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**ANALYSIS OF COLLECTIVE BARGAINING LEGISLATION**

98302

**U.S. Department of Justice  
National Institute of Justice**

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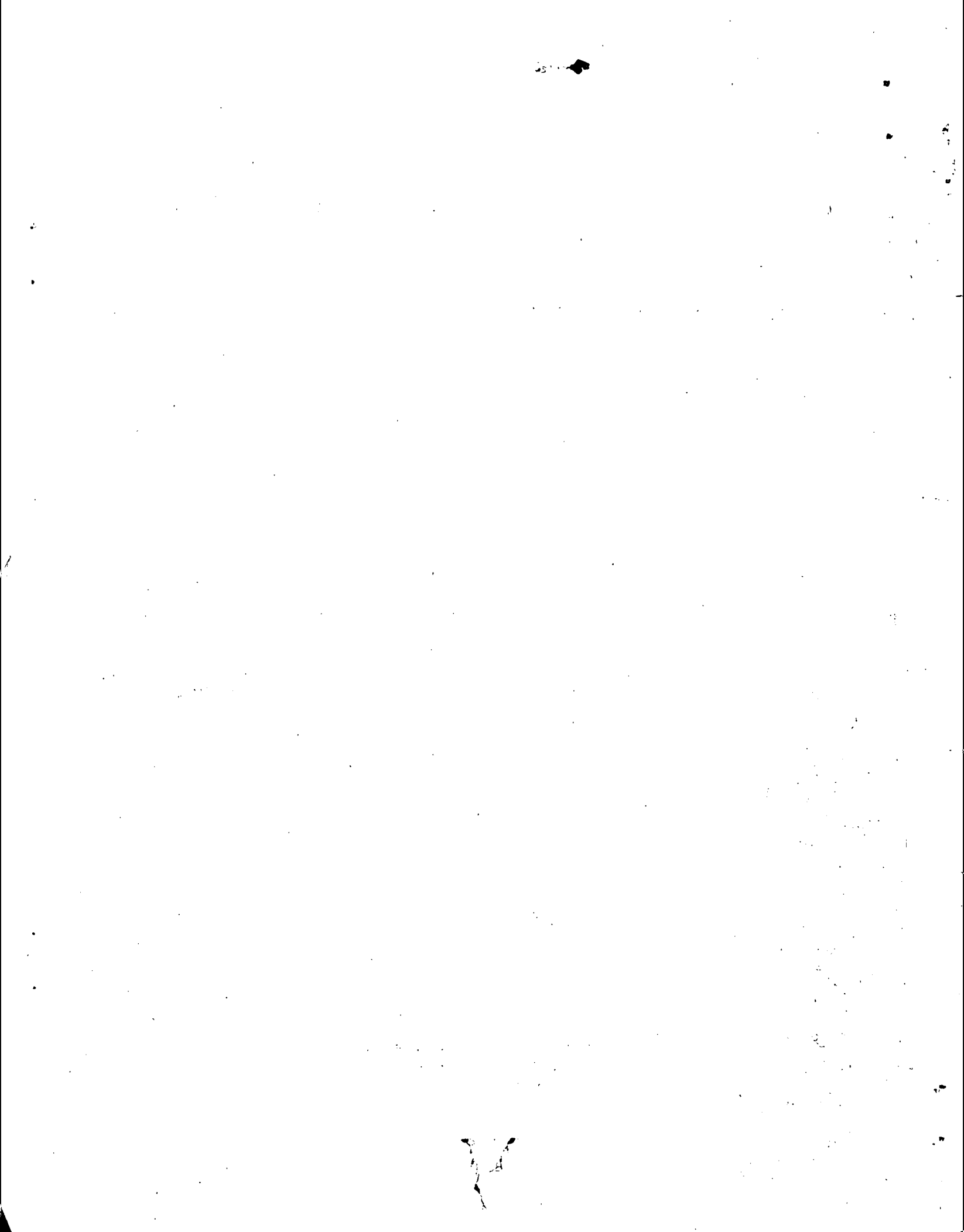
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**Prepared by:**

**Department of Fiscal Services  
Annapolis, Maryland  
November, 1983**



**DEPARTMENT OF FISCAL SERVICES**

MARYLAND GENERAL ASSEMBLY  
LEGISLATIVE SERVICES BUILDING  
90 STATE CIRCLE

**ANNAPOLIS, MARYLAND 21401-1991**  
**841-3761**



**WILLIAM S. RATCHFORD, II**  
DIRECTOR

November 1, 1983

The Honorable Melvin A. Steinberg  
President of the Senate

The Honorable Benjamin L. Cardin  
Speaker of the House of Delegates

Members of the General Assembly.

During previous legislative sessions the General Assembly has considered several bills relating to collective bargaining. As statewide legislation has not been enacted, it is anticipated that bills on this issue will be introduced at the 1984 Session.

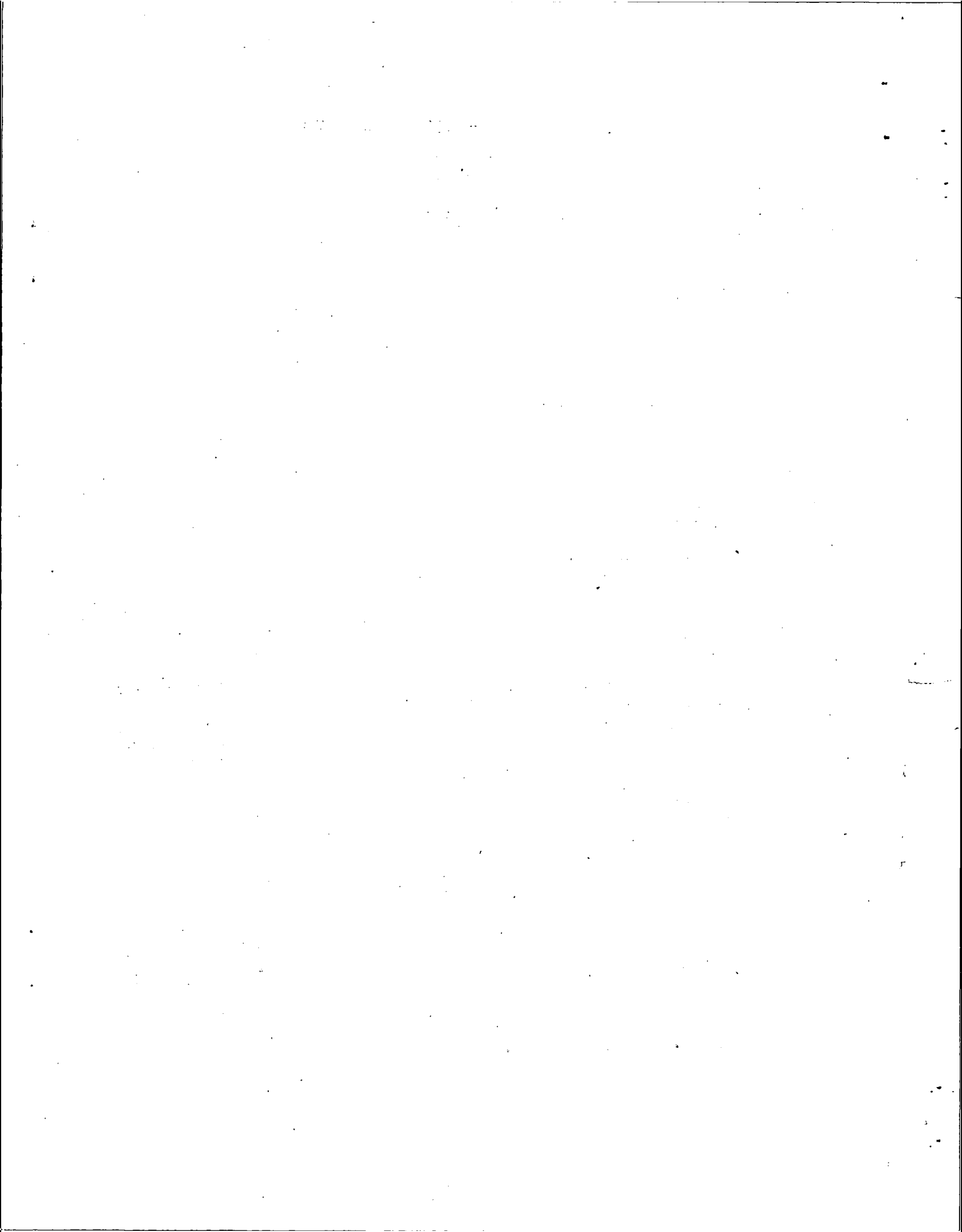
The Department of Fiscal Services developed this research report to provide background information on this subject. The focus of the report is on collective bargaining legislation in other states, existing provisions in Maryland law with respect to State entities and local governments, and the major components in collective bargaining legislation.

The report was prepared by E. Kenneth Henschen with research assistance from Eugene M. Thomas, III, analysts in the Division of Fiscal Research, under the general supervision of Joseph M. Coble, Director of the Division.

The Department of Fiscal Services trusts the report will be of assistance to legislators and other individuals interested in collective bargaining legislation.

Sincerely yours,

William S. Ratchford, II  
Director



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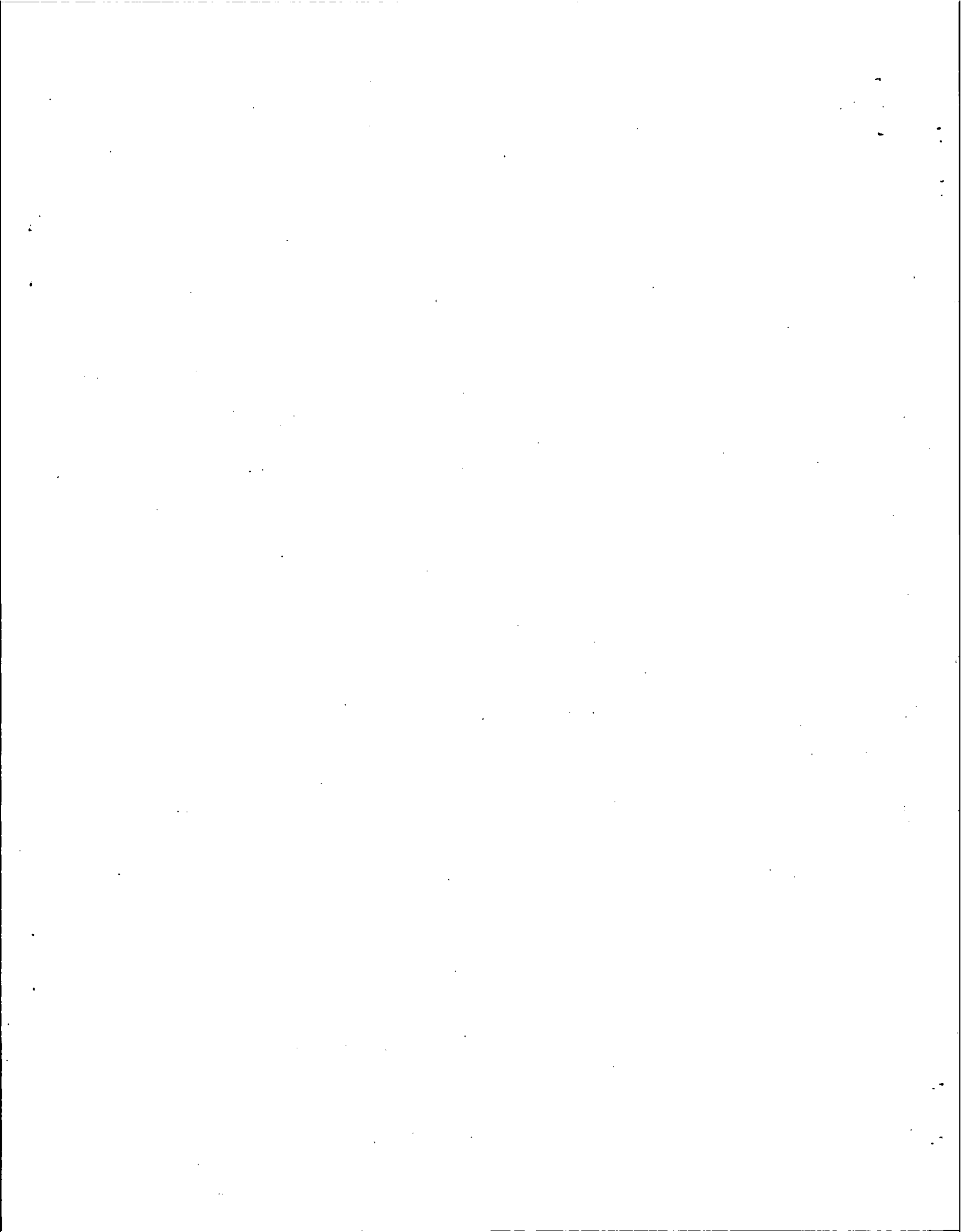
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ACQUISITIONS



## INTRODUCTION

Prior to passage of the Pendleton Civil Services Act in 1883 providing merit system coverage to approximately 10% of public employees in the national government, the patronage system in most public jurisdictions served in effect as the union for the public employees.<sup>1</sup> Employee grievances were handled by the political officials who had placed the employees in jobs. Upon passage of the Pendleton Act and in the ensuing period of civil service reform, greater job security and other reforms made public service employment in many areas more attractive than private employment. Public sector employees had little incentive to unionize for the purpose of bargaining collectively.

