

Chapter 261

(Senate Bill 422)

AN ACT concerning

Public School Employees – Collective Bargaining – Representation Fees

FOR the purpose of requiring public school employers in all jurisdictions of the State to negotiate with certain employee organizations designated as the exclusive representatives for the public school employees a requirement of a certain service or representation fee to be charged to nonmembers; exempting certain employees from certain requirements for paying service or representation fees; requiring certain public school employers and certain exclusive bargaining representatives to negotiate whether service or representation fees are applicable to certain employees under certain circumstances; providing for the ratification of certain contracts in certain counties by certain employees after a certain date; providing a certain exception and requirement for noncertificated employees whose religious beliefs are opposed to joining or financially supporting a collective bargaining organization; requiring the exclusive representative to establish and maintain a certain procedure; requiring the public school employer to deduct a certain fee from the earnings of nonmember employees in accordance with a certain schedule; excluding certain negotiated fees from certain requirements and further negotiations; making conforming changes; providing for the application of this Act; and generally relating to representation fees for public school employees.

BY repealing and reenacting, with amendments,

Article – Education

Section 6–407(c) and 6–504

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

BY repealing

Article – Education

Section 6–407(d), (e), and (f)

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

BY adding to

Article – Education

Section 6–407(d), (e), and (f)

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Education

6–407.

(c) (1) [In Montgomery County, Prince George’s County, Baltimore County, Baltimore City, and Howard County, the] ~~THE SUBJECT TO SUBSECTION (D) OF THIS SECTION, THE~~ public school employer [may] **SHALL** negotiate with the employee organization designated as the exclusive representative for the public school employees in a unit, a ~~REQUIRED REQUIREMENT OF A~~ reasonable service or representation fee, to be charged nonmembers for representing them in negotiations, contract administration, including grievances, and other activities as are required under subsection (b) of this section.

(2) The service or representation fee may not exceed the annual dues of the members of the organization.

(3) An employee who is a substitute teacher and who works on a short-term day-to-day basis is not required to pay a service or representation fee.

(4) An employee whose religious beliefs are opposed to joining or financially supporting any collective bargaining organization is:

(i) Not required to pay a service or representation fee; and

(ii) Required to pay an amount of money as determined in paragraph (2) of this subsection to a nonreligious, nonunion charity or to such other charitable organization as may be mutually agreed upon by the employee and the exclusive representative, and who furnishes to the public school employer and the exclusive representative written proof of such payment.

[(5) (i) In Baltimore County, the provisions of this subsection shall apply only to employees who are hired on or after July 1, 1997.

(ii) The provisions of this paragraph apply if an agency or representation fee is negotiated in Baltimore County.

(iii) 1. Subject to the provisions of subparagraph 2 of this subparagraph, the employee organization designated as the exclusive representative for the public school employees shall indemnify and hold harmless the Board of Education of Baltimore County against any and all claims, demands, suits, or any other forms of liability that may arise out of, or by reason of, action taken by the board

for the purpose of complying with any of the agency or representation fee provisions of the negotiated agreement.

2. The board shall retain without charge to the board the services of counsel that are designated by the exclusive representative with regard to any claim, demand, suit, or any other liability that may arise out of, or by reason of, action taken by the board for the purpose of complying with any of the agency or representation fee provisions of the negotiated agreement.

(iv) The employee organization designated as the exclusive representative shall submit to the board an annual audit from an external auditor that reflects the operational expenses of the employee organization and explains how the representation fee is calculated based on the audit.

(v) 1. The agency or representation fee shall be based only on the expenses incurred by the employee organization in its representation in negotiations, contract administration, including the handling of grievances, and other activities, as required under this section.

2. Any political activities of the employee organization designated as the exclusive representative may not be financed by the funds collected from the agency or representation fee.]

(5) THE EXCLUSIVE REPRESENTATIVE SHALL ESTABLISH AND MAINTAIN A PROCEDURE THAT PROVIDES NONMEMBERS WITH:

(I) AN ADEQUATE EXPLANATION OF THE BASIS FOR THE SERVICE OR REPRESENTATION FEE; AND

(II) AN OPPORTUNITY TO CHALLENGE THE AMOUNT OF THE FEE.

