Circuit Court for Montgomery County
Case No. 443221V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 01051

September Term, 2018

MONTGOMERY COLLEGE CHAPTER, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

v.

BOARD OF TRUSTEES OF MONTGOMERY COMMUNITY COLLEGE, ET AL.

Arthur,
Leahy,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: November 5, 2019

The Montgomery College Chapter of the American Association of University Professors ("AAUP"), appellant, appeals an order of the Circuit Court for Montgomery County denying its complaint to compel arbitration and entering judgment in favor of the Board of Trustees of Montgomery Community College and its Secretary-Treasurer, the College's President, DeRionne P. Pollard[1] (collectively, the "Board"), appellee. The underlying dispute is whether the Board's failure to pay a wage increase negotiated under a Collective Bargaining Agreement ("Agreement") is an arbitrable grievance.

In its timely appeal, AAUP presents two questions,[2] which we have consolidated into one:

> Whether the circuit court was legally correct in granting the Board's motion to dismiss, or in the alternative, motion for summary judgment?

For the reasons that follow, we will affirm the judgment of the circuit court.

[1] Dr. Pollard was appointed pursuant to Md. Code Ann. (1974, 2014 Repl. Vol., 2019 Supp.), § 16-103 of the Education Article ("ED"). AAUP named her as a defendant because, as the College's President, she "is responsible for the conduct of the community college and for the administration and supervision of its departments." ED § 16-104(b)(4).

[2] As presented in AAUP's brief, the questions are:

1. Whether the circuit court exceeded its authority by misinterpreting two contract provisions to conclude that a grievance was not arbitrable.
2. Whether the circuit court exceeded its authority in granting the College's motion for summary judgment without making findings of fact based on the facts that support the AAUP's position.

FACTUAL AND PROCEDURAL BACKGROUND

AAUP represents the College's full-time faculty in its negotiations with the Board under Md. Code Ann. (1974, 2014 Repl. Vol., 2019 Supp.), § 16-412 of the Education Article ("Education Article"). AAUP and the Board have been parties to a series of "collective bargaining"[3] agreements, the most recent of which became effective March 23, 2015 and ends August 24, 2025. Section 8.2(A)[4] of the Agreement provided a 6.25% wage increase for full-time faculty for the 2018 Fiscal Academic Year[5] ("FY 18").

[3] Section 16-412(a)(1)(4) of the Education Article provides:

> "Collective bargaining" means the performance by the certified employee organization, through its designated representative, and the public employer, of their mutual obligations to meet at reasonable times and to negotiate in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising under an agreement, and the execution of various agreements incorporating the terms agreed upon by both parties. In the performance of this obligation neither party shall be compelled to agree to a proposal, or be required to make a concession to the other.

[4] Section 8.2(A) of the Agreement provides in pertinent part:

> Fiscal Academic year 2018: Effective the first day of the academic year, there shall be a two and three-quarters percent (2.75%) wage adjustment and, for faculty members who have been in the bargaining unit for at least one semester as of the beginning of the fiscal academic year, and an increment of three and one-half percent (3.5%) to the extent that an employee's salary does not exceed the maximum of the salary range. The salary range for the fiscal academic year shall be $61,509.00 to 115,330.00.

[5] The 2018 Fiscal Academic Year ran from the first pay period for full-time faculty in September of 2017 through the last pay period in May of 2018.

Funds for the College's budget comes from three sources: the State of Maryland, Montgomery County, and tuition payments from students. The funding from Montgomery County is the issue in this case. For FY 18, the Board requested $7.4 million from the County to fund personnel wage adjustments at the College.[6]

In a memorandum dated March 1, 2017, Dr. Janet Wormack, Senior Vice President for Administrative and Fiscal Services, stated that $7.4 million would provide "a 4.5 percent salary increase for every eligible employee[.]" That statement made no mention of AAUP's 6.25% wage increase for FY 18, and generated AAUP's "concern that the [Board] would not honor the terms and conditions of [the] Agreement." Professor Harry Zarin, AAUP's President, "sought clarification from [the Board] that the [Board] would . . . comply with Section 8.2 of the Agreement . . . based on [the] March 1 [m]emorandum which referenced significantly lower rates than were in the Agreement[.]"[7] On April 5, 2017, the Board's counsel responded that the $7.4 million request was sufficient to implement the Agreement:

[6] Notwithstanding references to FY 17, at oral argument, the Board clarified that the dispute at issue concerns FY 18.

