GO Item 1
October 6, 2016
Worksession

MEMORANDUM

October 4, 2016

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

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

Expedited Bill 24-16, Collective Bargaining – Impasse Procedures - Amendments, sponsored by Lead Sponsor Council President Floreen and Co-Sponsor Councilmember Rice, was introduced on June 21, 2016. A public hearing was held on July 12.

Background

The County enacted 3 separate collective bargaining laws at different times. The first law enacted was the Police Labor Relations Law. The law governing general County employees was enacted second, and the law governing fire and rescue employees was enacted last. The amendments would make similar changes in each law. The lead sponsor, Council President Floreen, explained these changes in a June 14 memorandum at ©28-30. The goal of this Bill is to create a system that encourages the Executive and the union to negotiate sustainable collective bargaining agreements that can be approved by the Council without resorting to interest arbitration. The Bill would amend each collective bargaining law by adding some transparency to the collective bargaining process, modifying the qualifications and selection procedure for the labor relations administrators, separating the mediation process from the arbitration process, and modifying the qualifications for the impasse arbitrator and the factors the arbitrator must consider in resolving an impasse in collective bargaining.

Montgomery County Organizational Reform Commission

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

The ORC recommended:

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

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

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

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

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

Bill 9-13

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

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

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

Other Jurisdictions

Although the union representatives at the public hearing characterized the amendments in Bill 24-16 as an anti-union attack that would take the County collective bargaining laws outside the mainstream of labor law in the United States, a review of the labor laws in other jurisdictions does not support this claim. Many States have enacted comprehensive collective bargaining laws covering all State and local government employees. Maryland has enacted a comprehensive collective bargaining law for public school employees and for State employees, but leaves the regulation of collective bargaining with County and municipal employees up to the local legislative body. However, it may be useful to compare the amendments in Bill 24-16 with some of the State and local laws governing collective bargaining with State and local government employees.

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

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

b. **Selection of the Labor Relations Administrator or Permanent Umpire (LRA)** Comprehensive State public sector collective bargaining laws usually create an independent agency, often called the Public Employee Relations Board (PERB) to administer the law and resolve disputes. Each County collective bargaining law creates the LRA position to perform these duties. Bill 24-16 would provide that the LRA is appointed by the Executive, subject to confirmation by the Council. This is consistent with Section 215 of the County Charter which requires the Executive to "appoint, subject to confirmation of the Council, all members of boards and commissions unless otherwise prescribed by state law or this Charter."

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

   Maryland created the Public School Labor Relations Board to administer the State law governing collective bargaining with school employees. Although all 5 members of the board are appointed by the Governor with the advice and consent of the Senate, 2 members must be appointed from a list of candidates submitted by

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

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

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

Howard County provides for arbitration of an impasse in bargaining with police or fire employees. The arbitrator may try to settle the dispute, but is not a mediator. For all other Howard County employees, impasse resolution consists of mandatory non-binding fact-finding with no arbitration. See Howard County Code §§1.608 and 1.609. Baltimore County also separates the role of mediator and arbitrator. See Baltimore County Code §§4-5-404 to 4-5-407. Anne Arundel County separates the role of mediator and non-binding fact-finder for all non-uniformed public safety employees. Anne Arundel County provides for a separate mediator and arbitration panel for uniformed public safety employees. See Anne Arundel Code §§6-4-110 and 6-4-111. Prince George's County similarly splits the role of mediator and arbitrator. See Prince George's County Code §§13A-111 and 13A-111.01.

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

Public Hearing – July 12, 2016

The Council held a spirited public hearing on July 12 with 31 speakers. Three members of the Organizational Reform Commission, Vernon Ricks (©47-48), Joan Fidler (©49), and Scott Fosler (©50-51) each supported the Bill as a reasonable approach to make the collective bargaining process more transparent for the taxpayers and more balanced. We also received written testimony from a 4th member of the Organizational Reform Commission, Cristina Echavarren, (©52) supporting the Bill. Each of the other 28 speakers strongly opposed the Bill arguing that it was anti-union and would shift the balance of power too far to the County. At least one representative from each County employee union testified in opposition to the Bill. Jeffrey Buddle, President of the Montgomery County Career Fire Fighters Association, IAFF Local 1664, provided a detailed explanation of his opposition to each provision of the Bill. See (©53-58). Gino Renne, President, UFCW Local 1994, MCGEO, provided a history of the County collective bargaining laws. See (©59-64). Robert J. Garagiola, an attorney with Alexander & Cleaver, representing the Fraternal Order of Police, Lodge 35, also strongly opposed the Bill.

Officials from other unions also opposed the Bill. Carlos Jimenez, Executive Director of the Metropolitan Washington Council, AFL-CIO (©65-67), Merle Cuttitta, President, SEIU Local 500 (©68-70), James P. Koutsos, President, Montgomery County Association of Administrators and Principals (©71-72), Mark Federici, UFCW Local 400 (written testimony from Boaz Young-El at ©73), Vince Canales, President, Maryland FOP, Teferi Gebre, Executive Vice President of AFL-CIO (written testimony from Richard Trumka (©74-75), Darrell Carrington, AFSCME Council 67 (©76), Marilyn Irwin, President, CWA Local 2108 (©77-78), Stuart Applebaum, UFCW International Vice President, and Al Vincent, UFCW Region 2 International Vice President, each opposed the Bill.

William Mitchell, Human Resources Consultant testifying for MCGEO (©79-88), William McFadden, a retired labor mediator with the FMCS, Richard Kirschner, Justin Vest, Progressive Maryland, Michael Rund, County Fire Fighter, Carey Butsavage, an attorney representing MCGEO, Larry Dickter, former Vice President of MCGEO, Dianne Betsey, County Library employee, Leon Walters, MCGEO Shop Steward, County Information Technology Department, Valerie Whitby, County Housing Inspector, Patricia Buck, County Library employee, Brock Cline, County Fire Captain, Robert Ford, County Fire Fighter, Kevin Heenan, County Corrections employee, and Kermit Leibensperger, also opposed the Bill. The Council also received written testimony from Victoria Leonard, LiUNA (©89) and Carlos Garcia, CASA (©90-92) opposing the Bill.

Discussion

Bill 24-16 would amend these laws in the following 6 areas:

1. **Transparency** – The Bill would:

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

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

These provisions were attacked by the union representatives at the public hearing as "taking a page out of the conservative model law advocated by American Legislative Exchange Council or ALEC. However, ALEC advocates that all collective bargaining sessions must be conducted in public and all documents used in bargaining subject to public disclosure. See the ALEC model law at: https://www.alec.org/model-policy/public-employee-bargaining-transparency-act/

Bill 24-16 would not require either of these "transparency provisions." Linking Bill 24-16 to ALEC is a catchy sound bite without a basis in fact.

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

This provision was added to the Bill to extend the process to ensure enough time for splitting the mediator and the arbitrator. The main advantage of the current med-arb process is speed because the arbitrator is already familiar with the positions of the parties before the arbitration hearing. Separating the role of mediator and arbitrator may require additional time.

3. **Employer rights** – Employer or management rights are those topics that are not subject to collective bargaining. The Police Labor Relations Law contains 10 listed employer rights. Each of the other 2 collective bargaining laws has 19 employer rights. The Bill would make the list the same in each law by adding the additional 9 employer rights to the Police Labor Relations Law. In addition, the Bill would clarify that any subject that is not expressly identified as a mandatory subject of bargaining is not subject to bargaining as an employer right.

4. **Selection of Labor Relations Administrator (LRA)** – The LRA (or umpire under the Police Labor Relations Law) serves as a public official responsible for deciding if either the Executive or the union has violated the collective bargaining law. The LRA conducts evidentiary hearings and issues decisions that are subject to appeal on the record in the Circuit Court as a decision of an administrative agency. Although the LRA is appointed by the Executive for a 5-year term of office, subject to Council confirmation, each law gives the union certain rights to help select this public official. The union representing police officers has the right to veto the re-appointment of the LRA. Under the other 2 laws, the Executive must appoint the LRA from a list that is agreed upon by the Chief Administrative Officer and the union. The Bill would repeal the right of the union to help choose the LRA and leave it to the elected Executive and Councilmembers in the same manner that other County public officials are appointed.

This provision was attacked at the public hearing by the union representatives as anti-union. Reducing the role of the union in selecting the judge who acts as the

Public Employee Relations Board lessens the power of the union. However, the Labor Relations Administrator is a government official holding an office of profit under the Maryland Constitution. As described above, it is not unusual for the elected representatives of the residents (here the Executive and the Council) to select the person holding this type of government position.

The Bill would also change the qualifications for the LRA from a person with experience as a neutral party in labor relations to a person who is experienced conducting adjudicatory hearings, such as a retired judge. Due in part to Maryland's mandatory retirement policy for its judges, many retired judges with a wealth of experience in deciding cases based upon the evidence and the relevant law continue to work as mediators and arbitrators.

Retired judges are uniquely qualified to preside over adjudicatory hearings, but Bill 24-16 would not require the LRA to be a retired judge. The Bill would require the LRA to be experienced conducting adjudicatory hearings. Many people who are also experienced in labor relations would continue to qualify for these positions.

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

This provision was also attacked by the union representatives at the public hearing as anti-union. However, it is a neutral change in policy that leverages the strength of the mediation process. The ability of a mediator to get each party to understand the strengths and weaknesses of their positions is based upon the mediator's ability to gain the confidence of the parties. A party is much more likely to confide in a mediator who has no authority to impose a resolution. Mediation before a person who is both the mediator and the arbitrator is simply the initial stage of the arbitration process. Splitting the role of mediator and arbitrator is the most common method in other jurisdictions.

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

   (a) The Bill would create a 3-person arbitration panel. The Executive would select 1 member, the union would select 1 member, and the parties would

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

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

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Expedited Bill No. 24-16
Concerning: Collective Bargaining – Impasse Procedures - Amendments
Revised: 9/28/2016 DraftNo.10
Introduced: June 21, 2016
Expires: December 21, 2017
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Floreen

AN EXPEDITED ACT to:

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

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

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

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

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

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

33-77. Permanent umpire.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33-80. Collective bargaining.

* * *

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

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

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

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

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

(5) [To] direct or supervise employees;

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

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

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

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

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

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

(11) set the standards of productivity and technology;

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

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

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

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

(16) maintain internal security standards;

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

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

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

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

* * *

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

* * *

33-81. Impasse procedure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the specific reopener matter to be bargained;

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

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

33-103. Labor relations administrator.

* * *

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

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

* * *

33-107. Collective bargaining.

* * *

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

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

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

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

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

(5) Direct and supervise employees.

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

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

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

(9) Transfer, assign, and schedule employees.

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

(11) Set the standards of productivity and technology.

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

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

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

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

(16) Maintain internal security standards.

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

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

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

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

33-149. Labor Relations Administrator.

* * *

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

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

* * *

33-152. Collective bargaining.

* * *

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

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

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

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

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

(5) direct and supervise employees;

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

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

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

(9) transfer, assign, and schedule employees;

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

(11) set standards of productivity and technology;

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

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

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

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

(16) maintain internal security standards;

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

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

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

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

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

33-103A. Arbitration Panel.