The Wagner Act of 1935 strengthened the private labor union and for the first time provided for the right of collective bargaining.<sup>2</sup> Government workers now desired the rights given to private employees. Federal worker unions were denied bargaining rights, however, until the issuance of Executive Order 10988 in 1962.<sup>3</sup> The Order followed the first state statute to recognize the right of employee organizations to bargain, passed in Wisconsin in 1959 for its local government employees.<sup>4</sup>

The last two decades have seen widespread enactment of state laws formally establishing the public employer-employee relationship. A summary of the current status of these laws is presented in Table I. However, there is little similarity to these laws other than the recognition of employee organizations. Chart I classifies the provisions of law in Table I on an ordinal scale in which higher values denote the greater effect of the law. Chart I shows, for example, that although 47 states have enacted some provision regulating the public employer-employee relationship, only 31 require employers and employees to bargain collectively.

In spite of recent passage of a large number of state and local public employee bargaining laws, the long delay in enacting laws for public employees following the Wagner Act and the great differences among these laws can be attributed to government's unique justification for denying employees the right to bargain collectively. It has been argued that collective bargaining would violate governmental sovereignty, interrupt essential services, interfere with the budgeting process, and conflict with civil service administration.

The principle of governmental sovereignty holds that it is the responsibility of elected officials to act exclusively on behalf of the public. An agreement made between government officers and representatives of employees which binds elected officials has often been considered a violation of this principle.

The possibility of interruption of essential services through strike is perhaps the most conspicuous example of the inherent conflict between the desires of the public (through elected officials) and government employees, and has frequently been the reason for denying collective bargaining rights.

Government has also argued that collective bargaining could lead to ever-

<sup>1</sup>W. D. Heisel, On Public Employee Negotiations (Chicago: International Personnel Management Assn., 1973), p. 1.

<sup>2</sup>Ibid., p. 2.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid., p. 5.

increasing budgets and that budget planning would be difficult in any case if employees gained new pay and benefit increases, which may eventually lead to reducing the government work force and curtailing needed services.

Finally, often government has been reluctant to provide for collective bargaining because negotiations may undermine the authority of a civil service system. For example, position classification, which is usually the responsibility of a civil service commission, affects salary levels and is therefore of interest to employee organizations.

The basis for collective bargaining legislation in recent years has been an acknowledgment that formulation of an employee organization results from a determination by employees to share in decision-making and that if decisions are made in a co-equal process employees will be happier and more productive, possibly improving the efficiency of public service. In addition, experience shows that collective bargaining has resulted in better protection of employees' rights under merit systems of government.<sup>5</sup>

The rest of this report, beginning with Section II, details major components in a collective bargaining law for public employees and addresses specifics relating to Maryland.

<sup>5</sup>N. Joseph Cayer, Public Personnel Administration in the United States (New York: St. Martin's Press, 1975), p. 122.



**TABLE I  
SELECTED PROVISIONS OF STATE PUBLIC SECTOR BARGAINING LAWS**

<u>State</u>	<u>Coverage</u>	<u>"Bargaining" or "Meet and Confer"</u>	<u>Impasse Resolution*</u>	<u>Union Security</u>	<u>Strikes</u>
Alabama	Public employees- no general law; fire fighters and educational employees- special statutes; sheriff's deputies and city water works employees - case law	Fire fighters- right to present proposals-employer may sign agreement	Not provided by statute	Sheriff's deputies and educational employees: checkoff	Fire fighters: total strike ban
Alaska	Public employees generally, teachers, & ferry system employees - statutory provisions	Public employees generally-collective bargaining; teachers- negotiation on matters pertaining to their employment and fulfillment of professional duties	Public employees - arbitration requirements depend upon classification of employee; teachers - advisory arbitration	Public employees generally: checkoff- union shop - agency shop	Public employees generally: total ban for essential employees - other employees can strike after mediation - majority strike vote required
Arizona	Public employees - no general law; City of Phoenix public employees - comprehensive ordinance; university employees, teachers, and state employees - case law	No general statutory law	Not provided by statute	Teachers: checkoff	No general statutory provision or case law
Arkansas	Public employees - no general law; municipal employees, public employees, & state employees - case law	Public employees generally - no comprehensive law - employer may bargain but not required to	Not provided by statute	State employees: checkoff - union shop illegal	Public employees generally: total strike ban
California	Local government employees, state employees, state civil service employees, educational employees, & fire fighters - statute; employees of the City of San Francisco, San Francisco County, Los Angeles County, and the City of Los Angeles - ordinance	Local employees and state employees - meet and confer; state civil service employees - meet and confer in good faith; educational employees - collective bargaining	Local government employees and state civil service employees - mediation; state government employees - not provided by statute; educational employees - fact finding	Local employees: checkoff - agency shop illegal; educational employees: checkoff - service fee - maintenance of membership - employer may require ratification of security arrangement by majority vote; state civil service employees: checkoff - maintenance of membership	State, civil service, local & educational employees: total strike ban

**SELECTED PROVISIONS OF STATE PUBLIC SECTOR BARGAINING LAWS  
(Continued)**

<u>State</u>	<u>Coverage</u>	<u>"Bargaining" or "Meet and Confer"</u>	<u>Impasse Resolution*</u>	<u>Union Security</u>	<u>Strikes</u>
Colorado	Public employees - no general law; state college employees, teachers, and police - case law	Public employees generally - no comprehensive statute - collective bargaining not illegal per se	Not provided by statute	No general statutory law	No general statutory provision or case law
Connecticut	State employees, municipal employees, and teachers - statute	State employees, municipal employees, and teachers - collective bargaining	Municipal employees - binding arbitration if neither party previously requested arbitration; state employees - fact finding; teachers - advisory arbitration	State employees: checkoff - agency shop; municipal employees: checkoff	State and municipal employees and teachers: total strike ban
Delaware	Public employees in general, transit workers, & certificated public school employees - statute	Public employees generally - collective bargaining; teachers-negotiations required upon request of either party	Public employees - arbitration for certain matters; teachers - fact finding; transit workers - binding arbitration upon request of either party	Public employees generally, including teachers: checkoff	Public employees, including teachers: total strike ban
District of Columbia	District personnel & public school employees - rules	District personnel & public school employees - collective negotiation	District employees - arbitration may be alternative to fact finding & may be made binding; public school employees - arbitration as set by parties	District employees: agency shop - checkoff; public school employees: checkoff	Public employees generally: total strike ban
Florida	Public employees generally - statute	Public employees generally - collective bargaining	Public employees - binding legislative ruling	Public employees generally: checkoff - agency shop illegal	Public employees generally: total strike ban
Georgia	Public employees - no general statute; fire fighters & state employees - special statutes; police & municipal employees - case law	Fire fighters - meet & confer - within specified number of days after receipt of notice from union	Fire fighters - mediation	No general statutory law	Fire fighters and state employees: total strike ban

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**SELECTED PROVISIONS OF STATE PUBLIC SECTOR BARGAINING LAWS**  
(Continued)

<u>State</u>	<u>Coverage</u>	<u>"Bargaining" or "Meet and Confer"</u>	<u>Impasse Resolution*</u>	<u>Union Security</u>	<u>Strikes</u>
Hawaii	Public employees - general statute	Public employees generally - collective bargaining - meet & confer on subjects reserved to management	Public employees - binding arbitration upon agreement of parties; fire fighters - compulsory binding arbitration	Public employees generally: agency shop	Public employees generally: limited strike ban - strike permitted after compliance with impasse procedures & advance notice to state board & employer
Idaho	Fire fighters & teachers - statute; municipal employees - case law	Fire fighters - collective bargaining - within specified number of days after request; teachers - collective bargaining	Teachers and fire fighters - fact finding	No general statutory law	Fire fighters: total strike ban
Illinois	Public employees - no general law; state employees - executive order; firemen - Municipal Code; public employees generally, policemen, & non-academic employees of a board of education - case law	Public employees generally - collective bargaining permitted but not required - no comprehensive statute	State employees - arbitration	County highway department employees generally: checkoff (employee must request)	Public employees generally: total strike ban
Indiana	Public employees generally and certificated school employees - statute	Public employees generally - collective bargaining; certificated school employees - collective bargaining - meet & discuss obligation for certain subjects	Public employees - fact finding recommendations may be binding upon request of one party or else voluntary binding arbitra- tion; certificated school employees - binding arbitration upon mutual consent or, if no agreement by specified date before budget submission, parties retain status quo	Public employees generally & certificated school employees: checkoff	Public employees and certificated school employees: total strike ban
Iowa	State and local governmental employees - statute	Public employees generally - collective bargaining	Public employees - binding arbitration by request of parties; fire fighters - advisory arbitration	Public employees generally: checkoff	Public employees generally: total ban
Kansas	State & local governmental employees and teachers - statute	State and local employees - meet and confer obligation; teachers - collective bargaining	Public employees (other than state agencies, employees) - governing body will settle impasse if no agreement within certain period after appointment of fact finders; teachers - Board of Education will take action in public interest if no previous settlement	Public employees generally: agency shop illegal; teachers: checkoff	State and local employees and teachers: total strike ban

**SELECTED PROVISIONS OF STATE PUBLIC SECTOR BARGAINING LAWS  
(Continued)**

<u>State</u>	<u>Coverage</u>	<u>"Bargaining" or "Meet and Confer"</u>	<u>Impasse Resolution*</u>	<u>Union Security</u>	<u>Strikes</u>
Kentucky	Policemen & fire fighters - statutory provisions; teachers - case law	Fire fighters - collective bargaining; police - collective bargaining in counties which exceed certain population that have adopted the merit system	Fire fighters - fact finding	Fire fighters: checkoff - union shop	Fire fighters, teachers, & police: total strike ban
Louisiana	Public employees - no general law; public transportation employees & public employees - special statutes; state & local governmental employees & public employees generally - case law	No general statutory law	Not provided by statute	Public employees generally: checkoff	No general statutory provision or case law
Maine	Municipal employees, teachers, state employees, and Maine University/ Academy employees, Vocational - technical institute employees, and practical nursing school employees - statute	Municipal employees & state employees - collective bargaining	Municipal employees & state employees - arbitration upon request (decisions advisory or binding, depending on subject)	State and municipal employees: union security devices not permitted	Municipal and state employees & teachers: total strike ban
Maryland	Teachers & noncertificated employees of school districts, employees of Baltimore County Community Colleges & Montgomery County Community College & transit employees - statute; public employees generally - county ordinances	Teachers and school employees - meet and negotiate upon request	Teachers and school employees - fact finding	Teachers: checkoff	Teachers and school employees: total strike ban
Massachusetts	Public employees generally, police & fire fighters - statute	Public employees generally - collective bargaining	Public employees - legislative body may authorize binding arbitration; fire fighters and police officers - advisory arbitration or else binding arbitration (scope of arbitration limited specifically)	Public employees generally: checkoff - agency shop (majority vote required)	Public employees generally: total strike ban

**SELECTED PROVISIONS OF STATE PUBLIC SECTOR BARGAINING LAWS**  
(Continued)

<u>State</u>	<u>Coverage</u>	<u>"Bargaining" or "Meet and Confer"</u>	<u>Impasse Resolution*</u>	<u>Union Security</u>	<u>Strikes</u>
Michigan	Public employees generally, police & fire fighters - statute	Public employees generally - collective bargaining	Public employees - fact finding; police & firemen - either party may initiate binding arbitration	Public employees generally: agency shop	Public employees generally: total strike ban
Minnesota	Public employees in general - statute	Public employees generally - collective bargaining (negotiation in good faith); professional employees - meet and confer on policy matters	Public employees - parties may petition for binding arbitration (employer may reject binding arbitration unless essential employees involved)	Public employees generally: agency shop	Public employees generally: limited strike right
Mississippi	Public employees - no general law	No general statutory law	Not provided by statute	No general statutory law	No general statutory law or case law
Missouri	Public employees generally - statute; police officers, teachers, court employees, and university non-professionals - case law	Public employees generally - meet and confer - consultation - advisory	Public employees - not provided (parties may agree to fact finding)	No general statutory law	Public employees generally: strikes prohibited
Montana	State and local governmental employees and nurses - statute	State and local employees - collective bargaining; nurses - meet & bargain in good faith - reduce agreement to writing	Public employees and fire fighters - parties may submit to binding arbitration; nurses - not provided	Public employees generally: checkoff - agency shop	Public employees generally: strikes permitted by court decision; nurses: limited strike right - strike permitted after advance notice to employer & if there is not another strike in effect at a health care facility within a specified radius; fire fighters: strikes prohibited during negotiation, arbitration and term of contract
Nebraska	Teachers, government service employees, and public utility workers - statute	Public employees generally - collective bargaining; teachers - meet and confer	Governmental employees and teachers - state commission can dictate certain contract terms if impasse continues	Public employees generally: checkoff - agency shop illegal	Public employees generally: total strike ban
Nevada	Local government employees - statute	Public employees generally - collective bargaining on mandatory subjects - meet and confer on other subjects	Local government employees - fact finding recommendations may be made binding by parties or by governor by order on certain subjects; firemen - arbitration becomes binding after specified period	Public employees generally: checkoff (mandatory bargaining subject)	Public employees generally: total strike ban

