Agenda Item 13
July 12, 2016
Public Hearing

MEMORANDUM

July 8, 2016

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Expedited Bill 24-16, Collective Bargaining – Impasse Procedures - Amendments

Expedited Bill 24-16, Collective Bargaining – Impasse Procedures - Amendments, sponsored by Lead Sponsor Council President Floreen and Co-Sponsor Councilmember Rice, was introduced on June 21, 2016. A Government Operations and Fiscal Policy Committee worksession will be scheduled at a later date.

Background

The County enacted 3 separate collective bargaining laws at different times. The first law enacted was the Police Labor Relations Law. The law governing general County employees was enacted second, and the law governing fire and rescue employees was enacted last. The amendments would make similar changes in each law. The lead sponsor, Council President Floreen, explained these changes in a June 14 memorandum at ©28-30. The goal of this Bill is to create a system that encourages the Executive and the union to negotiate sustainable collective bargaining agreements that can be approved by the Council without resorting to interest arbitration. Bill 24-16 would amend these laws in the following 6 areas:

1. **Transparency** – The Bill would:

   (a) require public disclosure of each party's initial bargaining position on all provisions; and
   (b) require that any evidentiary hearing before the arbitration panel be open to the public.

   The purpose of these amendments is to make the collective bargaining process, which results in wages and benefits that consume the overwhelming majority of the County operating budget, more open to the public.

2. **Time for negotiation** – The Bill would give the union and the Executive an extra 2 weeks by requiring negotiations to begin on October 15 instead of November 1.

3. **Employer rights** – Employer or management rights are those topics that are not subject to collective bargaining. The Police Labor Relations Law contains 10 listed

employer rights. Each of the other 2 collective bargaining laws has 19 employer rights. The Bill would make the list the same in each law by adding the additional 9 employer rights to the Police Labor Relations Law. In addition, the Bill would clarify that any subject that is not expressly identified as a mandatory subject of bargaining is not subject to bargaining as an employer right.

4. **Selection of Labor Relations Administrator (LRA)** – The LRA (or umpire under the Police Labor Relations Law) serves as a public official responsible for deciding if either the Executive or the union has violated the collective bargaining law. The LRA conducts evidentiary hearings and issues decisions that are subject to appeal on the record in the Circuit Court as a decision of an administrative agency. Although the LRA is appointed by the Executive for a 5-year term of office, subject to Council confirmation, each law gives the union certain rights to help select this public official. The union representing police officers has the right to veto the re-appointment of the LRA. Under the other 2 laws, the Executive must appoint the LRA from a list that is agreed upon by the Chief Administrative Officer and the union. The Bill would repeal the right of the union to help choose the LRA and leave it to the elected Executive and Councilmembers in the same manner that other County public officials are appointed. The Bill would also change the qualifications for the LRA from a person with experience as a neutral party in labor relations to a person who is experienced conducting adjudicatory hearings, such as a retired judge. Due in part to Maryland's mandatory retirement policy for its judges, many retired judges with a wealth of experience in deciding cases based upon the evidence and the relevant law continue to work as mediators and arbitrators.

5. **Mediation** – Each law requires one person to serve as both the mediator and the arbitrator. While this "med-arb" is efficient because the arbitrator is already familiar with the disputed issues before the arbitration hearing, it does not permit the mediator to serve the traditional role of a mediator. A traditional mediator has no power to impose a solution to the parties. The parties are then free to confide both the strengths and weaknesses in their positions in private with the mediator. The parties are generally reluctant to do this with a mediator who is also serving as the arbitrator who can impose a final decision on the parties.

6. **Arbitration** – Each law provides for final offer by package arbitration before a single neutral labor arbitrator who also served as the mediator. Under final offer by package, each party must submit a final offer on each disputed item to the arbitrator. The arbitrator must select the complete final offer package submitted by one of the parties without compromise. The result is a clear winner and loser. The Bill would make 2 changes to this process:

   (a) The Bill would create a 3-person arbitration panel. The Executive would select 1 member, the union would select 1 member, and the parties would jointly agree on a 3rd neutral member, who must be a retired judge. If the parties were unable to agree, they would be required to select a retired judge from a panel of 5 pre-selected by the Council by alternate strikes with the union going first.

(b) The Bill would also amend the criteria for the arbitration panel to consider in making its decision. In 2010, the Council enacted Bill 57-10, which required the arbitrator to consider first the ability of the County to pay for a party's offer before looking at traditional comparisons. The County Attorney's Office suggested amendments to strengthen these criteria which were not enacted by the Council in 2010. Bill 24-16 would amend the criteria for the arbitration panel to consider consistent with the County Attorney's suggested language in 2010.

Montgomery County Organizational Reform Commission

The Council established the Montgomery County Organizational Reform Commission (ORC) on May 18, 2010 by Resolution No. 16-1350. The Council appointed 8 members in Resolution No. 16-1434 on July 20, 2010. See ©33-34. The ORC was charged with making recommendations for potential reorganization or consolidation of functions performed by County government and County-funded agencies. The ORC issued its final report to the Council and Executive on January 31, 2011. One of the issues studied by the ORC was the County collective bargaining process. The ORC recommendations on collective bargaining are at ©35-45.

The ORC recommended:

(1) Increasing the public's ability to participate in the collective bargaining process by publishing the opening proposals from each side, opening up the evidentiary hearing before the impasse arbitration panel, and holding a public hearing on the agreement before Council action;

(2) eliminating the Executive's obligation to conduct "effects bargaining" with the police union;

(3) requiring the impasse arbitrator to assume no increase in taxes when determining the affordability of a union proposal; and

(4) establish a 3-person arbitration panel to resolve an impasse in bargaining consisting of a management representative, a union representative, and a 3rd neutral arbitrator agreed upon by the other 2 members or, if no agreement, selected from a panel of public members previously appointed by the Council.

The Council President introduced Bill 19-11, Personnel – Collective Bargaining – Public Access, and Bill 20-11, Personnel – Collective Bargaining – Public Accountability – Impasse Arbitration, to implement these recommendations on June 14, 2011. The Council did not enact either Bill. The Council President also introduced Bill 18-11, Police Labor Relations – Duty to Bargain, to eliminate "effects bargaining" for the police union. Bill 18-11 was enacted by the Council on July 19, 2011.[1]

[1] The Fraternal Order of Police petitioned Bill 18-11 to referendum. The County voters approved Bill 18-11 in the November 2012 election.

Bill 9-13

Bill 9-13, Collective Bargaining – Impasse – Arbitration Panel, sponsored by Councilmember Andrews, was introduced on March 19. Bill 9-13 would have separated the role of mediator and arbitrator. The Bill would also have established an arbitration panel consisting of 3 voting neutral public members, 1 non-voting union representative, and 1 non-voting employer representative. The non-voting members would have been selected by the parties. The Council would have recommended 3 public members and 2 alternate public members. The Executive would have appointed, subject to Council confirmation, each of the 5 public members to a three-year term. Each public member would have been a County resident knowledgeable in fiscal matters who is unaffiliated with federal, State, or local management or labor unions. A majority of the 3 public members on the arbitration panel would have had to vote for a decision resolving an impasse.

The Council held a public hearing on Bill 9-13 and referred it to the Government Operations and Fiscal Policy (GO) Committee for a recommendation. The GO Committee considered the Bill at a worksession on June 24, 2013. The GO Committee recommended disapproval of the Bill and agreed to send a request to the Executive for his recommendations on how to improve the interest arbitration process. A copy of the GO Committee request to the Executive is at ©46. The Executive never responded. Bill 9-13 was not enacted.

