

# Collective Bargaining With Binding Arbitration

## The FOP's Response to the Cecil County Commissioners

The **Cecil County Fraternal Order of Police, Lodge 2** would like to take this opportunity to respond and address issues the county commissioners raised in their recent opinion entitled, *Some Facts About Collective Bargaining With Interest Arbitration For Deputy Sheriffs*, found on the county website at [www.ccgov.org](http://www.ccgov.org).

Over the last three years, Cecil County sheriff's deputies have pursued a more direct and honest dialogue with the county commissioners – one that promotes integrity. This was born over many years of neglect by the county as to what their number one priority should be: protecting its citizens. This goes way beyond inadequate pay and benefits and straight to the heart of the issue: with very few exceptions, the county has consistently viewed the sheriff's office as a necessary evil and has funded it as such. In a county such as ours, it is outrageous that only 6 or 7 deputies per shift are expected to adequately patrol the county and keep bad guys at bay. The Town of Elkton has almost that many covering their town because *they get it* – is your family's safety any less important? If we're not aggressively pursuing more police coverage when violent crime goes up EACH YEAR, then are we at least going to invest in the deputies we do have? The county's answer is, apparently, no.

Whenever deputies are told – even during prosperous years – that there is no extra money in the budget to keep their salaries comparable to neighboring jurisdictions but there is money to fund non-essential big-ticket projects, they're told to “hang on ‘till next year.” Always next year. And if that doesn't sit right with them, they're told – like the recent online Whig comment - “You're disgruntled. Go find a job somewhere else.”

Is that what the citizens really want? Do they really want their deputies – professional police officers with years of experience and knowledge of this county and its citizens – to leave because they simply want to better their families? More than a few heard that message loud and clear and did just that.

In the last 10 years, no less than 32 deputies left the Cecil County Sheriff's Office for better employment – and that's just the law enforcement side! 32 deputies whose training, uniforms, and equipment YOU PAYED FOR left after getting their experience here and taking it to benefit citizens elsewhere. It's a good bet that the Delaware State Police, New Castle County and Newark Police, Queen Anne's County Sheriff's Office, and the Maryland State Police (to name but a few) thank you.

Quite frankly, it is in the citizens' best interest to have a well funded and highly trained police force. Cops today deal with situations far removed from the days of locking up the town drunk for the night. Their work includes increasingly detailed investigations into complex issues involving identity theft, homicides, gangs, drugs, child predators, and abductions. In fact, recently a small child was abducted by a non-family member and sheriff's deputies pulled together their resources with surrounding jurisdictions and worked tirelessly to put that small child in the arms of her mother within 10 HOURS! These are the dedicated professionals citizens have working for them. Please take the time to read and study the deputies' side of this issue, compare them with the commissioner's point of view, and decide for yourself whether *Collective Bargaining with Binding Arbitration* for sheriff's deputies is right for Cecil County.

### **What is Collective Bargaining with Binding Arbitration?**

Collective bargaining is nothing more than deputies sitting down with government at a level playing field and negotiating issues to meet the best interests of the deputies and the public. Binding Arbitration is an informal process in which two parties present their views of a dispute to a neutral third party, an arbitrator, who will decide how to resolve the dispute. The arbitrator considers, in part, various constants:

- the county financial situation,
- their ability to maintain bond ratings, and
- comparable wages and benefits in surrounding jurisdictions before making a binding decision.

Arbitration is intended to spur candid, open discussions. It protects the citizens from overzealous, unwarranted requests by both elected officials and

deputies. The National Labor Relations Act is quite clear on the topic of Arbitration. It states that in the absence of strikes and negative work actions, already illegal for public safety employees, arbitration acts as a catalyst to ensure that the commissioners and deputies negotiate in “good faith.”

