Circuit Court for Baltimore County
Case No. 03-C-16-7546

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 232

September Term, 2017

BALTIMORE COUNTY, MARYLAND

v.

FEDERATION OF PUBLIC EMPLOYEES, LOCAL 4883, AFT-AFL-CIO

Graeff,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 22, 2018

This appeal involves the scope of an agreement to arbitrate between Baltimore County, Maryland (the "County"), appellant, and the Federation of Public Employees, Local 4883, AFT, AFL-CIO (the "Federation"), appellee. The County appeals from the order of the Circuit Court for Baltimore County granting the Federation's petition to compel it to submit to binding arbitration for a dispute regarding the reclassification of Emergency Communication Technician ("ECT") positions. It presents the following question for this Court's review, which we have rephrased slightly:

> Did the County agree to arbitrate a dispute with the Federation regarding the reclassifications of several Emergency Communication Technician positions?

For the reasons set forth below, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Memorandum of Understanding

On June 30, 2014, the County and the Federation executed a Memorandum of Understanding ("MOU").[1] This lengthy document provided, among other things, that

[1] The Memorandum of Understanding ("MOU") was effective from July 1, 2012 to June 30, 2016, but Article 22, Section 22.3 provided that the MOU "shall automatically renew itself as of July 1, 2016" for yearly periods until either party provides "written notice of a desire to terminate, modify or amend" it. The record does not indicate if a successor agreement was executed or if the MOU automatically renewed. The circuit court stated that it did not "know [if] that really matter[ed]" for the resolution of the issue presented. We agree.

"[e]mployees assigned to the Communications Center shall not be regularly scheduled in excess of forty (40) hours in a workweek."

To effectuate implementation of the MOU, the MOU provided that the County "shall introduce all legislation necessary" to "give full force and effect to the provisions" of any subsequent MOU's, and the County and the Federation would "support all such legislation, both before the Personnel and Salary Advisory Board, and the County Council." It further provided that, "[i]f legislation necessary to effectuate the terms of this agreement is not adopted by the County Council, the parties shall recommence negotiations if either party so requests."

The MOU recognized that the Federation served as the "exclusive representative of its employees . . . in all matters relating to wages, hours and other conditions and terms of employment." The County, however, had certain management rights, set forth in Article 2, Section 2.1, as follows:

> It is the exclusive right of the County to determine the purposes and objectives of each of its constituent offices and departments; set standards of services to be offered to the public; to determine the methods, means, personnel, and other resources, . . . by which the County's operations are to be conducted, . . . and exercise control and discretion over its organization and operations.

The MOU set forth in detail the procedure for employees to submit grievances. It provided, as follows:

> **Section 4.1 – Definition of Grievance**
>
> (a) The term grievance shall mean any dispute between an employee and the Administration, (a) concerning the application or interpretation of the terms of this Memorandum of Understanding; (b) concerning the discriminatory

> application or misapplication of the rules and regulations of any agency of the County . . . . The procedure set forth in this Article 4 and Article 5 of the Memorandum of Understanding are the exclusive procedures for the resolution of all grievances, and no employee shall be permitted to process any grievance except as set forth herein.
>
> (b) Federation Grievances
> It is understood that general grievances involving the provisions of this Memorandum of Understanding may be presented by the Federation President when, in the opinion of the President, such grievances would protect the general interests of employees.

The MOU provided that "[a]ny grievance as defined in Section 4.1(a) or (b)" that has "been properly processed through the grievance procedures,"[2] and "which has not been settled at the conclusion thereof, may be appealed to arbitration." To appeal to arbitration, the Federation was required to serve written notice on the Director of Human Resources of an intent to appeal, setting forth "the specific provision(s) of th[e] Memorandum of Understanding or of the County's rules and regulations at issue, and a statement of the specific relief sought."[3]

[2] The MOU set forth a four-step procedure to bring a grievance, and it provided that "all grievances, except grievances involving the suspension or dismissal of an employee, must be presented in accordance with" that procedure. These steps included: (1) presenting the grievance to the employee's immediate supervisor; (2) if not settled, filing a written grievance with the Division Chief; (3) if not settled, filing a written appeal with the appropriate department head; and (4) if not settled, filing a written appeal of the department head's answer with the Director of Human Resources.

