

SUBSTITUTE ORDINANCE NO. 5639

AN ORDINANCE TO AMEND ARTICLE VIII, § 2-370 OF THE CODE OF ORDINANCES
RELATIVE TO ARBITRATION OF LABOR DISPUTES, IMPASSE PROCEDURES AND
PRESERVATION OF CHARTER POWERS OF CITY COUNCIL

WHEREAS, Referendum Ordinance No. 2766 authorized a referendum election on the question “Shall the Home Rule Charter of the City of Memphis, Tennessee be amended by including a section relating to ‘Disciplinary Action Against Striking Employees?’”;

WHEREAS, Referendum Ordinance No. 2766 included a separate provision authorizing the Council to set up, by Ordinance, procedures for arbitration of economic issues of municipal labor disputes, but only if there has occurred a deadlock or impasse between the Mayor and City employees on a total economic package and such deadlock or impasse continues for seven (7) consecutive days;

WHEREAS, the Council desires to amend Article VIII, § 2-370 of the Code Of Ordinances to redefine the procedure for arbitration of any deadlock or impasse between the Mayor and City employees on a total economic package and to clarify the scope of and the limitations on the Council to arbitrate such labor disputes;

WHEREAS, Referendum Ordinance No. 2766 did not alter the provisions of the Home Rule Charter that prohibits the City Council from interfering with the operation of City administrative departments and employees under the control of the Mayor or from requesting or requiring the Mayor to make contracts with any specific organization; and

WHEREAS, Referendum Ordinance No. 2766 did not address, authorize or direct the City Council to exercise its legislative powers under the Charter to propose any budgets for the City or to approve or amend any budgets in any manner, before such budgets were presented by the Mayor as required by the Charter; and

WHEREAS, the pre-impasse procedures (under Section A(2)) and the procedure for resolving impasses as to non-economic items (under Section A(4)) are included in this ordinance at the request of the City Administration.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 1. Total Impasse Procedure. Article VIII, Section 2-370 is hereby repealed in its entirety and the following provisions are substituted in lieu thereof:

A. *General provisions.*

1. Definitions. As used in this section the following terms shall have the indicated meanings:

Business day means a day other than a Saturday, Sunday or legal holiday under the laws of Tennessee.

Economic items shall be defined as any items which relate to an identifiable portion of any recognized unit which items provide to those employees direct benefits, except for economic items such as pension benefits, health insurance, and any other items excluded by the Charter of the City, or other state laws.

Non-Economic items shall not include economic items as described above.

Negotiations deadline is the date upon which discussions between the City administration and employee organizations regarding economic and non-economic items must be completed, or when a party has declared its last best offer, which shall be no later than March 31.

Total Economic Package shall be defined as the last best offers of the parties regarding the aggregate economic items as defined herein.

Impasse on economic items means that point at which any employee organization declares its last best offer, and that offer is either not captured or insufficiently captured in the total economic package proposed by the Mayor to the City Council, which package represents the last best offer of the City.

Impasse on non-economic items means that point at which any employee organization or City administration do not have agreement on non-economic items by the negotiation deadline.

2. Pre-Impasse Procedure

a. Referendum Ordinance No. 2766 expressly directed the Council to set up, by Ordinance, procedures for the arbitration of economic issues of municipal labor disputes between the City and its employees by the Council or a committee of the Council.

b. The final position of the City on economic items as defined in this section shall be in writing. If the City presents its final offer more than three business days prior to the negotiations deadline, then, after the City presents its final offer, the organization(s) shall indicate in writing its acceptance of that final offer or its final position on economic items as defined in this section. This response of the organization(s) shall be made before the negotiation deadline.

If the City makes its final offer to the organization(s) less than three business days before the negotiations deadline, the chief spokesperson of the organization(s) shall tentatively accept or reject the offer in writing at the same negotiation session that the final offer of the City was received. If the organization(s) rejects the final offer of the City, the organization(s), through its chief spokesperson, shall set forth in writing the final position on economic items, as defined in this section of the organization(s), at the time of the rejection of the final offer of the City and during the same negotiation session that the final offer was received. If after the tentative acceptance by the organization(s) of the final offer of the City, should the employees of the

organization(s) fail to ratify the final offer of the City, then the final position of the organization(s) shall be its last position at the bargaining table, before the final offer of the City had been given.

