

Bill No. 20-01
Concerning: Add Binding Arbitration to
Collective Bargaining with Fire Service
Employees
Introduced: January 21, 2020
Revised: _____ Draft No. _____
Enacted: February 18, 2020
Effective: April 18, 2020
Expires: April 20, 2020
Frederick County Code, Chapter 1-2; 2-8
Section(s) 121-128; 2-8-7

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council Member Jessica Fitzwater

AN ACT to: Revise the Frederick County Code to comply with Charter section 705(b) as approved by the voters of Frederick County on November 6, 2018, by adding binding arbitration to collective bargaining for Fire Service Employees.

Executive: Jan H. Gordon Date Received: 3/3/2020
Approved: ✓ Date: 3/17/2020
Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, 1-2; 2-8 Section(s) 121-128; 2-8-7

Other: _____


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* * *

Heading or defined term.
Added to existing law by original bill.
Deleted from existing law by original bill.
Existing law unaffected by bill.

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The County Council of Frederick County, Maryland, finds it necessary and appropriate to add binding arbitration to collective bargaining.

NOW, THEREFORE, BE IT ENACTED, BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.


M.C. Keegan-Ayer, President
County Council of Frederick County,
Maryland



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MAR 03 2020



Office of the
County Executive

250 pm

**ARTICLE IX: COLLECTIVE BARGAINING AND BINDING ARBITRATION WITH
EMPLOYEES IN THE FIRE AND RESCUE SERVICES DIVISION**

§1-2-121. DEFINITIONS.

COLLECTIVE BARGAINING. The process of meeting at reasonable times and places and negotiating in good faith on [appropriate] authorized subjects as defined under this article. This article does not compel either party to agree to a proposal or to make a concession.

EMPLOYEE. A sworn, regular, nonexempt, [uniformed] employee at or below the rank of captain within the Frederick County Division of Fire and Rescue Services.

IMPASSE. The failure of the County Executive and the exclusive representative to reach a collective bargaining agreement despite good faith efforts to do so.

[UNIFORMED EMPLOYEE. An employee is considered uniformed if the employee works in a position that meets the following criteria:

- (1) The position is a non-administrative, active duty position;
- (2) The position requires certification by the Maryland Police Training Commission, the Maryland Fire and Rescue Institute or the Maryland Correctional Training Commission; and
- (3) The daily duties of the position could result in loss of life.]

§ 1-2-122. COLLECTIVE BARGAINING.

(A) Authorized. The County Executive [may] shall engage in negotiat[e]ions with regard to the authorized subjects of negotiation as defined in §1-2-126 [wages and benefits] with the employee organization recognized as the exclusive representative of the employees.

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(B) Memorandum of understanding.

(1) [The c]Collective bargaining with the exclusive representative may include a memorandum of understanding concerning the authorized subjects of negotiation as defined in §1-2-126 [wages and benefits].

(2) [The]Any memorandum of understanding [is not effective until it is ratified by a majority of the votes cast by the employees] executed by the County Executive is not effective unless ratified in accordance with procedures adopted by the exclusive representative.

(C) Agreement subject to funding by the [c]County. The County Council retains the right to approve or disapprove, in whole or in part, any additional funding required as the result of a[n] negotiated agreement reached by the County Executive with the exclusive representative.

(D) [Binding interest arbitration prohibited. Binding interest arbitration is not allowed.]

[(E)] Strikes prohibited; penalties.

(1) An employee shall not engage in, induce, or initiate a strike.

(2) In the event of a violation of this subsection, the [c]County will take whatever action it deems necessary to protect the public, including, without limitation, suspension of certification or any privilege acquired as the result of the certification; revocation of the right of an employee organization to represent employees; discipline, including termination of employment, of employees engaged in such illegal conduct; or application for relief in an appropriate court of law.

§ 1-2-123. EMPLOYEE RIGHTS.

(A) Employees may form, join, and assist employee organizations for the purpose of bargaining collectively on authorized subjects of negotiation [wages and benefits] through a representative of their own choosing.

(B) Employees also have the right to refrain from the activities described in paragraph (A).

§ 1-2-124. MANAGEMENT RIGHTS.

[The county's obligations under this article it do not affect its exclusive right and responsibilities to:

(A) Direct employees in the performance of their assigned duties;

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(B) Hire, promote, transfer, assign, lay off, recall, retain employees in positions, or to suspend, demote, discharge, or take other disciplinary action against employees;

(C) Maintain the efficiency of all county operations;

(D) Determine the method, means, and equipment by which operations are to be conducted; or

(E) Determine the mission of the county and take whatever actions may be necessary to discharge its responsibilities in emergencies.]

