



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

July 22, 1998

TO: Michael Faden, Senior Legislative Attorney
Montgomery County Council

VIA: Charles W. Thompson, Jr. *Charles W. Thompson, Jr.*
County Attorney

FROM: Marc P. Hansen, Chief *Marc Hansen*
Division of General Counsel

RE: Bill 45-97, Collective Bargaining - Binding Arbitration

QUESTION

You have asked for our opinion regarding the legality of a provision in Bill 45-97, Collective Bargaining - Amendments, which requires a neutral party to resolve a collective bargaining impasse between the County Executive and the representative of non-public safety employees. You state, "The fundamental legal issue this poses is whether, without expressly amending the Charter to permit it, delegating the County Executive's decision-making authority with respect to a collective-bargaining agreement to a private arbitrator would amount to an unlawful delegation of the executive power assigned to the Executive by §201 of the Charter."

SHORT ANSWER

Because Charter §511 authorizes the County Council by legislation to provide for arbitration to resolve an impasse in reaching a collective bargaining agreement, Bill 45-97 may authorize a third party to resolve that impasse.

ANALYSIS

The Court of Appeals has on several occasions concluded that authorization to engage in arbitration to resolve an impasse in collective bargaining must arise from a public general law or County charter. *See, Anne Arundel County v. Fraternal Order of Anne Arundel Detention Officers and Personnel*, 313 Md. 98, 543 A.2d 841 (1988).¹ The key issue, therefore, is whether Charter §511 authorizes the Council to provide for arbitration. If it does, Bill 45-97 may validly impose a binding dispute resolution process to resolve an impasse in collective bargaining.

You have pointed out that Charter §§510 and 510A require the Council to provide by law for collective bargaining with "binding" arbitration.² Charter §511, on the other hand, omits the term "binding." You have raised the question whether the failure to use the term "binding" in Charter §511 means that the Council is not authorized to provide for "binding" arbitration in Bill 45-97.

We do not believe that the failure to use the term "binding" in Charter §511 is significant in this case. Both the plain meaning of the language used in Charter §511 and its legislative history leave little doubt that Charter § 511 authorizes the Council to provide by law for a binding dispute resolution process to resolve collective bargaining impasses.

A county charter is to be read and construed in the same manner as a statute and its words generally are to be given their natural meaning. *Anderson v. Harford County*, 50 Md. App. 48, 435 A.2d 496 (1981). Charter §511 provides:

The Montgomery County Council may provide by law for collective bargaining, **with arbitration** or other impasse-resolution procedures, with authorized representatives of officers and employees of the County Government not covered by either Section 510

¹In *Anne Arundel County v. Fraternal Order*, the Court of Appeals indicated that a charter provision authorizing collective bargaining arbitration must be consistent with Article XI-A of the Maryland Constitution. *Id.*, at 111. Because neither Charter §511 nor Bill 45-97 attempts to limit the decision-making authority of the County Council, we do not believe that Article XI-A of the Maryland Constitution would be violated by imposing binding arbitration on representatives of the collective-bargaining unit and the County Executive. *See Ritchmount Partnership v. Bd. of Supervisors of Elections*, 283 Md. 48, 388 A.2d 523 (1977) (County Council of a charter county must serve as the primary legislative body of the county.)

²Charter §510 (collective bargaining for police officers) was approved in 1980; Charter §511 was approved in 1984; and Charter §510A (collective bargaining for firefighters) was approved in 1994. While Charter §511 was placed on the ballot by the County Council, Charter

or Section 510A of this Charter. Any law so enacted shall prohibit strikes or work-stoppages for such officers and employees. (Emphasis added.)

Webster's dictionary defines the term "arbitration" as: "settlement of a dispute by a person or persons chosen to hear both sides and come to a decision."³ Black's Law Dictionary defines "arbitration" as, "a method of dispute resolution involving one or more neutral third parties who are chosen by or agreed to by the disputing parties, **and whose decision is binding.**" (Emphasis added.)⁴ Accordingly, the normal meaning of the term "arbitration" involves as a key element a binding dispute resolution process.

The legislative history concerning Charter §511 confirms that §511 was intended to authorize a binding dispute resolution process. The 1984 report of the Charter Review Commission recommended that the County Council place on the ballot for approval by the voters Charter §511.⁵ The Charter Review Commission report states, "The Commission believes that the Council should have the opportunity and the clear authority to deal **uniformly** with the issue of collective bargaining for County employees other than police officers; that position was unanimous and bi-partisan." (Emphasis added.) As noted, Charter §510, which had been approved in 1980, mandated binding arbitration to resolve an impasse in collective bargaining for police officers.

