

**MEMORANDUM**

July 8, 2011

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 20-11, Personnel – Collective Bargaining – Public Accountability – Impasse Arbitration

Bill 20-11, Personnel – Collective Bargaining – Public Accountability – Impasse Arbitration, sponsored by the Council President on recommendation of the Organizational Reform Commission, was introduced on June 14, 2011. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for July 18 at 9:30 a.m.

Bill 20-11 would establish an interest arbitration panel to resolve an impasse, require an impasse arbitration hearing to be open to the public, and modify the criteria for the impasse panel to apply. The Council delayed introducing this Bill until after finalizing the FY12 Budget because these process changes, if enacted, could not take effect until collective bargaining for FY13 begins in the fall.

**Background**

In its report to the Council dated January 31, 2011, the Organizational Reform Commission (ORC), in *Recommendations #19 and #20*, recommended amending the County collective bargaining laws to establish an interest arbitration panel to resolve an impasse, require an impasse arbitration hearing to be open to the public, and modify the criteria for the impasse panel to apply.

The full text of the recommendation is below.

**Public Accountability in Interest Arbitration**

- 1. Change the criteria for the arbitrator to use to resolve a collective bargaining impasse.**

Interest arbitration is a method of resolving disputes over the terms and conditions of a new collective bargaining agreement. Grievance arbitration is a method of resolving disputes over the interpretation or application of an existing collective bargaining contract. County Charter §510 requires the Council to enact a collective bargaining law for police officers that includes interest arbitration. Charter §510A requires the same for firefighters. Charter §511 authorizes, but does not require, the Council to enact a collective bargaining law for other County employees that may include interest arbitration or other impasse procedures. All of these Charter provisions require any collective bargaining law enacted by the Council to prohibit strikes or work stoppages by County employees. The Council has enacted comprehensive collective bargaining laws with interest arbitration for police (Chapter 33, Article V), firefighters (Chapter 33, Article X), and other County employees (Chapter 33, Article VII).

All three County collective bargaining laws require final offer by package arbitration requiring the arbitrator to select the entire final offer covering all disputed issues submitted by one of the parties. The arbitrator is a private-sector labor professional jointly selected by the Executive and the union. Since 1983, there have been 17 impasses resolved by interest arbitration. One of the impasses involved firefighters, one involved general County employees, and the other 15 involved the police.

The arbitrator selected the final offer of the International Association of Fire Fighters (IAFF) in the one impasse with the firefighters and selected the County offer in the one impasse with general County employees represented by the Municipal and County Government Employees Organization (MCGEO). The arbitrator selected the FOP offer in 11 of the 15 impasses with the police. The arbitrator selected the County offer over the FOP offer three times,<sup>1</sup> and the County agreed to the FOP offer after the arbitration hearing one time. One explanation for these one-sided results is a lack of public accountability in the interest arbitration system used to resolve impasses with County unions.

One of the arguments often raised in challenges to interest arbitration laws is the lack of accountability to the public. Legislatures enacting interest arbitration laws have responded to this criticism in a variety of ways. An Oklahoma law authorizes a city council to call a special election and submit the two proposals to the voters for a final decision, if the arbitrator selects the union's final package. The Oklahoma Supreme Court upheld this unusual provision in *FOP Lodge No. 165 v. City of Choctaw*, 933 P. 2d 261 (Okla. 1996). Some laws provide for political accountability in the method of choosing the arbitrator. The Colorado Supreme Court upheld an interest arbitration law, in part, because it required the city council to unilaterally select the list of arbitrators in *FOP Colorado Lodge No. 19 v. City of Commerce City*, 996 P. 2d 133 (Colo. 2000). Finally, many interest arbitration laws provide for accountability by adopting guidelines that the arbitrator must consider, require a written decision with findings of fact, and subject the decision to judicial review for abuse of discretion, fraud, or misconduct. See, *Anchorage v. Anchorage Dep't of Employees Ass'n*, 839 P. 2d 1080 (Alaska 1992).