**SELECTED PROVISIONS OF STATE PUBLIC SECTOR BARGAINING LAWS  
(Continued)**

<u>State</u>	<u>Coverage</u>	<u>"Bargaining" or "Meet and Confer"</u>	<u>Impasse Resolution*</u>	<u>Union Security</u>	<u>Strikes</u>
New Hampshire	Public employees generally - statute	Public employees generally - collective bargaining	Public employees - fact finding recommendations may be approved by (1) negotiating team, (2) union membership & employer's board, or (3) legislative body	No general statutory law	Public employees generally: total strike ban
New Jersey	Public employees in general - statute	Public employees generally - collective negotiations	Public employees - arbitration may be requested with award to be issued within specified period; uniformed employees - binding arbitration required if no agreement by specified date before budget submission	Public employees generally: checkoff - maintenance of membership illegal - agency shop illegal	Public employees generally: total strike ban
New Mexico	State employees - regulation; municipal employees - case law	State employees - collective bargaining permitted but not required - once employer consents, duty of good faith arises	State employees - state board takes necessary steps after fact finding	State employees: checkoff - union and agency shop prohibited	Public employees generally: total strike ban
New York	Public employees generally and municipal workers of the City of New York - statute	Public employees generally - collective bargaining	Public employees - voluntary arbitration with legislative determination of contract (public panel's decision binds police and firemen); City of New York - city board decisions binding after fact finding	Public employees generally: checkoff - agency shop permitted	Public employees generally and New York City employees: total strike ban
North Carolina	Public employees generally - no statute; public employees generally and municipal employees - special statutes	No general statutory law	Not provided by statute	No general statutory law	No general statutory or case law
North Dakota	Teachers & public employees generally - statute	Certificated school employees - collective bargaining - individual bargaining permitted	Public employees - mediation; teachers - state commission makes recommendations after fact finding	Public employees generally: agency shop; teachers: checkoff	Teachers: total strike ban
Ohio	Public employees - no general law; public employees generally - special statutes	No general statutory law	Public employees - court not authorized to appoint mediator & binding arbitration not permitted	Public employees generally: checkoff - agency shop prohibited	Public employees generally: total strike ban

**SELECTED PROVISIONS OF STATE PUBLIC SECTOR BARGAINING LAWS  
(Continued)**

<u>State</u>	<u>Coverage</u>	<u>"Bargaining" or "Meet and Confer"</u>	<u>Impasse Resolution*</u>	<u>Union Security</u>	<u>Strikes</u>
Oklahoma	Teachers, policemen, and fire fighters - statute	Fire fighters and police - meet & discuss - employer retains right to final decision - advisory	Fire fighters and policemen - arbitration (employer not required to accept award); teachers - fact finding	No general statutory law	Police, fire fighters, and teachers: total strike ban
Oregon	Public employees generally - statute; employees of the City of Corvallis, the City of Eugene, and the City of Portland - ordinances	Public employees generally - collective bargaining	Public employees - binding arbitration may be initiated by one party or state board (only for those without right to strike)	Public employees generally: checkoff - union shop - agency shop must be approved by majority of unit employees	Public employees generally: limited strike right - for employees who are members of properly certified or recognized bargaining units so long as units not required to use binding arbitration, have exhausted dispute settlement procedures, and have given advance notice to employer and labor board - no strike right for essential employees
Pennsylvania	Public employees generally, police and fire fighters - statute	Public employees generally - collective bargaining - supervisors have only meet and confer rights	Public employees - voluntary binding arbitration (mandatory for certain employee groups & awards requiring legislative action are advisory); police- men and firemen - binding arbitration invoked by either party	Public employees generally: checkoff - maintenance of membership - agency shop illegal	Public employees generally: limited strike right - must exhaust impasse settlement procedures - no strike right for guards or court employees
Rhode Island	State employees, municipal employees, fire fighters, local police, state police, & certified teachers - statute	Public employees generally - collective bargaining	State employees - compulsory binding arbitration (advisory arbitration for wages); teachers & municipal employees - voluntary arbitration (binding except for money matters forwarded to legislative body); fire fighters, local police & state police - compulsory binding arbitration	State employees: checkoff - agency shop; teachers: agency shop	Public employees generally: total strike ban
South Carolina	State employees & county & municipal employees - statute; fire fighters - case law	No general statutory law	Not provided by statute	No general statutory law	No general statutory or case law

**SELECTED PROVISIONS OF STATE PUBLIC SECTOR BARGAINING LAWS  
(Continued)**

<u>State</u>	<u>Coverage</u>	<u>"Bargaining" or "Meet and Confer"</u>	<u>Impasse Resolution*</u>	<u>Union Security</u>	<u>Strikes</u>
South Dakota	Public employees generally - statute	Public employees generally - meet & confer for university employees - collective bargaining for other employees	Public employees - labor commissioner makes recommendations after conciliation attempt; firemen & policemen - statute declared unconstitutional	Public employees generally: checkoff	Public employees generally: total strike ban
Tennessee	Professional employees (teachers) - statute; municipal employees - case law	Professional employees (teachers) - collective bargaining	Professional employees (teachers) - advisory arbitration	Professional employees (teachers): no union security provisions; state employees: checkoff	Professional employees (teachers) and city employees: total strike ban
Texas	Fire fighters, policemen, public employees generally, & teachers - statute	Fire fighters and police - collective bargaining; teachers - meet and confer	Firemen and policemen - parties may agree to arbitration with award based on stated criteria (if employer doesn't elect arbitration, district court fixes certain terms - may be unconstitutional)	City & county employees: checkoff; public employees generally: agency shop prohibited	Police & fire employees & certified teachers: total strike ban
Utah	State employees - statute	No general statutory law	Not provided by law	No general statutory law	Public employees generally: total strike ban
Vermont	State employees, municipal employees, & teachers - statute	State employees and municipal employees - collective bargaining	State employees - state board selects from final offers if no agreement by specified date; municipal employees - parties may submit to binding arbitration; teachers - fact finding	State employees: agency shop prohibited; municipal employees: union shop - agency shop	Municipal employees: strike permit unless it occurs at certain times during statutory negotiation process or unless it will endanger public health, safety or welfare; state employees: total strike ban
Virginia	Public employees - no general statute; employees of local governments - special statutes; municipal employees, police, and fire fighters - case law	No general statutory law	Not provided by statute	No general statutory law	Public employees generally: total strike ban



**SELECTED PROVISIONS OF STATE PUBLIC SECTOR BARGAINING LAWS  
(Continued)**

<u>State</u>	<u>Coverage</u>	<u>"Bargaining" or "Meet and Confer"</u>	<u>Impasse Resolution*</u>	<u>Union Security</u>	<u>Strikes</u>
Washington	Public employees generally, teachers, community college academic employees, marine employees, port district employees, state civil service employees, state civil service employees who work for the higher education board, and public utility employees - statute	Public employees generally - collective bargaining; community college employees - meet & confer	Public employees - mediation; uniformed employees - compulsory binding arbitration; teachers & community college employees - fact finding	Public employees generally & teachers: checkoff - agency shop	Public employees: total strike ban
West Virginia	Public employees - no statute; public employees generally - case law	No general statutory law	Not provided by statute (mediation permitted)	No general statutory law	Public employees: total strike ban
Wisconsin	State employees, municipal employees, teachers, fire fighters, and police - statute	Public employees generally - collective bargaining	State employees - if fact finding recommendations not accepted in reasonable time, an unfair labor practice; municipal employees - provisions expired 10/31/81; firemen & policemen - binding arbitration upon mutual agreement	Municipal employees: checkoff - agency shop (majority vote required); state employees: checkoff - agency shop (two-thirds vote required)	State employees & police & fire fighters: total strike ban; municipal employees: limited strike right - if both parties withdraw final offer before binding arbitration and then advance notice is given
Wyoming	Fire fighters - statute; public employees generally - case law	Fire fighters - collective bargaining	Firemen - arbitration (Uniform Arbitration Act procedures used)	No general statutory law	Fire fighters: no mention of strikes

\*Identifies last step in impasse resolution procedure

Source: Commerce Clearing House, Inc. Topical Law Reports - Public Employee Bargaining  
 Prepared by: Department of Fiscal Services  
 Date: August, 1983

CHART I  
INDEX OF STATE PUBLIC SECTOR BARGAINING LAWS FOR VARIOUS EMPLOYEE GROUPS

State	"Bargaining" or "Meet and Confer"						Impasse Resolution						Union Security						Strikes							
	Pol-ice	Fire	Educ-ation	Local	State	Public Empl.	Pol-ice	Fire	Educ-ation	Local	State	Public Empl.	Pol-ice	Fire	Educ-ation	Local	State	Public Empl.	Pol-ice	Fire	Educ-ation	Local	State	Public Empl.		
Alabama		1				4									1											
Alaska			2								2															2
Arizona															1											
Arkansas																		1								
California			4	2	2				2	1	1				2	1	2									
Colorado																										
Connecticut			4	4	4				2	4	2					1	2									
Delaware			2			4					2															
Florida						4									1										1	
Georgia		2							1																1	
Hawaii						4			4																2	
Illinois		4	4						2	2															2	
Indiana			4			3					2					1									1	
Iowa						4																			1	
Iowa						4			2		3														1	
Kansas			4	2	2																					
Kentucky	4	4							2	4					3	1										
Louisiana																									1	
Maine				4	4						3	3														
Maryland			2												1											
Massachusetts						4			3	3															2	
Michigan						4			3	3															1	
Minnesota			2			4																			2	
Mississippi																										
Missouri						2																				
Montana				4	4				3																1	
Nebraska			2			4				3															1	
Nevada						4			4		3														1	
New Hampshire						4																			1	
New Jersey						4			4	4															1	
New Mexico					3												1								1	
New York						4			3	3															1	
North Carolina											4	4													1	
North Dakota																									1	
Ohio			3												1										1	
Oklahoma	2	2							2	2	2														1	
Oregon						4																			2	
Pennsylvania						4			3	3															2	
Rhode Island						4			4	4	3	3	4												1	
South Carolina															2		2									
South Dakota			2			4																			1	
Tennessee			4								2						1	1							1	
Texas	4	4	2						3	3						1									1	
Utah																									1	
Vermont				4	4						2	3	4												1	
Virginia															3										1	
Washington			2			4			4	4	2				2										1	
West Virginia																									1	
Wisconsin						4			3	3			4												1	
Wyoming		4									2														1	
Washington, D.C.			2			2					2				1										1	
No of States With a Provision	3	7	16	6	7	23	10	18	16	7	8	21	0	1	11	6	7	22	4	8	13	8	7	19		
Most Common Provision	4	4	2	4	4	4	3	3	2	3	4	3	n/a	3	1	1	2	*	1	1	1	1	1	1		

\*Equivalent number of values 1 and 2.

INDEX VALUES ASSIGNED:

"Bargaining" or "Meet and Confer"

- 1 = Right to Present Proposals
- 2 = Required to Meet and Confer
- 3 = May Bargain Collectively
- 4 = Required to Bargain Collectively

Union Security

- 1 = Checkoff Allowed
- 2 = Maintenance of Membership or Form of Agency Shop Allowed
- 3 = Union Shop Allowed

Impasse Resolution

- 1 = Mediation
- 2 = Fact Finding or Advisory Arbitration
- 3 = Voluntary Binding Arbitration
- 4 = Compulsory Binding Arbitration

Strikes

- 1 = Strikes Prohibited
- 2 = Some Limited Strike Rights

Source: Commerce Clearing House, Inc., Topical Law Reports - Public Employee Bargaining  
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## I. STATE PUBLIC SECTOR EMPLOYEE BARGAINING LAW IN MARYLAND

Current Maryland State law grants bargaining rights to the following employees:

- Certificated education employees
- Noncertificated education employees
- Employees of the Baltimore County community colleges
- Employees of Montgomery Community College
- Employees of the Maryland Mass Transit Administration

The General Assembly provided all certificated education employees the right to meet and negotiate with their employer in 1968. In 1974 noncertificated education employees in all counties other than Carroll, Frederick, Howard, Somerset, Wicomico, and Worcester and Baltimore City and who were not covered by a negotiated agreement under local law were granted this right. Both laws obligate the employer (a county board of education or the Board of School Commissioners of Baltimore City) and the employee organization representing the public school employees to confer in good faith on matters relating to salaries, wages, hours, and other working conditions and to reduce to writing the matters agreed on. Under both laws, however, the employer retains the right to make the final determination as to matters that have been the subject of negotiation, subject to budgetary approval of monetary items by the governing body of the county or the Mayor and City Council of Baltimore City.

