

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1243
Ways and Means

(Delegate Hixson, *et al.*)

Fairness in Negotiations Act

This bill establishes a new collective bargaining process for a local board of education and a designated local school employee organization to resolve salaries, wages, hours, and other working conditions. Employee transfers and assignments are specified as working conditions for both certificated and noncertificated employees. For noncertificated employees the discipline and discharge of an employee for just cause are also specified as issues subject to negotiation. The role of the State Board of Education and the State Superintendent of Schools in resolving impasses is reduced.

The bill also establishes an arbitration process to resolve the interpretation of the collective bargaining process, the duty to bargain, or an alleged unfair labor practice.

Fiscal Summary

State Effect: To the extent teacher salaries increase due to the new collective bargaining process, general fund expenditures increase significantly to pay increased retirement costs. Revenues are not affected.

Local Effect: Local school system expenditures may increase significantly due to increases in school employee salaries and fringe benefits and the hiring of outside mediators and arbitrators.

Small Business Effect: None.

Analysis

Bill Summary:

New Collective Bargaining Process

New collective bargaining processes between a local board of education and a designated local school employee organization (union) are established for both certificated and noncertificated school employees.

The existing collective bargaining framework, with either party asking for assistance and advice from the State Board of Education if negotiations come to an impasse or appointing a panel if one side does not consent to aid from the State Board of Education, is abolished.

Negotiations: When local school boards and local school employee organizations negotiate, they are required to meet at reasonable times, and put in writing the matters agreed on as a result of the negotiations. Both parties should try to conclude negotiations with a final written agreement in a timely manner. During the negotiations, both parties must honor existing agreements. The agreements must allow binding arbitration of the grievances arising under the agreement.

The topics about which local school boards must meet and negotiate with local school employee organizations are specified to include transfers and assignments. For certain noncertificated employees, the discipline and discharge of an employee for just cause are also specified as topics of negotiation.

Matters that are not subject to negotiation because they have not been mutually agreed to may be raised to resolve an impasse.

Mediation: If a local board of education and a designated local school employee organization do not conclude negotiations with a final written agreement within 30 days, they must mediate their differences. The party demanding mediation must deliver a copy of the demand to the State Superintendent of Schools. With the consent of both parties, the assistance of the Superintendent may be requested to resolve the impasse.

Within 10 days after a demand for mediation is made, the parties must select a neutral mediator by agreement or from a list. The mediator must not issue written findings or other documents concerning differences between the parties. After the neutral mediator is selected the mediation must begin within 15 days and conclude within 25 days.

The parties to the mediation are required to equally share the costs of the mediator.

Arbitration: If a written agreement is not reached after mediation, or within 25 days after the neutral mediator is selected, either party may demand arbitration. The party demanding arbitration must deliver a copy of the demand to the Superintendent. Within 10 days after a demand for arbitration is made, the parties must select an arbitrator by agreement or from a list. Arbitration must begin within five days after an arbitrator is selected.

Arbitration begins when the parties exchange last and best offers. The last and best offers are required to list separately every term or condition of employment in dispute and the demand of the party making the offer.

Within 25 days after being selected, the arbitrator must open the arbitration record. The arbitrator is responsible for running the arbitration including issuing oaths and hearing evidence. The arbitrator has full authority to hear and decide all issues in dispute, including matters of procedure and the scope of the arbitration. Within 30 days of the record being opened, the arbitrator must conclude the arbitration by issuing a written decision. The arbitrator must issue the written decision within seven days after the arbitration record is closed. For each term or condition in dispute, the arbitrator must choose either the last and final offer or the local school board or the last and final offer of the designated local school employee organization. The arbitrator must consider evidence regarding the ability of the local school system and the county to fund the costs of the offers, and the arbitrator's finding is subject to the fiscal relationship between the school system and the county governing body.

The arbitrator's finding on an issue in dispute is final and binding on both parties, and a self-executing mandate on both parties. The arbitrator must deliver a copy of the written decision to both parties and the State Superintendent. The written decision is subject to other provisions concerning the fiscal relationship between the parties.

If both parties agree, the arbitration time limits may be waived. The parties to the arbitration are required to equally share the costs of the arbitrator.

Arbitration to Resolve the Process and Alleged Unfair Labor Practices

A similar arbitration process is established to resolve the interpretation of the collective bargaining process, the duty to bargain, or an alleged unfair labor practice.

Current Law: An agreement made by a local board of education and a local school employee organization representing school personnel may provide for binding arbitration of the grievances arising under the agreement.

A matter that is not subject to negotiation because it has not been mutually agreed to by the employer and the employee organization may not be raised in any action taken to resolve an impasse. A local school board may not negotiate the school calendar, the maximum number of students assigned to a class, or any matter prohibited by law.