(A) The county's obligations under this article and any memorandum of understanding made under it do not impair or affect its exclusive rights and responsibilities to:

(1) Determine the overall budget and mission of the County 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, supervise, and discipline employees in accordance with County policies;

(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 County 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 to meet daily operational needs;

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

(11) Set system performance standards;

(12) Establish employee performance standards and evaluate employees;

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(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 purchase of, use of, disposal of, machinery, equipment, supplies, tools, other property and facilities and, capital assets used in the delivery of fire and rescue services in Frederick County;

(16) Maintain internal security standards;

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

(18) Suspend, discharge, or otherwise discipline employees; 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 memorandum of understanding.

(B) Exemption. This Article does not limit the discretion of the County to voluntarily discuss with the exclusive representative any matter concerning the County's exercise of any right specified in this section. If any matter is discussed it is not subject to negotiation.

(C) Incorporation. The management rights specified in this section must be incorporated by reference in every memorandum of understanding or other agreement reached between the County and the employee organization.

(D) Volunteers. Any memorandum of understanding shall not restrain or restrict a person from serving as an active member or officer of a volunteer fire department, fire company, rescue squad, ambulance company, or other volunteer organization that provides fire and rescue services.

§1-2-125. CERTIFICATION OF EXCLUSIVE REPRESENTATIVE.

§1-2-126. NEGOTIATION [OF WAGES AND BENEFITS] AND AUTHORIZED SUBJECTS.

(A) Meetings with exclusive representative. The [c]County's negotiation committee appointed under § 1-2-127 and the exclusive representative [may] shall meet and negotiate in good

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faith with respect to [wages and benefits] the authorized subjects of negotiation, but such negotiations may not compel either the county or the exclusive representative to agree to a proposal or require the making of a concession.

(B) Number of participants. During any collective bargaining, each party is allowed to have an equal number of representatives participate in the negotiations.

(C) Time limit on negotiation. Negotiation with the exclusive representative [may] will begin on or after October 1 of each year. The county is not required to negotiate collectively with the exclusive representative if the exclusive representative is not certified by October 1. Any negotiations with the exclusive representative must be completed each year by the following [February 28] December 31.

(D) Subjects of negotiation. Should [an] the employee organization be certified as the exclusive bargaining representative, items that may be collectively bargained are:

- (1) Wages; [and]
- (2) Benefits including, but not limited to:
 - (a) Deferred compensation plan;
 - (b) Dental insurance;
 - (c) Health insurance;
 - (d) Holidays;
 - (e) Life insurance;
 - (f) Paid leave;
 - (g) Retirement or pension plan; and
 - (h) Tuition assistance.
- (3) Working conditions; and
- (4) Terms and/or conditions of employment.

(E) Nonnegotiable subjects. [All other terms or conditions of employment] The rights reserved exclusively to the County under §1-2-124 of this subtitle are not negotiable.

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§1-2-127. NEGOTIATION COMMITTEE.

§1-2-128. IMPASSE PROCEDURE

(A) Impasse Procedure.

(1) If the County and the exclusive representative are unable to reach a negotiated agreement by December 31, an impasse will be deemed to exist in the negotiations with the exclusive representative. At any time during the negotiations either party may declare an impasse.

(2) Within three (3) business days after such impasse, the County and the exclusive representative involved shall apply to the American Arbitration Association for a list of nine neutral labor arbitrators who are members of the National Academy of Arbitrators, who are familiar with impasse disputes and interest arbitration, who maintain a residence within 150 miles of Frederick, Maryland;

(3) Pursuant to an application made under subsection (2), instruct the American Arbitration Association to provide a list of neutral arbitrators within five (5) business days, and ensure that all of the arbitrators on the list provided are available to conduct hearings and to issue a final written award by March 1;

(a) The parties shall alternately strike names and keep track of the order of the strikes until there is only one member remaining;

(b) The party striking first shall be agreed to or determined by a coin toss; and

(c) The last remaining arbitrator shall be deemed to be selected by the parties and shall arbitrate the dispute.

(4) The arbitrator shall be informed of his or her selection as soon as possible. If for any reason the selected arbitrator is unable or unwilling to serve or meet the deadlines contained in this section, the parties shall immediately notify the last previous strike from the arbitration panel of his or her selection. The process shall continue, if necessary, until a member of the arbitration panel available to serve and meet the deadlines is selected.

(5) Within five (5) business days after selection of the arbitrator, the parties will provide a written memorandum that states all of the issues upon which they agree.

