


MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

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

Expedited Bill 57-10, Collective Bargaining – Impasse Procedures, sponsored by Council Vice President Ervin, Council President Floreen, and Councilmembers Andrews, Berliner, Elrich, and Knapp, Navarro, Trachtenberg, and Leventhal, is scheduled to be introduced on November 23, 2010. A public hearing is tentatively scheduled for December 7 at 1:30 p.m.

All 3 County collective bargaining laws resolve an impasse through final offer by package arbitration where the arbitrator selects 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. Bill 57-10 would modify the criteria for an impasse neutral or mediator/arbitrator to evaluate before issuing an arbitration award.

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 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.

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Expedited Bill No. 57-10
Concerning: Personnel – Collective Bargaining – Impasse Procedures
Revised: November 22, 2010
Draft No. 9
Introduced: November 23, 2010
Expires: May 23, 2010
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 the ability of the County to pay for additional
16 short-term and long-term expenditures by considering:

17 (i) the limits on the County's ability to raise taxes
18 under State law and the County Charter;

19 (ii) the added burden on County taxpayers, if any,
20 resulting from increases in revenues needed to fund
21 a final offer; and

22 (iii) the County's ability to continue to provide the
23 current standard of all public services.

24 (B) After ~~evaluating~~ the ability of the County to pay under
25 subparagraph (A), the impasse neutral may only consider:

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

- 28 [a.] (ii) [Past] past collective bargaining contracts between
 29 the parties, including the [past] bargaining history
 30 that led to [such contracts, or the pre-collective
 31 bargaining history of employee wages, hours,
 32 benefits and working conditions] each contract;
- 33 [b.] (iii) [Comparison] a comparison of wages, hours,
 34 benefits, and conditions of employment of similar
 35 employees of other public employers in the
 36 Washington Metropolitan Area and in Maryland;
- 37 [c.] (iv) [Comparison] a comparison of wages, hours,
 38 benefits, and conditions of employment of other
 39 Montgomery County [personnel] employees; and
- 40 [d.] (v) [Wages] wages, benefits, hours and other working
 41 conditions of similar employees of private
 42 employers in Montgomery County[;]
- 43 [e. The interest and welfare of the public;]
- 44 [f. The ability of the employer to finance economic
 45 adjustments and the effect of the adjustments upon the
 46 normal standard of public services by the employer].
- 47 (6) The impasse neutral [shall] must:
- 48 (A) not compromise or alter the final offer that he or she
 49 selects; [. Selection of]
- 50 (B) select an offer [shall be] based on the contents of that offer;
 51 [. No consideration shall be given to, nor]
- 52 (C) not consider or receive [shall] any evidence or argument
 53 [be received] concerning the history of collective
 54 bargaining in this immediate dispute, including offers of

55 settlement not contained in the offers submitted to the
 56 impasse neutral; and [. However, the impasse neutral
 57 shall]

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

61 * * *

62 **33-108. Bargaining, impasse, and legislative procedures.**

63 * * *

64 (f) (1) If binding arbitration is invoked, the mediator/arbitrator must
 65 require each party to submit a final offer, which must consist
 66 either of a complete draft of a proposed collective bargaining
 67 agreement or a complete package proposal, as the
 68 mediator/arbitrator directs. If only complete package proposals
 69 are required, the mediator/arbitrator must require the parties to
 70 submit jointly a memorandum of all items previously agreed
 71 on.

72 * * *

73 (4) In making a determination under this subsection, the
 74 mediator/arbitrator [may consider only the following factors]
 75 must first evaluate and give the highest priority to the ability of
 76 the County to pay for additional short-term and long-term
 77 expenditures by considering:

78 (A) the limits on the County's ability to raise taxes under State
 79 law and the County Charter;

- 80 (B) the added burden on County taxpayers, if any, resulting
 81 from increases in revenues needed to fund a final offer;
 82 and
- 83 (C) the County's ability to continue to provide the current
 84 standard of all public services.
- 85 (5) After evaluating the ability of the County to pay under paragraph
 86 (4), the mediator/arbitrator may only consider:
- 87 (A) the interest and welfare of County taxpayers and service
 88 recipients;
- 89 [(A)] (B) [Past] past collective bargaining agreements between
 90 the parties, including the past bargaining history that led
 91 to [the agreements, or the pre-collective bargaining
 92 history of employee wages, hours, benefits, and working
 93 conditions] each agreement[.];
- 94 [(B)] (C) [Comparison] a comparison of wages, hours, benefits,
 95 and conditions of employment of similar employees of
 96 other public employers in the Washington Metropolitan
 97 Area and in Maryland[.];
- 98 [(C)] (D) [Comparison] a comparison of wages, hours, benefits,
 99 and conditions of employment of other Montgomery
 100 County [personnel] employees[.] ; and
- 101 [(D)] (E) [Wages] wages, benefits, hours, and other working
 102 conditions of similar employees of private employers in
 103 Montgomery County.
- 104 [(E)] The interest and welfare of the public.
- 105 (F) The ability of the employer to finance economic
 106 adjustments, and the effect of the adjustments upon the

107 normal standard of public services provided by the
 108 employer.]

109 (6) The offer selected by the mediator/arbitrator, integrated with all
 110 previously agreed on items, is the final agreement between the
 111 employer and the certified representative, need not be ratified
 112 by any party, and has the effect of a contract ratified by the
 113 parties under subsection (c). The parties must execute the
 114 agreement, and any provision which requires action in the
 115 County budget must be included in the budget which the
 116 employer submits to the County Council.

117 * * *

118 **33-153. Bargaining, impasse, and legislative procedures.**

119 * * *

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

124 (1) In determining which final offer is the more reasonable, the
 125 impasse neutral [may consider only the following factors] must
 126 first evaluate and give the highest priority to the ability of the
 127 County to pay for additional short-term and long-term
 128 expenditures by considering:

129 (A) the limits on the County's ability to raise taxes under State
 130 law and the County Charter;

131 (B) the added burden on County taxpayers, if any, resulting
 132 from increases in revenues needed to fund a final offer;
 133 and

- 134 (C) the County's ability to continue to provide the current
 135 standard of all public services.
- 136 (2) After evaluating the ability of the County to pay under paragraph
 137 (1), the impasse neutral may only consider:
- 138 (A) the interest and welfare of County taxpayers and service
 139 recipients;
- 140 [(1)] (B) past collective bargaining agreements between the
 141 parties, including the past bargaining history that led to
 142 [the agreements, or the pre-collective bargaining history
 143 of employee wages, hours, benefits, and working
 144 conditions] each agreement;
- 145 [(2)] (C) wages, hours, benefits and conditions of employment
 146 of similar employees of other public employers in the
 147 Washington Metropolitan Area and in Maryland;
- 148 [(3)] (D) wages, hours, benefits, and conditions of employment
 149 of other Montgomery County employees; and
- 150 [(4)] (E) wages, benefits, hours, and other working conditions
 151 of similar employees of private employers in
 152 Montgomery County];
- 153 (5) the interest and welfare of the public; and
- 154 (6) the ability of the employer to finance economic adjustments, and
 155 the effect of those adjustments upon the normal standard of
 156 public services provided by the employer].

157 * * *

158 **Sec. 2. Effective Date.**

159 The Council declares that this legislation is necessary for the immediate
 160 protection of the public interest. This Act takes effect on the date on which it

161 becomes law.

162

163 *Approved:*

164

Nancy Floreen, President, County Council

Date

165 *Approved:*

166

Isiah Leggett, County Executive

Date

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

168

Linda M. Lauer, Clerk of the Council

Date

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