[3] The MOU provided time deadlines for each step in the process. With respect to the appeal to arbitration, it was required to be filed "not later than ten (10) workdays after receipt by the Federation Field Representative of the Director of Human Resources answer at Step 4 of the grievance procedure." If the appeal is not timely, the grievance "shall be deemed to have been settled in accordance with the Step 4 answer which shall be final and binding on the aggrieved employee, the Federation and the Administration."

The jurisdiction and authority of the arbitrator was "confined exclusively to the interpretation and/or application of the express provision or provisions of this Memorandum of Understanding or the rules and regulations of a County agency at issue . . ., as specified in the written grievance" filed at Step 2 of the procedure. An arbitrator did not have the

> authority to add to, detract from, alter, amend, or modify any provision of this Memorandum of Understanding or any rules and regulations of a County agency, or impose on either party hereto a limitation or obligation not explicitly provided for in this Memorandum of Understanding or the rules and regulations of the County agency, or to establish or alter any wage rate or wage structure.

The MOU provided that the award of the arbitrator "shall be final and biding."

Memorandum of Settlement

In January 2015, the County raised the possibility of altering the work schedules for ECT positions. The MOU provided that ECT positions, also referred to as "911 Call Center employees," were classified as 40-hour per week positions with a "'regular workday' . . . consist[ing] of eight (8) consecutive hours." In November 2015, the parties executed a Memorandum of Settlement ("MOS"), which provided, as relevant to this appeal, as follows:

> The settlement only affects the classifications of:
> Emergency Communications Technicians Trainee (40 Hours)
> Emergency Communications Technician I (40 Hours)
> Emergency Communications Technician II (40 Hours)
> Emergency Communications Assistance Supervisor (40 Hours)
> Emergency Communications Supervisor (40 Hours)
>
> The parties hereby agree to the following:

Employees shall work twelve (12) hour shifts
Scheduling of the shifts shall adhere to the Pitman Rotating Shift (Day/Night) Exhibit I.
Management reserves the right to set the start and end times of the shifts.
Effective January 1, 2016, the existing shift configuration will be 7-7.

The Pitman Rotating Shift configuration, attached as an exhibit, depicted the 84-hour bi-weekly shift rotation. It depicted shifts as follows:

ROTATION 1 (17 Weeks)

	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14
Shift A	DAY	DAY	OFF	OFF	DAY	DAY	DAY	OFF	OFF	DAY	DAY	OFF	OFF	OFF
Shift B	OFF	OFF	DAY	DAY	OFF	OFF	OFF	DAY	DAY	OFF	OFF	DAY	DAY	DAY
Shift C	NIGHT	NIGHT	OFF	OFF	NIGHT	NIGHT	NIGHT	OFF	OFF	NIGHT	NIGHT	OFF	OFF	OFF
Shift D	OFF	OFF	NIGHT	NIGHT	OFF	OFF	OFF	NIGHT	NIGHT	OFF	OFF	NIGHT	NIGHT	NIGHT

ROTATION 2 (17 Weeks)

	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14
Shift A	NIGHT	NIGHT	OFF	OFF	NIGHT	NIGHT	NIGHT	OFF	OFF	NIGHT	NIGHT	OFF	OFF	OFF
Shift B	OFF	OFF	NIGHT	NIGHT	OFF	OFF	OFF	NIGHT	NIGHT	OFF	OFF	NIGHT	NIGHT	NIGHT
Shift C	DAY	DAY	OFF	OFF	DAY	DAY	DAY	OFF	OFF	DAY	DAY	OFF	OFF	OFF
Shift D	OFF	OFF	DAY	DAY	OFF	OFF	OFF	DAY	DAY	OFF	OFF	DAY	DAY	DAY

Pursuant to this schedule, ECT employees worked five 12-hour shifts (60 hours) one week and two 12-hour shifts (24 hours) the next week. The record reflects that, in practice, the 12-hour shifts as implemented resulted in a schedule of 48 hours one week and 36 hours the next week.

The MOS also included provisions regarding holidays and sick leave, and it stated that employees would be paid in accordance with an attached pay schedule, which provided a 5.484% increase. The MOS also stated that, effective January 1, 2016, employees working in the 911 center would receive "no cost parking."

Reclassification of ECT Positions

On December 9, 2015, the County Personnel and Salary Advisory Board ("PSAB") approved a change to the classification of certain ECT positions to an 84-hour, bi-weekly schedule. The Federation, which had been notified of the proposed changes the day before, offered no objection. On December 21, 2015, the County Council passed Bill No. 89-15 – Personnel Law of Baltimore County, enacting the proposed changes into law, effective January 1, 2016.