c. Following the negotiation deadline, and at least seven (7) days before the Mayor presents his proposed budget to the Council, the Mayor or his designee shall advise the employee organization(s) of the City's proposed Total Economic Package to be included in the Mayor's proposed budget, and shall also advise the employee organizations of any changes to its final positions therein. If changes in the Mayor's proposed budget are unacceptable, the employee organizations shall notify the City in writing within 48 hours. At that time, the City will engage in discussions with those organizations in an attempt to reach an agreement prior to the deadline to declare impasse.

d. At any time before the point of impasse, either party (with written notice to the other party) may call for the appointment of a mediator to assist the parties in negotiating an agreement. It shall be the function of the mediator to bring the parties together to attempt to effectuate a settlement of outstanding issues. The mediator shall have no power to compel either of the parties concerning any aspect of negotiations or the agreement to be negotiated. The mediator may be selected by agreement of the parties (with each party agreeing to share equally in the costs) or by a request by either party to the Federal Mediation and Conciliation Service for the appointment of a federal mediator.

3. *Arbitration Procedures for Resolving Impasses over a Total Economic Package*

a. If any employee organization shall determine that the Total Economic Package for City Employees included in the proposed budget(s) presented by the Mayor to the City Council is not acceptable to such organization(s), such organization(s) may indicate in writing to the Chairman of the City Council that such organization(s) elect to invoke arbitration procedures, hereunder, for resolving impasse over the City's Total Economic Package submitted to the Mayor by the electing employee organization(s) ("Impasse Notice").

b. The Impasse Notice(s) must be delivered to the Chairman at the City Council's offices not later than seven (7) business days after the presentation of the budget(s) by the Mayor to the Council; a copy of the Total Economic Package of the electing employee organization(s) shall be attached to the Impasse Notice. Any employee organization(s) that do not elect to invoke impasse hereunder or that fail to make a timely election in accordance with this ordinance shall be deemed to have waived any right to have the Total Economic Package of such employee organization(s) considered by the Council.

c. Once this impasse resolution procedure has been implemented by notification of the chairperson as provided for in subsection A(3)(b) of this section, neither party may alter their final position as defined in subsection (A)(2) of this section. However, either party may, at any time, accept the final position total package of the other party as originally submitted to the City Council. Such acceptance shall be the final understanding. Further, the parties may mutually agree upon some or all items at impasse any time before final Council action at positions the same or different than their final position. Such mutually agreed upon items will be removed from the impasse list of both parties by notification to the chairperson of the Council and shall be made a part of any future agreement or memorandum of understanding.

d. Within ten (10) business days after the Mayor has presented the budget(s) to the Council and provided any employee organization has timely submitted an Impasse Notice in accordance with this ordinance, the Chairman of the City Council will convene a meeting between the electing employee organization(s), the City administration and the Chairman to allow the electing employee organization(s) and the City administration to each select one (1) member of the Council to serve on an Impasse Committee. There will be one impasse committee per employee organization, but not more than seven (7). When the employee organization represents more than one bargaining unit, the impasse committee will decide the impasse for each unit separately, unless otherwise agreed by the City and the employee organization. The two Council members, so selected, shall select a third member within forty-eight (48) hours of their selection and in the absence of agreement by the two Council members, the Chairman shall select the third member. Within four business days after the chair of the impasse committee is selected, the parties shall provide a summary of the issues and any written materials in support of their position, if any, to the impasse committee.

e. The Impasse Committee shall be authorized to determine the procedure for the electing employee organization(s) and the City Administration to present their respective positions on the impasse issues, and the amount of time allocated to the electing employee organization(s) and the City Administration to present to the Council their respective positions on the proposed budget amendment(s), except that each party shall have at least thirty (30) minutes per unit to present a summary of the issues and their positions. No member of the Impasse Committee shall be authorized to negotiate with either the City or the organization(s) to change their Total Economic Package(s).

f. The Impasse Committee must make and submit for consideration their recommendation to the Council no later than the close of business on the Tuesday preceding the second reading of the budget ordinance(s) that includes the Total Economic Package of the electing employee organization(s) with the committee's recommendation, as an agenda item for the next Council meeting. No member of the Impasse Committee shall be authorized to negotiate with either the City or the organization(s) to change their Total Economic Package(s), but must choose only the last best offer of one of the parties. The recommendation submitted to Council shall delineate the Total Economic Package requested by each unit compared to the Total Economic Package proposed by the Mayor.

