

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0362

September Term, 2015

MAYOR AND CITY COUNCIL OF
HAGERSTOWN

v.

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 1605

Eyler, Deborah S.,
Berger,
Harrell, Glenn T., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: March 21, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

CASE-IN-A-NUTSHELL

Propelled apparently by the efforts of the leaders and membership of the International Association of Firefighters (IAFF), Local 1605, a sufficient number of verified signatures of registered voters in the City of Hagerstown were garnered in 2014 on a petition to amend the City Charter (and requiring the Mayor and City Council (hereinafter “the City”)) to enact implementation provisions to install collective bargaining and binding arbitration as to non-management employees of the City’s police and fire departments. The proposed Charter amendment was to have been adopted by the City or placed on the ballot of the next general City election for a thumbs-up or down vote by the registered voters; however, the City declined to adopt the proposed amendment or a resolution setting a date for a referendum vote by the City electorate. The City justified this inaction on the basis that the proposed amendment was not appropriate charter material and/or was an impermissible delegation of the local legislature’s powers. To no one’s surprise, litigation ensued.

BACKGROUND

Local 1605¹ filed a complaint in the Circuit Court for Washington County seeking injunctive, mandamus, and declaratory relief to compel the City to adopt the proposed

¹ Local 1605 was joined in the litigation by the American Federation of State, County and Municipal Employees (AFSCME) Council 63, Local 373, and one Mitchell Brose Gearhart. Should the Charter amendment proposal be ratified by the Mayor and Council or the electorate, the AFSCME local would represent the City’s police officers

(Continued...)

Charter amendment or set a date for a referendum vote of the municipal electorate. The City responded with a counter-complaint asking for a declaration that the binding arbitration language in the proposed Charter amendment was not proper charter material; an impermissible delegation of the Mayor and Council’s legislative authority; and, illegal otherwise. Cross-motions for summary judgment brought the dispute to a legal head before the Honorable Donald E. Beachley. The material facts were concededly not in genuine dispute. Local 1605 argued that it should prevail because the present case was not distinguishable materially from *Atkinson v. Anne Arundel County*, 428 Md. 723, 53 A.3d 1184 (2012), where the Court of Appeals blessed a quite similar charter initiative in Anne Arundel County. The City relied principally on *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980) and *Griffith v. Wakefield*, 298 Md. 381, 470 A.2d 345 (1984), in which cases proposed charter amendments found less favor. Judge Beachley granted Local 1605’s motion for summary judgment and denied the City’s motion. Essentially, he concluded that *Atkinson* was controlling in the present case. He ordered (and explained his ruling in a written opinion) on 1 April 2015 that: (1) the proposed charter amendment is proper charter material and not an unlawful delegation of the local legislative body’s legislative power; (2) the voters’ petition was in proper form and had the valid signatures of a requisite number of registered voters; (3) the local legislative

(...continued)

and Local 1605 the fire service employees in collective bargaining. Mr. Gearhart was a retired City firefighter and registered voter in the City.

body had a non-discretionary duty either to adopt the proposed Charter amendment or set a date for a referendum on it; and (4) issued a writ of mandamus to the Mayor and City Council to do one or the other of these duties. The City filed timely an appeal to this Court.

THE \$64,000 QUESTION

Appellants frame a unitary question for our consideration, which we have modified ever so slightly for the sake of concision:

Did the circuit court err in concluding that the proposed charter amendment constituted proper charter material and was not an unlawful delegation of the legislative power of the City Council?

We shall affirm the judgment of the circuit court for the reasons that follow.

