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21
22
23
24
25

I N D E X

STATEMENTS OF:

PAGE:

Edward Rovner	3
Robert Hillman	5
Kathleen A. Dolan	20
Allen Katz	22
George Driesen, Esq.	22
Philip Nichols	40

P R O C E E D I N G S

9:00 p.m.

MR. GUDIS: Good evening Ladies and Gentlemen.

This is the continuation of the public hearing held on January 14, 1982, on Legislative Bill No. 71-81, Collective Bargaining for Police Officers. The bill provides the framework for conducting collective bargaining between County government and police officers in specified classifications and includes establishment of a permanent umpire to implement certain provisions of law; certification procedures for employee organizations; subjects appropriate and inappropriate for bargaining; impasse procedures; prohibited practices; provisions prohibiting strikes and lockouts; use of official working time of employees; and the effect of prior enactments. This legislation amends Chapter 33 of the Montgomery County Code, 1972, as amended.

A worksession on this legislation has been scheduled for Thursday, February 4, 1982, at 3:00 p.m.

The public hearing record will remain open until the close of business on Friday, January 29, 1982.

The first witness to appear before us tonight is Edward Rovner for the County Executive.

MR. ROVNER: Thank you for the opportunity to be here tonight to describe the legislation and summarize the legislation which is before you.

1 After passage of the amendments last year, or 1980
2 I should say, negotiations opened between the County and the
3 Fraternal Order of Police and extensive discussions regarding
4 the content of the proposed laws to affectuate the change that
5 was made in the charter regarding collective bargaining.

6 Mr. Hillman has retained a special counsel to work
7 with the County government in this effort. After some months,
8 as you know, a proposed law was finally prepared and submitted
9 to you.

10 You have before you what is a series of amendments
11 to that original proposal. Let me describe what the procedure
12 has been which I think will set the framework for where we
13 are at the moment.

14 Following the submission of the proposed law to the
15 Council the committee working for the executive branch con-
16 tinued to meet with the lawyers and the officers of the Fraternal
17 Order of Police to review that draft proposal originally
18 submitted to you. A number of changes were made in the orig-
19 inal recommendation and they have now been incorporated in a
20 single document which constitutes a series of amendments to
21 the original draft and that has been submitted to you. It
22 represents the agreement between the Fraternal Order of
23 Police and the Executive Branch on most issues.

24 On several issues there was just no agreement
25 between us and the draft represents the judgement of the

1 executives as to what ought to be in the ordinance, and that
2 is before you tonight.

3 The Fraternal Order of Police will be here to
4 expound on where the areas of agreement are and disagreement
5 are between us.

6 Mr. Hillman, who is special counsel, is here, and
7 can summarize what is in the bill and answer any specific
8 questions you may have as to the contents of it.

9 The remnants before you represent the best judge-
10 ment of the executives on what would be in the ordinance
11 which when adopted by the Council will set the framework for
12 the collective bargaining between the County and the union
13 which represents the police.

14 If there are no questions as to the history of
15 negotiations, I'd like to ask Mr. Hillman if he would describe
16 what is in the bill before you.

17 MR. GUDIS: Thank you. Before Mr. Hillman starts, I
18 would like to tell the audience that the amendments Mr.
19 Rovner is talking about are in the memorandum dated today.
20 Unfortunately our print shop did not, they were not able to
21 make copies available, but we can certainly make copies
22 available tomorrow or no later than Wednesday.

23 MR. ROVNER: The Fraternal Order of Police do have
24 copies.

25 MR. GUDIS: I was told that, but I was also told

1 that we usually would have copies in the back and the print
2 shop was not able to do that tonight.

3 MR. HILLMAN: My name is Robert Hillman. I'm a
4 partner in the law firm of Wolf, Pokempner & Hillman. What
5 I'd like to do is give you a brief summary of the law and to
6 highlight for you some of its aspects including what I con-
7 sider the two most substantive of the amendments that we have
8 proposed.

9 First, the law repeals certain existing laws for
10 employees who are represented by a collective bargaining
11 organization, the meet and confer law and the present law
12 which automatically give 75 percent of cost of living wage
13 adjustment each year.

14 The law begins after those repealing provisions
15 with a declaration of policy. That declaration of policy
16 basically says between the County and an organization
17 representing its police officers, matters of wages, hours and
18 certain conditions of employment will be decided by collective
19 bargaining and that the parties other than presenting the
20 results of the collective bargaining to the County Council
21 for its approval will not come to the Council at other times
22 asking for those collective bargaining agreements either to be
23 added to or undone by legislation. And in the trade we call
24 that no end runs.

25 Constitutionally we can't prohibit end runs, but we

1 hope this declaration of policy will serve all parties as a
2 warning that the County's policy is against such end runs.

3 We go on to define certain terms. I think the most
4 important for this piece of legislation is the term employee.
5 Employee includes uniformed police officers below the rank of
6 Sergeant. Now there is some discussion as to why we cut off
7 at Sergeant. Basically for two reasons. One, we have a
8 history under the meet and confer law of negotiating a meeting
9 and conferring for those employees below the rank of Sergeant.
10 And nothing in the amendment to the County charter suggested
11 that should be changed.

12 Secondly, and probably more important, we feel, the
13 County Executive feels strongly that Sergeants are an essen-
14 tial part of the management of the police force in Montgomery
15 County. In fact, we have some statistics that show that
16 certain hours of the day or really certain hours of the night
17 throughout the county, Sergeants are in charge of the various
18 districts. They are the ranking officers.

19 The legislation is designed first to provide
20 employee free choice. Employees are free to either bargain
21 collectively or not bargain collectively, and to bargain
22 collectively if they wish through a representative of their
23 own choosing. To ensure that free choice and to ensure fair
24 dealing, we have set up the office of permanent umpire. Now
25 the permanent umpire we have set up is not a large addition

1 to the County bureaucracy. We've set up an office of some-
2 one who is a known neutral in the field and who will serve and
3 be paid only when he is needed. It is not a permanent office.
4 He is called on much like arbitrators are called on, only when
5 he is needed. We hope that will be very seldom and will not
6 add additional expense to the County's budget.