If either or both parties to a proposed agreement between the public school employer and employees conclude that an impasse exists in negotiations, a third-party panel or the State Board of Education shall assist in resolving differences. Within 30 days after appointment, the panel or Board is required to make written recommendations to resolve any dispute not previously resolved. The recommendations, however, are not binding on the parties, as the employer reserves the final right of determination. Employee strikes are strictly prohibited.

As to certificated education employees, statutory law and rules and regulations establishing and regulating tenure take precedence over bargaining rights granted to the employees. As to noncertificated employees, if the governing authority does not approve enough funds to implement the negotiated agreement, renegotiations are required before the employer makes a final determination.

Baltimore County community college employees were granted collective bargaining rights under State law in 1977, as were employees of Montgomery Community College in 1978. Collective bargaining as provided for under these laws differs from the "meet and negotiate" rights established for public elementary and secondary school employees by eliminating any provision for unilateral determination of issues and by making the terms of the agreement superior to conflicting rules, regulations, and administrative policies. Strikes continue to be prohibited for both Baltimore County community college and Montgomery Community College employees. Both community college laws provide for expiration upon enactment of a general law on collective bargaining applicable to community colleges.

Public elementary and secondary school employees and community college employees perform State-mandated functions, but are not clearly State employees. In most instances, these services are delivered under the auspices of independent boards at the local level which are fiscally dependent on the local governments but receive significant financial support from the State government.

The only State agency required to collectively bargain with its employees is the Mass Transit Administration, which, by statute, assumed the collective bargaining agreement between the transportation system acquired by the Administration and the authorized representative of its employees existing at the date of the acquisition.

General State law also provides that persons subject to collective bargaining agreements containing grievance procedures shall be excepted from the grievance procedure for merit system employees.

Further, employees of the Washington Metropolitan Area Transit Authority, which provides transit services in Montgomery and Prince George's Counties, are given collective bargaining rights through a multi-state compact.

## II. EMPLOYEE COVERAGE

Recognizing fundamental differences in the services provided by their employees, many states have granted bargaining privileges to their employees by enacting separate laws for certain groups. A review of Table I shows that policemen, firemen, and teachers are the most frequent groups covered under separate laws in recognition of the uniquely essential services they provide which require them to be subject to special statutory provisions. In Maryland, special State statutes currently apply to certificated education employees, noncertificated education employees, employees of the Baltimore County community colleges, employees of Montgomery Community College, and employees of the Maryland Mass Transit Administration.

The following categories of employees may or may not be excluded from coverage under any general collective bargaining statute:

- Personnel employees
- Confidential employees
- Administrative employees
- Supervisory employees
- Professional employees
- Probationary employees
- Part-time, temporary or seasonal employees

Personnel employees and confidential employees may have access to confidential information which would benefit the employee organization in negotiations. These employees should not be in a position in which they might be tempted to disclose inside information or in which their actions could be viewed suspiciously by supervisors, and accordingly, are frequently not allowed membership in an employee organization with bargaining rights.

Administrative employees generally identify with the interests of the employer and have little interest in being represented in bargaining by an employee organization. Among Maryland State employees, however, both the Maryland Classified Employees Association (MCEA) and the American Federation of State, County and Municipal Employees (AFSCME) currently admit administrative employees, who receive benefits such as reduced rates for certain insurance coverage, social privileges, and others. If statewide collective bargaining legislation is enacted, the legislation may wish to consider some type of exception or special membership for those administrative employees who currently are members of existing employee organizations. In addition to the "administrative employees," there are approximately 300 top-level management employees in the executive branch who would not be allowed membership in an employee organization with bargaining rights.

Although supervisory employees should be excluded from a bargaining unit that includes their subordinates, they are frequently permitted to be represented in bargaining through a unit of supervisors.

Professional employees may be excluded from coverage under a public employee bargaining law, but more often, they are recognized as a bargaining unit separate from nonprofessionals, and may even be included in a unit with nonprofessionals if a majority of professionals desire inclusion.

Probationary employees are generally not covered by bargaining laws to affirm

the employer's undisputed right to determine the fitness of a new hire. Part-time, temporary or seasonal employees may or may not be excluded from coverage depending on the extent to which the employees generally have a stake in items subject to bargaining.

Also at issue is whether other units of government - counties, municipalities, and bi-county agencies - should be included within the scope of State law. Table II shows the 18 local governments in Maryland which currently have a policy which recognizes labor's right to bargain. The legal source which authorizes the policy of labor recognition is a factor in deciding whether or not to include the local units under State law because it indicates the extent of local support which the policy has. If the policy is stated in the charter, it was approved by the community at large; if stated as an ordinance, it was approved by the governing body and given the effect of law; and if stated by resolution, it was approved by the governing body but deemed to be administrative in nature. Three local governments have a charter policy, 7 an ordinance policy, and 8 a policy by resolution.

In each of the following sections a table outlines the existing practice in the 18 local government entities with some type of collective bargaining legislation. If the General Assembly considers collective bargaining legislation applicable to local governments, it may wish to exempt either permanently or for a period of time, those jurisdictions that have implemented some type of collective bargaining legislation. Another alternative would be a general grant of authority for local governments to enact collective bargaining legislation subject to certain general guidelines.

**TABLE II**  
**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - MEANS OF LABOR RECOGNITION**  
**AND EMPLOYEE COVERAGE**

<u>Local Unit</u>	<u>Means of Labor Recognition</u>	<u>Employee Groups Covered</u>	<u>Positions Excluded</u>
Allegany County	Ordinance	Sheriff's department employees; employees of roads department and nursing home	No provision
Annapolis	Ordinance	City employees	No provision
Anne Arundel County	Ordinance	Classified County employees	No provision
Baltimore City	Ordinance	Classified City employees (police department employees covered by authority of State law)	Part-time, seasonal, probationary, provisional or temporary employees; employees engaged in personnel work in other than a clerical capacity; confidential employees
Baltimore County	Charter	Classified County employees	No provision
Bel Air	Resolution	Public works department employees	No provision
Bowie	Resolution	City employees	Supervisory employees; employees directly involved in the administration of personnel regulations or rules; employees of the Office of the City Manager; temporary or probationary employees; confidential and professional employees
College Park	Resolution	Public works department employees; clerical and technical employees (pending)	No provision
Cumberland	Ordinance	Police department, general trades and labor, fire department, and clerical and technical employees	Legal Secretary; Clerk-Stenographer III Personnel Office; Clerk-Stenographer III City Clerk's Office
Garrett County	Resolution	Roads department employees	No provision
Hagerstown	Resolution	Police, fire, general office, and trade and labor employees	No provision
Harford County	Ordinance	Classified County employees	Confidential employees and attorneys employed to represent the County; police officers
Howard County	Charter	Classified County employees	Confidential employees; management employees; nonclassified exempt employees as defined in charter
Montgomery County- General Employees	Charter	County career merit system employees	Confidential aides; non-merit system employees; heads & deputy & assistant heads of departments & agencies & their aides; employees of offices of county attorney, management & budget, employee relations, personnel, merit system protection board, & police department
Montgomery County- Police	Charter	Police officers	Police sergeant and higher class
Prince George's County	Ordinance	County employees	Elected officials; management-level employees; confidential employees; policy-making officials

**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - MEANS OF LABOR RECOGNITION  
AND EMPLOYEE COVERAGE**

(Continued)

<u>Local Unit</u>	<u>Means of Labor Recognition</u>	<u>Employee Groups Covered</u>	<u>Positions Excluded</u>
Rockville	Resolution	City employees	Supervisory employees above the level of foreman; employees directly involved in the administration of personnel regulations or rules; employees of the Office of the City Manager; temporary or probationary employees; confidential and professional employees
Washington County	Resolution	Roads department employees	Clerical and supervisory employees
Washington Suburban Sanitary Commission	Resolution	Classified Commission employees	Temporary employees; policy-makers; confidential employees; employees with major role in personnel administration

Source: Local Codes and Resolutions; Institute for Governmental Service, 1982 Survey of Wages and Collective Bargaining Arrangements in Selected Maryland Local Governments.  
 Prepared by: Department of Fiscal Services  
 Date: August, 1983



### III. UNIT DETERMINATION

Bargaining units are segregated groups of employees granted bargaining rights under a single employee relations statute. The means for determining bargaining units is of fundamental importance because the unit membership determines the employee organization, if any, that will represent it.

It is generally agreed that employees having the same "community of interest" should be included in the same unit. Community of interest, however, is not so easily defined. If community of interest is defined along departmental lines, administrators may be combined with laborers; if defined along salary lines, those performing very different governmental services may be included in the same unit. Certainly for bargaining to be effective, it must address the particular problems of a homogeneous group of employees.

If community of interest is defined along too narrow lines, however, too many bargaining units will be created, or overfragmentation will result. Overfragmentation impairs the employer's ability to solve government-wide employee problems since it is frequently bargaining with employee organizations that do not represent a majority of government-wide employees in a particular classification or group of related classifications. Also, "whip-sawing," or the tactic of some employee organizations to pyramid on what others gained in recent negotiations, is more likely with overfragmentation since there are more bargaining representatives.

Coalition bargaining by employee organizations to negotiate a standard agreement applicable to all employees in a single classification or group of related classifications is one means of dealing with a number of recognized employee organizations, but it is not always possible to have a group of employee organizations submit to coalition bargaining.

Generally, collective bargaining legislation has been structured to encourage the formation of a limited number of bargaining units. Not only do fewer groups simplify negotiations on government-wide issues and minimize "whip-sawing," but fewer groups mean less time spent in negotiations. Also, expressions of opinion by large groups are more likely to be typical of the entire employee population than a collection of opinions from fragmented groups; this can be important in helping the employer to reach a better decision on a nonnegotiable issue which affects all employees, such as the form of a health insurance plan.

Traditionally in most units, certain classifications of employees are not mixed. Management employees, if they are permitted to join employee organizations at all, usually cannot be included in the same unit with nonmanagement employees. Similarly, the same unit will not include professional and other employees, unless a majority of professional employees agree. Supervisors should be excluded from a unit that includes their subordinates whenever the character of their work is more like that of management than workmen.

The Commission on Compensation and Personnel Policies (Sondheim Commission) has proposed that six salary structures be established for State employees.<sup>6</sup> The six

<sup>6</sup>Report of the Commission on Compensation and Personnel Policies, Walter Sondheim, Chairman (Annapolis: Commission on Compensation and Personnel Policies, 1982).

salary structures are:

- Clerical and technical
- Executive
- Physician
- Professional and managerial
- Public safety
- Trades and labor

These salary structures could form the basis of bargaining units, subject to certain modifications:

- (1) Executive employees should not be permitted to bargain, due to the employer-oriented interests of executives. There are approximately 300 positions in this category.
- (2) Because their interests may conflict, professional and managerial employees should be included in the same unit only if agreed to by a majority of each group.
- (3) Public safety employees could be diffused into two separate bargaining units - Maryland State Police and all other public safety employees - in recognition of existing organizations.
- (4) The six salary structures cover only employees under the jurisdiction of the Department of Personnel. Among State employees not covered are faculty and nonfaculty employees of the University of Maryland, faculty employees at Maryland's other State universities and colleges, and certain employees of the Mass Transit Administration.

The number of State employees in the potential bargaining units cited above are as follows, with the current membership status in existing employee organizations also provided:

- (1) Clerical and technical (16,800) - no employee organization claims unquestioned majority membership; Maryland Classified Employees Association (MCEA) claims possible majority membership
- (2) Physician (306) - no employee organization claims unquestioned majority membership; MCEA claims possible majority membership
- (3) Professional and managerial (16,500) - no employee organization claims unquestioned majority membership; MCEA claims possible majority membership
- (4) Maryland State Police (1,600) - Maryland Troopers Association (MTA) claims unquestioned majority membership
- (5) Other public safety (3,300) - American Federation of State, County and Municipal Employees (AFSCME) claims unquestioned majority membership; MCEA claims possible majority membership
- (6) Trades and labor (9,000) - no employee organization claims unquestioned majority membership; MCEA claims possible majority membership

- (7) Faculty of University of Maryland and other State universities and colleges (6,320) - no employee organization claims majority membership.
- (8) Nonfaculty of University of Maryland (10,151) - no employee organization claims majority membership.
- (9) Transit (2,500) - Amalgamated Transit Union (ATU) has current bargaining rights as exclusive representative

Under many collective bargaining laws, an administrative agency is granted authority to determine if an employee organization represents a majority of persons in a bargaining unit. If such a determination is made, the employee organization could be granted exclusive representation status without an election. When no organization has a majority or when no organization exists, an election would be held to determine exclusive representation upon filing of proper petition (see section IV for a complete discussion of representation procedures). Transit workers of the Maryland Mass Transit Administration currently have collective bargaining rights and are exclusively represented by ATU.

