
Testimony of David Gray Wright
SB 908 – Budget Bill – Appropriations Statement –
Memorandum of Understanding for State Personnel
Finance Committee
March 17, 2021
Support / Favorable

My firm represents AFSCME Maryland Council 3. We also represent firefighters, teachers, county and municipal employees, and other public employees throughout Maryland, through their collective bargaining representatives. We routinely negotiate in the context of binding interest arbitration.

Binding interest arbitration has emerged as a crucial tool for successful and cooperative labor relations in the public sector. That is so because arbitration (i) **motivates negotiating parties to reach an agreement** and, when they cannot, (ii) it provides **a final result with reason and purpose that both parties have faith in**. On this basis, several counties, Baltimore City, and Ocean City have adopted arbitration; as have several states with mature labor relations.

Arbitration is a dispute resolution tool to break an impasse. When parties bargain in good faith but cannot reach agreement on all the subjects before them, they may reach impasse – a sticking point over the last few unresolved subjects. Arbitration allows **a professional neutral to hear the positions and reasoning from both sides** and break the impasse by choosing the more appropriate resolution of those final disputed subjects.

Although both sides can take an impasse to arbitration, both sides ordinarily work hard to avoid arbitration. Collective bargaining favors a negotiated agreement and resolution, and parties to collective bargaining disfavor “winning” and “losing.” Thus, **parties that can resort to arbitration are nonetheless more rational and more compromising, and more likely to reach agreement because they are motivated to avoid “losing.”**

When parties resort to arbitration, if they wish to succeed, they must present positions supported by evidence and founded in fairness. **The arbitrator is dispassionate – proceeding without the emotion and politics that may have caused impasse. The arbitrator must make a decision based on established standards about fiscal considerations of the employer and considerations for employees.** As a result, both parties get an opportunity to be fully heard and then a complete and reasoned assessment of their positions from the arbitrator. **Like judicial decisions, the parties necessarily have faith in the process and result, because of the involvement of a neutral.**

Many additional questions are addressed in the following pages.

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What is Binding Arbitration?

Arbitration before a neutral third party is the preferred way to resolve differences between labor and management over terms and conditions of employment. Binding Arbitration produces a final decision that defines the rights and obligations of the parties. Arbitration Awards are subject to judicial review under standards that are well defined in Maryland law.

What collective bargaining rights do State employees have?

- The State and each exclusive representative (employee union) are to meet, exchange information and negotiate within an annual bargaining window.
- The representatives are to negotiate within sufficient time to conclude a written memorandum of understanding before January 1 for any item requiring an appropriation of funds or other legislation for the next fiscal year, i.e., the fiscal year that begins on the following July 1.
- A memorandum of understanding is to include the terms and conditions that are to be adopted and implemented for the next fiscal year.
- The State's annual budget bill submitted to the General Assembly is to include amounts required to accommodate any additional cost resulting from the negotiations as reflected in each memorandum of understanding.

What happens if a memorandum of understanding is not concluded between the State and an exclusive representative?

- If negotiations do not conclude for the next fiscal year before October 25, either party may request appointment of a fact finder.
- The fact finder may issue subpoenas, hold hearings, administer oaths, take testimony, and receive other evidence on the issues in dispute.
- The fact finder is to make written recommendations regarding wages, hours, and working conditions, and any other terms or conditions of employment in dispute before November 20.
- The fact finder is to release the written recommendations to the Governor, the President of the Senate, and the Speaker of the House of Delegates on or before December 1.
- The fact finder's written recommendations are not binding.

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Why propose Binding Arbitration?

- The written recommendations of a fact finder do not have to be accepted however worthy the fact finder's written recommendations may be.
- Even after it is ratified and concluded, a memorandum of understanding is not enforceable unless its new terms either are included in the State's budget or confirmed by legislative action of the General Assembly.

Why should Binding Arbitration for State employees be authorized by constitutional amendment?

- Under the Maryland Constitution, the Governor has sole authority to prepare and submit a budget for the next fiscal year to the General Assembly.
- The Governor's sole authority permits the Governor to disregard both a fact finder's written recommendations and new terms included in a memorandum of understanding.
- If authorized, Binding Arbitration would permit an experienced, neutral third party to balance the needs of State employees against the mission and means of the State, and to adopt a fair outcome for all to follow.

Will implementation legislation be needed should this pass?

- Yes. The purpose of the proposed amendment is to simply authorize Binding Arbitration.
- As a second step, if the amendment is adopted, the General Assembly will need to enact statutory material to define the mechanics of the arbitration process and implement the Constitutional authorization.

Which other states permit Binding Arbitration?

- Connecticut, Delaware and Hawaii permit Binding Arbitration for non-public safety state employees. Many more states permit Binding Arbitration for public safety workers, including fire fighters, emergency medical services personnel and police officers.

Is Binding Arbitration authorized for any public employees in Maryland?

- Yes, for some State employees: Maryland Transportation Code § 7-602 states "(i)f, in a labor dispute between the Administration and any employees described in § 7-601 of this subtitle, collective bargaining does not result in agreement, the Administration shall submit the dispute to an arbitration board."
- Yes, for some County and Municipal employees: Eight Maryland jurisdictions: Anne Arundel County, Baltimore City, Baltimore County, Frederick County, Howard County, Montgomery County, Prince George's County and the Town of Ocean City have authorized Binding Arbitration for fire and EMS bargaining units through Charter and Code-level legislation.
- The Maryland Court of Appeals has approved of Binding Arbitration.