7 The election procedures that we've set up are
8 very similar to those which are standard under the National
9 Labor Relations Act and many other State and subdivision
10 Employee Relations Acts.

11 The timing of the first election and elections
12 thereafter is carefully set out so that timing will not inter-
13 fere with orderly collective bargaining which we have set up
14 so it will be coordinated and finished in a timely fashion
15 before the Council's budget deliberations.

16 The collective bargaining, should there be a
17 representative elected, is of two types. We have two types of
18 subjects for collective bargaining and this is one of the
19 major amendments. That is in the packet of amendments that
20 you got today.

21 Before we had those subjects which were mandatory
22 and the subjects which were prohibited. After discussions
23 with the FOP we have proposed that we now have two types of
24 subjects. Those which are mandatory which we must bargain
25 about and those which are permissive, which the parties can

1 bargain about if they both agree to bargain about those
2 subjects.

3 Permissive subjects may not be taken to impasse. If
4 there is any question as to whether a subject is permissive or
5 mandatory, that is decided by the permanent umpire.

6 Basically the bargaining procedure which we have set
7 up calls for the parties to begin bargaining November 1st of
8 any year, or any fiscal year in which a contract will expire.
9 Contracts must run from July 1st to June 30th. We allow for
10 multi-year contracts.

11 Bargaining starts November 1st. Bargaining must
12 end by January 20th. If the parties are still at an impasse
13 they then begin an impasse procedure which calls for binding
14 arbitration. The person who conducts that impasse procedure
15 is someone we call the impasse neutral for want of a better
16 name. He's chosen by the two parties and he is chosen back
17 in November shortly after the bargaining begins. So if we
18 are stuck at January 20th, this person is on hand, he has the
19 time set aside and he can do the impasse procedure in a very
20 orderly and timely fashion.

21 The impasse and the report of the impasse neutral
22 must be completed by February 1st. That report is binding
23 upon the collective bargaining representative and the County
24 Executive. The County Executive is bound to include the
25 results of either collective bargaining or the impasse

1 procedure in the budget he presents to the Council, and if
2 there is any other legislation called for he is bound to
3 present that to the Council and to attempt to use his best
4 offices to have the Council enact such legislation.

5 That, of course, is then submitted on March 1st to
6 the Council when it gets the budget.

7 The second of the major amendments in this legis-
8 lation now comes into play. Originally after the matter goes
9 to the Council we had provided that the Council then would
10 either approve and include in its budget and include in future
11 legislation what was needed to implement the agreement. What
12 we were concerned about is that we would not really have the
13 guidance of the Council if it was with a contract or a result
14 of impasse was presented to them on really a take it or leave
15 it basis. So what we have provided for in the amendment is to
16 allow for some expression of the Council's position as of
17 April 25th, part way through the Council's budget delibera-
18 tions. And we have provided that if the Council expresses its
19 disapproval of the contract the parties would get back
20 together and try to negotiate a new agreement with the help
21 of the impasse neutral if necessary and resubmit this new
22 agreement along the lines of the Council's guidance by May 10th
23 so it might be included in the final budget on May 15th.

24 This, we hope, provides us with some guidance with
25 the Council's wisdom and does not present the Council with a

1 take it or leave it package.

2 The legislation goes on to provide for certain pro-
3 hibited practices, fairly standard unfair labor practices,
4 with the enforcement by the permanent umpire if necessary.

5 By the way, I might add that my experience in
6 collective bargaining and various subdivisions in Maryland is
7 that the prohibited practices or unfair labor practices are
8 very seldom happening and are very seldom called upon to have
9 hearings and use the permanent umpire on those matters.

10 And finally the legislation provides for a no strike,
11 no lock-out provision which allows for sanctions for a strike
12 after a hearing. That, I think, fairly well summarizes the
13 legislation and I am certainly willing to answer any
14 questions.

15 MR. GUDIS: Thank you.

16 MR. SCULL: The provisions for reply by the Council
17 by April 25th, page 23, cites, "Council shall indicate by a
18 majority of four votes its intention to do or not do." Is
19 there a precedent elsewhere for this procedure? How does it
20 work?

21 MR. HILLMAN: There are various procedures in various
22 states and various subdivisions. We felt strongly here that
23 under the charter, particularly section 305, that we could
24 not have collective bargaining or binding arbitration that
25 bound the Council, and this was our way of saying, knowing we

1 need the approval of the Council, we would like to hear about
2 it so that we had a second shot to negotiate if needed.

3 I am not sure that this exact formula is in use at
4 the present time. Connecticut has a formula somewhat like
5 this. How has it worked other places? Well, not ever having
6 experienced this exact formula, I can't tell you. But I can
7 tell you a great deal of what goes on in public sector collec-
8 tive bargaining is, if not unique, has very little experience
9 behind it because we've only been doing public sector collec-
10 tive bargaining for about ten years.

11 MR. SCULL: What do you see as the legal effect if
12 the Council were to not act on or before April 25th? What
13 happens in the budget process? Do you contemplate that this
14 vote is the same as an appropriation?

15 MR. HILLMAN: The vote on the 25th?

16 MR. SCULL: Yes.

17 MR. HILLMAN: No. I think it's clear that what we're
18 saying the Council state its current intention and it is not
19 obviously binding on the Council in stating their intention.

20 MR. SCULL: If they fail to do it, could it create
21 an infirmity in their final budget action, if they fail to
22 take an intermediate step? I don't know what other, there are
23 some deadlines in the charter and the laws for action in
24 sending things to Prince Georges and what not. This seems a
25 little different.

1 MR. HILLMAN: The purpose of this concept is really
2 to provide for an orderly way of dealing with employee
3 representatives rather than saying to them, okay, you have
4 bargained for two months, you've gone perhaps to an impasse
5 procedure, and now we don't like what you do, so tough luck.

