

David Gray Wright (AFSCME - KSC) 2.11.22 .pdf

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Position: FAV

Testimony of David Gray Wright
HB 458: State Personnel – Collective Bargaining –
Revisions and Budget Bill
Appropriations
February 15, 2021
Support / Favorable

Binding interest arbitration is the single best way to bring objectivity, professionalism, and ultimately resolution to collective bargain for State employees.

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

Arbitration is the crucial tool for successful and cooperative labor relations in the public sector – where rationality is favored and strikes are disallowed. That is so because arbitration (i) **motivates negotiating parties to reach an agreement** and, when they cannot, (ii) it provides **a final resolution and agreement based on reason and fact**. On this basis, several counties, Baltimore City, and Ocean City have adopted arbitration; as have several states with mature labor relations.

Arbitration is a dispute resolution tool to break an impasse. When parties bargain in good faith but cannot reach agreement, they may reach impasse – a sticking point over the last unresolved subjects. Arbitration allows **a professional neutral to hear the positions and reasoning from both sides** and break the impasse by choosing the more appropriate resolution of those final disputed subjects. The neutral’s decision is based on factors set by law to account for the potential cost to the State, the realities of the labor market and the cost of living, and other objective measures.

Although both sides can take an impasse to arbitration, both sides ordinarily work hard to avoid arbitration. Parties to collective bargaining disfavor “winning” and “losing.” Thus, **arbitration makes it more likely that an agreement will be negotiated**. This bill also puts the arbitrator in the position of helping and supervising the negotiations process, to promote an effective and successful process, and thus avoid impasse.

Many additional questions are addressed in the following pages.

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February 15, 2021

What is Binding Arbitration?

Arbitration is the way to avoid, and if necessary to resolve, stalled or high conflict collective bargaining. It is the preferred and widely adopted way to resolve differences between labor and management who must reach agreement through bargaining. The **possibility of binding arbitration** encourages both sides to be centrist and objective and reach agreement. The **actuality of binding arbitration** produces a collective bargaining agreement that is more centrist and objective. An **arbitration award** is subject to judicial review under standards that are well defined in Maryland law.

What collective bargaining rights do State employees currently have?

- The State and each exclusive representative (employee union) are to meet, exchange information and proposals, and negotiate in advance of the budget cycle and legislative session.
- When negotiations are to begin, however, is not set by law. The exchange of information and proposals is not subject to supervision and disputes during negotiations are not promptly addressed. Negotiations over budget items – such as COLAs and steps – must conclude before January 1, but if there is no agreement by that date, then management may impose the budget it sees fit.
- Negotiations over non-budget items – such as safety issues, telework – could continue after January 1, but there is no deadline for conclusion and no process for resolution of differences.
- A memorandum of understanding is eventually prepared to reflect the budget items agreed or imposed and the other terms and conditions for employees on which some agreement has been reached.

What happens if labor and management are far apart and in high conflict over appropriate COLAs, steps, and other budget items?

- If negotiations start early enough, and information and proposals are exchanged, and if it seems agreement is unlikely and conflict is more likely, then before October 25, labor may request appointment of a fact finder to offer recommendations.
- To that end, the fact finder can issue subpoenas, hold hearings, take testimony, and receive other evidence on the issues in dispute.
- The fact finder makes written recommendations regarding wages – COLAs, steps, bonuses – and other budgetary and non-budgetary items and topics.
- The recommendations are issued before November 20. They are sent to the Governor, the President of the Senate, and the Speaker of the House of Delegates on or before December 1. No action is required.
- The fact finder's written recommendations are not binding. Management may impose the budget it sees fit, and non-budget items are left unresolved.

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Why propose binding arbitration?

- Binding arbitration results in more agreements, more quickly, with less conflict, founded on more objectivity and more centrist proposals – budgetary and non-budgetary.
- The written recommendations of a fact finder do not resolve conflict, but instead only give it some context and third party insights.
- To offer recommendations to conflict, is to offer no real resolution to conflict at all.

Why should binding arbitration for State employees be authorized by constitutional amendment?

- Under the Maryland Constitution, the Governor has sole authority to prepare and submit a budget for the next fiscal year to the General Assembly.
- The Governor's sole authority permits the Governor to disregard both a fact finder's written recommendations and new terms included in a memorandum of understanding – to proceed as the Governor sees fit, regardless of objective evidence or rationality.
- Binding arbitration would permit an experienced, neutral third party to balance the needs of State employees against the mission and means of the State, and to adopt a fair outcome and agreement for all to be bound by.

Will there need to be implementation legislation should this pass?

- Yes. This is why SB 472 and HB 458 include both a constitutional amendment to simply authorize binding arbitration; and then implementation language to improve the negotiations process and to define the mechanics of the arbitration process and implement the Constitutional authorization.

Which other states permit binding arbitration?

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

Is binding arbitration authorized for any public employees in Maryland?

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

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What entities would binding arbitration apply to?

- Binding arbitration would apply to the State and the exclusive representatives of State employees; State institutions of Higher Education (USM, Morgan State University, St. Mary's College of Maryland, Baltimore City Community College) and each exclusive representative of their employees; and the Maryland Environmental Service and the exclusive representative of its employees.

