



*The Circuit Court for Baltimore County*

THIRD JUDICIAL CIRCUIT OF MARYLAND

TIMOTHY J. MARTIN  
JUDGE

COUNTY COURTS BUILDING  
401 BOSLEY AVENUE  
TOWSON, MARYLAND 21204  
410-887-6515

July 7, 2010

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Re: *Fraternal Order of Police Baltimore County Lodge 4 v. Smith*  
Case No.: 03-C-08-007070

Dear Counsel:

Enclosed please find a courtesy copy of the Order entered in the above-captioned matter. Should you have any questions, please do not hesitate to contact us at (410) 887-6515.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sarah A. Norton".

Sarah A. Norton  
Law Clerk to Judge Timothy J. Martin

TJM/san  
Enclosure

FRATERNAL ORDER OF POLICE,  
BALTIMORE COUNTY  
LODGE 4

Petitioner

v.

JAMES T. SMITH, JR. in his official  
Capacity, County Executive

Respondent

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No.: 03-C-08-7070  
\*

\* \* \* \* \*

**OPINION & ORDER**

PROCEDURAL HISTORY

DATE

July 1, 2008	Petitioner (hereinafter FOP) filed a Complaint for Declaratory Judgment and Injunctive Relief (paper 1,000) against James T. Smith, Jr. in his capacity as County Executive, Baltimore County Maryland (hereinafter J. Smith).
August 12, 2008	J. Smith answered the Complaint (paper 1,001).
January 8, 2009	FOP filed a Motion for Summary Judgment (paper 8,000) with supporting memoranda, an affidavit of Cole Weston, the President of FOP Lodge 4, ten exhibits and the deposition transcripts of Keith A. Dorsey, Director of the Office of Budget and Finance of Baltimore County.
January 9, 2009	J. Smith filed a Motion for Summary Judgment (paper 10,000) with supporting memoranda and four exhibits (including a portion of the Dorsey deposition transcript).
April 15, 2009	J. Smith filed his opposition (paper 10,001) to FOP's Motion for Summary Judgment.
April 16, 2009	The FOP filed its opposition to J. Smith's Motion for Summary Judgment (paper 10,003) with additional affidavit of Cole Weston and an additional five exhibits.
May 10, 2010	This court heard oral arguments from the parties on the reciprocal Motions for Summary Judgment and held this matter sub curia.

## OVERALL ISSUES

In the context of a summary judgment motion, should this court declare that J. Smith refused and/or failed to follow the requirements of the County Employee Relations Act (ERA), Baltimore County Code Article 4, Title 5, Subtitle 505(h) with respect to his mandated duties contained therein?

If so, should this court declare and order that J. Smith implement the provisions of certain proposed bills and to place these provisions in the Memorandum of Understanding (MOU) between Baltimore County and the FOP for the year 7/1/08-6/30/09?

If so, should this court declare/order that in the future J. Smith (or successor County Executive) submit any MOU provisions in an arbitration award under subtitle 505 of the ERA to the County Council in accordance with 505(h) and the court's decision herein?

If so, should this court declare/enjoin J. Smith (or successor County Executive) from submitting to the County Council the provisions of any MOU contained in an arbitration award in violation of the requirements of 505(h) of the Employee Relations Act?

Alternatively, should this court declare that J. Smith did not violate or refuse and/or fail to follow the requirements of Baltimore County Code Article 4, Title 5, Subtitle 505(h) and deny all relief requested by the FOP?

To this court, an even more specific issue is as follows:

Does the language of the Code section, which is the subject matter of this dispute, give rise to one plain meaning? If so, applying the uncontraverted facts to the one plain meaning arising from the statutory language, did J. Smith violate the requirements of the section and fail and/or refuse to do that which he was mandated?

## SUMMARY JUDGMENT

Given reciprocal Motions for Summary Judgment pursuant to Maryland Rule 2-501, do the pleadings, affidavits, depositions, and exhibits on file display or generate any genuine issue(s) of material fact? And, if not, is either party entitled to judgment as a matter of law?

Here, both parties seek summary judgment under Rule 2-501. Notably, each argues that this matter does not represent a factual dispute, but is ripe for a determination

that the code section in question represents one meaning, as to what it requires, as to what it mandates and as to what it does not require. Neither party suggests any ambiguity in the statute. Each, however, is diametrically opposed to the position taken by the other as to the intent and effect of the language.