~~¶(6) In Montgomery County, an AN employee who is a home or hospital teacher and who works on a short-term day-to-day basis is not required to pay a service or representation fee.¶~~

~~(6)~~ **(7) THE PUBLIC SCHOOL EMPLOYER SHALL:**

(I) DEDUCT THE SERVICE OR REPRESENTATION FEE FROM THE EARNINGS OF THE NONMEMBER EMPLOYEES IN ACCORDANCE WITH A SCHEDULE PROVIDED BY THE EXCLUSIVE REPRESENTATIVE; AND

(II) PROMPTLY TRANSMIT THE AMOUNT DEDUCTED TO THE EXCLUSIVE REPRESENTATIVE.

[(d) (1) In Allegany County, Calvert County, Charles County, Garrett County, and Washington County, the public school employer may negotiate with the employee organization designated as the exclusive representative for the public school employees in a unit, a reasonable service or representation fee, to be charged nonmembers for representing them in negotiation, contract administration, including grievances, and other activities specified under subsection (b) of this section.

(2) In Charles County, the provisions of this subsection shall apply only to employees who are hired on or after July 1, 2005.

(e) In Garrett County:

(1) A public school employee who is not a member of the employee organization designated as the exclusive representative for the public school employees in a unit at the time that a negotiated service or representation fee is initiated is exempt from the fee provided under subsection (d) of this section; and

(2) An individual who becomes a public school employee after the time that a negotiated service or representation fee is initiated and does not join the employee organization designated as the exclusive representative is liable for the fee provided under subsection (d) of this section.

(f) In Anne Arundel County:

(1) The public school employer may negotiate with the employee organization designated as the exclusive representative for the public school employees in a unit, a reasonable service or representation fee to be charged nonmembers for representing them in negotiations, contract administration, including grievances, and other activities as are required under subsection (b) of this section.

(2) (i) Subject to the provisions of subparagraph (ii) of this paragraph, the employee organization designated as the exclusive representative for the public school employees shall indemnify and hold harmless the Anne Arundel County Board of Education against any and all claims, demands, suits, or any other forms of liability that may arise out of, or by reason of, action taken by the board for the purpose of complying with any of the agency or representation fee provisions of the negotiated agreement.

(ii) The board shall retain without charge to the board the services of counsel that are designated by the exclusive representative with regard to any claim, demand, suit, or any other liability that may arise out of, or by reason of, action taken by the board for the purpose of complying with any of the agency or representation fee provisions of the negotiated agreement.

(3) The employee organization designated as the exclusive representative shall submit to the Anne Arundel County Board of Education an

annual audit from an external auditor that reflects the operational expenses of the employee organization and explains how the service or representation fee is calculated based on the audit.

(4) (i) The service or representation fee shall be based only on the expenses incurred by the employee organization in its representation in negotiations, contract administration, including grievances, and other activities under this section.

(ii) Political activities of the employee organization designated as the exclusive representative may not be financed with the funds collected from the service or representation fee.

(5) An employee whose religious beliefs are opposed to joining or financially supporting any collective bargaining organization is:

(i) Not required to pay a service or representation fee; and

(ii) Required to pay an amount of money as determined under paragraph (1) of this subsection to a nonreligious, nonunion charity or to another charitable organization that is mutually agreed upon by the employee and the exclusive representative, and who furnishes to the public school employer and the exclusive representative written proof of the payment.

(6) Any negotiated agreement that includes a representation fee also shall contain a provision that requires that an amount of revenue equal to 25% of the annual representation fees collected and maintained by the local bargaining representative be designated for professional development for represented educators.

(7) This subsection shall apply only to employees who are hired on or after October 1, 2004.]

(D) WHEN NEGOTIATING THE IMPLEMENTATION OF A SERVICE OR REPRESENTATION FEE UNDER THIS SECTION, THE PUBLIC SCHOOL EMPLOYER AND THE EXCLUSIVE BARGAINING REPRESENTATIVE SHALL NEGOTIATE WHETHER THE FEE IS APPLICABLE TO CURRENT EMPLOYEES.

