

SOME FACTS ABOUT COLLECTIVE BARGAINING WITH INTEREST ARBITRATION FOR DEPUTY SHERIFFS

FEBRUARY 16, 2010

Introduction

Last week a majority of the Cecil County's State legislative delegation (the Delegation") approved the introduction of companion bills in the Maryland Senate (SB 726) and House of Delegates (HB 916)(the "Bills"), which call for a County-wide referendum during this November's elections, in which the voters of Cecil County are to be asked to consider and approve one of two alternative versions of legislation authorizing collective bargaining for the County's deputy sheriffs. One alternative calls for the enactment of collective bargaining with so-called "binding interest arbitration," the other with so-called "non-binding interest arbitration."

These Bills were introduced by the Delegation over the Commissioners' strong written and verbal objections. This is the latest chapter in a debate which has been on-going in the County for some time, between and among the Commissioners (both past and present), the Sheriff, State and local representatives of the Fraternal Order of Police (the "FOP") and the Delegation.

For years, the Commissioners have consistently supported legislation to authorize collective bargaining for Sheriff's deputies but, just as consistently, they have opposed any authorizing legislation which creates a right of interest arbitration, whether binding or non-binding. The Commissioners are now also strongly opposed to having this matter presented to County voters for decision, in a referendum. The Commissioners object to the proposed bills for many reasons, and want to explain why.

I.

Collective Bargaining Basics

The Commissioners think that Sheriff's deputies should have the right to engage in collective bargaining with them and with the Sheriff. But they strongly oppose the Delegation's Bills, which offer alternative versions of collective bargaining legislation for approval by referendum in November. Perhaps it would be helpful to begin by providing some information about basic collective bargaining concepts and terms.

- **What is Collective Bargaining?**

There are two basic aspects to Collective Bargaining. First, the Sheriff's deputies need to be given the right to form and to participate in a labor organization, to act as their exclusive representative in bargaining. And then the Sheriff's Deputies need to be accorded the right to have their representative bargain or negotiate with the Commissioners and the Sheriff about their wages, benefits, and other terms and conditions of their employment (except those which relate to the running of the

operations of the Office of Sheriff). Those negotiations will result in a labor contract between and among the representative organization, the Commissioners and the Sheriff.

- **Can't the Commissioners, the Sheriff and the Sheriff's Deputies collectively bargain now?**

No. Because Cecil County operates under a commissioner form of government, it takes an act of the State legislature, first to empower the Sheriff's deputies to vote to have a labor organization represent them and then to permit that organization to bargain for them, as their exclusive representative.

- **The Delegation's Bills refer to "mediation," "binding arbitration" and "non-binding arbitration;" what is mediation?**

The Bills say that if the Commissioners, the Sheriff and the FOP are unable to agree on labor contract terms then any of them can seek non-binding mediation. This means that a third party will be asked to act as a "referee," to help the County, the Sheriff and the FOP to strike a deal. But the mediator doesn't have any power to make the parties' deal for them, or to force the parties to accept any terms that the parties don't agree to.

- **What is "interest arbitration", what's the difference between "binding" and "non-binding" interest arbitration, and how do these differ from mediation?**

The Bills say that if the Commissioners, the Sheriff and the FOP are unable to agree on labor contract terms, and they ask a mediator to help bridge the gap, and the mediation is unsuccessful, then any of the parties can seek to have an arbitrator appointed.

An arbitrator is a third party, like a mediator. But unlike a mediator, who only acts as a "referee," to help both parties strike a deal, an arbitrator acts as a sort of outside, private "judge," who takes control of a dispute, and who has the power to conduct an investigation into the matter, gathering evidence, and taking testimony, and rendering a decision about what the "right" result should be concerning the contested issue. Essentially, the arbitrator tells the Commissioners, the Sheriff and the FOP what the terms of their deal "should be" when those parties are otherwise at an impasse.

In binding interest arbitration, the decision of that outside arbitrator is final and binding on the parties – just like a judge's ruling, but without any right of appeal. In non-binding interest arbitration that decision is only advisory.

