

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 380
Appropriations

(Delegate Korman, *et al.*)

Arbitration Reform for State Employees Act of 2023

This bill alters the collective bargaining process for State employees by establishing binding arbitration in the event of an impasse in negotiations. In addition, it requires the selection of a neutral arbitrator to oversee all aspects of collective bargaining, expands the matters subject to negotiation, and makes various conforming changes. The bill modifies statute and proposes a constitutional amendment (subject to ratification by the voters in the next general election) to require the Governor to include in the annual budget bill the appropriations necessary to implement and fund all terms of memoranda of understanding (MOUs) or binding arbitration involving the State, State institutions of higher education, and the Maryland Environmental Service (MES) and the exclusive representatives of their respective employees. **The bill's statutory provisions take effect July 1, 2023.**

Fiscal Summary

State Effect: State contractual expenditures (all funds) increase annually beginning in FY 2024 for arbitration services, as discussed below. State personnel and other expenditures (all funds) are affected, potentially significantly, as early as FY 2026, as discussed below. Revenues are not directly affected. This assessment does not reflect any potential alteration in MES's nonbudgeted status as a result of the bill, as discussed in the State Expenditures section of this fiscal and policy note. **This bill may establish a mandated appropriation beginning as early as FY 2026.**

Local Effect: Local government finances are not directly affected.

Small Business Effect: None.

Analysis

Bill Summary:

Meeting Times and Conclusion of Negotiations

The bill specifies that the parties to collective bargaining must meet at reasonable times between July 1 and September 30. The parties must make a reasonable effort to begin negotiations on or near July 1, including the exchange of information necessary to responsibly conduct and conclude negotiations by September 30.

Selection of a Neutral Arbitrator

For each bargaining unit, whenever an MOU is to be negotiated, reopened, or amended, the parties must first select a neutral arbitrator for the negotiations by July 15. The parties must select the arbitrator from a list of 15 arbitrators provided by the American Arbitration Association's labor arbitration panel by alternatively striking names from the list until one name remains. The selected arbitrator must be able and available to perform the duties and to hold hearings, both in person and through remote communication. The selected arbitrator must accept the appointment before July 15, or the parties may agree to make an alternative appointment from (1) the list originally provided by the American Arbitration Association or (2) a list of nationwide arbitrators provided by the Federal Mediation and Conciliation Service.

Powers and Duties of a Neutral Arbitrator

A neutral arbitrator selected under the bill may:

- mediate or aid in the resolution of any dispute between the parties regarding the conduct of negotiations, including whether the conduct of a party is in good faith;
- receive from the parties copies of information requests presented and responses received, to mediate or aid in the resolution of disputes over the timeliness and sufficiency of information demands and production;
- issue opinions in order to help to resolve disputes over requests for information or promote bargaining in good faith; and
- direct production of estimates of revenues and expenditures compiled by the State Board of Revenue Estimates, the Bureau of Revenue Estimates, or the Consensus Revenue Monitoring and Forecasting Group.

The opinions and guidance issued by the neutral arbitrator are advisory on the parties and the Governor. The process established by the bill does not diminish or limit the rights of any party to file and pursue a complaint of unfair labor practices before the board.

Resolution of an Impasse

If an impasse is declared on or after October 1, arbitration must proceed in accordance with specified procedures set forth under the bill. On the fifth business day after the impasse is declared, each party must submit to the neutral arbitrator, in writing and with a copy to the other party, a last best and final offer, including (1) all provisions in the existing MOU not to be modified; (2) all new, amended, or modified MOU provisions agreed to by the parties before the impasse was declared that are to be included through written mutual agreement; and (3) detailed further provisions that a party is proposing for inclusion in an MOU. Further provisions are limited to specific proposals that were submitted in writing to the other party and were the subject of collective bargaining between the parties up to the time of impasse, as specified.