On July 26, 1984, the County Council discussed placing Charter §511 on the ballot. There was considerable discussion regarding whether Charter §511 should authorize the Council to provide for a binding dispute resolution process.⁶ The Council minutes reflect that Council member Hanna moved to delete from Charter §511 the phrase "arbitration or other impasse-resolution procedures," and substitute "mediation or **non-binding** arbitration." (Emphasis added.) Ms. Spencer, a member of the Charter Review Commission, pointed out that Mr. Hanna's amendment would create a conflict with §510, which provides for binding arbitration for police officers. Mr. Renne, president of the Montgomery County Government Employees Organization, indicated that his organization hoped that the Charter would provide for "one system of arbitration for all employees." Mr. Renne indicated that "binding arbitration is preferred because without it there will be inconsistency and uncertainty about how an impasse will be resolved."

³Webster's New World Dictionary of the American Language (College Edition, 1960)

⁴Black's Law Dictionary (Bryan A. Garner, ed., West Publishing Company, Pocket Edition, 1996)

⁵Relevant portions of the 1984 Charter Review Commission Report are attached.

⁶Relevant portions of the Council minutes for July 26, 1984, are attached.

In short, the legislative history of Charter §511 clearly indicates that the Charter amendment was intended to enable the Council to provide for binding dispute resolution, and the actual words used in Charter §511 are consistent with that intent.

CONCLUSION

Unless authorized by the County Charter, the Council would be without the authority to enact legislation to impose a binding dispute-resolution process on the exercise of an executive function—like agreeing to a collective bargaining agreement—by the County Executive. But Charter §511 does authorize the Council to enact legislation providing for arbitration to resolve collective bargaining impasses. Bill 45-97 accordingly may legally provide for arbitration to resolve an impasse in the collective bargaining process.

We trust you will find this memorandum responsive to your inquiry. If you have any concerns or questions regarding our advice, please let us know.

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c: Bruce Romer, Chief Administrative Officer
Marta Brito Perez, Director/Office of Human Resources
Deborah Snead, Assistant Chief Administrative Officer
Bernadette F. Lamson, Assistant County Attorney
David E. Stevenson, Associate County Attorney

1984 REPORT
of the
CHARTER REVIEW
COMMISSION



May 1984

Montgomery County, Maryland

RECOMMENDATION B. Collective Bargaining for County employees.

A new Section 511 should be added to the Charter to authorize the County Council to provide by law for collective bargaining with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the county government not covered by Section 510 of the Charter; such law would prohibit strikes and work stoppages.

PROPOSED CHARTER LANGUAGE

Revised Section 511

SECTION 511 Collective Bargaining - County Employees

The Montgomery County Council may provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the county government not covered by Section 510 of this Charter. Any law so enacted shall prohibit strikes or work stoppages for such officers and employees.

A new second sentence for Section 401 shall be added as follows:

PROPOSED CHARTER LANGUAGE

Revised Section 401

SECTION 401

Merit System

The Council shall prescribe by law a merit system for all officers and employees of the County government, except members of the Council, the County Executive, the Chief Administrative Officer, the County Attorney, the heads of the departments, the heads of the principal offices and agencies, as defined by law, one confidential aide for each member of the Council, two senior professional staff positions for the

Council as a whole as may be designated from time to time by the Council, three special assistant positions in the office of the County Executive as may be designated from time to time by the County Executive, special legal counsel employed pursuant to this Charter, and members of boards and commissions and other officers authorized by law to be appointed to serve in a quasi-judicial capacity. Officers and employees who are members of a unit for which a collective bargaining contract exists may be excluded from provisions of the merit system only to the extent that such provisions are subject to collective bargaining pursuant to legislation enacted under Section 510 or Section 511 of this Charter. The merit system shall provide the means to recruit, select, develop, and maintain an effective, non-partisan, and responsive work force with personnel actions based on demonstrated merit and fitness. Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. The Council shall establish by law a system of retirement pay.