[7] AAUP's Grievance Officer filed a grievance on behalf of AAUP on April 7, 2017, which was later rescinded. The April 7 grievance stated:

> The College acted improperly and in violation of Article 8.5 because it failed to submit the required request to Montgomery County for the funds necessary to implement the Agreement. Therefore, the Chapter Executive Committee, representing the bargaining members of the unit are filing a formal grievance.

> It would cost approximately $3.0 million to fully fund the wage adjustment in Section 8.2 for FY18. The message sent to the College community by Dr. Wormack in early March suggested that, if $7.4 million is received from the County, it would enable the College to provide a 1% general wage adjustment and the 3.5% increment to all College employees. It was stated this way because of the administration's desire to be fair and equitable to all College employees.

When the Montgomery County Council only approved $5.2 million—$2.2 million less than requested—the Board invoked Section 8.5[8] of the Agreement to re-negotiate the

(…continued)

> Provision(s) of the Agreement Alleged to Have Been Violated
> Improper use of Article 8.5 because the College did not first make a request for the funds necessary to pay the negotiated fiscal adjustments for FY 18.
>
> Specific Remedy Sought
> - Communication that the College did not comply with their statutory obligation and did not comply with their statutory obligation and did not follow the directive set forth in the [County Chief Administrative Officer's] December 2016 memorandum;
> - Faculty are paid the agreed-upon fiscal adjustments for FY18.
> - Additionally, the Chapter requests the College to agree to move directly to Section 3.1B of the Agreement and begin the arbitration process.

[8] Section 8.5, entitled "Failure to Achieve Projected Revenues," provides:

> This Agreement is dependent upon receipt by Montgomery College of the revenues projected by Montgomery County as necessary to implement the Agreement. Should revenues fall below the levels necessary to implement this Agreement, Management shall immediately notify the Chapter of the shortfall in revenues and of its proposals, if any, for such modifications of this Agreement as are, in the judgment of Management, made necessary by the shortfall. Thereafter, Management and the Chapter shall promptly meet and bargain in good faith in an attempt to reach an agreement which can be implemented within the revenues received by Montgomery College. If Management and the Chapter are unable to reach such agreement within ten (10) calendar days, the State Commissioner of Labor and Industry, or his designee, shall participate in the negotiations as a mediator. If Management

wage increase. And, when the parties were unable to reach an agreement, they unsuccessfully pursued mediation. At that point, they reached a fork in the procedural path: one led to fact-finding[9] under Section 8.5 of the Agreement; the other to arbitration under Section 3.2[10] of the Agreement.

(…continued)

> and the Chapter are unable to reach an agreement within ten (10) calendar days after the commencement of mediation, either Management or the Chapter may request fact-finding. Upon such request, Management and the Chapter shall attempt to agree to a fact finder. If Management and the Chapter are unable to agree to a fact finder they shall jointly request the American Arbitration Association to furnish a list of seven (7) qualified and impartial persons, one of whom shall be selected as the fact finder. Selection shall be made by Management and the Chapter alternately striking any name from the list, until only one name remains. The person whose name remains shall be the fact finder. The fact finder shall conduct a hearing within ten (10) calendar days of his appointment and shall issue a report containing his findings of fact and recommendations to Management and the Chapter within five (5) calendar days of the close of the hearing. If Management and the Chapter are unable to reach agreement within three (3) calendar days after receipt of the fact finder's report, either Management or the Chapter may release the report to the public.

Section 8.5 is consistent with Section 16-412(g)(6) of the Education Article, which states:

> If the request for funds necessary to implement the agreement is reduced, modified, or rejected by the governing body of Montgomery County, either party may, no later than 20 days after final budget action by the governing body, reopen the agreement.