6 Well we're saying the same things perhaps to the
7 Executive. This is a chance we feel for the council to say
8 we like A, B, and C. We don't like D. We like E and we
9 don't like F. So go back and put together another collective
10 bargaining agreement which will be within those parameters
11 because those are the parameters we intend to inact. And it
12 is, as I say, an expression of intention.

13 MR. FOSLER: Mr. Hillman, I wonder if you could
14 clarify a little more exactly how the process is going to
15 work. There is an agreement between the Executive and the
16 bargaining agent. That agreement then is submitted to the
17 Council?

18 MR. HILLMAN: That's correct.

19 MR. FOSLER: The Council then reacts to it on or
20 before April 25th. If the Council, this of course is before
21 there has been any kind of an impasse resolution.

22 MR. HILLMAN: No, this is after an impasse resolu-
23 tion if there need be, because the impasse resolution --

24 MR. FOSLER: The Council would be reacting to the
25 arbitrator's decision?

1 MR. HILLMAN: Either the agreement of the parties
2 or the arbitrator's decision.

3 MR. FOSLER: And if the Council rejected the
4 arbitrator's decision, it would go back to the parties for
5 further negotiation and for possible further impasse resolution?

6 MR. HILLMAN: That's correct.

7 MR. FOSLER: What happens the second time if the
8 arbitrator comes up with the same decision?

9 MR. HILLMAN: Any agreement and an arbitrator's
10 decision which has the force and effect of agreement is
11 finally subject to automatic reduction or elimination of
12 conditions which the Council does not approve.

13 MR. FOSLER: Say that again.

14 MR. HILLMAN: What we are providing for is a final
15 decision by the Council. Since the Council under the charter,
16 under Section 305 of the charter has the power to enact the
17 budget. So what we are saying, let us take an example, the
18 parties agree to a contract which costs a million dollars.
19 The Council looks at that contract and sends it back to the
20 parties and says, "We're not going to approve a million dollars.
21 You'd better come up with a contract that costs about
22 \$800,000."

23 The parties go back and they can't agree on anything
24 that costs \$800,000. And they come back with something that
25 still costs a million dollars. The Council then has every

1 right to pass a budget for \$800,000 in it and the parties live
2 with \$800,000.

3 MR. FOSLER: I wonder if you could indicate again
4 the distinction between interest arbitration and grievance
5 arbitration in the Executive's view on what the charter
6 amendments says and what the legislation would propose.

7 MR. HILLMAN: The interest arbitration provides for
8 a neutral, the parties, well, if they cannot agree the interest
9 arbitration provides for the neutral to decide between the
10 positions of the party. We have provided here for last best
11 offer. That is the parties will each present a package and
12 the neutral would choose between those packages and that
13 package then becomes the agreement of the parties which is
14 submitted to the Council.

15 Grievance arbitration on the other hand is arbitra-
16 tion over the implementation of provisions of an already
17 executed contract. How does a provision of a contract apply
18 to a certain set of facts basically.

19 There was some disagreement as to the exact effect,
20 the exact intention, as to the referendum, the charter
21 amendment. The County Executive however feels it was clear,
22 at least to him, what was proposed was interest arbitration
23 and not grievance arbitration. And that is what is proposed
24 in this legislation.

25 MR. FOSLER: Another one of the amendments that the

1 Executive is proposing would modify the prohibited subjects
2 of bargaining. As I understand it it makes some of them
3 permissive as opposed to prohibitive. Could you be more
4 specific as to what now under the amended version of the
5 Executive's bill would be the mandatory subjects of bargaining
6 and which would be the permissive subjects and which would be
7 the prohibitive subjects?

8 MR HILLMAN: The mandatory subject --

9 MR. FOSLER: And could you give us the Executive's
10 reason or thinking behind it?

11 MR. HILLMAN: The mandatory subjects are set out on
12 page 18 section 33-80(A). Salary and wages; pension;
13 retirement; employee benefits such as insurance, leave,
14 holidays, vacation, personal patrol vehicles, hours and work-
15 ing conditions, and provisions for the processing of
16 grievances. B and C of that section set out those matters
17 which are permissive. There is a long list of them. Certain
18 things such as pensions of persons who have already retired;
19 recruitment selection; appointment; testing; promotion; posi-
20 tion classification. Everything listed in B and C now are
21 permissive subjects of bargaining.

22 The County does not have to bargain about any of
23 these things if it says it does not wish to bargain. And the
24 thinking behind changing these from prohibitive to permissive
25 is that the parties may wish to talk about some of these

1 things. We felt that by prohibiting discussion of these
2 subjects we were doing a disservice to the county.

3 Employee organization, for instance, down to tech-
4 nology to be utilized. The employee organization may have
5 some ideas about the technology to be utilized that are good
6 ideas. We did not want to prohibit discussion of those ideas
7 and we did not want to prohibit giving the parties the flexi-
8 bility to embody good ideas in the collective bargaining
9 agreement. So we made them permissive. The County can dis-
10 cuss if it wishes to. If the County doesn't wish to discuss
11 them they cannot be taken to impasse.

12 MR. FOSLER: B and C had been a prohibited subjects?

13 MR. HILLMAN: That's correct.

14 MR. FOSLER: And the amendment would make them
15 permissive.

16 MR. HILLMAN: That's correct.

17 MR. FOSLER: Are there still some that are prohibited?

18 MR. HILLMAN: No.

19 MR. FOSLER: There are no subjects that are prohi-
20 bited from bargaining?

21 MR. HILLMAN: That's correct.

22 Those things in C really are management rights, and
23 what we would be discussing there are the effects. For
24 instance, the effects of transfer assignment scheduling. We
25 would talk about the effects of those actions.

