
By: **Montgomery County Delegation and Prince George's County
Delegation**

Introduced and read first time: February 9, 2001
Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland-National Capital Park and Planning Commission - Binding**
3 **Arbitration**
4 **MC/PG 116-01**

5 FOR the purpose of requiring that collective bargaining between the
6 Maryland-National Capital Park and Planning Commission and the exclusive
7 representative of a bargaining unit for Commission employees begin not later
8 each year than a certain date and end not later than a certain date; requiring
9 that negotiations be conducted in good faith; establishing a procedure for
10 resolving a negotiability dispute; repealing certain provisions authorizing the
11 appointment of a fact finder and the use of fact-finding procedures when there
12 is an impasse in collective bargaining between the Commission and the
13 exclusive representative; establishing procedures requiring the appointment of
14 a mediator-arbitrator and binding arbitration when there is an impasse; setting
15 certain deadlines; requiring the mediator-arbitrator to take certain actions in
16 determining a final reasonable offer; requiring the mediator-arbitrator to direct
17 the parties to submit certain memoranda outlining previous offers and
18 agreements and hold a nonpublic hearing to consider the proposals submitted by
19 the parties; limiting the items which the mediator-arbitrator may consider in
20 selecting a final offer; prohibiting the arbitrator from compromising or altering
21 the final offer selected; providing that the parties need not ratify, but must
22 execute, the final offer; providing that the economic terms of the final offer are
23 subject to being funded by the Montgomery County and Prince George's County
24 councils; requiring the Commission to request funds for all economic provisions
25 of the final agreement in the Commission's final budget; requiring the parties to
26 reopen negotiations if the county councils do not fund all provisions of the final
27 agreement; providing for the treatment of the final offer; requiring the parties to
28 share equally in paying the costs of arbitration; making certain stylistic
29 changes; providing for the application of this Act; and generally relating to
30 procedures for the appointment of a mediator-arbitrator and binding
31 arbitration in collective bargaining between the Maryland-National Capital
32 Park and Planning Commission and the exclusive representative of a bargaining
33 unit for Commission employees.

1 BY renumbering

2 Article 28 - Maryland-National Capital Park and Planning Commission
3 Section 2-112.1(k), (m), (n), (o), (p), (q), (r), (s), (t), and (u), respectively
4 to be Section 2-112.1(m), (n), (o), (p), (q), (r), (s), (t), (u), and (v), respectively
5 Annotated Code of Maryland
6 (1997 Replacement Volume and 2000 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article 28 - Maryland-National Capital Park and Planning Commission
9 Section 2-112.1(j)
10 Annotated Code of Maryland
11 (1997 Replacement Volume and 2000 Supplement)

12 BY repealing

13 Article 28 - Maryland-National Capital Park and Planning Commission
14 Section 2-112.1(l)
15 Annotated Code of Maryland
16 (1997 Replacement Volume and 2000 Supplement)

17 BY adding to

18 Article 28 - Maryland-National Capital Park and Planning Commission
19 Section 2-112.1(k) and (l)
20 Annotated Code of Maryland
21 (1997 Replacement Volume and 2000 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article 28 - Maryland-National Capital Park and Planning Commission
24 Section 2-112.1(o)(2) and (p)
25 Annotated Code of Maryland
26 (1997 Replacement Volume and 2000 Supplement)
27 (As enacted by Section 1 of this Act)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

29 MARYLAND, That Section(s) 2-112.1(k), (m), (n), (o), (p), (q), (r), (s), (t), and (u),
30 respectively, of Article 28 - Maryland-National Capital Park and Planning
31 Commission of the Annotated Code of Maryland be renumbered to be Section(s)
32 2-112.1(m), (n), (o), (p), (q), (r), (s), (t), (u), and (v), respectively.

33 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
34 read as follows:

Article 28 - Maryland-National Capital Park and Planning Commission

2 2-112.1.

3 (j) (1) The Commission and an employee organization certified as exclusive
4 representative shall meet and engage in collective bargaining in good faith in regard
5 to the following subjects of bargaining:

6 (i) Salary and wages, including the percentage of the increase in
7 the salary and wages budget that will be devoted to merit increments and cash
8 awards, provided that salaries and wages shall be uniform for all employees in the
9 same classification;

10 (ii) On or after June 1, 1994, pension and other retirement benefits
11 for active employees;

12 (iii) Employee benefits such as insurance, leave, holidays, and
13 vacations;

14 (iv) Hours and working conditions;

15 (v) Provisions for the orderly processing and settlement of
16 grievances concerning the interpretation and implementation of a collective
17 bargaining agreement that may include:

18 1. Binding third party arbitration, provided that the
19 arbitrator has no authority to amend, add to, or subtract from the provisions of the
20 collective bargaining agreement; and

21 2. Provisions for the exclusivity of forum;

22 (vi) Matters affecting the health and safety of employees; and

23 (vii) The effect of the exercise of the Commission's rights and
24 responsibilities under subsection [(p)] (Q) of this section on employees.