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<sup>1</sup> The FOP appealed two of the three decisions in favor of the County to the Circuit Court. The Circuit Court reversed a portion of the arbitrator's award in 2003 and affirmed the arbitrator's award for the County in 2008.

We note that the Council enacted Expedited Bill 57-10, which modifies the criteria used by the arbitrator in resolving collective bargaining impasses with each County employee union. We support this legislation as a first step in the process of increasing public accountability in the arbitration process used to resolve impasses, but we recommend an additional amendment.

Under the County collective bargaining laws before the enactment of Bill 57-10, an arbitrator could only consider:

- a. Past collective bargaining contracts between the parties, including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits and working conditions;
- b. Comparison of wages, hours, benefits and conditions of employment of similar employees, of other public employers, in the Washington Metropolitan Area and in Maryland;
- c. Comparison of wages, hours, benefits and conditions of employment of other Montgomery County personnel;
- d. Wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County;
- e. The interest and welfare of the public; and
- f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

The problem with these criteria can be seen in the most recent arbitration awards under the County collective bargaining laws. For example, Arbitrator David Vaughn described his understanding of the statutory criteria as follows:

*“This provision does not require that any particular factor be considered or that all of them be considered. It simply identifies the factors that I may consider. Thus, I am free to determine whether any particular factor or factors weigh more heavily than others...”* (MCGEO Arbitration Decision of March 22, 2010)

In the 2010 Police arbitration decision, Arbitrator Herbert Fishgold, applying these criteria, found that the FOP’s last offer for a 3.5% step increase, at a cost of \$1.2 million, and a reinstated tuition assistance program, at a cost of \$455,000, was more reasonable than the County’s offer of no pay increase or tuition assistance. Mr. Fishgold found that the FOP had already given up a previously negotiated 4.5% cost-of-living increase each of the past two years and had, therefore, done enough to help balance the County’s budget. The Council subsequently rejected both of these economic provisions and required all County employees to take furloughs, including police officers, in order to close an unprecedented budget deficit.

The arbitrator should consider the funds available to pay personnel costs before considering comparative salaries and past collective bargaining agreements. The bill, as enacted, requires the arbitrator to evaluate and give the highest priority to the County’s ability to pay before

considering the other five factors. The amendment that the Council ultimately rejected would have gone further by requiring the arbitrator to determine first if the final offers were affordable without raising taxes or lowering the existing level of public services. Although we support the bill as enacted without this amendment, the amendment would have added important guidance to the arbitrator to determine affordability based upon existing resources only.

➤ ***We recommend new legislation that would include the amendment that was originally supported by the Council's Government Operations and Fiscal Policy Committee on December 7.***

## **2. Change the method of selecting the arbitrator.**

All three of the County's collective bargaining laws require the appointment of a professional labor arbitrator who is mutually selected by the Executive and the union. Professional labor arbitrators must avoid the appearance of favoring one side or the other in order to continue to be selected. It is especially important for a professional labor arbitrator to avoid a veto by a national union with affiliates representing public employees throughout the nation. The labor arbitrator is accountable to the parties but not to the taxpayers.

The Baltimore County Code has a different system for resolving disputes with unions representing non-public safety employees. The Code requires the appointment of a permanent arbitration panel consisting of five members serving four-year terms. Three members are appointed by the Council, one by the Executive, and one by the certified employee organizations. The members serve without compensation. The law provides for mediation before a professional mediator provided by the Federal Mediation and Conciliation Service, and fact-finding by a neutral selected from a panel of experts provided by an impartial third-party agency. If the parties are still unable to resolve the dispute, the arbitration panel conducts a hearing and issues an advisory decision. The decision of the arbitrator is a non-binding recommendation to the Executive, who makes the final decision.

Although this system has been in place for more than 10 years, only one dispute has been submitted to the Board. In 2008, a jointly selected professional labor arbitrator serving as a fact-finder recommended the employees receive a 3% pay increase after mediation. After reviewing the fact-finder's report and meeting with each party, the Arbitration Board issued a non-binding recommendation of no pay increase. The Executive accepted the Board's recommendation. However, the Baltimore County voters approved a charter amendment in the 2010 general election authorizing, but not requiring, the Baltimore County Council to enact a law requiring interest arbitration for general county employees similar to the law governing public safety employees.