If the specific bargaining units are not identified in legislation, under some laws, employee organizations propose a unit and this unit is approved or disapproved by the agency administering the employee relations statute. The agency's ruling may be final, or it may be subject to third party arbitration. Often, if the administrative agency was created pursuant to the employee bargaining law, it will be granted full authority to decide the appropriate unit.

Unit determination provisions contained in the policies of Maryland's local governments with formal collective bargaining arrangements are presented in Table III.

**TABLE III  
LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - UNIT DETERMINATION**

<u>Local Unit</u>	<u>Criteria for Unit Determination</u>	<u>Procedure for Creation or Change of Unit</u>	<u>Prohibitions</u>
Allegany County	Not specified in law; County Commissioners currently recognize one employee organization which represents a majority of employees in 2 bargaining units		
Annapolis	Community of interest	No provision	Same unit cannot include professional and other employees, unless agreed to by majority of professional employees, nor supervisory and nonsupervisory employees
Anne Arundel County	Unit providing fullest freedom to exercise employee rights; community of interest; history of County employee relations; effect of dividing a single classification on existing classification structure; effect of overfragmentation; effect on efficient operation of public service	Employee organization must file all job class titles to be included in unit; ruling by personnel officer; disagreement settled by arbitrator	No unit can be established based solely on extent to which employees have organized; professionals cannot be denied right to unit separate from nonprofessionals; management and confidential employees cannot be included in same unit with nonmanagement or nonconfidential employees
Baltimore City	Unit containing majority of employees in a civil service job classification or group of related classifications deemed prima facie appropriate; unit not based on job classifications may be appropriate if community of interest exists & unit is compatible with joint responsibilities of employer and employees to serve public	No provision	Same unit cannot include professional & other employees, unless agreed to by majority of professional employees, nor supervisory and nonsupervisory employees
Baltimore County	Following units established: (1) salaried & hourly paid classified employees (2) uniformed police (3) uniformed firemen (4) registered nurses, including permanent part-time registered nurses	Disagreement between employee organization & Labor Commissioner over unit settled by third party	Same unit cannot include supervisory, management or confidential employees & other employees
Bel Air	Not specified in resolution; Town Commissioners currently recognize one employee organization as the exclusive representative of one bargaining unit		
Bowie	Community of interest within single department	No provision	No provision
College Park	City Council may authorize unit representation with or without election upon filing of petition by both unit employees and employee organization seeking exclusive representation rights		
Cumberland	Police department/general trades and labor- exclusive representative certified by order of Mayor and City Council; fire department/clerical and technical-exclusive representative certified after election		

**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - UNIT DETERMINATION**  
(Continued)

<u>Local Unit</u>	<u>Criteria for Unit Determination</u>	<u>Procedure for Creation or Change of Unit</u>	<u>Prohibitions</u>
Garrett County	Not specified in resolution; County Commissioners currently recognize one employee organization which represents a majority of employees in one bargaining unit		
Hagerstown	Not specified in resolution; Mayor and City Council currently recognize exclusive representatives for 4 employee groups		
Harford County	Unit providing fullest freedom to exercise employee rights; community of interest; history of County employee relations; effect of dividing a single classification on existing classification structure; effect of overfragmentation; effect on efficient operation of public service	Employee organization must file all job class titles to be included in unit; ruling by personnel officer; disagreement settled by arbitrator	No unit can be established solely on extent to which employees have organized; professionals cannot be denied right to unit separate from nonprofessionals; management and confidential employees cannot be included in same unit with nonmanagement or non-confidential employees
Howard County	Unit providing fullest freedom to exercise employee rights; community of interest; history of County employee relations; effect of dividing a single classification on existing classification structure; effect of overfragmentation; effect on efficient operation of public service	Employee organization must file all job class titles to be included in unit; ruling by personnel officer; disagreement settled by arbitrator	No unit can be established based solely on extent to which employees have organized; professionals cannot be denied right to unit separate from nonprofessionals
Montgomery County - General Employees	Determination shall result in largest number of employees in unit consistent with community of interest to avoid proliferation & fragmentation (current County policy limits number of units to 7); units for uniformed services employees shall include only rank of corporal and below	Chief administrative officer shall make final unit determination after receipt of request for certification	No unit can be established based solely on extent to which employees have organized
Montgomery County - Police	No provision	No provision	No provision
Prince George's County	Community of interest; history of collective bargaining; desires of employees; effectiveness & efficiency of labor management relations affected by unit; effects of overfragmentation on efficiency of government operations	PERB panel shall decide appropriate unit	Same unit cannot include professional and other employees, unless agreed to by majority of professional employees, nor supervisory and nonsupervisory employees
Rockville	Community of interest within single department	No provision	No provision
Washington County	Not specified in resolution; County Commissioners currently recognize one employee organization as the exclusive representative of one bargaining unit		

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LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - UNIT DETERMINATION  
(Continued)

Local Unit

Criteria for Unit Determination

Procedure for Creation or  
Change of Unit

Prohibitions

Washington  
Suburban Sanitary  
Commission

Community of interest; history of  
employee representation in the unit;  
efficient operation of Commission and  
sound employee relations; joint respon-  
sibility to serve the public

Commission decides appropriate  
unit

No unit can be established based solely on extent to which  
employees have organized; same unit cannot include  
supervisors or professionals and other employees

Source: Local Codes and Resolutions  
Prepared by: Department of Fiscal Services  
Date: August 1983

#### IV. REPRESENTATION

An employee organization should have in its membership a majority of employees in a bargaining unit before it is granted exclusive representation rights to ensure that bargaining is not in the interest of an active and vocal minority. Until an employee organization has majority membership in a unit, no exclusive representative should be recognized.

At issue in determining exclusive representation is the method of deciding majority support. Some state laws do not require that a representation election be held, but merely that the administrative agency determine majority support. This may be accomplished by a check of dues deduction authorization or membership cards, but in the event a question of representation exists, an election may be held. Other laws require an election to determine an exclusive representative. Usually, before any election is held, a petitioning employee organization (or group of employees) must show a certain level of support for the organization within the unit (usually 30%) in order to justify the election; generally, if an election is held, any other employee organization is allowed on the ballot if it shows a certain level of support within the unit (usually at least 10%). Always there must be the option for "no representation" on the ballot.

When an election is held, most laws require that an employee organization receive a majority of the votes cast by employees voting in the election (with a provision for a runoff election in the event no employee organization receives a majority) rather than an absolute majority of the employees in the potential bargaining unit, to be certified as the exclusive representative. The City of Bowie, with a unique policy provision, requires certification upon majority vote only if the number of votes cast is also equal to at least one-third of the number of eligible unit employees.

When an employee organization is certified as the exclusive representative, it must represent all unit employees, members and nonmembers alike. Conversely, until an employee organization has a majority in an appropriate unit, an employee organization should not represent any employees in bargaining. Although laws establishing bargaining rights generally concur on this point, an employer is free to consult with any minority organization at the employer's discretion so long as any understandings reached are not binding on the parties. Many governments encourage consultation through express enabling legislation in an effort to maintain channels of communication with all employees.

Representation provisions contained in the policies of Maryland's local governments with formal collective bargaining arrangements are presented in Table IV.

**TABLE IV  
LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - REPRESENTATION**

<u>Local Unit</u>	<u>Petition Requirements</u>	<u>Ballot Choices</u>	<u>Determination of Exclusive Represent.</u>	<u>Election Restrictions</u>	<u>Responsibility of Exclusive Represent.</u>	<u>Recognition of Employee Organizations Other Than Exclusive Represent.</u>
Allegany County	Not specified in law; County Commissioners currently recognize one employee organization which represents a majority of employees in 2 bargaining units					
Annapolis	Showing of 30% support within unit	Petitioning employee organization and no representation	Majority vote within unit	No election more often than once a year	To represent all unit employees, regardless of organization membership	No provision
Anne Arundel County	Showing of 30% support within unit (certification or decertification)	Petitioning or current employee organization, any intervenor employee organization showing 10% support, and no representation	Majority vote within unit; if no majority, runoff between 2 choices with highest number of votes	No election more often than every 2 years	To represent all unit employees, regardless of organization membership	No provision
Baltimore City	Showing of 30% support within unit; no employee organization may petition for representation of a unit of professional or supervisory employees if the organization also includes rank & file employees as members (organizations of fire officers & registered nurses excluded)	Petitioning employee organization, any other employee organization showing 10% support, and no representation	By Labor Commissioner whenever petition presented or if question exists, upon majority vote in election (with runoff if no majority)	No election more often than every 2 years	To represent all unit employees, regardless of organization membership	No provision
Baltimore County	Showing of 30% support within unit (certification or decertification); no employee organization may petition for representation of a unit of law enforcement employees if the organization also includes non-law enforcement employees as members	Petitioning or current employee organization, any intervenor employee organization showing 30% support, and no representation	Majority vote within unit; if no majority runoff between 2 choices with highest number of votes	No election more often than every 2 years	To represent all unit employees, regardless of organization membership	No provision
Bel Air	Not specified in resolution; Town Commissioners currently recognize one employee organization as the exclusive representative of one bargaining unit					



**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - REPRESENTATION**  
(Continued)

<u>Local Unit</u>	<u>Petition Requirements</u>	<u>Ballot Choices</u>	<u>Determination of Exclusive Represent.</u>	<u>Election Restrictions</u>	<u>Responsibility of Exclusive Represent.</u>	<u>Recognition of Employee Organizations Other Than Exclusive Represent.</u>
Bowie	Showing of 30% support (certification); employer may decertify if organization no longer has majority support within unit	Petitioning employee organization, any other employee organization showing 30% support, and no representation	Selection by majority of votes cast and one-third of eligible personnel within unit; if no majority, runoff between 2 choices with highest number of votes	No election more often than once a year	To represent all unit employees, regardless of organization membership	No provision
College Park	City Council may authorize unit representation with or without election upon filing of petition by both unit employees and employee organization seeking exclusive representation rights					
Cumberland	Police department/general trades and labor - exclusive representative certified by order of Mayor and City Council; fire department/ clerical and technical - exclusive representative certified after election					
Garrett County	Not specified in resolution; County Commissioners currently recognize one employee organization which represents a majority of employees in one bargaining unit					
Hagerstown	Not specified in resolution; Mayor and City Council currently recognize exclusive representatives for 4 employee groups					
Harford County	Showing of 30% support within unit (certification or decertification)	Petitioning or current employee organization, any intervenor employee organization showing 30% support, and no representation	Majority vote within unit; if no majority, runoff between 2 choices with highest number of votes	No election more often than once a year	To represent all unit employees, regardless of organization membership	No provision
Howard County	Showing of 30% support within unit (certification or decertification)	Petitioning or current employee organization, any intervenor employee organization showing 10% support, and no representation	Majority vote within unit; if no majority, runoff between 2 choices with highest number of votes	No election more often than every 2 years	To represent all unit employees, regardless of organization membership	No provision
Montgomery County - General Employees	Showing of 30% support within unit (certification or decertification)	Petitioning or current employee organization, any other employee organization showing 10% support, and no representation	Majority vote within unit; if no majority, runoff between 2 choices with highest number of votes	No election more often than once a year	No provision	County may meet with religious, social, fraternal, professional or other lawful associations on matters of concern

**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - REPRESENTATION**  
(Continued)

<u>Local Unit</u>	<u>Petition Requirements</u>	<u>Ballot Choices</u>	<u>Determination of Exclusive Represent.</u>	<u>Election Restrictions</u>	<u>Responsibility of Exclusive Represent.</u>	<u>Recognition of Employee Organizations Other Than Exclusive Represent.</u>
Montgomery County - Police	Showing of 30% support within unit (certification or decertification); employer may petition for decertification; election held if umpire determines petition is proper	Petitioning or current employee organization, any other employee or organization showing 10% support, and no representation	Majority vote within unit; if no majority, runoff between 2 choices with highest number of votes	No election more often than every 2 years	To represent all unit employees, regardless of organization membership	No provision
Prince George's County	Showing of 30% support within unit (certification or decertification); employer may petition for certification or decertification; election held if PERB panel determines question of representation exists	Petitioning or current employee organization, any intervenor employee organization showing 10% support (30% support within proposed unit if unit determination challenged), and no representation	Majority vote within unit; if no majority, runoff between 2 choices with highest number of votes	No election more often than once a year or during term of agreement of 3 years or less	To represent all unit employees, regardless of organization membership	County may meet with any employee organization to discuss Countywide matters, however, changes in these matters may be made only through negotiations with employee organization(s) representing over 50% of affected employees
Rockville	Showing of substantial support (certification); employer may decertify if organization no longer has majority support within unit	No provision	Determination of majority support of eligible personnel within unit	No election by same employee organization more often than once a year	To represent all unit employees, regardless of organization membership	No provision
Washington County	Not specified in resolution; County Commissioners currently recognize one employee organization as the exclusive representative of one bargaining unit					
Washington Suburban Sanitary Commission	Showing of 30% support within unit (certification or decertification); employer may petition for certification or decertification	Petitioning or current employee organization, any intervenor employee organization showing 10% support, and no representation	Selection by 45% of eligible voters within unit, if greater than number of "no representation" votes; if no organization receives 45%, runoff between 2 organizations receiving collectively two-thirds of votes of eligible voters within unit	No election more often than once a year	To represent all unit employees regardless of organization membership	No provision

Source: Local Codes and Resolutions  
Prepared by: Department of Fiscal Services  
Date: August, 1983

## V. SCOPE OF BARGAINING

There is general agreement that certain subjects should be negotiable in bargaining, even in the absence of specific legislation. Among these are wages and salaries, fringe benefits, hours, and working conditions. Legislation is required, however, (1) to establish the relationship of any agreement to existing laws and rules and (2) to affirm the nonnegotiability of certain items.

