


MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Expedited Bill 57-10, Personnel – Collective Bargaining – Impasse Procedures

Government Operations Committee recommendation (3-0): enact the Bill with amendments.

Expedited Bill 57-10, Collective Bargaining – Impasse Procedures, sponsored by Council Vice President Ervin, Council President Floreen, and Councilmembers Andrews, Berliner, Elrich, Knapp, Navarro, Trachtenberg, and Leventhal, was introduced on November 23, 2010. A public hearing was held on December 7, 2010 followed later that afternoon by a Government Operations Committee worksession.

Background

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 fire fighters. 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), fire fighters (Chapter 33, Article X), and other County employees (Chapter 33, Article VII).

All 3 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.¹ The arbitrator is a private sector labor professional jointly selected by the Executive and the union. The arbitration award becomes the final agreement between the

¹ Under standard arbitration, the arbitrator is free to create a final package based upon the evidence introduced by the parties at the hearing, including a compromise between the positions of the parties on each disputed issue. Final offer by issue arbitration requires the arbitrator to select the final offer of one party on each disputed issue.

Executive and the union, but economic issues and provisions that would require the enactment of legislation or the adoption of a regulation remain subject to Council approval.

There have been 17 impasses with County employee unions resolved by interest arbitration since 1988. One involved fire fighters, 1 involved general County employees, and the other 15 involved police officers.² The arbitrator selected the final offer of the International Association of Fire Fighters (IAFF) in the one impasse with the fire fighters and selected the County offer in the one impasse with the Municipal and County Government Employees Organization (MCGEO). The arbitrator selected the Fraternal Order of Police (FOP) offer in 11 of the impasses with the police. The arbitrator selected the County offer over the FOP offer 3 times,³ and the County agreed to the FOP offer after the arbitration hearing one time. A chart describing the issues resolved in each of the 17 arbitrations is at ©11-12. 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.

Under current County law, the arbitrator makes an award after considering 6 factors, including the County's ability to pay as only one of the 6 factors. The law does not require the arbitrator to place greater weight on any one of the 6 factors and does not require the arbitrator to consider all 6 of the factors. For example, an arbitrator is free to value a union's comparison with higher wages and benefits paid by another public employer greater than the County's financial ability to match them. Bill 57-10 would require the arbitrator to evaluate and give the highest priority to the County's ability to pay for economic provisions before considering the other 5 factors. A copy of Council Vice President Ervin's memorandum explaining the need for this Bill is at ©10.

Public Hearing

There were 6 witnesses at the public hearing on December 7. Joan Fidler, President of the Montgomery County Taxpayers League, supported the Bill and the Staff Amendment as a reasonable modification of the criteria for an arbitrator to use when resolving an impasse. See ©20. Gino Renne, UFCW Local 1994, MCGEO (©21-24), Joslyn Williams, Metropolitan Washington Council AFL-CIO (©25-26), David Kunes, Peace Action Montgomery (©27), Elbridge James, NAACP Maryland State Conference (©28-29), and Larry Stafford, Progressive Maryland (©30-31), each opposed the Bill. The union representatives, Mr. Renne and Mr. Williams, opposed the Bill as an unnecessary change to the current interest arbitration system that would reduce the accountability of County elected officials and undermine the collective bargaining process.

The Council also received written testimony opposing the Bill from Donald Cash, NAACP Region VII (©32) and Helen Melton, CASA de Maryland (©33).

² Arbitrator Richard Bloch, in his 1994 decision, called the unusually frequent arbitration hearings to resolve impasses with the FOP a "veritable conga line of impasse procedures."

³ The FOP appealed 2 of the 3 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.

Worksession

The Government Operations Committee reviewed the Bill at a worksession on December 7 after the public hearing. Stuart Weisberg, OHR, and Ed Lattner, County Attorney's Office, represented the Executive Branch. The Executive took no position on the Bill. Gino Renne, MCGEO, John Sparks, IAFF, and Marc Zifcak, FOP, represented the County employee unions. Joslyn Williams, Metropolitan Washington Council AFL-CIO, also provided comments. The Committee recommended (3-0) approval of the Bill as amended by Staff Amendment 1

Issues

1. Should the criteria for the arbitrator be changed?

The County collective bargaining laws state that the arbitrator *may 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;
- 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 last offer for a 3.5% step increase at a cost of \$1.2 million in FY11 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 reasoned that the FOP had already given up a previously negotiated 4.5% cost-of-living increase each of the past 2 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.

One of the main arguments raised by the employee unions at the public hearing and the worksession was that the current system is not broken. However, the recently released comprehensive report from the Office of Legislative Oversight (OLO) found that between FY02 and FY11 personnel costs increased 64% while the total number of workyears increased only 10%. During this same 10-year period, inflation was 29%, the County's population grew 12%, and median household income increased 21%.⁴ While the disproportionate rise in the average cost per employee over the last 10 years cannot be blamed completely on the interest arbitration system, the 12 arbitration awards in favor of the union out of 16 awards since 1988 has been a contributing factor. This Bill is not going to resolve the County's structural budget deficit, but requiring the arbitrator to determine affordability of the final offers before looking at the other factors is a reasonable and necessary change to the system because of the County's ongoing structural budget deficit.

The unions also argued that the arbitrator does not need to give the highest priority to ability to pay since the Council retains the authority to reject an arbitrator's decision on economic issues. Although the Council rejected the arbitrator's award for the FOP earlier this year, the collective bargaining process should result in affordable agreements or arbitration awards being presented to the Council for approval. Arbitration is a last resort to resolve an impasse in collective bargaining and Council rejection of an arbitration award should not be the expected norm for the system. The Council has the responsibility to provide guidance to the arbitrator in the interest arbitration law to help avoid unaffordable arbitration awards. Bill 57-10 would do that.

The arbitrator should consider the funds available to pay personnel costs before considering comparative salaries and past collective bargaining agreements. **Committee recommendation (3-0):** require the arbitrator to evaluate and give the highest priority to the County's ability to pay before considering the other factors.