(E) (1) THIS SUBSECTION APPLIES TO A COUNTY IN WHICH A SERVICE OR REPRESENTATION FEE WAS NOT NEGOTIATED BEFORE JULY 1, 2013.

(2) THE FOLLOWING EMPLOYEES IN A UNIT ARE ELIGIBLE TO VOTE ON RATIFICATION OF THE IMPLEMENTING AGREEMENT THAT PROVIDES FOR A SERVICE OR REPRESENTATION FEE:

(I) MEMBERS OF THE EMPLOYEE ORGANIZATION; AND

(II) NONMEMBERS AFFECTED BY THE SERVICE OR REPRESENTATION FEE.

(3) THE IMPLEMENTING AGREEMENT THAT PROVIDES FOR A SERVICE OR REPRESENTATION FEE SHALL BE RATIFIED BY A MAJORITY OF VOTES CAST BY THE EMPLOYEES ELIGIBLE TO VOTE UNDER PARAGRAPH (2) OF THIS SUBSECTION.

~~(D)~~ **(F) IN A COUNTY IN WHICH A SERVICE OR REPRESENTATION FEE HAS BEEN NEGOTIATED BEFORE JULY 1, 2013, THE FEE SHALL BE IMPLEMENTED UNDER THE PROVISIONS OF THE AGREEMENT NEGOTIATED BEFORE JULY 1, 2013, AND CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION WITHOUT THE NEED FOR FURTHER NEGOTIATIONS.**

6-504.

(a) A public school employee may refuse to join or participate in the activities of employee organizations.

(b) (1) [In Montgomery County, Allegany County, Charles County, and Howard County, the county board] ~~THE~~ **SUBJECT TO SUBSECTION (E) OF THIS SECTION, THE PUBLIC SCHOOL EMPLOYER,** with respect to noncertificated employees, shall negotiate a structure of **REQUIRED** reasonable service **OR REPRESENTATION** fees to be charged nonmembers for representation in negotiations and grievance matters by employee organizations.

[(2) In Charles County, the provisions of this subsection shall apply only to employees hired on or after July 1, 2005.]

(2) AN EMPLOYEE WHOSE RELIGIOUS BELIEFS ARE OPPOSED TO JOINING OR FINANCIALLY SUPPORTING ANY COLLECTIVE BARGAINING ORGANIZATION IS:

(I) NOT REQUIRED TO PAY A SERVICE OR REPRESENTATION FEE; AND

(II) REQUIRED TO PAY AN AMOUNT OF MONEY THAT IS EQUAL TO THE SERVICE OR REPRESENTATION FEE TO A NONRELIGIOUS, NONUNION CHARITY OR TO SUCH OTHER CHARITABLE ORGANIZATION AS MAY BE MUTUALLY AGREED UPON BY THE EMPLOYEE AND THE EMPLOYEE ORGANIZATION, AND WHO FURNISHES TO THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION WRITTEN PROOF OF THE PAYMENT.

[(c) In Prince George’s County, the county board shall negotiate an organizational security provision, commonly known as “agency shop”, with employee organizations.]

(C) THE EMPLOYEE ORGANIZATION SHALL ESTABLISH AND MAINTAIN A PROCEDURE THAT PROVIDES NONMEMBERS WITH:

~~(1)~~ **(1) AN ADEQUATE EXPLANATION OF THE BASIS FOR THE SERVICE OR REPRESENTATION FEE; AND**

~~(2)~~ **(2) AN OPPORTUNITY TO CHALLENGE THE AMOUNT OF THE FEE.**

[(d) (1) In Anne Arundel County, Baltimore County, and Garrett County, the county board, with respect to noncertificated employees, may negotiate a structure of reasonable service fees to be charged nonmembers for representation in negotiations and grievance matters by employee organizations.

(2) In Anne Arundel County, if the county board negotiates a structure of fees as authorized under this subsection:

(i) Each party shall:

- 1. Confer in good faith, at all reasonable times; and
- 2. Reduce to writing the matters agreed on as a result of the negotiations; and

(ii) Neither party is required to agree to any proposal or to make any concession.

(3) (i) The provisions of this paragraph apply if an agency or representation fee is negotiated in Baltimore County.