The summary judgment cases are legion and no shopping list is required in this opinion. Suffice it to say, this court must address two separate issues: (1) Whether the pleadings, depositions, answers to interrogatories, admissions and affidavits (or here – appended exhibits), show that there is no genuine dispute as to any material fact and whether the movant is entitled to judgment as a matter of law. (court's emphasis) See *Syme v. Marks Rentals Inc.*, 70 Md. App 235 (1987); *Bagwell v. Peninsula Regional Medical Center*, 106 Md. App. 470 (1995). This court does not attempt to decide any issue of fact or of credibility, but only whether such issues exist. See *White v. Friel*, 210 Md. 274 (1956).

Where the facts are conceded, undisputed or uncontraverted, and the inferences to be drawn therefrom are plain, definite and undisputed, their legal significance is a matter of law to be determined by the court. See *Fenwick Motor Co. v. Fenwick*, 258 Md. 134 (1970).

## ANALYSIS

### BINDING ARBITRATION

In November, 2002, Baltimore County voters approved an amendment to the Baltimore County Charter, providing for binding interest arbitration for the County Administrator on the one hand and either the FOP, Firefighters Union or paramedics on the other hand in the event of a dispute arising out of the negotiations to the end of

reaching a collective bargaining agreement. (As indicated, in the case of the FOP, called a Memorandum of Understanding, or MOU). This amendment required the County Council to implement legislation to that effect. This amendment is codified in the Baltimore County Code Article 4, Title 5, Subtitle 505 – BINDING ARBITRATION.

The statute indicates in §4-5-505(a) – *Impasse* – “If the County Administration (hereinafter J. Smith – County Executive) and the exclusive representative (here the FOP) are unable to reach an agreement on **wages, hours, or terms and conditions of employment** by February 1, an impasse may be declared in the negotiations with the exclusive representative with which there is no agreement, by either party by sending written notice to the other party.” (court’s emphasis) It further indicates in §4-5-505(b)(1) that “within 5 calendar days after receipt of the written notice as provided in subsection (a) of this section, the parties **shall** designate a member of the arbitration panel as the arbitrator.” (court’s emphasis)

In 2007, the FOP and J. Smith, for the first time since its passage, invoked the binding arbitration provision contained in the County Code. The arbitrator’s decision, dated March 19, 2007, contained certain provisions (indicated in Petitioner’s Exhibit 6 – Weston’s Affidavit) and after the arbitration award, J. Smith submitted to the County Council some of the provisions contained in the Arbitration Award. (court’s emphasis) Those not submitted to the Council were placed in the Memorandum of Understanding (MOU) (essentially the collective bargaining agreement for a given year) between the parties along with those that were submitted to the Council and ultimately approved by same. (court’s emphasis)

In 2008 the FOP and J. Smith reached an impasse as to certain matters and again entered into binding arbitration as required under the statute. The arbitration hearing was held on March 7<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup>, 2008. Baltimore County Code §4-5-505(f)(2) requires that the arbitrator adopt the final position of either the FOP or J. Smith and the arbitrator may not merge or combine either side's proposal in an effort to compromise. Following the arbitration hearing, the FOP's position was ultimately adopted by the arbitrator. However, rather than submit a portion of the provisions of the arbitration decision as he had previously, J. Smith submitted all fourteen provisions contained in the arbitration decision to the County Council for approval.

Of the fourteen proposals contained in the arbitrator's decision, eight were approved by the Council, one which the FOP agrees was properly submitted and rejected, and five remain at issue in this dispute: Bill 38-08 (Bereavement Leave), Bill 41-08 (Union Representative), Bill 42-08 (No Furlough), Bill 43-08 (Holiday Pay), and Bill 49-08 (Hearing Board). This court recognizes no issue with the submission of any/all of the fourteen unresolved matters to arbitration, as all fourteen of these were proposals relating to "wages, hours, or terms and conditions of employment" as specified in §4-5-505(a) and subject to determination by an arbitrator.

