

CITY OF SALISBURY  
WORK SESSION  
JULY 5, 2023

Public Officials Present

Council President Muir Boda  
Council Vice-President April Jackson  
Councilmember Michele Gregory

Mayor John R. Heath (Zoom)  
Councilmember Angela M. Blake  
Councilmember Megan Outten

In Attendance

City Administrator Andy Kitzrow, City Clerk Kimberly Nichols, City Attorney Ashley Bosché, and interested members of the public

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On July 5, 2023 the Salisbury City Council convened at 4:30 p.m. in Conference Room 306 in the Government Office Building to discuss the Labor Code.

President Boda announced that normally Council did not allow public comments during Work Sessions and there would be none allowed this evening. The Labor Code had been tabled for further discussion and was now brought back before Council for consideration.

Ms. Bosché said that what was before Council was the same document discussed in March or April before it was tabled. If changes were to be made, Council needed to hear what they potentially would be and Legal could move forward from there.

President Boda called on Sabella Ally, AFSCME Organizing Director, who was present on Zoom to discuss suggested changes. Since the reception was spotty, Ms. Ally asked attorney David Wright of Kahn, Smith & Collins, P.A. (present in Room 306) to speak. He said the firm represented IAFF Locals throughout Maryland, Baltimore City, Baltimore County, Anne Arundel, Ocean City's fire fighters, and AFSCME Maryland. They had offered to model things off of different jurisdictions, and the City adopted many of the standard forms, but there were some deviations that concerned the City's labor participants. His goal today was to try to get the labor code in place where everyone was satisfied because it was time to move from the lawmaking stage to the bargaining stage. He shared that the amendments today were focused on the number of things that pulled this into the mainstream the way they felt that needed to happen, having had lots of roundtables with the different stakeholders and looking at different labor codes throughout Maryland.

Mr. Wright reviewed amendments to the draft code, which are outlined below:

- 1. Page 1, there was an effort to drill down on what it meant to be a management employee. There was a set definition in the Labor world. The added language included having the authority to exercise independent judgement in the interest of the employer to hire, transfer, suspend, lay off, promote, discharge, or discipline,*

- other employees, having the responsibility to adjust a grievance or to recommend such an action. (He said this clarity was needed)*
- 2. Lines 96 to 98- adjustment was needed to determine where the line was drawn between management employees and non-management. They re-worded it so that Fire Department Captains and Police Department Lieutenants would be in the unit because they did not make those decisions.*
  - 3. The edit in Lines 196-198 clarified that the City was a workplace that needed a reason to end your career and cut your pay as a disciplinary measure. This was quite standard and typical in most bargaining agreements and labor codes.*
  - 4. The edit in Lines 232-240 caused much discussion. Collective bargaining covered wages, hours, and other terms and conditions of employment. People cared about making a living, set hours, pensions, vacations, safety issues, uniforms, the grievance process, who was in the unit and who was not, etc. and was more things than could be listed. The term "other terms and conditions of employment" was a term within the private and public sector and entailed more than what could be listed. Health insurance was excluded and did not need negotiating.*
  - 5. Regarding Lines 242-252, Mr. Wright explained the scope of bargaining varied with each employee. Firefighters cared about different things from Public Works workers and police.*
  - 6. The standard for collective bargaining agreements was for them to go one year. Two years or three years was the standard, and this one went one to two years. Two years gave stability and three years was even better.*
  - 7. Retroactivity was struck and just happened; things took the time that they took.*
  - 8. Lines 267-269 were about the recognition process. They did not need particular timelines for when that happened and he thought they were on track.*
  - 9. Lines 281-289- it was good to have that step of the voluntary recognition process carried out by the FNCS, which was a way to get a refund on taxes. They were a federally supported labor relations group that did mediations and other things, and were neutral and affordable.*
  - 10. Page 3- what the union cared the most about was that there was a process for which things could be heard when there was an issue. The more things subject to the process the better off they were. The grievance process was a way for the employee or union to make a statement and have dispute resolution.*
  - 11. Lines 441-447 were about the interest arbitration process.*
  - 12. Lines 471-472 addressed the language to have interest arbitration to resolve when bargaining was not working out.*
  - 13. The typical window for negotiating was to try to make it coincide with the budget cycle. It moved the window out from October 1 to January 31<sup>st</sup> to give it time to have those three conversations with the different unions. With the holidays, the conversations would take a while.*
  - 14. Lines 160-162 was an odd requirement that stated an employee had to go to their manager before going to anyone else.*

Mr. Wright said, with the amendments and edits, the units would feel very satisfied about how this was coming together.

