

Chapter 92

(House Bill 764)

AN ACT concerning

Montgomery County Housing Opportunities Commission – Collective Bargaining Agreement Implementation – Impasse Arbitration**MC 10–23**

FOR the purpose of altering the terms and conditions of a certain final offer that the Executive Director of the Housing Opportunities Commission of Montgomery County is required to submit to the Montgomery Commission; authorizing the parties to a collective bargaining agreement for employees of the ~~Housing Opportunities Commission of Montgomery County~~ Montgomery Commission to request the services of a mediator–arbitrator during a term of a collective bargaining agreement under certain circumstances; establishing the process for mediation–arbitration; requiring the parties to share equally the costs of the mediator–arbitrator’s services; and generally relating to collective bargaining for employees of the Housing Opportunities Commission of Montgomery County.

BY repealing and reenacting, with amendments,

Article – Housing and Community Development

Section 16–310

Annotated Code of Maryland

(2019 Replacement Volume and 2022 Supplement)

BY adding to

Article – Housing and Community Development

Section 16–310.1

Annotated Code of Maryland

(2019 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Housing and Community Development

16–310.

(a) (1) If the parties have not reached an agreement on or before December 1 on a collective bargaining agreement that would become effective the following July 1, the parties shall jointly appoint a mediator–arbitrator panel.

(2) If the parties are unable to agree on a jointly appointed mediator–arbitrator as required under § 16–311 of this subtitle, the labor relations

administrator shall name the jointly appointed mediator–arbitrator on or before December 7.

(3) Notwithstanding appointment of the mediator–arbitrator panel, this subsection does not require beginning mediation–arbitration before the date set forth in subsection (b)(2) of this section.

(b) (1) During the collective bargaining:

(i) either party may declare an impasse and request the services of the mediator–arbitrator panel; or

(ii) the parties may jointly request the services of a mediator–arbitrator panel before an impasse is declared.

(2) If the mediator–arbitrator panel finds in the discretion of the panel that the parties are at a bona fide impasse, or on February 1, if they still have not agreed on a contract, whichever happens first, the mediator–arbitrator panel shall require the parties to submit:

(i) a joint memorandum listing all items to which the parties have previously agreed; and

(ii) a separate memorandum of the party’s last final offer presented in negotiations on all items to which the parties have not previously agreed.

(c) (1) On or before February 10, if the parties have not agreed on a contract, the mediator–arbitrator panel shall hold a nonpublic hearing on the parties’ proposals at a time, date, and place chosen by the mediator–arbitrator panel.

(2) Each party shall submit evidence or make oral and written argument in support of the party’s last final offer.

(3) The mediator–arbitrator panel may not open the hearing to a person who is not a party to the mediation–arbitration.

(d) (1) On or before February 15, the mediator–arbitrator panel shall issue a report choosing the final offer that the mediator–arbitrator panel determines to be more reasonable when viewed as a whole.

(2) Subject to paragraph (3) of this subsection, in determining the more reasonable offer, the mediator–arbitrator panel may consider only:

(i) past collective bargaining contracts between the parties, including the bargaining history that led to the agreement or the precollective bargaining history of employee wages, hours, benefits, and other working conditions;

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

(iii) a comparison of wages, hours, benefits, and conditions of employment of similar employees of private employers in Montgomery County;

(iv) the public interest and welfare;

(v) the ability of the employer to finance any economic adjustments required under the proposed agreement;

(vi) the effects of any economic adjustments on the standard of public services normally provided by the employer; and

(vii) the annual increase or decrease in consumer prices for all items as shown in the most recent Consumer Price Index – Wage Earners and Clerical Workers (“CPI–W”) for the Washington Metropolitan Area.

(3) In considering the terms and conditions of the final offer regarding wages, the mediator–arbitrator panel shall first consider and give the highest priority to the ability of the Montgomery Commission to pay for additional short–term and long–term expenses by considering:

(i) the limits on the ability of the Montgomery Commission to raise revenue;

(ii) the added burden raising revenue would have on customers of the Montgomery Commission; and

(iii) the ability of the Montgomery Commission to continue providing the current level of service to its customers.

(4) In determining the more reasonable offer, the mediator–arbitrator panel shall consider that all items on which the parties agreed before the mediation–arbitration are integrated with each offer.

(5) The mediator–arbitrator panel may not receive or consider the history of collective bargaining relating to the immediate dispute, including any offers of settlement not contained in the offer submitted to the mediator–arbitrator panel.

(e) The mediator–arbitrator panel may not compromise or alter the final offer that the mediator–arbitrator panel chooses.

(f) (1) Subject to paragraphs (2) and (5) of this subsection and without ratification by the parties, the offer that the mediator–arbitrator panel chooses as integrated with the items on which the parties previously agreed is the final agreement between the Montgomery Commission and the exclusive representative.

(2) The economic provisions of the final agreement are subject to funding by the Montgomery Commission.

(3) Except as provided in paragraph (5) of this subsection, the Montgomery Commission shall appropriate money in the Montgomery Commission’s final budget for all economic provisions of the final agreement.

(4) The parties shall execute an agreement that incorporates the final agreement, including arbitration awards and all issues agreed to under this section.

