



**Fraternal Order of Police
Montgomery County Lodge 35**

April 30, 2003

Louis Aronin
Permanent Umpire
2901 Boston St.
Suite 315
Baltimore, MD. 21224

RE: FOP Lodge 35 and Montgomery County
Emergency Charge of Prohibited Practice Regarding
Refusal to Bargain

Dear Mr. Aronin:

Please be advised that the Fraternal Order of Police, Montgomery County Lodge 35, Inc., hereby files an emergency charge of prohibited practice against Montgomery County, Maryland pursuant to Section 33-82 of the Montgomery County Police Labor Relations Law. Montgomery County Maryland has illegally refused to bargain pursuant to Mo. Co. Code §33-80(g) and in violation of §33-82(a)(5) and §33-82(a)(8).

Montgomery County Code Section 33-80(g) requires that "On or before May 1, the County Council **shall** indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and shall state its reasons for any intent to reject any part of the agreement." (Emphasis added). These are the only two options provided to the Council and by statute, it is mandatory that the Council do one or the other. Yesterday, the County Council refused to do either of these options. Instead, it elected to create an "option 3" in which it essentially deferred its decision for at least two weeks. Two council members vigorously objected to this "option 3" because it was *ultra vires*. Even the Council's own Legislative Attorney advised the Council that "procedurally this recommendation would break new ground." See, Att. 1, April 29, 2003 letter from Michael Faden, Senior Legislative Attorney to County Council. He continued, "[i]t is not completely clear that this kind of action is contemplated by County Code §33-80(g)." Id.

The reason this is relevant to this charge is that the County Code further provides that

"[i]f 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. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the Council on or before May 10." Mo. Co. Code §33-80(g).

Thus, by deferring its decision by two weeks, the parties will be beyond the May 10th statutory date. The Council's decision will, therefore, deprive the parties of the right to further negotiations.

The Council did not select "option 1" and indicate its unencumbered intent to appropriate funds for the agreement. Accordingly, it has refused to appropriate funds or to otherwise implement the agreement on or before May 1. Accordingly, and in adherence with the Code, at the conclusion of the Council meeting, the FOP immediately demanded that Douglas Duncan, the County Executive, return to bargaining. See Att. 2. Given the time table involved, the FOP recommended beginning negotiations on May 1, 2003. Id. The FOP also invited the Council to attend, as is recommended by the Code. Id.

Later in the day, the FOP then contacted the County Attorney's office to schedule negotiations. Dave Stevenson, an Assistant County Attorney, indicated that the County had not yet decided what its response to the bargaining demand would be. Accordingly, the FOP, by council, advised Mr. Stevenson by email, fax and telephone message, that if the FOP did not receive a response from the County by 2 pm this afternoon, the FOP would be forced to assume the County did not intend to negotiate. See Att. 3. It is now 4:00 pm and neither the FOP nor its council has received any response from the County. Given that the FOP's demand recommended negotiating at 10:00 tomorrow morning, the county's failure to respond by now indicates its refusal to bargain.

Further, the County's refusal to bargain at this juncture "indirectly oppos[es] the appropriation of funds or the enactment of legislation by the county council to implement an agreement reached between the employer and the certified representative pursuant to this article." PLRA 33-82(a)(8). The County's refusal to negotiate encourages and gives support to the Council's illegal action to defer any decision until the statutory period for re-negotiation is over.

FOP Lodge 35 submits that the County Executive's refusal to bargain is a prohibited practice in violation of Sections 33-80(g), 33-82(a)(5) and 33-82(a)(8) of the Police Labor Relations Act. We respectfully request that after hearing from the parties that you uphold this charge of prohibited practices, order the County Executive to immediately bargain in good faith as required by the Code, and order that the County Executive not take future actions which would directly or indirectly oppose the appropriation of funds or the enactment of legislation by the county council to implement an agreement reached between the parties.

We are prepared to cooperate fully in your investigation and/or hearing of this matter including submitting expedited briefs, or the holding of a telephone conference hearing, or both as you see fit.

Please be further advised that complete copies of this charge of prohibited practice and attachments have been faxed and hand delivered on this date to Douglas Duncan, County Executive, Executive Office Building, 101 Monroe Street, Rockville, Md. 20850 (fax: (240)777-2517), and Charles Thompson, County Attorney, 101 Monroe Street, Third Floor Rockville, Md. 20850 (fax:(240)777-6706).

Sincerely,

Carla M. Siegel

cc: Walter E. Bader