Bill No. 35-19
Concerning: Personnel – Collective Bargaining – Certified Representative – Duty of Fair Representation
Revised: October 3, 2019 Draft No. 2
Introduced: November 25, 2019
Enacted: February 4, 2020
Executive: February 14, 2020
Effective: May 15, 2020
Sunset Date: None
Ch. 3, Laws of Mont. Co. 2020

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Hucker

AN ACT to:
(1) amend the duty of fair representation for a certified representative of County employees;
(2) authorize a certified representative to impose the reasonable costs of filing a grievance or pursuing arbitration on an employee who does not pay membership dues or the equivalent;
(3) require a certified representative to file a grievance or pursue arbitration for an employee who does not pay membership dues or the equivalent only if the employee pays the reasonable costs imposed; and
(4) generally amending the duty of fair representation of a certified representative of County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-78, 33-104, and 33-150

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 33-78, 33-104, and 33-150 are amended as follows:

33-78. Employee rights.

(a) Employees shall have the right:

(1) To 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) To be fairly represented by their certified representative, if any.

(b) The employer must extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) Except as provided in subsections (e) and (f), a [A] certified representative must serve as the bargaining agent for all employees and must represent fairly and without discrimination all employees 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 the certified representative to receive membership dues deductions [or agency shop provisions shall] must be determined through negotiations, unless the authority to negotiate such provisions has been suspended under section 33-84. No collective bargaining agreement may include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization [other than an agency shop provision].
(e) A certified representative may require an employee who does not pay membership dues or equivalent fees to pay:

(1) the reasonable costs and fees, including expenses for staff time and materials, arbitrator fees, and related attorney’s fees, for filing a grievance or arbitrating a matter that arises under a collective bargaining agreement brought by the certified representative at the request of the employee; and

(2) any anticipated proportional costs and fees before a grievance is filed or arbitration is pursued.

(f) If an employee fails to pay the reasonable costs to file a grievance or pursue arbitration imposed under subsection (e), the certified representative may refuse to file the grievance or pursue arbitration on behalf of the employee. A dispute concerning the reasonableness of the fees imposed by the certified representative under subsection (e) may be submitted to the permanent umpire as a prohibited practice under Section 33-82.

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 orderly processing and settlement of grievances as agreed by the parties in accordance with this article.
(c) Except as provided in subsections (e) and (f), a [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] must 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].

(e) A certified representative may require an employee who does not pay membership dues or equivalent fees to pay:

1. the reasonable costs and fees, including expenses for staff time and materials, arbitrator fees, and related attorney’s fees, for filing a grievance or arbitrating a matter that arises under a collective bargaining agreement brought by the certified representative at the request of the employee; and

2. any anticipated proportional costs and fees before a grievance is filed or arbitration is pursued.

(f) If an employee fails to pay the reasonable costs to file a grievance or pursue arbitration imposed under subsection (e), the certified
representative may refuse to file the grievance or pursue arbitration on behalf of the employee. A dispute concerning the reasonableness of the fees imposed by the certified representative under subsection (e) may be submitted to the labor relations administrator as a prohibited practice under Section 33-109.

33-150. Employee rights.

(a) Employees have the right to:

(1) form, join, support, contribute to, or participate in, or 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 must extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties under this Article.

(c) Except as provided in subsections (e) and (f), a certified representative serves as the exclusive bargaining agent for all employees in the unit and must 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] must be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this Article. [Other than an agency shop provision, a] A
collective bargaining agreement must not require membership in, participation in the affairs of, or contributions to an employee organization.

(e) A certified representative may require an employee who does not pay membership dues or equivalent fees to pay:

(1) the reasonable costs and fees, including expenses for staff time and materials, arbitrator fees, and related attorney’s fees, for filing a grievance or arbitrating a matter that arises under a collective bargaining agreement brought by the certified representative at the request of the employee; and

(2) any anticipated proportional costs and fees before a grievance is filed or arbitration is pursued.

(f) If an employee fails to pay the reasonable costs to file a grievance or pursue arbitration imposed under subsection (e), the certified representative may refuse to file the grievance or pursue arbitration on behalf of the employee. A dispute concerning the reasonableness of the fees imposed by the certified representative under subsection (e) may be submitted to the labor relations administrator as a prohibited practice under Section 33-154.
Approved:

Sidney Katz, President, County Council 2/5/2020

Approved:

Marc Elrich, County Executive 2/15/2020

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council 2/18/2020