(5) (i) On or before April 1 or a later date determined by mutual agreement of the parties due to extenuating circumstances, the Executive Director of the Montgomery Commission shall submit to the Montgomery Commission any term or condition of the final offer [regarding wages] that requires:

1. an appropriation of funds OR THAT MAY RESULT IN A PRESENT OR FUTURE FISCAL IMPACT ON THE MONTGOMERY COMMISSION OR ITS CUSTOMERS; or

[2. the adoption of a regulation that may result in a present or future fiscal impact on the Montgomery Commission or its customers.]

2. ACTION BY THE MONTGOMERY COMMISSION TO IMPLEMENT THE COLLECTIVE BARGAINING AGREEMENT.

(ii) The Montgomery Commission may accept or reject all or part of any term or condition that the Executive Director is required to submit under subparagraph (i) of this paragraph.

(g) The Montgomery Commission and the employee organization shall share the costs of the mediator–arbitrator panel’s services equally.

16–310.1.

(A) DURING THE TERM OF A COLLECTIVE BARGAINING AGREEMENT:

(1) EITHER PARTY MAY DECLARE AN IMPASSE AND REQUEST THE SERVICES OF A MEDIATOR–ARBITRATOR; AND

(2) THE PARTIES JOINTLY MAY REQUEST THE SERVICES OF A MEDIATOR-ARBITRATOR AT ANY TIME WITHOUT DECLARING AN IMPASSE.

(B) (1) IF THE SERVICES OF A MEDIATOR-ARBITRATOR ARE REQUESTED, THE PARTIES JOINTLY SHALL APPOINT A MEDIATOR-ARBITRATOR.

(2) IF THE PARTIES ARE UNABLE TO AGREE ON A JOINTLY APPOINTED MEDIATOR-ARBITRATOR AS REQUIRED UNDER § 16-311 OF THIS SUBTITLE, THE LABOR RELATIONS ADMINISTRATOR SHALL NAME THE JOINTLY APPOINTED MEDIATOR-ARBITRATOR WITHIN 7 DAYS AFTER THE SERVICES OF A MEDIATOR-ARBITRATOR WERE REQUESTED.

(C) IF THE MEDIATOR-ARBITRATOR FINDS IN THE DISCRETION OF THE MEDIATOR-ARBITRATOR THAT THE PARTIES ARE IN A BONA FIDE IMPASSE, THE MEDIATOR-ARBITRATOR SHALL REQUIRE EACH PARTY TO SUBMIT A SEPARATE MEMORANDUM OF THE PARTY'S LAST FINAL OFFER PRESENTED IN NEGOTIATIONS ON ITEMS WITH REGARD TO WHICH THE PARTIES ARE IN DISPUTE.

(D) (1) WITHIN 10 DAYS AFTER THE SUBMISSION OF THE MEMORANDUM REQUIRED UNDER SUBSECTION (C) OF THIS SECTION, THE MEDIATOR-ARBITRATOR SHALL HOLD A NONPUBLIC HEARING ON THE PARTIES' OFFERS AT A TIME, DATE, AND PLACE CHOSEN BY THE MEDIATOR-ARBITRATOR.

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

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

(E) (1) WITHIN 5 DAYS AFTER THE HEARING REQUIRED UNDER SUBSECTION (D)(1) OF THIS SECTION, THE MEDIATOR-ARBITRATOR SHALL ISSUE A REPORT CHOOSING THE FINAL OFFER THAT THE MEDIATOR-ARBITRATOR DETERMINES TO BE MORE REASONABLE WHEN VIEWED AS A WHOLE.

(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IN DETERMINING THE MORE REASONABLE OFFER, THE MEDIATOR-ARBITRATOR MAY CONSIDER ONLY:

(I) PAST COLLECTIVE BARGAINING CONTRACTS BETWEEN THE PARTIES, INCLUDING THE BARGAINING HISTORY THAT LED TO THE AGREEMENT OR THE PRECOLLECTIVE BARGAINING HISTORY OF EMPLOYEE WAGES, HOURS, BENEFITS, AND OTHER WORKING CONDITIONS;

(II) A COMPARISON OF WAGES, HOURS, BENEFITS, AND CONDITIONS OF EMPLOYMENT OF SIMILAR EMPLOYEES OF OTHER PUBLIC EMPLOYERS IN THE WASHINGTON METROPOLITAN AREA AND IN THE STATE;

(III) A COMPARISON OF WAGES, HOURS, BENEFITS, AND CONDITIONS OF EMPLOYMENT OF SIMILAR EMPLOYEES OF PRIVATE EMPLOYERS IN MONTGOMERY COUNTY;

(IV) THE PUBLIC INTEREST AND WELFARE;

(V) THE ABILITY OF THE EMPLOYER TO FINANCE ANY ECONOMIC ADJUSTMENTS REQUIRED UNDER THE PROPOSED AGREEMENT;

(VI) THE EFFECTS OF ANY ECONOMIC ADJUSTMENTS ON THE STANDARD OF PUBLIC SERVICES NORMALLY PROVIDED BY THE EMPLOYER; AND

(VII) THE ANNUAL INCREASE OR DECREASE IN CONSUMER PRICES FOR ALL ITEMS AS SHOWN IN THE MOST RECENT CONSUMER PRICE INDEX – WAGE EARNERS AND CLERICAL WORKERS (“CPI-W”) FOR THE WASHINGTON METROPOLITAN AREA.