2. Should the Bill be amended to clarify the weight to be given to the ability to pay?

The County Attorney, at the request of the Council Staff Director, provided several recommendations to clarify the guidance to an arbitrator that would further the purpose of the Bill in a December 3, 2010 memorandum at ©13-16. The County Attorney pointed out that the Bill would still permit an arbitrator to conclude that the Council could or should raise new or existing taxes, including overriding the property tax limit in Charter §305. The decision to raise taxes should be reserved to the elected County Council and not a private labor arbitrator. The County Attorney recommended amending the Bill to require the arbitrator to first determine the affordability of both final offers assuming no new or increased taxes before considering the other factors. Council staff drafted an amendment that would address the points made by the County

⁴ A copy of the OLO Report is posted on the Internet at:
<http://www.montgomerycountymd.gov/content/council/olo/reports/pdf/2011-2.pdf>.

Attorney in Staff Amendment 1 at ©17-19. **Committee recommendation (3-0):** amend the Bill with Staff Amendment 1.

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Expedited Bill No. 57-10
Concerning: Personnel – Collective Bargaining – Impasse Procedures
Revised: December 8, 2010
Draft No. 10
Introduced: November 23, 2010
Expires: May 23, 2012
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council Vice President Ervin, Council President Floreen, and Councilmembers Andrews, Berliner, Elrich, Knapp, Navarro, Trachtenberg, and Leventhal

AN EXPEDITED ACT to:

- (1) modify the criteria for an impasse neutral and a mediator/arbitrator to evaluate before issuing an arbitration award; and
- (2) 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

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

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

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

2 **33-81. Impasse procedure.**

3 * * *

4 (b) (1) During the course of collective bargaining, either party may
5 declare an impasse and request the services of the impasse
6 neutral. If the parties have not reached agreement by January 20,
7 an impasse [shall be deemed to exist] exists.

8 * * *

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

13 (A) The impasse neutral [may take into account only the
14 following factors] must first [[evaluate and give the highest
15 priority to]] determine the ability of the County to [[pay for
16 additional]] afford any short-term and long-term
17 expenditures required by the final offers [[by
18 considering]];

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

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

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

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

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

37 [a.] (ii) [Past] past collective bargaining contracts between
 38 the parties, including the [past] bargaining history
 39 that led to [such contracts, or the pre-collective
 40 bargaining history of employee wages, hours,
 41 benefits and working conditions] each contract;

42 [b.] (iii) [Comparison] a comparison of wages, hours,
 43 benefits, and conditions of employment of similar
 44 employees of other public employers in the
 45 Washington Metropolitan Area and in Maryland;

46 [c.] (iv) [Comparison] a comparison of wages, hours,
 47 benefits, and conditions of employment of other
 48 Montgomery County [personnel] employees; and

49 [d.] (v) [Wages] wages, benefits, hours and other working
 50 conditions of similar employees of private
 51 employers in Montgomery County[;]

52 [e. The interest and welfare of the public;]

53 [f. The ability of the employer to finance economic
54 adjustments and the effect of the adjustments upon the
55 normal standard of public services by the employer].

56 (6) The impasse neutral [shall] must:

57 (A) not compromise or alter the final offer that he or she
58 selects; [. Selection of]

59 (B) select an offer [shall be] based on the contents of that offer;
60 [. No consideration shall be given to, nor]

61 (C) not consider or receive [shall] any evidence or argument
62 [be received] concerning the history of collective
63 bargaining in this immediate dispute, including offers of
64 settlement not contained in the offers submitted to the
65 impasse neutral; and [. However, the impasse neutral
66 shall]

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

70 * * *

71 **33-108. Bargaining, impasse, and legislative procedures.**

72 * * *

73 (f) (1) If binding arbitration is invoked, the mediator/arbitrator must
74 require each party to submit a final offer, which must consist
75 either of a complete draft of a proposed collective bargaining
76 agreement or a complete package proposal, as the
77 mediator/arbitrator directs. If only complete package proposals
78 are required, the mediator/arbitrator must require the parties to

79 submit jointly a memorandum of all items previously agreed
80 on.

81 * * *

82 (4) In making a determination under this subsection, the
83 mediator/arbitrator [may consider only the following factors]
84 must first [[evaluate and give the highest priority to]] determine
85 the ability of the County to [[pay for additional]] afford any
86 short-term and long-term expenditures required by the final offers
87 [[by considering]]:

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

91 (B) [[the added burden on County taxpayers, if any, resulting
92 from increases in revenues needed to fund a final offer]]
93 assuming no increase in revenue from an ad valorem tax
94 on real property above the limit in County Charter Section
95 305; and

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

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

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

104 [(A)] (B) [Past] past collective bargaining agreements between
 105 the parties, including the past bargaining history that led
 106 to [the agreements, or the pre-collective bargaining
 107 history of employee wages, hours, benefits, and working
 108 conditions] each agreement[.];

109 [(B)] (C) [Comparison] a comparison of wages, hours, benefits,
 110 and conditions of employment of similar employees of
 111 other public employers in the Washington Metropolitan
 112 Area and in Maryland[.];

113 [(C)] (D) [Comparison] a comparison of wages, hours, benefits,
 114 and conditions of employment of other Montgomery
 115 County [personnel] employees[.] ; and

116 [(D)] (E) [Wages] wages, benefits, hours, and other working
 117 conditions of similar employees of private employers in
 118 Montgomery County.

119 [(E)] The interest and welfare of the public.

120 [(F)] The ability of the employer to finance economic
 121 adjustments, and the effect of the adjustments upon the
 122 normal standard of public services provided by the
 123 employer.]