Note: New matter: underscoring

DISCUSSION

Collective bargaining for county employees has been considered by previous Charter Review Commissions and County Councils. Other public employees (i.e. teachers, school supporting service employees, and employees of Montgomery College) have obtained collective bargaining through passage of public general laws by the Maryland General Assembly. In addition, Montgomery County Police Officers obtained the right to bargain collectively through a Charter amendment which they proposed by initiative.

The Commission believes that the Council should have the opportunity and the clear authority to deal uniformly with the issue of collective bargaining for County employees other than police officers; that position was unanimous and bipartisan.

The proposed amendment would leave to the discretion of the Council the decision as to whether or not county employees should have the right to bargain collectively. The proposed amendment also leaves to Council discretion the extent to which county employees under collective bargaining should remain within the merit system. The proposed amendment would also prohibit strikes by county employees who are the subject of a collective bargaining agreement.

There was disagreement among the Commission members as to whether the proposed amendment should mandate action by the Council to create a framework for collective bargaining (five members favored the mandatory language) and on whether there should be a "no strike" provision in the proposal (the same five members opposed the strike ban). Commissioner Michael Gildea has written a minority statement covering these two positions, and Commissioners Goldman, Garber, and Gildenhorn subscribed to those views. They are included in this report, pages 21-26. Commissioner Frosh has also written a minority statement on these two positions. His comments are included on page 27 of this report.

The Commission does not recommend any action at this time on the issues of a separate merit system for legislative and/or judicial employees, RIF/replacement rights between and among executive, legislative, and judicial employees, or increased non-merit staff for the County Council. The Commission believes that these issues require further study.

Submitted in packet of 8/17
Council review cutoff 8/23
Approval scheduled 8/28

NOT APPROVED (8/17)
DISTRIBUTION LIMITED TO COUNCIL & STAFF

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, July 26, 1984 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:47 A.M. on Thursday, July 26, 1984.

PRESENT

Esther P. Gelman, President	Michael L. Gudis, Vice President
Rose Crenca	Neal Potter
Scott Fosler	David L. Scull
William E. Hanna, Jr., President Pro Tem	

The President in the Chair.

Re: Worksession on Charter Amendments,
Petitions and Ballot Questions

The Council reviewed Charter amendments, petitions, and ballot questions in accordance with a memorandum of July 24, 1984 from Myriam Bailey, Office of Legislative Counsel. The Council began its review by considering recommendations of the Charter Review Commission.

Ballot Question A and Proposed Charter Amendment (Approval of the Budget) - This involves an amendment to Section 305 of the Charter which exempts the budgets of certain self-funding programs from the computation of the aggregate operating budget when determining whether an affirmative vote of five Councilmembers is required to approve the budget; provides that the Consumer Price Index shall be computed for the twelve months preceding December first of each year; and makes a clarifying change.

Councilman Potter directed attention to his proposed additional amendment to add the following language after the phrase "For the purposes of this limitation the aggregate operating budget":

shall include all items for which appropriations were
included in the operating budget of the preceding year

Mr. Potter said that his amendment has been discussed with the Office of Management and Budget. The amendment is proposed to ensure that the comparison from one year to the next truly reflects the increase in operating budget expenditures. He said that it might be helpful to add the following clarifying language:

Mr. Spengler directed attention to the Charter Review Commission's proposed Charter language for Section 305, noting that the word "fully" between "for" and "self-supporting" in the proposed language is used to describe enterprise funds which are not necessarily fully self-supporting.

Councilman Gudis moved, duly seconded, to delete the word [fully] between "for" and "self-supporting" in the Charter amendment.

Councilman Hanna suggested that the word "self-supporting" be deleted also. Mr. Gudis accepted Mr. Hanna's suggestion as an amendment to his motion.

Mr. Spengler said that accountants use the term "primarily" self-supporting. If it meets that test, it is considered an enterprise fund.

Councilman Potter moved, duly seconded, an amendment to Mr. Gudis' motion to substitute the word "primarily" for "fully."

Councilman Hanna said that, if the word "primarily" is used, it will have to be defined. In his opinion, it is simpler to say "enterprise funds" without any adjectives.

Councilmembers Potter and Fosler voting in the affirmative and Councilmembers Hanna, Gudis, Scull, Crenca and Gelman voting in the negative, the amendment to Mr. Gudis' motion failed for lack of a majority vote.

Without objection, the Council approved Mr. Gudis' motion, as amended, to delete the words [fully self-supporting].