### **How will it be used in Cecil County?**

Binding Arbitration for the Cecil County Sheriff’s Office deputies will only occur if the commissioners and the deputies cannot reach an agreement during contract negotiations. The arbitration process is very similar to the negotiation process, however, both parties continue to present proposals to one another under the guidance of the arbitrator. If there is a failure to reach an agreement, both sides carefully propose their final offer to the arbitrator. Again, the arbitrator considers the various constants described above: the county financial situation, their ability to maintain bond ratings, and comparable wage and benefits in the surrounding jurisdictions before making the final decision. Because the expense of this process is shared by deputies and the county, Binding Arbitration has been rarely used in the jurisdictions that have it as it encourages both sides to reach an agreement.

### **Will this process raise my taxes?**

Absolutely not! No Maryland jurisdiction has ever seen their taxes raised as a result of a police contract or an arbitrator's decision. Neither will this process prohibit or inhibit the Sheriff in his/her duties. The Sheriff is a constitutional officer, with certain managerial rights which cannot be taken away, who is mandated by the voters to operate his/her Office as they see fit.

### **Will this bankrupt the county or adversely affect my quality of life?**

No! Even though government’s number one priority should be the safety of the public, law enforcement operations comprise just 5% of the commissioners’ proposed Fiscal Year 2011 \$165 million budget. Because police are the most visible form of government and the ones most citizens have contact with, it is convenient for politicians to blame public safety for financial woes and, in fact, is why many jurisdictions cut them first.

As it stands, the proposed budget already slashes \$100,000 from law enforcement and it was made very clear, as it was last year, that yearly step increases would not be given, nor did the FOP ask for them. *(That didn't stop the County Administrator from requesting a \$4000 pay raise to his 6-figure salary. Though, to be fair, he did request a \$100 raise for his administrative assistant).* So where is the pork? How about the \$300,000 the county contributed to restore the North East Covered Bridge that goes nowhere. *(Restoring historical structures to give future generations a sense of culture and communal identity is admirable, but the county can't justify those types of expenditures and still not adequately address the basic functions of government.)* Or, how about the hundreds of thousands of dollars the commissioners have reportedly spent to retain **Miles & Stockbridge Law Firm** to represent them on various issues (such as the collective bargaining issue for the last three years or the **Artisan** deal) when they *already have a county attorney on the payroll?* And, of course, who can forget the recent closed session hiring of a lobbyist to fight their own deputies to the tune of \$6000. These are only a very few of many examples of how the county is wasting taxpayer dollars and it has nothing to do with protecting your family.

### **Why are the commissioners so against arbitration?**

While only the commissioners know their true reasons, it is not hard to make an educated guess based on their history with employees and citizens alike. An arbitrator has subpoena power and will be able to verify whether the county was being truthful in fully disclosing its financial situation. This was clearly demonstrated in two Maryland counties last year. Anne Arundel County and their sergeants' union went to arbitration over a pay dispute. After carefully considering all facts and evidence, the arbitrator sided with the county, finding that the county's financial situation did not support the sergeants' request. The other example was in Baltimore County where an arbitrator found \$30 million the county did not disclose. This process works both ways and is designed to keep honest people honest. *(Interestingly, Commissioner Wayne Tome, who "strongly opposes" the referendum bill, is an employee of the Baltimore County Fire Department and has enjoyed and benefited from this process during his tenure there. While it's good enough for him, it apparently isn't good enough for Cecil County sheriff's deputies.)*

## **Will arbitration cost the county tens of thousands of dollars?**

It doesn't have to. The average arbitration costs approx. \$6000 and is split evenly between the county and the FOP. If the county chooses to hire high priced attorneys and economists rather than utilizing the county attorney and budget director it already employs, that could drive the costs up but that isn't the fault of the FOP. The fact is, with a \$165 million budget and over \$20 million in the rainy day fund, the county could simply out spend the FOP if it worked that way. It doesn't and the county doesn't want you to know that.

## **What about these “horror stories” the county is citing?**

They are just that – horror stories not based on facts and designed to scare the public. Out of the many “examples” the county listed in their recent dissertation, only one from Maryland -Wicomico County- was cited and in that case, the Court of Special Appeals ruled against the FOP, opining that the citizens' initiated referendum, which authorized Collective Bargaining with Binding Arbitration for the sheriff's deputies, was unconstitutional because the referendum “backdoored” the legislative process. While the case has been appealed to the Court of Appeals, Cecil County's situation is different. Because this is a commissioner form of government, the Maryland General Assembly is the *only* body authorized to pass legislation affecting the citizens of Cecil County. This referendum would be a *direct result* of the legislative process and would not be affected by the ruling.

