

ORDINANCE NO. _____, SERIES 2018

**AN ORDINANCE AMENDING CHAPTER 35 TO REQUIRE MANDATORY
ARBITRATION IN COLLECTIVE BARGAINING FOR EMPLOYEES OF
THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT.
(AMENDMENT BY SUBSTITUTION)**

SPONSORED BY: PRESIDENT JAMES

WHEREAS, Metro Council amends Louisville Metro Code of Ordinances § 35.056(A) to require all collective bargaining arbitrations be binding on all parties.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I. Section 35.056 of the Louisville Metro Code of Ordinances (LMCO) is hereby amended as follows:

§ 35.056 COLLECTIVE BARGAINING CONTRACTS.

Other than as agreed to by a collective bargaining agreement:

(A) Collective bargaining agreement(s) adopted in accordance with this subchapter, unless otherwise agreed to by the parties to the collective bargaining agreement, shall contain, the following provisions and procedures:

(1) *Grievance procedures.* Every employee or recognized bargaining representative shall have the right to present for consideration any grievance which may exist as to any matter affecting the employee's or union's relationship to Metro Government. Any employee may designate one or more persons to represent him or her in the presentation of any such grievance. No designation of a representative, however, shall preclude an employee from presenting and processing his or her grievance, except that where the employee is part of a bargaining unit for which there is a recognized

bargaining representative, the bargaining representative shall be notified in advance of the time and place of all discussions relative to the grievance and shall be privileged to participate in all such sessions. The following rules for the presentation and resolution of grievances or requests are prescribed:

(a) The grievance, in the first instance, shall be presented to the immediate superior of the grieving employee within five working days from the time the grievance or controversy occurs. If not satisfactorily adjusted at this level within 48 hours, the employee or union may reduce the matter to writing and refer it to the department head. The department head shall act on the grievance within five working days.

(b) In the event that the decision of the department head is adverse to the grievant or union, the grievant or union may request mediation by the Louisville Labor Management Committee. This Committee shall make an advisory report to the employee, the employee's representative, and to the Mayor, within seven working days. The Mayor shall accept or reject the recommendation of the Louisville Labor Management Committee within seven working days. Neither the grievant nor the union are required to request the assistance of the Louisville Labor Management Committee, in which case they may appeal the department head's decision directly to the Mayor within five working days of the department head's decision and receive a decision from the Mayor within ten working days.

(c) In the event the Mayor's decision is adverse to the grievant or union, the union may submit the grievance to an impartial arbitrator selected by the parties in accordance with the procedures established by the Federal Mediation and Conciliation

Service or the American Arbitration Association. The determination of the mutually-selected arbitrator shall be submitted to the Mayor within ten days of the arbitrator's decision. The arbitrator's decision shall be final and binding on all parties unless the Mayor request the decision be placed on the next regularly scheduled Metro Council meeting docket and a three-fourths majority of the Metro Council find the arbitrator's decision to be arbitrary or capricious.

(d) Shop stewards of the recognized bargaining representative who are designated to represent the employee shall receive their regular pay for time lost from work to attend meetings and talks scheduled in the processing of a grievance.

(e) (1) Notwithstanding the "otherwise agreed to" provisions above, anytime a collective bargaining agreement uses the term "arbitration" or "arbitrate," those terms shall, at the election of the Union, mean "binding" arbitration instead of "advisory" arbitration.

(2) The union's election for "binding" arbitration must be transmitted to the Mayor in writing within forty-five (45) days after this ordinance becomes effective. If a Union wishes to elect "binding" arbitration" or to revoke a prior election, it may do so in writing to the mayor within thirty (30) days of the expiration date of the applicable collective bargaining agreement.

(3) The costs related to the arbitration proceedings shall be divided equally between the parties, but otherwise, each party shall be responsible for their own costs and attorney's fees.

(4) In all other respects, the collective bargaining agreements will remain as negotiated by the parties.

(5) After the union has elected binding arbitration, the arbitration will be binding, except for terminations not as a result of progressive discipline, and health insurance benefits. These matters may seek judicial review, de novo, under Kentucky law, if adverse by the parties.

(6) Binding arbitration is non-negotiable.

(B) Collective bargaining agreements shall supersede any rule or regulation of any Merit Board or Civil Service Board within Metro Government except rules or regulations specifically provided for in federal or state laws, a municipal charter, or provisions of the Kentucky Constitution.

(C) Personnel records. All departments of Metro Government shall maintain daily attendance records of all employees. Such records shall include, but not be limited to, the amount of overtime worked by each employee and any time lost from work and accrued paid leave of any nature.

(D) Bulletin boards. Any collective bargaining representative recognized as such under this subchapter shall during the effective period of such recognition be permitted to post notices on the employees' bulletin boards. All posted material shall be signed by an officer of the union.

(E) Wages.

(1) Salaries and wages for all Metro Government employees shall be determined on the basis of job classification to assure comparable pay for comparable work.

