



HOUSE APPROPRIATIONS COMMITTEE

House Bill 458

State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations

February 15, 2022

Carolyn W. Skolnik, USM Associate Vice Chancellor

Unfavorable

Chair McIntosh, Vice Chair Chang and committee members, thank you for the opportunity to share our thoughts on House Bill 458. The USM opposes HB 458 because it conflicts with the fundamental tenets and objectives of the collective bargaining process and will have negative consequences injurious to that process.

The purpose of collective bargaining is for both parties to work together and negotiate mutually agreeable employment terms that will serve the needs and interests of both the employer and employees. The issues that are addressed in the bargaining process are intricately related to how the particular institution or agency operates. Indeed, collective bargaining does not solely involve interpretations of law; it also involves propositions that ultimately affect discrete groups of employees and the unique circumstances of an employer's operations. The union is responsible for representing the employees' interests throughout the process, and the institution represents the interests of running a successful operation. In the overwhelming number of cases, a contract is reached without impasse. Indeed, over the past twenty years, the institutions within the University System of Maryland have been able to reach agreements with the unions through the collective bargaining process, and there have been very few unfair labor practice charges before the State Higher Educations Labor Relations Board. Significant changes to the collective bargaining process that provide unions the option to engage in consolidated bargaining at the USM were recently enacted by the General Assembly; the additional changes HB 458 would enact are unnecessary.

Moreover, the legislation, as currently written, is ill-advised for multiple reasons. Putting the ultimate decision-making authority into the hands of a single third party is antithetical to the collective bargaining process. Binding interest arbitration would allow an outside party, who is neither accountable to the public nor subject to the consequences of his/her decisions, to unilaterally decide the terms of a union contract. As opposed to grievance arbitration, in which the arbitrator performs a judicial function by merely interpreting and applying an existing agreement, in interest arbitration the arbitrator is setting the terms, working conditions, and wages of public employees – matters which have always been, and should continue to be, the subject of good faith negotiations between the parties in interest.

Significantly, the legislation threatens to impair genuine good-faith bargaining. It can be expected that impasse, real or perceived, will be higher in a system that ends with interest arbitration than in a system that does not include this process at all. Rather than engage in realistic negotiations, parties will game the process. As a result, the availability of arbitration will have a "chilling effect" upon the parties' efforts to honestly negotiate an agreement. A chilling effect occurs when parties favor an early impasse instead of bargaining to a

settlement because one or both sides believe that an arbitration award may be more favorable than a negotiated contract. The idea is that the negotiators feel that there will be no loss of productivity or money due to the interest arbitration system, so they might as well arbitrate rather than settle.

Over time the parties may begin to default to arbitration as they habitually rely on arbitrators to write their labor contracts. This may lead to bad faith negotiating, where parties only negotiate as a formality instead of working on lasting solutions for their problems. They are essentially not bargaining, but rather waiting for a third party to decide their contract.

Additionally, because arbitrators are removed from the political process, public employees may make unrealistic demands during negotiations, believing that arbitrators will be more amenable than their employers. The effect will be that the purpose of collective bargaining – to encourage voluntary agreements between employers and employees – would be thwarted by binding interest arbitration. These aspects of the arbitration process are antithetical to the needs and desires of public employers and employees, and the public in general.

Furthermore, the proposed legislation would permit arbitrators who serve on a temporary basis and are politically unaccountable to award wage and other increases requiring expenditure of tax dollars. Insulated from electoral accountability, arbitrators are often oblivious to fiscal pressures. This will inevitably lead to inflationary wages that will have a harmful impact on the State's budgets.

Finally, this bill raises a constitutional question about a state sovereign's delegation of such broad authority to an unelected, non-governmental third party, particularly with respect to the spending of tax dollars. The discretion and power that would be conferred on an arbitrator under this legislation is not consonant with the concept of representative democracy because authoritative political decisions should be made by government officials, not arbitrators who are unaccountable to the public.



About the University System of Maryland

The University System of Maryland (USM)—one system made up of 12 institutions, three regional centers, and a central office—awards 8 out of every 10 bachelor's degrees in the State of Maryland. The USM is governed by a Board of Regents, comprised of 21 members from diverse professional

and personal backgrounds. The chancellor, Dr. Jay Perman, oversees and manages the operations of USM. However, each constituent institution is run by its own president who has authority over that university. Each of USM's 12 institutions has a distinct and unique approach to the mission of educating students and promoting the economic, intellectual, and cultural growth of its surrounding community. These institutions are located throughout the state, from western Maryland to the Eastern Shore, with the flagship campus in the Washington suburbs. The USM includes Historically Black Colleges and Universities, comprehensive institutions, research universities, and the country's largest public online institution.