



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

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March 14, 2003

TO : All Unit Members
FROM : Walter E. Bader, President *Walter E. Bader*

On February 25, 2003, I posted announcement that we had lost the arbitration. Nowhere in that announcement, or at any time since, did I say that Charles Moose kept us from getting a better pay raise. Rather, I said that he opposed our final offer in a winner-takes-all arbitration that involved pay. Indeed, I specifically stated then, "it is Lodge 35's, **not management's**, job to represent you in negotiations."

The message was that we lost and must accept that loss in support of the process. However, I was critical that police management so vigorously opposed us in a winner-takes-all process, particularly as it relates to officer safety.

The game they play is to pretend somehow that the County consists of different entities all involved in the bargaining process. Nothing could be farther from the truth. This is one County government. Your employer is the "county executive and designees." MCP, OHR, OMB, and others are those designees. They are all one in the same. They sit on one side of the table. We sit on the other. Upon *bona fide* impasse, the Arbitrator sits at the head of that table with us on the right side and the Employer on the left.

In the "MCP Bulletin", Chief Moose has addressed this matter. Unfortunately, he omits a lot of the detail as to what actually occurred. We can fill in the voids with bargaining notes and hearing transcripts.

Below is a chart comparing Chief Moose's statements with my statements of fact. Ordinarily, I would let the matter rest, but the issues involved are so significant that they require full discussion.

Charles Moose Statement	W.E. Bader Response
<i>Many of the conversations seem to involve my keeping FOP members from getting a raise.... I have said, and continue to say, "I wish every person with the Montgomery County Police was paid what I am paid"—then I would ask for more. So, for me to be blamed for members' not getting a raise is interesting</i>	We did not blame Chief Moose for "not getting a raise." What we said was that he opposed us in a winner-takes-all arbitration over pay. (See Safety Below.) ----- During negotiations in 2000-01, we were talking about pay. Chief Moose was present. I said, You support our proposed pay increase, "Don't you?." He was silent. My response was, "It is easy to talk at to members and say you support pay increases, but here is where the rubber hits the road." No oral response.

<i>During this past session I gave no testimony</i>	This is a disingenuous abrogation of responsibility. Chief Moose was present for and gave moral support to John King when he testified against our Final Offer. He was also present and participated during the final hours of mediation. He cannot now disavow direct involvement.
<i>The Human Relations bargaining team does ask us, as management, about contract language and how it may or may not impact the operation of the Department</i>	FOP 35 bargains with a single party, i.e., the County Executive and his designees. It is one County, one team that includes police management. If the other side isn't talking with its own players, there's a management problem.
<i>But when you say that testimony against language is the same as testimony against pay, the lines have been blurred</i>	There is nothing blurred about testifying in a winner-takes-all arbitration. It is crystal clear. The purpose of testimony is to convince the arbitrator that your position on any issue is the one he ought to adopt. <u>If you testify against point A, you are testifying against the entire final offer.</u> A quarterback who throws a few passes for the Cowboys can't later claim that he wasn't against the Redskins.
I was not called [to testify] by either side	Not the point. Chief Moose personally and officially opposed our Final Offer. In 21 years of bargaining we have never called a police chief to testify at <u>interest</u> arbitration. He was already opposing us and we would be very concerned about what he might say. At negotiations in 2000-01, we did ask him about and got no favorable response. We don't need him to testify for us. He testified against us. (The last time we called Chief Moose to testify in a <u>grievance</u> arbitration, his attorney proffered that he would disavow that a former assistant chief had authority to discuss a matter with Lodge 35.)
<i>But still, the message is that I kept the FOP from a raise. I disagree.</i>	Again, we never said he kept us from getting a pay increase – we got 2%. What we said was that he opposed us in a winner-takes-all arbitration where significant pay and safety issues were before the arbitrator. Again, we only saw police management when they were opposing us.
<i>But one loss every 13-14 years is not a bad record. This doesn't put money in your pocket but it may help put things in perspective.</i>	We accepted the award the minute it was issued. Our concern was deeper, as expressed in a message on our WEB Page. Our concern was their vigorous opposition to our Final Offer, including officer safety.