The other cited “examples” are in other states with laws different than Maryland. In fact, the main complaint cited in those “examples” is that arbitrators are not required to take into account a jurisdiction's financial situation, revenues, and their ability to pay. If the commissioners had bothered to read the proposed referendum bill, they would have seen these very requirements codified in the text, which reads that the arbitrator shall:

### ***“Receive and consider evidence regarding:***

- A. Hours, wages, and benefits of similar sworn law enforcement employees in comparable surrounding jurisdictions;***
- B. The cost of living in Cecil County;***

***C. The condition of Cecil County's general Operating fund and Cecil County's ability to fund the final proposed offers;***

***D. The nature of the work performed by employees represented by the labor organization; and***

***E. Other information that the arbitrator considers necessary to fully weigh the final proposed offers of the labor organization and the Sheriff and the Board"***

That nullifies their entire argument. So let's take a look at several examples of how this process has worked in Maryland:

- While, as previously discussed, Ann Arundel County Police sergeants union recently went to arbitration and lost, the Ann Arundel County FOP (which represents the rank and file) has never been to arbitration and has always been able to work well with their government.
- Baltimore County FOP went to arbitration for the first time last year and taxes did not go up as a result of the arbitrator's award.
- Elkton FOP is currently in arbitration with their town over retirement issues. While the result won't be known for 30 days, the town's property taxes have gone down in recent years (though the county's have consistently risen) and they have a \$5 million surplus. This is Elkton's first time at arbitration since the voters empowered them with it in 2004.
- Ocean City, Maryland is an interesting story. Former Mayor and current Delegate Jim Mathias is a supporter of this process. For approx. 15 years, the city and FOP could not resolve their issues pertaining to bargaining. A referendum was held on the issue of Collective Bargaining with Binding Arbitration for police officers and the citizens supported their cops with *87% of the vote*. After utilizing this process, the city found it worked so good that they *gave* it to their career firefighters/paramedics. Neither the FOP nor the firefighters union have ever taken the city to arbitration. In fact, there is so much trust between the city and public safety that last year the FOP and firefighters union unanimously voted to forgo their contractually guaranteed pay raises with the option of forgoing them for this year as well. Their logic was very simple: The citizens of Ocean City have taken care of them and they felt it their duty to do their part in these tough economic times, knowing

that when things get better – and it is starting to – the city will continue to take care of them and treat them as valued professionals. That is the kind of trust and cooperation we can have here in Cecil County.

### **How did we get to this point?**

By elected officials not ensuring that their word was their bond. For many years, the county has put the sheriff's office on the back burner and treated major issues with a band aid. 8 years ago, during the last sheriff's administration, the FOP convinced the county to commission a pay study, which ultimately found that the sheriff's deputies were severely under paid. The commissioners then put in place a Public Safety Pay Scale, which, while still inadequate, was designed to start making deputies' wages more comparable to surrounding jurisdictions. The problem was that, with very few exceptions, deputies never saw the money and it wasn't until the next sheriff's administration that the county did anything about it. This was not the "big pay raise" that the sheriff likes to laud as one of his accomplishments. This was simply righting a wrong and honoring the agreement the county had with its deputies. Several years later, another pay study was commissioned and again it was decided to attempt to bring the pay scale up to comparable levels. Once again, it fell short and has never received the proper attention it deserves. What the county *did* do was place deputies in a "pay-for-performance" evaluation system which took away yearly pay scale steps (about 2.5%) if deputies did not meet a pre-determined level of performance. Being ripe for potential abuse and political retribution, deputies did not want to be on this system but it was implemented anyway. The only upside was that the county had, in effect, made a gentlemen's agreement which provided that as long as performance was maintained, deputies would continue to receive their yearly step increase.