25 (2) This subsection does not require the Commission or the employee
26 organization to agree to any proposal or to make any concession.

27 (3) [The Commission and an employee organization certified as
28 exclusive representative shall make every reasonable effort to complete negotiations
29 at least 2 months prior to the Commission's budget submittal deadline.]

30 (I) 1. COLLECTIVE BARGAINING SHALL BEGIN NOT LATER
31 THAN SEPTEMBER 1 BEFORE THE BEGINNING OF A FISCAL YEAR FOR WHICH AN
32 AGREEMENT HAS NOT BEEN REACHED BETWEEN THE COMMISSION AND THE
33 CERTIFIED REPRESENTATIVE.

34 2. COLLECTIVE BARGAINING SHALL FINISH ON OR BEFORE
35 THE FOLLOWING FEBRUARY 1.

1 (II) DURING THE PERIOD SET IN SUBPARAGRAPH (I) OF THIS
2 PARAGRAPH, THE PARTIES SHALL NEGOTIATE IN GOOD FAITH.

3 (K) (1) IF A PARTY CONSIDERS A BARGAINING PROPOSAL TO CONTRAVENE
4 THE RIGHTS AND RESPONSIBILITIES OF THE COMMISSION UNDER SUBSECTION (Q)
5 OF THIS SECTION OR THE RIGHTS OF EMPLOYEES OF THE COMMISSION UNDER
6 SUBSECTION (S) OF THIS SECTION OR TO OTHERWISE VIOLATE THIS SECTION, THE
7 PARTY SHALL PETITION THE LABOR RELATIONS ADMINISTRATOR FOR A
8 DETERMINATION OF WHETHER THE BARGAINING PROPOSAL CONSTITUTES A
9 NEGOTIABILITY DISPUTE THAT CONTRAVENES THIS SECTION.

10 (2) THE PROCEDURE FOR RESOLVING A NEGOTIABILITY DISPUTE SHALL
11 FOLLOW THE PROCESS FOR REVIEWING UNFAIR LABOR PRACTICE CHARGES, EXCEPT
12 THAT THE LABOR RELATIONS ADMINISTRATOR MAY SHORTEN THE TIME PERIODS OR
13 ORDER ANY EXPEDITED PROCEDURE APPROPRIATE UNDER THE CIRCUMSTANCES.

14 (3) THE LABOR RELATIONS ADMINISTRATOR MAY ORDER A PARTY TO
15 WITHDRAW ALL OR PART OF A BARGAINING PROPOSAL THAT CONTRAVENES THIS
16 SECTION.

17 (4) UNLESS APPEALED ON THE BASIS OF BEING ARBITRARY,
18 CAPRICIOUS, OR EXCEEDING THE AUTHORITY OF A PARTY, ANY DECISION AND
19 ORDER REACHED UNDER THIS SUBSECTION IS FINAL.

20 [(l) (1) A fact finder may be used in the collective bargaining process
21 whenever:

22 (i) The Commission and the employee organization agree to
23 fact-finding; or

24 (ii) An impasse results, and the Commission or the employee
25 organization requests fact-finding.

26 (2) The fact finder shall be mutually selected by the Commission and the
27 employee organization from a list supplied by the American Arbitration Association or
28 the Federal Mediation and Conciliation Service.

29 (3) If agreement cannot be reached on the selection of a fact finder, the
30 fact finder shall be selected by the Labor Relations Administrator.

31 (4) (i) The fact finder shall hold hearings and may administer oaths.

32 (ii) Within 30 days after appointment, the fact finder shall give to
33 the Commission and the employee organization a written report with findings and
34 recommendations to resolve the impasse.

35 (5) If the impasse continues for 10 days after submission of the fact
36 finder's report, the fact finder shall make the report available to the public.

1 (6) The Commission and the employee organization shall share equally
2 the costs of the fact finder.]