- **What is "binding grievance arbitration", and what's the difference between that and "interest arbitration"?**

The Bills say that a collective bargaining agreement for Sheriff's deputies may contain a grievance procedure providing for binding arbitration of grievances in reference to a labor contract, including grievances related to interpretation or breach of that contract. This is a method for resolving disputes arising under an already existing

collective bargaining agreement. In this method, the arbitrator is someone who is trained to interpret a labor agreement. These persons generally have a track record, so that the parties can determine in the selection process whether the proposed arbitrator is sufficiently qualified to be entrusted to make a decision. Most importantly, in grievance arbitration, the arbitrator cannot expand or rewrite the parties' underlying agreement, or any of the rules or orders which are at issue. The grievance arbitrator is simply interpreting the language in the existing labor agreement, and applying those terms to the facts of the particular dispute.

II.

The Commissioners Are in Favor of Collective Bargaining; But They Oppose the Delegation's Bills

Recent history demonstrates the good faith of the Commissioners and the Sheriff in this matter.

- **Are the Commissioners in favor of Collective Bargaining?**

Yes. For well over three years now, the Commissioners (both present as well as recent past members) have been on record as being in favor of State authorizing legislation empowering the Deputy Sheriffs to engage in collective bargaining for wages, benefits and some terms of working conditions. The Sheriff has also been on record in supporting the same thing. The Commissioners and the Sheriff have jointly supported the introduction of bills to do that. As a matter of fact, most recently the Commissioners supported the introduction of a bill empowering the County's EMS staff to engage in collective bargaining, too. But, in that case, and as in the case of the Sheriff's Deputies, the Commissioners draw the line at any provision in any proposed bill, for any class of County employees, which authorizes the resort to any form of interest arbitration.

On the other hand, for years now the local FOP representatives and some of the Sheriff's deputies have been just as adamant that they won't settle for the introduction of any bill unless it contains binding interest arbitration provisions, so that's probably why the FOP worked their way around the Commissioners to pressure the Delegation into introducing the Bills in Annapolis last week.

- **Do the Commissioners support a collective bargaining bill for Sheriff's deputies containing mediation provisions?**

Yes. Look at the record. Back in December 2008 the Commissioners proposed a version of the legislation that included a requirement that the parties engage in mediation to resolve any terms on which the parties have negotiated but have not reached agreement. Such mediation is conducted privately because it is pre-agreement, and this form of resolution allows the parties to engage a mediator to assist in bargaining, rather than imposing contract terms by award. Mediation is a very effective means of resolving contract negotiations. It is widely used in the United States. There are a large number of

very good mediators who have experience and talent to assist the County and the Sheriff and the FOP. The cost of mediation is a fraction of the cost of interest arbitration.

But the presence of interest arbitration in the proposed alternative bills – whether of the binding or non-binding kind - as a next step beyond mediation will make it less likely that either party will commit to compromise its position in a meaningful mediation. That's because true good-faith negotiations are more difficult when the parties know that any one of them can short-circuit that process by resorting to an arbitrator to agree with their position and issue (or impose) an award setting terms.

- **Do the Commissioners support a collective bargaining bill for Sheriff's deputies containing binding grievance arbitration?**

Yes. The Commissioners think that this is an acceptable method for resolving disputes arising under an already existing collective bargaining agreement.

- **Then why do the Commissioners oppose any bill containing interest arbitration, either the binding or non-binding kind?**

For lots of good reasons. First and foremost, interest arbitration - in any form - is unlike grievance arbitration. With interest arbitration, the parties are allowing an unelected third party who is not familiar with or affected by the County's finances and who is not responsible to County voters and taxpayers to set the terms of a labor agreement which will have an impact on County finances and taxes.

In binding interest arbitration, the un-elected and unaccountable arbitrator tells the parties what their contract will be. The arbitrator is deciding what the County will pay, or give in benefits or what the working conditions will be if the County and the Sheriff or the FOP cannot agree on them through the normal give and take of the collective bargaining process. The final decision as to the wages and benefits that the County must pay and the terms and conditions of employment that the Office of Sheriff must provide is made by someone who is NOT a taxpayer of the County. This arbitrator is not affected by the decision, and bears no responsibility for determining where or how to pay for increases in wages and benefits or how to operate the Office of Sheriff.