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

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

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

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

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

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

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

Approved:

Nancy Floreen , President, County Council Date

LEGISLATIVE REQUEST REPORT

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

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

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

NANCY FLOREEN
COUNCIL PRESIDENT

MEMORANDUM

June 14, 2016

TO: Councilmembers

FROM: Nancy Floreen, Council President

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

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

Transparency

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

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

Time for Negotiation

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

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Employer Rights

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

Selection of Labor Relations Administrator

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

Mediation

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

Arbitration

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

3-Person Arbitration Panel

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

The criteria for the arbitration panel to consider

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

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

I would welcome your support for this Bill.

OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Shawn Stokes, Director
Office of Human Resources

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

DATE: June 29, 2016

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

Bill 24-16E would accomplish the following:

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

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

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

The Bill is legally sufficient.

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

ebl

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

16-004023
Bill 24-16E OCA review

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

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Floreen and Councilmembers Berliner and Trachtenberg

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SUBJECT: Appointments to the Montgomery County Organizational Reform Commission

Background

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

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

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

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

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

Action

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

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

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

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

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

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

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

This is a correct copy of Council action.

Linda M. Lauer

Linda M. Lauer, Clerk of the Council

Collective Bargaining

Statement of the Issue

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

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

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

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

Discussion of the Issue and Recommendations

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

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

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

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

Summary of Collective Bargaining Recommendations[6]

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

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

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

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

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

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

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

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

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

Public Accountability in Collective Bargaining

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

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

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

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

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

  Specifically, we recommend that:

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

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

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

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

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

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

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

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

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

The Erosion of Management Rights

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

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

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

Public Accountability in Interest Arbitration

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

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

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

The arbitrator selected the final offer of the International Association of Fire Fighters (IAFF) in the one impasse with the firefighters and selected the County offer in the one impasse with general County employees represented by the Municipal and County Government Employees Organization (MCGEO). The arbitrator selected the FOP offer in 11 of the 15 impasses with the police. The arbitrator selected the County offer over the FOP offer three times,[8] and the County agreed to the FOP offer after the arbitration hearing one time. One explanation for these one-sided results is a lack of public accountability in the interest arbitration system used to resolve impasses with County unions.

One of the arguments often raised in challenges to interest arbitration laws is the lack of accountability to the public. Legislatures enacting interest arbitration laws have responded to this criticism in a variety of ways. An Oklahoma law authorizes a city council to call a special election and submit the two proposals to the voters for a final decision, if the arbitrator selects the union's final package. The Oklahoma Supreme Court upheld this unusual provision in *FOP Lodge No. 165 v. City of Choctaw,* 933 P. 2d 261 (Okla. 1996). Some laws provide for political accountability in the method of choosing the arbitrator. The Colorado Supreme Court upheld an interest arbitration law, in part, because it required the city council to unilaterally select the list of arbitrators in *FOP Colorado Lodge No. 19 v. City of Commerce City,* 996 P. 2d 133 (Colo. 2000). Finally, many interest arbitration laws provide for accountability by adopting guidelines that the arbitrator must consider, require a written decision with findings of fact, and subject the decision to judicial review for abuse of discretion, fraud, or misconduct. See, *Anchorage v. Anchorage Dep't of Employees Ass'n,* 839 P. 2d 1080 (Alaska 1992).

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

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

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

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

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

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

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

e. The interest and welfare of the public; and

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

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

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

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

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

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

2. Change the method of selecting the arbitrator.

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

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

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

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

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

provision for a three-person arbitration board, with the third member selected from a list provided by the State PERB if the parties are unable to agree.

Maryland, however, does not have a comprehensive State law governing collective bargaining with State and local government employees and does not have a State PERB with jurisdiction over County government labor relations.[9] Montgomery County collective bargaining laws establish a single labor relations administrator for each bargaining unit to serve as the PERB. The labor relations administrator is jointly selected by the Executive and the union.

Montgomery County collective bargaining laws require the labor professional jointly selected by the parties to serve as both a mediator and the arbitrator. This dual role has the advantage of granting the mediator/arbitrator greater authority during the mediation process. A party must seriously consider any statement about a weakness in a party's position by a mediator who ultimately will resolve an impasse as the arbitrator. Traditional mediation promotes the free flow of ideas between the parties, in part, because the mediator has no authority to impose a resolution. This free flow of ideas is diminished when the mediator will also serve as the arbitrator. A major advantage of the dual role is that the mediator/arbitrator can issue a quicker decision because he or she is already familiar with the issues at impasse. This speed is useful due to the compressed schedule for bargaining, impasse resolution, and budget decisions. However, we believe the better alternative for both mediation and arbitration would be to use a jointly selected mediator and a separate arbitration board.

- ***We recommend establishment of a three-person arbitration board, with each party selecting one member and the two parties selecting a third neutral party.***

If the parties are unable to agree on a third party, we recommend following the New York and Pennsylvania model of requiring the parties to select a third party from a pre-selected list of neutrals appointed by the Council. The persons on the list would be appointed for a four-year term of office without requiring the concurrence of either the union or the Executive. If the parties are unable to agree on a person from the Council's list, they would be required to select an arbitrator through alternate strikes from the list.

Savings

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

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

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

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

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

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

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

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

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

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

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

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

June 28, 2013

TO: Isiah Leggett, County Executive

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

SUBJECT: Interest Arbitration under the County Collective Bargaining Laws

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

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

cc. Councilmembers
Tim Firestine
Joseph Adler
Marc Hansen
Steve Farber

Testimony of Vernon H. Ricks, Jr.
on Expedited Bill 24-16, Collective Bargaining – Impasse Procedures –Amendments
July 12, 2016

President Floreen and members of the Council, I am Vernon Ricks. I am here to speak in support of Expedited Bill 24-16.

One of the county's greatest assets is our outstanding workforce. This fact really came home to me when I served as Co-chair of the Organizational Reform Commission appointed jointly by you and the County Executive. One focus of the commission's 2011 report was collective bargaining. My excellent Co-chair, Dick Wegman, has asked to be associated with my remarks this evening.

We issued our report at the depth of the Great Recession. The recovery since then has been very slow. Many people are still hurting, but property taxes this year are going up by nearly 9 percent. Now, five years after our report, is a good time to revisit what we proposed.

Bill 24-16 includes some key elements from our report. The first element is transparency. The bill would require public disclosure of each party's initial bargaining position on all provisions, and also require that any evidentiary hearing before the arbitration panel be open to the public. In my view, opening up the process to the public at these two points – but only at these points, not for the entire negotiating process – is just plain common sense. This county is committed to open government and transparency.

Another element from our report is to separate the roles of mediator and arbitrator, which are combined under current law. We concluded that separating the roles would encourage negotiated settlements rather than force them.

Still another element from our report is to replace the single arbitrator under current law with a three-member arbitration panel that includes one member appointed by the Executive, one by the union, and a neutral third member – a retired judge – selected by the first two members. This change would make the process more balanced. Under current law, both parties have the right to go to arbitration if they have failed to reach agreement. But the County Executive has said that he has no choice but to reach agreement because an arbitrated

decision would result in a worse outcome. This really means that a basic option in bargaining – arbitration – is available only to the union. In other words, the playing field is not level.

Another element from our report is to strengthen the requirement to consider the affordability of an arbitrated decision by assuming no increase in any existing tax rate or the adoption of any new tax.

Bill 24-16 includes two other elements that the commission report did not address. One would clarify employer rights. The other would have the labor relations administrator or permanent umpire appointed by the Executive and confirmed by the Council. This is parallel to the practice in many progressive states, the District of Columbia, and the federal government.

There will be extensive debate about all these provisions. These issues are very important not only to our employees and taxpayers but to the future of our county. I urge you to keep an open mind and to weigh carefully which changes have the potential to move our county forward.

Testimony Before the County Council
Expedited Bill 24-16, Collective Bargaining – Impasse Procedures – Amendments
July 12, 2016

President Floreen and members of the Council, I am **Joan Fidler, president of the Montgomery County Taxpayers League** and I am here to testify in support of Expedited Bill 24-16 on Collective Bargaining – Impasse Procedures.

First, we would like to thank President Floreen for proposing the bill as it reflects a degree of courage that we admire. It begins to restore the balance for the taxpayers of the county.

Bill 24-15 is a new beginning. Let us count the ways:

The bill provides transparency – it requires public disclosure at the outset of bargaining and at evidentiary hearings.
The bill introduces objectivity – it separates the roles of mediator and arbitrator
The bill recognizes the need for a level playing field - it replaces the single arbitrator with a 3-member panel.

There will be opposition to this bill from the labor unions. We believe that labor unions are important and so are employee rights. But taxpayers are important too and they too have rights.

So to the argument that requiring public disclosure would impede efficiency and effectiveness, we would respond that opening proposals are not exactly state secrets to be hidden from the taxpaying public and that evidentiary hearings in all trials are open to the public. Why not here?

To the argument that the transparency provisions of this bill are harmful, we would argue that the only two transparency provisions in this bill are opening positions and evidentiary hearings. Should the taxpayer be barred from those? The bill does not require any open bargaining sessions.

To the argument that using the same individual as mediator and arbitrator streamlines the process, we would argue that separating the two roles is a standard method of mediation used in our court system and in other local collective bargaining laws. Why not here?

To the argument that labor relations professionals will be replaced by retired judges, we would argue that retired judges have vast experience in assessing facts fairly. Why would we reject an experienced judge?

Most important, the current system of interest arbitration has a direct and tremendous impact on the cost of County wages and benefits. In the last 3 years most county employees have had pay raises of 21% with another 4.5% this year. The bulk of property tax increases fund the salaries and benefits of our county employees. It is said that he who pays the piper calls the tune. Could taxpayers see the arbitration sheet music before the score is settled?

5

Statement by Scott Fosler
to the
Montgomery County Council
on
Expedited Bill 24-16, Collective Bargaining –
Impasse Procedures –Amendments
July 12, 2016

President Floreen and members of the County Council

My name is Scott Fosler. I am testifying solely on my own behalf, and not as a representative of any organization with which I am affiliated. I was a member of the Organizational Reform Commission appointed jointly by the County Council and the County Executive, and my testimony draws on that Commission's work. I would like to associate myself with the testimony of Mr. Vernon Ricks, who was co-chair of the Commission and applies some of the recommendations from our report to Bill 24-16.

I would also like to make a broader point about this legislation.

Having spent eight years working directly with county employees when I was on the County Council, I can attest to high standards of conduct and professionalism that have been the expectation and the practice in every department of our county government. And I have long supported the important role of public employee unions and a strong collective bargaining process as a means of providing employees with the practical instruments they need and deserve to represent their interests.

The process for collective bargaining is inherently complex, and requires periodic adjustment to assure it is properly balanced in a manner that retains the confidence of both the public and of public employees. The changes proposed in Bill 24-16 are part of the on-going attention diligent elected officials rightly give to that process. They are not trivial changes, but neither do they stretch beyond the boundaries of good, mainstream practice in public labor relations and collective bargaining. To the contrary, they would bring Montgomery County back into that mainstream. Let me cite two examples.