President Boda asked about the strike throughs of Lines 232 to 240 of *promotional schedules and training*. Mr. Wright said they would be handled under “other conditions of employment.”

Ms. Bosché said that the City would be comfortable making a lot of the changes. The big items were still other terms and conditions of employment. She asked if they wanted to add any other exclusions to that or keep it as written with the specifics being enumerated subjects. She needed to hear from Council to how it should be drafted. In terms of the duration of the CBA, she advised it be not less than two and not more than three years because of having three units. In matters subject to arbitration, she knew that Ms. Caton had spent a lot of time revising the Employee Handbook and the plan was to keep that separate and out of the CBA. At this point, Administration was not interested in grieving anything that would be involved in the Employee Handbook. In terms of the arbitration itself, Ms. Bosché said that some of the factors in limiting the time to try a case were just to keep down the costs. Administration was also concerned with the timelines for negotiating. There was concern that going through January 31<sup>st</sup> was still a little late if they ended up in arbitration because of when they began budget meetings in January. She said they would be more comfortable going through December 31<sup>st</sup> but the two big items Council should consider were 1) what was going to be subject to bargaining, and 2) what would be subject to arbitration. She said that in the arbitration selection, Mr. Wright was interested in one particular federal mediation facilitation services, but she thought the City would want to keep it open to other agencies such as Triple A or JAMS.

Mayor Heath asked if Mr. Wright could gather the average hours of arbitration for the department he mentioned. He said he had been practicing for thirteen years and had never taken a case to an interest arbitration hearing. It was a rarity and a tool that kept the parties on track but was rarely used.

Ms. Bosché said that her firm did quite a lot of employment law and represented a number of unions. They had been to arbitration in terms of employee grievances numerous times and with a local municipality they did two arbitrations. They settled on the cusps of having a hearing and the other had a hearing which involved part of the CBA. She agreed it was an effective tool to try and reach an agreement, but she had been involved in a number of arbitrations. Ms. Outten asked how many days the arbitrations involved and Ms. Bosché said they were normally one day.

When discussing the deadlines, Mr. Wright said that December 31<sup>st</sup> was not a good deadline as it would ruin holidays and December seemed very rushed. The very first CBA would require more time to work through. President Boda recommended January 15<sup>th</sup> and Mr. Wright said the parties could mutually extend the deadline. **Council reached unanimous consensus to the January 15<sup>th</sup> date.**

**Council reached unanimous to the term “other terms and conditions of employment.”** Mr. Kitzrow said that many people were concerned with retirement because of the way ours was set up and what we should not negotiate. It was not an exclusionary piece, and allowing it to be negotiated may appear good, but could be very

cumbersome and problematic at some point dealing with Maryland State Retirement. Employees already vested and part of the retirement system could not have it taken away from them. One of the rules was for Council to understand the financial difficulty they may be in a year from now. Ms. Outten said she appreciated the extra layer of protection in Lines 232-240. Ms. Blake asked if retirement was negotiable, and President Boda answered that it could be negotiated. Ms. Jackson thought this would help recruit and retain good workers in the City. President Boda was comfortable with “other terms and conditions of employment.” He added his only concern was, and he did not know if there was something outside of this that they could do, to potentially protect the employee’s retirement. We did not know who would be here next year or five years down the road. Mr. Kitzrow said that other than changing rules internally there was nothing we could do to guarantee anything beyond the current mayor, Administration and Council because it had to be adopted through the budget.

In discussing “Duration”, Mr. Kitzrow said that Administration supported making it no fewer than two years and no more than three years. **Council reached unanimous consensus to two to three years.**

In Lines 428, “Matters subject to arbitration,” Mr. Kitzrow said the City spent a lot of time creating the Employee Handbook and were very comfortable with what they put in it. To have it removed from their control was not good. If it was not in the CBA, then it should be kept out, especially if they decided to work “other terms and conditions” into it. He said that Administration recommended keeping it as it was, and possibly the only thing was the Employer’s Exclusive Representative, if it was underlined. Council reached unanimous consensus to not add it.