[9] "Fact-finding" means identification of the major issues in a particular impasse, review of the positions of the parties and resolution of factual difference by an impartial individual or panel, and the making of recommendation for settlement of the impasse. ED § 16-412(a)(9).

[10] Section 3.2 of the Agreement provides:

Section 3.1(A) of the Agreement defines a "grievance" as "an allegation by a faculty member that management has violated an express provision of this Agreement and that such faculty member has been personally aggrieved thereby."

Section 3.1(B) sets forth a four-step grievance process. Step 1 requires notice to the faculty member's immediate supervisor. Step 2 is a written appeal to the Campus Vice President and Provost. Step 3 is a written appeal to the Senior Vice President for Academic Affairs or Senior Vice President for Student Services. Under Step 4, parties may "mutually agree to attempt to resolve the grievance through mediation." If the grievance is not resolved at Step 3 or at Step 4, AAUP may elect arbitration under Section 3.2 of the Agreement.

Professor Zarin filed a grievance under Article 3 of the Agreement stating:

> The College has violated the parties' Agreement by its failure to provide and pay to the covered Chapter members the salary increases that were to be implemented with the start of [FY] 2018 as set forth in Section 8.2(A) of the Agreement, which Section expressly provides for a 3.5% increment as well as a 2.75% General Wage Adjustment. On September 1, 2017, the first paycheck issued by the College for [FY] 2018, full-time faculty did not receive either the agreed-upon increment or the general wage adjustment.

The remedy requested was the 6.25% wage increase provided for in the Agreement.

(…continued)

> If a grievance is not satisfactorily adjusted at Step 3 or through mediation, the Chapter . . . may submit a grievance that has been properly processed through the procedure set forth in Section 3.1 of the Article to final and binding arbitration.

Professor Zarin's grievance proceeded to Step 3[11] where the College's Senior Vice President for Student Affairs Monica Brown, denying the grievance, stated that "the [g]rievance [p]rocedure in Article 3 is not the appropriate way to address this issue" and that "the [a]ppropriate [r]esolution is [u]nder Section 8.5." She further explained that "Management"[12] remained willing to engage in fact-finding under Section 8.5. AAUP responded that it intended to arbitrate under Step 4 of the grievance procedure.

When the Board continued to decline to arbitrate, AAUP filed its Complaint to compel arbitration. The Board responded with a Motion to Dismiss or, in the alternative, Motion for Summary Judgment, which AAUP opposed. A hearing on the Board's motion was held by the circuit court on June 19, 2018.

At the conclusion of the hearing, the circuit court ruled from the bench:

> The question the court is being asked is whether the faculty has filed a grievance under Article 3[']s grievance procedure and if so they'd be entitled to arbitration under Section 3.2 or is this a salary dispute under Article 8 and if so the issue is to be submitted to a fact finder under 8.5[,] titled failure to achieve projected revenues.
>
> * * *
>
> A grievance is ["]an allegation by a faculty member singular that management has violated an express provision of this agreement and that such faculty member individually has been personally aggrieved thereby.["]

[11] In this case, the parties had already unsuccessfully engaged in mediation.

[12] Section 1.1 of the Agreement provides:

> Whenever used in this Agreement, the term "Management" shall mean the Board and/or the administrative staff designated by the Board to implement and administer the Board's policies.

* * *

This lawsuit was not brought by an individual faculty member, the lawsuit which is before me . . . says plaintiff Montgomery College Chapter of the American Association of University Professors, in bracket chapter of MC-AAUP by and through its undersigned counsel alleges and states [for its] [C]omplaint.

* * *

So, this was brought by the [AAUP]. This was brought by the faculty. I look at . . . the procedures . . . under Article 3['s] grievance procedures and I look at [S]tep [1]. This ag[grieved] faculty member may submit written grievance to the faculty member's immediate supervisor . . . [N]ow why would you do that?

The immediate supervisor is not paying a salary, the immediate supervisor's not paying any percent increase, with our copy to the Director of Employee Relations Diversity and Inclusion. Now why would you do that? They have absolutely nothing to do that I can read this agreement with respect to compensation or raises. I look at [S]tep [2] . . . dealing with the Vice President or Provost with a copy of the Director of Employee Relationships Diversity and Inclusion.

