

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 677

(Senator Pugh)

Finance

**Collective Bargaining - State Labor Relations Board and State Higher Education
Labor Relations Board - Enforcement Authority**

This bill establishes the exclusive authority of the State Labor Relations Board (SLRB) and the State Higher Education Labor Relations Board (SHELRB) to decide all controversies and disputes related to the State's collective bargaining statutes. It specifically authorizes both boards to order respondents to pay complainants who prevail any back pay, foregone wages or earnings, the value of lost benefits, and interest to which they are entitled. The decisions of both boards are final administrative decisions; actions to enforce the decisions may be brought by the board in the appropriate circuit court (in the county in which the board's principal office is located).

Fiscal Summary

State Effect: Assuming State compliance with existing collective bargaining statutes, there is no effect on State liability for monetary damages in unfair labor practice cases. To the extent that both boards' authority to award monetary damages results in more cases being filed, they may require additional administrative and legal staff to handle the increased case load. However, the likelihood of a substantial increase is minimal. No effect on revenues.

Local Effect: The bill is not expected to materially affect the finances or operations of circuit courts.

Small Business Effect: None.

Analysis

Current Law: SLRB is responsible for administering and enforcing the State's collective bargaining laws with respect to employees of principal departments within the Executive Branch and the:

- Maryland Insurance Administration;
- State Department of Assessments and Taxation;
- State Lottery and Gaming Control Agency;
- Comptroller's Office;
- Maryland Transportation Authority (police officers at the rank of sergeant or below and civilians);
- State Retirement Agency; and
- Maryland State Department of Education.

SHELRB is responsible for enforcing collective bargaining laws with respect to employees of the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College.

Among their delineated duties, both boards may investigate and take appropriate action in response to complaints of unfair labor practices and lockouts. Among the nine unfair labor practices included in statute is refusing to bargain in good faith. The State and its officers, employees, agents, or representatives are prohibited from engaging in unfair labor practices.

If a person fails to comply with an order issued by either board, a member of the appropriate board may petition the circuit court to order the person to comply. The board is not required to post bond for such an action.

The State's collective bargaining statutes, and any agreement reached under the statutes, do not limit or interfere with the powers of the Governor or General Assembly to enact a budget under the Maryland Constitution.

Background: Chapter 487 of 2009 (HB 101, the Budget Reconciliation and Financing Act) prohibited the State, subject to limited exemptions, from awarding "bonuses related to the individual performance, merit increases, or cost-of-living adjustments in fiscal 2010." The Department of Budget and Management (DBM) interpreted the prohibition against performance-based bonuses to include hiring bonuses, referral bonuses, and retention bonuses, including those that had already been promised to some employees.

The American Federation of State, County, and Municipal Employees (AFSCME), the exclusive representative for most Executive Branch employees, filed a complaint with SLRB that DBM had exceeded its authority under Chapter 487 by including the additional bonuses without notifying and bargaining in good faith with the union. In September 2010, SLRB ruled in favor of AFSCME but noted in its decision that it did not have the authority to order DBM to award back pay. It cited substantial precedence, including a decision by the Maryland Court of Appeals, that its statutory authority to “take appropriate action” does not extend to awarding back pay.

DBM estimates that an order to award back pay would have cost the State \$11.5 million.

State Fiscal Effect: In its written decision, SLRB clearly established its desire to award back pay to the State employees aggrieved by DBM’s decision but cited its lack of authority to do so. The decision states, “We hold, **reluctantly**...that this Board is without the statutory authority to grant monetary damages as a remedy in unfair labor practice cases” (emphasis added). It is unclear whether the board, at AFSCME’s request, would have the authority to revisit its decision under the bill and award back pay. The Department of Legislative Services (DLS) notes that the bill does not apply retroactively; therefore, DLS concludes that SLRB’s decision is not subject to reconsideration. Thus, the bill has no direct fiscal effect on State finances. To the extent that future unfair labor practice cases result in rulings against the State, the boards’ authority under the bill may result in increased State liability for back pay.

Both boards already have the authority to adjudicate unfair labor practice cases brought to them. DLS cannot predict with any certainty whether the additional authority to award monetary damages in those cases would result in a larger case load; nevertheless, DLS does not anticipate that the bill will result in a substantial increase for either board. To the extent that the authority granted by the bill does increase either board’s case load, the boards may require additional administrative and legal staff to handle the increase.

Additional Information

Prior Introductions: None.

Cross File: HB 1280 (Delegate Haynes, *et al.*) - Appropriations.

Information Source(s): Department of Budget and Management, Maryland Higher Education Commission, Judiciary (Administrative Office of the Courts), State Labor Relations Boards, Department of Legislative Services

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