1 MR. GUDIS: You're saying both parties have to
2 agree?

3 MR. HILLMAN: That's right. They have to agree to
4 discuss them.

5 MR. GUDIS: I just want to make one comment. I
6 think we're going to have to look very carefully at the
7 April 25th date because we don't normally start working on
8 the operating budget until right after the 15th of April, so I
9 think we're going to have to look at that date and perhaps
10 we may have to suggest some changes, but we will certainly
11 take that up at the work session.

12 MR. ROVNER: The objective was to provide a date
13 far enough in advance of the adoption of the final budget that
14 if the Council had problems, signal as early as possible to
15 the parties that you're having problems so we can go back and
16 try to resolve it, but close enough to the final date so you'd
17 have a chance to work through a good many of the budget
18 problems and be able to see this contract in some kind of
19 context of the balance of County government.

20 MR. GUDIS: I understand. I think the question that
21 I'm raising is that since that is so early in the budget
22 process, when we actually start working on the operating
23 budget, that sometimes we aren't always in a position to make
24 a determination. Like the COL, we don't normally determine
25 that until we go through the whole budget process.

1 If we try to do this too early then the question
2 comes up as to whether we can make this decision without
3 having an effect on other county programs. I'm not saying we
4 can't or that we can. I'm sure we'll try to do our best to
5 try to do it as early as possible to give all parties a chance
6 to participate. I just wanted to alert you to that.

7 MR. GUDIS: The next speaker will be Kathleen Dolan.

8 MR. FOSLER: Mr. Rovner, I have a question for you.
9 Mr. Hillman, under B, it says, "The following subjects shall
10 not be the subject of collective bargaining" under the copies
11 that we thought included the amendments.

12 MR. HILLMAN: The only thing I can say is that it
13 is a typographical error because there is a D, which says
14 "Notwithstanding any provision of this law" and it goes on
15 to say that they can bargain about any matter.

16 MR. GUDIS: It may be the subject of --

17 MR. HILLMAN: The bottom of 20 is the permissive
18 language.

19 MR. FOSLER: Let me be clear.

20 MR. HILLMAN: I think you could leave that "shall
21 not be" because the "notwithstanding" provision down at the
22 bottom of page 20, allows for the permissive --

23 MS. SPECTOR: That's not a good way to write it.

24 MR. HILLMAN: I agree with you.

25 MR. GUDIS: I think before we get the final bill

1 we'll work that out.

2 MR. GUDIS: Ms. Dolan?

3 MS. DOLAN: I'm Kathy Dolan. I reside at 4505
4 Bennion Road in Wheaton, and I am here to testify on behalf
5 of the Employee Organizations Task Force concerning bill 71-81
6 "Collective Bargaining for Police Officers."

7 This bill is a response to the will of the voters
8 expresses in 1980 to support collective bargaining for police
9 officers. We feel that the voters also support collective
10 bargaining for all county employees and we are here to ask
11 that this bill be expanded to cover all Montgomery County
12 employees.

13 This is not the first time collective bargaining has
14 been discussed in Montgomery County. In 1976, the Special
15 Committee to Review Compensation and Personnel Practices, in
16 their final report to the Council (August 1976) stated, "In
17 the Committee's view there are advantages to the County through
18 increased collective bargaining which outweigh the potential
19 dangers." They went on to state, "Furthermore, it is time to
20 make a positive affirmation of collective bargaining as a
21 right of recognized employee groups." We concur with this
22 advice of six years ago.

23 Second, the County has had Meet and Confer legisla-
24 tion on the books since 1978 and it has not been successful.
25 Several strong and organized groups were informed by the

1 County that they could not be recognized under this legisla-
2 tion and other groups have not been able to have a successful
3 election. This is in large part due to the restrictions and
4 limitations inherent in the law.

5 Third, only the Fraternal Order of Police has
6 organized successfully under Meet and Confer and their
7 reaction to the experience was to go to the voters in 1980 to
8 get a charter amendment for real collective bargaining.

9 Two years ago the Charter Review Commission Personnel
10 Committee stated that, "Many County employees view the "meet
11 and confer' process as a meaningless exercise. They feel this
12 way because any 'position paper' that is written as a result
13 of 'meet and confer' merely details the topics discussed and
14 the views of both sides. It has no legal standing. In
15 addition there is no mandate that both sides come to an
16 agreement and the CAO remains the final authority for most
17 disputes. This situation causes many employees to believe that
18 there is too little incentive for the County to really con-
19 sider their point of view. It is simply too easy to put off
20 negotiation of the tough issues to a later date. there does
21 not seem to be anything that can be done to address these
22 problems short of implementing collective bargaining."

23 Fourth, County employees are reasonable and decent
24 people. We are taxpayers also. We ask only justice and fair-
25 ness. We do not ask for impossible wages, unreasonable hours

1 or unmeetable working conditions. And we would not ask for
2 these under collective bargaining. We do want the right to
3 ask for what is equitable.

4 In looking at the specifics of this legislation we
5 have some problems in several areas. First, the definition of
6 strike in section 33-76 is somewhat unusual. There are several
7 model laws that have better definitions.

8 We also are concerned with the section on the
9 Permanent Umpire. This looks like the bargain basement ver-
10 sion of a Public Employee Relations Board and as such has some
11 real flaws. In addition, several provisions under section
12 33-77 Permanent Umpire especially (2) and (3) will hamper the
13 Umpire in necessary information gathering.

14 Another area of concern is in terms of time limits
15 on petitions and provisions for decertification. The pro-
16 visions for petitions seem unnecessarily restrictive and the
17 prohibition of runoff elections is quite questionable.

18 We have other problems with the bill and will be
19 glad to discuss it further with the Council.

20 MR. GUDIS: Thank you. Are there any questions?

21 If not, the next speaker is Mr. Allen Katz represent-
22 ing Lodge 35, Fraternal Order of Police.

23 MR. KATZ: I'd like to introduce George Driesen who
24 is our special counsel who has helped the Fraternal Order of
25 Police, Lodge 35, during the drafting process. And it will be

1 his comments that I believe you have a copy of now.