There again, for what purpose if it is a dispute with respect to the pay increase?

* * *

It would be hard to imagine that when the provisions of grievances are viewed alongside those of Article 8's salaries, that anyone unless engaging in extreme mental gymnastics, could conclude that the dispute is a grievance.

* * *

On the contrary, and consistent with my decision, this dispute finds its natural home in Article 8, ironically titled ["S]alar[ies"]. How odd, how peculiar, when you're dealing with salaries and you're dealing with an increase in salary that we look to salaries?

* * *

[Section 8.5] doesn't say the agreement is dependent upon having money somewhere in the bank. It says ["]necessary to implement the agreement["], [which is] an exact phrase subject to interpretation and that's why there's an elaborate process . . . .

[It further] says that . . . ["] [M]anagement shall immediately notify the [C]hapter of the shortfall . . . [in] revenue [and] of its proposal[s]" and "if [, any,] for such modifications [of] this [A]greement as are[,] in the judgment of [M]anagement[, made] necessary by the shortfall." This [A]greement allows [M]anagement to make to use its judgment to determine to go through this process. It doesn't take two people, two sides, to agree . . . .

* * *

So, this wasn't negotiated on the fly, this was something that smart attorneys that deal with labor, deal with wages, deal with universities put in there and so this was the best way to represent the college and the faculty members . . . . It also says after [the] fact-finder files the report . . . the [M]anagement [and] Chapter then try to reach [an] [A]greement within three days after that.

* * *

That's the way I see it and I'll therefore find under both, I'll find that the plaintiff failed [to] state a claim upon which relief could be granted because you can't grant relief or arbitration when the subject matter is salary . . . but I'll also grant summary judgment because . . . I find that there are no genuine disputes of any material facts.

STANDARD OF REVIEW

The Court of Appeals has explained:

The role of an appellate court is substantially similar whether reviewing the grant of summary judgment or the grant of a motion to dismiss. In both instances, the standard is whether the trial court was "legally correct." Moreover, with regard to both types of motions, "we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Sprenger v*

> *Public Serv. Comm'n.*, 400 Md. 1, 21 (motion to dismiss). *See also Reiter v. Pneumo Abex*, 417 Md. 57, 67 (2010) (same for grant of summary judgment). . . . Thus, we are simply tasked with a *de novo* review of the [c]ircuit [c]ourt's conclusions of law.

Napata v. University of Maryland Medical System Corp., 417 Md. 724, 732 (2011) (cleaned up).

DISCUSSION

Contentions

Citing *Gold Coast Mall, Inc. v. Larmar Corp.*, 298 Md. 96, 103 (1983),[13] AAUP contends that the circuit court erred in finding that AAUP's grievance was not arbitrable under Article 3 of the Agreement because the Agreement has a "broad arbitration clause" that does not exclude any dispute in its grievance procedure. It further contends that Section 8.5 "does not apply because the [Board] obtained enough money from the Council to fund the required salary increase," but elected not to do so. And, pointing to another provision in the Agreement that precludes certain discharged faculty members

[13] *Gold Coast Mall v. Larmar Corp.*, 298 Md. 96, 101–02 (1983), involved a lease that read, "In the event of a disagreement between the parties during the term hereof which they are unable to resolve within sixty days by negotiations between them, then it is agreed that such disagreement shall be submitted by the parties to 'informal three-man arbitration' . . . ." The Court of Appeals concluded:

> The language of this broad arbitration clause is clear. It **appears to require both parties to arbitrate any and all disputes arising out of the agreement**. No type of controversy is expressly or specifically excluded from the requirement to arbitrate.

Id. at 107–08 (emphasis added).

from filing a grievance,[14] it asserts that "the parties knew how to expressly exclude [a matter] from arbitration" and that the Agreement does not include a "similar provision excluding the failure to provide a contractually required wage increase from arbitration."