The Fiscal Note for the bill explained that the legislation amended the classification and compensation plan for ECT positions, as recommended by the PSAB. The purpose of the bill was to "improve customer service delivery and decrease the turnover rate in the Emergency Communications Center by placing an adequate number of tenured, knowledgeable and cross-trained employees across all shifts." It provided that the employees would work a "Pitman fixed shift schedule," and that "all positions, except the Assistant Chief and the Chief of the Communications Center, [were] changed from 40 hours to 84 hours bi-weekly."[4] The parties agree that this modification, which changed the bi-weekly hours from 80 hours to 84 hours every two weeks, resulted in ECT positions working more hours per year.

[4] The Fiscal Note for the bill reclassifying the ECT positions from 40 hours to 84 hours bi-weekly stated that the changes to the pay schedule were "designed as an offset to the employees not being paid for holidays."

The Grievance

On February 1, 2016, the Federation filed a grievance on behalf of the 911 Call Center Employees.[5] The nature of the grievance was stated as follows:

> On January 19th 2016 employees learned from ESS that the [C]ounty changed the base pay scale from 2080 hours annually to 2184 hours annually. The Federation Grievance is on behalf of all 911 Call Center Employees affected by the County's unilateral change of the annual base salary divisor for hourly rate conversion from 2080 hours per year to 2184 hours per year. This Federation Grievance challenges the Employer's unilateral reduction in the hourly rate calculation used for straight time, overtime, and other premium wages effective January 1, 2016 by reclassifying the affected positions from 40 hour classifications to 84 hour Bi-Weekly classifications AFTER ratification of the Memorandum of Settlement executed by the parties on or about November 12, 2015. Such unilateral change served to increase the Annual Salary divisor from 2080 hours per year to 2184 hours per year causing a substantial reduction to the straight time hourly rate. For illustration purposes only, and by example: in the case of the lead grievant in this Class, Arley Scott, such reduction had reduced his hourly rate by $1.47 per hour. (from $30.9192 to $29.4469). This unilateral change was never discussed nor contemplated by the parties during recent negotiations.

With respect to the agreement or policy that was violated, the Federation listed: "MOU: Article 4.1(a) & (b), 8.1, Article 10 and Exhibit H – *et seq.*" and the MOS. The remedy requested was reversal of "any and all unilateral actions taken by the Employer, including without limitation, the reclassification of the affected positions from 40 hour to 84 hour Bi-weekly, including all actions taken by the PSAB and County Council adopting such changes; and [the] return [of] all affected employees to the 40 hour classification held at the time the parties reached their agreement" in the MOS. The Federation also required

[5] This grievance initially was raised with supervisor George Gay, who advised the Federation to "submit the issue directly to Fred Homan, the signatory on behalf of the County on the [] Memorandum of Settlement."

that employees in the affected positions be granted back pay "retroactively from the implementation date of such unilateral change."

On February 24, 2016, the County requested that the grievance be dismissed on the ground that the Office of Administrative Hearings ("OAH") lacked subject matter jurisdiction. It asserted:

> Pursuant to County Code Section 4-2-202 with notice to Union President John Ripley, the Personnel Salary and Advisory Board ("PSAB") and County Council adopted a changed from 80 Hours Bi-Weekly to 84 hours Bi-Weekly to [certain ECT employees.]
>
> The union had the opportunity to object to this change before the PSAB and ultimately, before the County Council. The union failed to do so. In fact, the union signed a Memorandum of Settlement agreeing to the very arrangement that they now purport to grieve. . . .
>
> [E]ven if the OAH determined that the re-classification should not have taken place, there is no remedy it can order as the exclusive authority to make changes to the classification system rests in the PSAB and County Council.

