

Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401 - 1699



MARY ELLEN BARBERA
Chief Judge

February 20, 2020

Senator Delores G. Kelley
Chair, Senate Finance Committee
3 East Miller, Senate Office Building
Annapolis, MD 21401

Senator William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

Re: Senate Bill 388 – Circuit Courts and District Court of Maryland Employees -
Collective Bargaining

Dear Senator Kelley and Senator Smith:

The Maryland Judiciary strongly opposes Senate Bill 388. This bill establishes collective bargaining rights for clerical, administrative, constabulary, maintenance and housekeeping employees of the Circuit Courts and the District Court. It also establishes a State Judicial Employees Labor Relations Board as an independent unit of State government.

Senate Bill 388 raises fundamental constitutional and separation of powers concerns. The Maryland Constitution provides for the Chief Judge of the Court of Appeals to serve as the administrative head of the judicial system of the State. The Executive Branch and the Legislative Branch have no mandate to interfere with that authority. *See* Maryland Constitution, Article IV, §18(b)(1). Under the specific framework of this proposal, the Chief Judge's administrative decisions regarding personnel would be subject to the control of the State Judicial Employees Labor Relations Board. The Board, which would exist as an "independent unit of State Government," would be vested with authority to hold hearings and order positions and recommendations contrary to the Chief Judge in matters concerning wages, hours, and other disputes regarding terms and conditions of employment.

The bill limits the control the Chief Judge would have over the board and grants significant authority to both the Executive Branch and Legislative Branch. For example, the Governor would select two board members. The President of the Senate and the Speaker of the House would each prepare a list of five from which the Chief Judge would choose one member each. The Chief Judge, in contrast, would be permitted unfettered discretion only to select a single board member. Further, the Chief Judge would not have the sole authority to remove any of the five members of the board for incompetence, misconduct, or willful neglect of duty. The Chief Judge would share that authority with the Governor, who would be able to act independent of the Chief Judge. For the Executive Branch, in contrast, the Governor selects the entire membership of the State Labor Relations Board—and only the Governor may remove a member. State Personnel and Pensions Article § 3-202.

This legislation also contravenes the Maryland historical precedents that created public sector collective bargaining in the Executive Branch. Present-day collective bargaining for limited Executive Branch employees took root in Executive Order Executive Order 01.01.1996.13, issued by Governor Glendening in 1996. The General Assembly subsequently enacted statutory collective bargaining for Executive Branch employees, *but only* through legislation directly sponsored and signed by the Governor. *See* 1999 Maryland Laws Ch. 298 (H.B. 179). The proposed bill directly undercuts the administrative powers that the Constitution grants the Chief Judge as head of the Judicial Branch. The Executive Branch explicitly ordered collective bargaining, directly sponsored supporting legislation, and has retained broad control over collective bargaining. In contrast, under the proposed legislation, the Judicial Branch has been accorded no such deference.

Furthermore, this bill, like its previous incarnation, would add an unnecessary and costly redundancy to the Judicial Branch's existing personnel system. Currently, Judiciary employees enjoy similar pay, benefits, and protections as their Executive Branch counterparts. This includes the same provisions of federal and State employment as well as occupational health and safety laws. Additionally, the Judiciary's compensation system for State-paid employees allows for step increases, cost of living increases, and use of paid leave.

Most significantly for your current consideration, Judiciary employees have received increases in pay and benefits without any of the added financial or personnel costs that would be imposed by this legislation. The Judiciary has been conducting an on-going evaluation of its classification and compensation structure since 2014, resulting in incremental adjustments to classifications and compensation that have been beneficial to employees. In terms of benefits, the Judicial Branch proactively has provided the same or similar protections and benefits enjoyed by employees in the Executive Branch. For instance, in 2019, the General Assembly made paid parental leave a statutory obligation for the Executive Branch to provide to its employees. Acts 2018, c. 752, § 1,

eff. Oct. 1, 2018. Without any negotiating or other unnecessary expenditure of taxpayer funds, the Judicial Branch provided equivalent benefits beginning January 2, 2019.

The Judicial Branch has worked hard and succeeded in ensuring that Judicial Branch employees enjoy the same or similar protections and benefits enjoyed by employees in the Executive Branch, without any of the cost burdens placed upon State finances by collective bargaining. These benefits include paid holidays and leave, state retirement benefits, membership in supplemental retirement programs, workplace mediation, progressive discipline, grievance and termination appeal rights, whistleblower and EEO/harassment protections with the assistance of the Fair Practices Department, a leave bank, flexible work schedules, educational assistance, employee assistance programs, telework, court certificate programs, and other education programs through the Judiciary's own nationally recognized Judicial College. New policies are widely vetted throughout the Judicial Branch, and employees are given an opportunity to provide input. Employees are allowed union representation at grievance conferences and termination hearings. With certain exceptions, Judiciary employees may be discharged only "for cause" and do not serve at the pleasure of a manager or an elected official.

Finally, this bill would place wide-reaching fiscal burdens on the Judiciary. The financial impact associated with collective bargaining falls into two major categories:

- (1) Start-up costs associated with hiring additional personnel to handle labor relations responsibilities, personnel participating in the negotiation process, preliminary and post-collective bargaining preparation, travel expenses; pre-conference meetings, supplying employee data via letters, fax, paper copies, etc., and the costs of elections;
- (2) On-going operational costs associated with the administration of the collective bargaining agreement, contesting decisions reached by the board, assisting the board in making determinations, salaries and fringe benefits for additional labor relations staff, lost productivity from representatives dedicating an estimated 15% to 20% of their time to labor relations/union activities, additional supplies, postage, equipment, etc., and additional maintenance costs for State vehicles used to support labor relations activities.

For all the reasons above, the Maryland Judiciary asks that you give Senate Bill 388 an unfavorable report. Thank you for your consideration of this matter of vital importance to the Maryland Judicial Branch.

Sincerely,

A handwritten signature in blue ink that reads "Mary Ellen Barbera". The signature is fluid and cursive, with the first name "Mary" and last name "Barbera" clearly legible.

Mary Ellen Barbera
Chief Judge, Court of Appeals

A handwritten signature in blue ink that reads "Laura S. Ripken". The signature is highly stylized and cursive, with a long horizontal line extending to the right.

Laura S. Ripken
Circuit Administrative Judge,
Fifth Judicial Circuit
Chair, Conference of Circuit Judges

A handwritten signature in blue ink that reads "John P. Morrissey". The signature is cursive and somewhat compact, with a distinct loop at the beginning.

John P. Morrissey
Chief Judge, District Court

cc: Honorable Bill Ferguson, President of the Maryland Senate
Senate Finance and Judicial Proceedings Committees