

"Federation Corner" column
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Unions dictates pension policy to County Council

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Earlier this week there was an instructive confrontation between Municipal & County Government Employees Organization (MCGEO) Union Boss Gino Renne and County Council Staff Director Stephen Farber. The most dramatic moment came when Mr. Renne threatened legal action against Mr. Farber. The cause of this? A memo from Mr. Farber to the three members of the County Council's Management and Fiscal Policy (MFP) Committee detailing his reasons for opposing Expedited Bill 6-08, which would increase the number of members of the County's Board of Investment Trustees (BIT), an appointed group which manages more than \$3 billion in assets for the County's employee retirement plans.

Mr. Farber explained that when BIT was set up in 1986, the County Council decided that 3 of the 9 trustees should represent employees (1 union, 1 non-union, and 1 retired), 2 should be members of the public "knowledgeable in pensions, investments, or financial matters," and four should be County managers. By comparison, the 9-member MCPS pension fund covers members of 3 unions but has only 1 union trustee. In 2004, the County Council agreed to increase BIT to 13 members, including 2 more union members to allow each of the 3 unions to have a trustee, along with 2 more knowledgeable members of the public. The three unions are MCGEO, the Fraternal Order of Police (FOP) - the police union - and the Montgomery County Career [Paid] Firefighters Association - the firefighters union - also know as the International Association of Firefighters (IAFF) Local 1664. Expedited Bill 6-08, the result of collective bargaining negotiations, would add 2 more MCGEO members and one more knowledgeable public member.

Mr. Farber clarifies that since BIT has nothing to do with benefits, there is no reason to have more union representatives. He states that BIT needs investment experts because the "continuing rise in benefits negotiated" in union contracts "places constant pressure on the retirement system. The largest of the funds, the Employees' Retirement System (ERS), with \$2.8 billion in assets, is funded at 79.5% of obligation, rather than 90% which is the average for state pension funds." The unfunded liability is \$631 million. "A 0.1 percent decrease in the ERS' annual investment return would require \$2.7% million more in taxpayer support for the fund." That's \$27 million more taxpayer funds for a 1% decrease, or \$270 million more in taxpayer funds for a 10% decrease, not unheard of in a volatile situation like today's market.

Mr. Farber claims that the unions, with 5,300 active participants, are outnumbered by the 5,500 retired employees, who no longer belong to a union, yet they have 1 trustee while the unions have 3. He believes they are overrepresented in terms of money, because 87% of ERS funding and 100% of the Retiree Health Benefits Trust funding comes from taxpayers. However, Expedited Bill 6-08 would result in 5 union trustees and 5 public trustees. Mr. Farber believes that the larger BIT becomes, the harder it will be to operate. He points out that MCGEO asked this question of 2006 County Council candidates: "Would you initiate and sponsor legislation that would change the composition of [BIT] to require that 50 percent of the board be trustees from the 3 county employee unions?" In other words, unions would need to get 7 more trustees added to the current 13 to end up with 10 out of the resulting 20. If 1 public trustee were added for every 2 new union trustees, as Expedited Bill 6-08 would require, the result could be 37 Board trustees.

The most controversial item in Mr. Farber's memo is this: "The Board's union trustees have shown a divided loyalty" & In August 2005, IAFF Local 1664 president [John] Sparks wrote to [BIT's] 18 investment managers - who each managed on average about \$130 million in ERS assets - to solicit contributions of up to \$5,000 for an event the union was sponsoring. [One letter sent to a manager in Philadelphia states: "The Montgomery County Career Fire fighters Association will be hosting the Professional Fire Fighters of

Maryland 19th Biennial Convention and Training Session at the Carousel Resort Hotel in Ocean City, Maryland from {9/25-9/28}, 2005. As a friend of our Local, we would like to invite your firm to attend and/or sponsor this important event, and to provide you with the opportunity to meet with fire union officials from all over the State of Maryland. Since this is the first time that our Local has hosted the State Convention we want to make sure that everyone has an enjoyable experience. To help us put together the best State Convention ever, we ask that you consider one of the following sponsorships: Platinum \$5,000; Gold \$2,500; Silver \$1,500; Brass \$750. Please make the check out to 'MCCFFA State Convention' and mail to... John J. Sparks, President"