Other Jurisdictions

Many States have enacted comprehensive collective bargaining laws covering all State and local government employees. Maryland has enacted a comprehensive collective bargaining law for public school employees and for State employees, but leaves the regulation of collective bargaining with County and municipal employees up to the local legislative body. However, it may be useful to compare the amendments in Bill 24-16 with some of the State and local laws governing collective bargaining with State and local government employees.

a. **Transparency** – Alaska and Iowa have enacted laws making the opening proposals from each side in collective bargaining open to the public. See Alaska Stat. §23.40.235 and Iowa Code Ann. §20.17(3). Alaska law also makes a party's last-best-offer a public document. Florida, Kansas, Minnesota, Montana, Tennessee and Texas require all bargaining sessions to be open to the public. *Bill 24-16 would not require any bargaining sessions to be open to the public.*

   Bill 24-16 would also require the arbitration hearing to be open to the public. Prince George's County Code §13A-111.01 similarly requires an open hearing. The District of Columbia Code similarly requires a fact-finding hearing to resolve an impasse in bargaining to be open to the public. See D.C. Code §1-617.12.

b. **Selection of the Labor Relations Administrator or Permanent Umpire (LRA)** Comprehensive State public sector collective bargaining laws usually create an independent agency, often called the Public Employee Relations Board (PERB) to administer the law and resolve disputes. Each County collective bargaining law creates the LRA position to perform these duties. Bill 24-16 would provide that the LRA is appointed by the Executive, subject to confirmation by the Council.

This is consistent with Section 215 of the County Charter which requires the Executive to "appoint, subject to confirmation of the Council, all members of boards and commissions unless otherwise prescribed by state law or this Charter."

The appointment of the LRA by the Executive without a formal role for labor unions[2] in the appointment process is not unique in surrounding states. PERB members are appointed by the Governor, subject to confirmation by the Legislature in New York, Pennsylvania, Delaware, Connecticut, and the District of Columbia. The members of the Federal Labor Relations Authority, created by Congress to administer the collective bargaining law for Federal employees are appointed by the President with the advice and consent of the Senate.

Maryland created the Public School Labor Relations Board to administer the State law governing collective bargaining with school employees. Although all 5 members of the board are appointed by the Governor with the advice and consent of the Senate, 2 members must be appointed from a list of candidates submitted by a union and 2 members must be appointed from a list of candidates submitted by an organization of school boards or school superintendents. However, the 5th member must represent the public and is appointed by the Governor with the advice and consent of the Senate without involvement of union or management. See Md. Education Code §6-803. The State Labor Relations Board created to administer the collective bargaining law governing Maryland State employees has a similar composition. See Md. State Personnel and Pensions Code §3-202.

c. **Separating Mediation and Arbitration** – Each of the current County laws employs same person med-arb where one person is selected to both mediate and arbitrate the dispute if mediation is unsuccessful. Under the National Labor Relations Act covering private sector employees, collective bargaining impasses are resolved through mediation and, if unsuccessful, economic force – either by strikes or lockouts. Mediation is offered by the Federal Mediation and Conciliation Service (FMCS). FMCS mediators have no authority to impose a settlement. In Maryland, the law governing school employees requires a separate mediator to resolve an impasse. If mediation is unsuccessful, arbitration is held before the Public School Labor Relations Board. See Md. Education Code §6-408. The State law governing Maryland State employees requires the parties to submit an impasse to fact-finding by a neutral mediator who has no authority to impose a resolution. If either party objects to the recommendations of the fact-finder, the recommendations are submitted to the Governor, the union, and the General Assembly. See Md. State Personnel and Pensions Code §3-501.

Howard County provides for arbitration of an impasse in bargaining with police or fire employees. The arbitrator may try to settle the dispute, but is not a mediator. For all other Howard County employees, impasse resolution consists of mandatory non-binding fact-finding with no arbitration. See Howard County Code §§1.608 and 1.609. Baltimore County also separates the role of mediator and arbitrator. See Baltimore County Code §§4-5-404 to 4-5-407. Anne Arundel County separates the

[2] Unions would retain their ability to lobby the Executive and Council as to these appointments and attempt to influence these elected officials through the ballot box.

role of mediator and non-binding fact-finder for all non-uniformed public safety employees. Anne Arundel County provides for a separate mediator and arbitration panel for uniformed public safety employees. See Anne Arundel Code §§6-4-110 and 6-4-111. Prince George's County similarly splits the role of mediator and arbitrator. See Prince George's County Code §§13A-111 and 13A-111.01.

d. **Qualifications of an Impasse Arbitrator** – The Bill would establish a 3-person arbitration panel with a neutral chair who is a retired judge. If the parties cannot agree, they must select a retired judge from a panel appointed by the Council. The State of Maryland requires impasse arbitration before the Public School Labor Relations Board. The Board is chaired by a public member appointed by the Governor who must have "experience in labor relations." Anne Arundel, Prince George's, and Baltimore County use labor arbitrators from a list provided by AAA or the FMCS to resolve an impasse in bargaining.

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Expedited Bill No. 24-16
Concerning: Collective Bargaining – Impasse Procedures - Amendments
Revised: July 1, 2016 Draft No. 9
Introduced: June 21, 2016
Expires: December 21, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Floreen
Co-Sponsor: Councilmember Rice

AN EXPEDITED ACT to:

(1) increasing the time for collective bargaining;
(2) modifying the scope of collective bargaining;
(3) modifying the selection procedure and qualifications for labor relations administrator and permanent umpire;
(4) require public disclosure of each party's initial bargaining position on major economic provisions;
(5) separating the role of mediator and arbitrator in resolving a bargaining impasse;
(6) establishing an arbitration panel to serve as arbitrator;
(7) requiring the evidentiary hearing before the arbitration panel to be open to the public;
(8) modifying the criteria for an arbitration panel to consider; and
(9) generally amending the collective bargaining laws for County employees.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-77, 33-80, 33-81, 33-103, 33-107, 33-108, 33-149, 33-152, and 33-153

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

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

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

Sec. 1. Sections 33-77, 33-80, 33-81, 33-103, 33-107, 33-108, 33-149, 33-152, and 33-153 are amended as follows:

33-77. Permanent umpire.

(a) There is hereby created the position of permanent umpire, so as to provide for the effective implementation and administration of sections 33-79 and 33-82 of this article concerning selection, certification and decertification procedures and prohibited practices. The permanent umpire [shall] must exercise the following powers and perform the following duties and functions:

(1) Adopt regulations under method (1) of section 2A-15 of this Code, for the implementation and administration of sections 33-79 and 33-82 as are consistent with this article;

(2) Request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the permanent umpire to properly carry out his functions;

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue said certification or decertification;

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices; however, if the employer and a certified representative have negotiated a valid grievance procedure, the permanent umpire must defer to that

procedure for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this article; furthermore, the permanent umpire [shall] must defer to state procedures in those matters which are governed by the law enforcement officers bill of rights, [article 27, sections 727 et seq., Annotated Code of Maryland] MD Code, Public Safety, §§3-101 to 3-113, as amended.*

(6) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and

(7) Exercise any other powers and perform any other duties and functions as may be specified in sections 33-79 and 33-82 of this article.