On March 7, 2016, the OAH held a meeting regarding the Federation's grievance. On June 9, 2016, the administrative law judge ("ALJ") issued its decision granting the County's motion to dismiss. It explained:

> This grievance concerns the actions of the County Personnel and Salary Advisory Board (PSAB) and County Council as it regards the change of employee classifications of personnel at the 911 call center.
>
> * * *
>
> Certain facts are not at issue. The PSAB approved a change to the classification of certain 911 call center employees to move them to an 84-hour, bi-weekly schedule. The proposed changes were emailed to Mr. Ripley as the union representative, by Julie Guilbault of the Office of Human Resources, prior to the PSAB meeting. There was no objection raised by the union at the PSAB meeting, which approved the proposed changes. Pursuant

> to the Baltimore County Code (BCC), the PSAB recommendation was taken up by the Baltimore County Council, who on December 21, 2015 passed Bill No. 89-15 – Personnel Law of Baltimore County:
>
> > ". . . repealing and reenacting, with amendments
> > Pay Schedules I-E, Section I, Pay Schedules".
>
> There exists three branches of government – the Executive, Legislative and Judicial. Once this change in the classification was **enacted as legislation** by the County Council, it became law, subject only to action by a court of competent jurisdiction; or by further legislative action by the Council.
>
> Regardless of my position as "designee" of the director, I function as part of the Executive branch; and therefore have no authority to change the legislative actions of the Council. The Union had the opportunity to appear, comment upon, and contest the Council's action on Bill No. 89-15. For whatever reason, it did not do so.
>
> Therefore, for the reasons stated above, the Motion to Dismiss must be granted. The Union must look elsewhere for any relief.

On June 16, 2016, the Federation invoked Article 5.1(a) of the MOU to appeal to arbitration. Counsel proposed that, "[d]ue to the unusual nature of the Step 4 answer issued in this case," the case should "proceed in a bifurcated manner before the same arbitrator, with the threshold issue stated to address the hearing officer's claimed authority to dismiss a grievance at Step 4 of the procedure, followed by a decision on the merits."

On June 24, 2016, the County responded to the Federation's request, declining to participate in arbitration. The County stated: "Section 4.1(a) of the Memorandum of Understanding ("MOU") provides the 'Definition of a Grievance' for purposes of pursuing Steps 1-4 and ultimately, arbitration . . . . The present grievance requests a change in the law and therefore, does not fit the definition of grievance." It noted that the ALJ

"determined he had 'no authority to change the legislative actions of the Council,'" and the "same holds true for an arbitrator."

Circuit Court Proceedings

On July 19, 2016, the Federation filed a complaint in the circuit court to compel arbitration. It asserted that the County "unilaterally reduced the hourly pay of the 911 Call Center employees to such a degree that it required them to work an additional 104 hours per year in order to earn the same base salary as they were earning prior to agreeing to the terms of the [MOS]." The Federation argued that "a change to an 84-hour bi-weekly base pay calculation was never raised by the County until *after* the [MOS] was signed and only then, in the form of a proposed legislative change," and therefore, "the County's actions were unilateral and, as applied, adversely change[d] the pay practices for the 911 Call Center 40-hour classified employees."

On September 6, 2016, the County filed its response to the motion to compel arbitration, arguing that the Federation's suit was an "attempt to re-negotiate terms of the [MOU] now codified into County law," which fell "outside of the provisions of the [MOU] . . . and [was] not subject to arbitration." It asserted that the Federation "had not only one but two opportunities, not even including negotiations, to object to the agreed upon terms of the MOS and ultimately, the bill which made those changes law," but the Federation did not challenge "the legality of the Bill 89-15." The County stated that the "PSAB and County Council ha[d] exclusive jurisdiction of the County's compensation and classification plans," and an arbitrator would not have jurisdiction over the matter because

the MOU expressly provided that an arbitrator "shall have **no authority to add to, detract from, alter, amend or modify any provision of this Memorandum of Understanding or any rules and regulations of a County agency**." (Emphasis in original).

The Federation filed a reply. It asserted that its grievance was based on a breach of contract due to the County's improper interpretation and application of the MOS, not the PSAB or County Council's actions, which were consequences of the breach.

On March 6, 2017, the court held a hearing on the Federation's motion to compel arbitration. Each party reasserted the positions set forth in their pleadings.

The court initially ruled from the bench. It first found that there was a valid arbitration agreement between the parties. Second, it found that the matter at issue was "arbitrable and should be arbitrated." The court stated that it did not "find the fact that the PSAB ha[d] decided, and the County Council ha[d] voted[,] to be something that then foreclose[d] any further grievance process or arbitration."