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(6) Within five (5) business days after receipt of the submissions provided for in subsection (5) above, the parties will simultaneously exchange their respective "final offers" that contain all of the proposed issues for a memorandum of understanding between the County and the exclusive representative, including a proposed term of the memorandum of understanding of not less than one (1) fiscal year and not more than three (3) fiscal years.

(7) The arbitrator shall schedule a hearing in Frederick County to begin as soon as possible after the exchange of final offers, but in no event more than thirty (30) calendar days after the exchange of final offers. The hearing shall not be open to the public and shall be conducted consistent with the procedural rules and regulations of the American Arbitration Association. Each party shall be responsible for the costs of their own attorney(s) and expert witness(es), if any.

(8) The arbitrator shall have full authority to hear and decide all issues in dispute regarding the parties' respective final offers, including matters of procedure and the scope of the arbitration.

(9) If the impasse is not resolved prior to the conclusion of the hearing the arbitrator shall prepare a written report, which shall include the arbitrator's separate decision as to each disputed subject area of bargaining as to whether he or she adopts the County or the exclusive representative's final offer as to each subject area of bargaining.

(10) In determining whether to include in the memorandum of understanding the final offer of the County or the exclusive representative, the arbitrator shall consider the factors described in subsection (B) below.

(B) Arbitrator—Factors to Consider.

(1) In determining which final offer is the more reasonable, the arbitrator must first evaluate and give the highest priority to the ability of the County to pay for additional short-term and long-term expenditures, including those which would result from adoption of each parties' respective final offer, by considering:

(a) the interest, needs, and welfare of County residents and taxpayers;

(b) the limits on the County's ability to raise taxes under State law and the County Charter;

(c) the general fund revenue estimates for the ensuing fiscal year, exclusive of those revenues sufficient to fund the County Executive's proposed capital budget, transfers to other funds, legally mandated operating expenses, and debt service;

(d) the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a final offer;

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(e) the County's ability to continue to provide the current standard of all public services, including State and County mandated expenditures;

(f) the potential impact of adoption of each parties' respective final offer on the County's credit rating; and

(g) the previously agreed-on issues as provided in (A)(4) of this subtitle.

(2) After evaluating the ability of the County to pay under paragraph (B)(1), the arbitrator may only consider:

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

(b) overall compensation presently received by the employees in the bargaining unit, inclusive of wages, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;

(c) wages, hours, benefits and conditions of employment of similar employees of other public employers in comparable jurisdictions as defined in subsection (3) below;

(d) wages, hours, benefits, and conditions of employment of other County employees and the potential effect of the arbitrator's selection of each Parties' respective final offer on other employees of the County;

(e) the special nature of the work performed by the employees in the bargaining unit, including hazards of employment, physical requirements, educational qualifications, job training and skills, shift assignments and the demands placed upon such employees as compared to other County employees;

(f) the continuity and stability of employment of the members of the bargaining unit, including application and vacancy statistics for positions in the bargaining unit; and

(g) increases or decreases in the cost of living in Frederick County.

(3) In determining the comparability of other jurisdictions, the arbitrator shall compare the following characteristics of the proposed comparable jurisdiction with those same characteristics for Frederick County:

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- jurisdiction;
- (a) geographic size;
 - (b) distance between the County and the proposed comparable
 - (c) population;
 - (d) population density;
 - (e) average household income of residents;
 - (f) average property value;
 - (g) gains and losses of assessed property values;
 - (h) size and composition of fire department;
 - (i) fire incident rate;
 - (j) general fund revenue and expenditures;
 - (k) assessable tax base; and
 - (l) cost of living data.

(4) The arbitrator must base the selection of the more reasonable respective final offer of the Parties on the contents of the offer and the integration of any previously agreed-on items with the disputed items. In making a decision, the arbitrator must not consider or receive any evidence or argument concerning offers of settlement not contained in the final offers submitted to the arbitrator, or any other information concerning the collective bargaining leading to impasse. The arbitrator must neither compromise nor alter the final offer that he or she selects.

(5) The final offer selected by the arbitrator, 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 §1-2-122(B)(2).

(C) Executive Action.

(1) The arbitrator shall submit his or her decision to the County and the exclusive representative within 20 calendar days after the conclusion of the hearing or the date established for the submission of post-hearing briefs, whichever is later, but in no event later than March 1. The report and proposed memorandum of understanding shall be binding upon the County Executive and the exclusive representative, including the individual employees in the

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bargaining unit. The County Executive shall submit to the County Council in a timely manner all provisions of the new memorandum of understanding adopted by the arbitrator which require an appropriation of funds or enactment, repeal, or modification of County law, and shall make a good faith effort to have such provisions implemented by Council action as a part of the following year's budget process.