Bill 24-16 would increase transparency in the bargaining process in a carefully measured way by requiring public disclosure of each party's initial bargaining position on all provisions, and also requiring that any evidentiary hearing before the arbitration panel be open to the public. This is similar to the practice in both Iowa and Alaska.
Some states go much further, requiring that all negotiations be open to the public, including Colorado, Florida, Idaho, Kansas, Minnesota, Montana, Tennessee and Texas.

The second example is the manner of appointment for public employee relations board members, the equivalent to our Labor Relations Administrator (LRA) or umpire.

Maryland is unusual in that it does not have a comprehensive public employee labor law that covers all state and local government employees. And, by the way, it's worth

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remembering that not all states even permit public employees to bargain collectively, including our neighbor to the south, Virginia.

Most states that permit public sector collective bargaining do have comprehensive laws, and it is common practice in many of those states -- including New York, Pennsylvania, Delaware and Connecticut -- for the public employee relations board members to be appointed by the governor and confirmed by the legislature without union input. The District of Columbia uses a similar model. All of these jurisdictions follow the example of the Federal Labor Relations Authority, where the president appoints and the Senate confirms members.

Any time changes are proposed in complex legal and administrative systems that affect our lives, it is natural, and prudent, that we examine them with care and caution. Because small changes can in fact have large consequences. So I understand entirely the concerns of our county workers, unions and elected officials about the changes proposed in Bill 24-16.

I would only hope that that the deliberations over these important proposals be kept in context, and that all sides treat them with the proportionality warranted. The overriding concern of everyone is to find the right balance that serves the public interest while respecting and protecting the rights and interests of county employees, themselves so vital a part of that broader public interest.

From: Cristina Echavarren [mailto:c.echavarren@gmail.com]
Sent: Monday, July 11, 2016 8:20 AM
To: Floreen's Office, Councilmember <Councilmember.Floreen@montgomerycountymd.gov>
Cc: Farber, Steve <Steve.Farber@montgomerycountymd.gov>
Subject: Bill 24-16, Collective Bargaining Impasse Procedures

Nancy Floreen, President
Montgomery County Council

Dear Councilmember Floreen:

I am writing to you in support of Expedited Bill 24-16, Collective Bargaining Impasse Procedures.
I have been a resident of Montgomery County for several decades, most recently as a property owner residing outside the County. Throughout my association with the County, I have been proud of the priorities set by the County Government to ensure the well-being of its citizens. I have been proud to be a part of a community that receives high quality public services provided by its police, fire fighters, teachers, and County employees. I realize these services require adequate funding, and I am fully in support of adequate, but reasonable, funding for these services.
I have always believed in public service, and I was happy to serve on the Organizational Reform Commission in 2010-2011. While on the Commission, I led the subgroup that evaluated the laws and regulations around collective bargaining in the County. This experience allowed me to see that there were problems with the process.
During discussions in the subgroup, it became apparent to me that the County was providing a disservice to the citizens of Montgomery County. This disservice to the citizens of Montgomery County is due to the lack of transparency regarding the collective bargaining process.
The proposed legislation would allow citizens in the County to know, within a reasonable amount of time prior to negotiations, the initial bargaining positions on all provisions. It also requires that any evidentiary hearing before the arbitration panel be open to the public. These changes to the collective bargaining process are reasonable and fair to the citizens of this County. This legislation does not and should not, require actual negotiation sessions to be open to the public.
The Commission subgroup found that the rules regarding mediation and arbitration prevented citizens of the County from fully understanding the issues regarding collective bargaining impasse situations. This legislation addresses issues we raised regarding mediation and arbitration. The bill would allow the County Executive to appoint the Labor Relations Authority members, subject to County Council approval. This change in the law will transfer the responsibility of appointments to the County Executive and the County Council, thus allowing citizens an opportunity to question the choices of elected officials. Currently, County laws provide for unions to have either veto power over the selection, or for unions to provide a list from which the LRA member must be selected. The bill also requires that evidentiary hearings before the arbitration panel be open to the public.
The Organizational Reform Commission recommended transparency on these issues and it is time to move forward to enact the legislation that allows for it to happen.
Best regards,

Cristina Echavarren

Montgomery County Career
Fire Fighters Association

LOCAL 1664

July 12, 2016

PUBLIC HEARING TESTIMONY OF THE
MONTGOMERY COUNTY CAREER FIRE FIGHTERS ASSOCIATION, IAFF LOCAL 1664, AFL-CIO

EXPEDITED BILL 24-16: COLLECIVE BARGAINING – IMPASSE PROCEDURES – AMENDMENTS

The Montgomery County Career Fire Fighters Association, IAFF Local 1664, AFL-CIO (hereinafter, "MCCFFA" or "the Union") is submitting this written testimony to express its *strong opposition* to Expedited Bill 24-16. If enacted, this legislation would do meaningful harm to County Government employees by curtailing collective bargaining; which has proven its value over the years in promoting harmonious relations between the County Government and those who so diligently provide important public services to the residents and business owners in this County.

This proposed legislation only serves to *unravel* that which has been the declared public policy of the County for decades – "to preserve an appropriate balance between labor and management" in initiating government action on subjects that are appropriate for collective deliberations, i.e., terms and conditions of employment (*see* County Code, Chapter 33, Article X, Section 33-147). Rather than *preserving the balance* between labor and management, Expedited Bill 24-16 would, if enacted, create an *uneven* playing field that strongly favors management in all subsequent rounds of collective bargaining.

In introducing this Bill, Council President Floreen pointed to the fact that County employee unions have won 16 of the 20 interest arbitrations that have occurred since 1988. Although she notes that "there are many possible explanations for these results other than the [present] 'system' " (not the least of which may be that the contract proposals presented by various County Executives were wholly unreasonable), there has been no detailed analysis of those interest arbitration awards, and yet the Bill seeks to establish a new system in which all of the trump cards would be dealt to the County.

In fact, there has been only ***two*** arbitrated agreements involving MCCFFA (both of which the Union won). The first involved the amount of the reduction to the pensions paid to fire/rescue service retirees when they reach normal social security retirement age (the reduction that was then in effect caused retirees to have less total retirement income than what they received prior to reaching social security retirement age). The second interest arbitration involved pay and benefit levels in the aftermath of the Great Recession. In that particular arbitration, the MCCFFA submitted a proposal calling for a "0%" wage increase; so it is altogether inaccurate to suggest that interest arbitration as presently constructed leads to wage and benefit packages for fire/rescue service employees that are "unsustainable" (notably, *even the County Council failed to support the unreasonable reductions in employee compensation that the County Executive presented in that arbitration case*).

Also, while Expedited Bill 24-16 has purportedly been introduced to address concerns about fiscal sustainability, Council members should not lose sight of the fact that negotiated labor agreements contain

provisions on health, safety and related working conditions that are of vital importance to employees. The Bill (with its changes to the Employer Rights section(s) of current law) would put the continued validity of these provisions at risk.

However, the most compelling reason for voting against this Bill is the fact that it is simply not needed to protect the County's interests in either the day-to-day administration of the collective bargaining laws or in the collective bargaining process. Under current law, the County Council has the authority to reject funding for negotiated labor agreements that it deems to be unaffordable. In fact, there have been several instances in just the last six years (most recently in setting the County budget for FY '17) that the Council has exercised this authority by voting to reject funding of negotiated wage and benefit improvements for County employees. *When the County Council has the ultimate power over the purse strings, it serves no legitimate purpose to enact legislation that fundamentally curtails existing employee rights to bargain collectively.*

An analysis of the specific elements of the Bill shows that most of the proposed changes to the administration of the collective bargaining law(s) and the collective bargaining process suffer from misguided principles.

1. *The Requirement that the Union's Initial Bargaining Proposals and the Employer's Initial Counter-Proposals be Made Public on an Internet Website Would Impair, Rather than Enhance, Negotiations.*

   This proposed requirement is deficient in multiple respects. First, proposals are not submitted in one complete package on a specified date. As agreed to by the Union and the Employer in many prior rounds of bargaining, initial proposals are submitted over the course of multiple bargaining sessions following the commencement of negotiations. In addition, because proposals require "table discussion" (often during several sessions) and study/internal deliberations by various Employer officials (MCFRS, OMB, Human Resources), counter-proposals by the Employer are often not presented until well into the process. If the intent is to require that all proposals and counter-proposals be submitted at the start of bargaining, this will insert a layer of complexity and inefficiencies into the process that will only hinder the achievement of collaborative resolutions (for example, most, if not all of the Employer's counter-proposals will be a stock response to "reject").

   Moreover, as noted by Susan Heltemes, a Commissioner on the Montgomery County Organizational Reform Commission that issued a report in 2011, the integrity of the collective bargaining process is ensured by maintaining *confidentiality* until a final agreement is reached. "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." *Montgomery County Organization Reform Commission Final Report, January 31, 2011, p. 36, fn 7.* Is it because the practitioners in the process, i.e., the Union and the County Executive, have long recognized that these and similar problems would be injected into the process by public disclosure of initial proposals and counter-proposals that they have agreed to a public "blackout" in nearly every set of ground rules that have governed the parties' bargaining of labor agreements going back many years.

2. *The Proposed Change in the Introductory Language of the "Employer Rights" Section of the Collective Bargaining Laws is Notable for its Lack of Any Empirical Support.*

The Bill would amend the current lead-in language to the "Employer Rights" section of the collective bargaining laws with the noted intent of placing additional restrictions on the authorized scope of collective bargaining. The stated rational for this proposed amendment is a misconception that "Labor Relations Administrators ["LRAs"] have minimized these employer rights over the years by narrowly interpreting the language in each law that prohibits bargaining from 'impairing' these rights and consequently expanding the scope of collective bargaining." (*see* Council President Floreen's cover memo to Expedited Bill 24-16, p. 2).

Yet no support whatsoever has been presented for this broad pronouncement that LRAs have diminished the scope of Employer rights. There is no citation of prior LRA decisions that have resolved negotiability issues, nor any analysis of the impact of LRA decisions on government operations or the Employer's ability to deliver public services efficiently. This proposed change is merely a theoretical construct presented in a vacuum. In point of fact, the MCCFFA has initiated very few negotiability appeals that have required a LRA decision in the nearly 30 years that collective bargaining has been in effect for the fire/rescue service, and for those that the Union has initiated which have resulted in an administrative decision , the Union has not always prevailed. This specific portion of the Bill is overreaching and a classic example of "if it ain't broke, don't fix it."

3. *Changing the Group that is Eligible for Appointment as Labor Relations Administrator from Professional Labor Arbitrators to Retired Judges and Excluding Union Input is Extremely Misguided.*

Current law requires that a person appointed as LRA be experienced "as a neutral in the field of labor relations." (*see* Section 33-149(b) of the County Code). The Bill would change this long-standing qualification towards an express preference (and effectively, perhaps, a requirement) for the LRA to be a retired judge. The only reason cited for this proposed change is that retired judges have experience in conducting adjudicatory hearings. This implies that labor relations neutrals have insufficient experience in conducting adjudicatory hearings when, in fact, just the opposite is true. Those who have made a career of serving as neutrals in the field of labor relations have years of experience conducting adjudicatory hearings that are similar in most respects to "bench trials" in state and federal courts. Labor arbitrators rule on motions and procedural issues, issue rulings on the admissibility of evidence and apply specialized legal principles to the facts established at hearing to reach the ultimate outcome.