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

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

132 * * *

133 **33-153. Bargaining, impasse, and legislative procedures.**

134 * * *

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

139 (1) In determining which final offer is the more reasonable, the
 140 impasse neutral [may consider only the following factors] must
 141 first [[evaluate and give the highest priority to]] determine the
 142 ability of the County to [[pay for additional]] afford any short-
 143 term and long-term expenditures required by the final offers [[by
 144 considering]]:

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

148 (B) [[the added burden on County taxpayers, if any, resulting
 149 from increases in revenues needed to fund a final offer]]
 150 assuming no increase in revenue from an ad valorem tax
 151 on real property above the limit in County Charter Section
 152 305; and

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

155 (2) [[After evaluating the ability of the County to pay]] If the
 156 impasse neutral finds under paragraph (1) that the County can

157 afford both final offers, the impasse neutral [[may only]] must
 158 consider:

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

161 [(1)] (B) past collective bargaining agreements between the
 162 parties, including the past bargaining history that led to
 163 [the agreements, or the pre-collective bargaining history
 164 of employee wages, hours, benefits, and working
 165 conditions] each agreement;

166 [(2)] (C) wages, hours, benefits and conditions of employment
 167 of similar employees of other public employers in the
 168 Washington Metropolitan Area and in Maryland;

169 [(3)] (D) wages, hours, benefits, and conditions of employment
 170 of other Montgomery County employees; and

171 [(4)] (E) wages, benefits, hours, and other working conditions
 172 of similar employees of private employers in
 173 Montgomery County];

174 (5) the interest and welfare of the public; and

175 (6) the ability of the employer to finance economic adjustments, and
 176 the effect of those adjustments upon the normal standard of
 177 public services provided by the employer].

178 * * *

179 **Sec. 2. Effective Date.**

180 The Council declares that this legislation is necessary for the immediate
 181 protection of the public interest. This Act takes effect on the date on which it
 182 becomes law.

183

LEGISLATIVE REQUEST REPORT

Expedited Bill 57-10

Personnel – Collective Bargaining – Impasse Procedures

DESCRIPTION: The Bill would modify the criteria that must be evaluated by the impasse neutral or mediator/arbitrator before issuing an award resolving a collective bargaining impasse.

PROBLEM: Current law lists 6 factors for the impasse neutral to consider without giving greater weight to any of them. The County's ability to pay is not given enough emphasis in these factors.

GOALS AND OBJECTIVES: To clarify that an impasse neutral or mediator/arbitrator should give the highest priority to the County's ability to pay for economic provisions in a collective bargaining agreement when issuing an arbitration award. The goal is to encourage the parties to resolve impasses through negotiation rather than arbitration.

COORDINATION: Office of Human Resources

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, 240-777-7895

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: None.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

VALERIE ERVIN
COUNCILMEMBER
DISTRICT 5

MEMORANDUM

November 19, 2010

TO: Councilmembers

FROM: Valerie Ervin, Council Vice President *VE*

SUBJECT: Bill to Prioritize Collective Bargaining Impasse Factors

There are three separate laws that govern the County's collective bargaining with the unions representing police, firefighters, and general government employees. All resolve an impasse through arbitration where the arbitrator selects the entire final offer submitted by either the County or the union.

Under current law, the arbitrator makes an award after considering six factors. These include: past contracts and bargaining history; the wages, hours, benefits, and conditions of employment of other County employees, public employees in the region and the State, and the County's private sector; and the County's ability to pay for any changes. The current law gives none of these factors greater weight than any other.

The FY11 budget we approved in May, and the six-year balanced fiscal plan we approved in June, are stark reminders of the severe short-term and long-term budget pressures the County faces. An arbitrator's assessment of final competing offers should be grounded in this reality. I will introduce the attached bill to require an arbitrator to give the highest priority to the County's ability to pay. The arbitrator then must evaluate other factors such as the interest and welfare of County taxpayers and service recipients.

As one with more than a quarter century on the front lines of the labor movement, I am deeply committed to fairness for County employees. But fairness also requires that the County can afford to honor its labor contracts. It also requires equitable treatment for taxpayers and service recipients. This bill will help achieve these goals. I welcome all my colleagues as co-sponsors.

Attachment

Interest Arbitration Decisions Since 1988

#	Date	Union	Arbitrator	Issues	Award
1	2/19/1988	FOP	Fishgold	<ol style="list-style-type: none"> 1. Indemnification of County for dues checkoff. 2. 1 day of leave for occupational stress. 3. County - narrow non-discrimination clause. 4. FOP - add traffic officers to PPV program. 5. FOP - reopener for disability retirement. 6. Differential pay for specialized officers. 7. Clothing allowance. 8. Shift differential pay. 9. COLA (5.5% v. 3%) 	FOP
2	2/25/1991	FOP	Bloch	<ol style="list-style-type: none"> 1. Maintenance of standards provision. 2. Alcohol/drug policy. 3. COLA (6.2% v. 0%) 4. Retirement Incentive Program (RIP) 	County
3	2/12/1992	FOP	Kennelly	<ol style="list-style-type: none"> 1. FOP - add 1 additional step 2. COLA (me-too up to 2% v. 0%) 	FOP
4	2/19/1992	FOP	Bloch	<ol style="list-style-type: none"> 1. Furlough procedures. 2. FOP - 4 days of compensatory leave for furlough. 3. Reduce pay, 32 hours of annual leave to be used in 2 years. 	FOP
5	2/23/1993	FOP	Porter	<ol style="list-style-type: none"> 1. COLA (3% v. 1.5%) 2. FOP - RIP. 3. Increase clothing allowance. 4. Increase pay differential. 	FOP
6	3/23/1994	FOP	Bloch	<ol style="list-style-type: none"> 1. Health insurance policy. 2. COLA (2.7% v. 2.5%). 3. Disability leave - donations of sick leave. 	FOP
7	4/25/1994	FOP	Fasser	<ol style="list-style-type: none"> 1. Eligibility for RIP enacted by Council. 	FOP
8	2/14/1995	FOP	S. Strongin	<ol style="list-style-type: none"> 1. COLA (2.9% v. 1.5%). 2. Partial SCDR (66 2/3% v. variable). 	FOP
9	6/12/1998	FOP	Oldham	<ol style="list-style-type: none"> 1. FOP - change disability procedures. 2. FOP - County option - DROP. 3. FOP - increase COLA for retirees. 4. FOP - increase multiplier for over 65. 5. FOP - increase employee retirement contribution. 	FOP