#### **THE PLAIN LANGUAGE OF THE STATUTE**

The voters' approval of the Charter amendment and the County Council's implementation of legislation to require binding arbitration in the event of an impasse must have affirmative meaning to this court; i.e. they cannot mean nothing. (court's emphasis) Baltimore County Code §4-5-505(h)(2) states that "the decision and the proposed memorandum of understanding shall be binding on the County Executive, the

exclusive representative, and individual employees in the representation unit". This is not insignificant to this court. The arbitration process as it exists is **mandatory** should the parties reach an impasse and the decision resulting from that arbitration is **binding on the County Executive**. To this court, logic dictates that in order for the arbitration process to exist as it does and to serve any purpose at all, J. Smith must be bound by the arbitrator's decision in the sense that J. Smith is to submit **only** those items which require "an appropriation of funds or the enactment of legislation". See Baltimore County Code §4-5-505(h)(3). (court's emphasis) It makes no sense to this court that the arbitrator is required to select only one proposed package – even if it represents "the good, the bad, and the ugly" (See Opinion and Award of Arbitrator page 52)– but the County Executive can then unilaterally and with unlimited discretion choose that which is ultimately submitted to the council as opposed to that which is placed in the MOU without County Council action.

This court's duty in statutory interpretation is to focus upon the intent of the legislature and the language of the statute in total. "The canons of statutory construction are well settled. We recently reaffirmed those, relevant and dispositive of this case in *Mayor & City Council of Baltimore v. Chase*, 360 Md. 121, 128, 756 (2000). In that case, quoting *Chesapeake and Potomac Tel. Co. of Md. V. Dir. of Fin. For Mayor and City Council of Baltimore*, 343 Md. 567, 578, 683 (1996) we said, in that regard, that in pursuing the real goal of statutory interpretation, the discernment of the intent of the Legislature, we begin our inquiry with the words of the statute and, when they are clear and unambiguous, we end it there, as well." See *Mid-Atlantic Power Supply Assoc. v. Public Service Commission of Maryland*, et al. 361 Md. 196 (2000).

The statute, §4-5-505, must be read as a whole, in its entirety, and it is the responsibility of this court to read it as such and determine if the language of the statute can be said to have one and only one meaning. Since neither party in this case has argued that the language contained in the statute is ambiguous, it is this court's duty to determine what, if any, discretion J. Smith has in determining which proposals should be submitted to the County Council.

It is clear to this court that it was the intention of the legislature to create a **binding** arbitration provision which fashioned a process by which J. Smith and the FOP could resolve differences during collective bargaining. Following that logic, this court acknowledges that the process of binding arbitration would be a worthless endeavor if it were to allow for J. Smith to submit all, none or some of the provisions which he alone felt appropriate and necessary for consideration by the County Council. Reading §4-5-505(h)(2) in conjunction with (h)(3)(i) and (h)(3)(ii), it is clear to this court that the decision by the arbitrator and the memorandum of understanding **shall** be binding on J. Smith, that he **shall** submit the provisions of the MOU that require an appropriation of funds or the enactment of legislation and importantly that it is the duty of J. Smith, pursuant to (h)(3)(ii), to "undertake all administrative and executive action necessary to submit legislation to carry out the decision issued by the arbitrator". (court's emphasis) All three provisions above, read in concert, clearly enumerate the responsibilities mandated upon J. Smith. "[This court is to] neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words the Legislature used or engage in a forced or subtle interpretation in an attempt to extend or limit the statute's meaning." *Taylor v. NationsBank*, 365 Md. 166, 181, 776 A.2d 645,

654 (2001). It is interesting to this court that nowhere contained in the statute is prohibitory language with respect to J. Smith's duties; i.e. nowhere in the statute is it expressly stated what J. Smith is **not** to submit to the County Council. However, his argument that the absence of any language to that effect indicates that his own discretion is virtually unlimited is not persuasive to this court. (court's emphasis)

It is the opinion of this court that the legislature never anticipated a problem such as the instant matter. Nonetheless, the statute requires that J. Smith undertake all actions necessary to effectuate the decision of the arbitrator, while making it expressly clear in §4-5-505(h)(2) that he is bound by the decision. If it is the duty of J. Smith to do all that is in his power to carry out the decision of the arbitrator and he is bound by the decision of the arbitrator, what would be the point in the legislature enacting a provision requiring **binding arbitration** of the unresolved issues if J. Smith could simply pass along all, none or some of the provisions for approval by the County Council or a theory that he had unlimited, unfettered discretion to do so, the very position J. Smith now argues? (court's emphasis)

