

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 559

(Senator Pinsky, *et al.*)

Finance

Appropriations

State Personnel - Collective Bargaining - Binding Arbitration

This bill requires binding arbitration, if requested, for State employees for certain grievances.

Fiscal Summary

State Effect: Potentially significant increase in general or special fund expenditures to the extent binding arbitration decisions involve substantial awards. Administrative costs related to grievance resolution, however, could decrease. Revenues would not be affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires binding arbitration before a neutral party to resolve a grievance that arises in a State employee bargaining unit with an exclusive representative if requested by the appointing authority or the unit's exclusive representative. It defines a grievance as a dispute regarding the interpretation or application of the terms of a Memorandum of Understanding (MOU).

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.

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 must 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.

State Expenditures: The bill applies to 36,744 employees covered by collective bargaining under SPMS and independent personnel systems and requires binding arbitration for disputes over terms of the MOU, which can include wages, hours, and other terms of employment. 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.

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.

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 in some cases, 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 Information

Prior Introductions: None.

Cross File: HB 813 (Delegate Barkley, *et al.*) – Appropriations.

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

Fiscal Note History: First Reader - March 4, 2003
ncs/jr Revised - Senate Third Reader - April 3, 2003

Analysis by: Ann Marie Maloney

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