(b) The [permanent umpire must be appointed by the] County Executive must appoint the permanent umpire, subject to confirmation by the County Council, [serve] for a term of 5 years. [, and] The Executive may [be reappointed to another 5-year term] reappoint an incumbent umpire. [The permanent umpire must not be reappointed if, during the period between 60 days and 30 days before the umpire's term expires, the certified representative files a written objection to the umpire's reappointment with the County Executive.]

(c) If the permanent umpire dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve, the Executive must appoint a new permanent umpire, subject to confirmation by the Council,

to serve the remainder of the previous umpire's term. The umpire appointed under this subsection may be reappointed under subsection (b).

(d) The permanent umpire must be a person with experience [as a neutral in the field of labor relations] conducting adjudicatory hearings, such as a retired judge, and must not be a person who, because of vocation, employment, or affiliation, can be categorized as a representative of the interests of the employer or any employee organization.

(e) The permanent umpire must be paid a daily fee as specified in a contract with the County, and must be reimbursed for necessary expenses incurred in performing the duties of umpire.

33-80. Collective bargaining.

* * *

(b) *Employer rights*. [This article and any agreement pursuant hereto shall not impair the right and responsibility of the employer.] All elements of the employment relationship that are not expressly identified as a mandatory subject of bargaining in subsection (a) are employer rights that are not subject to bargaining. Employer rights include the employer's right to:

(1) [To] determine the overall budget and mission of the employer and any agency of county government;

(2) [To] maintain and improve the efficiency and effectiveness of operations;

(3) [To] determine the services to be rendered and the operations to be performed;

(4) [To] determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;

(5) [To] direct or supervise employees;

(6) [To] hire, select and establish the standards governing promotion of employees and to classify positions;

(7) [To] relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;

(8) [To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement;]

[(9)] [To] take actions to carry out the mission of government in situations of emergency;

[(10)] (9) [To] transfer, assign and schedule employees[.];

(10) determine the size, grades, and composition of the work force;

(11) set the standards of productivity and technology;

(12) establish employee performance standards and evaluate employees, except that evaluation procedures shall be a subject for bargaining;

(13) make and implement systems for awarding outstanding service increments, extraordinary performance awards, and other merit awards;

(14) introduce new or improved technology, research, development, and services;

(15) control and regulate the use of machinery, equipment, and other property and facilities of the employer, subject to subsection (a)(6) of this section;

(16) maintain internal security standards;

(17) create, alter, combine, contract out, or abolish any job classification, department, operation, unit, or other division or

service, provided that no contracting of work which will displace employees may be undertaken by the employer unless ninety (90) days prior to signing the contract, or such other date of notice as agreed by parties, written notice has been given to the certified representative;

(18) suspend, discharge, or otherwise discipline employees for cause, subject to Charter section 404, any grievance procedure set forth in the collective bargaining agreement, and the Law Enforcement Officers Bill of Rights, MD Code, Public Safety, §§3-101 to 3-113, as amended; and

(19) issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this article, federal or state law, or the terms of the collective bargaining agreement.

* * *

(d) *Time limits*. Collective bargaining [shall] must commence no later than [November 1] October 15 preceding a fiscal year for which there is no contract between the employer and the certified representative and [shall] must be concluded by January 20. The employer must publish the certified representative's initial proposal on all terms and the employer's initial counter-proposal on all terms on an internet site accessible to the public within 10 days after the employer's initial counter-proposal is made. The resolution of an impasse in collective bargaining [shall] must be completed by February [1] 15. These time limits may be waived only by prior written consent of the parties.

* * *

33-81. Impasse procedure.

(a) Before September 10 of any year in which the employer and a certified representative bargain collectively, they [shall] must choose [an impasse neutral] a mediator either by agreement or through the processes of the American Arbitration Association. The [impasse neutral shall] mediator must be required to be available during the period from January 20 to February [1] 15. Fees, costs and expenses of the [impasse neutral shall] mediator must be shared equally by the employer and the certified representative.

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

(2) Whenever an impasse has been reached, the dispute [shall] must be submitted to the [impasse neutral] mediator. The [impasse neutral shall] mediator must attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

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

arbitration panel must require the parties to submit jointly a memorandum of all items previously agreed upon.

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

(5) On or before February [1] 15, the [impasse neutral] arbitration panel must select, as a whole, the more reasonable, in the [impasse neutral's] arbitration panel's judgment, of the final offers submitted by the parties.

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

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

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

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

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

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

(ii) past collective bargaining contracts between the parties, including the bargaining history that led to each contract;

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

(iv) a comparison of wages, hours, benefits, and conditions of employment of other Montgomery County employees; and

(v) wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County

(6) The [impasse neutral] arbitration panel must:

(A) not compromise or alter the final offer that [he or she] the panel selects;

(B) select an offer based on the contents of that offer;

(C) not consider or receive any evidence or argument concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the [impasse neutral] arbitration panel; and

(D) consider all previously agreed on items integrated with the specific disputed items to determine the [single] most reasonable offer.

(7) The offer selected by the [impasse neutral] arbitration panel, integrated with the previously agreed upon items, [shall] must be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and [shall] must have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(g) above. The parties [shall] must execute such agreement.

(c) An impasse over a reopener matter must be resolved under the procedures in this subsection. Any other impasse over a matter subject to collective bargaining must be resolved under the impasse procedure in subsections (a) and (b).

(1) If the parties agree in a collective bargaining agreement to bargain over an identified issue on or before a specified date, the parties must bargain under those terms. Each identified issue must be designated as a "reopener matter."

(2) When the parties initiate collective bargaining under paragraph (1), the parties must choose, by agreement or through the processes of the American Arbitration Association, [an impasse neutral] a

mediator who agrees to be available for impasse resolution within 30 days.

(3) If, after bargaining in good faith, the parties are unable to reach agreement on a reopener matter by the deadline specified in the collective bargaining agreement, either party may declare an impasse.

(4) If an impasse is declared under paragraph (3), the dispute must be submitted to [the] an [impasse neutral] arbitration panel selected pursuant to Section 33-103A no later than 10 days after impasse is declared.

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

(A) the dates in that subsection do not apply;

(B) each party must submit to the [impasse neutral] arbitration panel a final offer on only the reopener matter; and

(C) the [impasse neutral] arbitration panel must select the most reasonable of the parties' final offers no later than 10 days after the [impasse neutral] arbitration panel receives the final offers.

(6) This subsection applies only if the parties in their collective bargaining agreement have designated:

(A) the specific reopener matter to be bargained;

(B) the date by which bargaining on the reopener matter must begin; and

(C) the deadline by which bargaining on the reopener matter must be completed and after which the impasse procedure must be implemented.

33-103. Labor relations administrator.

* * *

(b) (1) The Administrator must be a person with experience [as a neutral in the field of labor relations] conducting adjudicatory hearings, such as a retired judge, and must not be a person who, because of vocation, employment, or affiliation, can be categorized as a representative of the interest of the employer or any employee organization.

(2) The County Executive must appoint, subject to confirmation by the County Council, the Administrator for a term of 5 years [from a list of 5 nominees agreed upon by any certified representative(s) and the Chief Administrative Officer]. The [list] Executive may [include] reappoint the incumbent Administrator. [If the Council does not confirm the appointment, the new appointment must be from a new agreed list of 5 nominees. If no certified representative has been selected, the Administrator must be appointed for a 4-year term by the Executive, subject to Council confirmation.]

