

MEMORANDUM

June 10, 2011

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Bill 19-11, Personnel – Collective Bargaining – Public Access

Bill 19-11, Personnel – Collective Bargaining – Public Access, 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 19-11 would require the Council to hold a public hearing on each collective bargaining agreement submitted to it, change certain dates in the collective bargaining process, and require public disclosure of each party's initial bargaining position on major economic provisions. 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 **Recommendation #18**, recommended amending the County collective bargaining laws to require the Council to hold a public hearing on each collective bargaining agreement submitted to it, change certain dates, and require public disclosure of each party's initial bargaining position on major economic provisions.

The full text of the recommendation is below.

Public Accountability in Collective Bargaining

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

disputes. However, open meetings could also inhibit the parties from making unrealistic demands and statements.

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

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

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

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

Specifically, we recommend that:

1. The initial proposals and counter-proposals in collective bargaining negotiations from both parties should be publicly posted on the County's website for public comment. The negotiated collective bargaining ground rules with each County employee union should contain a final date for each party to submit all of their proposals for bargaining. We recommend posting the positions of each party, as of that date. *This could be done by the Executive without changing current law or, alternatively, by the Council amending County law.¹*

¹ **Reservation of Organizational Reform Commissioner Susan Heltemes:** Historically, the integrity of the collective bargaining process has functioned under stringent guidelines that rely on the integrity of all persons involved in the negotiations to maintain confidentiality to the process until a final product/agreement is attained. The final product is open to the public and hearings are held by the Montgomery County Council. Initial disclosures of proposals would likely establish unrealistic expectations not only for management, but also for employees since initial proposals are usually not where the negotiations come down at the conclusion of bargaining. If opening proffers were open to the public, it is likely that outside input could obstruct the bargaining process and interfere with tight timelines and strategy. Such obstruction could alter the negotiating process and ultimately end in more arbitration and deterioration of what has become a respected form of negotiation for our public sector employees. It is important to note that Park and Planning employees, as well as HOC, Montgomery College and MCPS employees, function under state guidelines that are different than those for the firefighters, police and MCGEO. Furthermore, it seems unlikely that making opening proposals from the County and unions prior to negotiating would actually result in savings. Such proposed savings are mere conjecture and not worth the effort of upsetting a time honored process that works.

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

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

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

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:

18. Make the collective bargaining process more transparent and increase opportunities for public input on

- (a) initial proposals; and**
- (b) the end of the process.**

The ORC report included 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 19-11, sponsored by the Council President on recommendation of the ORC would implement ORC Recommendations #18.

This packet contains:

Bill 19-11
Legislative Request Report

Circle #

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Bill No. 19-11
Concerning: Personnel – Collective Bargaining – Public Access
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) require the Council to hold a public hearing on each collective bargaining agreement submitted to it;
- (2) change certain dates;
- (3) require public disclosure of each party's initial bargaining position on major economic provisions; and
- (4) generally amend County collective bargaining laws.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-80, 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:

Sec. 1. Sections 33-80, 33-81, 33-108, and 33-153 are amended as follows:

33-80. Collective bargaining.

* * *

(d) *Time limits.* Collective bargaining [shall commence] must begin no later than November 1 [preceding a] before any fiscal year for which there is no contract between the employer and the certified representative and [shall] should be concluded by January [20] 6. The employer must publish the certified representative's initial proposal on economic terms and the employer's initial counter-proposal on economic terms on an internet site accessible to the public within 10 days after the employer's initial counter-proposal is made. The resolution of an impasse in collective bargaining [shall] must be completed by [February 1] January 18. These time limits may be waived only by prior written consent of the parties.