(3) IN CONSIDERING THE TERMS AND CONDITIONS OF THE FINAL OFFER, THE MEDIATOR-ARBITRATOR SHALL FIRST CONSIDER AND GIVE THE HIGHEST PRIORITY TO THE ABILITY OF THE MONTGOMERY COMMISSION TO PAY FOR ADDITIONAL SHORT-TERM AND LONG-TERM EXPENSES BY CONSIDERING:

(I) THE LIMITS ON THE ABILITY OF THE MONTGOMERY COMMISSION TO RAISE REVENUE;

(II) THE ADDED BURDEN RAISING REVENUE WOULD HAVE ON CUSTOMERS OF THE MONTGOMERY COMMISSION; AND

(III) THE ABILITY OF THE MONTGOMERY COMMISSION TO CONTINUE PROVIDING THE CURRENT LEVEL OF SERVICE TO ITS CUSTOMERS.

(4) IN DETERMINING THE MORE REASONABLE OFFER, THE MEDIATOR-ARBITRATOR SHALL CONSIDER THAT ALL ITEMS ON WHICH THE PARTIES AGREED BEFORE THE MEDIATION-ARBITRATION ARE INTEGRATED WITH EACH OFFER.

(5) THE MEDIATOR-ARBITRATOR MAY NOT RECEIVE OR CONSIDER THE HISTORY OF COLLECTIVE BARGAINING RELATING TO THE IMMEDIATE DISPUTE,

INCLUDING ANY OFFERS OF SETTLEMENT NOT CONTAINED IN THE OFFER SUBMITTED TO THE MEDIATOR-ARBITRATOR.

(F) THE MEDIATOR-ARBITRATOR MAY NOT COMPROMISE OR ALTER THE FINAL OFFER THAT THE MEDIATOR-ARBITRATOR CHOOSES.

(G) (1) SUBJECT TO PARAGRAPHS (2) AND (5) OF THIS SUBSECTION AND WITHOUT RATIFICATION BY THE PARTIES, THE OFFER THAT THE MEDIATOR-ARBITRATOR CHOOSES AS INTEGRATED WITH THE ITEMS ON WHICH THE PARTIES PREVIOUSLY AGREED IS THE FINAL AGREEMENT BETWEEN THE MONTGOMERY COMMISSION AND THE EXCLUSIVE REPRESENTATIVE.

(2) THE ECONOMIC PROVISIONS OF THE FINAL AGREEMENT ARE SUBJECT TO FUNDING BY THE MONTGOMERY COMMISSION.

(3) EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION, THE MONTGOMERY COMMISSION SHALL APPROPRIATE MONEY IN THE MONTGOMERY COMMISSION'S FINAL BUDGET FOR ALL ECONOMIC PROVISIONS OF THE FINAL AGREEMENT.

(4) THE PARTIES SHALL EXECUTE AN AGREEMENT THAT INCORPORATES THE FINAL AGREEMENT, INCLUDING ARBITRATION AWARDS AND ALL ISSUES AGREED TO UNDER THIS SECTION.

(5) (I) ~~ON OR BEFORE APRIL 1 OR~~ WITHIN 45 DAYS AFTER THE EXECUTION OF AN AGREEMENT UNDER PARAGRAPH (4) OF THIS SUBSECTION OR ON A LATER DATE DETERMINED BY MUTUAL AGREEMENT OF THE PARTIES DUE TO EXTENUATING CIRCUMSTANCES, THE EXECUTIVE DIRECTOR OF THE MONTGOMERY COMMISSION SHALL SUBMIT TO THE MONTGOMERY COMMISSION ANY TERM OR CONDITION OF THE FINAL OFFER ~~REGARDING WAGES~~ THAT REQUIRES:

1. AN APPROPRIATION OF FUNDS OR THAT MAY RESULT IN A PRESENT OR FUTURE FISCAL IMPACT ON THE MONTGOMERY COMMISSION OR ITS CUSTOMERS; OR

2. ~~THE ADOPTION OF A REGULATION THAT MAY RESULT IN A PRESENT OR FUTURE FISCAL IMPACT ON THE MONTGOMERY COMMISSION OR ITS CUSTOMERS~~ ACTION BY THE MONTGOMERY COMMISSION TO IMPLEMENT THE COLLECTIVE BARGAINING AGREEMENT.

(II) THE MONTGOMERY COMMISSION MAY ACCEPT OR REJECT ALL OR PART OF ANY TERM OR CONDITION THAT THE EXECUTIVE DIRECTOR IS REQUIRED TO SUBMIT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(H) THE MONTGOMERY COMMISSION AND THE EMPLOYEE ORGANIZATION SHALL SHARE EQUALLY THE COSTS OF THE MEDIATOR–ARBITRATOR’S SERVICES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.

Approved by the Governor, April 11, 2023.