10	2/26/2001	FOP	S. Strongin	1. COLA (\$2800 + \$600 v. \$2500). 2. FOP - shift differential re-opener.	FOP
11	2/24/2003	FOP	Sharnoff	1. FOP – 1 additional personal leave day. 2. FOP – compressed schedule for special assignment. 3. FOP – increase PPV for canine officers. 4. COLA (3.5% v. 2%). 5. Selection of attorneys for criminal offense. 6. County – single issue arbitration for changes to directives.	County ¹
12	3/19/2004	IAFF	La Rue	1. IAFF – Increase the multiplier for calculating pension for integrated plan after reaching Social Security age.	IAFF
13	3/15/2007	FOP	Bloch	1. FOP - Police Hearing Board decision to bind Chief on discipline.	FOP
14	11/29/2007	FOP	Bloch	County agreed to FOP offer.	Settled
15	5/8/2008	FOP	Bloch	1. Implementation of mobile video system.	County ²
16	3/2010	FOP	Fishgold	1. FY11 service and longevity increments (3.5% v. 0%). 2. Re institute tuition assistance for FY11.	FOP ³
17	3/22/2010	MCGEO	Vaughn	1. RIF procedures and limits. 2. RIP savings to reduce RIFs in bargaining unit.	County

¹ The FOP appealed decision and Circuit Court held that item 6 was invalid under Police Collective Bargaining Law.

² The FOP appealed the decision and Circuit Court upheld the arbitrator's decision.

³ The Council rejected the arbitrator's award.



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
Acting County Attorney

MEMORANDUM

TO: Steve Farber
Council Staff Director

VIA: Marc P. Hansen *MPH*
Acting County Attorney

FROM: Edward B. Lattner, Chief *EPL*
Division of Human Resources & Appeals

DATE: December 3, 2010

RE: Bill 57-10E (Personnel - Collective Bargaining - Impasse Procedures)

You have asked us to determine if Bill 57-10E provides sufficient guidance to an arbitrator in light of its stated goal—requiring the arbitrator to consider, first and foremost, the County’s ability to pay for a labor contract in light “of the severe short-term and long-term budget pressures the County faces.” You have also asked us to suggest amendments that would help the legislation achieve that goal.

Background

All three collective bargaining laws provide that an arbitrator¹ resolves an impasse during collective bargaining by selecting either the union’s or the Executive’s final offer covering all of the disputed issues. The arbitrator is a private sector labor professional jointly selected by the Executive and the union. Bill 57-10 would modify the criteria used by the arbitrator to evaluate the parties’ proposals before issuing an award by requiring him or her to give highest priority to the County’s ability to pay when deciding between the union’s and the Executive’s final offers. Council Vice President Ervin’s November 19, 2010, memorandum makes clear that the bill is designed to ensure that the arbitrator’s assessment of final competing offers is grounded in the reality “of the severe short-term and long-term budget pressures the County faces.”

Mr. Drummer’s November 23, 2010, memorandum to the Council correctly states the

¹ The FOP and IAFF collective bargaining laws refer to an “impasse neutral” while the MCGEO law refers to a “mediator/arbitrator.” By whatever designation, the person’s role is the same.

present state of the law and the effect of the proposed amendment.

Under current law, the arbitrator makes an award after considering 6 factors, including the County's ability to pay as only one of the 6 factors. The law does not require the arbitrator to place greater weight on anyone of the 6 factors and does not require the arbitrator to consider all 6 of the factors. For example, an arbitrator is free to value a union's comparison with higher wages and benefits paid by another public employer greater than the County's financial ability to match them. Bill 57-10 would require the arbitrator to evaluate and give the highest priority to the County's ability to pay for economic provisions before considering the other 5 factors.

The Bill

Bill 57-10E combines two of the six factors currently considered by the arbitrator ((1) the interest and welfare of the public and (2) 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) into the following predominant factor:

The impasse neutral must first evaluate and give the highest priority to the ability of the County to pay for additional short-term and long-term expenditures by considering:

- (i) the limits on the County's ability to raise taxes under State law and the County Charter;
- (ii) the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a final offer; and
- (iii) the County's ability to continue to provide the current standard of all public services.

While this language is legally sufficient, alternative language would strengthen the bill's stated goal of requiring the arbitrator to consider, first and foremost, the County's ability to pay for a labor contract in light "of the severe short-term and long-term budget pressures the County faces."

First, as a standard to be applied by the arbitrator, "the limits on the County's ability to raise taxes under State law and the County Charter" is somewhat mercurial. While State law does impose an absolute cap on the County's ability to tax residents' income, and the County Charter requires that all nine Councilmembers approve certain increases in the property tax, the County enjoys extraordinarily broad authority to impose other taxes under § 52-17 of the County Code. In construing the scope of § 52-17, the Court of Appeals has held that if the State had the power to impose a tax, the County has the same power. *Waters Landing Limited Partnership v.*

Montgomery County, 337 Md. 15, 25, 650 A.2d 712 (1994).² Presently, County taxes include fuel energy, carbon emissions, cell phone usage, and hotel/motel usage. The language in the bill leaves ample room for the arbitrator to conclude that the Council could or should increase those taxes (or impose new taxes). The language in the bill also permits the arbitrator to conclude that all nine Council members could or should increase the property tax beyond the Charter-imposed tax limitation. Accordingly, we recommend that this provision be amended to require that the arbitrator evaluate the County's ability to pay for short-term and long-term expenditures by assuming no increase in the then-current tax rates. The setting of tax rates should be the exclusive province of the County's elected officials, not a private sector labor professional.

Second, although the bill is borne of the current fiscal shortfall, it could have the effect of requiring the arbitrator to select a proposal requiring significant spending increases in times of fiscal largess because consideration of "the ability of the County to pay" is not limited to fallow economic times. Thus, if and when (hopefully when) the County's coffers are full, consideration of "the ability of the County to pay" would militate in favor of the proposal calling for a corresponding increase in spending on a labor contract. If the purpose of the bill is to require the arbitrator to consider the County's ability to pay when times are tough, then the bill should provide some objective trigger for mandatory consideration of that factor (e.g., this factor applies only when revenues drop by X%).

Third, the bill requires the arbitrator to consider the County's ability to pay "for **additional** short-term and long-term expenditures" (emphasis added). Presumably, consideration of the County's fiscal health is therefore limited to those final offers that propose expenditures above and beyond those previously provided to bargaining unit members.³ Thus, the arbitrator would not consider the County's fiscal health at all if the union's proposal held costs constant and the Executive's proposal reduced those costs. If the purpose of this bill is to make affordability the arbitrator's predominant factor, then it should not be limited to those proposals that would increase spending; it should be the predominant factor in reviewing every proposal. The word "additional" should be stricken.