*The Baltimore Sun* recently reported that the Baltimore County Council is likely to enact an interest arbitration law for general county employees. Although it is likely that Baltimore County will move away from this system, the Colorado Supreme Court, in *FOP v. City of Commerce City*, 996 P.2d 133 (Colo. 2000), held that an interest arbitration statute must require the arbitrator to be accountable to the public. The Court held that the statute did not violate a provision in the Colorado Constitution requiring political accountability for a person exercising governmental power *only* because it required Commerce City to appoint unilaterally a permanent panel of arbitrators that could be selected by the parties to resolve an impasse.

In New York, the Public Employees' Fair Employment Act, §209, establishes a three-person arbitration board to resolve an impasse between a state or local government employer and a union representing public safety employees. Each side chooses one arbitrator and the two arbitrators select a third neutral party. If the parties are unable to agree, the State Public Employee Relations Board (PERB) provides a list of neutral arbitrators that the parties must choose from by alternate strikes. The list is created by the PERB without input from either party. Section 806 of the Pennsylvania Public Employee Relations Act has a similar provision for a three-person arbitration board, with the third member selected from a list provided by the State PERB if the parties are unable to agree.

Maryland, however, does not have a comprehensive State law governing collective bargaining with State and local government employees and does not have a State PERB with jurisdiction over County government labor relations.<sup>2</sup> Montgomery County collective bargaining laws establish a single labor relations administrator for each bargaining unit to serve as the PERB. The labor relations administrator is jointly selected by the Executive and the union. Montgomery County collective bargaining laws require the labor professional jointly selected by the parties to serve as both a mediator and the arbitrator. This dual role has the advantage of granting the mediator/arbitrator greater authority during the mediation process. A party must seriously consider any statement about a weakness in a party's position by a mediator who ultimately will resolve an impasse as the arbitrator. Traditional mediation promotes the free flow of ideas between the parties, in part, because the mediator has no authority to impose a resolution. This free flow of ideas is diminished when the mediator will also serve as the arbitrator. A major advantage of the dual role is that the mediator/arbitrator can issue a quicker decision because he or she is already familiar with the issues at impasse. This speed is useful due to the compressed schedule for bargaining, impasse resolution, and budget decisions. However, we believe the better alternative for both mediation and arbitration would be to use a jointly selected mediator and a separate arbitration board.

➤ ***We recommend establishment of a three-person arbitration board, with each party selecting one member and the two parties selecting a third neutral party.***

If the parties are unable to agree on a third party, we recommend following the New York and Pennsylvania model of requiring the parties to select a third party from a pre-selected list of neutrals appointed by the Council. The persons on the list would be appointed for a four-year term of office without requiring the concurrence of either the union or the Executive. If the parties are unable to agree on a person from the Council's list, they would be required to select an arbitrator through alternate strikes from the list.

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<sup>2</sup> Maryland does have a comprehensive labor relations law governing public school employees and recently established a Maryland Public School Employee Relations Board. However, the members of this Board are jointly selected by the employee unions and public school management.

## Executive's Response

In a memorandum to the Council President dated February 21, 2011, the Executive responded to each of the 28 recommendations in the ORC report. The Executive did not take a position on this recommendation. He stated:

### **19. Modify the criteria for arbitrators to use in addressing a collective bargaining impasse.**

The ORC report includes several recommendations concerning the collective bargaining process. Since we are in the midst of bargaining with all three of our employee unions, I do not think it is appropriate to comment on the Commission's recommendations at this time.

### **20. Change the method for selecting the arbitrator for collective bargaining.**

The ORC report includes several recommendations concerning the collective bargaining process. Since we are in the midst of bargaining with all three of our employee unions, I do not think it is appropriate to comment on the Commission's recommendations at this time.

Bill 20-11, sponsored by the Council President on recommendation of the ORC would implement ORC Recommendations #19 and #20.

