Agenda Item 8
June 14, 2011
**Introduction**

# MEMORANDUM

June 10, 2011

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

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

Bill 20-11, Personnel – Collective Bargaining – Public Accountability – Impasse Arbitration, sponsored by the Council President on recommendation of the Organizational Reform Commission, is scheduled to be introduced on June 14, 2011. A public hearing is tentatively scheduled for July 12 at 1:30 p.m.

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

## Background

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

The full text of the recommendation is below.

**Public Accountability in Interest Arbitration**

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

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

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

The arbitrator selected the final offer of the International Association of Fire Fighters (IAFF) in the one impasse with the firefighters and selected the County offer in the one impasse with general County employees represented by the Municipal and County Government Employees Organization (MCGEO). The arbitrator selected the FOP offer in 11 of the 15 impasses with the police. The arbitrator selected the County offer over the FOP offer three times,[1] 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).

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

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

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

a. Past collective bargaining contracts between the parties, including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits and working conditions;

b. Comparison of wages, hours, benefits and conditions of employment of similar employees, of other public employers, in the Washington Metropolitan Area and in Maryland;

c. Comparison of wages, hours, benefits and conditions of employment of other Montgomery County personnel;

d. Wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County;

e. The interest and welfare of the public; and

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

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

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

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

The arbitrator should consider the funds available to pay personnel costs before considering comparative salaries and past collective bargaining agreements. The bill, as enacted, requires the arbitrator to evaluate and give the highest priority to the County's ability to pay before considering the other five factors. The amendment that the Council ultimately rejected would have gone further by requiring the arbitrator to determine first if the final offers were affordable without raising taxes or lowering the existing level of public services. Although we support the bill as enacted without this amendment, the amendment would have added important guidance to the arbitrator to determine affordability based upon existing resources only.

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

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

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

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

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

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

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

Maryland, however, does not have a comprehensive State law governing collective bargaining with State and local government employees and does not have a State PERB with jurisdiction over County government labor relations.[2] 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.

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

**Executive's Response**

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

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

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

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

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

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

| This packet contains: | Circle # |
|---|---|
| Bill 20-11 | 1 |
| Legislative Request Report | 16 |

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

# COUNTY COUNCIL
# FOR MONTGOMERY COUNTY, MARYLAND

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

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

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-81, 33-108, and 33-153
By adding
Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-103A

| | |
|---|---|
| **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 33-81, 33-108, and 33-153 are amended as follows:**

**33-81. Impasse procedure.**

* * *

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

* * *

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

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

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

(A) The impasse [neutral] 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 required by [considering] the final offers:

(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 impasse panel finds under subparagraph (A) that the County can afford both final offers, the impasse [neutral] panel [may only] 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] panel must:

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

(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] 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] 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 have] has 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 or the effects on employees of an exercise of an employer's right 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) Reopener matters.

* * *

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

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

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

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

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

* * *

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

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

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

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

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

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

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

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

(ii) each party must submit to the impasse [neutral] panel a final offer only on the effect on employees of the employer's exercise of its right; and

(iii) the impasse [neutral] panel must select the most reasonable of the parties' final offers no later than 10 days after the impasse [neutral] panel receives the final offers and, if appropriate, must provide retroactive relief.

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

**33-108. Bargaining, impasse, and legislative 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] mediate 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 impasse panel selected under Section 33-103A.

(f) (1) If binding arbitration is invoked, the [mediator/arbitrator] impasse 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] impasse panel directs. If only complete package proposals are required, the [mediator/arbitrator] impasse panel must require the parties to submit jointly a memorandum of all items previously agreed on.

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

(3) On or before February 15, the [mediator/arbitrator] impasse panel must select, as a whole, the more reasonable of the final offers submitted by the parties. The [mediator/arbitrator] impasse panel must not compromise or alter a final offer. The [mediator/arbitrator] impasse 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] impasse 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] impasse 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.

(5) [After evaluating the ability of the County to pay] If the impasse panel finds that under paragraph (4) the County can afford both final offers, the [mediator/arbitrator] impasse 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) 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] impasse 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.

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

* * *

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

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

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

(1) In determining which final offer is the more reasonable, the impasse [neutral] 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 impasse neutral finds under paragraph (1) that the County can afford both final offers, the impasse [neutral] 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] 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] panel must not consider or receive any evidence or argument concerning offers of settlement not contained in the offers submitted to the impasse [neutral] panel, or any other information concerning the collective bargaining leading to impasse. The impasse [neutral] 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] 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. Impasse Panel.**

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

(c) *Composition.* An impasse 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. If they are unable to agree, they must select a neutral member from the 5 neutral impasse members appointed by the Council by alternating strikes with the employee representative making the first strike until only 1 neutral member remains.

(d) *Term.* An impasse 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 impasse 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.

*Approved:*

Valerie Ervin, President, County Council | Date

*Approved:*

Isiah Leggett, County Executive | Date

*This is a correct copy of Council action.*

Linda M. Lauer, Clerk of the Council | Date

## LEGISLATIVE REQUEST REPORT

Bill 20-11
*Personnel – Collective Bargaining – Public Accountability – Impasse Arbitration*

| | |
|---|---|
| **DESCRIPTION:** | Bill 20-11 would establish an interest arbitration panel to resolve an impasse, require an impasse arbitration hearing to be open to the public, and modify the criteria for the impasse panel to apply. |
| **PROBLEM:** | The Organizational Reform Commission recommended these changes to the County collective bargaining laws. |
| **GOALS AND OBJECTIVES:** | To increase public accountability in the impasse arbitration process. |
| **COORDINATION:** | County Executive, County Attorney, Human Resources |
| **FISCAL IMPACT:** | To be requested. |
| **ECONOMIC IMPACT:** | To be requested. |
| **EVALUATION:** | To be requested. |
| **EXPERIENCE ELSEWHERE:** | To be researched. |
| **SOURCE OF INFORMATION:** | Organizational Reform Commission Report.<br>Robert H. Drummer, Senior Legislative Attorney |
| **APPLICATION WITHIN MUNICIPALITIES:** | Not applicable. |
| **PENALTIES:** | None. |

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