Finally, although the bill gives predominance to affordability, it does not preclude an arbitrator from determining that the other factors overcome that predominance. We suggest an amendment that would limit the arbitrator's ability to consider the other factors to situations where the arbitrator finds that both proposals are affordable.

ebl

² Some items are beyond the County's taxing power (e.g., alcoholic beverages, gasoline).

³ It is unclear whether this would be limited to expenditures provided for in the prior labor agreement or expenditures actually authorized by the Council in the most recent annual operating budget.

Steve Farber
December 3, 2010
Page 4

cc: Kathleen Boucher, Assistant Chief Administrative Officer
Joseph Adler, Director, OHR
Stuart Weisberg, Office of Human Resources
Robert H. Drummer, Senior Legislative Attorney

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Staff Amendment 1

Amend lines 13-25 as follows:

- (A) The impasse neutral [may take into account only the following factors] 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 the final offers [[by considering]]:
- (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 neutral finds under subparagraph (A) that the County can afford both final offers, the impasse neutral [[may only]] must consider:

Amend lines 73-86 as follows:

- (4) In making a determination under this subsection, the mediator/arbitrator [may consider only the following factors] 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 the final offers [[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 mediator/arbitrator finds that under paragraph (4) the County can afford both final offers, the mediator/arbitrator [[may only]] must consider:

Amend lines 124-137 as follows:

- (1) In determining which final offer is the more reasonable, the impasse neutral [may consider only the following factors] 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 the final offers [[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.

- (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 [[may only]] must consider:

/

Testimony before the County Council
on Expedited Bill 57-10, Personnel - Collective Bargaining - Impasse Procedures
December 7, 2010
- Joan Fidler

Madam President and members of the Council, thank you for this opportunity to speak in strong support of Expedited Bill 57-10, Personnel - Collective Bargaining - Impasse Procedures and more particularly the staff amendment to the bill. I am Joan Fidler, president of the Montgomery County Taxpayers League and while I am here to speak for the taxpayers of the county I am also here to commend the Council for not only facing fiscal reality but also having the courage to do something about it. Particularly courageous is President Ervin who has been on the front lines of the labor movement and has placed herself in harm's way on behalf of working people, at least as much, if not more so, than anyone else in this room.

So why does the Taxpayers League support this bill? The bill provides guidance to the arbitrator who heretofore, we taxpayers are astounded to learn, did not have to be governed by the county's ability to pay. The arbitrator could pick and choose from 6 factors, no one more important than another, to arrive at unaffordable compensation decisions. The legacy costs of past arbitrator decisions have now brought the county to a virtual fiscal standstill. The present is bleak and the future not much brighter.

This bill modifies the criteria that *must* be evaluated by the arbitrator before issuing an award. This bill, and more particularly the amendment to the bill, which we endorse for its logic and its clarity, gives primacy to the county's ability to pay. It provides clear guidance to the arbitrator who must now first evaluate and give the highest priority to the county's ability to "afford any short-term and long-term expenditures required by the final offers". The final offer can assume no increase in existing tax rates, no increase in property taxes (assuming the County will respect the Charter limit on property tax revenue), and must consider the County's ability to continue to provide the current level of all public services.

All county residents value the work of our dedicated employees and the need to provide them appropriate compensation, but it is not fair to county employees to enter into labor agreements that cannot be honored in future years. For contracts to be honored, they must be affordable. This bill will help the county and the unions to reach agreement on contracts that will realistically meet the needs of employees, the taxpayers and 1 million county residents.

We have a deep structural budget deficit. So do many counties and states across the country. So let's get real. We need this bill.

Thank you.

2

TESTIMONY BY:
PRESIDENT GINO RENNE, UFCW LOCAL 1994 MCGEO
ON BEHALF OF
PROTECT YOUR MONTGOMERY COALITION
IN OPPOSITION TO
COUNCIL BILL #57-10
BEFORE THE MONTGOMERY COUNTY COUNCIL
TUESDAY, DECEMBER 7, 2010

This measure 57-10 is an anathema to open government. It is an enemy of transparency and it is an escape hatch to enable elected leaders—Council Members or the County Executive—to evade their respective roles in the collective bargaining process.

Perhaps that is not the intent of the sponsor, but that could be the outcome. We want to believe Ms Ervin when she claims to be a friend of labor. However, friends don't let friends drive off the road. Friends will warn friends that it is ill advised to try to build your future ambitions on fawning editorial comments from Washington Post. Friends will remind friends that the Washington Post is a fickle mistress, and that the Post's political preferences don't often persuade Montgomery County's voters. Look at the Post's own sorry history of labor-management relations.

The Washington Post's editorials are mere opinions. We all know what they say about opinions. No editorial can alter the fact that no arbitrator has ever appropriated a single dime in this county.

Every year, council staff prepares a memo stating that "The Council is not bound by the agreement on those matters [including appropriation of funds] over which the Council has final approval."*

*Memorandum to Council MFP Committee from Michael Faden and Robert H. Drummer, April 20, 2009.

Simply put, under current law, an arbitration award is subject to County Council funding. As a senior council attorney said, "Under each collective bargaining law, wage decisions during each contract are made as part of each year's operating budget."*

*Memorandum from Michael Faden, Senior Legislative Attorney to the MFP Committee, April 28, 2003.

Procedurally, a contract or arbitration award is no different than any other recommendation in the County Executive's recommended budget.*

**[T]he collective bargaining law clearly recognizes the council's primacy in fiscal matters." *Id.*

The current law also recognizes that the Council has more information available to it in May than can be presented to an arbitrator in January. Indeed, the Executive's recommended budget is not presented to Council until March 15, yet this bill expects

a labor arbitrator to have a crystal ball to see months or years into the future. That is a distortion of the process.

County residents have to be asking, "If it ain't broke, why fix it?" The fact is that for two consecutive years, county government, police and fire employees have voluntarily given up pay increases that were previously negotiated, and it didn't require arbitration. The current system has fostered labor peace, cooperation and continuity for more than a quarter of a century. Another example: In 1991, an arbitrator awarded police officers Zero percent and the FOP and rank and file police officers respected that outcome because we knew we had confidence in the process. The union had been given a fair opportunity to make our case. This bill will change that.