On March 13, 2017, the court issued its Memorandum Opinion explaining its ruling granting the Federation's Petition for Judicial Review and to Compel Binding Arbitration. The court initially discussed the issue presented, as follows:

> Following extensive negotiations, in November, 2015, the parties signed a Memorandum of Settlement ("the MOS") in which they agreed, among other things, that the affected employees would work 12 hour shifts pursuant to the Pitman Rotation Shift Configuration (the "Pitman Configuration"). The MOS and Pitman Configuration are attached to the Federation's Petition as Exhibit 2. The Pitman Configuration graphically depicts the 911 Call Center employees working five 12 hour days (60 hours) one week and two 12 hour days (24 hours) the next week. Following ratification of the MOS, Baltimore County prepared documentation to reclassify the emergency communication employees from 40 hour to 84 hour bi-weekly employees. The County

> provided the Federation with the proposed changes on December 8, 2015. The Personnel and Salary Advisory Board ("the PSAB") voted to accept the changes on December 9, 2015. The County Council approved the change and adopted the corresponding legislation on December 21, 2015.
>
> According to the Federation, "the County unilaterally reduced the hourly pay of the 911 Call Center employees to such a degree that it required them to work an additional 104 hours per year in order to earn the same base salary as they were earning prior to agreeing to the terms of the Addendum." Petition at ¶ 10. Moreover, the Federation claims that "the County recommended legislation to the PSAB and County Council that was inconsistent with the terms and conditions of the MOU as Amended." *Id.* The Federation contends that it has properly followed the grievance process outlined in the MOU and is entitled to have the matter addressed through arbitration.
>
> The County, on the other hand, argues that the current dispute does not fall within the parameters of the MOU and "is therefore not subject to arbitration." Response at 1. The County points out that the parties agreed that the 911 Call Center employees would work 12 hour shifts and that the MOS contains "an attachment reflecting the agreed upon 'Pitman Rotating Shift Configuration' which unequivocally represents the employees' newly negotiated 84-hour bi-weekly schedules." *Id.* at 2. Simply put, the County argues that "the Federation's complaint is not covered by the grievance process," *Id.* at 4, and, further, that once the Legislature approved the change and enacted Bill No. 89-15, the Executive Branch lost jurisdiction.

The court then addressed the grievance process set forth in the MOU, noting that "the term grievance is defined as 'any dispute between an employee and the Administration . . . concerning the application or interpretation of the terms' of the MOU." It noted that, pursuant to the MOU, the "jurisdiction and authority of the arbitrator of the grievance and the arbitrator's opinion and award shall be confined exclusively to the interpretation and/or application of the express provision or provisions of the MOU."

The court summarized the crux of the case as "whether the current controversy constitutes a grievance as defined in the MOU and, if so, whether the matter is subject to

arbitration following the passage of Bill No. 89-15." It noted that the MOS constituted an "addendum to the MOU," which stated that the "settlement only affects the classifications" of certain ECT positions. The court stated:

> The MOS [] delineates that the employees shall work 12 hour shifts, scheduled to adhere to the Pitman Rotating Shift Configuration, which was attached. The Pitman Configuration shows that employees work 60 hours one week and 24 hours the next. According to counsel for the County, however, the Pitman Configuration (as graphically depicted as an attachment to the MOS) is not used in practice.
>
> The MOS indicates that those affected by the reclassification are 40 hour employees. The Pitman Configuration, however, outlines a different scenario. According to the County's attorney, a third schedule is actually used in practice. This confusion and/or conflict gives rise to a dispute concerning the application or interpretation of the terms contained in the MOS. That issue is subject to the grievance procedure, which ultimately envisions the matter being resolved via binding arbitration. If, as the County suggests, the passage of legislation immediately and irrevocably deprives the Executive Branch and an arbitrator from further consideration of the matter, the grievance process would be cut short and have little meaning.

This appeal followed.[6]

DISCUSSION

The County contends that the circuit court erred in compelling arbitration. It asserts that the reclassification issue is not arbitrable because it does not meet the MOU's definition of a grievance. It further argues that the arbitrator does not have jurisdiction over the issue: (1) pursuant to the terms of the MOU; and (2) because "the PSAB and County Council have exclusive jurisdiction of the County's Compensation and

[6] An order granting a request to compel arbitration is a final, appealable order. *Deer Auto. Grp., LLC v. Brown*, 454 Md. 52, 65 (2017).

