

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 884
Appropriations

(Delegate Bates, *et al.*)

State Personnel - Collective Bargaining - Payment of Service Fees

This bill specifies that collective bargaining may not include negotiations relating to the payment of service fees to an employee organization through an automatic deduction from the wages of a State employee who is not a member of the organization.

The bill takes effect June 1, 2011.

Fiscal Summary

State Effect: None. Prohibiting the automatic deduction of service fees does not materially affect governmental finances. However, the bill relieves the Comptroller's Office of the operational burden associated with collection of approximately \$4 million annually in nonmember service fees on behalf of the exclusive representative of certain bargaining units (assuming a \$10 fee per biweekly pay period).

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapter 187 of 2009 authorizes the State to collectively bargain with the exclusive representative of a bargaining unit for service fees from State employees who are not members of that exclusive representative. Thus, employees who are in a bargaining unit but are not members of any employee organization must pay the service fee if a fee is successfully negotiated. Likewise, employees who are dues-paying

members of an employee organization that is not the exclusive representative must also pay any negotiated service fee.

Chapter 187 specifies that service fees may not be bargained for in negotiations between an employee organization and a University System of Maryland (USM) institution, Morgan State University, St. Mary's College of Maryland, or Baltimore City Community College.

Employees may not be required to pay a service fee due to specified religious objections. However, such employees are required to pay up to an amount equal to the negotiated service fee to a nonprofit charitable organization. To receive this exemption, employees must provide proof of payment to the exclusive representative and the Department of Budget and Management (DBM).

Background: While an exclusive representative bargains for all members of a particular bargaining unit, only a portion of these individuals pays union membership dues to the representing organization. A service fee is paid by an employee to his or her bargaining unit's exclusive representative to offset costs attributable to the collective bargaining process. Generally, this fee is less than the fee charged for union dues.

Maryland Bargaining Units

Exhibit 1 shows the number of State employees in each bargaining unit. Maryland's collective bargaining law applies to employees of the Executive Branch departments, the Maryland Insurance Administration, the State Department of Assessments and Taxation, the State Lottery Agency, USM, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College.

Certain Executive Branch employees within the State do not have these rights, such as elected government officials; political appointees or employees by special appointment; or any supervisory, managerial, or confidential employees of an Executive Branch department, USM institution, or other State college or university, including faculty.

Exhibit 1
State of Maryland Bargaining Units
(Excluding Higher Education Units)

| <u>Unit</u> | <u>Unit Name</u> | <u>Number of Employees</u> | <u>Exclusive Representative</u> |
|-------------|---|----------------------------|---------------------------------|
| A | Labor and Trades | 1,659 | AFSCME MD |
| B | Administrative, Technical, and Clerical | 5,429 | AFSCME MD |
| C | Regulatory, Inspection, and License | 499 | AFSCME MD |
| D | Health and Human Services (nonprof.) | 1,803 | AFSCME MD |
| E | Health Care Professionals | 1,904 | AFT – Healthcare MD |
| F | Social and Human Services Professionals | 3,919 | AFSCME MD |
| G | Engineering, Scientific, and Administrative Professionals | 4,734 | MPEC |
| H | Public Safety and Security | 9,393 | AFSCME/Teamsters |
| I | Sworn Police Officers | 1,657 | SLEOLA |

Note: AFSCME = American Federation of State, County, and Municipal Employees; AFT = American Federation of Teachers; MPEC = Maryland Professional Employees Council; SLEOLA = State Law Enforcement Officers' Labor Alliance

Source: Department of Budget and Management, February 2011

Proposed Collective Bargaining Agreement Includes Service Fee Requirements

A proposed memorandum of understanding (MOU) between AFSCME, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and the State regarding bargaining units A, B, C, D, and F includes a provision requiring all employees who are covered by the MOU but who are not members of AFSCME to pay AFSCME a service fee as a condition of continued employment with the State. The requirement to pay the service fee is effective July 1, 2011, or within 30 calendar days of employment with the bargaining unit. The amount of the service fee is not specified in the proposed MOU but must not exceed the amount of dues uniformly required of AFSCME members. The MOU requires the State to automatically withhold from the biweekly salary of each employee who is not an AFSCME member the service fee as determined without the necessity of a written, signed authorization of the employee.

A proposed MOU between AFSCME, the Teamsters, and the State includes similar service fee provisions for bargaining unit H.

Service Fees in Other States

In 2009, 23 other states either required state employees to pay a service fee or allowed the fee to be mandated through collective bargaining. In some states, employees with a religious objection to paying the fee are exempt from paying it. In all states, some employees, such as managers or confidential employees, are exempt from the collective bargaining law. In some states, supervisors are exempt. Service fees are also referred to as representation fees, agency fees, agency shop fees, or fair share fees.

Supreme Court Rulings

The U.S. Supreme Court has issued several opinions relating to the right of a public-sector exclusive representative to collect service fees from nonunion members. In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the court found that, while an exclusive representative could collect a fee from nonunion members, the fee revenues could not be used to support ideological causes not germane to the organization's duties as the collective bargaining representative. In another case, the *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), the court held that, in order to protect nonunion members' constitutional rights to freedom of speech and association, the union's collection of agency fees must "include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker, and an escrow for the amounts reasonably in dispute while such challenges are pending."

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, University System of Maryland, Morgan State University, Maryland Department of Transportation, Department of Budget and Management, Department of Legislative Services

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