Legislation establishing the scope of a collective bargaining agreement in relation to existing laws and rules, including budgetary and civil service laws and rules, may be accomplished through an express statement providing that the terms of the agreement shall either prevail over or be subordinate to existing laws or rules. The disadvantage of this treatment is that it provides little flexibility for decision-makers. Alternatively, the collective bargaining law may provide for final approval of the agreement by the government's elected officials.

Some legislation will provide for approval of an agreement by both a government's chief executive and legislative body consistent with the principle of governmental sovereignty. It also parallels the employee organization's treatment of a tentative negotiated agreement - ratification by the full membership of the employee organization is a prerequisite for approval.

Approval of the final agreement by the legislature is a provision found in most state collective bargaining laws. A review of Table V shows that most Maryland local governments with bargaining policies require that the local legislative body ratify an agreement whose terms require funding or change in any existing law or regulation.

Approval of an agreement by the chief executive is not usually allowed after an agreement has been submitted to binding arbitration, although the right of final legislative approval is usually reserved (see further discussion of impasse resolution procedures in section VI).

In addition to an approval clause, a public employee collective bargaining law should contain special provisions required to safeguard civil service rules and laws, particularly if the civil service (or similar) commission is independent of the executive branch which handles negotiations. In Maryland, the Department of Personnel is an executive department of State government, and therefore, its laws and rules probably require no special protection other than the requirement that wherever a bargaining unit does not include all employees in a particular job classification or group of related classifications and negotiations are held to discuss position classification, joint negotiations with employee organizations representing a majority of employees in the same classification should be held.

Certain items are usually identified in statute as nonnegotiable. A statewide retirement plan, for example, would ordinarily be considered nonnegotiable unless employee organization negotiators represented a majority of affected employees because a change in the plan would affect all of the State's employees, whether members of the bargaining unit or not. In Maryland, local governments may be members of the Maryland State Retirement Systems. Since these local governments would be powerless to change the State's pension laws, this subject should be made expressly nonnegotiable.

The employer is assumed to have certain rights, which are also usually identified in statute as nonnegotiable. Rights reserved to the employer typically include (1)

determining the mission of the employer's organization, (2) setting standards of service to the public, (3) determining the methods and means of operation, (4) directing, assigning, hiring, firing, promoting and demoting employees, and (5) setting reasonable work rules.

There are inevitable areas of overlap between the subjects previously mentioned as being generally negotiable and those considered nonnegotiable. Most state legislation, however, delineates no further, relying on negotiators to decide the matters fairly.

Scope of bargaining provisions contained in the policies of Maryland's local governments with formal collective bargaining arrangements are presented in Table V.

TABLE V  
LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - SCOPE OF BARGAINING

<u>Local Unit</u>	<u>Bargaining Subjects</u>	<u>Relation of Agreement to Other Laws and Rules</u>	<u>Provision for Final Approval of Agreement</u>	<u>Nonnegotiable Items (Employer Rights)</u>
Allegany County	Wages, hours & working conditions	No provision	No provision	No provision
Annapolis	Administration of grievances, including settlement by arbitration; terms and conditions of employment	Agreement subject to applicable provisions of any law, ordinance or charter	Approval by Mayor and Aldermen	Mission of agency; standards of service; direction, assignment, hiring, firing, promotion and demotion of employees; setting reasonable work rules
Anne Arundel County	Wages, hours, working conditions and other terms of employment	No provision	No provision	Purposes and objectives of organization; standards of service; methods of operation; direction, assignment, hiring, firing, promotion and demotion of employees; setting reasonable work rules
Baltimore City	Administration of grievances, including settlement by binding arbitration (advisory arbitration if decision contrary to charter provisions); salaries, wages, hours & other matters relating to employee benefits & duties; if unit consists of less than a Citywide unit of all employees in a particular job classification or group of related classifications, joint negotiations required over salaries, wages and working conditions so that 30% of employees in same classification are represented (otherwise, these subjects not negotiable)	Agreement subject to applicable provisions of any law, ordinance or charter	Approval by Board of Estimates	Mission of agency; standards of service; direction, assignment, hiring, firing, promotion and demotion of employees; setting reasonable work rules
Baltimore County	Administration of grievances, including settlement by arbitration; wages, hours & other terms & conditions of employment; no retroactivity allowed in agreement or in legislation effecting agreement	Agreement subject to applicable provisions of any law, charter, fiscal procedure, rule or regulation	Failure of County Council to provide funds or pass legislation necessary to implement agreement does not preclude continuing negotiations at request of either party	Purposes and objectives of organization; standards of service; methods of operation; direction, assignment, hiring, firing, promotion & demotion of employees; setting reasonable work rules
Bel Air	Personnel policies and matters affecting employment	No provision	No provision	No provision

**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - SCOPE OF BARGAINING**  
(Continued)

<u>Local Unit</u>	<u>Bargaining Subjects</u>	<u>Relation of Agreement to Other Laws and Rules</u>	<u>Provision for Final Approval of Agreement</u>	<u>Nonnegotiable Items (Employer Rights)</u>
Bowie	Employment conditions, benefits and management-employee relations	Agreement subject to applicable provisions of any ordinance	Approval by City Council, if the terms of agreement require funding	Efficiency of operation; mission of agency; methods of operation; direction, assignment, hiring, firing, promotion and demotion of employees
College Park	Wages, hours and conditions of employment	No provision	Approval by City Council if terms of agreement require funding or change in law or regulation	No provision
Cumberland	Wages and working conditions	No provision	No provision	No provision
Garrett County	Wages, hours and conditions of employment	No provision	No provision	No provision
Hagerstown	Wages and working conditions	No provision	No provision	No provision
Harford County	Wages, hours, working conditions and other terms of employment; negotiations conducted separately with each unit	No provision	County Council must adopt current expense budget prior to signing of agreement (Council may reduce funding for agreement)	Purposes and objectives of organization; standards of service; methods of operation; direction, assignment, hiring, firing, promotion and demotion of employees; setting reasonable work rules
Howard County	Administration of grievances, including settlement by arbitration; wages, hours, working conditions and other terms of employment	Agreement subject to applicable provisions of charter; if conflict arises after adoption of agreement between agreement & any rule or regulation, agreement prevails, except where precluded by charter or State law	Approval by County Council, if terms of agreement require funding or change in law or regulation; if agreement rejected, parties resume negotiations	Purposes and objectives of organization; standards of service; methods of operation; direction, assignment, hiring, firing, promotion and demotion of employees; setting reasonable work rules
Montgomery County - General Employees	Personnel policies, practices and matters affecting working conditions	Discussions subject to applicable provisions of any law, ordinance, charter, or personnel regulation	Final decisions by chief administrative officer, subject to appeal to merit system protection board where provided by law	No provision
Montgomery County - Police	Salaries & wages, provided that they shall be uniform throughout same classification; pension and retirement benefits for active employees only; other employee benefits; hours and working conditions; administration of grievances, including settlement by binding arbitration; matters	No provision	Approval by County Council, if terms of agreement require funding or change in law; if agreement rejected, parties resume negotiations and resubmit agreement; agreement shall provide either for automatic reduction or elimination of such conditional wage or benefit	Budget and mission of agency; efficiency of operation; services rendered; methods of operation, including job classifications & location of facilities; direction, assignment, hiring, firing, promotion and demotion of employees

**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - SCOPE OF BARGAINING**  
(Continued)

<u>Local Unit</u>	<u>Bargaining Subjects</u>	<u>Relation of Agreement to Other Laws and Rules</u>	<u>Provision for Final Approval of Agreement</u>	<u>Nonnegotiable Items (Employer Rights)</u>
	affecting health and safety of employees; effect on employees of employer's exercise of employer's rights		adjustment if Council does not appropriate any or all funds	
Prince George's County	Nonprobationary, commissioned full-time employees of sheriff's office - compensation only;* other employees - wages, hours and other terms and conditions of employment, including administration of grievance, including settlement by binding arbitration; employer not obligated to negotiate County-wide matters which must be uniform for all employees, such as a County-wide pension plan, unless negotiating employee organization(s) represent over 50% of affected employees; employer & exclusive representative may bargain for variation of an application of a Countywide policy *State law provision	If conflict arises after adoption of agreement between agreement and any rule or regulation, agreement prevails, except where precluded by charter or State law	Approval by County Council, if terms of agreement require funding or change in law or regulation; if agreement rejected, parties resume negotiations; agreement shall not provide for salaries or benefits which exceed County's ability to pay	No provision
Rockville	Employment conditions, benefits and management-employee relations	Agreement subject to applicable provisions of any ordinance	Approval by City Council, if terms of agreement require funding	Efficiency of operation; mission of agency; methods of operation; direction, assignment, hiring, firing, promotion and demotion of employees
Washington County	Wages, hours and conditions of employment	No provision	No provision	No provision
Washington Suburban Sanitary Commission	Wages, hours and other terms and conditions of employment	No provision	Failure of County Councils to provide funds necessary to implement agreement obligates parties to continue negotiations	Mission of agency; efficiency of operation; methods of operation; direction, assignment, hiring, firing, promotion and demotion of employees
Source: Prepared by: Date:	Local Codes and Resolutions Department of Fiscal Services August, 1983			

## VI. NEGOTIATIONS

Since the terms of an agreement usually require funding, negotiations usually begin early enough before the start of the contract year (which should coincide with the government's fiscal year) so that decisions are known in time to be incorporated in appropriations. Collective bargaining statutes often specify the date by which bargaining should commence to avoid conflict with the budget process.

Even though negotiations may begin far in advance of the final budget submission date, impasses in negotiations may arise which could disrupt the budget process. Typical impasse resolution procedures contained in statute are the following:

- Mediation, whereby a neutral third party tries in joint and private sessions with the parties to facilitate negotiations.
- Fact finding, or advisory arbitration, whereby a neutral party recommends a solution after holding hearings and studying briefs which is then returned to the parties for further bargaining.
- Binding arbitration, which may be either voluntary or compulsory, under which a neutral party decides the issues in dispute and the decisions must be accepted by the parties.

Even if binding arbitration is prescribed, it is usually the last step in the process. This is because an arbitrator's decision takes away from the parties the power to determine the final agreement. Binding arbitration, therefore, may circumvent the will of the public embodied in the employer's representative to the negotiations. Although most laws providing for binding arbitration consider it contrary to legislative intent to allow the chief executive to approve the arbitrator's decision, the right of final approval is reserved by the legislature. Binding arbitration may also be included in law in exchange for an antistrike clause (see further discussion of strikes in section VII).

When mediation and/or fact finding alone are permitted, the chief executive is frequently empowered to decide the agreement if no agreement has been reached by the budget submission date. Under some laws, the legislature may decide the agreement, although some authorities argue that this power exceeds the legislature's oversight authority.

The failure of the legislature to adopt the necessary appropriation legislation to fund the agreement or to pass or amend laws necessary to implement the agreement should not preclude further bargaining.

Chart I shows that among the states with statutory provisions, policemen and firemen are most often provided voluntary binding arbitration, education employees are most often provided fact finding (advisory arbitration), and local, state and general public employees are most often provided either voluntary or compulsory binding arbitration as the last step in third party neutral impasse resolution.