Reviewing the exchange of memoranda between the sponsor and Council legal staff indicates how far this measure can go to damage bargaining. Clearly, the legal staff would prefer a process that would instruct an arbitrator to render determinations that reduce the final cost of a settlement—regardless of the merits of submissions by the parties.

What you are suggesting is not arbitration and it is not consistent with collective bargaining. The legal staff's suggestions would stack the deck in arbitration and attempt to tie the hands of the arbitrator to guarantee a favorable outcome for the county. Certainly, a system like that would encourage the executive to declare an impasse just to pass the buck to an arbitrator.

The staff's background table of interest arbitration decisions since 1988 implies that arbitration has been a boon for the unions and a bane for management. But, that summary doesn't prove anything about the effectiveness of the law. It could just as easily reflect the fact that the county wasn't as well prepared to present its case as were the unions; or that the unions had a better case; or that the union positions were more reasonable. For instance, the 2001 highlighted case in that table involved an issue where the cost of each position was the same, but the parties disagreed on whether additional pay should go to the bottom or the top of the pay scale. To say that management "lost" more often than the unions because the rules aren't fair is like suggesting that baseball isn't fair because the Yankees get to the World Series more often than the Orioles.

Historically, the County Council has not sought to increase pay or benefits beyond what has been negotiated, but it has consistently held to its authority to decrease settlements. So, tilting the playing field even further in favor of management would simply hand the executive another opportunity to bargain to impasse rather than seek settlements.

And, if fiscal restraint is the objective, consider, too, that more than \$6.5 million of the county's payroll (that's just the current total cost of top executive level management salaries) is out of the reach of collective bargaining and arbitration.*

*(Representative list of top executive level management salaries is attached.)

While it may be popular to demonize hard working public employees and their bargaining process, we don't believe that Montgomery County should buy into that fiction or feed that prejudice by undermining collective bargaining for its workforce.* *See 'Public Employees: The 21st Century's Welfare Queens,' Pittsburgh Post-Gazette, November 14, 2010.

After 30 years of persistent attacks on the labor movement, the right wing in America has hammered down private sector union representation to some 7 percent of the workforce. Now, they are turning on public workers where they recognize they can score points in the media by pandering to fear and resentment. Teachers, bus drivers, librarians, police officers, fire fighters—we have all become targets of opportunity. Those attacks are unconscionable, but even worse, it's appalling when those same sentiments are echoed by some of our so-called friends who call themselves progressive Democrats. There is precious little difference between the attitude expressed by conservative Republican Governor Mitch Daniels in Indiana, who describes public workers as “the new privileged class,” and this proposal from Council Member Valerie Irvin.

People are aware of the service unions perform for our members—as advocates and representatives, as their voice on the job. We also perform a significant public service as watchdogs and knowledgeable stakeholders in the process of open government. That latter function makes us more dangerous in the eyes of politicians than the former and sometimes spurs elected officials to search for ways to reduce our presence.

By tradition and history, labor is more closely associated to the Democratic Party than we are to the Republicans. The Democratic Party openly embraces our core values while Republican platforms typically align with big business and privilege. Our members are much more diverse—ranging from extremely progressive to extremely conservative. Our experience, however, tells us that, once elected, politicians sometimes abandon the principles and values that defined them as candidates in favor of getting re-elected.

That, we believe, is the case for this bill. The Democratic Party embraces collective bargaining as a core value. Republicans reject it. How, then, can a Council Member describe him or herself as a Democrat, then advance a measure to undermine collective bargaining? And, what will be the next step? Repeal collective bargaining? Impose an “employment at will” regime?

Current law works well. Over 25 years, there has never been a problem. So, what's changed?

Even when we “win” Labor does not see arbitration as a victory. It certainly is not a goal when we begin negotiations. Arbitration is a less desirable, but acceptable

alternative to reaching a formal agreement, binding each party to certain norms of behavior in a legal contract. Arbitration, like a strike, indicates a failure of the collective bargaining system. It is an option that hands over the ultimate decision about the future to a third party and regardless of track records, the outcome is never guaranteed. Arbitration is a concession that both labor and management make in the interest of continuity of essential public service. We don't wish to see it weakened.

In summary: The Protect your Montgomery Coalition—composed of the Fraternal Order of Police Lodge 35, the International Association of Fire Fighters Local 1664 and UFCW Local 1994, MCGEO—opposes this bill because it is unnecessary, it weakens accountability and transparency in the operations of the County Council and the County Executive, it seeks to undermine the collective bargaining process and it addresses a phantom problem with a non-solution.

Thank you for your time.

Metropolitan Washington Council AFL-CIO

Testimony of Joslyn N. Williams
President, Metropolitan Washington Council
Before the Montgomery County Council on Bill 57-10

Thank you for the opportunity to express the views of the Metropolitan Washington Council AFL-CIO. The Council's nearly 200 affiliated unions represent hundreds of thousands of workers in the Washington Metropolitan area—thousands of them residents of Montgomery County.

It's been said every problem we confront today started out somewhere in the distant past as a solution. That's the case with Bill 57-10, which seems to be a solution for a problem that simply does not exist. Collective bargaining with interest and impasse arbitration has worked well for more than 25 years. I am unaware of any recurrent complaints from labor or management about its failure and I would challenge the sponsor of this legislation to cite any examples where it has fallen short of providing equitable outcomes for all parties.

We oppose this legislation because it would remove the county council and the county executive one step further from the collective bargaining process. Transparency and accountability are the gold standard for democratic government. How does ceding the authority and responsibility of elected officials comport with those goals?

We must also ask how residents, voters and even employees would be better off when crucial decisions regarding the affordability of a collective bargaining agreement fall to an un-elected arbitrator? Who should know better how much the county can afford than the executive and his deputies who are part of the negotiation process? And, shame on an elected county council—whose highest responsibility is to monitor the public coffers—if they can't do the arithmetic before they vote on the terms of a negotiated agreement.

So we must ask the question: Is there another agenda on the part of the proponents of this measure? Might this be, in fact, nothing more than a blatant and heavy-handed attempt to curry favor in the press by picking a fight with labor? If so, double shame on you.