This court carefully reviewed the Affidavit of Mr. Cole Weston, President of FOP Lodge 4, dated January 8, 2009 and the deposition of Mr. Keith Dorsey, Director of the Office of Budget and Finance, dated December 23, 2008. Contained in the deposition with Mr. Dorsey are clear, unequivocal concessions that there were no separate appropriations made for any of the five bills at issue in the instant dispute. Beginning on page 49 of Mr. Dorsey's transcript, line 20, "Q: Okay. Bill No. 40-08, I think we just – which is radio battery and charger provision for the FOP. Did you specifically appropriate money for this bill – A: Not specifically." Questions to the same effect follow

with respect to the other four bills at issue and Mr. Dorsey gives similar responses each time. (See Dorsey Deposition Transcript pages 53, 56, 60, and 68). Further, it is Cole Weston's contention that "none of these 'Bills' other than Bill 45-08 (Optional Retirement Allowance) and Bill 50-08 (Personnel Law Bill) actually modified existing legislation". See Weston Affidavit page 7 paragraph 15.

If J. Smith intended to pursue the argument that all of the proposals required either legislation or an appropriation of funds and that he submitted all fourteen for that reason, then J. Smith is required to support that position with affidavits, depositions or statements under oath indicating same. See Md. Rule 2-501(b)(2). This he has not done. Ultimately, J. Smith abandoned this position and now argues that, as County Executive, he has the right to submit all, some or none of the bills as he sees fit, so long as those that do require legislation or an appropriation of funds are submitted.

This court believes the language of the statute is clear, unambiguous and should be interpreted to mean that J. Smith is bound by the decision of the arbitrator and is to submit only those bills that require legislation or an appropriation of funds. This determination is only strengthened by the legislative history of §4-5-505. Both the FOP and J. Smith sought to limit the language included in the statute by way of draft Bills. In December, 2002, the FOP submitted a draft bill containing a provision limiting that which the County Executive should submit to the County Council. The language of that draft bill read "the County Executive shall submit to the County Council in a timely manner all provisions of the new collective bargaining agreement adopted by the Impasse Panel member which requires an appropriation of funds or enactment (or repeal or modification of a County law)...". Subsequently, on April 30, 2003, J. Smith submitted

a draft bill containing no restriction or limitation on what arbitration provisions needed to be submitted to the County Council. Ultimately the County Council opted to include in the Bill the language requested by the FOP indicating that J. Smith “shall submit to the County Council...the provisions of the memorandum of understanding that require an appropriation of funds or the enactment of legislation”. In 2007, when the FOP and J. Smith first made use of the binding arbitration provision, J. Smith did **not** submit all bills contained in the arbitration award, and submitted only those that required enactment of legislation or an appropriation of funds. This is significant to the court.

The language of the statute, read in its entirety, indicates to this court that the purpose of the binding arbitration is to do that which is says– **bind the County Executive**. This is the only logical deduction the court can reason for the implementation of the Binding Arbitration provision of the Employee Relations Act.

#### CONCLUSION

Pursuant to Maryland Rule 2-501 and after careful review of all that is required of this court, this court finds that J. Smith thwarted the clear purpose of the code provisions by submitting all the arbitrated proposals; some of which required appropriations; some of which required legislation together with proposals, to this court, which required neither. (court’s emphasis) This was violative of the code provisions and a failure by J. Smith to do that which was mandated.

For all of the above reasons, it is ORDERED,

That Summary Judgment is GRANTED in favor of the FOP and this court declares:

(a) That J. Smith failed to follow the requirements of Baltimore Code Code Article 4, Title 5, Subtitle 505(h);

(b) That J. Smith shall implement the provisions of Bill 38-08 (Bereavement Leave), Bill 41-08 (Union Representative), Bill 42-08 (No Furlough), Bill 43-08 (Holiday Pay), and Bill 49-08 (Hearing Board) and shall place these provisions into the Memorandum of Understanding between Baltimore County and the FOP for the year 7/1/2008 – 6/30/2009;

(c) That in the future, J. Smith (or successor County Executive) shall submit any MOU provisions in an arbitration award under Subtitle 505 of the Employee Relations Act to the County Council in accordance with 505(h) and this court's decision contained herein.

(d) That J. Smith (or successor County Executive) is enjoined from submitting to the County Council the provisions of any MOU contained in an arbitration award in violation of the requirements of 505(h) of the Employee Relations Act.

AND IT IS SO ORDERED, this 7<sup>th</sup> day of July, 2010.

  
Hon. Timothy J. Martin