

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 312

(Senator Pinsky, *et al.*)

Finance

Appropriations

State Personnel - Collective Bargaining - Binding Arbitration

This bill provides that memoranda of understanding (MOU) between the Governor and the exclusive representatives of State employee bargaining units may provide for binding arbitration of any grievance that the parties have agreed is subject to arbitration. A grievance is defined as a dispute regarding the interpretation or application of the terms of a negotiated and ratified MOU.

Fiscal Summary

State Effect: General or special fund expenditures could increase to the extent that binding arbitration decisions involve monetary awards. Revenues would not be affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapter 298 of 1999 created statutory collective bargaining rights for State employees of principal departments within the Executive Branch and certain independent agencies. Collective bargaining includes all matters related to wages, hours, and other terms and conditions of employment. The State Labor Relations Board (SLRB) oversees the collective bargaining process for these employees and holds hearings to resolve any issues or complaints. 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).

Chapter 241 of 2001 granted bargaining rights for employees of the University System of Maryland (USM), Morgan State University (MSU), St. Mary's College (SMC), and Baltimore City Community College (BCCC). The State Higher Education Labor Relations Board resolves unfair labor practice issues and oversees the bargaining process.

State law does not authorize binding arbitration for grievances in an MOU for State employees. However, State law provides for binding arbitration for public school teachers over grievances that both parties have agreed to subject to arbitration. The Maryland State Teachers' Association advises that binding arbitration applies to most or all provisions in teachers' contracts (except Queen Anne's and Caroline counties) as part of the contract negotiation.

Memorandum of Understanding

A side letter that was drafted as part of the last MOU, reached in 2002, allows binding arbitration to be used for employee grievances if the complaint cannot be resolved after the three steps of the resolution procedure have been exhausted. It would not apply to disciplinary actions. The letter states that binding arbitration would not be implemented until the Attorney General rendered an opinion that it is permissible under current law and no other legislative change is required.

Prior to leaving office in January 2003, Governor Glendening endorsed an MOU (effective from January 14, 2002 to June 30, 2005) that contained a 2% cost-of-living increase estimated to cost \$100 million. Governor Ehrlich did not propose any funding for the wage increase in the fiscal 2004 budget, citing the State's significant fiscal crisis. The American Federation of State, County, and Municipal Employees filed suit against the State in April 2003 to enforce the terms of the MOUs negotiated for its bargaining units and filed for summary judgment.

The Anne Arundel County Circuit Court decided in October 2003 that certain MOUs for SPMS employees were binding contracts, with the exception of economic terms; however, the Court of Special Appeals has temporarily stayed the circuit court's decision. Accordingly, no MOU (and presumably the grievance procedure therein) is in effect until a final ruling has been issued.

Background: The Federal Mediation and Conciliation Service (FMCS) mediates collective bargaining negotiations between employee unions and employers and offers conflict resolution services for other government agencies, foreign nations, and international organizations using private contractors. In fiscal 2003, the agency made 2,746 awards or decisions involving private and public sector employees, including 48 in Maryland. Discharge and disciplinary action complaints accounted for 40% of FMCS' fiscal 2003 workload. Pay and benefit complaints (excluding classification or incentives)

accounted for approximately 11% of all contract interpretation cases; however, only 25 awards for substantive matters under arbitration were granted. Another 102 arbitration awards involved procedural issues and 12 awards were given for disputes that related to both procedural and substantive issues.

State Expenditures: The bill applies to 34,924 employees covered by collective bargaining under SPMS, 5,784 employees of USM, and collective bargaining employees at SMC, BCCC, and MSU. The number and content of disputes that would be subject to binding arbitration cannot be estimated at this time as the State may choose not to participate in binding arbitration. It is also unclear whether an arbitrator's decision would be any different or require more costly remedies than one rendered by the courts.

The State's ability to contest the outcome is much more limited if binding arbitration is applied. Under the Uniform Arbitration Act, an award decided under binding arbitration can only be vacated by the courts under narrowly specified circumstances (*e.g.*, the award was procured by corruption, fraud, or undue means, or there was evident partiality by the arbitrator). 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 health benefits, or if the decision required a change in State policy for all employees. For example, a 1% salary raise for State employees costs approximately \$30 million according to DBM. Presumably, the State would only select grievances for arbitration that would incur minimal costs, but that cannot be determined at this time.

Additional Information

Prior Introductions: Bills that required binding arbitration for employee grievances at the request of either party were introduced as SB 559 and HB 813 in the 2003 session; SB 559 was passed by the Senate but no action was taken in the House. HB 813 received an unfavorable report from the Appropriations Committee.

Cross File: HB 559 (Delegate Barkley, *et al.*) – Appropriations.

Information Source(s): Department of Budget and Management, State Higher Education Labor Relations Board, Federal Mediation and Conciliation Service, Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2004
lc/mdr Revised - Senate Third Reader - March 30, 2004

Analysis by: Ann Marie Maloney

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