It's been my privilege to serve as president of the Labor Council for nearly 30 years. I was privileged to work with some of the county's earliest elected leaders in the development of your labor relations laws in the 1970s, from a total absence of union representation to meet and confer, to your current mature and—judging from experience and results—highly evolved and effective collective bargaining law.

Metropolitan Washington Council AFL-CIO

Although circumstances and conditions over those years have changed, the collective bargaining process has enabled management and the county's unions to adapt effectively to those changes.

The current dark economic situation has been painful for all, but your workers—the police officers, fire fighters, general government workers, teachers and board of education personnel—have suffered that pain as deeply as anyone. They endured job cuts, furloughs and very austere contracts over the past two years. They are accomplishing their tasks with fewer people and resources even as demand for public services grows in worsening times.

Cutting workers, wages and benefits may seem at first glance like an easy budgetary fix that plays well to a solution-hungry media and public, but this kind of simplistic pandering is no substitute for thoughtful leadership and longer-term real solutions.

For example, the problem we face includes both the growth of personnel costs and the shrinkage of revenues. So why has the council chosen to only address the issue from the cost side of the balance sheet?

The County's population continues to grow. The needs of your residents for transportation, health services, public safety and education will only increase in hard times. It is incumbent on leaders like yourselves to face hard facts and re-examine the landscape for additional revenue sources.

Collective bargaining is the cornerstone of U.S. labor relations in both the public and private sectors. It has served our nation well for over 80 years. Any tinkering that undermines the collective bargaining process simply serves the purpose of those who want to eliminate unions altogether. We would hope that no one on this council harbors those inclinations.

In summary: We oppose this legislation because it addresses a nonexistent problem, it erodes accountability and transparency in government, it adds no value for residents and taxpayers and it feeds the anti-union forces who want to see collective bargaining destroyed. Most importantly, it wastes the precious time and resources of this body while there is a growing need for leadership and innovation to seek out long-term economic solutions for providing the fundamental governmental services that residents want, need and deserve.

###

Peace Action Montgomery County

Testimony of David L. Kunes
Member, Peace Action Montgomery County
Before the Montgomery County Council on Bill 57-10

I would like to thank the Council for considering our viewpoint on this important issue. Peace Action Montgomery County is a local activist group with over 2,000 members in the area. We believe that the issues raised by Council Bill 57-10 are symptomatic of a national failure to address the actual needs of our communities.

It is clear to us that county workers are being singled out as the cause of this current budget crisis, when this is not the case. It is even more clear that there is a misallocation of our community's resources when significantly more of our monies are spent on militarism and corporate welfare, than on transportation, health services, public safety and education. These vital services are needed now more than ever, but are always the first to be cut.

Our federally elected officials consistently fail to prioritize the everyday workers who are the backbone of our community, in favor of the corporate interests outside of it. Unfairly, it is often left to our County officials to correct these imbalances as best they can.

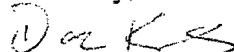
Unfortunately, Council Bill 57-10 will not correct these imbalances, but only magnify them. If it is passed, it will mark the first assault against the collective bargaining rights of county workers, and another blow to a constituency that has been hit especially hard these last few years. Firefighters and police have already had to sacrifice their safety for our budget. Fighting to secure a county with a growing population, but shrinking resources. General government workers, teachers and others have hurt too, enduring job cuts, furloughs, salary freezes and more.

By weakening their collective bargaining rights, you will further disenfranchise the very workers the County must rely on the most to get us through these difficult and uncertain times. Especially now, government workers should be viewed as the foundation for a happy and productive society, which they are, not as a liability.

Furthermore, as residents of Montgomery County, we expect our elected officials to lead, not to pass off the responsibility of their decisions to third parties. Good governance demands that the County Council and the County Executive work more closely with the representatives of County workers, and recognize the vital role they play in overcoming our present challenges.

Therefore, we urge the County Council to reject Council bill 57-10 and to protect one of our most important resources, our workers. Lastly, we would urge the Council to continue to lobby state and federal representatives on behalf of our community to better use their funds to address its actual needs: living wages, peace, education and sustainability.

Sincerely,



David L. Kunes
Peace Action Montgomery County



5

NAACP Maryland State Conference
P.O. Box 67747
Baltimore, Maryland 21215

OPPOSITION TO MONTGOMERY
COUNTY COUNCIL BILL 57-10

December 7, 2010

The Honorable Nancy Floreen
President, Montgomery County Council
100 Maryland Ave #6
Rockville, MD 20850-2367

Dear Council President Floreen,

I am writing, on behalf of Gerald Stansbury, President of the Maryland State NAACP and its Executive Committee, to express opposition to Montgomery County Council Bill 57-10. The measure before you asks that fairly negotiated agreements, which have provided county residents the best workforce in the county, be voided for the uncertainty and dissatisfaction that the proposed legislation will produce.

In specification, we have strong opposition to language in this legislation that authorizes/ requires an arbitrator must give highest priority to ability of the County to pay for short and long-term expenditures. In specific, these are negotiated wages and benefits; that were reached in good faith by representatives of labor and management. We, as citizens, elect the County Executive and each member of the County Council because we citizens believe that part of your responsibility to us maintaining good faith relationships with our employees through their representatives. This measure destroys that belief.

In addition, this specification prohibits the arbitrator from having access to and review and/or analysis of actions of the executive and legislative bodies that shaped the budget or the budget development process; a process that, in if manipulated, could result in undo and unreasonable pressure on the county's ability to fulfill its negotiated labor agreements. Enactment of this legislation would proclaim to the public that employees and citizens alike have no standing before this body in regard to the governance of employment and the quality of life in this county.

The Maryland State NAACP also believes this measure, in its application, allows for an uneven and discriminatory treatment of employees or a classification of employees. Across the country the NAACP is seeing the erosion of employee rights and protections by legislative actions of elected officials who were reacting to the cries of a select (and wealthy) few who want to avoid tax fairness and demand unrealistic budget cuts. Such actions usually result in draconian measures against state, county, and/or municipal employees, and lead to further decline in public services and trust.