g. The Council shall act only as the final arbiter of the impasse between the City and the employee organization(s) and may not negotiate with either the City or the organization(s) to alter the Total Economic Package of any party. All impasse votes by the full Council must occur before the final vote on third reading of the proposed fiscal year operating budget. Each party shall be permitted up to fifteen (15) minutes, or longer at the discretion of the Council, per unit to present their position to full Council before the final vote. An affirmative vote of a majority of the members of the full Council shall determine if the Total Economic Package submitted by the electing employee organization(s) shall be made part of the budget ordinance by or at the full Council meeting during which the proposed fiscal year operating budget is submitted on second reading or after second reading at a special meeting called by the Council Chairman before the third reading.

h. The impasse decision made by the City Council shall become effective and shall be subject to funding by the City Council in an approved budget. The City Administration shall take whatever action is appropriate to implement the approved impasse decision, as funded, into the Mayor's operating budget.

4. *Procedure for Resolving Impasses over Non-Economic Items*

a. This ordinance does not empower the City Council to discuss or reach an agreement on non-economic items or issues. Non-economic items not mutually agreed prior to the declaration of impasse will remain as stated in the previously agreed upon memorandum of understanding, unless either party, gives written notice to the other party of the intent to mediate the impasse of non-economic items, by following the notice deadline procedures under Section A(3), except that the notice to the City shall be provided to the City's Chief Human Resources Officer.

b. Upon proper notice of the intent to mediate, the mediator may be selected by agreement of the parties (with each party sharing equally in the associated costs) or by a request by either party to the Federal Mediation and Conciliation Service for the appointment of a federal mediator. The parties shall mediate within sixty days of said notice, or as otherwise agreed upon. Until the conclusion of the mediation, the current language of any memorandum of understanding shall control.

c. If the parties have not successfully resolved the impasse through mediation, either party may, within 7 days after the conclusion of the mediation period, give written notice to the other party of the intent to send the impasse to an employee relations panel ("written notice of intent") on up to four (4) non-economic articles. Within 7 days after the written notice, each party must select a representative to serve on the panel. A panel member shall not be an employee of the City, or a member or affiliate of the involved employee organization/union, and must be a resident of Shelby County, Tennessee.

d. The two representatives must mutually agree on a third member of the panel from the panel of arbitrators from the Federal Mediation and Conciliation Service ("FMCS"). The cost of the arbitrator shall be borne by the invoking party or equally shared by the parties if both parties submit written notice of intent. The three (3) panel members shall schedule a hearing on the impasse within forty-five (45) days of the issuance of the notice of intent to arbitrate. Upon the panel's finding of which proposed non-economic language shall be utilized, that language shall become part of the new memorandum of understanding. In the event that either party seeks to implement a change in an article effecting more than one bargaining unit, that matter may be consolidated by agreement of the parties and heard by one panel, selected in the manner described herein, and costs associated with the arbitrator shall be borne by the party seeking the change.

e. No member of the panel shall be authorized to negotiate with either the City or the organization(s) and must choose, without modification, only the language proposed for an entire article by one of the parties.

Section 2. Nonconflicting – Conflicting laws.

BE IT FURTHER ORDAINED that as amended hereby all laws constituting the present Code of Ordinances of the City of Memphis be and the same are hereby continued in full force and effect, and all laws in conflict herewith are hereby repealed. This ordinance does not alter or amend the rights or obligations of any person or entity that may exist under the City Charter or under Tennessee law.

Section 3. Severability.

BE IT FURTHER ORDAINED that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held to be unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

Section 4. Effective Date.

BE IT FURTHER ORDAINED That this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

SPONSOR: CITY ADMINISTRATION

BERLIN BOYD
Council Chairman

Attest:

Comptroller

THE FOREGOING ORDINANCE
5039 PASSED

1st Reading Feb 21, 2017

2nd Reading Mar 7, 2017

3rd Reading Mar 21, 2017

Approved [Signature]
Chairman of Council

Date Signed: March 21, 2017

Approved: [Signature]
Mayor, City of Memphis

Date Signed: 3/21/17

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Snipe
Comptroller