Upon motion of Councilman Gudis, duly seconded and without objection, the Council agreed to delete [the Parking Lot districts] from the proposed Charter amendment for Section 305 of the Charter.

Ballot Question B and Proposed Charter Amendment (Collective Bargaining - County Employees - This involves an amendment to Section 401 of the Charter and the addition of a new Section 511 authorizing the Council to provide by law for collective bargaining.

President Gelman asked about the distinction between "mediation" and "arbitration." Mr. Newman said that mediation is a resolution of differences by an informal procedure, while arbitration is a resolution of differences by a formal procedure involving the issuance of a decision by an arbitrator. The question of whether the decision is binding or not depends upon the agreements reached by the parties involved. Councilman Fosler noted that "binding arbitration" is another term to be considered.

Councilman Hanna moved, duly seconded, to delete from the proposed Charter amendment for Section 511 the words [arbitration or other impasse resolution procedures] and to substitute mediation or non-binding arbitration.

Ms. Elizabeth Spencer, a member of the Charter Review Commission, said that the Charter Review Commission felt that the language in the Charter should be as broadly permissive as possible because the legislation enacted by the Council may be different for different groups.

President Gelman expressed the view that the language in the Charter amendment should be broad because it empowers the Council to enact legislation.

Councilman Hanna said that he prefers to restrict the law that may be enacted to provide for only non-binding arbitration.

Councilman Potter suggested that Mr. Hanna would only need to add the word "non-binding" before the word "arbitration" to accomplish his objective. Mr. Hanna accepted Mr. Potter's suggestion as an amendment to his motion.

Ms. Spencer pointed out that this will create a conflict with Section 510 of the Charter which provides for binding arbitration with an authorized representative of the Montgomery County police officers.

Mr. Geno Renne, President of the Montgomery County Government Employees' Organization (MCGEO), cited the need for equity among County employees. He said that, regardless of whether it is included in the Charter, the Council has the ultimate responsibility of deciding whether it will accept binding arbitration. He said that both of the groups represented by MCGEO are currently under "meet and confer", and that it was hoped that the Charter amendment would provide one system of arbitration for all employees. He said that binding arbitration is preferred because without it there will be inconsistency and uncertainty about how an impasse will be resolved.

Councilman Potter said that he believes binding arbitration would remove from the Council its authority to make the final decision. Noting that he believes that it might be appropriate in situations where strikes are prohibited, Mr. Potter raised objections to the language proposed for Section 511 that says that "any law so enacted shall prohibit strikes or work stoppages." He believes that the Charter amendment should provide some flexibility and balance. He noted that Section 510 prohibits strikes, but provides for binding arbitration.

Councilman Hanna said that he objects to relinquishing of the Council's responsibility to an arbitrator and believes that it could have negative results. He cited a case where employees negotiated an agreement under binding arbitration which called for salary increases which could not be met without a tax increase. He said that the court ruling in this case was that the only individuals who have the overall responsibility of the government are the elected officials; an arbitrator cannot remove those powers and demand something that is against the public interest. He said that he is in favor of collective bargaining for employees if this is what the employees wish.

Councilmembers Hanna and Scull voting in the affirmative and Councilmembers Gudis, Potter, Crenca, Fosler and Gelman voting in the negative, Mr. Hanna's motion to add non-binding before the word "arbitration" failed for lack of a majority vote.

With respect to the language which indicates that the authority for collective bargaining may be granted to authorized representatives of officers and employees of the County government not covered by Section 510, Mr. Renne pointed out that MCGEO cannot represent non-merit employees. He believes that the Council can address this issue through the legislation it enacts in this regard.

Councilman Potter moved to substitute the word may for "shall" before the word "prohibit" in the language proposed for Section 511. The motion failed for lack of a second. In making the motion, Mr. Potter said that he believes that the issue of prohibiting or permitting strikes could be addressed in legislation the Council enacts.

Mr. Renne requested that the record reflect MCGEO's opposition to the lack of flexibility in the Charter amendment for County employees.

Councilman Potter moved to delete the word [only] between "system" and "to" in the language proposed for Section 401. Following discussion, without objection, the Council agreed to amend this language by including a comma before the word "only", as suggested by Ms. Spencer.

Councilman Hanna raised a question about the language proposed for Section 401 that says that "officers and employees who are members of a unit for which a collective bargaining contract exists may be excluded from the provisions of the merit system." He expressed the view that employees should