* * *

33-107. Collective bargaining.

* * *

(c) *Employer rights.* [This article and any agreement made under it shall not impair the right and responsibility of the employer to perform] All elements of the employment relationship that are not expressly identified as a mandatory subject of bargaining in subsections (a) or (b) are employer rights that are not subject to bargaining. Employer rights include the following:

(1) Determine the overall budget and mission of the employer and any agency of county government.

(2) Maintain and improve the efficiency and effectiveness of operations.

(3) Determine the services to be rendered and the operations to be performed.

(4) Determine the overall organizational structure, methods, processes, means, job classifications, and personnel by which operations are to be conducted and the location of facilities.

(5) Direct and supervise employees.

(6) Hire, select, and establish the standards governing promotion of employees, and classify positions.

(7) Relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive.

(8) Take actions to carry out the mission of government in situations of emergency.

(9) Transfer, assign, and schedule employees.

(10) Determine the size, grades, and composition of the work force.

(11) Set the standards of productivity and technology.

(12) Establish employee performance standards and evaluate employees, except that evaluation procedures shall be a subject for bargaining.

(13) Make and implement systems for awarding outstanding service increments, extraordinary performance awards, and other merit awards.

(14) Introduce new or improved technology, research, development, and services.

(15) Control and regulate the use of machinery, equipment, and other property and facilities of the employer, subject to subsection (a)(6) of this section.

(16) Maintain internal security standards.

(17) Create, alter, combine, contract out, or abolish any job classification, department, operation, unit, or other division or service, provided that no contracting of work which will displace employees may be undertaken by the employer unless ninety (90) days prior to signing the contract, or such other date of notice as agreed by parties, written notice has been given to the certified representative.

(18) Suspend, discharge, or otherwise discipline employees for cause, except that, subject to Charter section 404, any such action may be subject to the grievance procedure set forth in the collective bargaining agreement.

(19) Issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this article, federal or state law, or the terms of the collective bargaining agreement.

* * *

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

(a) Collective bargaining must begin no later than [November 1] October 15 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and must be finished on or before February [1] 15. The employer must publish the

certified representative's initial proposal on all terms and the employer's initial counter-proposal on all terms on an internet site accessible to the public within 10 days after the employer's initial counter-proposal is made.

(b) Any provision for automatic renewal or extension of a collective bargaining agreement is void. An agreement is not valid if it extends for less than one (1) year or for more than three (3) years. All agreements take effect July 1 and end June 30.

(c) A collective bargaining agreement takes effect only after ratification by the employer and the certified representative. The certified representative may adopt its own ratification procedures.

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

(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the [mediator/arbitrator] mediator, or the parties may jointly request those services before an impasse is declared. If the parties do not reach an agreement by February 1, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) Any dispute, except a dispute involving the negotiability of a bargaining proposal, must be submitted to the [mediator/arbitrator] mediator whenever an impasse has been reached, or as provided in subsection (e)(1). The [mediator/arbitrator] mediator must engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will encourage settlement of the dispute.

(3) If the [mediator/arbitrator] mediator finds, in the [mediator/arbitrator's] mediator's sole discretion, that the parties are at a bona fide impasse, or as of February 1 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration before an arbitration panel selected under Section 33-103A.

(f) (1) If binding arbitration is invoked, the [mediator/arbitrator] arbitration panel must require each party to submit [a final offer, [which must consist either of a complete draft of a proposed collective bargaining agreement or] a complete package proposal, [as the mediator/arbitrator directs] including a final offer on each item that remains in dispute. [If only complete package proposals are required, the mediator/arbitrator] The arbitration panel must require the parties to submit jointly a memorandum of all items previously agreed on.

(2) The [mediator/arbitrator] arbitration panel may require the parties to submit oral or written evidence and arguments in support of their proposals. The [mediator/arbitrator] arbitration panel may hold a hearing for this purpose at a time, date, and place selected by the

[mediator/arbitrator] arbitration panel. This hearing must [not] be open to the public.

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

(4) In making a determination under this subsection, the [mediator/arbitrator] arbitration panel must first [evaluate and give the highest priority to] determine the ability of the County to [pay for additional] afford any short-term and long-term expenditures [by considering]:

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

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

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

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

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

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

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

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

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

(6) The offer selected by the [mediator/arbitrator] arbitration panel, integrated with all previously agreed on items, is the final agreement between the employer and the certified representative, need not be ratified by any party, and has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement, and any provision which requires action in

the County budget must be included in the budget which the employer submits to the County Council.

* * *

33-149. Labor Relations Administrator.

* * *

(b) The Administrator must be a person with experience [as a neutral in labor relations] conducting adjudicatory hearings, such as a retired judge, and must not be a person who, because of vocation, employment, or affiliation, can be categorized as a representative of the interest of the employer or any employee organization.

(c) The County Executive must appoint the Administrator, subject to confirmation by the County Council [, from a list of 5 nominees agreed on by the certified representative and the Chief Administrative Officer]. [If there is no certified representative, the Executive must appoint an Administrator, subject to confirmation by the Council. If the Council does not confirm an appointment, the Executive must appoint another person from a new agreed list of 5 nominees and submit that appointee to the Council for confirmation.] The Administrator serves a term of 5 years. [An incumbent Administrator is automatically reappointed for another 5-year term, subject to Council confirmation, unless, during the period between 60 and 30 days before the term expires, the certified representative notifies the Chief Administrative Officer or the employer notifies the certified representative that either objects to the reappointment.] The Executive may reappoint the incumbent Administrator.

* * *

33-152. Collective bargaining.

* * *

(b) *Employer rights.* [This Article and any collective bargaining agreement made under it must not impair the right and responsibility of the employer to] All elements of the employment relationship that are not expressly identified as a mandatory subject of bargaining in subsection (a) are employer rights that are not subject to bargaining. Employer rights include the right to:

(1) determine the overall budget and mission of the employer and any agency of County government;

(2) maintain and improve the efficiency and effectiveness of operations;

(3) determine the services to be rendered and the operations to be performed;

(4) determine the overall organizational structure, methods, processes, means, job classifications, and personnel by which operations are conducted, and the location of facilities;

(5) direct and supervise employees;

(6) hire, select, and establish the standards governing promotion of employees, and classify positions;

(7) relieve employees from duties because of lack of work or funds, or when the employer determines continued work would be inefficient or nonproductive;

(8) take actions to carry out the mission of government in emergency situations;

(9) transfer, assign, and schedule employees;

(10) determine the size, grades, and composition of the work force;

(11) set standards of productivity and technology;

(12) establish employee performance standards and evaluate employees, but evaluation procedures are subject to bargaining;

(13) make and implement systems for awarding outstanding service increments, extraordinary performance awards, and other merit awards;

(14) introduce new or improved technology, research, development, and services;

(15) control and regulate the use of machinery, equipment, and other property and facilities of the employer, subject to subsection (a)(6);

(16) maintain internal security standards;

(17) create, alter, combine, contract out, or abolish any job classification, department, operation, unit, or other division or service, but the employer must not contract work which will displace employees unless it gives written notice to the certified representative 90 days before signing the contract or other notice agreed by the parties;

(18) suspend, discharge, or otherwise discipline employees for cause, except that, subject to Charter Section 404, any such action may be subject to a grievance procedure included in a collective bargaining agreement; and

(19) issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this Article, federal or State law, or the terms of a collective bargaining agreement.