STANDARD OF REVIEW

Summary judgment is granted properly when “there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” Md. Rule 2-501(e). Because the parties agreed that there is no genuine issue of material fact, “there are no facts in dispute in this case [and we review] whether the declaratory judgment was correct as a matter of law.” *Atkinson*, 428 Md. at 741, 53 A.3d at 1195 (citing *Catalyst Health Solutions, Inc. v. Magill*, 414 Md. 457, 471–72, 995 A.2d 960, 968 (2010)). This standard is non-deferential to the judgment of the trial court. *See Columbia Ass’n, Inc. v. Poteet*, 199 Md. App. 537, 546, 23 A.3d 308, 314 (2011) (citation omitted) (“We review an order granting summary judgment *de novo*”).

ANALYSIS

County charters “are, in effect, constitutions for county governments, and Article XI-A contemplates that they should reflect the broad outlines of governmental powers and limitations.” *Save Our Streets v. Mitchell*, 357 Md. 237, 252, 743 A.2d 748, 757 (2000). Although *Atkinson* and the other authorities discussed here involve county charters enacted under Article XI-A of the Maryland Constitution, the Court of Appeals held earlier that there is no distinguishable organic difference, at least for present purposes, between a charter for a county and one for a municipality organized under Article XI-E. *See Town of La Plata v. Faison-Rosewick LLC*, 434 Md. 496, 515, 76 A.3d 1001, 1012 (2013) (“Article XI-E of the Maryland Constitution governs all municipalities except Baltimore City, which is constitutionally the same as a home rule county”, citing to Art. XI-A).²

We adopt the following comparison of the provisions of the charter amendment considered in *Atkinson* and the one in the present case, as the same appeared in the record before the circuit court and in Appellees’ brief (emphasis in original):³

Provision	Anne Arundel Charter	Proposed Hagerstown Charter
	Amendment in <i>Atkinson</i>	Amendment
Heading	“Binding arbitration for law	“Collective bargaining and binding

² When questioned in the like vein at oral argument, counsel for the City conceded that there is no meaningful distinction, for present purposes, between municipal and county charter forms of governance.

³ Counsel for the City agreed at oral argument before us that the content of this “chart” is accurate.

	enforcement employees and for uniformed firefighters of the Fire Department.”	arbitration for non-management employees of the police and fire departments.”
Covered employees	“Law enforcement employees shall be uniformed officers of the Police Department, Sheriff’s Department, and Office of Detention Facilities.”	“Non-management employees of the police and fire departments of the City of Hagerstown.”
Collective bargaining	“In addition to the rights granted to County employees in Section 811 of this Article to organize and bargain collectively...” ^[4]	“[Police and fire fighters] shall be entitled to designate a union to act as their exclusive representative and to engage in collective bargaining with the City regarding wages, benefits, and working conditions.”
Binding arbitration	“...the County Council shall provide by ordinance for binding arbitration with authorized representatives of the appropriate employee bargaining unit in order to resolve labor disputes with the County’s law enforcement employees.”	“The City Council shall provide by ordinance for binding arbitration with the exclusive representatives in order to resolve labor disputes.”
Ordinance	“The ordinance shall provide for the appointment of a neutral arbitrator by the parties to the arbitration who shall issue a binding decision to be implemented as part of the following year’s budget process and which shall take into account the financial condition of the County and the reasonable interests of the law enforcement employees and the county relating to the terms and conditions of employment.”	“The ordinance shall provide for the appointment of a neutral arbitrator, the factors that should be considered by the arbitrator, and the procedures for implementing the arbitrator’s decision when passing or amending the City’s budget.”
Strikes	“Any ordinance that is enacted shall prohibit strikes or work stoppage by the law enforcement employees.”	“Any ordinance that is enacted shall prohibit strikes or work stoppage by the law enforcement employees.”

⁴ Section 811 stated: “Employees in the classified service shall have the right to organize and bargain collectively through representative employee organizations of their own choosing as provided by ordinance of the County Council.”

Based on oral argument, it is not unfair for us to perceive that the parties acknowledge that the meaning and sweep of *Atkinson* may be a crucial tipping point in the present case. Thus, we consider it first.