If negotiations come to an impasse, the parties have the option of asking for the assistance and advice of the State Board of Education. If one party does not consent to the aid of the State board, then a three-member panel consisting of one member named by each party and a third member chosen by both members must be appointed. The State board or the panel must meet with the parties to aid in resolving the differences. If the matter is not resolved, the State board or the panel must make a written report and recommendation within 30 days after the request. A copy of the report is required to be sent to the representatives of the local school system and the representatives for the local school employee organization. All costs from the mediation must be shared by the parties. The local school board is responsible for making the final determination on matters that have been the subject of negotiation; however, that decision is subject to other laws governing the fiscal relationship between the local school board and the county commissioner and county council.

There is no process to arbitrate the collective bargaining process or alleged unfair labor practice.

Background: The State Board of Education and sometimes the courts have ruled on the matters that can be negotiated in the collective bargaining process. **Exhibit 1** shows some of the subject matter that the State board and the courts have determined is not negotiable. If this bill passes, it is possible that some of these matters could be negotiated.

State Expenditures: The State pays retirement benefits for teachers based on the salaries of teachers in the second prior fiscal year. Depending on the outcomes of the new collective bargaining process, the salary base for teachers may increase beginning in fiscal 2010. An increased salary base results in higher teachers' retirement payments in the second fiscal year following the increase.

For illustrative purposes, if statewide teachers' salaries increase by 0.5% in fiscal 2010, State teacher retirement contributions will increase by an estimated \$4.5 million in fiscal 2012. This estimate assumes a teacher retirement contribution rate of 15.45% in fiscal 2012.

Exhibit 1
Nonnegotiable Subject Matters

Subject Matter Not Negotiable/Arbitrable	State Board Decision/ Appellate Court Opinion
Reclassification	<i>MCEA v. Board of Education of Montgomery County</i> , 311 Md. 303, 534 A.2d 980 (December 28, 1987)
Classroom Observation	<i>Howard County Education Association v. Board of Education</i> , State Board Opinion 88-5 (April 27, 1987)
Second Class Certificates	<i>Dorchester Educators v. Board of Education</i> , State Board Opinion 88-3 (April 27, 1988)
Assignment (but procedure is negotiable)	<i>Brezinski/Wallace v. Board of Education of Howard County</i> , State Board Opinion 98-14 (June 28, 1989)
Transfer and Reassignment (but procedure is negotiable)	<i>Einem v. Board of Education of Howard County</i> , State Board Opinion No. 89-13 (June 28, 1989)
A local school board may neither negotiate nor delegate its responsibilities for determining tenure	<i>Board of Education of Carroll County v. Education Association, Inc.</i> , 53 Md. App. 355, 452 A.2d 1316 (1982)
Right to transfer teachers involuntarily (procedures are negotiable and arbitrable)	<i>Williamson v. Board of Education of Prince George's County</i> , No. 89-11 (June 28, 1989)
Matters of educational policy including promotion, transfer, and evaluation of noncertificated employee is not negotiable	<i>Howard County Educational Support Personnel v. Board of Education of Howard County</i> , No. 89-32 (December 13, 1989)
Change in step caused by a reclassification plan	<i>Washington County Educational Classified Employee Association v. Board of Education of Washington County</i> (Ct. of Sp. App., September 3, 1993)
Extra-curricular assignments, such as coaching assignment decisions	<i>Education Association of St. Mary's County and Thomas Murray v. Board of Education of St. Mary's County</i> , State Board Opinion No. 97-22 (May 28, 1997) upheld by the Circuit Court for St. Mary's County, case no. 18-C-97-000781, May 14, 1998

Source: Maryland Association of Boards of Education

Local Expenditures: Local school expenditures may increase due to (1) increased costs for collective bargaining, including the hiring of outside mediators and arbitrators; and (2) increased salaries for employees.

Increased Labor Negotiations

Local school expenditures may increase to hire outside mediators and arbitrators. Local school boards and the designated local school employee organization are required to split mediation and arbitration costs. Mediation and arbitration costs will depend on the number of cases per year and cannot be reliably estimated. The bill does provide specific timeframes for the completion of mediation and arbitration, which may help to control costs.

Increased Salaries and Benefits

Another potential cost for local school systems is increased salaries and fringe benefits for employees due to the new collective bargaining process to the extent that the new process established in the bill is more advantageous for unions, costs may increase significantly. In fiscal 2007, school systems spent \$6.1 billion on salaries and wages and approximately \$1.6 billion on employee benefits (excluding State-paid retirement). If these costs were to increase by 0.5% in fiscal 2010, collectively, local school systems will spend an additional \$38.5 million in fiscal 2010. The bill does, however, specify that arbitrators must consider the ability of local school systems to pay for increases and the relationship between counties and local school systems.

Additional Information

Prior Introductions: None.

Cross File: SB 673 (Senator Raskin, *et al.*) - Finance.

Information Source(s): Kent County, Montgomery County, Washington County, Worcester County, Maryland State Department of Education, Department of Legislative Services

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