* * *

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

(a) Collective bargaining must begin no later than the [November 1] October 15 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and must be completed on or before [January] February 15[.], including the [The] resolution of a bargaining impasse [must be completed by February 1]. These time limits may be waived or extended by written agreement of the parties. The employer must publish the certified representative's initial proposal on all terms and the employer's initial counter-proposal on all terms on an internet site accessible to the public within 10 days after the employer's initial counter-proposal is made.

(b) Any provision for automatic renewal or extension of a collective bargaining agreement is void. An agreement is void if it extends for less than 1 year or more than 3 years. Each collective bargaining agreement must take effect July 1 and end June 30.

(c) A collective bargaining agreement takes effect only after ratification by the employer and the certified representative. The certified representative may adopt its own ratification procedures.

(d) Before September 10 of any year in which the employer and the certified representative bargain collectively, they must choose [an impasse neutral] a mediator, either by agreement or through the processes of the American Arbitration Association. The [impasse neutral] mediator must be available from January 15 to February [1] 15. The [impasse neutral's] mediator's fees and expenses must be shared equally by the employer and the certified representative.

(e) During the course of collective bargaining, either party may declare an impasse and request the services of the [impasse neutral] mediator, or the parties may jointly request those services before declaring an impasse. If

the parties have not agreed on a collective bargaining agreement by [January 15] February 1, an impasse exists by operation of law.

(f) When an impasse is reached, the parties must submit the dispute to the [impasse neutral] mediator. The [impasse neutral] mediator must attempt mediation by bringing the parties together voluntarily under conditions that will tend to bring about a settlement of the dispute.

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

(h) The [impasse neutral] arbitration panel may require the parties to submit evidence or present oral or written arguments in support of their proposals. The [impasse neutral] arbitration panel may hold a hearing at a time, date, and place selected by the [impasse neutral] arbitration panel. The hearing must [not] be open to the public.

(i) On or before February [1] 15, unless that date is extended by written agreement of the parties, the [impasse neutral] arbitration panel must select, without compromising, the final offer that, as a whole, the [impasse neutral] arbitration panel judges to be the more reasonable.

(1) In determining which final offer is the more reasonable, the [impasse neutral] arbitration panel must first [evaluate and give the highest priority to] determine the ability of the County to [pay for

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

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

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

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

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

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

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

(C) wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;

(D) wages, hours, benefits, and conditions of employment of other Montgomery County employees; and

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

(j) The [impasse neutral] arbitration panel must base the selection of the most reasonable offer on the contents of the offer and the integration of any previously agreed-on items with the disputed items. In making a decision, the [impasse neutral] arbitration panel must not consider or receive any evidence or argument concerning offers of settlement not contained in the offers submitted to the [impasse neutral] arbitration panel, or any other information concerning the collective bargaining leading to impasse. The [impasse neutral] arbitration panel must neither compromise nor alter the final offer that [he or she selects] they select.

(k) The final offer selected by the [impasse neutral] arbitration panel, integrated with any items previously agreed on, is the final agreement between the parties, need not be ratified by any party, and has the force and effect of an agreement voluntarily entered into and ratified under subsection (c). The parties must execute that agreement.

* * *

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

33-103A. Arbitration Panel.

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

(b) *Panel.* The Council must appoint 5 retired judges for a 5-year term to serve as an arbitration panel neutral member if the parties are unable to agree on a neutral member.

(c) *Composition.* An arbitration panel contains 3 members. One member must be selected by the certified employee representative involved in the impasse. One member must be selected by the employer. The employee representative member and the employer representative member may jointly select the neutral member. The neutral member must be a retired judge. If they are unable to agree, the parties must select a retired judge from a panel appointed by the Council under subsection (b) by alternate strikes with the employee representative going first. The neutral member must not be the mediator who attempted to mediate the impasse.

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

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

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

Sec. 3. Expedited Effective Date. The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

Approved:

Nancy Floreen , President, County Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 24-16
Collective Bargaining – Impasse Procedures - Amendments

DESCRIPTION:	Expedited Bill 24-16 would amend the collective bargaining laws to increase transparency, expand the time for bargaining, modify the employer rights, amend the qualifications of the Labor Relations Administrator and the selection process, and amend the process for mediation and arbitration of interest disputes.
PROBLEM:	The County collective bargaining laws have not resulted in sustainable negotiated agreements that are approved by the Council in recent years.
GOALS AND OBJECTIVES:	The goal of the Bill is to promote sustainable negotiated agreements that can be approved by the Council without resorting to arbitration.
COORDINATION:	Chief Administrative Officer, Director of Human Resources, County Attorney.
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	None.

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

NANCY FLOREEN
COUNCIL PRESIDENT

MEMORANDUM

June 14, 2016

TO: Councilmembers

FROM: Nancy Floreen, Council President

SUBJECT: Proposed Bill to amend the procedures for resolving an impasse in collective bargaining

Now that we have unanimously adopted the budget, it is a good time to review some of our collective bargaining laws. Although we have separate collective bargaining laws for police, fire, and general County employees, the procedures for resolving a collective bargaining impasse are almost identical in each law. I plan to introduce the attached Bill to make several important changes to the impasse procedures in each collective bargaining law. The Bill would make changes in the system in 6 important areas – changes that would make the system work better for employees, government operations, and taxpayers alike.

Transparency

The entire collective bargaining process is currently handled out of the public eye. Negotiations are private, and the evidentiary hearing before the arbitrator is held in private. As the County government moves to more transparency, I believe it is time to open up a collective bargaining process that results in decisions on wages and benefits that consume the overwhelming majority of our operating budget. The Bill would:

1. require public disclosure of each party's initial bargaining position on all provisions; and
2. require that any evidentiary hearing before the arbitration panel be open to the public.

Time for Negotiation

Although negotiations must end in time for the Council to review the final agreements before adopting the operating budget, we can provide additional time by requiring negotiations to begin before November 1. The Bill would give the union and the Executive an extra 2 weeks by requiring negotiations to begin on October 15.

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Employer Rights

Each of the collective bargaining laws contains a list of employer rights that cannot be "impaired" by a collective bargaining agreement. The Police Labor Relations Act contains 10 employer rights. Both the law governing general County employees and the law governing fire employees have the same 19 employer rights. The Bill would make the list of employer rights for police employees consistent with the other 2 bargaining laws that were enacted more recently. In addition, the Labor Relations Administrators have minimized these employer rights over the years by narrowly interpreting the language in each law that prohibits bargaining from "impairing" these rights and consequently expanding the scope of collective bargaining. The Bill would also clarify that bargaining is limited to the subjects listed in the law as subject to bargaining and strengthens the application of employer rights.

Selection of Labor Relations Administrator

Each collective bargaining law requires the Executive to appoint a labor relations administrator or permanent umpire (LRA) for a 5-year term of office, subject to Council confirmation. Each LRA holds a quasi-judicial office in County government and is responsible for resolving disputes between the employer and the union by conducting adjudicatory hearings. The LRA resolves questions concerning a bargaining unit, representation elections, the scope of collective bargaining, and prohibited practice charges. The LRA serves the function performed by the National Labor Relations Board for the private sector. Each current law requires the LRA to be experienced as a neutral in the field of labor relations. In practice, the LRA is normally chosen from the universe of professional labor arbitrators who often work as grievance arbitrators in the field of labor relations. The Bill would require the LRA to be experienced in conducting adjudicatory hearings, such as a retired judge. Due in part to Maryland's mandatory retirement policy for its judges, many retired judges continue to work as mediators and arbitrators. Many have a wealth of experience and excellent reputations for issuing well-reasoned decisions in many areas of the law. In addition, the Bill would repeal the right of a union to veto the re-appointment by the Executive of the LRA. The Executive and the Council are the elected representatives who are charged with appointing County officials.

