



Ismael "Vince" Canales
President

FRATERNAL ORDER OF POLICE Prince George's County Lodge 89, Inc.

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June 30, 2009

The Honorable Jack B. Johnson
Prince George's County Executive
Prince George's County, Maryland
Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

Dear Mr. Johnson:

Late last week, Lodge 89 of the Fraternal Order of Police obtained a copy of Executive Order No. 18-2009, which you apparently signed on June 9, 2009, but did not circulate to County departments and agencies until June 18, 2009, and even then did not provide to the FOP, which serves as the exclusive representative of the County's police officers. Your attempt to conceal this Executive Order is not surprising, given that it may be unlawful under the County's Labor Code and Personnel Law, and it certainly is disrespectful to all County police officers who have bargaining rights through the FOP.

In this unilaterally issued Executive Order, you assert that, effective July 1, 2009, all determinations for the payment of overtime will utilize a definition of "hours worked" that does not include paid leave. A June 18, 2009 cover memorandum issued by the Chief Administrative Officer to circulate the Executive Order to all County departments states that employees covered by collective bargaining agreements will continue to employ overtime methods that have been practiced under those agreements, but that "[n]ew labor contracts will be subject to the provisions of this Executive Order." For the following reasons, among others, the Executive Order and the cover memorandum are both factually incorrect and legally suspect.

Let me start with the facts. For more than three decades, ever since the beginning of collective bargaining between the County and the FOP, the collective bargaining agreement has used the following words to govern overtime for police officers: "Any employee . . . who works in excess of eighty (80) hours in a pay period, shall have the option of receiving pay at the rate of one and one-half (1 1/2) hours for each overtime hour, or receiving compensatory time at the rate of one and one-half (1 1/2) hours of each hour worked." The clear intent of this provision has been to provide time and one-

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half overtime, in either pay or compensatory leave, to all police officers for any hour that the officer works that is in excess of his/her regularly schedule of 80 hours in a pay period. Effectuating that intent, under this provision, for more than three decades, the County has paid all officers time and one-half (in either pay or compensatory leave) for all work hours above 80 hours in a pay period.

To be sure, to obtain such payment, the excess hours must actually be worked by the officer. Stated another way, an officer does not earn time and one-half for hours in excess of the regularly scheduled 80 hours unless those hours in excess of 80 hours are actually worked. But there is no requirement, and there never has been any requirement, that the regular schedule of 80 hours per pay period must also be actual hours worked. This is made clear not only by the words of the collective bargaining agreement, and not only by the practice followed by the parties for more than thirty years, but also by all other indicia of the parties' mutual intent, including, among others, personnel regulations the County itself adopted and orders and regulations issued by the Police Department consistent with those regulations.

It bears noting, moreover, that the overtime provision in the FOP/County collective bargaining agreement – as described above – has been part of the agreement reached by the parties in each and every collectively bargained contract since the 1970s; has been the mutual joint interpretation of the parties under each and every collectively bargained contract since the 1970s (except for a few weeks in 2004, when the County proposed a unilateral change but then withdrew its proposal); and has been the practice followed by the parties under each and every collectively bargained contract governing the terms and conditions of employment for police officers since the 1970s.

Thus, your Executive Order is factually incorrect when it assumes that the collective bargaining agreement between the County and the FOP may now be unilaterally interpreted to mean that the regularly scheduled 80 hours in a pay period must be hours actually worked by the officer before overtime at the rate of time and one-half (in pay or compensatory leave) is required.

With regard to the law, your Executive Order also is patently unlawful if either its intent or effect is to implement a change unilaterally, or to instruct County bargaining representatives to refuse to bargain about overtime or engage in only surface bargaining about overtime, which remains a mandatory subject of negotiations. When negotiations resume between the County and the FOP later this week, the FOP will be prepared to bargain about the future payment of overtime. Should the County's bargaining representatives refuse to bargain, or engage in only surface bargaining, it will be clear that your unilateral issuance of this Executive Order was an unlawful interference in the

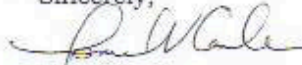
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bargaining process and a violation of the Labor Code, which mandates that both parties engage in good faith bargaining over all terms and conditions of employment. Appropriate legal measures will be taken, if necessary, to demonstrate any unfair labor practice resulting from your Executive Order and to obtain full remedies.

Finally, what is most disturbing about your Executive Order is not the faulty factual premises upon which it rests, nor its attempt to interfere in the ongoing collective bargaining process; rather, it is most pernicious because of what it discloses about your attitude toward the County's police officers represented by the FOP. While the officers continue to serve and protect the citizens of the County, putting their lives and physical well-being at risk, you somehow find it fitting to sign (and then conceal) unilateral pronouncements aimed at worsening the terms and conditions of employment for those officers. As demonstrated above, these pronouncements are both factually incorrect and legally suspect. But even worse, they demonstrate a total lack of respect for the dedicated public servants who police the County day in and day out, regardless of the danger presented.

Your Executive Order should be withdrawn.

Sincerely,



Ismael V. Canales
President, FOP Lodge 89

cc: Dr. Jacqueline Brown
Robert Mellin
Teresa Bowen
Chief Roberto Hylton
Bruce Lerner
FOP Executive Board