



September 18, 2012

Dear Democratic Party Precinct Officials:

I write to request an opportunity to speak to you briefly on Wednesday night at the Precinct Officials meeting as an attorney for the Montgomery County Fraternal Order of Police and as a former Maryland Democratic official. I wish to explain my strong opposition to Question B and to urge you to recommend to the Central Committee a “NO” vote. It is critical for our County and for labor fairness that voters overturn the Council’s legislation that would roll back the Montgomery County Police’s 30-year statutory right to bargain over the “effects” of the Police Chief’s and management’s decisions.

I served as a Maryland Democratic National Committeeman for 12 years -- from 1980 to 1992 – and as a member of the Maryland State Central Committee. I also served as Special Counsel to President Clinton from 1996-98, and was the Democratic nominee for Congress in the 8<sup>th</sup> congressional district in 1976. I hope that my past service as a Maryland Democratic official, my representation of the FOP, and my continuing status as a Montgomery County citizen demonstrates to you my capacity to speak at tomorrow night’s meeting.

It is particularly important that you hear from me given that in recent days, at least one County employee -- paid by taxpayers and using government resources -- has distributed information that is demonstrably false. For example, earlier today, Karen Falcon emailed out a paper wrongly blaming “effects” bargaining for a delay in Use of Force policies. As explained on Exhibit A, Use of Force policies are not subject to “effects” bargaining and have nothing to do with it – nothing. This is particularly galling because police officers have now agreed to three different Use of Force proposals, only to be told after agreeing that management no longer agreed. The police are currently waiting for management’s next proposal.

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More generally, I will urge a “NO” vote to Question B, and recommend overturning the Council law enacted last spring that would deprive our police officers of the right to bargain regarding the “effects” of management decisions, because of the following three facts:

- (1) Under current law, management may exercise all management rights – which is not affected at all by the right to bargain over the “effects” of those decisions;
- (2) There is zero downside to allowing such “effects” bargaining to continue – the police department is already able to implement immediately any decision that is a matter of significant public safety. If the matter is not such a public safety matter, the current law requires mandatory resolution within 50 days on the appropriate solution to the “effects” of management decisions, or implementation proceeds; and
- (3) Montgomery County’s statutory clarity in the limits of the right to bargain over the effects of the exercise of a management right is an *advantage*, limiting legal expenses and litigation over “unfair labor practices.” Changing the law guarantees that management and our police officers will engage in costly litigation over matters that are now resolved quickly and inexpensively.

I know that many of my Democratic friends of long standing for many years, including our distinguished County Executive Ike Leggett, supported this repeal of “effects bargaining” in the County. But with all due respect, the letter you received on September 12 from Executive Leggett and my friend Roger Berliner, County Council President, omitted every one of the above three facts. Moreover, their letter makes statements indicating that they misunderstand the facts as to how “effects” bargaining has actually worked in the County over the last three decades. Indeed, as you will note from the attachment to this letter, every single assertion in the Leggett and Berliner letter was either false, misleading, or both.

My friends, Executive Leggett and Council President Berliner state that the Council’s decision to roll back bargaining rights of the County’s police should not be compared to what the Republican Governor Scott Walker did in Wisconsin. “That is not true,” they write.

Well, I agree that the County Council and Executive Leggett did not do what Governor Scott Walker did, as they phrased it, “a la Wisconsin.” The truth is, they did worse. Governor Scott Walker exempted police from his rollbacks of collective bargaining rights. The

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County Council and Executive Leggett affirmatively acted to roll back “effects” collective bargaining for County police.

Another key, indisputable fact omitted from Executive Leggett’s and Council President Berliner’s letter: they failed to mention that not even once over 30 years has the right to effects bargaining resulted in the 50 day resolution process. Not once.

Their letter describes (falsely and misleadingly, as Attachment A shows) the parade of horrors caused by the County police’s right to “effects” bargaining over the years.

In other words, there has been no downside in over 30 years in allowing police officers to have limited rights, defined by statute, to bargain over the “effects” of management decisions by Police Chief Tom Manger – while not having any right to challenge the actual management decisions themselves. There is no “delay” seen in over 30 years in allowing these rights – since the 50 day process has never been invoked. And in any event, even if it had been, under the current law, the Chief could immediately implement any rules and policies if he made a good faith determination, in cases of a public emergency, they had a “significant effect on the safety of the public.” And even if he did not so determine -- and there were effects bargaining that resulted in the 50 day process, which there has never been to date - the maximum amount of time that a resolution could be reached under the current law was and would be less than two months.

I request an opportunity to speak to you at the Wednesday evening meeting to make this presentation and to respond to questions, and would welcome an opportunity to discuss and debate this issue with my good friends, Executive Leggett and Council President Berliner. If that is not convenient for Wednesday night, then I hope precinct officials and the Central Committee will provide me an opportunity to do so in the near future before any final decision is made on a position on Question B.

Sincerely,

*Lanny Davis* (ljd)

Lanny J. Davis

Attachments