusive representative shall
20 be revoked by the Commissioner, and that employee organization or any other
21 employee organization which engages in a strike shall be ineligible to be certified as
22 an exclusive representative for a period of 1 year following the end of the strike.

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

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

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

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

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

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

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

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

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

17 (g) [The MNCPPC may:

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

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

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

25 (I) DETERMINE THE OVERALL BUDGET AND MISSION OF THE
26 MNCPPC;

27 (II) MAINTAIN AND IMPROVE THE EFFICIENCY AND
28 EFFECTIVENESS OF OPERATIONS;

29 (III) DETERMINE THE SERVICES TO BE RENDERED AND THE
30 OPERATIONS TO BE PERFORMED;

31 (IV) DETERMINE THE LOCATION OF THE FACILITIES AND OVERALL
32 ORGANIZATIONAL STRUCTURE, METHODS, PROCESSES, MEANS, JOB
33 CLASSIFICATIONS, AND PERSONNEL BY WHICH OPERATIONS ARE TO BE
34 CONDUCTED;

35 (V) DIRECT AND SUPERVISE EMPLOYEES;

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

1 (VII) RELIEVE EMPLOYEES FROM DUTIES BECAUSE OF LACK OF
2 WORK OR FUNDS OR WHEN THE MNCPPC DETERMINES CONTINUED WORK WOULD
3 BE INEFFICIENT OR NONPRODUCTIVE;

4 (VIII) TRANSFER AND SCHEDULE EMPLOYEES;

5 (IX) DETERMINE THE SIZES, GRADES, AND COMPOSITION OF THE
6 WORKFORCE;

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

8 (XI) ESTABLISH EMPLOYEE PERFORMANCE STANDARDS AND
9 EVALUATE AND ASSIGN EXCEPT THAT EVALUATION AND ASSIGNMENT PROCEDURES
10 ARE SUBJECTS FOR BARGAINING;

11 (XII) MAKE AND IMPLEMENT SYSTEMS FOR AWARDED
12 OUTSTANDING SERVICE INCREMENTS, EXTRAORDINARY PERFORMANCE AWARDS,
13 AND OTHER MERIT AWARDS;

14 (XIII) INTRODUCE NEW OR IMPROVED TECHNOLOGY, RESEARCH
15 DEVELOPMENT, AND SERVICES;

16 (XIV) CONTROL AND REGULATE THE USE OF MACHINERY
17 EQUIPMENT, AND OTHER PROPERTY AND FACILITIES OF THE MNCPPC SUBJECT TO
18 NEGOTIATION RELATED TO MATTERS AFFECTING THE HEALTH AND SAFETY OF
19 EMPLOYEES;

20 (XV) MAINTAIN INTERNAL SECURITY STANDARDS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) Interfere with, intimidate, restrain, coerce, or discriminate
2 against an employee in the exercise of the employee's rights provided under this
3 section;
- 4 (ii) Cause or attempt to cause the MNCPPC to discriminate against
5 a public employee in violation of paragraph (1)(iv) of this subsection;
- 6 (iii) Refuse to collectively bargain in good faith with the MNCPPC
7 as provided in subsection (e)(1) of this section, if a labor organization has been
8 designated as the exclusive representative of employees in a unit in accordance with
9 the provisions of subsection (c) of this section;
- 10 (iv) [Refuse to participate in good faith in the procedures for
11 fact-finding as provided in subsection (e)(4) of this section;
- 12 (v)] Engage in a strike in violation of subsection [(e)(5)] (E)(6) of this
13 section; or
- 14 [(vi)] (V) Refuse or fail to comply with any provision of this section.
- 15 (3) An expression of any views, arguments, or opinions, whether oral or
16 written, printed, graphic, or visual form, may not constitute or be evidence of an
17 unfair labor practice under any of the provisions of this section, if the expression does
18 not contain a threat of reprisal or force, a promise of benefit, or a misrepresentation of
19 fact.
- 20 (j) (1) Nothing in this section or in any other federal or State law may
21 preclude the MNCPPC from making a collective bargaining agreement with an
22 exclusive representative that requires an employee, as a condition of employment, to
23 pay a maintenance or service fee as a contribution towards the cost of the negotiation
24 and administration of the agreement, in an amount not greater than the regular
25 annual dues paid to the exclusive representative.
- 26 (2) Before the MNCPPC discharges an employee who fails to pay a
27 maintenance or service fee, it shall give the employee:
- 28 (i) Written notice of the delinquent payment; and
- 29 (ii) Adequate time to correct the delinquency.
- 30 (3) If the MNCPPC and the employee are unable to resolve the fee issue,
31 the issue shall be submitted to an umpire in accordance with the provisions of
32 subsection (k) of this section.
- 33 (k) (1) Any charge that the MNCPPC, a public employee, or a labor
34 organization has engaged in an unfair labor practice shall:
- 35 (i) Be in writing;

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

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

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

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

11 (ii) The umpire shall serve for 2 years and be eligible for
12 reappointment.

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

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

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

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

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

22 (5) The umpire:

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

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

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

31 (iv) Shall recognize fundamental distinctions between private and
32 public employment; and

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

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

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

7 (8) An order may:

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

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

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

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

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

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

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

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

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

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