Noting that Section 3.2(C) expressly provides that an arbitrator does not have jurisdiction to alter any wage rate or wage structure, the Board contends that the grievance provisions do not apply to the dispute at issue. It argues that Section 8.5 governs the procedure for resolving issues regarding overall wage adjustments, and, more specifically, the dispute presented in AAUP's complaint.

Analysis

The parties in this case did not "expressly provide" in the Agreement that the Maryland Uniform Arbitration Act should apply, and therefore common law principles guide our analysis. *See Prince George's Cty. v. Fraternal Order of Police, Prince George's Cty., Lodge 89*, 172 Md. App. 295 (2007), referring to Md. Code. Ann. (1974, 2013 Repl. Vol.), § 3-206(b) of the Cts. & Jud. Proc. Article.[15] And, "[b]ecause

[14] Section 4.5(E) of the Agreement provides in pertinent part:

> A faculty member may be discharged upon the recommendation of a Dean/Supervisor . . . . If the recommendation is upheld, the faculty member may file a grievance pursuant to Section 3.1 at Step 3. This Section 4.5(E) does not apply to faculty members who are laid off, to faculty members whose employment is terminated pursuant to Section 4.2, 4.3, or 4.4 of this Article, or to any other termination of employment.

[15] In addition, provisions of the Education Article provide the statutory framework in which the College operates. Section 16-301 of the Education Article provides that the College's board of trustees and the president "shall prepare and submit" a budget to the

arbitration is a matter of contract, we use contract principles to determine whether an agreement to arbitrate exists." *Cain v. Midland Funding, LLC*, 452 Md. 141, 155 (2017) (citation omitted).

A party "can only be forced to submit those issues to arbitration it has agreed to submit." *Rourke v. Amchem Prods., Inc.*, 153 Md. App. 91, 123–24 (2003), *aff'd*, 384 Md. 329 (2004) (citation omitted). In other words, "[i]f it is apparent . . . that the issue sought to be arbitrated lies beyond the scope of the arbitration clause, the opposing party should not be compelled to arbitration, since there is no agreement to arbitrate." *Baltimore Cty. Fraternal Order of Police Lodge No. 4 v. Baltimore Cty.*, 429 Md. 533, 551 (2012) (quoting *Gold Coast Mall*, 298 Md. at 104–05) (internal quotation marks omitted).

In Maryland, "the general policy . . . is to allow the question of arbitrability to go to the arbitrator in the first instance if it is unclear from the arbitration agreement whether the parties have agreed to submit a particular subject matter to arbitration or if the court, in addressing arbitrability, must consider the merits of the dispute." *Baltimore Cty. v. Baltimore Cty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 577–78 (2014) (citations omitted). Only when it can "'be said with positive assurance that the

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County Council, which the Council reviews and can "reduce." The budgeted amounts are at all times dependent upon the appropriations that are made by the respective governing bodies. Section 16-304 of the Education Article requires county governing bodies to make appropriations for certain "major functions" and restricts the College from "spend[ing] more on any major function than the amount appropriated for it."

arbitration clause is not susceptible of an interpretation that covers the asserted dispute'" should a court not order arbitration. *Mayor v. Baltimore Fire Fighters*, 93 Md. App. 604, 610 (1992) (quoting *AT&T Techs. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986)).

It is a fundamental rule of contract interpretation that "'the intention of the parties as expressed in the language of the contract controls the analysis.'" *Ford v. Antwerpen Motorcars Ltd.*, 443 Md. 470, 477 (2015) (quoting *Curtis G. Testerman Co. v. Buck*, 340 Md. 569, 580 (1995)). But, when "the language of the contract is unambiguous, we give effect to its plain meaning and do not delve into what the parties may have subjectively intended." *Antwerpen*, 443 Md. at 477 (quoting *Rourke v. Amchem Prods., Inc.*, 384 Md. 329, 354 (2004)).

As discussed above, AAUP argues that Section 8.5 only applies when the Board does not receive sufficient funds to fund the Agreement and not when, "as here, the College receive[d] enough money, but [chose] to spend the money elsewhere." It reasons that although the Board received $5.2 million, $2.2 million less than the $7.4 million it requested for wage increases for AAUP and two other employee unions, only $3 million was needed to fund AAUP's wage increase. Therefore, the Board received the funds necessary for the wage increase provided for in the Agreement.