Equally important, it is precisely because of their narrowly-tailored experience that labor relations neutrals are well versed in the rudiments of labor law issues, and therefore are *the most qualified* individuals to decide cases involving, e.g., allegations of unfair labor practices and negotiability disputes. Retired judges, on the other hand, did not hear/decide labor cases on a regular basis during their tenure on the bench and are clearly less familiar with the fundamental "law of the shop" principles that are at the heart of the unique cases that a LRA is called upon to decide. It is simply nonsensical to substitute a group of individuals that is clearly *less* experienced to hear/decide specialized labor relations cases for the group that is the most qualified to hear/decide

such cases. It is analogous to substituting a general practice physician in place of a neurosurgeon to perform brain surgeries.

One only has to review the impeccable qualifications of Homer La Rue, the current LRA for the fire and rescue service who was reappointed last year to another five-year term, to recognize the fallacy that afflicts this part of the Bill. The memo from County Executive Leggett to the Council announcing Mr. La Rue's reappointment (issued on October 16, 2015) noted that "[a]s an arbitrator and a mediator, [Mr. La Rue] has presided over *more than 2,000* labor and employment cases in the private and public sectors (emphasis added). Mr. La Rue has taught at Howard University School of Law since 1983 and has been a professor of law since 1995. He is the director of the Alternative Dispute Resolution Curriculum at the law school." It is simply impossible to conclude that any retired judge is as experienced (or even nearly as experienced) as Mr. La Rue (and others like him) in resolving labor disputes. Why would the Council want retired judges, who are *less* experienced than professionals in the field of labor dispute resolution, to be appointed to the important position of LRA?[1]

In addition, there is no logical reason to exclude the Union altogether from the process of selecting an individual to serve as the LRA. The current process, whereby the County Executive appoints the LRA for a five-year term, subject to confirmation by the Council, from a list of five individuals that has been mutually agreed upon by the Union and the CAO has worked well since it was adopted. There has never been any contention that the Union's agreement to the list of LRA candidates has led to undue influence or the appearance of bias on the part of any individual who has been selected to serve as LRA. It is important to note that no individual may even receive consideration for LRA unless the County Executive believes that the individual is qualified and approves of his/her inclusion on the list. The current procedure does not nullify or diminish the legal authority of the either the County Executive to appoint the LRA or the Council to confirm the appointment.

4. *Separating the Role of Mediator and Arbitrator in the Impasse Resolution Procedures Would Result in More Interest Arbitrations Being Held, Not Less, and Would Increase the County's Costs Rather than Result in Savings.*

That part of the Bill which would require the mediator and the interest arbitrator to be two different individuals (changing current law whereby one person serves as both mediator and arbitrator) is based upon *incorrect* assumptions, and apparently stems from recommendations by individuals who have not had any first-hand experience in the existing impasse resolution procedures.

First, having the same person serve as both mediator and arbitrator creates important procedural efficiencies. Separating the two would mean that arbitration hearings, which now take only two or three days, would require much more time *and expense* (since arbitrators charge for each day they spend in hearing, engage in study/research and write the opinion and award).

[1] For these same reasons, the MCCFFA opposes that part of Expedited Bill 24-16 which would establish a three-member interest arbitration panel in which the Chairperson would be a retired judge rather than an individual with experience as a neutral in the field of labor relations.

Second, this feature provides a key dynamic to the process. Having detailed and frank discussions during mediation with the person who might subsequently serve as the interest arbitrator gives the parties a sense of that individual's initial thoughts (without yet having reviewed evidence) on the reasonableness of the parties' respective positions; and hence, what the results of an arbitration hearing might likely be. This leads both sides to move away from previously intractable positions and to offer more moderate proposals than what had been on the table previously, thereby enabling the parties to reach an acceptable middle ground. Consequently, having one person serve as both mediator and arbitrator greatly *increases* the likelihood of reaching a negotiated agreement rather than an arbitrated one; which is a far better outcome for all concerned (the Union, the Employer and the public).

Contrary to the theoretical notions expressed in the Bill's introductory materials, in actual practice the parties are *not* reluctant to speak freely to a mediator who will also serve as the arbitrator, and it is the mediator/arbitrator (and not a "traditional mediator") who provides better feedback to the parties and is more apt to encourage a negotiated settlement. It is certain that separating the two roles will only lead to more arbitrations, which are costly, time consuming and not a particularly satisfying way to resolve disagreements at the bargaining table.

5. *Further Modifications to the Criteria Used to Select One Side's Last Best Final Offer Would Turn Interest Arbitrations into a Sham Proceeding.*

As recently as 2010, the Council passed amendments to the collective bargaining laws which changed the criteria that interest arbitrators were required to consider when deciding which of the competing Last Best Final Offers to choose as "the more reasonable" offer. In those amendments, the Council unequivocally mandated that an arbitrator give "the highest priority" to the ability of the County to pay for additional expenditures (both short-term and long-term) that would be required by the two final offers; and in assessing the County's "ability to pay", the arbitrator should consider: legal limits on the County's ability to raise taxes, any added burden on County taxpayers resulting from increasing revenues needed to fund a final offer and the impact on the County's ability to continue to provide the then current level of all public services (*see* County Code Section 33-153(i)). It is only after making these determinations that an arbitrator may turn to the other listed factors.

Now, without any objective support, Bill 24-16 would change the verbiage of the "ability to pay" criteria to be used by arbitrators in selecting the more reasonable Last Best Final Offer. There has only been one interest arbitration decision issued affecting the fire/rescue collective bargaining unit since the 2010 amendments. As noted above, the Union "won" that arbitration, not because the existing criteria were tilted in favor of the Union, but because the County Executive's Last Best Final Offer was wholly *un*reasonable (to the extent that even the Council rejected it outright!).

There is no practical or evidentiary basis for changing the law in this area. The "rules of the contest" under current law are clear and unambiguous; the County's ability to pay is *the primary factor* that an interest arbitrator must consider in determining which party's Last Best Final Offer should be selected as the more reasonable offer. There is no confusion on this issue. The only purpose served by this particular amendment is to put an exclamation point (!) on this principle and to drive home the not-so-subtle aim of the Bill that the County should win most (and perhaps all) of the interest arbitration cases.

In considering this proposed legislation, Council members should be aware of all of its underpinnings. While parts of it come from recommendations contained in a 2011 Report of the Montgomery County Organizational Reform Commission, certain parts are strikingly and substantially similar to the goals and objectives of the American Legislative Exchange Council (ALEC) – an ultraconservative organization whose programs and positions on issues are decidedly anti-labor. Expedited Bill 24-16 mirrors, in many respects, model legislation published by ALEC.

In summary, Expedited Bill 24-16 is a piece of legislation that proposes a series of solutions to address problems that do not, in fact, exist in County Government and would bring great harm and negative consequences to County employees' collective bargaining rights. This bill, if enacted, would severely disrupt the long standing provisions of nearly 30 years under current law that has worked well in preserving the appropriate balance between labor and management.

Therefore, the MCCFFA strongly urges that Council members reject the proposed principles of this legislation and vote **"no"** on Expedited Bill 24-16.[2]

Submitted by: Jeffrey Buddle, President, MCCFFA

[2] There is one part of Expedited Bill 24-16 that the MCCFFA does not oppose: that section which would extend the time period in which collective bargaining and any associated impasse procedures are to be completed. Such an extension would be of some help to the process, which currently is required to be completed in a timeframe that is too compressed.

UFCW LOCAL 1994
Municipal & County Government Employees Organization

GINO RENNE PRESIDENT
YVETTE CUFFIE SECRETARY-TREASURER
NELVIN RANSOME RECORDER
WWW.MCGEO.ORG

Testimony from

Gino Renne
President, UFCW Local 1994
Vice President, UFCW International
TO
Montgomery County Council

Good evening. I'm Gino Renne, president of UFCW Local 1994, MCGEO, AFL-CIO. This bill will impact 6800 of our members covered by our Montgomery County contract.

Whether intended or not, Bill 24-16 will have devastating consequences on the integrity of collective bargaining and our membership. It will most certainly disrupt the labor peace we've worked so hard to achieve.

Many of you do not know the history of collective bargaining in this county, but I do.

In 1948, the United Nations' Universal Declaration of Rights determined that "everyone has the right to form and to join trade unions for the protections of his interests." The freedom of association is enshrined in the U.S. Constitution, but it took the passage of the National Labor

UNITED FOOD & COMMERCIAL WORKERS LOCAL 1994 * 600 EAST DIAMOND AVENUE * SUITE 200 * GAITHERSBURG, MD 20877 * 301-977-7994 * 800-949-6914 * FAX 301-977-7962

Relations Act (NLRA), The Railway Labor Act and Federal Service Labor-Management Relations Statute in order to guarantee that private and federal public employees could gain the right to collectively bargain. However, the Acts did not cover state and local public sector employees, leaving those rights up to the state and local governments.

Thirty-one years ago, I had a hand in crafting the County's collective bargaining law. Workers before 1985, including myself as a deputy sheriff, felt voiceless and frustrated. The process of resolving workplace issues was chaotic. Unhappy employees often fought their battles alone, in the public eye and in the courts. These battles caused a strain on the workforce and on management. And the negativity hurt taxpayers.

Not only does collective bargaining give workers the right to bargain wages, it also gives the right to bargain working conditions. The result is often a more productive, efficient and happier workforce. Montgomery County taxpayers understood this in 1984 after some of the public battles between workers and management caused issues with public services.

Voters that year passed the ballot measure allowing for public sector collective bargaining. The sitting council at the time, along with County Executive Charlie Gilchrist and myself, then set about to craft a law that would bring labor peace to the county.

We were thoughtful about the process. We examined collective bargaining law elsewhere, and determined that the scope of bargaining for the County public employees would be the same as the scope of bargaining for private employers. My union agreed to forego the right to strike and we agreed to "meet and confer," which was the labor process we thought would help us avoid labor disputes. These trade offs would allow us to test the process and to revisit the law if it proved to be tilted too far in favor of one party or the other, which it turned out to be, in favor of the employer. We again met after the process was in place for a while and decided to replace the meet and confer process for interest arbitration.

In our 31-year relationship, Local 1994 and the county have only gone to arbitration once, which was over the union's proposal to give back to the county government $25 million in savings. The union's final

proposal had been rejected by the County Executive but was determined to be the more reasonable proposal during arbitration by the arbitrator.

Most anti-union pundits would have you believe that the collective bargaining system is only about wages. This is far from true, and marginalizes the workforce and its representatives, who in almost every union, are former front line employees who've risen through the ranks to lead their unions, like me.

Collective bargaining is also about productivity, prosperity and efficiency. Economic research shows that unionization increases productivity across all industries versus nonunion workplaces. Workers in union workplaces find ways to maintain good labor-management relations. They have meaningful collaborations with management to reduce waste and improve efficiency. Workplace turnover is also lower, resulting in lower investment in training new employees.