<p><i>Many of the conversations seem to involve my commitment to your safety.</i></p>	<p>Let's talk about safety. A Joint Labor-Management Safety Committee is charged with safety. The Committee has existed since July 1, 1983 and recommended cage cars (in some cars); push bumpers (on some cars) to keep officers from getting hit on disabled vehicle calls; shotgun racks; and a four-corner strobes to keep officers from getting T-boned on Code 3 calls. Police management did not act on a single one of these recommendations. We took them to the table and still only barely kept them alive because police management opposed them.</p>
<p><i>because it is not about certain equipment, the new guns or an order to charge a scene in an unsafe manner</i></p>	<p>Equipment was an issue during negotiations. The guns were blamed on Lodge 35 until, on November 4, we said we were prepared to sign that day. Management said it wasn't ready. There was no issue about "charg[ing] a scene" on the table.</p>
<p><i>This conversation seems to revolve around the timeline when the information was known that Malvo and Muhammed became 0100 suspects.</i></p>	<p>This is a diversion. On January 2, 2003, Management was given the following demand: Article 32, "<i>Section D. Timely Information Concerning Officer Safety. The department shall at all times ensure that unit members are given prompt notification of all vehicles, suspects, and conditions of which it becomes aware and that that could reasonably affect officer safety.</i>"</p>
<p>N/A</p>	<p>Police management did not respond to the demand at any time during negotiations.</p>
<p>Police Management submitted the following Final Offer: <i>Article 32, Section A.</i></p> <p>1. The employer shall take all reasonable steps to preserve and maintain the health and safety of its employees, including the timely release of appropriate information to preserve officer safety. To that end the parties agree to establish a joint health and safety committee to be composed of three (3) members appointed by the bargaining unit and three (3) members appointed by the County....</p>	<p>After Impasse, John King came and expressed concerns. We addressed his concerns through an amended Final Officer: <i>Section D. Timely Information Concerning Officer Safety.</i></p> <ol style="list-style-type: none"> 1. When appropriate, the department shall ensure that unit members are given prompt notification of all vehicles, suspects, and conditions of which it becomes aware that may jeopardize officer safety. 2. The department shall ensure that unit members are given prompt notification of all vehicles, suspects, and conditions where it is reasonably likely that an officer, acting in his/her official capacity who comes into contact with such vehicle(s), suspect(s), or condition(s) would face greater than the normal threat of death, injury, personal danger, or the need to use deadly force. <p>Subsection 1 is similar to the County's Final Offer. However, Subsection 2 was vigorously opposed by police management.</p>

<p><i>I have tried to remain focused on the future, but the past keeps being discussed. Also Malvo, above.</i></p>	<p>The first time police management wanted to discuss the safety issue was after impasse. We said that the sniper incident is over; we are concerned about the future, not the past. On January 29, the first day of arbitration, but prior to formal hearings, Chief Moose was present at a discussion on our Final Offer. He brought up the snipers and said that our Final Offer implied he withheld information in the sniper case. Again, we said we want to look forward. At arbitration, we tried to avoid sniper discussions, Management, not Lodge 35, raised them. (See transcripts.)</p>
<p><i>During this past session I gave no testimony</i></p>	<p>After personally participating in a meeting with the arbitrator, Chief Moose refused to alter his position on our Final Offer on officer safety. It then went to formal hearing.</p>
<p>N/A</p>	<p>We had five days of hearings. The opposition to our Final Offer on officer safety consumed a lot of time we could have dedicated to economics, revenues, and other important issues. Because officer safety is of tremendous importance, we committed time and effort opposing management and supporting our right to live. Please read transcripts on FOP WEB Board.</p>
<p><i>It has been alleged that we testified against your safety. Not so</i></p>	<p>February 8, 2003 was the last day of arbitration hearings. MCP was still opposing our final offer. Bill O'Toole testified against safety <u>on an entirely new theory</u>. Our final offer was amended and agreed.</p>
<p><i>Please remember we now have people getting Top Secret briefings from several federal agencies. We wanted to be careful about agreeing to language that would cause them a conflict about getting that information</i></p>	<p>This issue was not raised until the last day of arbitration and is the theory Bill O'Toole advanced in his testimony of February 8. ----- On January 30, the department's position was that it might be bad for PR. (See transcript.)</p>
<p><i>It is good that we are willing to have our own internal discussions because if we remain silent it may harm trust.</i></p>	<p>As noted, the issue was on the table by January 2. There was very little discussion. Thereafter, there was considerable formal testimony against safety in favor of PR.</p> <p>The management attitude over our Final Offer and exhaustive attempts to fight a very reasonable contract provision has harmed trust.</p>