Atkinson arose from the voters of Anne Arundel County, in 2002, amending the County Charter to direct the County Council to adopt an ordinance providing for binding arbitration to resolve labor disputes between the County government and its law enforcement personnel and uniformed firefighters. The amendment provided that an arbitrator’s binding decision would take into account the financial condition of the County and would be implemented as part of each succeeding year’s budget process. In 2003, the County Council adopted an implementing ordinance.

In 2011, the County Council amended the County Code, contrary to the 2003 ordinance, such that the County Council would “not be required to appropriate funds or enact legislation necessary to implement” an arbitrator’s final written award. The 2011 ordinance included an uncodified “section 3,” which provided that, if any part of the 2011 ordinance were held invalid, the 2003 ordinance providing for binding arbitration “would be deemed repealed by operation of law.” In that instance, the pre-2003 state of the local law would be reinstated and the previously prevailing impasse resolution procedure would be restored, consisting of submitting a fact-finder’s recommendation to the County Council, which could “take the action it determines to be in the public interest.”

Certain members of the aggrieved labor bargaining units brought suit in the Circuit Court for Anne Arundel County seeking a declaratory judgment that the 2011 ordinance

violated the 2002 Charter Amendment. The County retorted that, construed properly so as to avoid constitutional issues, the 2002 Charter Amendment required the County Executive to propose funding in the budget to comply with a binding award, but that the County Council may reduce or eliminate that proposed appropriation. The County filed also a counterclaim, in the event the 2011 ordinance were found invalid, seeking a declaration that the 2002 Charter Amendment violated the Maryland Constitution, Article XI-A (the Home Rule Amendment) § 3, because the Charter amendment is not “charter material,” under *Cheeks*, 287 Md. 595, 415 A.2d 255, and its progeny.⁵ Alternatively, the County sought a declaration that the 2003 and 2011 ordinances dealing with binding arbitration self-destruct under uncodified section 3 of the 2011 ordinance. The circuit court declared that the 2002 Charter Amendment violated the Maryland Constitution, as argued by the County.

Atkinson filed an appeal to the Court of Special Appeals. Prior to us deciding the appeal, Atkinson filed a Petition for Writ of Certiorari with the Court of Appeals. The County filed a Conditional Cross-Petition. The Court of Appeals granted both petitions. 424 Md. 291, 35 A.3d 488 (2012). Atkinson framed his certiorari question as follows:

1. As article XI-A, § 1 of the Maryland Constitution authorizes charter provisions concerning a county’s system for budgeting and appropriating revenues, was it lawful to amend the Anne Arundel County Charter, through charter revision, to direct the County Council to provide by ordinance for binding arbitration of labor disputes?

⁵ Included among *Cheeks*’ progeny is *Griffith v. Wakefield*, 298 Md. 381, 470 A.2d 345 (1984), both cases upon which the City relies significantly here.

2. Is Anne Arundel County Bill No. 4-11 unlawful as its terms failed to comply with §§ 812(a) and 812(b) of the County Charter by deleting from Section 6-4-11 of the County Code the provisions that provide for binding arbitration of labor disputes?

428 Md. at 740, n.7, 53 A.3d at 1194, n.7.

The County’s reframing of Atkinson’s certiorari questions and its sole properly preserved question were as follows:

A. Is § 6–4–111 of the Anne Arundel County Code as amended by Section 2 of Anne Arundel County Council Bill No. 4–11 consistent with § 812 of the Anne Arundel County Charter?

B. Does § 812 of the Anne Arundel County Charter violate Article XI–A, § 3 of the Maryland Constitution?

C. Did the adoption of § 812 of the Anne Arundel County Charter constitute the exercise of direct legislative initiative by the electorate of the County in violation of Article XI–A, § 3 of the Maryland Constitution despite the fact that it was proposed by resolutions adopted by the Anne Arundel County Council?

[Cross–Petition]

D. Is § 6–4–111 of the Anne Arundel County Code repealed by operation of law in accordance with Section 3 of Anne Arundel County Council Bill No. 4–11 because the changes made to binding arbitration by Section 2 of Bill No. 4–11 are invalid for any reason?