Mediation

Each of the current collective bargaining laws requires one neutral person to serve as both the mediator and the arbitrator. This is known as med-arb. The advantage of med-arb is that the mediator-arbitrator is already familiar with the issues and the respective positions of the parties before the arbitration hearing begins. However, this procedure subverts the traditional role of the mediator by giving the mediator too much authority to impose his or her own will on the parties. The parties may be reluctant to speak freely in front of a mediator who will ultimately serve as the judge or arbitrator. The negotiators for each party are discouraged from revealing to the mediator-arbitrator the full extent of their authority. A traditional mediator has no power to impose a final decision on either party, and can therefore provide better feedback to each party in separate meetings and encourage a negotiated settlement rather than force one. The Bill would separate the role of mediator and arbitrator.

Arbitration

Under current law, the arbitration is held before one person who previously served as the mediator. Each party submits a final package that includes a final offer on each item still in dispute along with all of the items that have been previously agreed upon. The arbitrator is required to select either the Executive's final package or the union's final package. This is known as final offer by package arbitration. The system is designed to discourage each party from submitting a final offer on any item that is unreasonable in order to avoid losing the entire package. It results in a clear winner and loser in each arbitration and is designed to discourage the parties from going to arbitration. Although the Executive has reached negotiated agreements with each union without arbitration in the last several years, the Executive has explained his agreements, in part, by opining that an arbitration decision would result in a worse outcome. In fact, the union has won 16 of the 20 arbitration decisions under this system since 1988. Although there are many possible explanations for these results other than the "system," I believe it is time to try a different approach. The Bill would make 2 changes in this area.

3-Person Arbitration Panel

The Bill would create a 3-person arbitration panel that includes 1 member appointed by the Executive, 1 member appointed by the union, and a neutral 3rd member. The neutral 3rd member would be a retired judge. The management member and the union member would agree on the neutral member. If they were unable to agree, the person would be selected from a panel of retired judges selected by the Council. This would ensure that the perspectives of each party would be considered in the panel's deliberations.

The criteria for the arbitration panel to consider

In December 2010, the Council enacted Bill 57-10, which modified the criteria for the arbitrator to consider by requiring the arbitrator to consider first the ability of the County to afford a proposed economic provision. The Bill would better define the first factors for the arbitration panel to consider by adopting amendments to Bill 57-10 that were recommended by the County Attorney's Office in 2010, but not adopted by the Council. The Bill would require the arbitration panel to first consider affordability before applying the traditional factors with the following language:

> *The arbitration panel must first determine the ability of the County to afford any short-term and long-term expenditures required by a final offer:*
> *(i) assuming no increase in any existing tax rate or the adoption of any new tax;*
> *(ii) assuming no increase in revenue from an ad valorem tax on real property above the limit in County Charter Section 305; and*
> *(iii) considering the County's ability to continue to provide the current level of all public services.*

I would welcome your support for this Bill.

OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Shawn Stokes, Director
Office of Human Resources

FROM: Edward B. Lattner, Chief EBL
Division of Government Operations

DATE: June 29, 2016

RE: **Bill 24-16E, Collective Bargaining Impasse Procedures - Amendments**

Bill 24-16E would accomplish the following:

- Increase transparency in certain aspects of the collective bargaining process;
- Extend by two weeks the time available to the parties for collective bargaining;
- Make the list of employer, or "management," rights the same in all three collective bargaining laws and clarify that any subject not expressly identified as a mandatory subject of bargaining is an employer right, which is not subject to bargaining;
- Repeal the union's role in the County Executive's appointment of Labor Relations Administrators (referred to as the Permanent Umpire in the police collective bargaining law) and change the qualifications of the LRA from a person with experience as a neutral party in labor relations to a person who is experienced conducting adjudicatory hearings, such as a retired judge;
- Separate the role of the mediator/arbitrator into two separate roles—one person will serve as the mediator and another person will serve as an impasse arbitrator;
- Make the impasse arbitrator a member of a three-person impasse arbitration panel, with each party selecting one member and the parties selecting a retired judge as the "neutral" impasse arbitrator; and

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- Amending the criteria for the impasse arbitration panel to consider in selecting one of the parties' last best final offer.

Robert Drummer provided a more detailed summary of Bill 24-16E in his introduction packet.

The Bill is legally sufficient.

If you have any concerns or questions concerning this memorandum please call me.

ebl

cc: Robert H. Drummer, Senior Legislative Attorney
Bonnie Kirkland, Assistant CAO
Marc P. Hansen, County Attorney
Silvia Kinch, Chief, Division of Human Resources, OCA

16-004023
Bill 24-16E OCA review

Resolution No.: 16-1434
Introduced: July 20, 2010
Adopted: July 20, 2010

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Floreen and Councilmembers Berliner and Trachtenberg

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SUBJECT: Appointments to the Montgomery County Organizational Reform Commission

Background

1. Resolution No. 16-1350 adopted on May 18, 2010, established the Montgomery County Organizational Reform Commission to make recommendations for potential reorganization or consolidation of functions performed by County government and County-funded agencies.

2. The Commission must solicit suggestions for potential reorganization or consolidation of functions performed by County government and County-funded agencies from: elected officials; County residents; business and community leaders; County and agency employees; bargaining unit representatives; and other stakeholders.

3. The Commission must draft and adopt written criteria to evaluate which suggestions merit further consideration by the Commission. The criteria must include: a minimum level of potential cost savings (for example, $1 million per year); a standard for ease of implementation; and a measure of acceptable service level impact.

4. No later than September 30, 2010, the Commission must submit a status report of its progress to the Council and the Executive outlining its progress to date and its work plan through January 31, 2011. Executive staff and Council staff must provide support to the Commission.

5. The Commission must submit its final report to the Executive and Council no later than January 31, 2011. The report must contain the Commission's recommendations to reorganize or consolidate functions performed by County government or County-funded agencies. For each recommendation for reorganization or consolidation, the Commission's report must include the rationale and estimated cost savings associated with implementing the recommendation. Any organizational proposal for County government in the Commission report must take the form of a reorganization plan that the Executive could submit to the Council under Charter §217.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

1. The following individuals are hereby appointed to Montgomery County Organizational Reform Commission by the County Council:

   Members
   1. Scott Fosler
   2. Daniel Hoffman
   3. Vernon H. Ricks, Jr.
   4. Len Simon

2. The following individuals are hereby appointed to Montgomery County Organizational Reform Commission by the County Executive:

   Members
   5. M. Cristina Echavarren
   6. Joan Fidler
   7. Susan Heltemes
   8. Richard Wegman, Co-Chair

3. The following individuals are hereby designated as Co-Chairs to the Commission:

   1. Mr. Vernon H. Ricks, Jr is designated Co-Chair by the County Council.
   2. Mr. Richard Wegman designated Co-Chair by the County Executive.

This is a correct copy of Council action.