Who pays the costs of mediation, fact finding, and arbitration? Most legislation shares the costs equally between the parties. Cost sharing seems appropriate even if only one party initiates the request, as it is uncertain to what extent the action was provoked by the other party. Also, cost sharing prevents one party from abusing the impasse resolution machinery.

Under some laws, mediation is considered in the public interest and therefore is paid by the taxpayer through appropriation to the state agency. Fact finding and arbitration are not so considered and are paid by the parties.

Negotiation provisions contained in the policies of Maryland's local governments with formal collective bargaining arrangements are presented in Table VI.

**TABLE VI  
LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - NEGOTIATIONS**

<u>Local Unit</u>	<u>Timing of Negotiations</u>	<u>Impasse Resolution</u>	<u>Cost of Impasse Procedures</u>
Allegheny County	No provision	Arbitration provided if County Commissioners determine impasse is reached or at request of employee organization; arbitrators shall make binding recommendations within 30 days if no previous agreement	Shared by parties
Annapolis	No provision	No provision	No provision
Anne Arundel County	Negotiations appropriately related to budget-making process	If no agreement by March 1 prior to final date for submitting budget, mediation; if no agreement by 35 days prior to budget date, fact finding, with recommendations by 10 days prior to budget date; if no agreement by budget date, compulsory binding arbitration by County Council; if additional funds required, Council shall send supplemental budget request to County Executive	Shared equally by parties
Baltimore City	Negotiations to be between January 1 & March 1 preceding budget submission date and agreement to be presented to Board of Estimates for approval by April 1	If no agreement by March 1 prior to final date for setting budget, mediation; if mediation unsuccessful, fact finding with recommendations	Shared equally by parties
Baltimore County	Negotiations related to budget submission date; no negotiations until next year required with employee organization certified after March 1 if appropriation of funds required	If no agreement by February 1, mediation; if no agreement by February 20, fact finding; fact finders' recommendations due by March 20; if no agreement, Personnel and Salary Advisory Board shall submit final recommendations to County Executive before April 5; County Executive shall review all recommendations and decide agreement (fire fighters submit disputes to binding arbitration)	Shared equally by parties
Bel Air	No provision	No provision	No provision
Bowie	Monetary proposals to be submitted by February 1, with agreement by April 1 preceding budget year	No provision	No provision
College Park	No provision	No provision	No provision
Cumberland	No provision	No provision	No provision
Garrett County	No provision	No provision	No provision
Hagerstown	No provision	No provision	No provision
Harford County	Negotiations to begin by November 1 & end by March 1 preceding budget submission date	If no agreement by December 15, fact finding, with recommendations by January 15 (fact finding may be waived by mutual agreement of parties); if no agreement by February 5, advisory arbitration required; arbitrator's decision due by March 1; if no agreement by March 1, County Executive may prepare budget based on amount of funds recommended by arbitrator or, in absence of opinion, amount of funds deemed appropriate	Shared equally by parties

**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - NEGOTIATIONS**  
(Continued)

<u>Local Unit</u>	<u>Timing of Negotiations</u>	<u>Impasse Resolution</u>	<u>Cost of Impasse Procedures</u>
Howard County	Parties shall try to end negotiations by March 1	If no agreement by March 1 or if parties agree impasse exists, mediation; if no agreement by 35 days prior to budget submission date, fact finding, with recommendations if no agreement by 10 days prior to budget submission date; County Executive shall consider recommendations in determining budget	Shared equally by parties
Montgomery County - General Employees	No provision	No provision	No provision
Montgomery County - Police	Negotiations to begin by November 1 and end by January 20; resolution of impasse to be completed by February 1	Mediation required between January 20 & February 1 if no agreement (earlier mediation at request of either party); if impasse neutral decides negotiations at bona-fide impasse on February 1, binding arbitration decision made	Shared equally by parties
Prince George's County	Parties shall try to end negotiations by March 1	Other than protective service employees: Parties may set own procedures; if no agreement by March 1, or after 90 days from start of negotiations on initial agreement, PERB panel may invoke mediation; fact finding permitted; employer may agree to submit to binding arbitration -- Protective service employees (sworn police officers and uniformed firefighters): If no agreement by March 1, arbitrator holds pre-hearing conference and hearing; if no agreement within 90 days of arbitrator's appointment, arbitrator decides agreement; within 10 days after arbitrator's decision, parties may modify agreement, after which time arbitrator's decision, with modifications, is binding; within 30 days after arbitrator's decision, decision may be challenged in Circuit Court	Mediation costs borne by County; other costs shared equally by parties
Rockville	Negotiations not to disrupt public business	No provision	No provision
Washington County	No provision	No provision	No provision
Washington Suburban Sanitary Commission	Negotiations in advance of budget adoption; no negotiations until next year required with employee organization certified after budget submission date	If no agreement by 60 days prior to budget submission date or if parties agree impasse exists, mediation; Impasse Panel appointed if no agreement after reasonable period of mediation, with advisory recommendations due if no agreement by 20 days prior to budget submission date	Shared equally by parties

Source: Local Codes and Resolutions  
Prepared by: Department of Fiscal Services  
Date: August 1983

## VII. STRIKES

The effects of strikes in the private and public sectors are fundamentally different. In private industry, a strike is intended to force a settlement by hurting the economic position of the employer. In the public service, there is no economic contest between employer and employee since the employer retains its revenue-raising ability; the effect of a strike of the public service is to curtail services which the public has paid for through taxes.

Chart I shows that of the 69 separate state statutes with a strike provision, 60 prohibit strikes. Among essential services (police, fire, and education), only one of 25 statutes asserts the right to strike.

If a legislature determines that strikes should be prohibited, what is the most effective way to structure legislation to achieve legislative intent? Workers have been known to strike if provoked, law or no law. Therefore, providing alternative impasse resolution mechanisms is one way to help achieve legislative intent to prohibit strikes. Alternative mechanisms lessen the provocation that might impel workers to strike. Fact finding is a popular impasse resolution procedure with employee organizations because it requires that a neutral party propose recommendations for an agreement; although the recommendations are advisory, they are usually difficult to reject by the parties, and the employee organization feels it has gotten a "fair deal."

Of those laws with a limited right to strike provision, this right is usually denied employees with the right of binding arbitration or who have not exhausted other impasse procedures. Often, strike notice is required to be given. Employers are also usually given the right of petition to an employee relations board or court to end a strike if the public welfare is threatened.

If a collective bargaining law provides that strikes should be illegal, it follows that the legislation should identify the penalties which may be imposed on violators. A review of provisions of Maryland's local governments' policies reveals that typically employees are subject to disciplinary action up to and including employment termination and that employee organizations are subject to decertification as exclusive representative, forbidden from participation in representation elections for a stated maximum period, and/or dispossessed of dues checkoff privilege for a stated maximum period. Legislation establishing penalties for strike violations generally permits an employee relations board or the chief executive to set specific penalties based on the circumstances in each case.

Strike provisions contained in the policies of Maryland's local governments with formal collective bargaining arrangements are presented in Table VII.

**TABLE VII  
LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - STRIKES**

<u>Local Unit</u>	<u>Status</u>	<u>Penalties for Violation</u>
Allegany County	Prohibited	No provision
Annapolis	Prohibited	Employees subject to employment termination; employee organization's recognition as exclusive representative revoked and participation in elections barred for 2 years
Anne Arundel County	Prohibited	Employees subject to employment termination; employee organization subject to decertification as exclusive representative, bar from participation in elections for 2 years, and revocation of dues checkoff privilege
Baltimore City	Prohibited	Employee organization subject to decertification as exclusive representative, bar from participation in elections for 2 years, and revocation of dues checkoff privilege for 2 years
Baltimore County	Prohibited	Employees subject to employment termination; employee organization subject to decertification as exclusive representative, bar from participation in elections for 2 years, and revocation of dues checkoff privilege
Bel Air	No provision	No provision
Bowie	Prohibited	Employees subject to employment termination
College Park	No provision	No provision
Cumberland	Prohibited	Employees subject to employment termination; employee organization shall be decertified as exclusive representative and barred from participating in elections for 3 years
Garrett County	No provision	No provision
Hagerstown	No provision	No provision
Harford County	Prohibited	Employees subject to employment termination; employee organization subject to decertification as exclusive representative, bar from participation in elections for 2 years, and revocation of dues checkoff privilege
Howard County	Prohibited	Employees subject to employment termination; employee organization subject to decertification as exclusive representative, bar from participation in elections for 2 years, and revocation of dues checkoff privilege
Montgomery County - General Employees	Prohibited	No provision
Montgomery County - Police	Prohibited	Employees subject to employment termination; employee organization subject to decertification as exclusive representative, bar from participation in elections for 2 years, and revocation of dues checkoff privilege

**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - STRIKES**  
(Continued)

<u>Local Unit</u>	<u>Status</u>	<u>Penalties for Violation</u>
Prince George's County	Permitted, if: (1) employee is not in a unit for which binding arbitration of contract is available, (2) impasse procedures have terminated and efforts at resolution have stopped, (3) 30 days have passed from effort of County Council to resolve dispute, and (4) 10 days strike notice is given; employer may petition PERB panel to end strike if public welfare threatened; no employee organization may engage in "sympathy strike"	No provision
Rockville	Prohibited	Employees subject to employment termination
Washington County	No provision	No provision
Washington Suburban Sanitary Commission	Prohibited	Employees subject to suspension or discharge; employee organization subject to suspension of certification and revocation of right to participate in elections for 1 year

Source: Local Codes and Resolutions  
Prepared by: Department of Fiscal Services  
Date: August 1983

## VIII. AGREEMENTS

A public sector collective bargaining law may provide for either a "meet and confer" relationship or the traditional form of collective bargaining which prevails in private industry.

The difference between meet and confer and collective bargaining is basic. Meet and confer, while providing employee organizations with the legal right to confer with the employer prior to decisions, reserves the right of final decision to the employer. In contrast, collective bargaining recognizes both parties to the negotiations as equals and requires that an agreement be produced that is accepted by both.

Opponents of collective bargaining contend that government decisions should be made by the employer's officials, who represent the public interest at all times. Further, there are government entities, such as civil service offices, which consider both employee and employer interests. Proponents of collective bargaining disapprove of the unilateral decision-making process of meet and confer which they believe is contrary to the spirit of employee organization recognition.

Chart I and Table VIII show that among both states and Maryland local governments which recognize the right of public employees to organize, the right of collective bargaining is most prevalent. Reasons vary among jurisdictions, but in some states, the absence of legislation did not hinder the development of employee organizations and of a bargaining relationship. It is doubtful that employee organizations which possess de facto bargaining rights will settle for a meet and confer law; realistically, in such states, the choice is bargaining with or without legislation. Currently, organizations of State employees do meet on an informal basis with the Governor or his designees during the budget process to present concerns or requests for changes in salaries and benefits. A "meet and confer" statute would formalize this process.

Some laws give meet and confer rights to certain employees, such as management, professional and supervisory employees who share, in most cases, a common interest with the employer, and collective bargaining privileges to others.

Because the employer finally decides all issues, there is no need for a meet and confer law to establish impasse resolution procedures.

If collective bargaining is provided for and agreement is reached, how long should the agreement last? This is generally a question for negotiators to decide, but legislation may set a minimum or maximum period. The advantage of a one-year contract is that it does not bind the parties for a long period to conditions with which they might be unhappy. The advantage of a contract of two or three years duration is that it results in predictable employment conditions over the period to allow the employer to better project its labor costs. An intermediate alternative is a two- or three-year contract which permits the negotiation of certain subjects, such as wages, at the beginning of each year but keeps all other subjects nonnegotiable for the contract term.

Agreement provisions contained in the policies of Maryland's local governments with formal collective bargaining arrangements are presented in Table VIII.

**TABLE VIII**  
**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - AGREEMENTS**

<u>Local Unit</u>	<u>"Bargaining" or "Meet and Confer"</u>
Allegany County	Collective bargaining
Annapolis	Collective bargaining (other than management employees)
Anne Arundel County	Meet and confer for management employees; collective bargaining for other employees
Baltimore City	Meet and confer for professional and supervisory employees (other than fire officers and nurses); collective bargaining for other employees
Baltimore County	Meet and confer for confidential, management and supervisory employees; collective bargaining for other employees
Bel Air	Meet and confer (agreement not required but letter of agreement may be prepared)
Bowie	Collective bargaining
College Park	Collective bargaining
Cumberland	Collective bargaining
Garrett County	Collective bargaining
Hagerstown	Collective bargaining
Harford County	Collective bargaining
Howard County	Collective bargaining
Montgomery County - General Employees	Meet and confer (agreement not required but position papers may be prepared; decisions not binding)
Montgomery County - Police	Collective bargaining (no contract may exceed 3 years)
Prince George's County	Collective bargaining
Rockville	Collective bargaining
Washington County	Collective bargaining
Washington Suburban Sanitary Commission	Meet and confer for supervisory employees; collective bargaining for other employees

Source: Local Codes and Resolutions; Institute for Governmental Service, 1982 Survey of Wages and Collective Bargaining Arrangements in Selected Maryland Local Governments  
 Prepared by: Department of Fiscal Services  
 Date: August, 1983



## IX. RIGHTS

A public employee collective bargaining statute ordinarily specifies the mutual relationship which should exist between the employee and the employee organization designated as exclusive representative, between the employee and the civil service, and between the employee and an outside neutral party deciding a grievance matter.