Of course, this system still exists and while the FOP never asked for the steps last year or this year, deputies were initially surprised and felt slapped in the face when the commissioners reneged on that agreement for the first

time and used the money for other projects. The commissioners and sheriff have publicly insisted that they have been on the up & up with the deputies and that they should just “trust them” instead of having a proven conflict resolution mechanism to ensure fair play. Listed below are the actions of the county’s elected officials when dealing with the FOP:

- Sheriff Janney has campaigned on this issue, not once but twice, in pursuing the FOP’s endorsement. During the **2006 election in a speech documented on video**, Sheriff Janney addressed the lodge to obtain an endorsement they ultimately gave him and told his deputies, “*As your sheriff you have my word, you have my full support, in working with the legislators in making collective bargaining with binding arbitration a reality.*” In **December 2007** Sheriff Janney asked for and was afforded an opportunity to address his deputies at their monthly lodge meeting during which he predicted that they were low on the county commissioners list of priorities and stated that it was imperative that sheriff’s deputies obtain collective bargaining. He cautioned not accept anything less than binding arbitration, otherwise it would be “*collective begging.*” The FOP sought the assistance of the delegation and **Del. Michael Smigiel** submitted legislation providing for collective bargaining with binding arbitration for law enforcement deputies. As soon as the sheriff read this *standard boiler plate* bill, he immediately attacked the FOP in the press and accused them of sneaking behind his back. As the sheriff no longer supported the bill, the FOP believed it prudent to pull the bill and come up with one agreeable to them and the sheriff.
- In **May of 2008**, **Del. Mary-Dulany James** initiated a series of meetings between her, the FOP, and the sheriff during which a bill was crafted calling for *non-binding arbitration* and codifying the sheriff’s managerial rights as not subject to arbitration. The sheriff supported this bill and in **November 2008** the sheriff and the FOP met with the county commissioners and formally requested their support for this bill. Their attorney from Stockbridge & Miles law firm was there and suggested a brief recess so both sides could

caucus. When they returned, they presented a counter-offer of *mediation only*. The FOP told them that they could not make a decision until talking with the membership and promptly called an emergency meeting and presented the commissioners' counter-offer. The members overwhelmingly rejected the proposal and voted to press on with Del. James' bill.

- The FOP relayed that to **Commissioner Lockhart** and he stated that he would take it to a vote but believed that **Commissioners Mullin & Tome** would join him in accepting Del. James' bill. *That vote was taken in closed session on Tuesday, January 13, 2009* just before the commissioners entered the auditorium in a budget hearing meeting that saw three deputies pulled from patrol due to peaceful demonstrators protesting against the SPCA. Commissioners Lockhart and Mullin informed the FOP that they had **voted to accept** the bill by a **3-2 vote**, with **Commissioners Demmler & Hodge** dissenting. After the meeting, the FOP thanked each of them and asked Commissioner Lockhart for a letter documenting their support. He assured the FOP that they would get it by the end of the week.
- The FOP never did get that letter. What they did get, approx. 2 weeks later, was a letter from the commissioners rejecting the bill and stating that their final offer was the mediation bill. The FOP called Commissioner Lockhart, who assured them that their new position wasn't set in stone but that the commissioners wanted a "cap" on arbitration costs and suggested that \$15,000 was fair. He stated that, as president of the commissioners, he could call a re-vote and did so when the FOP *accepted this concession*. Del. James amended the bill and Commissioner Lockhart informed her and the FOP after the next commissioners meeting that it was acceptable.
- Shortly thereafter, not long before the committee hearing date, Commissioner Lockhart informed the FOP that they would again reject the bill unless deputies agreed to shoulder all the costs of arbitration. For obvious reasons, this was unacceptable and Del. James pulled the bill. The FOP made a decision right there to pursue

a referendum, asking the people to decide if they wanted deputies to engage in this process.