The Commissioners think that, in the last analysis, the Cecil County voters and tax-payers elected them to make those hard choices, and to be accountable to them for those decisions, at the ballot-box. The Commissioners think that while they remain accountable to the voters and taxpayers, as commissioners, binding interest arbitration takes away their power and ability to control the County's operations and its budget. It leaves to the unelected and unaccountable arbitrator the power to decide these issues and so to affect tax rates, and the delivery of police services to Cecil County taxpayers.

Second, while non-binding interest arbitration does not bind the Sheriff or the Commissioners to accept any award of increases in wages or benefits or changes in hours or terms and conditions of employment, any decision to reject an award by an interest arbitrator will be controversial, and it will generate ill will needlessly. In any event, there

is certainly nothing in the proposed legislation preventing the FOP from attempting other means to enforce a non-binding award made by an interest arbitrator - such as by referendum or through litigation. And any of those efforts, whether or not successful, will cost the County a lot of money.

Which brings up a third point – cost. The process of interest arbitration is expensive. As drafted, the proposed legislation has five criteria that the interest arbitrator must consider. Collecting facts provable at a trial (and a trial is, after all, the means of conducting an arbitration) on those criteria will be time consuming and expensive. These arbitrations almost always require engagement of labor trial counsel with experience in these types of matters and experts in the areas of comparative wages and benefits and county finance, particularly if the County takes the position that it cannot afford the increases demanded by the FOP. Typical costs for a single interest arbitration for a county – for labor lawyers’ fees, experts’ fees, costs of discovery and the like - would run from \$50,000- \$75,000. And that doesn’t include the cost to hire the arbitrator: their cost alone averages about \$1,000 per day. The fact that one of the Bills’ alternatives calls for collective bargaining with non-binding interest arbitration does not mean that the arbitration procedure or hearing will be any less expensive or less involved as that for a binding proceeding.

Inevitably, interest arbitration – whether binding or non-binding - will result in increased labor and other costs for the County, first through the cost of conducting the arbitration itself and then, potentially, through the award process. Either way, Cecil County taxpayers will pay that cost.

III.

Collective Bargaining with Mediation, and Not Interest Arbitration, Will Do The Trick

The FOP’s adamant demand for a collective bargaining bill with interest arbitration, and its insistence that no bill at all is better than a bill without interest arbitration, is puzzling given the history of labor relations in the County. And it gives cause for concern about the FOP’s true motives and intentions for its future dealings with the County.

- **The FOP says that unless a collective bargaining bill requires binding interest arbitration they will be reduced to “collective begging,” not collective bargaining. What about that?**

That sort of talk presupposes the Commissioners’ bad faith and is just not borne out by the facts. Many jurisdictions have successful collective bargaining without interest arbitration. At this point, there are no historical facts which support including interest arbitration in either of the alternative proposals in the Bills. The County has not mistreated the Sheriff’s deputies economically. In fact, the record reflects that the County has made continuous efforts to provide comparative wages and benefits to the deputies.

There just isn't any indication from the history of the relationship between and among the Commissioners, the Sheriff and the Sheriff's deputies that good-faith collective bargaining would fail without interest arbitration. Since the record is clear that the Commissioners support collective bargaining, there's every reason to believe that they would approach those negotiations in good faith. The Commissioners have no doubt that they can reach a fair agreement - without interest arbitration – and without jeopardizing either the delivery of law enforcement services or budgetary control.

- **The FOP says that they rarely use interest arbitration, so why are the Commissioners making such a big deal about it?**

The Commissioners will answer that question with another: if the FOP resorts to interest arbitration so rarely, then why is the FOP so insistent on having it in the first place? Could it be that this is just the best evidence that the FOP doesn't trust the Office of the Sheriff or the Board of Commissioners to "protect" their interests by paying the best possible wages and benefits and working conditions, and that they won't consider any negotiation "complete" until they've been able to test their negotiating gains through an arbitration? Right now, there is no right to collective bargaining for Sheriff's deputies – with or without interest arbitration. Why don't we first try collective bargaining with mediation, and without interest arbitration? If that process confirms the FOP's apparent worst fears about the motives and intentions of the Commissioners and the Sheriff, then won't that be sufficient cause to modify the then-existing legislation to add interest arbitration to add those further protections?