<p><i>We discussed the actual language, were sad that it was even at the table, but we did reach agreement about the language</i></p>	<p>Our response was given on February 3 when I testified as follows: "What I fear is your violent reaction to the reasonable language that we have proposed. That scares us. I would suggest that we were any other police department in this country, we'd probably have management signing that quickly. But this is Montgomery County...."</p> <p><u>Question</u> By County/Police Dept. Attorney: "What, what is the pre-bargaining history in the, of the practice of providing the, the riding officers the information that the union is referencing in (d)(2)?"</p> <p>Answer: "Prior to recently with our current police management, it's something that we just took for granted. It's almost like realizing they don't want us to breathe anymore so we have to come bargain that we have a right to breathe free air here. I mean that is how that was taken for granted. We always figured they would get information out."</p>
<p><i>Now it's being explained as "it must be a real problem because it is in the contract." A classic no-win situation</i></p>	<p>It was a big problem and still would be had Lodge 35 not put it into the contract. Without our attempts to arbitrate the issue in winner-takes-all arbitration, members clearly would have been in a life and death "no-win situation".</p>
<p><i>we have agreed with the FBI and the ATF to be part of an after-action report on the sniper incident funded by Bureau of Justice Assistance. This independent contract has been awarded to the Police Executive Research Forum (PERF).</i></p>	<p>BJA is DOJ, so look out. PERF is a management group and hardly independent, somewhat like "fox and the hen house" Chief Moose discusses in the bulletin.</p>
<p>Sniper timing – Who knew what and when.</p>	<p>We are looking at this issue, but it has nothing to do with the Final Offer we sought to avoid an officer's death from lack of information in the future.</p>
<p><i>Let me assure you that officer safety has been, continues to be, and will always be my Number-One priority.</i></p>	<p>Actions speak louder than words. They were silent on our safety demand for over 19 days and they fought it over an additional two weeks. It is now a priority?</p>

Additionally, there is an email that has been sent to lieutenants, captains, and assistant chiefs presenting the company line, replete with *post hoc* rationalizations. [See end last page of this document.] **That email discusses our officer safety final offer and says, "[Their] initial reaction was a slap in the face to the officers who comprise the department."**

If, indeed, that was their reaction (and this is the first we have heard this excuse), it demonstrates just how out of touch management is. There is nothing in our final offer or initial demand that is anything other than genuine concern for officer safety. **The "slap in the face" was Charles Moose's, John King's, and Bill O'Toole's vigorous opposition to officer safety and the FOP language above.**

Any discussion of the pre-arbitration demand is irrelevant – it was amended. The fact remains, and as stated above, the department actually arbitrated over officer safety and fought our Final Offer until the final hours of the final day of arbitration. Again, read John King's transcript and read the department's lawyer's questions in my transcript. We will be posting the other transcripts in the future.

Contrary to this email, there was no cooperation on the officer safety issue. Management did not even discuss it until after impasse and then only opposed it through testimony. The last minute agreement came when the County offered a technical amendment, not out of concern for your safety, but in the strategic interest in winning. (We were well aware that our best strategy for winning the arbitration would to have been to leave the final offer in for decision by the Arbitrator, but unlike management, we were not willing to risk officer safety for legal strategy.)

