

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE

House Bill 813  
Appropriations

(Delegate Barkley, *et al.*)

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**State Personnel - Collective Bargaining - Service Fees and Binding Arbitration**

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This bill alters the collective bargaining procedure for specified grievances and authorizes collective bargaining to include negotiations regarding the right of an employee organization to receive service fees from nonmembers.

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**Fiscal Summary**

**State Effect:** Potentially significant increase in general or special fund expenditures resulting from binding arbitration and the scope of grievances that would be subject to arbitration.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill requires binding arbitration before a neutral party, if requested, to resolve a grievance that arises in a State employee bargaining unit with an exclusive representative. It defines a grievance as a dispute regarding: (1) the interpretation or application of the terms of a Memorandum of Understanding (MOU); (2) an alleged violation, misinterpretation, or misapplication of an appointing authority's rules or regulations regarding a term or condition of employment; or (3) an alleged breach or violation of Division 1 of the State Personnel and Pensions Article.

The appointing authority and the exclusive representative must select an arbitrator by mutual agreement or by alternating strikes from a list of nine labor arbitrators provided

by the Federal Mediation and Conciliation Service. The costs of binding arbitration, including the arbitrator's fees and hearing costs, must be shared equally between the appointing authority and the exclusive representative. The bill authorizes the selected arbitrator to:

- convene and conduct an evidentiary hearing;
- issue subpoenas to compel the attendance of witnesses and the production of documents and other tangible evidence;
- hear evidence and rule on the admissibility of evidence;
- determine which issues are in dispute; and
- issue a final, binding rule on the grievance.

An arbitrator must deliver to the appointing authority and the exclusive representative a copy of a ruling and a written statement that explains the reasons for the ruling. If a person fails to comply with a subpoena issued under the bill or fails to testify on a matter on which he or she may be lawfully interrogated, a court may issue an order directing compliance with the subpoena or compelling testimony and enforce the order by proceedings of contempt.

An appointing authority or exclusive representative who presents a grievance to an arbitrator for binding arbitration under this bill may not also file a grievance under Title 12 of the State Personnel and Pensions Article.

**Current Law:** Chapter 298 of 1999 created statutory collective bargaining rights for State employees of the following appointing authorities: (1) the principal departments within the Executive Branch; (2) the Maryland Insurance Administration; (3) the State Department of Assessments and Taxation; and (4) the State Lottery Agency. These rights do not apply to Legislative and Judicial Branch personnel, elected and appointed officials, or special appointees and executive service personnel in the State Personnel Management System (SPMS). Employees of the University System of Maryland are in a separate bargaining unit. The law also created a State Labor Relations Board to oversee the collective bargaining process. The board is responsible for holding hearings to resolve any issues or complaints arising under collective bargaining.

State law does not authorize binding arbitration for grievances, as defined in the bill, that arise in a bargaining unit. Collective bargaining includes all matters related to wages, hours, and other terms and conditions of employment. However, it may not include negotiations over the right of an employee organization to receive service fees from nonmembers. The union certified as the exclusive representative must represent all employees in the bargaining unit whether or not the employees are members of the employee organization.

Generally, an employee in an Executive Branch agency may file a grievance under Title 12 about the interpretation and application of a personnel policy (or any policy or regulation under management's control) with the grievant's appointing authority. A grievance does not include a dispute about: (1) a pay grade or class range; (2) the amount or effective date of a statewide pay increase; (3) establishment of a class or classification standards; (4) assignment of a class to a service category; or (5) an oral reprimand or counseling.

The statutory (Title 12) procedure requires the employee to first file the grievance with his or her appointing authority. If the dispute is not resolved in the first step, the grievant may appeal within ten days after receiving a decision to the head of the principal unit and ultimately to the Secretary of Budget and Management. Within 30 days, the Secretary must either uphold the decision or refer the grievance to the Office of Administrative Hearings (OAH).

If either party wishes to contest a decision by OAH, it may appeal to the circuit court. Under the Uniform Arbitration Act, the court shall vacate an award decided under binding arbitration only under specified conditions related to the arbitration procedure; for example, the award was procured by corruption, fraud, or other undue means; there was evident partiality by an arbitrator; or the arbitrator exceeded his or her power.

The MOU provides a separate grievance procedure that calls for the employee and/or the union representative to attempt to resolve the issue with the immediate supervisor. If that fails, a written complaint signed by a union representative can be filed with the appointing authority, who must render a decision no later than 20 days after receiving the complaint. If the dispute is not settled, the union's executive director may invoke a factfinding procedure in which a neutral party resolves all questions. If the employer or union disagrees with the factfinder's decision, either may appeal to the State Labor Relations Board within 30 days of the decision.

Division 1 of the State Personnel and Pensions Article covers a comprehensive list of personnel laws related to employment policy, health and welfare benefits, employee training, contractual employment, overtime, callback pay, and leave.

**State Expenditures:** The bill applies to 36,744 employees covered by collective bargaining under SPMS and the Maryland Department of Transportation. The Department of Budget and Management (DBM) advises that in most cases, these employees can currently use the grievance procedure under SPMS despite statutory restrictions. The Department of Legislative Services (DLS) advises that OAH rejected one grievance filed by an MOU employee in 2002 because the employee was under a

collective bargaining agreement. The bill would incur both administrative expenses as well as any costs of remedies required by the arbitrator.

### *Administrative Costs*

The State's current per case expenses for dispute resolution could be lower under binding arbitration. The average State cost of a grievance case for both SPMS and collective bargaining employees without binding arbitration is \$2,000 per case. The State Labor Relations Board charges approximately \$4,000 per case involving collective bargaining disputes, which includes the services of a factfinder and the State pays half of this charge. The average cost of an arbitration case, according to the Federal Mediation and Conciliation Service (FMCS), is \$3,202. The State would be responsible for half of the costs, or \$1,601 per case. While the number of employees who would file a grievance in the future cannot be quantified, DBM advises that 198 employees filed a grievance in fiscal 2002. If half of these employees' grievances involved binding arbitration, the State's cost would be approximately \$158,500, versus \$198,000 under current procedures.

DLS advises that certain factors may limit the use of binding arbitration. For example, the choice of whether binding arbitration should be used is not the employee's but rather the exclusive representative, which bears half of the cost. Settlements may also be reached to avoid arbitration. Of the fiscal 2002 requests for arbitration received by FMCS, 14% were closed prior to a hearing.

### *Grievance Resolution Costs*

The number and content of grievances filed by employees that would be subject to binding arbitration cannot be estimated at this time. It is also unclear whether an arbitrator's decision would be any different or require more costly remedies than one rendered by OAH or the State Labor Relations Board.

However, the types of grievances that can be filed under the bill are considerably broader than what are allowed under the statutory procedures as Division 1 covers all personnel policies. Also, the State's ability to contest the outcome is much more limited if binding arbitration is applied. Accordingly, general or special fund expenditures could rise significantly, particularly if an award granted by an arbitrator involved back pay, restoration of paid leave, or fringe benefits such as health benefits or if the decision required a change in State policy for all employees.

**Additional Comments:** DLS advises that State employees who are members of a union pay \$21.88 in monthly dues to cover the costs of representation and other services provided by the union. Any proposed service fee, which the units would have to approve,

would likely cover only the costs of representation, according to the American Federation of State, County, and Municipal Employees.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 559 (Senator Pinsky, *et al.*) – Finance.

**Information Source(s):** Department of Budget and Management, Department of Legislative Services

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