Mr. Farber wrote: "Most trustees felt that the Board should amend its bylaws to expressly prohibit any such solicitations. While not questioning the integrity of those who want to solicit in this way, trustees opposed [such solicitations] for two reasons: respect for the letter and spirit of the Ethics Law, and concern that our investment managers could misinterpret such solicitations because of the 'pay-to-play' culture that still infects the public pension world. Mr. Sparks and the Board's union trustees strongly disagreed with this view. In December 2005, as a compromise, the Board tried a weaker requirement: that its investment managers simply report annually on any solicitations received from, or contributions made to, Board members or associated organizations. The union trustees demanded that the motion be defeated or tabled, and it was tabled. For the next 2 years, led by Mr. Sparks, they blocked its reconsideration. In January 2008, the Board was finally able to adopt the weaker requirement. Two of the 3 union trustees were absent, the third cast the only negative vote."

Union boss Gino Renne responded to Mr. Farber's memo with one of his own. He expressed a number of opinions about Expedited Bill 6-08 and about Mr. Farber. Here are a sample of them: "Nonetheless, for reasons that remain somewhat unclear, Mr. Farber has taken it upon himself to lead an anti-employee, anti-union crusade against this relatively innocuous proposal. Since right now the BIT is dominated by 'management and public trustees', perhaps an increase in the number of employee representatives would actually improve our funded ratio. Obviously, the status quo is not achieving what we want. In any event, the BIT, like most pension funds, relies heavily on the advice of paid experts and consultants for investment advice. What BIT members are charged with is evaluating that advice and good judgment in the interest of the participants of the plan; and it is precisely in this area that employee participation could prove most useful.

"Perhaps Mr. Farber's biggest canard is his scurrilous, inaccurate and possibly defamatory allegation that union trustees have in the past and will continue in the future to violate their fiduciary duties to the plan participants. These are inflammatory accusations of the most serious kind-and ones for which Mr. Farber has absolutely no factual support. The accusations against Mr. Sparks are a similar example of Mr. Farber's McCarthyisms. He alludes to a solicitation made by Mr. Sparks when he was not a member of the BIT, and then says he would not question Mr. Sparks' integrity. To be clear-there is absolutely no evidence that there were any improper solicitations made by Mr. Sparks or any other union trustees, or that there have been any breaches of fiduciary duty on the part of any union trustee. But again, Mr. Farber will not let facts get in the way of his crusade, nor dissuade him from trying to smear dedicated employee representatives.

"Mr. Farber obviously has strongly held views-against Unions, against employee participation on the BIT, against the raises negotiated by the County and approved by the Council against the process of collective bargaining and against the authority of the County's duly authorized Labor Relations Administrator. Perhaps Mr. Farber should run for County Executive or for a seat on the County Council. But until he does we respectfully submit that his role should not be that of self-appointed advocate against employees and the Unions they have chosen to represent them. We urge you to support the bargained for changes in the composition of the BIT."

According to a Washington Post reporter's account of this meeting: "Gino Renne angrily disputed Farber's memo, shaking his head at what he said was the equivalent of calling Renne a liar, a thief and a cheat. He told Farber, 'You'll get my responses in the court of law.' 'I welcome it,' Farber shot back. 'It is absolutely essential that the employees have substantial say in how this money is invested,' Renne wrote in a letter to council President Michael Knapp."

At this week's MCCF general meeting, after our delegates received a copy of Mr. Farber's memo and were further briefed about it, they voted unanimously to oppose Expedited Bill 6-08. I don't believe that Mr. Renne's memo would have dissuaded them from such a vote. If you are also persuaded to oppose this bill, I hope you will contact the County Council as soon as possible as the Council will vote on this rushed bill on Tuesday, June 17th. There is a second bill, Bill 11-08, which would guarantee a return of 7.25% to a union retirement plan, regardless of the actual market rate return. While the IRS may not allow such a high guaranteed return, any guarantee that is not based on market performance could create additional future taxpayer obligations of hundreds of millions of dollars in a bad market. MCCF delegates also voted unanimously to oppose this bill as well.

Two of the three members of the MFP Committee voted to recommend Expedited Bill 6-08 to the full Council, and all three members voted to recommend Bill 11-08. They expressed little concern over the exchange between Mr. Farber and Mr. Renne. I'll discuss the union background of several Councilmembers in a future column and how all union members consider the results of a collective bargaining agreement to be one of the most sacred of objects.

You can read Mr. Farber's memo at:

http://www.montgomerycountymd.gov/content/council/pdf/agenda/cm/2008/080609/20080609_ADDENDUM3.pdf