(2) The County Executive shall undertake all administrative and Executive action necessary to submit a proposed budget to carry out the decision issued by the arbitrator.

(3) The submission of a proposed budget to the County Council fulfills the obligations of the County Executive under this Title.

(4) This subsection may not be interpreted or construed to require the County Executive to be bound by, or to submit a budgetary request and legislation to implement any decision of an arbitrator that is contrary to:

(a) State law;

(b) Provisions of the County Charter governing public employment and fiscal procedures; or

(c) Those rights that are exclusive to the County pursuant to Section 1-2-124 of this subtitle.

(D) Council Action. The County Council is not bound by the arbitrator's decision made under this section and may act upon the submitted budget to implement the arbitrator's decision under this section in accordance with applicable law. The County Council retains the right to approve or disapprove, in whole or in part, any additional funding required as the result of the arbitrator's decision.

(E) Continuing Negotiations.

(1) The parties are strongly encouraged to reach an agreement on all issues whenever possible.

(2) On or before March 10, the County Council may indicate its intention to appropriate funds for or otherwise implement the agreement of the parties or the arbitrator's decision, whichever is applicable, or its intention not to do so, and state its reasons for any intent to reject any part of the agreement or arbitrator's decision. If the Council indicates its intention to reject any part, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. The parties shall thereafter meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. The results of the negotiations shall be submitted to the Council on or before March 15.

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(3) This section may not be construed to interfere with any efforts the parties may undertake to reach a negotiated agreement concerning any disputes at any time.

(F) Duration of Agreement. An arbitrator's award may be for more than one (1) fiscal year; however, the County Council shall only vote on proposed legislation to implement such award one (1) year at a time.

(G) Construction of Section. This section shall be the exclusive procedure for resolving disputes between the parties unless the parties mutually agree to use another or an additional dispute resolution procedure during any period of negotiations.

(H) Extension of Memorandum of Understanding.

(1) If the impasse resolution procedures provided for in this section have been invoked and the current memorandum of understanding expires without the implementation of a new memorandum of understanding, the County may not, without the written approval of the exclusive representative, make any changes in the wages or terms and conditions of employment between the expiration of the current memorandum of understanding and the effective date of the successor memorandum of understanding, except that the County may make changes to its health benefits. In addition, the County may implement changes to other benefits as required by applicable benefit plan documents; and

(2) The implementation of this subsection may not violate the provisions of the County Charter and may be effective for no longer than one year.

(I) Costs, Fees, costs, and expenses of the arbitrator shall be shared equally by the County and the exclusive representative.

(J) Waiver of Limitation Periods. Subject to the requirements of the County Charter, the parties may waive the time limits and dates established in this section by written mutual agreement.

(K) Modification. At any time, the parties may modify any provision of the memorandum of understanding by written mutual agreement.

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[§ 2-8-7. Collective bargaining.

- (A) (1) In this section the following words have the meanings indicated.
- (2) "Collective bargaining" does not include a meeting in which only representatives of the board of county commissioners are in attendance or a meeting in which only representatives of the exclusive representative are in attendance.
- (3) "Employee" means a regular, nonexempt, uniformed employee within the Frederick County Division of Fire and Rescue Services or other employee within the Division of Fire and Rescue Services, as determined by the board of county commissioners.
- (4) "Employee organization" means a labor or other organization in which employees participate and that has representing employees as one of its primary purposes.
- (5) "Exclusive representative" means the employee organization that has been certified through an election of eligible employees to represent and bargain for those employees over wages and benefits.
- (B) The board of county commissioners may enact an ordinance to allow voluntary collective bargaining concerning wages and benefits between the board of county commissioners and the employee organization that the board of county commissioners recognizes as the exclusive representative of its employees.
- (C) Once authorized by an ordinance, collective bargaining between the board of county commissioners and the exclusive representative may include a memorandum of understanding concerning wages and benefits.
- (D) Subject to provisions concerning budgetary and fiscal procedures in state law or county ordinance, a memorandum of understanding between the board of county commissioners and an exclusive representative shall bind the board of county commissioners for the period of time that is stated in the agreement.
- (E) The board of county commissioners may designate individuals to negotiate on its behalf with the exclusive representative.
- (F) This section does not:
- (1) Authorize or otherwise permit an employee to engage in a strike as defined in § 3-303 of the State Personnel and Pensions Article;
- (2) Require any form of collective bargaining; or

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(3) Require any method, means, or scope of bargaining between the board of county commissioners and an exclusive representative; or

(4) Authorize binding interest arbitration.}]

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