The neutral arbitrator acting as a mediator must attempt to resolve the impasse before a formal hearing on the impasse. Within 30 calendar days after a declared impasse, the neutral arbitrator must hold a formal hearing at which the parties may submit, in writing or oral testimony, all information or data supporting the final positions. Absent mutual agreement between the parties, or as otherwise ordered by the neutral arbitrator, the formal hearing must conclude within 45 calendar days after the impasse date. The arbitrator generally must conclude with a written award that sustains in its entirety the last best and final offer of one of the parties. Before a written award is issued, the parties may direct the neutral arbitrator to rule on specifically identified topics of bargaining, as specified.

Preliminary and Final Written Awards: The neutral arbitrator must issue a preliminary written award by December 5. The preliminary written award must address all provisions that each party proposed in its respective final position for inclusion in an MOU. Within five business days after receipt of the preliminary written award, the parties must review the award and may severally or mutually request changes or adjustments in the award. By December 15, the neutral arbitrator must issue a final written award in which the arbitrator (1) must order implementation of the last best and final offer of either party in its entirety, incorporating any voluntarily-agreed-to terms between the parties and (2) include any voluntarily-agreed-to terms between the parties and any prior term that, by agreement, is not to be changed for the next fiscal year. After December 15, if requested by either party, the neutral arbitrator must issue a statement of reasons for the final written award by January 20 of the immediately following year.

Specified deadlines within the bill may be modified based on good cause by mutual agreement of the parties or by order of the neutral arbitrator.

Required Considerations: The neutral arbitrator must consider, when developing a written award:

- the lawful authority of the employer, including the obligation of the employer to use special funds only for authorized purposes under limitations imposed by federal or State law;
- stipulations of the parties;
- the interests and welfare of the public;
- the financial ability of the employer to meet costs, without the premise that the employer may need to increase or impose new taxes, fees, or charges or develop other sources of revenue;
- the present and future general economic condition of the State or State institutions of higher education;
- comparisons of wages, hours, and conditions of employment of the employees involved with arbitration with the wages, hours, and conditions of employment of other employees performing similar services in public employment in adjacent states;
- comparisons of collective bargaining patterns in other states and among county employees in the State;
- consumer prices for goods and services as defined by public and private sources;
- the overall compensation presently received by the employees, including direct wage compensation, vacation, holidays, excused time off, insurance and pensions costs, medical and hospitalization benefits, the continuity and stability of employment, and all other received benefits;
- changes in any of the foregoing circumstances during the pendency of the arbitration; and
- other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties in public service or private employment.

Effect of Final Written Award: The decision of the neutral arbitrator is final and binding on the parties. The State, a State institution of higher education, MES, and the Governor must take all actions necessary to carry out and effectuate the final written award and place into effect the MOU. The parties at any time may amend or modify the final written award and, by consent, the amendments or modifications must be approved by the parties and placed in a supplemental written award by the neutral arbitrator that is final and binding. A supplemental written award must take effect on the date of the order of the neutral arbitrator and may not require ratification.

Matters to Be Negotiated

The bill specifies that collective bargaining must include all matters relating to fringe benefits, health benefits, and pension benefits (in addition to wages, hours, and other terms and conditions of employment, as specified under current law). In addition, the bill repeals a provision of law authorizing negotiations relating to the right of an employee organization to receive service fees from nonmembers (in conformance with the U.S. Supreme Court's holding in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 588 U.S. ___ (2018), as discussed in the Current Law section of this fiscal and policy note).

Costs

The costs of the services of the neutral arbitrator must be shared equally by the parties. All other costs incurred by either party as a result of arbitration under the bill are the responsibility of the party incurring the costs.

Required Appropriations

The bill modifies § 7-108 of the State Finance and Procurement Article to require the Governor to include in each annual budget bill the appropriations necessary to implement and fund all terms within each MOU between (1) the State and the exclusive representatives of State employees; (2) State institutions of higher education and each exclusive representative of their employees; and (3) MES and the exclusive representative of its employees.