* * *

(g) *Submission to Council.* A ratified agreement [shall be] is binding on the employer and the certified representative, and [shall] must be reduced to writing and executed by both parties. In each proposed annual operating budget, the County Executive [shall] must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. Any term or condition of a collective bargaining agreement which requires an appropriation of funds or enactment, repeal, or modification of a County law [shall] must be timely submitted to the County Council by the employer by [April 1] March 15, unless extenuating circumstances require a later date. If a later submission is necessary, the employer [shall] must specify the

28 submission date and the reasons for delay to the Council President by
29 [April 1] March 15. The employer [shall] must make a good faith effort
30 to have such term or condition implemented by Council action. Each
31 submission to the Council [shall] must include:

- 32 (1) all proposed legislation and regulations necessary to implement
33 the collective bargaining agreement;
- 34 (2) all changes from the previous collective bargaining agreement,
35 indicated by brackets and underlines or a similar notation system;
36 and
- 37 (3) all side letters or other extraneous documents that are binding on
38 the parties.

39 (h) *Council review.* The Council must hold a public hearing to allow the
40 parties and the public to testify on the agreement. On or before May
41 1, the County Council [shall] must indicate by resolution its
42 [intention] intent to appropriate funds for or otherwise implement the
43 agreement or its [intention] intent not to do so, and [shall] must state
44 its reasons for any intent to reject any part of the agreement. The
45 Council, by majority vote taken on or before May 1, may defer the
46 May 1 deadline to any date not later than May 15. If the Council
47 indicates its [intention] intent to reject any part, it [shall] must
48 designate a representative to meet with the parties and present the
49 Council's views in their further negotiations. This representative
50 [shall] must also participate fully in stating the Council's position in
51 any ensuing impasse procedure. The parties [shall] must thereafter
52 meet as promptly as possible and attempt to negotiate an agreement
53 acceptable to the Council. Either [of the parties] party may initiate the
54 impasse procedure [set forth] described in Section 33-81. The results

of the negotiation or impasse procedure [shall] must be submitted to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days.

* * *

33-81. Impasse procedure.

(a) Before September 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an impasse neutral either by agreement or through the processes of the American Arbitration Association. The impasse neutral [shall be required to] must be available during the period from January [20] 6 to [February 1] January 18. Fees, costs and expenses of the impasse neutral [shall] must be shared equally by the employer and the certified representative.

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

* * *

(5) On or before [February 1] January 18, the impasse neutral must select, as a whole, the more reasonable, in the impasse neutral's judgment, of the final offers submitted by the parties.

* * *

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

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

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

86 * * *

87 (e) (1) During the course of collective bargaining, either party may
 88 declare an impasse and request the services of the
 89 mediator/arbitrator, or the parties may jointly request those
 90 services before an impasse is declared. If the parties do not reach
 91 an agreement by [February 1] January 15, an impasse exists.
 92 Any issue regarding the negotiability of any bargaining proposal
 93 must be referred to the Labor Relations Administrator for an
 94 expedited determination.

95 * * *

96 (3) If the mediator/arbitrator finds, in the mediator/arbitrator's sole
 97 discretion, that the parties are at a bona fide impasse, or as of
 98 [February 1] January 15 when an impasse is automatically
 99 reached, whichever occurs earlier, the dispute must be submitted
 100 to binding arbitration.

101 (f) (1) If binding arbitration is invoked, the mediator/arbitrator must
 102 require each party to submit a final offer, which must consist
 103 either of a complete draft of a proposed collective bargaining
 104 agreement or a complete package proposal, as the
 105 mediator/arbitrator directs. If only complete package proposals
 106 are required, the mediator/arbitrator must require the parties to
 107 submit jointly a memorandum of all items previously agreed on.

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(3) On or before February [15] 1, the mediator/arbitrator must select, as a whole, the more reasonable of the final offers submitted by the parties. The mediator/arbitrator must not compromise or alter a final offer. The mediator/arbitrator 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 must consider all previously agreed-on items, integrated with the disputed items, to decide which offer is the most reasonable.