- It should be noted that, after the bill was pulled, the sheriff and the FOP president had a conversation on the phone during which he agreed that a Collective Bargaining with Binding Arbitration referendum should happen as long as his managerial rights were protected. The current referendum bill contains these protections but the sheriff has withdrawn his support.
- Contrary to recent disparaging public remarks by the commissioners, the FOP did not have the bill pulled because they demanded binding arbitration. At no time last year did the FOP demand this and the commissioners know it. As previously stated, the FOP agreed to Del. James' bill which only had *non-binding* arbitration in it. Had the Commissioners stuck with that bill, there would have been no discussions of a referendum this year. The mere mention of a “cap” in this year's bill is **proof** of the Commissioners agreeing to the proposed legislation last year because the FOP didn't ask for a “cap” and Del. James didn't put it in the original draft. However, once the “cap” was introduced, the Commissioners made the error of pulling their support if the FOP didn't agree to pay 100% of arbitration, and their inability to keep their word killed the legislation.
- Starting in **July 2009**, over **1000** Cecil County residents signed a petition to support placing Collective Bargaining with Binding Arbitration for sheriff's deputies on the 2010 ballot through enabling legislation. Given Commissioner Lockhart's recent public comments that he is adamantly opposed to this referendum, it is ironic – but not all together surprising – that *he himself signed the petition*, documenting his support for placing *this very issue* on the ballot!
- In **October 2009**, the FOP formally requested the commissioners to support enabling legislation to place this process on the ballot. The commissioners responded with a letter detailing the county attorney's opinion that the referendum and binding arbitration were

unconstitutional and that the commissioners requested an Attorney General's opinion on the matter.

- On **December 21, 2009**, they received the Attorney General's opinion, which stated that the referendum *and* binding arbitration is **constitutional**. The FOP wasn't informed of this decision until Del. Smigiel mentioned it to the FOP president 14 days later. The County Administrator stated that he must of "forgot" to have included the FOP in the distributing circle, although it is reasonable to assume that if the opinion had gone the other way, FOP leaders could have been anywhere in the world and that opinion would have been FedExed to them overnight. If it wasn't for Del. Smigiel's sense of fair play, the FOP might still be ignorant of its existence.
- In the beginning of **January 2010**, the FOP and the county delegation were informed that the commissioners would take *no opinion* on the referendum bill. According to Sen. Pipkin, as late as *Cecil County Night in Annapolis*, he asked Commissioner Lockhart what the commissioners wanted them to do on this issue and was told to "show some leadership."
- On **January 31, 2010**, the Cecil County delegation met in Annapolis, where they voted **6-1** to support the referendum bill, allowing voters to chose which form of arbitration would be best for Cecil County sheriff's deputies.
- The next day, on **February 01, 2010**, the sheriff contacted the FOP president and informed him that he now considers the rank of **First Sergeant** an appointed one and that a new policy would be forthcoming implementing the change. This is significant for two reasons. The first, being that the referendum bill would authorize the FOP to bargain for the rank of First Sergeant and below (*the rank of First Sergeant is the last one paid an hourly wage. Lieutenants and above are salary employees*). The second reason is, in the **Fall of 2009**, the Sheriff and the FOP had a series of meetings regarding new promotional procedures and the sheriff wanted the FOP's input. After negotiations and compromise on both sides, an agreement was reached as to the promotional process for the ranks of **Corporal**

**through First Sergeant.** This was codified in policy, which the Sheriff agreed to abide by. Up to that point, it was a strong example of how collective bargaining should work. What followed is a classic example as to why deputies need conflict resolution. While the Sheriff has the absolute right to change any policy at any time for any reason, *just because you have the right to do something doesn't mean you are right to do it.* The FOP believes that this was done in retaliation for standing up for themselves as well as an attempt to water-down the referendum bill. *(Ironically, this was the same sort of behavior the sheriff himself decried during his first campaign for office.)*

- Shortly thereafter, the commissioners finally sent the delegation a letter strongly opposing the bill. In it, they attacked the FOP for not being contented “with half a loaf” and falsely accused the FOP of pulling last year’s bill because binding arbitration wasn’t involved. They also objected to a referendum on the grounds that the issue is “complicated” and that “matters of governance” shouldn’t be “punted to the voters”, implying that Cecil County voters aren’t smart enough to understand the issues. Incidentally, they do support a referendum on another “complicated” issue - charter government. They seem to believe that the voters can comprehend the many complications of a brand new form of government but not issues relating to their deputies. This letter was signed by the same Commissioner Lockhart who, to recap, had previously signed a petition for Collective Bargaining with Binding Arbitration to be “punted to the voters.”
- And, of course, the commissioners, in closed session spent \$6000 of taxpayer funds to fight their own police officers and attempt to deny their citizens a voice in this process.