Linda M. Lauer

Linda M. Lauer, Clerk of the Council

Collective Bargaining

Statement of the Issue

The Council's Office of Legislative Oversight (OLO) recently released a comprehensive report on the County's tax-supported revenue and expenditure trends over the past 10 years, as well as those projected for the next six years.[4] OLO concluded that the County has a "structural budget gap," indicating that as currently projected, future spending would exceed expected revenue generation on a "persistent and recurring basis."

The historical increase in personnel cost is described in detail in OLO Report 2011-2. According to the report, a 10-year comparison of personnel cost versus the number of workyears indicates that the primary driver behind the increased cost is a higher average cost per employee, rather than a larger workforce. Employee compensation and benefits currently account for 82% of the County's total tax-supported spending. According to the OLO report, from FY02 to FY11, the County's tax-supported spending – excluding debt service – increased 59%, from $2.1 billion to $3.4 billion.[5] During this same 10-year period, inflation was 29%, the County's population grew 12%, and median household income increased 21%.

Personnel costs for the County government, MCPS, Montgomery College, M-NCPPC and HOC are largely determined by collective bargaining with employee unions. With unions representing the large majority of employees from these County tax-supported agencies, collective bargaining is one of the most important government processes. For this reason, we explored the possibility of making changes to the collective bargaining system.

The ORC was faced with a limited duration and limited resources to evaluate all processes that might merit analysis. We are aware that many of these should be addressed in the future. However, we chose collective bargaining because of the enormous impact collective bargaining agreements have on the County's fiscal situation. The ORC encourages the Council to continue to seek savings and efficiencies by reviewing these other processes. Please see Appendix II at the end of this report, indicating some issues that we would suggest be considered for future review.

Discussion of the Issue and Recommendations

The ORC's review of the collective bargaining system was governed by a desire to create a more equitable balance between the needs of County tax-supported employees and the needs of County residents. Over the past two years, due to the severity of the budget crisis, the Council has rejected some of the economic provisions in negotiated collective bargaining agreements with each County employee union. In FY11, the Council modified the furlough proposed by the Executive and adopted a budget that included a progressive furlough for all County Government employees. These "take-backs" inevitably lower employee morale over

[4] OLO Report 2011-2, *Achieving a Structurally Balanced Budget in Montgomery County (Parts I and II)*, is available on the Internet at: http://www.montgomerycountymd.gov/content/council/olo/reports/pdf/2011-2.pdf.
[5] OLO, Part I, pg 2

time. We believe that a collective bargaining system that results in more affordable contracts, without the need for last-minute take-backs, will ultimately lead to a more stable system and higher employee morale. County services can also be enhanced through more affordable labor contracts.

We did not limit our review to recommendations that can be implemented with little difficulty. Some recommendations can be implemented by the Executive without a change in current law. Some recommendations would require the enactment of legislation by the Council. Finally, some recommendations would require amendments to State law. Although we understand that changes to State law (such as the State Maintenance of Effort law, pertaining to public school funding) often require the consensus of elected officials – from lawmakers both within and outside Montgomery County – the County's growing structural budget gap requires that we consider all possible solutions.

Summary of Collective Bargaining Recommendations[6]

- ***We recommend an increase in the public's ability to participate in collective bargaining negotiations by:***

  1) Publishing the opening negotiating proposals from both the County and each County employee union;

  2) Requiring an evidentiary hearing before the arbitrator to be open to the public; and

  3) Requiring the Council to hold a public hearing on the terms of the negotiated agreement before taking action on it.

- ***We also recommend eliminating the Executive's obligation to conduct "effects bargaining" with the union representing police officers, thereby making the scope of bargaining consistent under each collective bargaining law.***

  The resolution of bargaining impasses through arbitration greatly affects the collective bargaining process. We support the Council's recent enactment of Expedited Bill 57-10, Personnel – Collective Bargaining – Impasse Procedures on December 14, 2010, which will require the arbitrator to evaluate and give the highest priority to the County's ability to pay for the final offers before considering a comparison of wages and benefits for other public employees. The Council's Government Operations and Fiscal Policy (GO) Committee recommended approval of the bill with an amendment on December 7, 2010.

- ***Although the bill was later enacted by the Council without this amendment, we recommend that the Council reconsider this amendment that would require the arbitrator to assume no increase in taxes when determining the affordability of the final offers.***

[6] **Reservation of Commissioner Dan Hoffman:** I abstained from approval of this recommendation on the basis that the changes being recommended were beyond the scope outlined by the resolution creating the ORC. The abstention was not due to the merits of the recommendation.

- ***We also recommend changing the method of selecting the arbitrator to enhance the accountability of the arbitrator to the taxpayers.*** We recommend a three-person panel, with each party selecting one arbitrator and the third neutral arbitrator selected by the parties from a list of persons appointed by the Council to four-year terms.

Public Accountability in Collective Bargaining

Collective bargaining sessions with County government employee unions are held in meetings closed to the public. The proposals and counter-proposals made by each side are never made public. If the parties reach impasse and invoke interest arbitration, the evidentiary hearing conducted by the arbitrator must be closed to the public. The terms of a negotiated agreement or an arbitrator's award are not made public until they are sent to the Council for approval. The intent of this confidentiality is to encourage the parties to speak freely without fear of their statements being used against them. Attendance at negotiating sessions by members of the public and the news media could inhibit the free and open discussion necessary to resolve disputes. However, open meetings could also inhibit the parties from making unrealistic demands and statements.

Collective bargaining in open meetings has been tried in Maryland. In 1981, the Carroll County Board of Education adopted a resolution that all collective bargaining meetings with the union representing public school teachers would be conducted in public. The union challenged the Board's resolution in Court, alleging that it was a failure to bargain in good faith. Despite the authority to conduct closed meetings to discuss collective bargaining in the Maryland Open Meetings Law, the Court of Appeals held that the Board could insist on open meetings without violating the duty to bargain in good faith. See *Carroll County Education Association, Inc. v. Board of Education of Carroll County,* 294 Md. 144 (1982).

More recently, Washington County Public Schools required the school unions to participate in open collective bargaining sessions in 2006. The parties eventually agreed to ground rules for open bargaining that provide for a closed session at the beginning of each meeting to explore new ideas, followed by an open meeting. All proposals and counter-proposals were made public in the open meeting.

We do not believe that all collective bargaining sessions should be open to the public. The parties must be able to speak freely without fear of each statement being published in the news media in order to negotiate in good faith. However, the current system eliminates almost all public input into the collective bargaining process.