Bottom Line: We were involved in a winner-takes-all process. Police management actively, and vigorously opposed us in formal arbitration hearings for the sole purpose of trying to convince the arbitrator that he should award their final offer and reject our final offer. **Pay was part of our final offer.** Much of that opposition was directed at our final offer requiring that they simply provide us with information on **"all vehicles, suspects, and conditions where it is reasonably likely that an officer, acting in his/her official capacity who comes into contact with such vehicle(s), suspect(s), or condition(s) would face greater than the normal threat of death, injury, personal danger, or the need to use deadly force. "**

MCP BULLETIN
March 13, 2003

Chief's Corner

There seems to be a number of current events that are the focus of numerous conversations. These conversations often end with more questions than answers. Since I cannot sit with each and every employee, it has been confusing to me whether I should join in or let you carry forth with your discussions. I have tried to remain focused on the future, but the past keeps being discussed. So here goes ...

Many of the conversations seem to involve my keeping FOP members from getting a raise. Many times I have said, and continue to say, "I wish every person with the Montgomery County Police was paid what I am paid"—then I would ask for more. So, for me to be blamed for members' not getting a raise is interesting. During this past session I gave no testimony, I was not called by either side. The Human Relations bargaining team does ask us, as management, about contract language and how it may or may not impact the operation of the Department. We have always seen, and very likely always will see, certain contract language differently than the way the FOP sees it. But when you say that testimony against language is the same as testimony against pay, the lines have been blurred. In most cases, the County gives a pass-through to management and—as I have said above—if everyone at FOP level is paid more, then, eventually, everyone is paid more. Thus, the County does not even ask me or any Executive Officer about pay issues ... something about the "fox and the hen house." But still, the message is that I kept the FOP from a raise. I disagree ... but I am not the thought police, so I hope you believe me. I respect what you do and I wish everyone got paid more ... but even if I had total control, I know there is only so much to go around. The FOP has been very successful at bargaining and I would not have predicted the arbitration outcome. But one loss every 13-14 years is not a bad record. This doesn't put money in your pocket but it may help put things in perspective.

Many of the conversations seem to involve my commitment to your safety. However, this is different because it is not about certain equipment, the new guns or an order to charge a scene in an unsafe manner. This conversation seems to revolve around the timeline when the information was known that Malvo and Muhammed became 0100 suspects. Since the case has not yet been to trial, and since everything I say and write is likely to be in the local media, this has been a very tough decision about what to say. I know that many state, local and federal officers had various portions of the investigation that eventually led to the arrest. We all know that certain documents were created in the State of Washington on west-coast time prior to being faxed to the JOC.

On 10-22-02, after the shooting of the bus driver, we developed several strong suspects. During a briefing we were informed that Malvo's fingerprints came back on a periodical about shooting that had been found in the Alabama shooting incident, yet there still was no link to Montgomery County. Pieces continued to come in, but the day closed without vehicles or warrants or confirmed suspects.

During the 0830 Investigative Brief on 10-23-02, additional information was discussed about the bus-driver shooting and links to the other shootings. By the 1600 hour briefing, Malvo and Mohammad had become potential suspects of interest and the investigators began the process of obtaining the material-witness warrant for Malvo and the federal firearms-violation warrant for Muhammad for an older offense.

By 1700 hours on 10-23-02, investigators were planning to show fliers of Malvo and Muhammad to area hotels, gun stores, gas stations, etc., to determine any connection in this area. At this point, copies were forwarded to every district station and put on the WebBoard. The first posting went out at 1829 hours. ECC instructed all shift supervisors to contact their stations.

Then they were instructed to have all officers view the information. This was done to keep the information off the police radio, which was being monitored by the media. A second message was put out at 2255 hours to change the mistaken "Wanted – Persons of interest related to Sniper Shootings" to a more correct "Wanted for Questioning Reference 0100s." And at this time, the lawyers debated the law about the juvenile picture, and the license plate was inappropriately leaked and played on television before it could be confirmed. As we all know now, the plate and car had been entered in our various systems many times, but the connection had not been made.

More specific details and exact minutes will all be issues at court. It is good that we are willing to have our own internal discussions because if we remain silent it may harm trust. We must, however, limit the sharing of documents and other evidence at this time. Please note that we have agreed with the FBI and the ATF to be part of an after-action report on the sniper incident funded by Bureau of Justice Assistance. This independent contract has been awarded to the Police Executive Research Forum (PERF). This team will be contacting many members of our Department. Everyone is encouraged to talk to them. If they do not contact you, however, you are certainly welcome to call them.