3 (L) (1) (I) IF THE PARTIES HAVE NOT REACHED AN AGREEMENT ON OR
4 BEFORE DECEMBER 1 ON A COLLECTIVE BARGAINING AGREEMENT THAT WOULD
5 BECOME EFFECTIVE THE FOLLOWING JULY 1, THE PARTIES SHALL JOINTLY APPOINT
6 A MEDIATOR-ARBITRATOR.

7 (II) IF THE PARTIES ARE UNABLE TO AGREE ON A
8 MEDIATOR-ARBITRATOR, THE LABOR RELATIONS ADMINISTRATOR SHALL NAME THE
9 MEDIATOR-ARBITRATOR ON OR BEFORE DECEMBER 7.

10 (III) NOTWITHSTANDING APPOINTMENT OF THE
11 MEDIATOR-ARBITRATOR, NOTHING IN THIS SUBSECTION SHALL REQUIRE
12 COMMENCEMENT OF MEDIATION-ARBITRATION PRIOR TO THE DATE SET FORTH IN
13 PARAGRAPH (3) OF THIS SUBSECTION.

14 (2) DURING THE COURSE OF THE COLLECTIVE BARGAINING EITHER
15 PARTY MAY DECLARE AN IMPASSE AND REQUEST THE SERVICES OF THE
16 MEDIATOR-ARBITRATOR, OR THE PARTIES MAY JOINTLY REQUEST THE SERVICES OF
17 A MEDIATOR-ARBITRATOR BEFORE AN IMPASSE IS DECLARED.

18 (3) IF THE MEDIATOR-ARBITRATOR FINDS IN THE
19 MEDIATOR-ARBITRATOR'S SOLE DISCRETION THAT THE PARTIES ARE AT A BONA
20 FIDE IMPASSE OR ON FEBRUARY 1, WHICHEVER OCCURS EARLIER, THE
21 MEDIATOR-ARBITRATOR SHALL DIRECT THE PARTIES TO SUBMIT:

22 (I) A JOINT MEMORANDUM LISTING ALL ITEMS TO WHICH THE
23 PARTIES PREVIOUSLY AGREED; AND

24 (II) A SEPARATE MEMORANDUM OF THE PARTY'S LAST FINAL
25 OFFER PRESENTED IN NEGOTIATIONS ON ALL ITEMS TO WHICH THE PARTIES DID
26 NOT PREVIOUSLY AGREE.

27 (4) (I) ON OR BEFORE FEBRUARY 10, THE MEDIATOR-ARBITRATOR
28 SHALL HOLD A NONPUBLIC HEARING ON THE PARTIES' PROPOSALS AT A TIME, DATE,
29 AND PLACE SELECTED BY THE MEDIATOR-ARBITRATOR.

30 (II) EACH PARTY SHALL SUBMIT EVIDENCE OR MAKE ORAL AND
31 WRITTEN ARGUMENT IN SUPPORT OF THE PARTY'S LAST FINAL OFFER.

32 (III) THE MEDIATOR-ARBITRATOR MAY NOT OPEN THE HEARING TO
33 A PERSON WHO IS NOT A PARTY TO THE MEDIATION-ARBITRATION.

34 (5) (I) ON OR BEFORE FEBRUARY 15, THE MEDIATOR-ARBITRATOR
35 SHALL ISSUE A REPORT SELECTING BETWEEN THE FINAL OFFERS SUBMITTED BY
36 THE PARTIES THAT THE MEDIATOR-ARBITRATOR DETERMINES TO BE MORE
37 REASONABLE, VIEWED AS A WHOLE.

1 (II) IN DETERMINING THE MORE REASONABLE OFFER, THE
2 MEDIATOR-ARBITRATOR MAY CONSIDER ONLY THE FOLLOWING FACTORS:

3 1. PAST COLLECTIVE BARGAINING CONTRACTS BETWEEN
4 THE PARTIES, INCLUDING THE PAST BARGAINING HISTORY THAT LED TO THE
5 AGREEMENT OR THE PRE-COLLECTIVE BARGAINING HISTORY OF EMPLOYEE WAGES,
6 HOURS, BENEFITS, AND OTHER WORKING CONDITIONS;

7 2. A COMPARISON OF WAGES, HOURS, BENEFITS, AND
8 CONDITIONS OF EMPLOYMENT OF SIMILAR EMPLOYEES OF OTHER PUBLIC
9 EMPLOYERS IN THE WASHINGTON METROPOLITAN AREA AND IN THE STATE;