Since 1985, we've negotiated many collective bargaining agreements that have forged a partnership between the County and its employees. We've worked to create efficiencies in county systems; we've worked to

enhance productivity; we've worked to create a system that improves problem solving and resolves workplace issues quietly and in the best interest of all parties involved.

In addition, Local 1994 members have collaborated with the county in lean times. We've willingly agreed to find ways to reduce health care costs and we've been forced to take on a greater portion of health care payments. We've agreed to wage freezes, furloughs, reduced retirement benefits, and assisted the county in shrinking the front line workforce by 900 positions. The result has been in both short term and long term savings in the hundreds of millions to Montgomery County taxpayers. Our members should be rewarded for these sacrifices not punished by diminishing their voices and rights.

I encourage you to read our contract, to see how much of our current contract focuses on partnership and collaboration, not divisive issues.

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Bill 24-16 would disrupt a process that has worked well for 31 years. You would demoralize the employees who've worked so hard over the years and who've so willingly worked to save this County money and to enhance this County's efficiency in public service.

Living in a democracy necessitates resolving conflict by building consensus among involved parties.

Ultimately, while you believe you need to change the relationship with our unions, this bill will destroy the relationship and ultimately, county taxpayers will pay the price.

Thank you.

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Metropolitan Washington Council, AFL-CIO

888 16th Street, NW, Suite 520 • Washington, DC 20006 • (202) 974-8150 • Fax (202) 974-8152

Testimony of Carlos Jimenez,

Executive Director

In Opposition to Bill 24-16, Collective Bargaining - Impasse Procedures

Before the Montgomery County Council

Honorable Nancy Floreen, President
12 July 2016

Good evening President Floreen and distinguished members of the County Council.

My name is Carlos Jimenez. I'm the executive director of the Metropolitan Washington Council, AFL-CIO. We represent almost 200 affiliated unions across the region – including 40,000 members in Montgomery County - and are tasked with representing their interest and those of all working people who work and live in our jurisdiction.

We come here today to state our opposition to Bill 24-16, a bill that in our opinion would radically alter a functional and proven method for working people to come together, negotiate, and make changes in the workplace in a constructive manner. I want to state, for the record, that disagreement is natural and healthy in true relationships and conversations between different parties. Everyone here who is committed to a good, transparent, and healthy long-term relationships likely knows this to be true. What Bill 24-16 would do, beyond the title and name given to the bill, is put into law a permanent handicap on working people in this currently functional arrangement. It may not be perfect, and no side always gets its way, but it works. To change that as is proposed in the bill, is in our view unfair, undemocratic, and an assault on our ability to do our jobs as public servants and on the organizations that represent those public servants.

What's more frightening about this proposal are the questions it raises, including questions about this County Council's attitude and view of the right of working people to come together and enter fair processes that allow differences of opinion on work matters to be resolved through the collective bargaining process. A process that has been in place for decades and has been tried and tested over the years. To be more blunt, we can't fathom or understand why in Montgomery County, our leaders would entertain legislation and proposals by the same people that are across the country trying to preempt local rule and autonomy for local communities, by the people who are attempting to legislate away the right of regular citizens to weigh-in on

climate change and improving the environment, an organization that wants to privatize public education and move us towards for-profit models. We can't understand why in Montgomery County, our elected leaders would associate with the American Legislative Exchange Council (ALEC) and their ideas.

We may never understand that, but what I can say to you tonight is that regardless of the intent, this legislation has already made us stronger. The response to this call proposal by our members, affiliates, and allies has been astonishing. Across sector or industry, whether it's a public or private sector union, from local to national unions and organizations, it has brought us together – you see we can all agree, regardless of issue or interest, that there is no room in our region for ALEC sponsored legislation, nor for elected officials who would champion their initiatives. We urge you to really step back and consider what the consequences of this legislation may be, and if there are issues or things that need to be improved or changed – let's talk about it at the bargaining table. Let's keep a healthy relationship, let's keep Montgomery County growing.

Thank you for your time and the opportunity to speak before you today.

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SEIU LOCAL 500

Raising the standard of living for Maryland and Washington, D.C. workers and their families

Testimony Before the Montgomery County Council
In Opposition to Bill 24-16
By
Merle Cuttitta, President
Service Employees international Union (SEIU) Local 500

July 12, 2016

President Floreen, Vice President Berliner and members of the Council:

Good Evening,

My name is Merle Cuttitta and I am proud to serve as President of SEIU Local 500. Our union represents 9,000 staff employed by the Montgomery County Public School System as well as better than 900 adjunct faculty at Montgomery College.

We are here this evening to join in solidarity with the thousands of outstanding county government employees, police officers and firefighters represented by MCGEO, the IAFF and the FOP, in expressing our profound disappointment and strong opposition to Bill 24-16. This legislation is a cynical attempt to weaken county collective bargaining laws in response to a contentious set of negotiations with the county unions this past spring. It is petty, it is vindictive and it needs to be stopped dead in its tracks!

This bill is not about equity in the bargaining process. In the recently completed county budget process, this Council more than demonstrated that the current bargaining laws give more than ample authority to bend collective bargaining outcomes to your will.

The legislation purports to create a more balanced and transparent bargaining system by silencing the union's voice in the dispute resolution process. It mandates that, once an interest arbitrator has been selected with no input from the union, that arbitrator must make your fiscal mandates their primary consideration. In other words, "decide whatever you think is fair, as long as you agree with us!"

It has been just a few years since you made your initial move toward weakening worker rights when you stripped the police of their "effects bargaining". Many of you assured us at the time that your move was a unique circumstance and not about weakening union rights. Yet here we are again.

I want to be clear. This is bad legislation that serves no other purpose than to widen the growing gulf between the County Government and its unions. We have a collective bargaining system that, in the end has always served the interests of the public and those of us who provide public services to Montgomery County taxpayers that are second to none.

This IS anti union legislation. It flies in the face of the core values that, as Democrats, we are supposed to stand for. The choice you make here will define you in the eyes of working people for a very long time. It will not be forgotten.

Let our current collective bargaining laws and the relationships we've built throughout our history, continue to stand as an ongoing testament to Montgomery County being the most progressive jurisdiction in our state.

Do not support Bill 24-16.

Thank you.

Montgomery County Council
Public Hearing on the Expedited Bill 24-16
Collective Bargaining—Impasse Procedures—Amendments
July 12, 2016
Testimony of James P. Koutsos, President, MCAAP

Good evening, Ms. Floreen, Mr. Berliner, and members of the County Council, I am James Koutsos, president of the Montgomery County Association of Administrators and Principals (MCAAP). Our organization represents over 750 educational leaders who serve in schools and in central services.

We are here this evening to join in solidarity with the thousands of outstanding county government employees, police officers and firefighters represented by MCGEO, the IAFF, and the FOP, in expressing our profound disappointment and strong opposition to Expedited Bill 24-16. This proposed legislation is anti-labor and anti-collaboration.

This County Council seats nine members, all Democrats. As I recall from my days in Mr. Washek's United States History class at Sherwood High School, Democrats espouse very clear core values. One of those core values has been a deep-rooted connection to labor. In fact, I recently turned to a website with the URL www.democrats.org to validate what I had remembered from Mr. Washek's class. Please allow me to read from the following excerpt from this website entitled *Union Members and Families*:

"For decades, Democrats have stood alongside labor unions in defense of fair pay and economic security. Union members have been a key part of the Democratic Party, organizing for elections and on issues such as health reform, minimum wage, retirement security, and greater accountability in the public and private sectors. The rights and benefits working Americans enjoy today were not easily gained; they had to be won. It took generations of courageous men and women at all levels of government and society — all committed to fighting for decent working conditions and fair pay, some even willing to risk their lives to secure victory and make those rights and benefits a reality."

For some reason, this Council is continuing to take steps away from its relationship with labor principles. This bill represents another example of a desire to distance yourselves from the very people who have worked so hard to support you as our elected officials.

In a Washington Post article dated June 20th, Council President Floreen is quoted in a statement claiming that this bill would, "establish more equitable contract arbitration awards and

enhance the likelihood that negotiations are grounded in fiscal reality." One could infer that what this statement really means is, "We lose these arbitrations too often. We're tired of paying for our mistakes. Arbitrators ignore fiscal reality. We're going to change the rules of the game to increase our chances of winning."

You argue your actions are more transparent. As you call the public's attention to the fact that it is a good thing for bargaining and arbitration to be open to their view, you deftly maneuver a repeal of the right of the union to help choose the Labor Relations Administrator, the public official responsible for deciding if either party has violated the collective bargaining law. Are you really asking us all to watch as you make collaboration disappear?!

We in Montgomery County have always been leaders in the area of collective bargaining and labor relations. We have benefitted from our history and our processes. As Mr. Buddle, president of the IAFF Local 1664 said in the same Washington Post article I quoted from earlier, "We have a process that is extremely effective."

I urge you to vote against Expedited Bill 24-16.

21

TESTIMONY IN Opposition toBill24-16:
Collective Bargaining- Impasse Procedures-Amendments

TO: President Floreen and Members of the Montgomery County Council
FROM: Boaz Young-El, Political Representative, United Food and Commercial Workers Local 400
DATE: July 12, 2016

Mrs. President and members of the council, thank you for the opportunity to testify today on this important bill. My name is Boaz Young-El and I am the political representative for the United Food and Commercial Workers Local 400. We represent nearly 4,000 members Montgomery County, MD, mostly in the retail and grocery industries. UFCW Local 400 strongly opposes Bill 24-16, Collective Bargaining- Impasse Procedures-Amendments, and we ask that it be reported from committee with an unfavorable ruling.

Our members in Montgomery County enjoy the protections and benefits due to them per their collective bargaining agreements because they have worked hard to secure certain wages and benefits over the years with their companies. However, even with collective bargaining agreements in place, employees are not guaranteed every economic or operational request made through bargaining with their respective companies. Bill 24-16 works counter to the practices I just mentioned between employee and employer during bargain. If implemented the bill would severely limit the power of public employees to bargaining good substantial contracts that would allow them to care for their self and their families.

Bill 24-16 is aimed to specifically hurt unionized work forces by limiting their ability to collectively bargain on certain aspects of their employment, while simultaneously increasing the power of employer in the same situation. For example, if passed, this bill would make opening proposals and making hearings open to the public, subjects them to public scrutiny, thus hampering the efficiency and effectiveness of negotiations. Also this bill would changes the items that public employees can negotiate at the bargaining table, and would prevent front line workers from pursuing proposals that improve operational efficiencies and enhance services to the public.

In addition this bill separates the role of arbitrator and mediator. A mediator that also serves as arbitrator, if needed, has the power to facilitate negotiated agreements, specifically because the parties know he would also be the arbitrator. Separating these two roles would make mediation far less meaningful or successful. Since the parties would know that the mediator no longer has anything to do with the arbitration outcome, there would be no incentive to heed the mediator's suggestions for compromise

This is a bad bill that will benefit employers, hurt workers, and the economy of Montgomery County. On behalf of all of our members in Montgomery County, we urge an unfavorable report on Bill 24-16. Thank you for your time.