* * *

(g) In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The employer must submit to the Council by [April 1] March 15, unless extenuating circumstances require a later date, any term or condition of the collective bargaining agreement that requires an appropriation of funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact. If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by [April 1] March 15. The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. Each submission to the Council must include:

- 135 (1) all proposed legislation and regulations necessary to implement
- 136 the collective bargaining agreement;
- 137 (2) all changes from the previous collective bargaining agreement,
- 138 indicated by brackets and underlines or a similar notation
- 139 system; and
- 140 (3) all side letters or other extraneous documents that are binding
- 141 on the parties.

142 The employer must make a good faith effort to have the Council
 143 approve all terms of the final agreement that require Council review.

- 144 (h) The Council [may] must hold a public hearing to enable the parties
- 145 and the public to testify on the agreement.

146 * * *

147 **33-153. Bargaining, impasse, and legislative procedures.**

- 148 (a) Collective bargaining must begin no later than the November 1 before
- 149 the beginning of a fiscal year for which there is no agreement between
- 150 the employer and the certified representative, and must be completed
- 151 on or before January [15] 2. The resolution of a bargaining impasse
- 152 must be completed by [February 1] January 17. These time limits
- 153 may be waived or extended by written agreement of the parties. The
- 154 employer must publish the certified representative's initial proposal
- 155 on economic terms and the employer's initial counter-proposal on
- 156 economic terms on an internet site accessible to the public within 10
- 157 days after the employer's initial counter-proposal is made.

158 * * *

- 159 (d) Before September 10 of any year in which the employer and the
- 160 certified representative bargain collectively, they must choose an

161 impasse neutral, either by agreement or through the processes of the
 162 American Arbitration Association. The impasse neutral must be
 163 available from January [15] 2 to [February 1] January 17. The impasse
 164 neutral's fees and expenses must be shared equally by the employer and
 165 the certified representative.

166 (e) During the course of collective bargaining, either party may declare an
 167 impasse and request the services of the impasse neutral, or the parties
 168 may jointly request those services before declaring an impasse. If the
 169 parties have not agreed on a collective bargaining agreement by January
 170 [15] 2, an impasse exists by operation of law.

171 * * *

172 (i) On or before [February 1] January 17, unless that date is extended by
 173 written agreement of the parties, the impasse neutral must select the
 174 final offer that, as a whole, the impasse neutral judges to be the more
 175 reasonable.

176 * * *

177 (l) In each proposed annual operating budget, the County Executive must
 178 describe any collective bargaining agreement or amendment to an
 179 agreement that is scheduled to take effect in the next fiscal year and
 180 estimate the cost of implementing that agreement. The annual
 181 operating budget must include sufficient funds to pay for the items in
 182 the parties' final agreement. The employer must expressly identify to
 183 the Council by [April 1] March 15, unless extenuating circumstances
 184 require a later date, all terms and conditions in the agreement that:

- 185 (1) require an appropriation of funds, [or]
- 186 (2) are inconsistent with any County law or regulation, [or]

187 (3) require the enactment or adoption of any County law or
188 regulation, or

189 (4) which have or may have a present or future fiscal impact.

190 If a later submission is necessary, the employer must specify the
191 submission date and the reasons for delay to the Council President by
192 [April 1] March 15. The employer must make a good faith effort to
193 have the Council take action to implement all terms and conditions in
194 the parties' final agreement.

195 * * *

196 (n) The Council [may] must hold a public hearing to enable the parties
197 and the public to testify on the agreement.

198 * * *

199 *Approved:*

200

Valerie Ervin, President, County Council Date

201 *Approved:*

202

Isiah Leggett, County Executive Date

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

204

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 19-11

Personnel – Collective Bargaining – Public Access

DESCRIPTION: Bill 19-11 would require the Council to hold a public hearing on each collective bargaining agreement submitted to it, change certain dates in the collective bargaining process, and require public disclosure of each party's initial bargaining position on major economic provisions.

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

GOALS AND OBJECTIVES: To increase public access to the collective bargaining process with County employees.

COORDINATION: County Executive, County Attorney, Human Resources

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

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

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: None.

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