Proposed Constitutional Amendment

In addition to the statutory changes discussed above, the bill proposes a constitutional amendment that, if approved by the voters at the next general election, requires the Governor's budget to contain the appropriations necessary to implement all terms and conditions of employment in each MOU concluded with the State – whether reached through mutual agreement or arbitration that is binding on the parties, the Governor, State institutions of higher education, and MES – for the next ensuing fiscal year for State employees in the various branches and departments of State government, including higher education. Further, each budget must contain a statement showing changes in wages, hours, fringe benefits, health benefits, pension benefits, and other terms and conditions of employment for State employees included in each MOU covering State employees for the next ensuing fiscal year.

In addition, the proposed constitutional amendment specifies that each budget must embrace an estimate of all appropriations for salaries *and fringe benefits* payable by the

State and under the Constitution and laws of the State, including those salaries and benefits committed under each MOU covering State employees.

Current Law:

State Employees and Collective Bargaining

Title 3 of the State Personnel and Pensions Article establishes statutory collective bargaining rights for a large number of State employees. Title 3 authorizes the State, State institutions of higher education, and MES to meet and confer with exclusive employee representatives about negotiable terms. Title 3 does not provide for binding arbitration but does allow fact finding in the event of an impasse, as discussed later in this Current Law section.

Maryland's collective bargaining law generally applies to employees of the Executive Branch departments, the Maryland Insurance Administration, the State Department of Assessments and Taxation, the State Lottery and Gaming Control Agency, the University System of Maryland (USM), the Office of the Comptroller, the Maryland Transportation Authority ((MDTA) for those who are not police officers), the State Retirement Agency, the Maryland State Department of Education, MES, the Maryland School for the Deaf, Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC), along with specified firefighters for the Martin State Airport and all full-time MDTA police officers at the rank of first sergeant and below. Chapter 46 of 2022 applied the State's collective bargaining laws to employees of the Office of the Public Defender as well.

The State's collective bargaining law does not apply to:

- Maryland Transit Administration (MTA) employees;
- Legislative and Judicial Branch personnel;
- elected and appointed officials;
- the Governor's and Lieutenant Governor's staff;
- an employee assigned to, or with access to records of, the State Labor Relations Board;
- special appointees and executive service personnel in the State Personnel Management System (SPMS);
- senior administrators, faculty members, student employees, and other designated employees of USM, MSU, SMCM, or BCCC;
- the chief, deputy, or assistant administrator of a unit with an independent personnel system;
- temporary or contractual employees in SPMS;

- an employee who is entitled to participate in collective bargaining under another law;
- an employee whose participation in a labor organization is contrary to the State's ethics laws; and
- any supervisory, managerial, or confidential employee as defined by regulation.

Bargaining Process

The parties must meet at reasonable times and engage in collective bargaining in good faith, as specified. The parties must make every reasonable effort to conclude negotiations in a timely manner for inclusion by the principal unit in its budget request to the Governor, and they must conclude negotiations by January 1 for any item requiring an appropriation of funds for the fiscal year that begins on the following July 1. The Governor must include in the annual budget bill submitted to the General Assembly any amounts in the budgets of the principal units required to accommodate any additional cost resulting from the negotiations for the fiscal year beginning the following July 1, including the actuarial impact of any required legislative changes to any of the State pension or retirement systems, if the legislative changes have been negotiated to become effective in that fiscal year.

If the parties do not conclude negotiations for the next fiscal year before October 25, either party may request that a fact finder be employed to resolve the issues. The fact finder must be employed no later than November 1 and must be a neutral party appointed by alternative striking from a list provided by the Federal Mediation Conciliation Service or under the Labor Arbitration Rules of the American Arbitration Association. The fact finder may give notice and hold hearings in accordance with the Administrative Procedures Act, administer oaths and take testimony and other evidence, and issue subpoenas. Before November 20, the fact finder must make written recommendations regarding wages, hours, and working conditions and any other terms or conditions of employment that may be in dispute. The written recommendations of the fact finder must be delivered to the Governor, the exclusive representative, the President of the Senate, and the Speaker of the House of Delegates by December 1.