AAUP also asserts that the "divergent facts concerning the intent of Section 8.5" qualifies as a factual dispute that "the [c]ircuit [c]ourt acknowledged, but ignored." It

argues that "what revenue the [C]ollege is receiving in relationship to the financial obligation it undertook voluntarily" is a fact that "must be established."

The Board rejects AAUP's interpretation of Section 8.5. It argues that it "gets to determine how its overall budget is managed," and when projected revenues are not received, Section 8.5 applies.

Fraternal Order of Police, Montgomery County, Lodge 35 v. Montgomery County ("*FOP Lodge 35*"), 437 Md. 618 (2014), which involves a labor dispute between the County and police union, provides some guidance. The County Council adopted a Resolution that modified benefits provided for in the parties' agreement. *Id.* at 626–27. The police union, asserting that changes to benefits "must be achieved through collective bargaining with binding arbitration," challenged the legality of the Council's actions. *Id.* at 628–29, 632.

The Court of Appeals held that the County acted within its statutory authority "in deciding not to fund fully—and, thereby, to 'change'—certain benefits in the pre-existing collectively-bargained agreement, at least where the 'changes' are fiscal in nature and the County Executive and the [union] did not submit a re-negotiated agreement to the Council." *Id.* at 620. The Court, stating that "he who holds the purse strings rules the roost," explained that the terms of the agreement governing funding of benefits was a fiscal decision over which the Council had the statutory authority to define and change pursuant to its budgetary approval function. *Id*. at 620, 633–34.

Here, a salary or wage adjustment dispute arising when there is a shortfall in revenues is expressly addressed in Section 8.5,[16] entitled "Failure to Achieve Projected Revenues," which provides:

> This Agreement is dependent upon receipt by Montgomery College of the revenues projected by Montgomery County as necessary to implement the Agreement. **Should revenues fall below the levels necessary to implement this Agreement**, Management shall immediately notify the Chapter of the shortfall in revenues and of its proposals, if any, for such modifications of this Agreement as are, **in the judgment of Management, made necessary by the shortfall**. Thereafter, Management and the Chapter shall promptly meet and bargain in good faith in an attempt to reach an agreement which can be implemented within the revenues received by Montgomery College.

(Emphasis added).

Section 8.5 does not provide for arbitration but rather independent fact-finding in a wage dispute arising when the Board does not receive its projected revenues.

Similar to *FOP Lodge 35*, the Agreement in this case is expressly dependent on the appropriations made by the County. In the event that the Board receives less funds than requested, both Section 16-412(g)(6) of the Education Article and Section 8.5 of the Agreement authorize re-negotiation of the Agreement.

As did the police union in *FOP Lodge 35*, AAUP argues that arbitration should be compelled to enforce the wage increase provided under the pre-existing Agreement. But, AAUP's receipt of the projected raise was dependent on the Board receiving the funds

[16] Section 8.5 is consistent with Section 16-412(g)(6) of the Education Article, which provides for re-opening negotiations when "the request for funds necessary to implement the agreement is reduced."

that it deemed necessary to implement the Agreement. Consistent with the Agreement and its statutory authority under Section 16-412(h) of the Education Article, the Board determined that the $2.2 million shortfall necessitated modification of the wage increase.[17]

AAUP acknowledges that the Board projected $7.4 million to fund wage increases for all its employees for FY 18, and it is not disputed that the County reduced the requested funds to $5.2 million—$2.2 million less than the Board requested. But it

[17] Section 16-103 of the Education Article, Powers of board of trustees, provides that:

> (a) *In general.*—In addition to the other powers granted and duties imposed by this title . . . each board of community college trustees has the powers and duties set forth in this section.
>
> . . . .
>
> (c) *General control; rules and regulations.*—Each board of trustees shall exercise general control over the community college . . . .
>
> (d) *Salaries and tenure.*—Each board of trustees may fix the salaries and tenure of the president, faculty, and other employees . . . .

