

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

House Bill 559  
Appropriations

(Delegate Barkley, *et al.*)

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**State Personnel - Collective Bargaining - Binding Arbitration**

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This bill requires binding arbitration, if requested, between the appointing authority and the State employees' representative for certain employee grievances.

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**Fiscal Summary**

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

**Local Effect:** None.

**Small Business Effect:** None.

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**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 bargaining 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 (FMCS). 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 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, as defined in the bill, that arise in a bargaining unit. The current MOU provides a separate grievance procedure that calls for the employee and/or the union representative to attempt to resolve an 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 still 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 SLRB within 30 days of the decision.

Generally, an Executive Branch employee may file a grievance under the State Personnel and Pension Article about the interpretation and application of a personnel policy (or any policy or regulation under management's control) with the appointing authority. Certain issues, such as a pay grade or class range or establishment of a classification standard, are exempt.

Under the Uniform Arbitration Act, which Maryland has adopted, the court must vacate an award decided under binding arbitration under narrowly 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 Act would not apply to a dispute between a union employee and employer if the collective bargaining agreement does not specify that it applies.

#### *Memorandum of Understanding*

A side letter that was drafted as part of the last MOU, reached in 2002, allows binding arbitration to be used 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. The letter also specifies that the Maryland Uniform Arbitration Act would apply and that the parties would share the costs equally. Nonunion members may have to reimburse the union for any expenses. If the State appealed a decision but failed to reverse the arbitrator's award, it must reimburse the union for reasonable attorney fees and costs. The status of that MOU is subject to litigation.

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:** 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. Discharge and disciplinary action complaints accounted for 40% of FMCS' fiscal 2003 workload. In fiscal 2003, the agency made 2,746 awards or decisions involving private and public sector employees, including 48 in Maryland.

**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 Department of Budget and Management (DBM) advises that in most cases, bargaining employees can currently use the grievance procedure under the MOU despite statutory restrictions. The Department of Legislative Services (DLS) advises that the Office of Administrative Hearings (OAH) rejected one grievance filed by an MOU employee in 2002 because the employee was under a collective bargaining agreement.

#### *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 SLRB.

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 health benefits, or if the decision required a change in State policy for all employees. Even small increases in health premiums or wages would mean a substantial expenditure. For example, a 1% salary raise for State employees costs approximately \$30 million according to DBM.

DLS notes that pay and benefit complaints (excluding classification or incentives) accounted for approximately 11% of all FMCS 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.

#### *Administrative Costs*

The State's current per case expenses for dispute resolution could be somewhat lower under binding arbitration. The average State cost of a grievance case for noncollective bargaining employees is currently \$2,796. SLRB 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 FMCS, is \$3,412. The State would be responsible for half of the costs, or \$1,706 per case. DBM advises that 184 grievances for SPMS employees were forwarded to OAH in fiscal 2003, including collective

bargaining cases waived by SLRB. If half of these employees' grievances involved binding arbitration, the State's cost would be approximately \$156,952, versus \$257,232 under current procedures if OAH hears the case.

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 the exclusive representative, which bears half of the cost. Settlements may also be reached to avoid arbitration.

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### **Additional Information**

**Prior Introductions:** Identical bills (as amended) 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:** SB 312 (Senator Pinsky, *et al.*) – Finance.

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

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