2 MR. DRIESEN: Let me tell you first of all how
3 utterly delighted I am to be here. I'm delighted on two
4 counts.

5 First of all, I'm a foreigner. I come from several
6 other jurisdictions and I immigrated to this county about 20
7 years ago. And one of the first things that struck me when
8 I arrived was the entirely different impression of a police
9 force here that I got very early on, I was given a speeding
10 ticket, from the impression that I had in other jurisdictions
11 where I had resided.

12 As I am sure all of you know, the police in this
13 county are extremely courteous, extremely efficient, and
14 extremely professional and I think anybody who lives here
15 knows that.

16 So I'm very proud indeed to be representing them.
17 And I think it is that sense of them and not as one of the
18 speakers last time suggested, the idea that the voters in
19 this county didn't know what they were doing that led the
20 voters to enact section 510 of the Montgomery County Code to
21 enable the police officers of this jurisdiction to have
22 collective bargaining with mandatory arbitration. And I'm
23 going to come to that section in a moment.

24 The second reason I'm delighted to be here is that
25 I have taught the subject of collective bargaining in three

1 of America's major law schools as what they call a guest or
2 adjunct professor. And I've always wondered if I could do a
3 better job than the prior scribblers in drafting a collective
4 bargaining bill. I haven't had the pleasure of drafting this
5 bill, but I must say the FOB and its representatives appreciate
6 the fact that the County Executive has listened carefully to
7 our comments. Alas, we disagree on the fundamentals. But
8 nonetheless we have been listened to with respect to the
9 document which you have before you, and some of our ideas do
10 appear in the document and we had a fair hearing.

11 But we believe the document before you does not
12 comply with the mandate of the voters when they adopted
13 Section 510 of the Montgomery County Charter.

14 Collective bargaining with mandatory arbitration
15 if adopted in this county, and we hope that it will be, would
16 bring Montgomery County into line with most of the forward
17 looking jurisdictions in this country that employ police
18 officers. It would substitute collective bargaining in the
19 fixing of terms and conditions of employment of police officers
20 in this jurisdiction. But the voters mandated binding arbitra-
21 tion and the County Executive, and we agree with this on that,
22 takes the position when they're referring to interest arbitra-
23 tion, and what the voters meant and what many many jurisdic-
24 tions in the United States that have bargaining for police
25 and other uniformed services have is just that, binding

1 arbitration. That is to say the parties negotiate and if no
2 agreement is reached the matter is placed before a neutral who
3 decides the issues.

4 Now you, ladies and gentlemen, are our employers and
5 when the voters said mandatory arbitration, it is our position
6 that they meant it. And it is our view that good public
7 sector labor relations require that there be a place where we
8 can go with you to get a final adjudication. And therefore,
9 we believe that the document before you is inadequate, both as
10 a matter of law in this county and as a matter of policy.
11 Because you don't have to go to interest arbitration.

12 Now there are many jurisdictions in which public
13 sector bargaining is provided for by statutes and other
14 employees, if an impasse is reached, have to rely on the good
15 grace of the legislature. It either votes their collective
16 bargaining agreement up or down. But in these same jurisdic-
17 tions, and I'm going to name them, where that is the procedure
18 for other employees, it is not the procedure for police and
19 other uniformed services. And the reason for that is simple.

20 The police and other uniformed services are too
21 darned important. We just can't have unresolved impasses and
22 collective bargaining between this county and its police
23 officers.

24 Among the jurisdictions which do not provide manda-
25 tory arbitration for other representative employees but do

1 provide such arbitration for police, are Massachusetts, New
2 York, Pennsylvania, New Jersey, Oregon, Washington, Wisconsin,
3 Wyoming, Minnesota, assuming as we do that police are essential
4 employees, and Alaska. And we urge this county do joining that
5 honorable list of jurisdictions which provide for mandatory
6 arbitration of police bargaining impasses. That, we think,
7 is the basic imperfection and failing in this document.

8 We have provided suggested language in Exhibit 3
9 which would integrate with the present ordinance. And I think
10 for that reason it is somewhat clumsy as a statute, but we
11 have provided language in our exhibit, I think it's Exhibit 1,
12 I misspoke, which would indeed make possible mandatory
13 arbitration if in the unlikely event there really was an
14 impasse between this council and the police in negotiations.

15 I might say as I read this ordinance, and we will
16 have some suggestions in the work sessions to clarify it, as
17 I read it you do not get the collective bargaining agreement
18 to pass upon. You only get those which is in my view proper
19 and not at all unusual, you only get those portions which
20 require either the appropriation of funds or the enactment of
21 legislation. Everything else is between the County Executive
22 and the collective bargaining departments.

23 But that is our basic problem with this document.
24 And there is nothing new in our proposal for mandatory arbi-
25 tration. Students of collective bargaining are familiar with

1 the practice of mandating arbitration as a substitute for
2 the strike in labor relations statutes governing uniformed
3 employees. That's how impasses are settled in the private
4 sector. We have to have a means of settling impasses with
5 you.

6 It is widely recognized that there must be a fair
7 and equitable method of resolving once and for all disagree-
8 ments over the contents of collective bargaining agreements
9 when one of the bargaining parties represents the uniformed
10 services. Otherwise uniformed employees may strike even
11 though a strike is unlawful because they have no other means
12 of obtaining a settlement that is perceived to be fair.

13 That is the lesson of the PATCO tragedy, as the
14 New York Times pointed out shortly after the PATCO strike
15 occurred. And it is the explanation for the 11 year history
16 of essentially strike free labor relations in the postal
17 service. Only one postal union, one small union, has ever
18 gone to arbitration in the postal service. But because it's
19 there there have always been agreements. And the postal
20 service, I don't want it misunderstood. The FOP is opposed
21 to strikes by police officers. The Fraternal Order of Police,
22 the parent organization, expressly forbids strikes, and that
23 rule binds Lodge 35. But there is no assurance that the FOP
24 will perpetually be representative of the County police, and
25 that's one of the reasons why there is sufficient frustration

1 no matter what the rules are on strikes. We think there
2 ought to be mandatory interest arbitration of the basic issues
3 of collective bargaining with the Council.

