

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 302
Appropriations

(Montgomery County Delegation)

Finance

Montgomery County Housing Opportunities Commission - Collective Bargaining
- Exclusive Representative Duty of Fair Representation
MC 26-19

This bill authorizes the exclusive employee bargaining representative for the Montgomery County Housing Opportunities Commission (HOC) to require a nonmember employee to pay specified costs and fees associated with filing a grievance or arbitrating a matter that arises under a collective bargaining agreement brought by the representative on behalf of the nonmember employee. The bill also establishes provisions governing failure to pay the costs and fees, the dispute of such costs and fees, and an exclusive representative's duty of fair representation owed to a public employee who is in the bargaining unit.

Fiscal Summary

State Effect: None. The bill only applies to Montgomery County.

Local Effect: The bill does not materially affect Montgomery County's operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The exclusive bargaining representative for HOC employees may require a nonmember to pay the reasonable costs and fees associated with filing a grievance or arbitrating a matter that arises under a collective bargaining agreement brought by the exclusive representative at the request of the employee. Reimbursable costs and fees include staff time and materials, arbitrator fees, and related attorney's fees.

If a nonmember employee fails to reimburse the exclusive representative, the representative is relieved of further responsibility to the nonmember. If the nonmember wishes to dispute the reasonableness of the costs and fees imposed, the nonmember must submit a claim for an unfair labor practice to the Montgomery County Labor Relations Administrator.

The bill also limits the exclusive representative's responsibilities to a public employee to (1) negotiating with HOC and (2) enforcing the terms of the collective bargaining agreement.

Current Law/Background: The exclusive employee bargaining representative for HOC represents all employees in the bargaining unit regardless of whether they pay membership dues or fees. The exclusive representative's actions toward members and nonmembers may not be arbitrary, discriminatory, or in bad faith.

Generally, if there is an unfair labor complaint, the charging party must make a submission in writing within 30 business days to the Montgomery County Labor Relations Administrator. Within 15 days of submitting the complaint, the administrator must hold a hearing and make a determination if an unfair practice actually occurred. If the administrator determines an unfair practice occurred, the administrator must order the offending party to (1) cease and desist from the unfair labor practice and (2) remedy the violation with actions, including reinstatement, restitution, back pay, and injunctions. If the offending party refuses to comply, the charging party may file an action to enforce the order with the circuit court for the county in which any of the involved employees work.

State Employees and Service Fees

State law authorizes collective bargaining 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 generally 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. Employees may not be required to pay a service fee due to specified religious objections, but instead, they must pay up to an amount equal to the negotiated service fee to a nonprofit charitable organization.

However, the U.S. Supreme Court reversed its position in 2018 on 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 U.S. Supreme 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. The U.S. Supreme Court agreed in September 2017 to hear a case, *Janus v. American Federation of State, County, and Municipal Employees*, 585 U.S. __ (2018), which challenged the constitutionality of the court's decision in *Abood* under the First Amendment. The court concluded that the state's collection of agency fees from nonconsenting public employees was a violation of the First Amendment and *Abood* is, therefore, overruled. States and public-sector unions may no longer extract agency fees from nonconsenting employees.

Housing Opportunities Commission of Montgomery County

HOC is the public housing agency for Montgomery County. Established in 1974, the commission administers federal, State, county, and private affordable housing programs. In addition, it develops housing, provides mortgage financing to developers and first-time homebuyers, manages public housing and other rental units, administers rental subsidy programs (including the Housing Choice Voucher Program), and provides counseling and support services to lower income individuals and families in assisted housing.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General; Department of Housing and Community Development; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2019
mm/mcr Third Reader - March 19, 2019

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