Schedules of such classifications and pay scales are contained in the Metro Government's current classification and compensation plan, which is available for inspection by any employee. The division of occupations into classes of work for purposes of job classification shall give due and adequate recognition to intelligence, skill, training, and experience. The allocation of individual jobs or positions to established job classifications shall be on the basis of the duties to be performed. No discrimination in job classification or in rates of pay shall be made on the basis of sex, race, color, sexual orientation and gender identity, religion, marital status, age 40 and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker. Should an employee be hired in or subsequently assigned to a particular job classification but actually employed and given work in another category with a higher rate of pay, he or she shall be entitled to be reclassified and paid the higher rate so long as he or she performs the higher rated category of work. However, such reclassification shall entitle the employee to the higher rate of pay retroactive to the pay period during which he or she began performing the higher rated category of work prior to the request for reclassification submitted in writing in accordance with subsection (A)(1) above.

(2) All wages and rates of pay, whether hourly or monthly, shall conform to Metro Government's classification and compensation plan as amended from time to time. Said plan shall be open for review and possible revision not more often than once each fiscal year. Employees and their duly recognized collective bargaining representatives shall be given a reasonable opportunity to make recommendations regarding wage matters during

each period. Nothing in this section limits the union's right to bargain over the Metro Government's classification, compensation plan or any wages.

(F) Collective bargaining contracts may provide for procedures under which union dues or fees may be checked off from the regular pay of employees covered by the Collective Bargaining Agreement and, unless otherwise agreed to by the parties in negotiations for a Collective Bargaining Agreement, the following conditions may be included:

(1) The check-off of regular union dues shall be made only on the basis of written authorization signed by the individual employee from whose pay the dues will be deducted.

(2) Where initiation fees are required for new members of a union, the collective bargaining contract may provide for check-off of initiation fees upon written authorization of the affected employee.

(3) Employees who are included in a collective bargaining unit but who exercise their right to decline to become members of the union representing that unit may be required by the collective bargaining contract to share in the financial support of the union by payment of a service or fair share fee, the amount of which shall be determined as set forth below. In the event the Collective Bargaining Agreement should provide for deduction of a service or fair share fee, the following requirements shall apply:

(a) The union shall provide to all affected employees and to Metro Government advance written notice at least 30 days before any mandatory deduction of the fair share or service fee, of the amount of the fee together with an accounting by an

independent certified public accountant setting forth the major categories of the union's budgeted expenses and designating those expenses which are ideological in nature, those expenses which are nonideological, and those expenses which may be mixed in nature. The accounting and designations must be in a manner allowing for intelligent appraisal of which portions of union expenses are ideological, and should indicate the percentage proportions of total union expenses devoted to ideological, nonideological or mixed purposes.

(b) The above described notice must also include a clear statement of the manner in which the amount of the fair share or service fee may be challenged by affected employees. The procedure for said challenges shall include a requirement that the challenges be in writing and delivered to the union, with a copy to Metro Government, within 30 days after receipt of the written notice described in subsection (F)(3)(a) hereof.

(c) The challenge procedure set forth in subsection (F)(3)(b) hereof shall provide for a reasonably prompt resolution of the challenge by an impartial decision-maker who may be an arbitrator chosen from a panel of arbitrators supplied by the Federal Mediation and Conciliation Service, the American Arbitration Association, or a similar organization of professional arbitrators. The method of selection of the impartial arbitrator shall include a request for a panel, and the opportunity for alternate striking between the union and the employee. The challenge procedure may provide that the impartial decision-maker shall be the Louisville Labor Management Committee or its designee. All challenges to a single notice of the amount of the fair share fee shall be decided by a single decision-maker at a single hearing.

(d) The challenge procedure shall also include a requirement that the initial amount of the fair share or service fee shall be the amount of the union dues reduced by a percentage equivalent to the percentage of total union expenses devoted to indisputably ideological purposes as determined by the certified public accountant; in the event of a challenge, the initial amount of the fair share fee so determined shall be placed in an escrow account by the Metro Government until the issuance of a decision by the impartial decision-maker as set forth above.

(e) In the event of a challenge, the final amount of the fair share fee as determined by the impartial decision-maker shall reflect only those expenses affirmatively related to administering the collective bargaining agreement, and the burden of proof for such affirmative relation shall be on the union.

(f) On the rendering of the impartial decision-maker's decision, the disputed amounts held in escrow shall be distributed to the challenging employee, the union, or both, as indicated in the arbitrator's decision.

(g) Provided the foregoing conditions are met, then the deduction of the initial amount of the fair share or service fee shall be automatic following the 30-day notice and information provided for hereinabove, and shall begin 30 days after the provision of such notice regardless of whether the employee has signed written authorization therefor.

(h) All uncontested fair share fee amounts deducted hereunder shall be paid over to the union by Metro Government within ten working days after the deduction is made.

(i) The union shall indemnify and save harmless the Metro Government against any expense or liability that may arise out of or by reason of any action taken by the Metro Government consistent with the foregoing, in connection with a fair share or service fee. In the event the Metro Government should be held liable or responsible for repayment of moneys paid to a union pursuant hereto, the union shall reimburse said moneys to the Metro Government. These provisions shall be interpreted insofar as possible in a manner consistent with applicable federal and state statutes or case law.

SECTION II. This ordinance shall take effect upon its passage and approval.

H. Stephen Ott
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____