428 Md. at 740, n.7 53 A.3d at 1194, n.7.

In reversing the judgment of the circuit court and remanding the case for entry of a declaratory judgment consistent with the Court of Appeals’s opinion, the Court held essentially that:

- Binding arbitration of labor disputes with public safety employees is “charter material.” The 2002 Charter Amendment represented a

policy decision by the County’s voters that certain labor disputes should be subject to binding arbitration. The County Council cannot reject the voters’ policy decision by ordinance. Therefore, the 2011 ordinance allowing the County Council to not appropriate funds for a final arbitration award was invalid.

- As implementation of the voters’ policy decision was left to the County Council, the 2002 Charter Amendment did not preclude unconstitutionally the exercise of the County Council’s law-making discretion. The 2002 Charter Amendment was valid.
- The uncodified section 3 of the 2011 ordinance, providing that the 2003 ordinance would be repealed by operation of law if any part of the 2011 ordinance were deemed invalid, would reinstate the pre-2003 dispute resolution procedure, which did not allow for binding arbitration. As such, section 3 of the 2011 ordinance contravened the 2002 Charter Amendment and was invalid.

The reasoning employed by the Court of Appeals in reaching these conclusions sheds much additional light on the present case.

Proposed amendments that seek to add binding arbitration provisions have been held definitively to be proper charter material by the Court of Appeals: “We consider it to be settled that binding arbitration is an appropriate subject matter for inclusion in a county [or city] charter.” *Atkinson*, 428 Md. at 745, 53 A.3d at 1197. Thus, because the provisions of the proposed charter amendment in the present case and the charter amendment in *Atkinson* are not different materially, Judge Beachley’s determination that the former was proper charter material was well-grounded in the law.

Moreover, the proposed charter amendment here is distinguishable from the ones held unconstitutional in *Griffith* and *Cheeks*. In determining whether a proposed amendment is proper charter material, “[a]n important consideration is the degree to

which the county council retains discretion and control regarding an area under its authority pursuant to Article XI-A of the Maryland Constitution.” *Save Our Streets*, 357 Md. at 253, 743 A.2d at 757. In *Griffith* and *Cheeks*, the proposed amendments “prescribe[d] ‘in lengthy detail’ [footnote omitted] an entire system of binding arbitration for a select group of county employees; it [left] nothing for the determination of the County Executive or the County Council.” *Atkinson*, 428 Md. at 732, 53 A.3d at 1189 (citing *Griffith*, 298 Md. at 386, 470 A.2d at 348 (changes in original)).

In *Cheeks*, the Court of Appeals invalidated a voter-initiated petition⁶ involving a charter amendment that “was intended, not simply to create a new City agency with authority over matters pertaining to landlords and tenants, but rather to establish a

⁶ At oral argument in the present case, Appellants maintained that there is a meaningful distinction to be observed for purposes of our legal analysis, between a voter-initiated petition and one initiated by a government body (as was the case in *Atkinson*). Appellants suggest that a voter-initiated petition is improper as it usurps the legislative power of the City. We disagree. It was made clear in *Atkinson* that “Article XI–A, § 5 provides, with respect to a charter county, that amendments to the Charter ‘may be proposed by a resolution of the . . . Council of the county, or by petition signed by’ a specified number or percentage of registered voters.” *Atkinson v. Anne Arundel County*, 428 Md. 723, 731 n.3, 53 A.3d 1184, 1189 n.3 (2012). It makes no difference to the propriety of the analysis who initiates the petition for a proposed amendment to a charter.