This packet contains:

Bill 20-11

Legislative Request Report

Circle #

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Bill No. 20-11  
Concerning: Personnel – Collective Bargaining – Public Accountability – Impasse Arbitration  
Revised: June 7, 2011 Draft No. 1  
Introduced: June 14, 2011  
Expires: December 14, 2012  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President on the recommendation of the Organizational Reform Commission

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**AN ACT** to:

- (1) establish an interest arbitration panel to resolve an impasse;
- (2) modify the criteria for the impasse panel to consider in arbitration; and
- (3) generally amend County collective bargaining laws.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-81, 33-108, and 33-153

By adding

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Section 33-103A

|                                     |  |
|-------------------------------------|--|
| <b>Boldface</b>                     | <i>Heading or defined term.</i>                            |
| <u>Underlining</u>                  | <i>Added to existing law by original bill.</i>             |
| <b>[Single boldface brackets]</b>   | <i>Deleted from existing law by original bill.</i>         |
| <u>Double underlining</u>           | <i>Added by amendment.</i>                                 |
| <b>[[Double boldface brackets]]</b> | <i>Deleted from existing law or the bill by amendment.</i> |
| * * *                               | <i>Existing law unaffected by bill.</i>                    |

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Sections 33-81, 33-108, and 33-153 are amended as follows:**

**33-81. Impasse procedure.**

\* \* \*

(b) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the impasse neutral. If the parties have not reached agreement by January 20, an impasse exists.

\* \* \*

(3) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral [shall] must certify the impasse for arbitration before an impasse panel selected pursuant to Section 33-103A. The impasse panel must require each party to submit a final offer which shall consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the impasse [neutral shall choose] panel chooses. If only complete package proposals are required, the impasse [neutral shall] panel must require the parties to submit jointly a memorandum of all items previously agreed upon.

(4) The impasse [neutral] panel may, in the impasse [neutral's] panel's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The impasse [neutral may] panel must hold a hearing open to the public for this purpose at a time, date and place selected by the impasse [neutral] panel. [Said hearing shall not be open to the public.]

27 (5) On or before February 1 [or prior thereto], the impasse [neutral]  
 28 panel must select, as a whole, the more reasonable, in the impasse  
 29 [neutral's] panel's judgment, of the final offers submitted by the  
 30 parties.

31 (A) The impasse [neutral] panel must first [evaluate and give  
 32 the highest priority to] determine the ability of the County  
 33 to [pay for additional] afford any short-term and long-term  
 34 expenditures required by [considering] the final offers:

35 (i) [the limits on the County's ability to raise taxes  
 36 under State law and the County Charter] assuming  
 37 no increase in any existing tax rate or the adoption  
 38 of any new tax;

39 (ii) [the added burden on County taxpayers, if any,  
 40 resulting from increases in revenues needed to fund  
 41 a final offer] assuming no increase in revenue from  
 42 an ad valorem tax on real property above the limit in  
 43 County charter Section 305; and

44 (iii) considering the County's ability to continue to  
 45 provide the current [standard] level of all public  
 46 services.

47 (B) [After evaluating the ability of the County to pay] If the  
 48 impasse panel finds under subparagraph (A) that the  
 49 County can afford both final offers, the impasse [neutral]  
 50 panel [may only] must consider:

51 (i) the interest and welfare of County taxpayers and  
 52 service recipients;

- 53 (ii) past collective bargaining contracts between the  
 54 parties, including the bargaining history that led to  
 55 each contract;
- 56 (iii) a comparison of wages, hours, benefits, and  
 57 conditions of employment of similar employees of  
 58 other public employers in the Washington  
 59 Metropolitan Area and in Maryland;
- 60 (iv) a comparison of wages, hours, benefits, and  
 61 conditions of employment of other Montgomery  
 62 County employees; and
- 63 (v) wages, benefits, hours and other working conditions  
 64 of similar employees of private employers in  
 65 Montgomery County.