Classification Plans." Accordingly, the County asserts that "the Federation cannot challenge the reclassification before an arbitrator and the arbitrator cannot change the classification."[7]

The Federation contends that the circuit court properly granted its motion to compel arbitration. It argues that the parties agreed in the MOU to arbitrate "any dispute . . . concerning the application or interpretation of the terms" of the MOS. The Federation asserts that, although the terms of the MOS make clear that employees working a 12-hour Pitman schedule would work more hours than they did on an eight-hour schedule, nothing in the MOS states that "parties agreed to change the classification of such employees from '40 Hours' to '84-Hours Bi-Weekly' classifications; causing a net 5% reduction in hourly rate compensation for the affected employees." Thus, it argues that the underlying dispute here "arises from a disagreement between the parties regarding the interpretation and application of the terms and conditions contained in the MOS."

In response to the County's assertion that arbitration is not appropriate because the County Council changed the classification and an arbitrator cannot change the law, the Federation states that it

[7] The County also argues that the circuit court erred in ordering arbitration because the Federation's grievance was "untimely." At oral argument before the circuit court, however, the County expressly stated that it was "not disputing" that the Federation "followed what [it] need[ed] to happen to trigger an arbitration," or that "they didn't timely file the grievance." The County, therefore, has waived this argument, and we will not consider it. *See Ali v. State*, 199 Md. App. 204, 230 (2011) (the Court declined to consider the issue of waiver of privilege on appeal because the State failed to raise the issue below).

> is not seeking a review of the County Council's action, because those actions can be addressed at a later date after the arbitration decides the underlying dispute between the Federation and the County Administration. Should the arbitrator rule in favor of the County's interpretation of the Agreement, no further legislative action will be required. However, should the arbitrator sustain the Federation's grievance, then the County Executive will be compelled by the provisions of Article 22.2 of the MOU and Baltimore County Code §4-5-310(c), to "introduce all legislation necessary to implement and give full force and effect to the provisions of the MOU" as interpreted by the arbitrator's final and binding decision.

Accordingly, it asserts that arbitration of the underlying contract dispute is proper.

In reviewing a trial court's order to compel arbitration, our focus "'extends only to a determination of the existence of an arbitration agreement.'" *Walther v. Sovereign Bank*, 386 Md. 412, 422 (2005) (quoting *Allstate Ins. Co. v. Stinebaugh*, 374 Md. 631, 645 (2003)). *Accord Holloman v. Circuit City Stores, Inc.*, 391 Md. 580, 588 (2006). Specifically, we must determine whether there is "a valid arbitration agreement, covering the matter in dispute." *Baltimore Cty. v. Baltimore Cty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 578 (2014). When conducting this review, we must be mindful that "'[a] party cannot be required to submit any dispute to arbitration that it has not agreed to submit.'" *Questar Homes of Avalon, LLC v. Pillar Const., Inc.*, 388 Md. 675, 685 (2005) (quoting *Stinebaugh*, 374 Md. at 648). "'The intention of the parties controls on whether there is an agreement to arbitrate.'" *Id.* (quoting *Stinebaugh*, 374 Md. at 648). "The trial court's decision as to whether a 'particular dispute is subject to arbitration is a conclusion of law, which we review *de novo.*'" *Holloman*, 391 Md. at 588 (quoting *Walther*, 386 Md. at 422).

In deciding whether the Federation's grievance is arbitrable, we must first determine the essence of the grievance. The arbitration provision in the MOU provided for final and binding arbitration of an unresolved grievance concerning the application or interpretation of the terms of the Memorandum of Understanding.[8]

Here, the MOS clearly set forth a schedule requiring the ECT positions to work 84 hours bi-weekly, as opposed to 40 hours a week. The grievance filed concerned, not the hours agreed to, but the validity of the reclassification of ECT positions from "40 hour classifications to 84 hour Bi-Weekly classifications." It complained that the reclassification increased the salary divisor "from 2080 hours per year to 2184 hours per year causing a substantial reduction to the straight time hourly rate."

Our review of the statutory scheme in Baltimore County, as well as the case law, leads to the conclusion that the reclassification of the ECT positions does not constitute an arbitrable grievance under the MOU. We explain.

The Baltimore County Code ("BCC") obligates the County and the exclusive representative of a union, in this case the Federation, to "[n]egotiate in good faith with respect to: (i) [w]ages, hours, and terms and conditions of employment; and (ii) [t]he drafting of a written memorandum of understanding containing all matters agreed upon." BCC § 4-5-310(a)(2). The MOS was a negotiation in regard to "[w]ages, hours, and terms

[8] When questioned at oral argument about the terms of the MOU or MOS that were in dispute, counsel for the Federation cited Section 22.2, which provided that the County shall introduce legislation necessary to implement an MOU. We note, however, that Section 22.2 was not listed as a violation in the grievance that was filed.

and conditions of employment." It provided that the work schedule for certain ECT 40-hour-a-week positions would change to 12-hour shifts pursuant to the Pitman Rotating Shift configuration.