IV.

Collective Bargaining Experience Elsewhere

A review of the experience of other jurisdictions, in Maryland and throughout the country, leads to the conclusion that the Commissioners are not crying wolf in warning about the dangers of the proposed legislation.

- **This issue can't be new; what's the experience of other Maryland jurisdictions?**

Good question. Right now, NO commissioner-form county grants collective bargaining power with binding interest arbitration for deputy sheriffs. In fact, the State of Maryland does not provide for binding interest arbitration for State Police! Allegheny County has collective bargaining with non-binding interest arbitration. And Wicomico County (not a commissioner government county) had collective bargaining with binding interest arbitration. But here's an interesting new development: Wicomico County recently challenged the interest arbitration aspects of its collective bargaining statute and last month the Maryland Court of Special Appeals ruled that provision unconstitutional, because it unlawfully infringed the budgetary and fiscal power and responsibility of county elected officials. Wicomico County's objections to those interest arbitration provisions are the same objections now being raised by the Commissioners.

- **What about the experience of other jurisdictions throughout the country?**

Again, good question. Here are just a few examples:

- In 2008 the City of Vallejo, California, - then one of about 25 cities out of 450 in California with binding arbitration labor provisions in its city charter - was so overwhelmed by the long-term cost of improvidently negotiated labor contracts that it was forced into bankruptcy, leading to a citizens' initiative to amend the charter to remove the binding arbitration provisions. You can look it up on the CitizensForVallejo.org website. Or read the story which appeared in George F. Will's column of September 11, 2008.
- In 1969 Michigan adopted interest arbitration for police and firefighter collective bargaining agreements, leading Detroit Mayor Coleman Young – who had authored the original law as a state senator – to regret what he had done. As he said in 1981, “We now know that compulsory arbitration has been a failure. Slowly, inexorably, compulsory arbitration has destroyed sensible fiscal management and has caused more damage to the public service than the strikes it was designed to prevent.”
- In 1999 an arbitration panel awarded Hamtramck, Michigan, police officers \$2.1 million in pay raises and back pay, pushing it into state receivership. The city was forced to impose a series of tax increases and service cuts to fund the award, which helped to drive away city residents.
- As late as 2006 Michigan governor Jennifer Granholm appointed a task force which studied the matter and concluded that local government costs in binding interest arbitration states were 3% to 5% higher than in jurisdictions without the provision. The task force concluded that the impact in dollar terms was “huge.” Legislation in Michigan seeks to amend the state's compulsory bargaining law by requiring that arbitrators look at a city's ability to pay and compare police and fire salaries and benefits with those of other city workers. The Michigan Municipal League supports these changes. The Small Business Association of Michigan supports outright repeal of the bargaining law.
- In New Jersey, representatives of several municipalities have called for reforms to the binding arbitration system. They say it is weighted toward public safety unions and has driven costs beyond the reach of many cities in tough economic times.
- The New York State Conference of Mayors and Municipal Officials has called for repeal of New York's compulsory arbitration statute when it expires next year. Officials say the statute imposes an unfunded mandate on municipalities because it does not require consideration of a city's ability to pay when awarding salaries and benefits.
- Even then-Governor Michael Dukakis of Massachusetts opposed binding interest arbitration for public sector employees. In 1977, during his first term, he tried to limit it, arguing that binding interest arbitration “has removed

legitimate management perogatives ... from the control of municipal officials at a time when they are under severe pressure to improve their management and make savings.” Two years later Massachusetts voters approved a ballot initiative that scrapped the measure.

