

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 362

(Montgomery County Delegation and Prince George's
County Delegation)

Appropriations

Finance

Maryland-National Capital Park and Planning Commission - Collective
Bargaining - Exclusive Representative Duty of Fair Representation
MC/PG 109-19

This bill authorizes the exclusive employee bargaining representative for the Maryland-National Capital Park and Planning Commission (M-NCPPC) to require a nonmember employee to pay specified costs and fees associated with filing a grievance or arbitrating a matter that arises under a collective bargaining agreement brought by the representative on behalf of the nonmember employee. The bill also establishes provisions governing failure to pay costs and fees, the dispute of such costs and fees, and an exclusive representative's duty of fair representation owed to a public employee who is in the bargaining unit.

Fiscal Summary

State Effect: None.

Local Effect: The bill does not materially affect M-NCPPC operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The exclusive representative of a collective bargaining unit of M-NCPPC may seek reimbursement for costs spent on nonmember employees while filing grievances or performing arbitration actions on the nonmember employees' behalf. As specified, costs

and fees relating to grievance filing and arbitration between the nonmembers and M-NCPPC, when requested by the nonmembers, qualifies for reimbursement.

The nonmember employees, if they fail to reimburse the exclusive representative, relieves the representative of further responsibility to the nonmembers. If the nonmembers wish to dispute the fees, they can request a hearing with the labor relations administrator.

Failure by the employees to pay these costs and fees relieves the exclusive representative from his obligation to represent the employees.

Current Law/Background: The exclusive representative of a collective bargaining unit at M-NCPPC represents all employees regardless of if they pay membership dues or fees. Generally, if there is an unfair labor complaint, the charging party must make a submission in writing within 30 business days to M-NCPPC. Within 15 days after an unfair labor practice charge is submitted, M-NCPPC and the employee organization must request the labor relations administrator to hold a hearing and determine if an unfair labor practice has occurred.

If the labor relations administrator determines an unfair practice occurred, the administrator must order the offending party to cease and desist from the unfair labor practice and remedy the violation as specified. If the offending party refuses to comply, the charging party may file an action to enforce the order with the circuit court of the county in which any of the involved employees work.

A party may request a judicial review of the labor relations administrator's decision on the basis that the decision is arbitrary, capricious, or exceeds the authority of the labor relations administrator.

State Employees and Service Fees

State law authorizes collective bargaining with the exclusive representative of a bargaining unit for service fees from State employees who are not members of that exclusive representative. Thus, employees who are in a bargaining unit but are not members of any employee organization generally must pay the service fee if a fee is successfully negotiated. Likewise, employees who are dues-paying members of an employee organization that is not the exclusive representative must also pay any negotiated service fee. Employees may not be required to pay a service fee due to specified religious objections, but instead they must pay up to an amount equal to the negotiated service fee to a nonprofit charitable organization.

However, the U.S. Supreme Court reversed its position in 2018 on the right of a public-sector exclusive representative to collect service fees from nonunion members. In

Abood v. Detroit Board of Education, 431 U.S. 209 (1977), the U.S. Supreme Court found that, while an exclusive representative could collect a fee from nonunion members, the fee revenues could not be used to support ideological causes not germane to the organization's duties as the collective bargaining representative. The U.S. Supreme Court agreed in September 2017 to hear a case, *Janus v. American Federation of State, County, and Municipal Employees*, 585 U.S. ___ (2018), which challenged the constitutionality of the court's decision in *Abood* under the First Amendment. The court concluded that the state's collection of agency fees from nonconsenting public employees was a violation of the First Amendment and *Abood* is, therefore, overruled. States and public-sector unions may no longer extract agency fees from nonconsenting employees.

The Maryland-National Capital Park and Planning Commission

M-NCPPC is a bi-county agency serving Montgomery and Prince George's counties that was empowered by the State in 1927 to acquire and administer a regional system of parks within the Maryland-Washington Metropolitan District and administer a general plan for the physical development of the area. In 1970, M-NCPPC became responsible for managing the Prince George's County public recreation program.

M-NCPPC operates approximately 52,000 acres of parkland, trails, and open space in Montgomery and Prince George's counties, as well as a variety of facilities, including nature centers, community centers, historic sites, and sports venues.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Maryland-National Capital Park and Planning Commission; Department of Legislative Services

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Analysis by: Arnold Adja

Direct Inquiries to:
(410) 946-5510
(301) 970-5510