By enactment into law, you are permanently changing the face of the County government and how it serves its residents. The NAACP understands the fiscal constraints elected

officials are facing; we, however, believe that implementation of Bill 57-10 is not in the best long-term interest of the County or its citizens.

Respectfully,

A handwritten signature in cursive script, appearing to read "Elbridge G. James". The signature is written in black ink and is positioned above the typed name and contact information.

Elbridge G. James
Chair, Political Action
301-213-9657
elbridgej@gmail.com

Progressive Maryland
Testimony on Montgomery County Council Bill 57-10

We appreciate the opportunity to testify.

Progressive Maryland is a grass roots non-profit organization drawing from educational, religious, labor and civic activists in the state of Maryland with a mission to improve the lives of working families in the state.

Progressive Maryland opposes Council Bill 57-10 because it establishes a dangerous precedent for changing the rules of collective bargaining for county employees whenever the County Executive or County Council perceives that it would be politically expedient to do so. Moreover, we are concerned any time that the process of collective bargaining is diminished the parity that the practice establishes between labor and management is undermined and the public's interests are compromised.

Collective bargaining is a publicly valuable institution that should be cultivated and expanded. Unfortunately, it has been attacked and disparaged in the private sector where the law has not kept up with changing conditions. Organizing new units in the private sector has been stymied by archaic interpretations of the law and aggressive attacks on the part of employers: abuses such as firings of workers who support organizing drives and weak penalties for violations of employee rights. As a consequence, real wages and real incomes have been falling for all workers—and our communities are poorer for it.

When union representation declines, benefits and wages shrink as well. So, if its cheaper government you want—busting the unions is one way to get there, but not the right way.

For elected officials who worry that they will be perceived as “soft” on unions if they support workers rights, consider the facts: union workers on average enjoy better benefits and working conditions because they are unionized. Supporting union rights for all workers sends the message that the right to decent wages and good jobs is universal—irrespective of who the employer is.

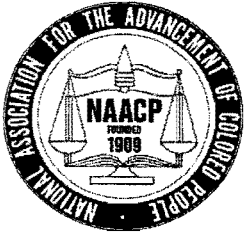
We wonder what specific event or events have sparked this new initiative. Reviewing the 25-year history of collective bargaining in Montgomery County, one must conclude that the process has worked relatively well. Montgomery County enjoys one of the most effective, efficient and productive government workforces in the region and the first priority of political leaders should be to sustain that quality.

In public sector collective bargaining, unions have historically ceded the right to strike in favor of the arbitration/mediation option in order to resolve problems that the parties find intractable on their own. Often, these issues involve deal with the apportionment of costs, not the costs themselves. Focusing exclusively on the

affordability of a matter in dispute reflects a grave misunderstanding of the process and erects another fortress for protecting management rights and prerogatives, not solving workplace problems.

Most importantly, we believe that the veiled purpose behind this proposal is to garner recognition and praise in the media and that is a poor excuse for any major change in public policy, especially in areas so significant and sensitive to the public interest.

#



**National Association for the Advancement of Colored People
4301 Garden City Drive · Landover, MD 20785**

December 6, 2010

Collective bargaining has proven to be a great leveler in the American workplace. It is under serious attack from big business and conservative forces for exactly that reason. Our organization is gravely concerned over the general trend toward disparity in wealth in the nation and within our communities.

Economists tell us that the last time in our nation's history that the nation's wealth was controlled by such a small handful of powerful individuals while the vast majority of Americans were experiencing falling income levels and declining quality of life was in 1929, on the eve of the Great Depression.

Our analysis of Council Bill 57-10 shows that it will encourage both the County Executive and the County Council to shirk their responsibility for planning, managing and effectively negotiating with the unions representing the County's workforce. This bill would encourage them to seek impasse, not agreement. This runs counter to our belief that elected officials must be accountable to citizens and taxpayers, not merely for budgetary decisions, but also for policies that impact on the quality of life of County residents.

We view any dilution of the free and unfettered exercise of collective bargaining to be a threat to minorities and the poor and therefore we oppose this bill.

Furthermore, the Maryland NAACP encourages the County Council and the County Executive to recognize the dire circumstances that now confront our County. We urge you to make extraordinary efforts to improve your relationships with the representatives of County workers to give them a genuine role in putting the County's fiscal house in order.

These are the men and women who have an intimate knowledge of the processes of our government. They are invaluable to improving efficiency and performance, but only as long as they understand that they are viewed as genuine partners and vital stakeholders. You undermine that objective if you weaken the collective bargaining process.

Sincerely,

Donald L. Cash
Chairman
NAACP, Region VII

**Testimony before the Montgomery County Council
In opposition to Expedited Bill 57-10
Personnel - Collective Bargaining - Impasse Procedures
December 7, 2010**

President Floreen and members of the County Council:

Good afternoon. My name is Helen Melton. I am the Advocacy Specialist for CASA de Maryland, which is the state's largest immigrant advocacy organization. I'm here today in opposition to County Bill 57-10, which changes an arbitrator's obligations and responsibilities for evaluating union and management positions during interest arbitration.

As the law currently stands, it allows arbitrators to evaluate many different factors in order to get to a fair and comprehensive decision at the time of deciding a final offer. Any changes to this law would clearly cloud an arbitrator's judgment on the any final offer, as this bills seeks to only give priority to a factor that's based on the effect that it would have on the effect the final offer would have on the county's budget, instead of a broad spectrum of issues, such as the condition of employment of similar employers in the Metro region, or past collective bargaining history of each contract, etc.

It is deeply disappointing to see this bill being introduced as part of the solution for the economic downtown that has grappled many other jurisdictions, while not taking into consideration the hard work and incredible service our unionize employees provide to make this county the great place we all want to live in.

As many of you know, CASA de Maryland is an organization that strives to provide services, not only to the immigrant community, but we also make every effort to represent the residents in our community that are unfairly targeted by unscrupulous employers, organizations and/or the government. That's why I'm here today; to support our brothers and sisters in the labor community against an unreasonable bill that unfairly targets the men and women that are providing essential county services to our community. This is not the right bill to solve the economic crisis of the County. I urge you to vote against bill.

Helen Melton
Advocacy Specialist
CASA de Maryland

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