Please contact Boaz Young-EL, 301-332-6612, if you have any additional questions.

26. Tefere Gebre

Ms. Nancy Floreen
Council President
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Dear Council President Floreen:

As President of the AFL-CIO, and on behalf of over XX members in Montgomery County, I am writing to express our strong opposition to Expedited Bill No. 24-16, which seeks to erode the protections provided to County employees through the current collective bargaining dispute resolution mechanism. Our specific objections are set forth below but generally our opposition stems from two principles.

First, as a long-time resident, voter and taxpayer in Montgomery County, I can say from personal experience that this bill is a solution in search of a problem. The current system is not in need of change. To the contrary, it has served the public and the County's employees well; it has accomplished what it is intended to accomplish. Labor relations disputes are resolved peacefully without interference with public services; the process is fair to employees, the County government and its citizens; and the County is not burdened with unnecessary conflict. That is the essential core of every labor relations statute in both the private and public sectors.

Second, the proposed changes would alter the delicate balance that forms the basis of the current system. In general, collective bargaining levels the imbalance of power between labor and management by creating a process by which the parties are able to resolve disputes. Collective bargaining works when there is a mechanism to break any impasse that may arise; it works when there are incentives for both parties to bargain in good faith—to put their best offer forward in an effort to reach a resolution. In the private sector that mechanism is the strike. In the public sector, at least in enlightened jurisdictions, that mechanism is binding interest arbitration. Unlike the strike, interest arbitration does not result in employees withholding services and jeopardizing critical public services. But, like the strike, interest arbitration—when appropriate safeguards are in place—encourages the parties to reach agreement by submitting their real "bottom line" proposals and inspires confidence that the process is fair and impartial. Montgomery County's current system meets that test.

By contrast, the proposed changes would disrupt the balance and safeguards currently in place. Specific objections follow.

First, one of the most important components of efficient labor relations is an incentive to resolve disputes quickly; dragging out negotiations causes unnecessary frustration and encourages dilatory tactics. There is no reason to lengthen the time of negotiations.

Second, without legislative limits, it is generally accepted that employers have all the rights and employees none. Labor relations statutes seek to level the playing field by curtailing

certain employer rights in the interest of fairness with the ultimate objective of fostering labor peace. There is no reason to expand the list of employer rights; it is inconsistent with the goal that is sought to be accomplished: a fair process for employees to address workplace problems.

Third, it is critically important that the dispute resolution mechanism (interest arbitration) be fair and provide both parties an incentive to reach agreement and bargain in good faith. If the decision-makers are biased toward one side, the process breaks down. There would simply be no reason for management to provide its real bottom line in order to reach an agreement short of arbitration, if the "neutral" arbitrators are in their control. And, even a perception of unfairness hinders the process because employees lose confidence that their interests are appropriately being taken into consideration. The goal is for disputes to be resolved, not to foster the festering of conflict. Accordingly, the proposal to change the method for selecting the neutral arbitrator to allow the Council to make the final choice upsets the delicate balance created by the current system.

Finally, it is, of course, important for the arbitrator to be guided by objective standards, and typically in interest arbitration, those standards mirror the criteria that guide labor and management in the private sector. Consideration of budgetary considerations (ability to pay) is one appropriate criterion. However, the proposed changes define "ability to pay" in an unfair and unworkable way. Preventing the arbitrator from being able to consider employer revenue streams (for example, an increase in projected property tax revenues) defies logic. When proposing a budget, these kinds of projections are routinely considered and, accordingly, the arbitrator should be able to consider them in order to assess the budgetary implications of proposals.

Likewise, the arbitrator should not be required to analyze the County's provision of the current level of services in order to maintain same. Employers have many ways to pay for improvements to employee wages, benefits and working conditions, including increased efficiencies. The Employer should be free to argue to the arbitrator that it would need to cut services but the Arbitrator should not be constrained to accept that position as unalterable fact as the proposed change suggests.

For these reasons and more, we oppose the proposed changes and urge the Council to maintain the current interest arbitration procedures.

Sincerely,

Richard L. Trumka

Cc: Members of the Montgomery County Council

AFSCME MD COUNCIL 67
We Make Maryland Happen

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

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Montgomery County Council Bill 24-16 – Collective Bargaining - Impasse Procedures - Amendments – OPPOSE

The American Federation of State, County and Municipal Employees (AFSCME) Maryland Council 67 and the 20,000 men and women across our great state, stand in solidarity with the thousands of outstanding county government employees, police officers and firefighters represented by SEIU 500, MCGEO, the IAFF and the FOP, in our strong opposition to Bill 24-16. Representatives from AFSCME Council 67 Local 2380 at Montgomery College Staff Union, Local 3399 City of Takoma Park and Local 1453 City of Rockville work closely with these other professionals to provide the most enviable services in the region.

AFSCME Council 67 joins the other County Unions in opposing amendments to long standing laws that have served our residents very well over the years. The proposed amendments would render the dispute resolution process as moot or quaint, placing the outcome in terms the administration dictates through fiscal mandates.

AFSCME Council 67 would also state that there has been an ongoing weakening of workers protections over the past several years, not only in Montgomery County, but in Maryland and across of Country. As we continue to witness the decline of the middle class in our country and in comparison to other industrialized nations, we see a direct correlation to the decline in Union membership and the weakening middle class. Legislation such as this, continues us down a path of uncertainty for the women and men that work round the clock to provide services to all of us. These workers are educating our youth, putting fires out at our homes, patrolling our shopping centers and a myriad of services that are essential to our health and well-being.

AFSCME Council 67 strongly opposes Bill 24-16 and asks for an UNFAVORABLE report.

Good Evening. My name is Marilyn Irwin. I am President of the Communications Workers of America, Local 2108. I represent 1700 members, most of whom work for Verizon. The majority of my members work in Montgomery County, and many of my active members and retirees live in Montgomery County, too. I'm here tonight because my members and I are very interested in Bill 24-16, and are very concerned about the impact the bill would have on the hard working public workers who serve us in this great county.

While I've worked in the private sector since I was 17 years old, the basic tenants of labor law, bargaining and negotiating are very similar when you compare the public and private sectors. The most important of these is fairness, in my opinion.

You can't have fairness without a level playing field.

- A 3-person arbitration panel of which the county chooses 2 of the 3 members removes that level playing field.
- Since the County Executive gets to name the Umpire, taking away the unions' right to object to the Umpire's reappointment once every five years removes that level playing field.
- When negotiating new contracts, requiring that the FOP's initial proposals be placed on a website for public viewing, while there is no requirement for the county's initial proposals to be so posted removes that level playing field. Bargaining in public deters frank discussion between the parties, and, in my experience it does not work.
- Expanding management rights, therefore expanding the subjects which cannot be subject to bargaining, while narrowing the scope of mandatory subjects of bargaining removes that level playing field.

Removing the requirement that the Permanent Umpire have experience in the field of Labor Relations shows a huge disregard for the Public Workers in Montgomery County, in my opinion. This Permanent Umpire is charged with resolving disputes which arise under labor law, determining violations of the law and deciding how the laws apply to the dispute. Common sense dictates that individual should be experienced in the field of Labor Relations. To appoint someone without that experience sends a message very loud and clear that it doesn't matter to this Council if the issues are handled fairly and in accordance with the law.

We've often heard, "If it ain't broke, don't fix it." That saying applies to Bill 24-16, I think. The current law has worked for more than 30 years, without issue. There have been 5 years without an arbitration, because the current law regarding mediation and arbitration encourages the parties to reach an agreement. Impasse has been viewed as a last resort, which has been avoided, if at all possible. The proposed legislations will create a process where the mediator has no teeth, leading to an increase in Arbitrations, which will unfairly favor the employer. These public workers don't have the right to strike, like those of us in the private sector do. They certainly shouldn't have their rights to fair hearings and fair negotiations taken from them.

I reviewed MCGEO's website this week. It states that their goal is to promote "Stable, purposeful jobs which pay fair wages, with adequate benefits, under safe working conditions." I stand here as a

representative of people who live, work, shop and play in Montgomery County, stating that we think that should be the goal of this Council, also. I've told Verizon managers dozens of times that you are supposed to treat your employees the way that you expect your employees to treat your customers. The workers represented by all three County Government employee unions---FOP, MCGEO and IAFF-- work hard to serve those in Montgomery County. They help to keep us safe, often by putting themselves in harm's way. They should be treated fairly... they deserve nothing less. I ask you to vote "no" on Bill 24-16.

Written Testimony of William L. Mitchell
Human Resources Consultant
Council Bill 24-16
Collective Bargaining Impasse Procedures Amendments
Tuesday, July 12, 2016

Madame President and Members of Council, my name is William Mitchell and I am a Human Resources Consultant. In the interest of full disclosure, I was employed by the Montgomery County Office of Human Resources from 1978 to 1995. A copy of my resume is attached (see Attachment #1). Since December of 2015, I have worked as a consultant for Municipal and County Government Employees Organization (MCGEO). This testimony is presented on behalf of the MCGEO membership.

The LEGISLATIVE REQUEST REPORT for Expedited Bill 24-16 defines the problem this bill intends to address. It says, *"The County collective bargaining laws have not resulted in sustainable negotiated agreements that are approved by the Council in recent years."* But, what is it about negotiated agreements that is not sustainable? And why has Council not approved negotiated agreements in recent years? The legislative package does not say. Fortunately, the Office of Human Resources (OHR) provides annually to the Council and the public the Personnel Management Review (PMR), a statistical summary of the County labor force. This historical PMR data is valuable in determining long-term trends. The following analysis of County compensation from 2004 to 2014 sheds considerable light on those trends and, therefore, what is and is not sustainable. Let's begin with salary. The PMR data in table 1 below show that the average

Table 1

Pay Scale	2004 Average Annual Salary	2014 Average Annual Salary	% Change	Cost of Salary Increases Above EEs [w/35% benefits]
MLS	$96,420	$127,441	32%	$3,901,974
OPT/SLT/GS[1]	$53,161	$67,021	26%	
Police Management	$84,038	$107,203	28%	$1,701,951
FOP	$56,458	$71,240	26%	
Fire Management	$86,007	$107,283	25%	$2,563,533
IAFF	$54,944	$63,865	16%	
Total				$8,167,458

OPT/SLT/GS[1] Includes all MCGEO and all GS employees below Grade 28 (pass through employees)

MCGEO employees' salary increased by 26% in the ten-year period between December 31, 2004 to December 31, 2014. During that same period, the Management Leadership Service (MLS) average salary increased by 32%, 6% more than their MCGEO subordinates. In public safety, Police Management salaries increased by 28% while FOP members saw a 26% increase. A similar pattern prevails in the Fire service – Fire Managers' salaries increased 25% while IAFF members grew only 16%. So, throughout the labor force, salaries of managers increased significantly more than the employees they manage over the ten-year period. These higher salary increases for managers were not forced on the County by arbitrators – they were given at the discretion of County leadership. And what do these discretionary pay increases cost the taxpayers of Montgomery County? How much could be saved if the pay increases for Managers had been no more than those provided the employees they manage? In 2014 alone taxpayers could have been spared more than $8M. Millions were lost from 2004 to 2014 as Managers' salaries grew at a much faster rate than their employees'. In 2015, 2016 and beyond those numbers will continue to grow.