Although Maryland is one of 30 states which have not enacted a right-to-work law prohibiting compulsory union membership by employees employed in the State (union shop), Section 64 of Article 100 of the Annotated Code of Maryland declares it contrary to public policy for an employment contract to contain an employee's promise to join or not to join a labor organization. It is assumed that this policy provision will guide public sector employer-employee relations in Maryland.

An alternative to the union shop, and supported by employee organizations with exclusive recognition where the union shop is prohibited, is the agency shop. Under the agency shop, an employee need not join the employee organization representing the unit, but if the individual chooses not to join, he or she must pay a "service fee" for services provided by the organization on his or her behalf as an employee in the unit. The amount of the fee is less than or equal to the basic dues paid by members. Those who support the agency shop feel that employees should not be able to "freeload" on the gains of employee organizations for members and nonmembers alike. Those who oppose it argue that it violates the employee's right not to be represented if he so desires. Opponents also see conflicts with civil service merit system laws or rules. Under a merit system, reasons for discharge are usually specified. These reasons do not include nonpayment of service fees, yet dismissal is the only ultimate penalty in the event an employee refuses to pay the service fee.

The two State payroll centers reported paying the following number of employees and withholding organizational dues from these employees as follows for pay periods ending in the second half of FY 1983:

<u>Payroll</u>	<u>Total Employees</u>	<u>Employees With Dues Withheld</u>				<u>Total</u>
		<u>MCEA</u>	<u>AFSCME</u>	<u>MTA</u>	<u>CBMST<sup>(1)</sup></u>	
Central	63,322	18,164 (28.7%)	8,179 (12.9%)	1,229 (1.9%)	101 (.2%)	27,673 (43.7%)
Transportation <sup>(2)</sup>	6,523	2,130 (32.7%)	649 (9.9%)	--	--	2,779 (42.6%)
<b>TOTAL</b>	69,845	20,294 (29.1%)	8,828 (12.6%)	1,229 (1.8%)	101 (.1%)	30,452 (43.6%)

(1) Coalition of Black Maryland State Troopers.

(2) Excludes Mass Transit Administration payroll.

Therefore, there are currently 39,393 State employees, or 56.4%, who are not paying organizational membership dues. The number of these employees who would be required to pay a service fee under an agency shop arrangement cannot be determined at this time.

The open shop grants employees the broadest rights, but is least sought by employee organizations with exclusive recognition. Under an open shop, employee membership in the organization is optional and no service fee is required.

Regardless of the shop arrangement permitted, a maintenance of membership provision may also be included in law. It is usually sought by the employee organization with exclusive recognition. Under maintenance of membership, an employee may not terminate membership in the organization except during a limited period each year.

It is common for the government employer to withhold membership dues (or service fees) from employees' paychecks upon written authorization by the employees and to remit the dues (or fees) to the employee organization. The "dues checkoff" may be set out in legislation. Employee organizations desire the dues checkoff as a convenience in collecting their revenues, and, especially in large jurisdictions with computerized payroll systems, there is little additional effort or expense incurred by the employer.

Maryland Executive Order 01.01.1983.03, issued in January, 1983, currently governs voluntary deductions from State employees' pay for an employee organization. Permitted voluntary deductions are provided at no charge as long as only one deduction is used. If additional deductions are requested, the organization will be charged a reasonable fee. Employees must request all deductions or subsequent changes or cancellations in writing.

Dues checkoff, under the Order, is provided to any employee organization which

- (1) is organized for purposes other than obtaining insurance coverage;
- (2) serves the interest of employees and the State as an employer as certified by the Secretary of Personnel; and
- (3) has at least 1,000 members who agree to payroll deduction.

In addition, in order to provide payroll deduction to smaller organizations which meet criteria (1) and (2) above, one additional deduction per employee may be approved for these organizations at the Governor's discretion.

Under the current practice, four employee organizations (MCEA, AFSCME, MTA and CBMST) have dues checkoff privileges for all State employees who belong to their organization and authorize the dues deduction. Therefore, collective bargaining legislation providing for the dues deduction privilege for the exclusive representative of a unit of employees should consider a provision continuing the privilege for all other employee organizations meeting the criteria of Executive Order 01.01.1983.03.

Collective bargaining legislation should also specify the rights of employees vis-a-vis the exclusive representative in grievance proceedings. Most laws provide that an employee has the right of self-representation, regardless of whether the employee is included in a bargaining unit. If the employee is included in a bargaining unit but is not a member of the employee organization representing the unit, the employer should be obligated by law to consult with the exclusive representative before deciding the grievance matter to ensure that the collective bargaining agreement is not violated for the benefit of a nonmember.

Legislation usually specifies the rights of employees who are included in a bargaining unit to civil service appeal procedures. The employee may be given the option of following the grievance procedure contained in the collective bargaining agreement or selecting the civil service procedure. In other cases the employee may be required to follow the grievance procedure established by the agreement. Currently, Section 53 of Article 64A of the Annotated Code of Maryland exempts persons subject to collective bargaining agreements from merit system provisions, and therefore, further legislation on this matter may be unnecessary.

For an employee to have the right of binding arbitration of grievances by an outside neutral party, legislation is needed to remove any doubt as to whether the decision is legal.

Rights provisions contained in the policies of Maryland's local governments with formal collective bargaining arrangements are presented in Table IX.

**TABLE IX  
LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - RIGHTS**

<u>Local Unit</u>	<u>Union Security - Shop Provision</u>	<u>Union Security - Dues Checkoff Provision</u>	<u>Employee Rights in Grievance Proceedings</u>
Allegany County	Not specified in law; County Commissioners currently permit agency shop (union security provision)		
Annapolis	Agency shop and maintenance of membership permitted	Provided for exclusive representative only upon employee authorization	Employee may choose grievance procedure adopted by agreement or established by civil service code
Anne Arundel County	Agency shop permitted	Provided for exclusive representative only upon employee authorization	Employee has right of self-representation or to designate personal representatives
Baltimore City	Agency shop and maintenance of membership permitted	Provided for exclusive representative only upon employee authorization	Employee has right of self-representation provided settlement not inconsistent with terms of agreement and exclusive representative entitled to attend hearing and be notified of settlement; employee may choose grievance procedure adopted by agreement or established by Board of Estimates
Baltimore County	Open shop	Provided for exclusive representative only; employee must request termination of dues deduction	Employee has right of self-representation provided settlement not inconsistent with terms of agreement and exclusive representative entitled to attend hearing
Bel Air	Not specified in resolution; Town Commissioners currently permit dues checkoff (union security provision)		
Bowie	Open shop	No provision	Employee has right of self-representation or to designate personal representatives
College Park	Not specified in resolution; City Council currently permits maintenance of membership (union security provision)		
Cumberland	Not specified in law; Mayor and City Council currently permit agency shop and dues checkoff		Employee has right of self-representation and to pursue grievance procedure adopted by Mayor and City Council
Garrett County	Not specified in resolution; County Commissioners currently permit open shop (union security provision)		
Hagerstown	Not specified in resolution; Mayor and City Council currently permit dues check-off (union security provision)		
Harford County	Open shop (agency shop prohibited)	Provided for exclusive representative only upon employee authorization	Employee has right of self-representation or to designate personal representatives
Howard County	Open shop	Provided for exclusive representative only upon employee authorization	Employee has right of self-representation provided settlement not inconsistent with terms of agreement and exclusive representative is notified of settlement; employee may choose grievance procedure adopted by agreement or provided by law
Montgomery County - General Employees	Open shop (agency shop prohibited)	Provided for exclusive representative only upon employee authorization	Employee has right of self-representation or to designate personal representatives
Montgomery County - Police	Agency shop permitted	Permitted if negotiated	No provision

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**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - RIGHTS**  
(Continued)

<u>Local Unit</u>	<u>Union Security - Shop Provision</u>	<u>Union Security - Dues Checkoff Provision</u>	<u>Employee Rights in Grievance Proceedings</u>
Prince George's County	Agency shop permitted	Provided for exclusive representative only upon employee authorization.	Employee has right to self-representation provided settlement not inconsistent with terms of agreement and exclusive representative entitled to attend hearing; employee must follow grievance procedure clause in agreement, which shall specify which procedure to use when more than one exists
Rockville	Open shop	No provision	Employee has right of self-representation or to designate personal representatives
Washington County	Not specified in resolution; County Commissioners currently permit maintenance of membership (union security provision)		
Washington Suburban Sanitary Commission	Open shop	No provision	Employee has right of self-representation provided settlement not inconsistent with terms of agreement and exclusive representative entitled to attend conference

Source: Local Codes and Resolutions; Institute for Governmental Service, 1982 Survey of Wages and Collective Bargaining Arrangements in Selected Maryland Local Governments  
 Prepared by: Department of Fiscal Services  
 Date: August, 1983

## X. ADMINISTRATIVE AGENCY

An administrative agency may be created to administer the collective bargaining act, or the responsibilities of an existing agency may be expanded. The agency normally has these functions:

- (1) Determining the composition of the bargaining unit, if not established by legislation.
- (2) Determining whether the employee organization has an actual majority within the bargaining unit by verifying membership records or dues deduction authorizations or by conducting elections and certifying results.
- (3) Determining whether a charge of unfair labor practices is valid.
- (4) Providing mediation service, if needed.
- (5) Providing panels from which fact finders can be selected, when needed.

When a collective bargaining law applies to only one group of employees (such as teachers) and provides for a meet and confer or similar relationship where much of the impasse resolution machinery is absent, the administrative agency may be a subject matter specialist (State Board of Education). In other cases, a professional labor relations agency is generally considered best able to carry out the mandate of the public employee bargaining statute.

House Bill 1206 (Collective Bargaining - State Public Employees) introduced during the 1983 Session was not passed into law. It provided, however, for a three-member Maryland Public Employment Relations Board to administer the provisions of the act. The Department of Fiscal Services estimated the State cost for the first-year budget of the Board to be \$641,000 for the services of a full-time Chairman, equivalent to a State Secretary, and sufficient staff to develop rules and regulations pertaining to all aspects of the Board's responsibility.

In addition to the Board, the Department advised that the State would need an Office of Employee Relations responsible for coordinating and preparing the employer negotiating package, employing management negotiators, and after negotiations, conducting educational programs among State supervisors as to how the terms of an agreement are to be carried out. First-year costs of the Office to the State were estimated to be \$315,000.

Among Maryland's local governments with formal labor relations policies, only Prince George's County has a Public Employee Relations Board to administer its labor relations act. Baltimore City has a full-time Labor Commissioner and Baltimore County has a part-time Labor Commissioner to administer their acts. In Montgomery County, a Permanent Umpire was created by the law granting police officers the right of collective bargaining. In Maryland's other local jurisdictions, the labor relations law or resolution is administered either by the chief administrator or personnel department.

Table X identifies the agency responsible for administering the employer-employee relations policy in all of Maryland's local governments with policies.

**TABLE X**  
**LOCAL PUBLIC SECTOR EMPLOYEE BARGAINING POLICIES - ADMINISTRATIVE AGENCY**

<u>Local Unit</u>	<u>Administrative Agency</u>	<u>Duties</u>
Allegany County	Personnel Administrator	All personnel functions
Annapolis	Personnel Officer	All personnel functions
Anne Arundel County	Personnel Officer	All personnel functions
Baltimore City	Labor Commissioner	Administration of employer-employee labor relations
Baltimore County	Labor Commissioner (part-time position)	Administration of employer-employee labor relations
Bel Air	Personnel Director	All personnel functions
Bowie	City Manager	General management functions
College Park	City Administrator	General management functions
Cumberland	City Clerk	General government functions
Garrett County	Chief Administrative Officer	General management functions
Hagerstown	Personnel Officer	All personnel functions
Harford County	Personnel Officer	All personnel functions
Howard County	Personnel Officer	All personnel functions
Montgomery County - General Employees	Chief Administrative Officer	General management functions
Montgomery County - Police	Permanent Umpire	Administration of employer-employee labor relations
Prince George's County	Prince George's County Public Employee Relations Board (PERB)	Administration of employer-employee labor relations
Rockville	City Manager	General management functions
Washington County	County Administrator	General management functions
Washington Suburban Sanitary Commission	Administrative Officer	General management functions

Source: Local Codes and Resolutions  
Prepared by: Department of Fiscal Services  
Date: August, 1983

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