Memoranda of Understanding

All matters of agreement reached by the parties must be incorporated into an MOU. No MOU is valid if it extends for less than one year or longer than three years. An MOU is not effective until it is ratified by the Governor (or, in the case of a State higher education institution or MES, ratified by the higher education institution's governing board or the Board of Directors of MES, respectively) and a majority of the votes cast by employees in the bargaining unit. Any matters in the MOU that require legislative changes are subject to the approval of the General Assembly.

Matters to Be Negotiated

Collective bargaining must include any matters relating to wages, hours, and terms and conditions of employment. The State is not required to negotiate any matter that is inconsistent with State law; however, the State may negotiate such matters as long as the parties understand that the item cannot become effective until the General Assembly takes action. The General Assembly, however, is not bound by the agreement.

Service Fees

State statute authorizes collective bargaining to include negotiations relating to the right of an employee organization to receive service fees from nonmembers. However, in 2018, the U.S. Supreme Court ruled in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 588 U.S. ___ (2018) that the collection of agency fees or other payments to public sector unions from nonconsenting public employees violates the First Amendment to the U.S. Constitution. Thus, states and public sector unions may no longer collect agency fees from nonconsenting employees. Accordingly, Maryland no longer collects service fees from nonunion members.

Maryland Transit Administration – Arbitration in Labor Disputes

While the State's collective bargaining statute under Title 3 of the State Personnel and Pension Article does not authorize binding arbitration, § 7-602 of the Transportation Article provides for binding arbitration in disputes between MTA and MTA employees relating to wages, salaries, hours, or other working conditions; benefits; grievances; or collective bargaining agreements, as specified. If a labor dispute between MTA and employees represented by an accredited representative does not result in agreement, MTA must submit the dispute to a three-member arbitration board. A majority determination of the board is final and binding on all disputed matters.

Article III, Section 52 of the Maryland Constitution

Pursuant to Article III, Section 52 of the Maryland Constitution, on the third Wednesday in January each year, the Governor must submit to the General Assembly a budget for the next ensuing fiscal year. Each budget must contain a complete plan of proposed expenditures and estimated revenues for the fiscal year and must show the estimated surplus or deficit of revenues at the end of the preceding fiscal year. In addition, each budget must be accompanied by a statement showing (1) the revenues and expenditures for the preceding fiscal year; (2) the current assets, liabilities, reserves, and surplus or deficit of the State; (3) the debts and funds of the State; (4) an estimate of the State's financial condition as of the beginning and end of the preceding fiscal year; and (5) any explanation the Governor may desire to make as to the important features of the budget and any

suggestions as to methods for reduction or increase of the State's revenue. Section 52 further specifies that each budget must embrace an estimate of all appropriations in such form and detail as the Governor determines or as may be prescribed by law for, among other things, the salaries payable by the State under the Constitution and laws of the State.

In enacting a balanced budget bill, the General Assembly generally may reduce appropriations in the Governor's proposed budget and may increase proposed appropriations relating to the General Assembly and the Judiciary. Chapter 645 of 2020, a constitutional amendment ratified by the voters in the 2020 general election, authorizes the General Assembly to increase or add appropriations in the Governor's proposed budget relating to the Executive Department, beginning with the fiscal 2024 budget bill. The total appropriation for the Executive Department approved by the General Assembly may not exceed the total proposed appropriation for the Executive Department submitted by the Governor.