- 66 (6) The impasse [neutral] panel must:
- 67 (A) not compromise or alter the final offer that [he or she  
 68 selects] they select;
- 69 (B) select an offer based on the contents of that offer;
- 70 (C) not consider or receive any evidence or argument  
 71 concerning the history of collective bargaining in this  
 72 immediate dispute, including offers of settlement not  
 73 contained in the offers submitted to the impasse [neutral]  
 74 panel; and
- 75 (D) consider all previously agreed on items integrated with the  
 76 specific disputed items to determine the single most  
 77 reasonable offer.
- 78 (7) The offer selected by the impasse [neutral] panel, integrated with  
 79 the previously agreed upon items, [shall] must be [deemed to

80 represent] the final agreement between the employer and the  
 81 certified representative, without the necessity of ratification by  
 82 the parties, and [shall have] has the force and effect of a contract  
 83 voluntarily entered into and ratified as set forth in subsection 33-  
 84 80(g) above. The parties [shall] must execute such agreement.

- 85 (c) An impasse over a reopener matter or the effects on employees of an  
 86 exercise of an employer's right must be resolved under the procedures  
 87 in this subsection. Any other impasse over a matter subject to collective  
 88 bargaining must be resolved under the impasse procedure in subsections  
 89 (a) and (b).

- 90 (1) Reopener matters.

91 \* \* \*

92 (D) If an impasse is declared under subparagraph (C), the  
 93 dispute must be submitted to the impasse neutral for  
 94 mediation no later than 10 days after impasse is declared.  
 95 If the impasse neutral certifies that an impasse exists after  
 96 mediation, the dispute must be resolved by an impasse  
 97 panel selected under Section 33-103A.

98 (E) The impasse [neutral] panel must resolve the dispute under  
 99 the impasse procedure in subsection (b), except that:

- 100 (i) the dates in that subsection do not apply;  
 101 (ii) each party must submit to the impasse [neutral]  
 102 panel a final offer on only the reopener matter; and  
 103 (iii) the impasse [neutral] panel must select the most  
 104 reasonable of the parties' final offers no later than 10  
 105 days after the impasse [neutral] panel receives the  
 106 final offers.

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(2) Bargaining over the effects of the exercise of an employer right.

(A) If the employer notifies the employee organization that it intends to exercise a right listed in Section 33-80(b), the exercise of which will have an effect on members of the bargaining unit, the parties must choose by agreement or through the process of the American Arbitration Association an impasse neutral who agrees to be available for impasse resolution within 30 days.

(B) The parties must engage in good faith bargaining on the effects of the exercise of the employer right. If the parties, after good faith bargaining, are unable to agree on the effect on bargaining unit employees of the employer's exercise of its right, either party may declare an impasse.

(C) If the parties bargain to impasse over the effects on employees of an exercise of an employer right that has a demonstrated, significant effect on the safety of the public, the employer may implement its last offer before engaging in the impasse procedure. A party must not exceed a time requirement of the impasse procedure. A party must not use the procedure in this paragraph for a matter that is a mandatory subject of bargaining other than the effects of the exercise of an employer right.

(D) The parties must submit the dispute to the impasse neutral for mediation no later than 10 days after either party declares an impasse under subparagraph (B). If the impasse neutral certifies that an impasse exists after

134 mediation, the dispute must be resolved by an impasse  
 135 panel selected under Section 33-103A.

136 (E) The impasse [neutral] panel must resolve the dispute under  
 137 the impasse procedures in subsection (b), except that:

- 138 (i) the dates in that subsection do not apply;
- 139 (ii) each party must submit to the impasse [neutral]  
 140 panel a final offer only on the effect on employees  
 141 of the employer's exercise of its right; and
- 142 (iii) the impasse [neutral] panel must select the most  
 143 reasonable of the parties' final offers no later than 10  
 144 days after the impasse [neutral] panel receives the  
 145 final offers and, if appropriate, must provide  
 146 retroactive relief.

147 (F) If the impasse [neutral] panel has not issued a decision  
 148 within 20 days after the impasse [neutral] panel receives  
 149 the parties' final offers, the employer may implement its  
 150 final offer until the impasse [neutral] panel issues a final  
 151 decision.