- Finally, and most recently, and closest to home, consider these excerpts which appeared in the Lancaster Sun’s January 10, 2010 edition, under the caption “Pa. Mayors Sing Union Blues”: Rising salaries and benefits for police and firefighters are wrecking city budgets in Pennsylvania, according to mayors. The primary culprit, they claim, is binding arbitration that favors public safety unions. "Taxpayers sometimes say, 'You're awfully generous with our money,' " Lancaster Mayor Rick Gray said. "But these aren't my decisions. It's not a true contract with police or firefighters. We don't negotiate." Gray and other mayors claim the process municipalities must use to bargain with police and firefighters is deeply flawed. However, a Lancaster Newspapers investigation shows that starting annual salaries for Lancaster police officers and firefighters have risen from about \$11,000 in 1980 to \$40,000 this year — an increase far beyond the rate of inflation. Moreover, the average Lancaster police officer or firefighter earned nearly \$60,000 last year — 62 percent more than the average county wage earner's \$37,000. Salary increases, accompanied by generous medical benefits and pensions, have accelerated in recent years in large part because of large awards by arbitration panels who don't represent taxpayers, Gray says. "It's an undemocratic process," he said. "People have no idea who's making the decisions that result in tax increases." But people do see the results — on the street and in their bank accounts. The Pennsylvania League of Cities and Municipalities ... remains determined to reform the process. "It's really starting to come to a head," comments Amy Sturges, the league's director of governmental affairs. "We are coming to a point where something needs to be done because of the economic climate." Pennsylvania's mayors are on board. Reading Mayor Tom McMahon says arbitration of public safety contracts bears part of the blame for his city being millions of dollars in debt. "There's a tight relationship between so-called neutral arbitrators and the unions," he claims. "Arbitrators tend to find in favor of unions." York Mayor John Brenner agrees. "Isn't it a travesty that mayors and business administrators have to feel at loggerheads with public safety unions?" he says. "That's what the arbitration process does to us."

V.

A Referendum is Wrong for Cecil County

The Commissioners oppose Delegation’s resort to a referendum or citizen initiative to choose between the Bills’ alternative, “compromise” collective bargaining proposals.

- **What’s wrong with the Delegation’s Bills, which let the Cecil County voters decide?**

First, the Bills are flawed because they present a “choice” to Cecil voters which is in fact no choice. Both forms of the collective bargaining legislation contained in the Bills call for interest arbitration – one binding, the other non-binding. But, as you’ve seen, the Commissioners are certain that either form of interest arbitration is unnecessary, harmful and wrong. Neither of the proposed alternative versions of the Bills is the one which the Commissioners presented in December 2008 (which contained only mediation provisions). And nowhere in the proposed referendum is there room for a third alternative vote – for “None Of The Above.” Those clever craftsmen of the Bills, at the FOP and among the Delegation, have rigged the vote to insure that, one way or the other, Cecil County tax-payers will end up with collective bargaining with interest arbitration if this matter makes its way to the ballot box come this November.

But more than that, the Commissioners object to the Bills as a general proposition, and as a matter of public policy: their objection touches on the proper role of the County Commissioners, as the elected representatives of all Cecil County citizens and taxpayers. These collective bargaining issues are important and, as you can see, they’re complicated. They require careful and considered thought and decision, which the Commissioners have done. The Commissioners think that that’s what the voters elected them to do, and they think that they’d be derelict in their duty to allow the Delegation to “punt” the issue to the voters, to review in a one or two sentence line on a ballot in a voting booth this November. The Commissioners don’t think that matters here in Cecil County are so dysfunctional that we have to resort to governance by referendum, “California-style.” The Commissioners’ views on these matters have been long in the making and are carefully considered. If the FOP, or any other constituency in our County, thinks that the Commissioners are wrong, then they should try to elect other Commissioners who share their views. The use of referendum, as an end-around-run, is not proper, and the Commissioners object to the Bills for that reason.

- **But if the Bills are so bad, then why has the Delegation elected to support them?**

Another good question. The short answer is that the Commissioners don’t know and the Delegation members aren’t saying. But clearly, the Delegation seems to care more about the FOP’s special interest than the general interest of all Cecil County residents and taxpayers. They’ve certainly paid more attention to the opinions and desires of the FOP’s leaders than your Commissioners.