To address another issue, many on our Department have not seen a co-worker die a violent line-of-duty death. I have ... more than once—as an officer on the raid team, and also later as the Chief of the agency. It is very painful. And it is also painful to have co-workers say you do not care about officer safety. It has been alleged that we testified against your safety. Not so. We discussed the actual language, were sad that it was even at the table, but we did reach agreement about the language. In short, nothing to hide so put it in the contract. Now it's being explained as "it must be a real problem because it is in the contract." A classic no-win situation. Please remember we now have people getting Top Secret briefings from several federal agencies. We wanted to be careful about agreeing to language that would cause them a conflict about getting that information. The last thing we want is a decision by these agencies to not brief the Montgomery County Police because of a clause in the contract. This is new ground and we are doing the best we can.

These are difficult times. The nation stands on the verge of war, the economy is faltering, the threat level and terrorism warnings make us feel helpless.

Again, I am glad we are discussing matters that are important to us. In the end we must depend on each other and the community must depend on us.

We made it through a difficult case. We are doing a great job addressing crime, traffic, drugs and terrorism. Let me assure you that officer safety has been, continues to be, and will always be my Number-One priority.

From: Hill, Rodney
Sent: Wednesday, March 12, 2003 5:45 PM
To: Wilkins, Janyce; Allen, Harold; Anastasi, Joseph; Bolesta, Robert; Boyd, Robert; Brown, Kathleen; Burnett, Eric; Cahalen, Evelyn; Cunningham, John; Damskey, John; Police, Davis; Betsy; Demme, Nancy; Didone, Thomas; Faass, Christina; Falcinelli, David; Fenner, James; Fitzgerald, John M.; Fitzpatrick, Thomas; Fryer, Wayne; Gillespie, David; Goldberg, Alan; Hamill, Russell; Police, Hanson, Raymond; Hatcher, Lance; Hill, Rodney; Jacocks, Thomas; Jerman, Wayne; Kapinos, John; Kornegay, Demitri; Lanham, William; Lester, Thomas; Mancuso, Salvatore; Mattingly, Joseph; McCarthy, Diane; Mcfee, Douglas; Mcmanus, Bryan; Mcswain, Darryl; Pierce, Terrence; Price, Michael; Raum, Philip; Reynolds, Luther; Rhodes, Kathi; Tracy, Drew; Walker, Patricia; Waring, Daniel
Cc: Williams, Anita; Scott, Sharon; Larocca, Marie; Fry, Michael; Torgesen, James; Stevenson, David; Pearlman, Sandra; Adler Joseph
Subject:

ALL:

I have mailed each of you a copy of the arbitrator's decision reference this last round of contracts. Pages 36 and 37 have the arbitrator's final conclusion and rationale for the award. In short, the arbitrator felt that the FOP's proposal of a 3.5% wage increase, coupled with a 3.3% wage adjustment, amounting to a 6.8% pay increase, was too costly during these difficult economic times.

Included in the arbitrator's decision each side's proposals and the arbitrator's opinion reference those proposals. A number of issues were agreed upon prior to the final offer, including the controversial "Officer Safety" language. Apparently, the inclusion of that language has caused great consternation within the department.

Within the department, the obvious implication being that management does not care about officer safety and this is just not true. For clarification, the FOP's initial proposal insisted that the department "at all times" ensure that unit members are given prompt notification of conditions that could reasonably affect officer safety. We then added language that stated "when appropriate". The union countered with "greater than the normal threat of death". Our initial reaction was that this proposal is insulting and a slap in the face to the officers who comprise this department. However, since we in fact prioritize officer safety, we saw no harm and were not opposed to contract language that memorializes that commitment. What is important to note is that we did indeed believe that the initial language submitted by the FOP was so subjective as to render compliance nearly impossible. Therefore, in response to the FOP's initial proposal, we countered with language that strengthened and clarified our commitment. The result was language that both sides agreed to prior to the submission of proposals for the arbitrator's decision. If the FOP did not approve of the language, then a proposal could have been submitted at the arbitrator, but no submission on this issue was generated. We worked cooperatively with the FP on this issue, and it was resolved.

Feel free to call me if you have question. Take care, be safe.

Rod Hill