Arbitrator’s selection in Lines 441-447. Mr. Kitzrow said it seemed reasonable to Administration to have options on availability if it came down to price points or different things they wanted to do for any reason, and he would not limit us in this scope. Mr. Wright said that the typical thing that he saw was with American Arbitration or one of the other, JAMS was unusual. But if we wanted to have the option to go Triple A or FMCS, it was mostly the same groups of people. Sometimes they gave the option, but he had no strong preference. His concern with options was that someone had to make a call on which one they were going with. He stated that he did not want to fight over that kind of thing. Mr. Kitzrow said that because we were adding more things that were potentially open for arbitration we would like to have the widest selection process.

Ms. Ally said she agreed with Mr. Wright. She recently was working with FMCS and Triple A and thought they tended to be cheaper and had more reasonable options. Of the two, FMCS was markedly more reasonable in cost and they used them more in their contracts than Triple A, but they both did very good jobs. She indicated she was less familiar with JAMS but heard great things about them. Triple A and FMCS were super solid so even if the City was limiting she would maybe limit one more time, and if limiting based on cost, she would limit to FMCS. Ms. Bosché said they would be where the panel of arbitrators would come from, and from there that was where the selection would come from. Mr. Wright said that JAMS seemed to be lots of retired judges who

charged quite a bit. The labor arbitrators were more affordable and familiar with these types of issues. Mr. Kitzrow said that when the City had to go into arbitration, if Administration was deciding they wanted to make sure that the City was working with an arbitration firm they were most comfortable with from an investment standpoint, for instance, they would pick the firm that they felt was most likely able to get them to that. He said he liked options and added that if the City was expanding the scope of what was now potentially for arbitration, he cautioned limiting our ability to navigate that. Mr. Wright discussed the process. **Council reached unanimous consensus to leave the section as it was written.**

Mr. Bosché discussed the time limits and asked if Council wanted to try to limit arbitration to one day as opposed to five days in order to keep costs down. Each side would get four hours. Ms. Outten thought a day felt really short and found in her research that they normally went longer. Ms. Bosché said that she tried bench trials and sometimes the judge had to get down the docket, and it made your case very efficient if you had to get in and get out. Mr. Wright said he never saw a limit on the duration of an arbitration. Ms. Bosché said the City obviously would not want to shortchange itself if we believed it was going to take longer than a day. Ms. Jackson suggested to limit it to two. Mr. Boda said to remember that the City had three unions. **Council reached unanimous consensus to limit arbitration to “up to two days, eight hours each.”**

After discussion, President Boda asked for consensus to move the labor code forward. Council reached unanimous consensus to advance the legislation to legislative agenda. First reading would be held on July 31, 2023 and second reading on August 14, 2023.

### **Administration and Council Comments**

Mayor Heath extended his deepest sympathy to the victims and families of the senseless shooting that took place last night just outside the City limits. The issues discussed here paled in comparison to the issues in the country.

Ms. Jackson concurred with Mayor Heath, as she knew the young man who was murdered and several of the other kids. The County and City needed to come together because the children needed things to do and somewhere to go. Something had to be done. These were our children and a 14-year-old died unnecessarily. Parents needed to know where their children were and they needed to be chaperoned by people who cared.

Ms. Gregory agreed it was tragic and pointless, and could not imagine what the parents were going through. None of us wanted that kind of community.

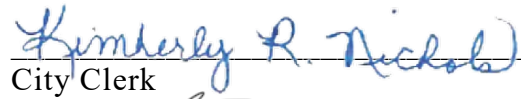
Ms. Blake shared she had the same sentiments. She requested that an upcoming work session agenda include an independent engineer to study parking before the shovel hit the gravel. She requested a discussion on the safety of the Bird Scooters and how much money they brought into the City. She asked those healthy enough to donate blood.

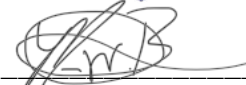
Ms. Outten said that Mayor Heath and Ms. Jackson worded it perfectly. Now more than ever it was time to hold your loved ones close. She knew that the City would rally together as a community. A lot needed to be done to make sure our kids were safe. She said the silver lining today was that the City Council was able to say they represented the employees of the City, and she was proud to be part of it.

President Boda concurred with everyone's sentiments and thanked Mayor Heath for his work.

**Adjournment**

With no further business to discuss, the Work Session adjourned at 5:41 p.m.

  
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City Clerk

  
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Council President