

Montgomery police union threatens to sue the county

Officers say they were entitled to contracted pay raises

by Erin Cunningham, Staff Writer

Montgomery's police union may sue the county for not approving pay raises and benefits that officers were expecting this year, according to a memo issued by its attorney.

In a notice sent last week, the union states the council was bound by an arbitrator's decision earlier this year on the union's fiscal 2012 contract to provide as much as 3.5 percent raises for most officers.

Council members have said that is a limitation on the council's absolute authority to allocate funds.

Councilman Marc Elrich (D-At large) of Takoma Park said Tuesday that the union's argument has no merit.

"We are clearly the appropriating body, and we're under no legal compulsion to allocate those funds," he said. "There may be moral and ethical reasons, but there are no legal reasons."

The council did not fund pay raises for any employees in its fiscal 2012 budget, approved May 26, saying they were unaffordable. County officials say the pay raises for police would have cost \$1.4 million this year.

In the union's notice, sent to Council President Valerie Ervin (D-Dist. 5) of Silver Spring and County Executive Isiah Leggett (D), union attorney William James Chen Jr. writes that the council broke the law by not funding the contracts.

The union also opposes a change requiring officers and every other county government employee to pay more for their health care benefits.

Ten people, including Fraternal Order of Police Lodge No. 35 President Marc Zifcak and past president Walt Bader, are named in the memo, but all county police officers are named as potential plaintiffs.

Zifcak did not return calls for comment, and a person who answered the phone at the FOP office directed questions to Chen, who declined to comment.

The lawsuit had not been filed as of press time Tuesday, and Chen would not say when or if he would file.

County attorneys said they could not comment without seeing the lawsuit.

“However, each provision in a collective bargaining agreement that requires an appropriation of funds is subject to an annual appropriation by the council,” said Bob Drummer, the council’s senior legislative attorney. “This would include a provision that is part of an award by an arbitrator.”

For fiscal 2012, an independent arbitrator weighed in on negotiations between the police union and county, accepting the union’s last, best offer, which called for some pay increases, said the county’s Director of Human Resources Joseph Adler.

“The council has the authority to decide if a provision in a collective bargaining agreement is affordable,” said Councilman Philip M. Andrews (D-Dist. 3) of Gaithersburg.

He also points out that when the council was considering collective bargaining legislation, union leaders argued it was unnecessary because the council was not bound by the decisions that take place during negotiations.

One of the county’s union leaders argued as much when testifying before the council in December.

Gino Renne, president of the United Food and Commercial Workers Local 1994/Municipal and County Government Employees Organization, told the council at the time, “Simply put, under current law an arbitration award is subject to county council funding.”

Andrews said Renne’s point undermines the police union’s argument.

County Executive Isiah Leggett (D) withstood similar legal challenges from county employee unions this year. Leggett prevailed when a judge ruled he was required to recommend budgets that are in the public’s best interest.