The PMR data informs the relative pay of County managers and the union members they oversee. The PMR contains no information about the salaries paid to appointed officials. However, in September of 2015 the Council's own Office of Legislative Oversite (OLO) conducted an authoritative analysis of the salaries paid to appointed officials and the MLS. That study concluded that director salaries exceed the local market by 18.9%, non-director appointees by 10.3%, and the MLS by 6.7%. How much could have been saved if the County leadership had not exceeded the market? $5.88M per year.

Let's now look at organizational structure. Recently, thought leaders in management have argued for leaner, less hierarchical organizations. Worldwide, organizations have flattened in response to employee empowering new technologies and the need to focus authority and resources on front-line workers. Has Montgomery County followed the worldwide trend? Has it become less hierarchical? The data in table 2 below is clear. Between 2004 and 2014 the County added significant layers of managerial oversite and control. Over the ten-year period analyzed, the number of MLS employees increased by 15% while their

subordinates in MCGEO increased by only 3%. Managers increased more than front-line employees in the Police and Fire services, as well.

Table 2

Pay Scale	2004 Number of Employees	2014 Number of Employees	% Change	Added Managers	Cost of Added Managers (w/35% benefits)
MLS	329	378	15%	37.5	$6,457,474
OPT/SLT/GS[1]	4763	4929	3%		
Mgt./EE Ratio	14.5	13.0			
Police Management	164	196	20%	9.3	$1,350,338
FOP	926	1054	14%		
Mgt./EE Ratio	5.6	5.4			
Fire Management	234	295	26%	6.8	$982,034
IAFF	738	909	23%		
Mgt./EE Ratio	3.2	3.1			
Total				53.6	$8,789,846

OPT/SLT/GS[1] Includes all MCGEO and all GS employees below Grade 28 (pass through employees)

In 2004, one MLS employee managed the work of 14.5 MCGEO employees. By 2014, that Manager had only 13 reports. The significant change in the manager-to-employee ratio across the County has resulted in an additional 53.6 managers being added to the payroll. At what cost? These "extra" MLS, Fire and Police managers cost the taxpayers $8.8M in 2014 alone. The need for the continual increase in managers is unexplained. Meanwhile, front-line employees were subject to Reductions-in-Force (RIF) in 2009; denied merit pay increases in 2011, 2012 and 2013; and had their negotiated agreement for 2017 overturned by Council. Why? The County claimed an "inability to pay". The negotiated agreement was deemed "unsustainable." However, the added managers, the generous salary increases paid to leadership and the degree to which all levels of leadership exceed the labor market make matters clear: The County had the ability to pay. Leadership chose instead to spend the money on themselves and not on front-line employees.

So, the County's own data indicates that it is not the compensation paid to union employees that is "unsustainable." If not compensation, what could it be that is deemed "unsustainable?" The legislative package states that, "*Although the Executive has reached negotiated agreements with each union without arbitration in the last several years, the Executive has explained his agreements, in part, by opining that an arbitration decision would result in a worse outcome. In fact, the union has won 16 of the 20 arbitration decisions under this* [the current] *system since 1988. Although there are many possible explanations for these results other*

than the "system," . . . it is time to try a different approach." Well, one alternative explanation for the lopsided won/loss record is that County management has not had the facts on its side. This has been my experience in the short time I have worked for MCGEO. Let me provide 2 quick examples:

Example 1: The OHR recently conducted a classification study of Ride-On Bus Operators as required by the Collective Bargaining Agreement (CBA). OHR retained a consultant who met with Washington Metropolitan Area Transit Authority (WMATA) human resources and operational staff to obtain all pertinent facts. The consultant concluded that the WMATA Bus Operators were a perfect job match to Ride-On Bus Operators. In addition, WMATA was deemed the only job match in the local area. The consultant further concluded, based on analysis of entry, midpoint and maximum salaries, that the Montgomery County pay scale was "competitive" with the WMATA scale.

MCGEO looked inside the minimum and maximum rates and found that the actual pay Ride-On Operators are paid relative to WMATA is far from "competitive." In fact, by their seventh year of service WMATA Bus Operators earn $16,439 (33%) more per year than their Ride-On counterparts. Staggeringly, over a 30-year career, Ride-On Bus Operators earn $215,785 less than their WMATA counterparts for driving the same buses down the same Montgomery County streets. The facts are more persuasive than the threat of arbitration. Having the facts on your side should win agreements. But absent an agreement, having the facts right will win at arbitration. The facts are why the Executive has reached agreements, not the threat of arbitration under the current system.

Example 2: The Office of Management and Budget (OMB) provided to Council and the public a Fiscal Impact Summary of the agreement reached between the County and MCGEO last fall (see Attachment #2). MCGEO agrees with most of the cost estimates. For example, we agree that the $2.7M and $3.6M estimates for the two ½ % General Wage Adjustments (GWAs) in FY17 and coming fiscal years are accurate. MRAs increase employee salaries, the pay scales and the budget by exactly the amount of the MRA. In fact, as shown above in Table 1, MCGEO employees' average salary increased by 26% over the 10-year period studied. That is directly attributable to the compounded MRAs negotiated over the ten years as can be seen in Table 3.

Table 3

Year	GWA Percent	Cumulative Compounded GWA	OPT/SLT/GS[1] Actual Average Salary*	OPT/SLT/GS Cumulative Average Salary % Change
2004	2.00%	2.00%	$53,161	2.00%
2005	2.75%	4.81%	$55,242	3.91%
2006	3.00%	7.95%	$57,204	7.61%
2007	4.00%	13.39%	$60,464	13.74%
2008	4.50%	18.49%	$64,237	20.84%
2009	0.00%	18.49%	$64,169	20.71%
2010	0.00%	18.49%	$64,384	21.11%
2011	0.00%	18.49%	$63,535	19.52%
2012	0.00%	18.49%	$62,820	18.17%
2013	3.25%	22.34%	$64,720	21.74%
2014	3.25%	26.32%	$67,021	26.07%

[1] OPT/SLT/GS includes all employees in Grades 5 through 28

* As of December 31 of each year

Service Increments or steps were given in seven of the ten years. What impact did increments have on MCGEO average salary? None. If you have the same number of employees and the same average salary, can salary costs increase? No, they cannot.

Why then does the Fiscal Impact Summary include items labeled "Service Increments of 3.5 Percent for Eligible Employees" and the amount of $5M in FY17 and $9.9M for fiscal years beyond FY17 for MCGEO and pass-through employees? If true, these are large and unsustainable numbers. Fortunately, they are not.

The longitudinal data show factually that increments have no impact on the budget. That's because the cost of increments is always already in the prior year's budget. They are not a new and added expense. Last year's compensation budget, FY16, included step increases. So did FY15 and FY14, and so on backward to a time long before collective bargaining. Factually, average salaries and salary budgets have not grown by tens of millions of dollars per year over time as is predicted by the Fiscal Impact Summary logic. But the damage is done. Council and the public view the agreement as beyond the County's ability to pay, and therefore, "unsustainable." Perhaps this misinformation is why *"The County collective*

bargaining laws have not resulted in sustainable negotiated agreements that are approved by the Council in recent years."

This Bill is a solution without a problem. The Collective Bargaining Law and the contractual salaries of the workers it covers are not what is "unsustainable." What is unsustainable is laying off front line workers claiming a "fiscal crises" when none exists. What is unsustainable is taking promised step increases from employees to increase the salaries of County leadership. What is "unsustainable" is paying all levels of leadership far above the labor market while Ride-On Bus Operators earn only two-thirds of the market rate. What is "unsustainable" is salary and budget analyses that consistently misrepresents factual data.

These amendments are unnecessary. The data refute the notion that ". . . *it is time to try a different approach."* Pursuing these needless amendments only serves to divert attention from the truly unsustainable problem: And that is that the County practices two compensation philosophies – one for management and one for working families. MCGEO urges you to vote NO on these unnecessary, regressive amendments. Instead, MCGEO will support, and urges you to support, legislation and policies that level what is already a steeply uneven playing field. That is the right thing to do for your front-line workers and their families and the taxpayers of Montgomery County.

Thank you for the opportunity to present these data and thoughts on behalf of MCGEO employees and their families.

ATTACHMENT 1

WILLIAM L. MITCHELL, IPMA-CP

81 S Street, NW
Washington, DC 20001
Telephone: (301) 404-5100

Email: mailto:wlmitch@erols.com

Experience

December 2015 – Present, *WLM CONSULTING*

September 2014 to July 2015, Acting Director, Human Resources City of Alexandria

Create a City-wide culture reflecting the City's 4 ***Guiding*** Principles; strategic alignment, accountability, leadership/ownership and creativity.

January 2011 to September 2014, Assistant Director, Total Compensation, City of Alexandria

Recommend strategic direction, establish policy and procedure and manage the day-to-day activities of the City's classification, compensation and benefits programs.

November 2008 to January 2011, CPS, Sacramento, CA, Manager, State and Local Consulting

Managed eastem US state and local government practice for a public sector human resource consulting firm. Directed 3 full-time staff and numerous intermittent consultants engaged in acquiring business, preparing bids, managing projects and delivering direct service in recruitment, assessment, classification, compensation, training, organizational development and related areas of HR.

December 1995 - November 2008 President, *WILLIAM L. MITCHELL & ASSOCIATES*

Provide comprehensive human resource consulting services to business, government and not-for-profit organizations.

- Analyzed and revised human resource systems by clarifying vision and mission and developing policy/procedure resulting in the alignment of process with mission and goals.
- Designed and installed tailored classification/compensation systems and performance/productivity measures improving client's competitiveness, employee satisfaction and performance.
- Developed recruiting and public safety promotional systems to identify engaged employees.
- Created training/coaching programs resulting in minority police officers successfully promoting.

1978-1995 Montgomery County (Maryland) Office of Human Resources

Served as Acting Director 1994-1995 Developed and managed all or part of a comprehensive human resource program (65 employees) for Montgomery County's 10,000 employees and 3,000 retirees and their dependents.

- Established collective bargaining goals and strategy for IAFF and UFCW Local 1994 union negotiations leading to new three-year contracts.
- Implemented defined contribution retirement plan, retirement incentive program, flex benefit and employee assistance programs.
- Developed RIF procedures, retirement incentives and job placements to reduce the size of government with minimal disruption to employees or government processes.
- Managed development of applicant tracking systems and creation of a position control system.

As Director, Personnel Services provided comprehensive human resource services to 32 departments/agencies, directed a staff of 32 employees (5 teams) delivering recruitment, selection, promotion, classification, occupational medical, and retirement counseling services.

As Employment Division Chief delivered timely and tailored staffing services through 21 employees.