10 3. A COMPARISON OF WAGES, HOURS, BENEFITS, AND
11 CONDITIONS OF EMPLOYMENT OF SIMILAR EMPLOYEES OF PRIVATE EMPLOYERS IN
12 MONTGOMERY COUNTY AND IN PRINCE GEORGE'S COUNTY;

13 4. THE PUBLIC INTEREST AND WELFARE;

14 5. THE ABILITY OF THE EMPLOYER TO FINANCE ANY
15 ECONOMIC ADJUSTMENTS REQUIRED UNDER THE PROPOSED AGREEMENT;

16 6. THE EFFECTS OF ANY ECONOMIC ADJUSTMENTS ON THE
17 STANDARD OF PUBLIC SERVICES NORMALLY PROVIDED BY THE EMPLOYER; AND

18 7. THE ANNUAL INCREASE OR DECREASE IN CONSUMER
19 PRICES FOR ALL ITEMS AS REFLECTED IN THE MOST RECENT CONSUMER PRICE
20 INDEX - WAGE EARNERS AND CLERICAL WORKERS ("CPI-W") FOR THE
21 WASHINGTON-BALTIMORE METROPOLITAN AREA.

22 (III) IN DETERMINING THE MOST REASONABLE OFFER, THE
23 MEDIATOR-ARBITRATOR SHALL CONSIDER TO BE INTEGRATED WITH EACH OFFER
24 ALL ITEMS ON WHICH THE PARTIES AGREED PRIOR TO THE
25 MEDIATION-ARBITRATION.

26 (IV) THE MEDIATOR-ARBITRATOR MAY NOT RECEIVE OR CONSIDER
27 THE HISTORY OF COLLECTIVE BARGAINING RELATING TO THE IMMEDIATE DISPUTE,
28 INCLUDING ANY OFFERS OF SETTLEMENT NOT CONTAINED IN THE OFFER
29 SUBMITTED TO THE MEDIATOR-ARBITRATOR.

30 (6) THE MEDIATOR-ARBITRATOR MAY NOT COMPROMISE OR ALTER THE
31 FINAL OFFER THAT THE MEDIATOR-ARBITRATOR SELECTS.

32 (7) (I) 1. SUBJECT TO SUB-SUBPARAGRAPH 2 OF THIS
33 SUBPARAGRAPH, WITHOUT RATIFICATION BY THE PARTIES, THE OFFER SELECTED
34 BY THE MEDIATOR-ARBITRATOR, AS INTEGRATED WITH THE ITEMS ON WHICH THE
35 PARTIES PREVIOUSLY AGREED, SHALL BE THE FINAL AGREEMENT BETWEEN THE
36 COMMISSION AND THE EXCLUSIVE REPRESENTATIVE.

1 2. THE ECONOMIC PROVISIONS OF THE FINAL AGREEMENT
2 ARE SUBJECT TO FUNDING BY THE MONTGOMERY COUNTY AND PRINCE GEORGE'S
3 COUNTY COUNCILS.

4 3. THE COMMISSION SHALL REQUEST FUNDS IN THE
5 COMMISSION'S FINAL BUDGET FROM THE COUNTY COUNCILS FOR ALL ECONOMIC
6 PROVISIONS OF THE FINAL AGREEMENT.

7 (II) THE PARTIES SHALL EXECUTE AN AGREEMENT
8 INCORPORATING THE FINAL AGREEMENT, INCLUDING ARBITRATION AWARDS AND
9 ALL ISSUES AGREED TO UNDER THIS SECTION.

10 (8) THE COMMISSION AND THE EMPLOYEE ORGANIZATION SHALL
11 SHARE EQUALLY IN PAYING THE COSTS OF THE ARBITRATOR'S SERVICES.

12 (o) (2) Unless the Montgomery County and Prince George's County Councils
13 approve the Commission's budget so as to [implement] APPROVE the terms of the
14 collective bargaining agreement, the Commission [or an] AND THE employee
15 organization, within [20] 5 days after [final budget action, may give written notice to
16 the other party that it is reopening] THE JOINT COUNTY COUNCIL MEETING, SHALL
17 REOPEN the negotiated agreement AND BARGAIN WITH RESPECT TO THE PROVISIONS
18 OF THE AGREEMENT NOT APPROVED BY THE COUNTY COUNCILS.

19 (p) If a provision in a collective bargaining agreement is ruled invalid or is not
20 funded by Montgomery County or Prince George's County, the remainder of the
21 agreement remains in effect unless reopened under subsection [(n)] (O)(2) of this
22 section.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2001 and shall apply to all bargaining cycles that begin after the effective
25 date of this Act.