

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 278
Appropriations

(Montgomery County Delegation)

Finance

**Montgomery County – Housing Opportunities Commission – Binding
Arbitration – Revisions MC 14–18**

This bill makes various changes to the binding arbitration process between the Housing Opportunities Commission of Montgomery County (HOC) and its employees. In considering the final offer regarding wages, the mediator-arbitrator panel required by the bill must give highest priority to HOC’s ability to pay for additional expenses. HOC may reject any part of the final offer regarding wages that has a specified fiscal effect on the commission.

Fiscal Summary

State Effect: None. The bill applies only to Montgomery County.

Local Effect: HOC expenditures may be affected to the extent that salary levels are implemented through the mediation-arbitration process (and subsequently approved by HOC). However, any effect depends upon how often salaries are set by a mediator-arbitrator panel and the extent to which the chosen salary levels differ from current levels. The overall effect is likely minimal, as HOC is authorized to reject portions of an agreement that have a fiscal impact. County revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Disclosure of Offers by Certified Employee Organization

The bill requires an employee organization certified as exclusive representative to disclose to represented employees all offers regarding wages made by HOC during collective bargaining negotiations.

Selection Process for Mediator Panel

The bill establishes a three-member mediator-arbitrator panel and specifies the selection process. HOC and the employee organization must *each* choose one mediator from a list supplied by the American Arbitration Association or the Federal Mediation and Conciliation Service. A third mediator must be *jointly* selected by HOC and the employee organization from either one of those organizations. If an agreement cannot be reached on the jointly appointed mediator, the labor relations administrator must choose the third mediator.

Choice of More Reasonable Proposal

The bill requires the mediator-arbitrator panel to include wages in the report determining the more reasonable final offer. In determining the more reasonable offer, the mediator-arbitrator panel may take into consideration the history of employees' wages as well as how employees' wages compare to specified public- and private-sector employees. However, in considering the terms and conditions of the final offer regarding wages, the panel must first consider (and give the highest priority to) the ability of HOC to pay for additional short-term and long-term expenses. Specifically, the panel must consider (1) the limits on the ability of HOC to raise revenue; (2) the added burden raising revenue would have on HOC customers; and (3) the ability of HOC to continue providing the current level of service to its customers.

Final Offer as Final Agreement

Generally, the offer that the mediator-arbitrator panel chooses (as integrated with other items previously agreed upon) is the final agreement between HOC and the exclusive representative. However, by April 1 (or a later date determined by mutual agreement due to extenuating circumstances), the Executive Director of HOC must submit to the commission any term or condition of the final offer regarding wages that requires (1) an appropriation of funds or (2) the adoption of a regulation that may result in a present or future fiscal impact on HOC or its customers.

HOC may subsequently accept or reject all or part of any of those terms or conditions.

Current Law: HOC and a certified employee organization must meet by September 1 each year and engage in collective bargaining about specified issues, including salaries and wages, for the following fiscal year. A mediator may be used in collective bargaining when (1) HOC and the employee organization agree to mediation or (2) an impasse results, and HOC or the employee organization requests mediation. If the parties do not reach an agreement by December 1 on an agreement that would become effective the following fiscal year (*i.e.*, July 1), then the parties must jointly appoint a mediator-arbitrator. However, mediation or arbitration is not required to begin until February 1. A mediator-arbitrator may be appointed before December 1 under specified circumstances.

If the mediator-arbitrator finds that the parties are at a bona fide impasse, the mediator-arbitrator must require both parties to submit certain information by February 1, including:

- a joint memorandum listing all items to which the parties have previously agreed; and
- a separate memorandum of the party's last final offer presented in negotiations on all items to which the parties have not previously agreed.

By February 10, the mediator-arbitrator must hold a nonpublic hearing on the parties' proposals. Each party must submit evidence or make oral and written arguments in support of the party's last final offer. By February 15, the mediator-arbitrator must issue a report choosing the final offer, *exclusive of wages*, that the mediator-arbitrator determines to be more reasonable when viewed as a whole.

In determining the more reasonable offer, the mediator-arbitrator may consider only specified factors, which, among other things, include:

- past collective bargaining contracts between the parties, including the bargaining history that led to the agreement or the precollective bargaining history of employee hours, benefits, and other working conditions;
- a comparison of hours, benefits, and conditions of employment of similar employees of other public employers in the Washington metropolitan area as well as the State; and
- a comparison of hours, benefits, and conditions of similar private-sector employees in Montgomery County.

The offer that the mediator-arbitrator chooses (as integrated with the items on which the parties previously agreed) is the final agreement between HOC and the employees'

representative, subject to funding by HOC. The final agreement need not be ratified by the parties.

Selection Process for Mediator

HOC and the employee organization must choose the mediator from a list supplied by the American Arbitration Association or the Federal Mediation and Conciliation Service. If an agreement cannot be reached on a mediator, then the labor relations administrator must choose the mediator.

Any costs of mediation must be shared equally by HOC and the employee organization.

Background: HOC is the public housing agency for Montgomery County. The commission administers federal, State, county, and private affordable housing programs. In addition, it develops housing; provides mortgage financing to developers and first-time homebuyers; manages public housing and other rental units; administers rental subsidy programs (including the Housing Choice Voucher Program); and provides counseling and support services to lower income individuals and families in assisted housing.

HOC is governed by seven volunteer commissioners, who are appointed by the Montgomery County Executive (and confirmed by the county council) to serve five-year terms.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County; Office of the Attorney General (Consumer Protection Division); Department of Housing and Community Development; Department of Legislative Services

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