And, Section 2.1 of the Agreement, Retention of Management Prerogatives, states:

> All management functions, rights, and prerogatives, written or unwritten, which have not been expressly modified or restricted by a specific provision of this Agreement, are retained and vested exclusively in Management and may be exercised by Management at its sole discretion. Such management functions, rights, and prerogatives include, but are not limited to, all rights and prerogatives granted by applicable law; . . . to allocate and expend funds and determine financial policies and procedures of Montgomery College; . . . and, in all other respects, to plan, manage, evaluate, administer, govern, control, and direct Montgomery College, its operations and personnel.

contends that without a finding that the Board did not receive the funding it needed, the Board is not entitled to judgment as a matter of law.

In our view, whether the funds "necessary to implement this Agreement" were received and whether wage modifications were "made necessary by the shortfall" are not facts requiring third-party determination under the terms of the Agreement. They were determinations to be made "in the judgment of Management." The Agreement, as the circuit court commented, "doesn't say [it] is dependent upon having money somewhere in the bank." And, more particularly, it does not say that the determination, as to the need for wage modifications, has to be made without regard to other budgeted expenditures or without consideration of wage adjustments for other employees.

Nevertheless, AAUP asserts that the dispute at issue remains "arguably arbitrable" under Section 3.2's "broad arbitration clause," which it reads as not excluding any type of dispute from its grievance procedure. But, Section 3.2(C) of the Agreement makes clear that the implementation of faculty-wide wage rates and structures are not arbitrable disputes under Section 3.2. Unlike *Gold Coast Mall*, the Agreement does not expressly provide that *any and all* issues between the parties will proceed to arbitration under the grievance procedure, and Section 3.2(C) expressly states: "The arbitrator shall have no authority to . . . establish or alter any wage rate or wage structure[.]"

In addition to the express language of Section 3.2(C) restricting the arbitrator's authority, the Agreement only provides for arbitration to resolve grievances, which are defined as "as an allegation by *a* faculty member that Management has violated an

express provision of this Agreement and that such faculty has been personally aggrieved thereby." (Emphasis added). Moreover, it expressly provides that an "arbitrator shall not hear or decide more than one grievance at one time without the mutual consent of Management and the Union."

AAUP argues that Professor Zarin was "personally aggrieved" by the alleged breach of contract and intended his grievance to provide a remedy for himself and for all affected faculty members. The Board responds that Professor Zarin filed a "class grievance," and that "as a matter of law the [Agreement] does not permit class grievances."

We agree with the Board that Professor Zarin effectively filed a class grievance. In it, he alleged that the Board "violated the parties' Agreement by . . . fail[ing] to provide and pay to the covered [AAUP] members the [FY 18] salary increases." He may have been personally aggrieved by the Board's decision not to provide the FY 18 wage adjustment, but the remedy he sought was for all affected AAUP members and the complaint seeking to compel arbitration was filed on behalf of AAUP.[18]

In asking the circuit court to compel arbitration, AAUP stated that "[a]bsent the final and binding resolution of this dispute by an arbitrator . . . the dispute between the parties will remain unresolved." We understand this to mean that a final decision in this

[18] Were this dispute arbitrable under the grievance provisions, a class arbitration rather than separate arbitration hearings for each of the over 500 affected faculty members might have merit. But, because we conclude that a wage dispute arising from a revenue shortfall is not an arbitrable grievance, we do not reach the policy argument advanced by AAUP favoring class grievances.

case should not rest solely with the Board. Perhaps that is true. On the other hand, the parties negotiated the Agreement which, in the case of wage rates and structures, expressly provides for impartial fact-finding rather than arbitration to address a dispute.

In sum, we hold that the circuit court was legally correct when it ruled in favor of the Board and refused to order arbitration, because, in the case of a revenue shortfall, the Agreement expressly provides for re-negotiation and fact-finding. The wage dispute in this case was not subject to the grievance process. Not only was the purported grievance a class grievance that was not permitted under the Agreement without the Board's consent, the Agreement expressly bars an arbitrator from "establish[ing] or alter[ing] any wage rate or wage structure," which enforcement of the Agreement would clearly do.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.