Although the County, in negotiating the MOS, had authority to negotiate wages and hours, it did not have the authority to negotiate the classification of the employees. The statutory scheme in Baltimore County gives responsibility for classification plans to the PSAB and the County Council. Section 802(d) of the Baltimore County Charter (the "Charter") requires the County's personnel law to provide for the "[a]uthority in the personnel and salary advisory board to set up and revise a job classification plan." The Baltimore County Code, in turn, provides, as follows:

> (a) *Recommendations of the Board.* The Personnel and Salary Advisory Board:
>
> > (1) Shall review the Classification and Compensation Plan; and
> >
> > (2) May submit recommendations regarding amendments to the Classification and Compensation Plan to the County Executive by transmission by the Director of Human Resources through the County Administrative Officer.
>
> (b) *County Executive.* If the County Executive approves any amendments to the Classification and Compensation Plan, the County Executive shall submit them to the County Council with a recommendation that the Council adopt them.
>
> (c) *County Council may adopt.* Amendments to the Classification and Compensation Plan shall take effect after the County Council has adopted them in accordance with § 802(e) of the Charter.

BCC § 4-2-202.

The terms of the MOU acknowledge that the authority to adopt or change classifications plans is vested in the County Council. Subsection 18.1 of the MOU, titled Revision of Class Specifications, provides: "Specifications for classes covered by this Memorandum of Understanding shall, when deemed necessary by the County, be revised in the Baltimore County Classification and Compensation Plans, which is incorporated by reference in this Section as part hereof."[9]

Pursuant to this statutory scheme, the County engages in collective bargaining on matters relating to wages, hours, and terms and conditions of employment, but the legislative branch of government, the County Council, has the authority regarding classification plans. Under such circumstances, the Maryland appellate courts have held that reclassification decisions are not negotiable issues in collective bargaining and are not subject to arbitration. *Montgomery Cty. Educ. Ass'n, Inc. v. Bd. of Educ. of Montgomery Cty.*, 311 Md. 303, 321-23 (1987) [hereinafter "*MCEA*"] (job reclassification of school staff not subject to negotiation or arbitration); *Washington Cty. Educ. Classified Emps. Ass'n v. Bd. of Educ. of Washington Cty.*, 97 Md. App. 397, 404 (regrading of employees' positions, i.e., moving employees to a higher salary grade but lowering their step at that

[9] The MOU further provided that, prior to the revision of a classification plan, the County would provide "a copy of the proposed revised class specification to the Federation in order to obtain its written comments pertaining thereto and to meet with the Federation upon request." The Federation did not, however, lodge any objection with the PSAB or the County Council to the proposed reclassification of the ECT positions. Moreover, as counsel for the Federation acknowledged at oral argument, the MOU did not give the Federation authority to dictate the specific terms of the classification plan to be implemented.

grade, constituted reclassification, which was not subject to negotiation or arbitration), *cert. denied*, 333 Md. 201 (1993). This is true even though the salary impact of reclassification decisions relates to wages and may have a "particularly severe impact on affected employees." *MCEA*, 311 Md. at 322.

In sum, the reclassification decision is not arbitrable through the grievance process set forth in the MOU.[10] Accordingly, the circuit court erred in ordering the County to submit to binding arbitration on the grievance filed.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED. COSTS TO BE PAID BY APPELLEE.

[10] We disagree with the Federation's contention that *Baltimore Cty. Fraternal Order of Police Lodge No. 4 v. Baltimore Cty.*, 429 Md. 533 (2012), is analogous. In that case, the issue was whether a duty to arbitrate survived the expiration of the agreement containing the arbitration clause in a situation where there was no doubt that, "if [the] dispute had arisen during the MOU's lifetime, it would have been arbitrable." *Id.* at 536, 555 n. 22. Although the Court of Appeals held that it could, in specified circumstances, the Court stated that its "holding does not take away from the courts the authority to determine the threshold issue of whether the parties agreed to arbitrate their disputes." *Id.* at 558. Here, we hold that the parties did not, and could not pursuant to the statutory scheme, agree to arbitrate a dispute regarding reclassification.