4 Now the next serious deficiency and it's fundamental,
5 is the very narrow range of subjects which this ordinance
6 permits to be bargained about. What could be more frustrating
7 to represented employees than a law which promises them
8 collective bargaining on the one hand but then so narrowly
9 restricts the scope of what may be negotiated that it keeps
10 the word of promise to the ear and breaks it to the hope, and
11 that is precisely what this ordinance does. It has a very
12 short list of five subjects that can be bargained about and
13 it has 15 items that can't be bargained about unless the
14 County agrees. And I might say if you have to have the
15 employer's agreement about what he's going to talk about,
16 what happens in negotiations is you spend half your time
17 talking about what you're going to talk about. And that's the
18 fear we have for an ordinance that is as narrowly conceived
19 as this one is, and that so significantly contracts the scope
20 of collective bargaining.

21 Indeed, this document prohibits bargaining about
22 some of the very matters that led to the police officers'
23 insistence, or I shouldn't say prohibits, from our standpoint
24 it doesn't require let's put it that way, collective bargain-
25 ing about some of the matters that led to the police officers'

1 insistence that there be collective bargaining in the county.

2 For example, schedules are not bargainable. The
3 department's insistence upon a five day instead of a four day
4 week has been a serious bone of contention between the police
5 department and police officers in the very recent past and it
6 still is.

#3

7 The police do not insist that they have their own
8 way, at least not all the time. But a statute that does not
9 even authorize them to bargain about a subject as important
10 as scheduling carries with it the seeds of difficulty for the
11 future. Similarly, the statute would prohibit bargaining
12 about transfers. This too is a matter of great importance to
13 the police. Where one works is obviously a term and condition
14 of employment and the procedures that will be followed and the
15 matters that will be considered when a transfer becomes
16 necessary are matters that traditionally labor organizations
17 negotiate with employers about.

18 The narrow scope of bargaining in this ordinance
19 reflects an extended list of management rights which the
20 employer need not bargain about. Statutes with such provisions
21 in them are a frequent source of irritation. And I've heard
22 testimony to that effect in my class by some of the leading
23 practitioners in public sector bargaining. And they provoke
24 litigation. I agree with Mr. Hillman that it would be delight-
25 ful and desireable if we didn't have any litigation under this

1 ordinance, just bargaining. But this is the kind of thing
2 that leads to litigation and litigation frustrates the
3 collective bargaining process.

4 For example, we're not allowed to bargain about
5 technology. No one knows what that term means. Does it mean
6 for example that the police have no right to bargain with
7 their employer about matters which vitally affect their
8 safety such as the weapons they use or the protections built
9 into their patrol vehicles? Similarly, what is more important
10 than the procedures and factors that will be considered when an
11 employee seeks promotion? That is not a bargainable subject
12 under this ordinance.

13 Again, it is a management right to maintain and
14 improve the efficiency of operations. If management asserts
15 that a particular proposal would reduce the efficiency of
16 operations, is the proposal not bargainable and shall the
17 parties argue about that rather than seek to achieve a
18 compromise or suitable arrangement which preserves the
19 interests of both sides?

20 I fear that under this ordinance the answer is the
21 employer wraps himself in that phrase, efficiency of operations,
22 and we go into some kind of a proceeding to determine whether
23 he is right and we never get to the merits and that's not good
24 policy. No one denies the legitimacy of the objectives which
25 are listed in the enumerated rights of management, but the

1 purpose of collective bargaining is to provide a means of
2 exchanging ideas that will accomodate management's objectives
3 and employees' needs. That's what it's all about.

4 This statute virtually makes that exchange
5 impossible because of the very narrow scope of bargaining
6 that is left after all the management rights and other pro-
7 hibitions in the ordinance are taken into consideration.

8 Exhibit 2 to this testimony is a revised definition
9 of collective bargaining. We took it whole from the New York
10 State statute which applies to police in that jurisdiction,
11 and I might say that it's used elsewhere too. There is no
12 reason why Montgomery County should adopt such a narrow
13 approach to the subjects which we can bargain about under
14 the ordinance.

15 The remaining concerns that we have listed in the
16 statement and reflected on our exhibit are narrow in scope.
17 Much narrower than the fundamental ones that I've been dis-
18 cussing, but very important to us.

19 Mr. Hillman passed lightly over the unfair labor
20 practice provisions. There is a laundry list of unfair labor
21 practice provisions in this ordinance which are unprecedented
22 in my view and my experience in labor relations. They go to
23 things like sabotage, violent action to prevent people from
24 entering a place of employment, taking possession of property
25 of the employer and the like. These are criminal violations.

1 They have no place in a labor relations ordinance, and since
2 the ordinance is hardly venturesome when it comes to affording
3 rights to employees, we see no excuse whatsoever for the
4 laundry list of horrors that is contained in subsection five
5 of subparagraph B of the prohibited practice section of the
6 ordinance. They should be deleted. No one knows what they
7 mean. They obviously have no place in the labor relations
8 statute.

9 I had wanted to address, but I think our concern has
10 been met by change in provision that would give the entire
11 jurisdiction over the labor organization's internal ratifica-
12 tion procedures. Fortunately that appears to have been
13 deleted so I won't take the time except to say that we are
14 pleased about that and would be very upset if it were
15 reinstated. We have a constitution, the state has laws which
16 provide, we have a constitutional provision for ratification
17 of collective bargaining agreements and that is subject to the
18 State Courts if there is some imperfection or ignored, and
19 we think that is the proper place for ratification procedures
20 if at all should be litigated.

21 Exhibit 3 also contains, and here we are stepping
22 into the shoes of management, it contains a proposed deletion
23 of one of the provisions of the ordinance dealing with strikes
24 and lock-outs. It prohibits the County Executive from
25 compensating any employee for a period when he is directly or

1 indirectly engaged in a strike.