152 **33-108. Bargaining, impasse, and legislative procedures.**

153 \* \* \*

154 (d) Before September 10 of any year in which the employer and the  
 155 certified representative bargain collectively, the Labor Relations  
 156 Administrator must appoint a [mediator/arbitrator] mediator, who may  
 157 be a person recommended by both parties. The [mediator/arbitrator]  
 158 mediator must be available from January 2 to June 30. Fees and  
 159 expenses of the [mediator/arbitrator] mediator must be shared equally  
 160 by the employer and the certified representative.

- 161 (e) (1) During the course of collective bargaining, either party may  
162 declare an impasse and request the services of the  
163 [mediator/arbitrator] mediator, or the parties may jointly request  
164 those services before an impasse is declared. If the parties do not  
165 reach an agreement by February 1, an impasse exists. Any issue  
166 regarding the negotiability of any bargaining proposal must be  
167 referred to the Labor Relations Administrator for an expedited  
168 determination.
- 169 (2) Any dispute, except a dispute involving the negotiability of a  
170 bargaining proposal, must be submitted to the  
171 [mediator/arbitrator] mediator whenever an impasse has been  
172 reached, or as provided in subsection (e)(1). The  
173 [mediator/arbitrator] mediator must [engage in mediation]  
174 mediate by bringing the parties together voluntarily under such  
175 favorable circumstances as will encourage settlement of the  
176 dispute.
- 177 (3) If the [mediator/arbitrator] mediator finds, in the  
178 [mediator/arbitrator's] mediator's sole discretion, that the parties  
179 are at a bona fide impasse, or as of February 1 when an impasse  
180 is automatically reached, whichever occurs earlier, the dispute  
181 must be submitted to binding arbitration before an impasse panel  
182 selected under Section 33-103A.
- 183 (f) (1) If binding arbitration is invoked, the [mediator/arbitrator]  
184 impasse panel must require each party to submit a final offer,  
185 which must consist either of a complete draft of a proposed  
186 collective bargaining agreement or a complete package

187 proposal, as the [mediator/arbitrator] impasse panel directs. If  
188 only complete package proposals are required, the  
189 [mediator/arbitrator] impasse panel must require the parties to  
190 submit jointly a memorandum of all items previously agreed  
191 on.

192 (2) The [mediator/arbitrator] impasse panel may require the parties  
193 to submit oral or written evidence and arguments in support of  
194 their proposals. The [mediator/arbitrator may] impasse panel  
195 must hold a hearing open to the public for this purpose at a  
196 time, date, and place selected by the [mediator/arbitrator]  
197 impasse panel. [This hearing must not be open to the public.]

198 (3) On or before February 15, the [mediator/arbitrator] impasse  
199 panel must select, as a whole, the more reasonable of the final  
200 offers submitted by the parties. The [mediator/arbitrator]  
201 impasse panel must not compromise or alter a final offer. The  
202 [mediator/arbitrator] impasse panel must not consider or receive  
203 any argument or evidence related to the history of collective  
204 bargaining in the immediate dispute, including any previous  
205 settlement offer not contained in the final offers. However, the  
206 [mediator/arbitrator] impasse panel must consider all previously  
207 agreed-on items, integrated with the disputed items, to decide  
208 which offer is the most reasonable.

209 (4) In making a determination under this subsection, the  
210 [mediator/arbitrator] impasse panel must first [evaluate and give  
211 the highest priority to] determine the ability of the County to [pay

212 for additional] afford any short-term and long-term expenditures  
 213 [by considering] required by the final offers:

214 (A) [the limits on the County's ability to raise taxes under State  
 215 law and the County Charter] assuming no increase in any  
 216 existing tax rate or the adoption of any new tax;

217 (B) [the added burden on County taxpayers, if any, resulting  
 218 from increases in revenues needed to fund a final offer]  
 219 assuming no increase in revenue from an ad valorem tax  
 220 on real property above the limit in County Charter Section  
 221 305; and

222 (C) considering the County's ability to continue to provide the  
 223 current [standard] level of all public services.