State Expenditures:

Costs Related to the Collective Bargaining Process

As discussed above, the bill requires the selection of a neutral arbitrator to oversee negotiations whenever an MOU is to be negotiated, reopened, or amended. The cost of the services of a neutral arbitrator employed under the bill must be shared equally between the parties. Thus, State contractual expenditures (all funds) increase annually beginning in fiscal 2024, which reflects the July 1, 2023 effective date of the bill's statutory provisions. For context, the Department of Budget and Management (DBM) has previously advised that the average hourly rate for a third-party arbitrator is likely to range from \$375 to \$1,125; *under one illustrative scenario*, general fund expenditures for DBM increase by at least \$36,000 annually, assuming (1) an average hourly rate of \$600, divided equally between the State and participating exclusive representatives, and (2) that, consistent with recent experience, DBM participates in an average of 60 bargaining sessions per year, with each session lasting two hours on average. Although DBM manages collective bargaining for all State employee groups, it has previously advised that the Maryland Department of Transportation (MDOT) would be responsible for covering the collective bargaining expenses under the bill for the employee units that are only within MDOT.

However, annual expenses related to arbitration services cannot be reliably estimated, as they depend on the number and duration of bargaining sessions, the extent to which neutral arbitrators must hear and assist in resolving disputes between the parties, the number and complexity of the issues to be resolved, and the time and costs incurred by the neutral arbitrator to study and prepare written opinions and advice. For example, DBM has previously noted that the number and complexity of factors that a neutral arbitrator must consider when developing a written award, including specified economic factors, may

require the assistance of additional experts and, thus, increase costs associated with arbitration. Further, to the extent that the arbitration process established under the bill significantly increases the workload demands on State agencies, some agencies may incur additional costs to hire consultants and/or additional human resources or labor relations personnel.

Effects on State Personnel and Other Expenditures

As noted above, the bill provides for binding arbitration in the event of an impasse. Further, subject to approval of a constitutional amendment by the voters in the general election in November 2024, the Governor must include in each annual budget bill the appropriations necessary to implement and fund all terms within each MOU (whether reached by mutual agreement or arbitration) between (1) the State and the exclusive representatives of State employees; (2) State institutions of higher education and each exclusive representative of their employees; and (3) MES and the exclusive representative of its employees. The bill further specifies that collective bargaining must include all matters relating to fringe benefits, health benefits, and pension benefits (in addition to wages, hours, and other terms and conditions of employment, as specified under current law).

The bill's impact on State personnel and other expenditures (all funds) cannot be reliably estimated or predicted, as it depends on the extent to which the terms of MOUs concluded as a result of the bill differ from the terms that would be negotiated in the absence of the bill, and the monetary value of those terms. However, the impact is potentially significant, particularly to the extent that matters are concluded through arbitration under the bill. Although such expenditures could be affected as early as fiscal 2025 if funded at the discretion of the Governor, this analysis assumes they increase or decrease as early as fiscal 2026 (the first budget funded by the Governor after the November 2024 election) to the extent that the final decisions of neutral arbitrators appointed under the bill are unfavorable or favorable to State agencies and institutions of higher education.

MES advises that MES employees are not currently represented within a bargaining unit. Thus, personnel and other expenditures for MES employees are not directly affected unless and until MES employees elect to collectively bargain. However, it is worth noting that the bill likely affects MES's nonbudgeted status in the event that MES employees elect to participate in collective bargaining and successfully negotiate terms that have monetary value, as the bill expressly requires that the Governor include in the annual budget bill the appropriations necessary to implement and fund the terms within each MOU concluded between MES and the exclusive representatives of its employees. In such an event, it is assumed that the bill, in effect, subjects MES to the State budget process. However, this fiscal and policy note does not account for any impact on State finances should MES become subject to the State budget process as a result of the bill.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 472 and HB 458 of 2022.

Designated Cross File: SB 218 (Senator McCray, *et al.*) - Budget and Taxation and Finance.

Information Source(s): Maryland Environmental Service; Comptroller's Office; Baltimore City Community College; University System of Maryland; St. Mary's College of Maryland; Maryland Department of Transportation; Department of Budget and Management; Department of Legislative Services

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js/mcr

Analysis by: Richard L. Duncan

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