Additionally, under the Local Government Article, it states explicitly that “[a]n amendment to a municipal charter may be initiated by: (1) the legislative body of the municipality as provided in § 4-304 of this subtitle; or (2) a petition of the qualified voters of the municipality as provided in § 4-305 of this subtitle.” Maryland Code (2013), Local Government Article, § 4-302 (“Local Gov’t”). A municipal charter under this section of the Code refers specifically to charters adopted under Article XI-E of the Maryland Constitution, *see* Local Gov’t § 4-101, but, as noted previously, there is no analytical difference for present purposes between the governance roles of municipal and county charters.

comprehensive system for regulating rents within the City’s residential housing market.” *Cheeks*, 287 Md. at 608, 415 A.2d at 261 (emphasis added). Invalidating the amendment, the Court of Appeals determined that it was “clear that the amendment is essentially legislative in character. Considered as a whole, the amendment is not addressed to the form or structure of government in any fundamental sense.” *Cheeks*, 287 Md. at 608, 415 A.2d at 262.

Similarly, in *Griffith*, the Court of Appeals applied the principle that, “absent an intention to permit a contrary usage, a charter amendment within the context of Art. XI-A is necessarily limited in substance to amending the form or structure of government initially established by adoption of the charter.” *Griffith*, 298 Md. at 385, 470 A.2d at 348 (citation omitted). In applying this principle, the Court of Appeals concluded:

As in *Cheeks*, the charter amendment proposed in Baltimore County is “essentially legislative in character;” it is a complete and specifically detailed legislative scheme. Again as in *Cheeks*, the present case presents a situation whereby the electorate, through the charter amendment process, is attempting to circumvent the local legislative body and enact local law. This is impermissible under Article XI-A of the Maryland Constitution which, in § 3, mandates that the County Council “shall have full power to enact local laws of said. . . County.”

Griffith, 298 Md. at 388, 470 A.2d at 349.

It is held commonly that “constitutions or charters [may] authorize, or preclude, specified types of enactments by legislative bodies. This is quite different from a charter itself containing all of the detailed provisions concerning the subject.” *Griffith*, 298 Md. at 389, 470 A.2d at 350. In *Atkinson*, the County Council was directed to implement the binding arbitration provision through its budget process. The Court of Appeals explained

that because “the Charter leaves fleshing out of the directive to the County Council,” it differed from the circumstances in *Cheeks* and *Griffith*. *Atkinson*, 428 Md. at 748, 53 A.3d at 1198. The Court continued:

Whether some portion of the County Council’s role in the budget process is to be transferred to a neutral arbitrator, in the event of an impasse in collective bargaining with public safety employees, affects the form and structure of government. To say that the voters of a county, exercising their power to amend the Charter, cannot direct that their policy decision be implemented by the County Council would be to hold that only the County Council ultimately can decide whether binding arbitration is County policy.

428 Md. at 748, 53 A.3d at 1198-99 (footnote omitted). The Court further stated that “the voters’ directive in County Charter § 812, for the Council to implement, in some fashion, binding arbitration in the budget process, does not implicate, on analysis, the lawmaking power of the Council under Const., Art. XI–A, § 3.” *Atkinson*, 428 Md. at 748, 53 A.3d at 1199.

The same reasoning applies and rings true here. The proposed charter amendment remains completely within appropriate charter mandates. It leaves the City sufficient legislative leeway and authority. Under the operation of the charter, the proposed amendment is not considered legislative in nature and should be put to the referendum process for action by the voters, if the City hasn’t the political will to adopt it. The conclusion by the Court of Appeals in *Atkinson* makes clear that a charter amendment which allows for the local legislative body to retain its lawmaking power is proper charter material and an appropriate delegation.

Because of the similarities between the charter amendment in *Atkinson* and the proposed one before us, it is clear that the latter does not, as Appellants claim, “divest the legislature of its lawmaking discretion.” We hold that the circuit court was correct as a matter of law in granting Local 1605’s motion for summary judgment, rendering the declarations it made, and issuing the writ of mandamus. We affirm its judgment.

**JUDGMENT OF THE CIRCUIT
COURT FOR WASHINGTON
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**