2 Now as I said before, the FOB opposes strikes and
3 we have no problem with disciplining an employee who goes on
4 strike in violation of applicable law. But a strike by
5 police officers can create a serious emergency and we think it
6 is unwise and imprudent to tie the hands of a future County
7 Executive by absolutely prohibiting him from taking steps he
8 deems essential. There may be circumstances that we cannot
9 foresee when the County Executive may conclude that some
10 employees who were "indirectly", whatever that means, engaged
11 in a strike must out of necessity or in fairness receive some
12 compensation. For that decision the County Executive would be
13 answerable to the voters as he should be. But he is equally
14 answerable if he fails adequately to deal with an emergency of
15 such gravity.

16 For this Council to decide in advance what a future
17 County Executive should do when faced with circumstances it
18 cannot now foresee, seems to us the height of folly. Again,
19 we don't want to be misunderstood. We anticipate there will
20 be no strikes under this legislation. And as I said, our
21 charter outlaws them, and I'm not referring to the County
22 Council's charter. I'm referring to the FOP's own charter.
23 And this is a disciplined, professional police force that is
24 not going to be a problem. But obviously the draftsman of this
25 legislation wanted to be sure there were controls in the event

1 that occurred. We think he has gone too far in this important
2 respect.

3 We believe the bill before you does not comply with
4 the voters' mandate. It does not provide for binding arbitra-
5 tion. It's narrow scope of bargaining could make a mockery
6 of the process of collective bargaining. In some respects we
7 believe the ordinance goes too far. For example, in enumerating
8 a series of criminal acts which are to be the subject of pro-
9 hibited practice provisions of the ordinance without the
10 protections of criminal law and provisions which are unprece-
11 dented.

12 We think the bill represents a step forward. With
13 the changes we have proposed we think the ordinance will pro-
14 vide a useful mechanism for resolving problems and establishing
15 wages and working conditions that are fair to the police and
16 the citizens they serve. With the changes we have proposed
17 adoption of the ordinance, we are confident, will lead to an
18 era of mutual harmony between the police and the County. So
19 amended the bill should be enacted.

20 Thank you.

21 MR. GUDIS: Thank you.

22 MS. SPECTOR: I haven't read through the attachments
23 yet, the Exhibits 1 and 2 and we'll probably get to this in our
24 work session, but in essence are you saying that the process
25 as outlined in the bill is acceptable but it doesn't go far

1 enough if the Council doesn't accept what has gone through the
2 process? That we then need to go to arbitration?

3 MR. DRIESEN: Yes.

4 MS. SPECTOR: You don't have a problem with the
5 process up to that point, with the way it starts in November
6 and goes through --

7 MR. DRIESEN: No, we do not have a problem with that
8 although if you come to the policy position that we have taken
9 it might be possible to simplify the legislation and make the
10 process somewhat less cumbersome.

11 MR. FOSLER: With respect to the question of the
12 legislative authority of the council and what it ought to be,
13 the FOPs position is that there ought to be some kind of
14 resolution beyond the council's decision. Is there some other
15 legislation? Is there some other collective bargaining or
16 elsewhere that addresses that point?

17 MR. DRIESEN: There are 11 jurisdictions, as I
18 indicated in my testimony, in which the police have the right
19 to go to binding arbitration with the legislative body, whatever
20 body has the responsibility for appropriating funds.

21 MR. FOSLER: We really ought to take a look at the
22 specifics of how those laws work, but in those instances,
23 does it work pretty much the same way up until the point as is
24 proposed here, up until the point that it goes to the legisla-
25 tive body, the agreement that is reached by the Executive, be

1 it the governor and the bargaining agent or the decision of
2 the arbitrator, goes to the legislative body if the legis-
3 lative body rejects it there is then provision for the arbitra-
4 tion of the decision after that?

5 MR. DRIESEN: We'd have to look at each one at
6 retail, but typically there is no impasse resolution machinery
7 before it gets to the body that has the power to appropriate
8 the funds because that is not necessary. You don't have an
9 agreement unless you have an agreement through collective
10 bargaining. If the legislative body doesn't appropriate the
11 funds or rejects the portion of the agreement which it has to
12 act upon, then the matter has to go to an arbitrator for
13 resolution. But to have an impasse, or to have arbitration
14 before that point is premature unless there has been agreement.

15 Most of the statutes are not very detailed in terms
16 of how the legislature acts. That's been done sort of behind
17 the scenes. The statute simply provides in the event of an
18 impasse it goes to arbitration.

19 MR. FOSLER: I think that's something we ought to
20 take a look at. I think it would be very helpful if the
21 Executive Board could get some information on that. Both the
22 laws, any kind of interpretation we have on the basis of
23 Court decisions, and also the practical way that it works.
24 The law is general in that regard. How has the process
25 actually been worked out?

1 The Executive has taken the position that the charter
2 amendment indicates the binding arbitration or first interest
3 arbitration, the FOP's position, when you propose the amend-
4 ment was, it did not relate to interest arbitration but only
5 to non-interest items. Isn't that correct?

6 MR. DRIESEN: There was some unclarity in it at
7 one stage before we actually took the matter to the voters.

8 MR. FOSLER: But the FOPs position was quite clear.
9 You stated before the Charter Review Commission you believed
10 the amendment you were proposing did not address interest
11 arbitration as a part of the binding arbitration. That is
12 correct, isn't it?

13 MR. KATZ: Mr. Fosler, when it was proposed, as you
14 know, there was a problem with a petition that actually was
15 presented to the Council. As you'll recall, we came before
16 the Council and said in light of the problems that we had
17 with the petition drive, that we asked the Council to propose
18 language, and of course we were denied that, and within a four
19 week period we obtained over 10,000 signatures and that's how
20 this got on the ballot.