224 (5) [After evaluating the ability of the County to pay] If the impasse  
 225 panel finds that under paragraph (4) the County can afford both  
 226 final offers, the [mediator/arbitrator] impasse panel [may only]  
 227 must consider:

228 (A) the interest and welfare of County taxpayers and service  
 229 recipients;

230 (B) past collective bargaining agreements between the  
 231 parties, including the past bargaining history that led to  
 232 each agreement;

233 (C) a comparison of wages, hours, benefits, and conditions of  
 234 employment of similar employees of other public  
 235 employers in the Washington Metropolitan Area and in  
 236 Maryland;

237 (D) a comparison of wages, hours, benefits, and conditions of  
238 employment of other Montgomery County employees;  
239 and

240 (E) wages, benefits, hours, and other working conditions of  
241 similar employees of private employers in Montgomery  
242 County.

243 (6) The offer selected by the [mediator/arbitrator] impasse panel,  
244 integrated with all previously agreed on items, is the final  
245 agreement between the employer and the certified  
246 representative, need not be ratified by any party, and has the  
247 effect of a contract ratified by the parties under subsection (c).  
248 The parties must execute the agreement, and any provision  
249 which requires action in the County budget must be included in  
250 the budget which the employer submits to the County Council.

251 \* \* \*

252 **33-153. Bargaining, impasse, and legislative procedures.**

253 \* \* \*

254 (g) If the impasse neutral, in the impasse neutral's sole discretion, finds that  
255 the parties are at a bona fide impasse, the impasse neutral must refer the  
256 dispute to an impasse panel selected under Section 33-103A. The  
257 impasse panel must require the parties to jointly submit all items  
258 previously agreed on, and each party to submit a final offer consisting of  
259 proposals not agreed upon. Neither party may change any proposal after  
260 it is submitted to the impasse [neutral] panel as a final offer, except to  
261 withdraw a proposal on which the parties have agreed.

262 (h) The impasse [neutral] panel may require the parties to submit  
263 evidence or present oral or written arguments in support of their

264 proposals. The impasse [neutral may] panel must hold a hearing open  
 265 to the public at a time, date, and place selected by the impasse  
 266 [neutral] panel. [The hearing must not be open to the public.]

267 (i) On or before February 1, unless that date is extended by written  
 268 agreement of the parties, the impasse [neutral] panel must select the  
 269 final offer that, as a whole, the impasse [neutral] panel judges to be  
 270 the more reasonable.

271 (1) In determining which final offer is the more reasonable, the  
 272 impasse [neutral] panel must first [evaluate and give the highest  
 273 priority to] determine the ability of the County to [pay for  
 274 additional] afford any short-term and long-term expenditures [by  
 275 considering] required by the final offers:

276 (A) [the limits on the County’s ability to raise taxes under State  
 277 law and the County Charter] assuming no increase in any  
 278 existing tax rate or the adoption of any new tax;

279 (B) [the added burden on County taxpayers, if any, resulting  
 280 from increases in revenues needed to fund a final offer]  
 281 assuming no increase in revenue from an ad valorem tax  
 282 on real property above the limit in county charter Section  
 283 305; and

284 (C) considering the County’s ability to continue to provide the  
 285 current [standard] level of all public services.

286 (2) [After evaluating the ability of the County to pay] If the impasse  
 287 neutral finds under paragraph (1) that the County can afford both  
 288 final offers, the impasse [neutral] panel [may only] must  
 289 consider:

- 290 (A) the interest and welfare of County taxpayers and service
- 291 recipients;
- 292 (B) past collective bargaining agreements between the
- 293 parties, including the past bargaining history that led to
- 294 each agreement;
- 295 (C) wages, hours, benefits and conditions of employment of
- 296 similar employees of other public employers in the
- 297 Washington Metropolitan Area and in Maryland;
- 298 (D) wages, hours, benefits, and conditions of employment of
- 299 other Montgomery County employees; and
- 300 (E) wages, benefits, hours, and other working conditions of
- 301 similar employees of private employers in Montgomery
- 302 County.