## **Conclusion**

The bottom line is that Collective Bargaining with Binding Arbitration is a tried and true mechanism in Maryland to negotiate wages, benefits, and working conditions between governments and police while ensuring both sides bargain in

good faith. Contrary to what the commissioners have implied, this process is not one-sided and favored toward the bargaining unit. Rather, the burden is equally on both sides to present their case in a clear and concise manner for the arbitrator to make a fair and intelligent decision. This process does not raise taxes and the commissioners have not come up with one single incident where that has happened anywhere in Maryland. With most deputies being homeowners in Cecil County, *it makes no sense for them to support a process that would give them a modest pay raise only to have it taken back by higher property taxes.*

The commissioners have consistently raised property taxes for years - they don't need to blame the deputies for that. Then again, it seems easier to blame the cops. Others do it, why shouldn't they?

They have accused the Cecil County Delegation of meddling in local affairs and forcing a referendum on them. The deputies made every conceivable attempt to reconcile this issue with the commissioners and went to the delegation only when it was apparent that the commissioners were not serious and could not be counted on to keep their word. The delegation carefully evaluated all the facts and came to the conclusion that their intervention was necessary.

Instead of the commissioners facing the very real issue that crime is rising in this county (*and they have done very little to address that*), they have painted the sheriff's deputies as disgruntled and ingrates. They have used fear mongering to suggest that law enforcement, being 5% of the budget, will somehow be responsible for bankrupting Cecil County if a process is put in place to keep everybody above board. They have played on anti-union sentiments and tried to portray the FOP as the "Boogeyman."

The fact is, no matter what your position is on unions, the FOP doesn't really fall into that category. A union's true power comes from their ability to strike or take other negative work actions, which could affect an employer's productivity and bottom line. Right or wrong, unions use that power as a strong negotiating tool in bargaining for labor issues. The FOP *does not* have that power. Police officers, by law, are forbidden to strike or take negative work actions. Even if they could strike, most sheriff's deputies live and raise their families in Cecil County and would not subject their families, friends, and neighbors to the mercy of

criminals just to get a pay raise. In the absence of that distinction, there is nothing to guarantee that the commissioners will bargain in good faith and thus the need for effective conflict resolution is a must to ensure fair play.

Finally, it is interesting to hear political candidates and elected officials pledge their support of law enforcement during election years or a police funeral. For all the band aids placed on this issue, the starting salary and yearly increments of the Cecil County Sheriff's Office is still well below that of surrounding jurisdictions and deputies are leaving and taking their experience with them. So the FOP asks this of the county commissioners, sheriff, and others who have vilified this process and their deputies:

**You can admire the undercover officer trying to keep drugs off your street and say you support law enforcement. You can praise the detective for apprehending predators before they get to your kids and say you support law enforcement. You can laud the patrol deputy for catching a burglar before he makes his way into your neighborhood and say you support law enforcement. But if you don't believe police have a right to bargain for a fair wage, *how can you say you support law enforcement?* If you don't believe police have a right to raise their families in a financially secure environment, *how can you say you support law enforcement?* If you don't believe the police deserve credible conflict resolution when bargaining with politicians, *how can you say you support law enforcement?***

The Cecil County Sheriff's Office is made up of honorable men and women with integrity, committed to serving and protecting the citizens of Cecil County. They need the support of their fellow citizens. Please carefully investigate and evaluate all the facts and points of view before coming to your own conclusion as to what is right for Cecil County.

## **Cecil County Fraternal Order of Police, Lodge 2**

**[www.cecilfop2.com](http://www.cecilfop2.com)**