21 Then there was some question as you say before the
22 Charter Review Commission of exactly what we were asking for.
23 But it was the County Executive that suggested the language
24 that we had proposed would mandate the binding arbitration on
25 interest issues and subsequent to that we met with Mr.

1 Gilchrist and told him whatever problems or whatever questions
2 before, so there would be no misunderstanding, we were asking
3 for interest arbitration. And subsequent to that time the
4 literature that we put out indicated we were asking for
5 interest arbitration.

6 I know what you're talking about. there was a period
7 when we talked to the Charter Commission that we were in
8 effect, or that we waived on that, but following --

9 MR. FOSLER: It was very clear. If you look at the
10 language in the record you stated five or six times quite
11 specifically that it was not interest arbitration that you
12 were referring to.

13 MR. KATZ: I know what you're talking about and I
14 remember that testimony.

15 MR. FOSLER: Was there some reason why there was a
16 change in interpretation?

17 MR. KATZ: As I said the Executive suggested the
18 language that we had proposed, or very well could mandate
19 the interest arbitration and upon reflection, and that's why
20 I went through the business of the fact that the petition was
21 done very quickly, and we went over it very quickly. But we
22 considered the issue and before it was voted on and frankly
23 before literature was put out, the Fraternal Order of Police
24 and the group that was really behind it, the Citizens for
25 Effective Law Enforcement, met with Mr. Gilchrist and said we

1 are adopting your position in effect. His position. And that
2 is, this is going to mandate binding arbitration on interest
3 issues, and put out literature to that effect.

4 MR. DRIESEN: I might say, I came to this matter
5 cold. I read it and I said well it's got to be interest
6 arbitration for a very simple reason, right alongisde the
7 prohibition of the right to strike. The interest arbitration
8 is as I said in my testimony, the substitute for the strike as
9 the impasse resolution mechanism. I'm not an expert in local
10 government, I confess, but it certainly seems to me, it may
11 take a charter amendment to permit interest arbitration because
12 of its implication. I doubt if it takes a charter amendment to
13 provide for resolution of grievances through some form of
14 third party instrumentation.

15 In any event the parallelism seems to be persuasive
16 as to what the charter amendment meant.

17 MR. FOSLER: The other item that you raise is the one
18 that is addressed in one of the amendments that the Executive
19 has proposed which has to do with the perusive items. And I
20 think there again, in gathering information for the work
21 sessions, it would be extremely useful for us to take a look at
22 the specific language and what the practice has been in those
23 jurisdictions which do already have collective bargaining with
24 their police departments. So if we could see if we could come
25 up to some kind of a resolution on that as well.

1 MR. GUDIS: Mr. Driesen, do you have readily avail-
2 able information on any other jurisdictions that you named in
3 here as to what they provide? I don't mean right this minute.
4 I guess my question is, would it be much of a problem for you
5 to put together a chart which in effect compares the various
6 or summarizes by jurisdiction this information so we would be
7 able to see at a glance as to what they provide?

8 MR. DRIESEN: It may be a little bit too detailed to
9 look at in a glance, but I do have that material and I'd be
10 happy to make it available.

11 MS. SPECTOR: My question was related to the other
12 jurisdiction. You named the states. Are they all state laws
13 or are local jurisdictions involved also?

14 MR. DRIESEN: Local jurisdictions are covered in
15 these instances by state statutes. As I see the situation
16 give the charter and its mandate, you are in the same situation
17 as those state legislatures were when they set out to adopt
18 a collective bargaining rule in effect, or laws.

19 MR. GUDIS: Any other questions?

20 MR. KATZ: I might take a moment to introduce
21 Philip Nichols who is the legal council for the State Fraternal
22 Order of Police Lodge, and we ask that he be allowed a few
23 minutes to address the Council on our behalf.

24 MR. NICHOLS: Thank you. I'll be extremely brief.

25 I appreciate the opportunity to speak before you. I

1 understand and I'm embarrassed that our National President
2 made it and we flew him in and made a big to-do over it, and
3 we were a little short on audience on the Council side, but in
4 any event, we want you to know this is a very serious matter
5 at the National level, the State level and certainly the local
6 level. I understand our National President gave a run-down of
7 the national experience in collective bargaining and found it
8 to be favorable. Our State President has asked me to come to
9 you tonight and tell you that the members of the State Lodge
10 stand behind Lodge 35.

11 We believe, quite honestly, it's a matter of great
12 social justice that the police employees of Montgomery County
13 have the right to be heard on those matters that affect them
14 most. The destiny of the police department in Montgomery
15 County is in your hands. I can only ask as respectfully as I
16 can on behalf of the other 8,000 police officers in Maryland,
17 that you give as much favorable consideration as you ethically
18 and properly can to the concerns of the FOP.

19 I don't have to remind you that in every jurisdiction
20 that has considered this matter by election or otherwise, that
21 they have ruled favorably and I believe you should be guided
22 by the voters in this particular case and afford the FOP as
23 great a voice in their own internal work place as any other
24 employee in the private sector which has been the rule for
25 decades.

1 I haven't had a chance to read through the amendments
2 but there was a stir in the audience when the Sergeants weren't
3 included in the unit and several people out there asked that
4 that be a great concern to you in your work session. That's
5 not the case in other areas of Maryland and I'm sure that you
6 are aware now, and you'll have the benefit of their experience
7 in considering it.

8 I thank you for allowing me to have this opportunity
9 and the State President also thanks you for allowing us to
10 be heard tonight.

11 MR. GUDIS: The meeting is adjourned.

12 (Whereupon, at 10:10 p.m. the Public Hearing was
13 adjourned.)

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REPORTER'S CERTIFICATE

DOCKET NUMBER:

CASE TITLE: Legislative Bill No. 71-81 Collective Bargaining

HEARING DATE: January 25, 1982

LOCATION: Rockville, Maryland

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before Montgomery County Council and that this is a true and correct transcript of the same.

Date: February 1, 1982



Official Reporter
Acme Reporting Company, Inc.
1411 K Street N.W.
Washington, D.C. 20005