303 (j) The impasse [neutral] panel must base the selection of the most

304 reasonable offer on the contents of the offer and the integration of any

305 previously agreed-on items with the disputed items. In making a

306 decision, the impasse [neutral] panel must not consider or receive any

307 evidence or argument concerning offers of settlement not contained in

308 the offers submitted to the impasse [neutral] panel, or any other

309 information concerning the collective bargaining leading to impasse.

310 The impasse [neutral] panel must neither compromise nor alter the

311 final offer that [he or she selects] they select.

312 (k) The final offer selected by the impasse [neutral] panel, integrated with

313 any items previously agreed on, is the final agreement between the

314 parties, need not be ratified by any party, and has the force and effect

315 of an agreement voluntarily entered into and ratified under subsection  
 316 (c). The parties must execute that agreement.

317 \* \* \*

318 **Sec. 2. Section 33-103A is added as follows:**

319 **33-103A. Impasse Panel.**

320 (a) Purpose. An impasse panel may conduct a hearing and resolve an  
 321 impasse in collective bargaining between a certified employee  
 322 representative and the employer under Sections 33-81, 33-108, and 33-  
 323 153.

324 (b) Neutral member. The Council must appoint 5 neutral impasse panel  
 325 members for staggered 3-year terms. To implement the staggered  
 326 terms, the Council must appoint the first and second members to a 3-  
 327 year term, the third member to a one-year term, and the fourth and fifth  
 328 members to a 2-year term. After these initial appointments, the Council  
 329 must appoint all members to 3-year terms, except for any member  
 330 appointed to fill a vacancy. If a vacancy is created by a neutral  
 331 member's death, disability, resignation, non-performance of duty, or  
 332 other cause, the Council must appoint a neutral member to complete the  
 333 member's term. Each neutral member must be a resident of the County  
 334 experienced in conducting an adjudicatory hearing.

335 (c) Composition. An impasse panel contains 3 members. One member  
 336 must be selected by the certified employee representative involved in  
 337 the impasse. One member must be selected by the employer. The  
 338 employee representative member and the employer representative  
 339 member may jointly select the neutral member. If they are unable to  
 340 agree, they must select a neutral member from the 5 neutral impasse  
 341 members appointed by the Council by alternating strikes with the

342 employee representative making the first strike until only 1 neutral  
343 member remains.

344 (d) Term. An impasse panel selected under subsection (c) serves until the  
345 Council takes final action on the collective bargaining agreement at  
346 impasse.

347 (e) Procedure. The neutral member is the panel chair and must preside at  
348 any hearing. A majority of the impasse panel must vote for a decision  
349 resolving an impasse.

350 (f) Compensation. The employer and the certified representative must pay  
351 any fees and expenses for their own representative. Fees and expenses  
352 of the neutral member must be shared equally by the employer and the  
353 certified representative.

354  
355 *Approved:*

356  
\_\_\_\_\_  
Valerie Ervin, President, County Council

\_\_\_\_\_  
Date

357 *Approved:*

358  
\_\_\_\_\_  
Isiah Leggett, County Executive

\_\_\_\_\_  
Date

359 *This is a correct copy of Council action.*

360  
\_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

\_\_\_\_\_  
Date

## LEGISLATIVE REQUEST REPORT

Bill 20-11

### *Personnel – Collective Bargaining – Public Accountability – Impasse Arbitration*

**DESCRIPTION:** Bill 20-11 would establish an interest arbitration panel to resolve an impasse, require an impasse arbitration hearing to be open to the public, and modify the criteria for the impasse panel to apply.

**PROBLEM:** The Organizational Reform Commission recommended these changes to the County collective bargaining laws.

**GOALS AND OBJECTIVES:** To increase public accountability in the impasse arbitration process.

**COORDINATION:** County Executive, County Attorney, Human Resources

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Organizational Reform Commission Report.  
Robert H. Drummer, Senior Legislative Attorney

**APPLICATION WITHIN MUNICIPALITIES:** Not applicable.

**PENALTIES:** None.

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