(ii) 1. Subject to the provisions of subparagraph 2 of this subparagraph, the employee organization designated as the exclusive representative for the public school employees shall indemnify and hold harmless the Board of Education of Baltimore County against any and all claims, demands, suits, or any other forms of liability that may arise out of, or by reason of, action taken by the board for the purpose of complying with any of the agency or representation fee provisions of the negotiated agreement.

2. The board shall retain without charge to the board the services of counsel that are designated by the exclusive representative with regard to any claim, demand, suit, or any other liability that may arise out of, or by reason of,

action taken by the board for the purpose of complying with any of the agency or representation fee provisions of the negotiated agreement.

(iii) The employee organization designated as the exclusive representative shall submit to the board an annual audit from an external auditor that reflects the operational expenses of the employee organization and explains how the representation fee is calculated based on the audit.

(iv) 1. The agency or representation fee shall be based only on the expenses incurred by the employee organization in its representation in negotiations, contract administration, including the handling of grievances, and other activities as required under § 6–509 of this subtitle; and

2. Any political activities of the employee organization designated as the exclusive representative may not be financed by the funds collected from the agency or representation fee.

(4) In Garrett County, if a noncertificated employee was not a public school employee at the time that a service fee under paragraph (1) of this subsection was initiated, the noncertificated employee may not be charged a service fee.]

(D) THE PUBLIC SCHOOL EMPLOYER SHALL:

(I) DEDUCT THE SERVICE OR REPRESENTATION FEE FROM THE EARNINGS OF THE NONMEMBER EMPLOYEES IN ACCORDANCE WITH A SCHEDULE PROVIDED BY THE EMPLOYEE ORGANIZATION; AND

(II) PROMPTLY TRANSMIT THE AMOUNT DEDUCTED TO THE EMPLOYEE ORGANIZATION.

[(e) In Baltimore City, the public school employer shall negotiate with the employee organization designated as the exclusive representative for the public school employees in a unit, a reasonable service or representation fee to be charged to nonmembers for representing them in negotiations in the same manner that any such fee was permitted under law and bargained for prior to January 1, 1997.]

(E) WHEN NEGOTIATING THE IMPLEMENTATION OF A SERVICE OR REPRESENTATION FEE UNDER THIS SECTION, THE PUBLIC SCHOOL EMPLOYER AND THE EXCLUSIVE BARGAINING REPRESENTATIVE SHALL FIRST NEGOTIATE WHETHER THE FEE IS APPLICABLE TO CURRENT EMPLOYEES.

(F) (1) THIS SUBSECTION APPLIES TO A COUNTY IN WHICH A SERVICE OR REPRESENTATION FEE WAS NOT NEGOTIATED BEFORE JULY 1, 2013.

(2) THE FOLLOWING EMPLOYEES IN A UNIT ARE ELIGIBLE TO VOTE ON RATIFICATION OF THE IMPLEMENTING AGREEMENT THAT PROVIDES FOR A SERVICE OR REPRESENTATION FEE:

(I) MEMBERS OF THE EMPLOYEE ORGANIZATION; AND

(II) NONMEMBERS AFFECTED BY THE SERVICE OR REPRESENTATION FEE.

(3) THE IMPLEMENTING AGREEMENT THAT PROVIDES FOR A SERVICE OR REPRESENTATION FEE SHALL BE RATIFIED BY A MAJORITY OF VOTES CAST BY THE EMPLOYEES ELIGIBLE TO VOTE UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(G) IN A COUNTY IN WHICH A SERVICE OR REPRESENTATION FEE HAS BEEN NEGOTIATED BEFORE JULY 1, 2013, THE FEE SHALL BE IMPLEMENTED UNDER THE PROVISIONS OF THE AGREEMENT NEGOTIATED BEFORE JULY 1, 2013, AND CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION WITHOUT THE NEED FOR FURTHER NEGOTIATIONS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to require any further negotiations regarding provisions of applicability to employees based on date of hire that are contained in an implementing agreement that provided for a service or representation fee negotiated prior to July 1, 2013.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2013.

Approved by the Governor, May 2, 2013.