- ***We recommend a modest increase in public accountability that would continue to permit the parties to speak freely during negotiations.***

  Specifically, we recommend that:

  1. The initial proposals and counter-proposals in collective bargaining negotiations from both parties should be publicly posted on the County's website for public comment. The negotiated collective bargaining ground rules with each County employee union should contain a final date for each party to submit all of their proposals for bargaining. We recommend posting the positions of each party, as

of that date. *This could be done by the Executive without changing current law or, alternatively, by the Council amending County law.*[7]

2. The Council should conduct a public hearing on all collective bargaining agreements before the Council's annual budget hearings. In order to accommodate this additional public hearing, we recommend that the statutory time periods for declaring impasse and completing arbitration be moved back by two weeks. *The Council would have to amend current law to change these dates. The Council has the current authority to hold a public hearing on collective bargaining agreements, but there is often not enough time to do this.*

The following chart shows the current statutory dates and our recommended new dates:

Bargaining Law	Current Impasse Date	Current Arbitration Date	New Impasse	New Arbitration Date
Police	January 20	February 1	January 6	January 18
General County Employees	February 1	February 15	January 15	February 1
Fire and Rescue	January 15	February 1	January 2	January 17

The evidentiary hearing before the arbitrator should be open to members of the public and news media. An open meeting would increase the ability of the public to provide useful comment on the decision at a public hearing before the Council. *This would require a change in County law.*

The Commission believes that it would make equal sense to provide for greater public input in the collective bargaining process with union employees of MCPS, Montgomery College, and the Maryland-National Capital Park and Planning Commission. However, these processes are governed by state law. We would support changes to state law that parallel the

[7] **Reservation of Commissioner Susan Heltemes:** Historically, the integrity of the collective bargaining process has functioned under stringent guidelines that rely on the integrity of all persons involved in the negotiations to maintain confidentiality to the process until a final product/agreement is attained. The final product is open to the public and hearings are held by the Montgomery County Council. Initial disclosures of proposals would likely establish unrealistic expectations not only for management, but also for employees since initial proposals are usually not where the negotiations come down at the conclusion of bargaining. If opening proffers were open to the public, it is likely that outside input could obstruct the bargaining process and interfere with tight timelines and strategy. Such obstruction could alter the negotiating process and ultimately end in more arbitration and deterioration of what has become a respected form of negotiation for our public sector employees. It is important to note that Park and Planning employees, as well as HOC, Montgomery College and MCPS employees, function under state guidelines that are different than those for the firefighters, police and MCGEO. Furthermore, it seems unlikely that making opening proposals from the County and unions prior to negotiating would actually result in savings. Such proposed savings are mere conjecture and not worth the effort of upsetting a time honored process that works.

collective bargaining recommendations in this document, in order to increase public accountability in collective bargaining with these agencies.

The Erosion of Management Rights

The Police Collective Bargaining law establishes the scope of collective bargaining in County Code §33-80. Similar to the collective bargaining laws for Fire and general County employees, the Police Collective Bargaining law requires the Executive to bargain over wages, benefits, and working conditions. Section 33-80(b) also establishes a list of "Employer rights" that the Executive does not need to bargain. However, unlike the collective bargaining laws for Fire and general County employees, §33-80(a)(7) requires the Executive to bargain over the "effect on employees of the employer's exercise of rights listed in subsection (b)." This provision is generally referred to as "effects bargaining." For example, §33-80(b)(3) grants the Executive the employer's right to "determine the services to be rendered and the operations to be performed." However, under effects bargaining the Executive would have to bargain with the union over the effect on employees of the Executive's decision to modify the services performed. In practice, "effects bargaining" has become the exception that makes most management decisions subject to bargaining.

"Effects bargaining" has hampered the ability of the Police Department to issue directives to govern how police officers must operate. For example, several years ago, the Police Department had to bargain with the FOP over a directive to implement the new computerized police report writing system. This bargaining delayed the implementation of a new system that County management established to improve efficiency. The FOP has recently delayed the implementation of all directives by refusing to respond to them.

- ***We recommend amending §33-80(a)(7) to make the scope of bargaining consistent with the scope of bargaining in the collective bargaining laws for Fire and general County employees.***

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,[8] 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).

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;

[8] 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.

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.[9] 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.

Savings

As stated above, personnel costs, which mostly result from the collective bargaining process, account for approximately $3.4 billion in the FY11 budget. The ORC believes that if the changes in the collective bargaining process recommended below are implemented, savings of tens of millions of dollars annually could result. We believe this would occur as: (1) the collective bargaining process becomes more transparent; (2) the public takes a significantly greater role in the decisions that determine compensation and benefits; (3) arbitrators are chosen in a way that leads to more balanced outcomes; and (4) affordability is given paramount consideration in both collective bargaining and arbitration.

[9] 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.

Across all agencies, personnel costs have increased 64%, while the total number of work years increased only 10%.[10] Aggregate salaries across the five agencies show a 50% rate increase during the same period.[11] In some cases, salaries rose significantly higher as these employees received 80% salary rate increases.[12]

For the County government itself, the report shows that tax-supported personnel costs rose 63%. This increase reflects a 42% increase in salaries and wages and a much higher 125% increase in benefits. In addition, the report shows that workyears rose only 0.4% in the same period. The following table, using data from the OLO report, shows the dollar amounts and percentage increases in the 10-year period.

Montgomery County Government	**FY02**	**FY11**	**% Change**
Salaries and Wages *(millions)*	$364	$518	42%
Benefits[13] *(millions)*	$119	$268	125%
Total	$483	$786	63%
Workyears	7,347	7,374	0.4%

By contrast, as the OLO report states, data for state and local governments show an average salary increase of 30% and an average benefits increase of 67% in the period 2001-09. Also by contrast, data for the private sector show an average salary increase of 27% and an average benefits increase of 44%.[14]

Across the five agencies, total tax-supported personnel cost represents 82% of the overall budget. The OLO report indicates that a 1% reduction in salaries would reduce total personnel costs in FY12 for County government by $6.2 million. A 1% reduction in salaries across the five agencies would reduce total expenditures by $22.9 million.[15]

Similarly, the OLO report indicates that a 5% salary reduction across the five agencies would result in a $114.6 million reduction in the budget. By containing personnel cost increases, the County can reduce the long-term compounding effect of increases that are not sustainable under current revenue projections.

The rising trends in personnel costs that are comparatively higher than other government and private industry averages and are noted above predominantly result from the collective bargaining process.

[10] OLO report Part I, pg 2
[11] OLO report Part I, pg 3
[12] OLO report Part I, pg 3 and 80
[13] Benefits include Social Security, group insurance, and retirement contributions but exclude retiree health costs.
[14] OLO report Part I, pg 46
[15] OLO report Part II, pg A-4

A specific fiscal impact of these changes cannot be quantified. However, based on FY11 budgeted amounts, even a 1% reduction in salaries for County government employees would result in a $6.2 million savings in the first year. If a 1% reduction in salaries were to be achieved across all five tax-supported agencies, the total annual savings would be $22.9 million.

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

June 28, 2013

TO: Isiah Leggett, County Executive

FROM: Nancy Navarro, Council President
Valerie Ervin, Councilmember
Hans Riemer, Councilmember

SUBJECT: Interest Arbitration under the County Collective Bargaining Laws

The Council's Government Operations and Fiscal Policy Committee (GO) held a worksession on Bill 9-13, Collective Bargaining – Impasse – Arbitration Panel on June 24, 2013. Bill 9-13 would amend the impasse resolution process under each of the County collective bargaining laws by splitting up the role of mediator and arbitrator, creating an arbitration panel of public members, and opening up all interest arbitration hearings to the public. We were disappointed that you did not share your position on this Bill with the Council at either the public hearing or at the GO Committee worksession. FOP Lodge 35 and IAFF Local 1664 each opposed Bill 9-13 at the public hearing and suggested that the current impasse resolution process works well.

In your budget message to the Council last March, you explained your decision to negotiate wage increases for County employees in FY14, in part, by alleging that arbitrator-mandated decisions could have resulted in raises that "double or triple the rate of raises contained in the package I negotiated with our unions." If you believe that the statutory system established in the collective bargaining laws contributed to your decision, we would appreciate hearing any recommendations you may have for improving the collective bargaining impasse resolution process, including the changes proposed in Bill 9-13.

cc. Councilmembers
Tim Firestine
Joseph Adler
Marc Hansen
Steve Farber

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