1973-1978 Chief, Employment Services Division, Prince George's County (Maryland) Office of Personnel

Managed 43 employees providing comprehensive staffing services to county departments and delivered employment and training programs funded under the Comprehensive Employment and Training Act of 1973. Prior to being promoted to Division Chief in 1975, served as a Personnel Analyst in the Recruitment and Examinations Division. Conducted job analysis and recruitment, developed and administered examinations for entry and promotion, and managed public safety promotional systems.

Education

Graduate, Bowling Green State University, Bowling Green, Ohio, 1971 – 1973, Major: Psychology
B.A., Psychology, 1971, The Catholic University of America, Washington, DC

Professional Affiliations

- Mayoral appointment to the Personnel Appeals Board, City of Rockville, Maryland 1994-1996
- The International Personnel Management Association
  - Elected to the Executive Council - U. S. 1994 - 1996
  - Elected Eastern Region President 1992 - 1993
  - Elected to the Eastern Region Executive Board 1989 - 1992
  - Elected President, Montgomery County Chapter 1985-86 and 1987-88

- The Local Government Personnel Association of the Baltimore-Washington Area
  - Elected Treasurer, 1987- 1988
  - Elected to the Executive Board 1985 - 1987
- Past member, Personnel Testing Council of Metropolitan Washington
- Past member, Mid-Atlantic Personnel Assessment Consortium

Volunteer Work

- Member, Grafton School Executive Board – (Grafton provides services and support to children and young adults with disabilities, their families and associated professionals) 2001-2004
- Second Genesis – Provided literacy instruction to offenders with addictions
- City of Rockville – Coached youth Basketball and Soccer

Awards

IPMA-Frank Densler Award for "Significant Contributions to the Field of Public Personnel Administration"

Attachment #2

Municipal and County Government Employees Organization
United Food and Commercial Workers, Local 1994
Fiscal Impact Summary*

Article	Item	Description	FY17	Annual Cost Beyond FY17
5	Wages	0.5 Percent General Wage Adjustment in July 2016 and 0.5 Percent General Wage Adjustment in January 2017	$2,732,914	$3,643,885
5.1	Longevity	Longevity Step Increase of 3 Percent for Eligible Employees	$86,226	$172,618
5.2	Lump Sum	1 Percent Lump Sum Payment for Eligible Employees at top of grade	$1,241,241	$0
6	Service Increments	Service Increment of 3.5 Percent for Eligible Employees	$3,712,403	$7,341,114
6.9	Service Increments	Postponed Increment - 3.5 Percent Paid in May 2017	$718,336	$4,669,183
9	Classification Studies	25 Individual and 7 Job Classification Studies	$25,000	$0
21	Insurance Coverage	Inclusion of Pharmacy Benefit Management Programs	-$202,564	-$270,085
21	Insurance Coverage	Domestic Partner Coverage, effective January 2017	$251,956	$503,912
53	Seasonal Employees	Additional $0.25 for Eligible Seasonal Employees	$116,699	$116,699
		Total	**$8,682,212**	**$16,177,326**

Non-Represented Pass-Through Estimates

Item	Description	FY17	Annual Cost Beyond FY17
Wages	0.5 Percent General Wage Adjustment in July 2016 and 0.5 Percent General Wage Adjustment in January 2017	$1,542,247	$2,056,329
Longevity	Longevity Step Increase of 2 Percent for Eligible Employees	$20,497	$42,026
Lump Sum	1 Percent Lump Sum Payment for Eligible Employees at top of grade	$675,268	$0
Service Increments	Service Increment of 3.5 Percent for Eligible Employees	$1,311,026	$2,564,864
Service Increments	Postponed Increment - 3.5 Percent Paid in May 2017	$190,314	$1,237,043
Insurance Coverage	Inclusion of Pharmacy Benefit Management Programs	-$186,927	-$249,236
Insurance Coverage	Domestic Partner Coverage, effective January 2017	$92,320	$184,640
	Total	**$3,644,745**	**$5,835,667**

* Estimates reflect the impact to all funds. Increases apply in the first full pay period during the month noted.
Note: Transit Accident Review is estimated to have an impact of $21,600 in FY17, paid through LMRC funds.
Fleet Safety Shoes can be provided within current equipment appropriation.

Testimony of Victoria Leonard on Montgomery County Council Bill 24-16 (Collective Bargaining—Impasse Procedures—Amendments)

July 12, 2016

Thank you for holding this public hearing on Bill 24-16.

My name is Victoria Leonard. I am employed by the Mid-Atlantic Region of the Laborers' International Union of North America, or LiUNA for short. LiUNA represents more than 6,300 members in the Washington DC area, including the drivers and helpers who collect the County's residential trash and yard waste.

While our LiUNA members who perform this important service work for County contractors and therefore are not direct County employees, we at LiUNA take seriously any attempt to gut the collective bargaining rights of workers.

LiUNA opposes B24-16. This bill seeks to limit the ability of public sector employees to collectively bargain. The bill proposes changes to the County code that tilt favor toward the employer.

Here are a few of the problems with B24-16:

1. It changes the items on which public employees would be able to negotiate.

2. It limits the power of Labor Relations Administrators to interpret what is considered negotiable under the County statute.

3. It seeks to change the method for selecting the Labor Relations Administrators, replacing them with retired judges and eliminating union input from the process.

This bill is taking Montgomery County in the **wrong** direction.

I urge you to oppose B24-16. Thank you for the opportunity to comment.

July 12, 2016

Montgomery County Council
100 Maryland Ave
Rockville, MD 20850

RE: COUNCIL BILL 24-16 – COLLECTIVE BARGAINING – IMPASSE PROCEDURES – AMENDMENTS

POSITION: OPPOSE

Dear Montgomery County Councilmembers:

I submit this letter as a union member and on behalf of both management and staff at CASA. We respectfully oppose Montgomery County Council Expedited Bill 24-16. As will be more thoroughly laid out below, Bill 24-16 decreases public sector union employees' ability to collectively bargain by changing the Montgomery County code to favor the employer.

Making the Collective Bargaining Process Public Will Create a Chilling Effect for Employees.

Under its transparency goal, Bill 24-16 would require public disclosure of each party's initial bargaining position and require that hearings be open to the general public. These requirements would subject public employees to unnecessary public scrutiny and it would hamper the efficiency and effectiveness of negotiations. In essence, it would create a wedge between the public and public employees. Moreover, many matters that need to be discussed may be confidential in nature and subject to HIPAA or other confidentiality and non-disclosure regulations. Thus, the bill would negatively impact public employees' right to bring confidential matters to the negotiation table for fear they would be disclosed to the public.

Transparency in the collective bargaining process should not jeopardize public employees' ability to bring matters to the negotiation table and this bill would do that. The notion that the collective bargaining process for public employees often results in decisions on wages and benefits that consume the overwhelming majority of the county's operating budget does not mean that public employees should be punished by now inhibiting their ability to bring up important matters to the negotiation table.

The collective bargaining process for public employees should remain closed because there are matters which simply do not concern the public and are not necessary for the public to weigh in on. Simply put, it is between the union and the Executive, not the public at large.

Adding More Employer Rights to the Current List Would Further Restrict the Items that Public Employees Can Negotiate at the Bargaining Table.

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Bill 24-16 would narrow a public employees' ability to bring certain matters because of the addition of employer rights.

Additionally, Bill 24-16 would prevent front line workers from pursuing proposals that would improve operational efficiencies and enhance services to the public. For instance, one of the added employer rights would include an employer's right to introduce new or improved technology, research, development and services. Thus, a frontline worker who has both the experience and knowledge in the employer's services, technology, and research and development would be prohibited from bringing it to the negotiation table because it would now be considered an employer right that cannot be "impaired" by a collective bargaining agreement.

Bill 24-16 also seeks to clarify that bargaining is limited to the subjects listed in the law as subject to bargaining and strengthens the application of employer rights. However, this would undoubtedly limit the power of the Labor Relations Administrator (LRA) to interpret Montgomery County's statute as to what is and is not "negotiable." This process has been in place for over 30 years, and it has worked all that time. LRAs, who are labor relations experts in deciding these cases, follow Maryland court precedents, when deciding what is and is not negotiable. This bill would upend that process.

Replacing the LRA with a Retired Judge Would Decrease the Effectiveness and Efficiency of Resolving Labor Disputes.

The bill attempts to replace the LRA with retired judges. Labor cases are, by design, entrusted to various agencies such as the National Labor Relations Board, Railway Labor Administration, Federal Labor Relations Authority, and countless state and local agencies because they have experience in labor relations.

A retired judge may be experienced in adjudicatory hearings and be well versed in various areas of the law, but a labor relations expert is a labor relations expert. Hence, why replace an expert in the relevant field with an experienced judge that may not have the specific expertise required to do the kind of labor relations work that an LRA requires.

Changing the qualifications of the LRA from a person with experience in labor relations to an individual experienced in adjudicatory hearings would prove disastrous.

Eliminating a Union's Right to Provide Input in the Selection of the LRA Would Weaken the Integrity and Neutrality of the LRA.

The LRA holds a quasi-judicial office in County government and is responsible for resolving various labor disputes and issues. Such position—requiring complete neutrality and integrity—would be undermined if the decision to select the LRA were left to one side. That is why it is imperative and current practice for both parties—the union and the Executive—to have input into the selection of the LRA.

Making the selection of the LRA completely one-sided where it would be left to the elected Executive and Councilmembers would irreparably damage labor relations and increase the number of legal battles in the foreseeable future.

Separating a Mediator-Arbitrator into Two Different Positions Would Make Mediation Far Less Meaningful or Successful.

The bill would separate the role of arbitrator and mediator. A mediator that also serves as arbitrator, if needed, has the power to facilitate negotiated agreements, specifically because the parties know that the person would also be the arbitrator. Separating these two roles would make mediation far less meaningful or successful. Since the parties would know that the mediator no longer has anything to do with the arbitration outcome, there would be no incentive to heed the mediator's suggestions for compromise. The number of arbitrations would then increase and also take longer, as the new arbitrator would have no prior knowledge of the issues at hand and the parties' positions. This additional litigation that the county would engage in is an avoidable extra cost to county taxpayers.

An Arbitration Panel Would Disrupt the Relationship between County and Service Providers.

The collective bargaining and dispute resolution processes exist to maintain labor peace and uninterrupted County operations. And they have been successful. Arbitrations have been few and far between over the past 30 years, and those that did occur were generally on narrow issues rather than entire packages or big-ticket items. The proposed legislation disrupts the relationship between the County and the service providers, therefore jeopardizing the quality of services and exposing the public to labor unrest. It is a solution looking for a problem, in order to tilt the scales in favor of the employer.

Conclusion

The morale of county workers is at an all-time low, with workload at a peak and staffing at a low, and now in the wake of the denial of raises that they willingly gave up years ago on the promise that they would eventually be made whole. One of few things left keeping the workforce going is the knowledge that they can at the very least come to the table in good faith and bargain over their working conditions and wages. If that process is usurped and tilted sharply toward the employer now, it will sap any remaining morale they are holding onto.

For all the foregoing reasons, we respectfully oppose Council Bill 24-16.

Sincerely,

/s/CARLOS GARCIA
Carlos Garcia, Esq.
Staff Attorney