The Commissioners told the Delegation members – verbally and in writing - that they object to the introduction of the Bills as a matter of process. Here in Cecil County, as elsewhere in Maryland, it’s customary for county officials and state legislative delegates to work cooperatively in the introduction and support of local legislation. At least that’s the ideal. The Commissioners think that a decent respect for their role as the locally-elected officers of the County government would dictate that the County’s State representatives should generally act to support those initiatives which the Commissioners approve, and generally not propose acts which the Commissioners oppose. At any rate the Commissioners think that that’s the norm elsewhere in Maryland where well-functioning liaisons exist between locally-elected officials and state representatives.

In the past there may have been some instances, here in Cecil County, and elsewhere, where State legislative delegations have not acted to support the initiatives of their locally-elected representatives, but the Commissioners can't recall any instance such as this, where such a State legislative delegation has taken affirmative action to propose a measure which has been positively and repeatedly opposed by local governmental officials, and particularly on a matter having such profound public policy and fiscal consequences for the County.

Last week the Commissioners wrote to all Delegation members asking them to reconsider their proposed action, for all these reasons. The Commissioners received no reply. Instead, the Bills were approved by the Delegation and introduced on February 10th.

VI.

What is to be Done?

The Commissioners intend to fight for the interests of all Cecil County residents, voters and taxpayers. And they need your help and support.

- **What do the Commissioners intend to do now?**

Oppose the Bills. The Commissioners will oppose the Bills in the Maryland State Senate. They will oppose them in the House of Delegates. They will let the Governor know that they oppose them. They will let the citizens and taxpayers of Cecil County know that they oppose them, and why. And if it passes, and a referendum is placed on the ballot to for approval this November, then they will oppose it at that time.

- **What can I do?**

If you support the Commissioners' position in this matter, and think that this collective bargaining/interest arbitration referendum is bad news for Cecil County citizens and tax-payers, then call, write or email the Delegation members and let them know; and tell your friends and neighbors to do so.

Here's how you can contact them:

Senator E.J. Pipkin, Legislative District 36, 416 James Senate Office Building, 11 Bladen Street, Annapolis, MD 21401; Phone: 1.800.492.7122. ext. 3639; email: ej.pipkin@senate.state.md.us

Senator Nancy Jacobs, Legislative District 34, 420 James Senate Office Building, 11 Bladen Street, Annapolis, MD 21401; Phone: 1.800.492.7122, ext. 3158; email: nancy.jacobs@senate.state.md.us

Mary-Dulany James, Legislative District 34-A, 404 Lowe House Office Building, 6 Bladen Street, Annapolis, MD 21401; Phone: 1.800.492.7122, ext. 3331; email: mary.dulany.james@house.state.md.us

B. Daniel Riley, Legislative District 34-A, 326 Lowe House Office Building, 6 Bladen Street, Annapolis, MD 21401; Phone: 1.800.492.7122, ext. 3280; email: daniel.riley@house.state.md.us

David D. Rudolph, Legislative District 34-B, 231 Lowe House Office Building, 6 Bladen Street, Annapolis, MD 21401; Phone: 1.800.492.7122, ext. 3444; email: david.rudolph@house.state.md.us

Michael D. Smigiel, Sr., Legislative District 36-B, 323 Lowe House Office Building, 6 Bladen Street, Annapolis, MD 21401; Phone: 1.800.492.7122, ext. 3555; email: Michael.smigiel@house.state.md.us

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The Commissioners also want to know what you think about all this. Call, write or email us to let us know. Here's how you can contact us:

Brian L. Lockhart, President, District 3 Cecil County Board of County Commissioners, 200 Chesapeake Blvd., Elkton, MD 21921; Phone: 410.996.5201/ 443.553.5914; email: blockhart@ccgov.org

Rebecca J. Demmler, Vice-President, District 2 Cecil County Board of County Commissioners, 200 Chesapeake Blvd., Elkton, MD 21921; Phone: 410.996.5201 / 410.398.1348; email: rдемmler@ccgov.org

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