How is a neutral arbitrator chosen?

- The arbitrator is to be selected from a list of 15 arbitrators provided by the American Arbitration Association. The list shall consist of qualified, nationwide arbitrators who are members of the National Academy of Arbitrators. The parties shall select the arbitrator by alternately striking the names from the list until one name remains.

What are the arbitrator's duties and responsibilities to help negotiations?

- The arbitrator will hear and resolve any disputes, including bargaining in good faith;
- May require documents to inform those resolutions of disputes, and issue remedial orders;
- May compel estimates of revenues and expenditures from the BRE;
- May call or conduct meetings and hearings, virtually or in-person;
- May compel production of documents or testimony of witnesses;
- May reach and issue conclusions of law over any disputed negotiation, and issue final, self-executing orders that are final and binding on the parties and the Governor.

What are the factors an arbitrator shall have to weigh to resolve an impasse in negotiations?

- The interests and welfare of the public;
- The financial ability of the employer to meet costs (without the premise of increasing or imposing new revenue raisers);
- The present and future general economic conditions of the State and its Higher Education institutions;
- Comparable wages, hours and conditions of like employees in adjacent states;
- Consumer prices for goods and services;
- Overall compensation presently received, including wages, vacation and other fringe benefits;
- Comparisons of collective bargaining patterns in other states and among county employees;
- The neutral arbitrator will consider the lawful authority of the employer to use special funds;
- The stipulations of the parties;
- Changes in the circumstances during the pendency of arbitration;
- Other traditional factors.

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Timeline Comparisons for Maryland Collective Bargaining

Under Present Law	Under SB 472 / HB 458
No set date to begin	Negotiations begin on or around July 1
	On or around July 15 a neutral arbitrator is selected to serve as Proctor
	Negotiations with arbitrator available to resolve disputes quickly
	September 30 targeted conclusion of negotiations
	October 1 impasse can be declared (no agreement through negotiations)
	October 6 a last, best & final offer is submitted by each side
If the parties do not conclude negotiations before October 25, either side may request that a fact finder be used to hear issues and make a recommendation	Within 30 days of the impasse (i.e. in October), the arbitrator shall begin to hold a formal hearing
The fact finder shall be employed no later than November 1	Generally, the formal hearing shall conclude within 45 days of the impasse date (mid-November).
By November 20 the fact finder shall make written recommendations regarding wages, hours, and working conditions and any other terms of employment	The neutral arbitrator shall issue a preliminary written award on or before December 5
The written recommendations of the fact finder are to be delivered to the Governor, the exclusive representative, the President of the Senate, and the Speaker of the House of Delegates on or before December 1	Within 5 business days, the parties shall review the award and may request changes or adjustments in the award (technical tweaks or subsequent agreements)
No more action required on recommendations	On or before December 15 the neutral arbitrator shall issue a final written award
The parties must conclude negotiations on economic matters by January 1	After December 15, if requested by either party, the neutral arbitrator must issue by January 20 a statement of reasons for the final written award

DebraLatsonAFSCMELocal112_FAV_HB458.pdf

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Patrick Moran - President

Testimony
HB 458 – State Personnel - Collective Bargaining - Revisions and Budget Bill
Appropriations
Appropriations Committee
February 15, 2022
Support

Good afternoon committee members, my name is Debra Graves-Latson, and I work as a Family Service Caseworker II – Adult Service, and I am a proud member of AFSCME Local 112.

I have worked for the State going on 14 years.

When I was first hired, one of the things I was told was that the State had steps within wage classes. Steps were supposed to be salary increases provided annually for satisfactory performance of the job, as well as a recognition that experience helps the State work for Marylanders.

In my 14 years of working for the State, I have only received four step increases, far from what I should have gotten.

This has happened to others who are represented by AFSCME, yet there are other state employees that have received many more step increases over the years. Why is that?

I love my job, and I do it well. But I feel like the State does not return that love. There should be fairness and equity applied, and it's not happening now. My hope is that this legislation, which will bring binding arbitration to collective bargaining, will fix the wrongs, because it's always the right time to do the right thing. Having a process to promote compromise and agreement is the right thing.

Thank you for the opportunity to speak with you today, and I ask for a favorable report of HB 458.

Every AFSCME Maryland State and University contract guarantees a right to union representation.
An employee has the right to a union representative if requested by the employee.
800.492.1996

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Testimony upload

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Position: FAV

MARC KORMAN
Legislative District 16
Montgomery County

Appropriations Committee

Subcommittees

Capital Budget

Chair, Transportation and the
Environment

Oversight Committee on Personnel



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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations (HB 458)
Testimony of Delegate Marc Korman—Favorable

Thank you Madam Chair, Mr. Vice Chair and my colleagues on the Appropriations Committee. I come before you today to present HB 458. The legislation is a combination of an amendment to the state constitution and statutory changes that would alter the system of government employee negotiations in Maryland to impose binding arbitration, allowing a neutral third party to settle contract disputes between the Governor and state workforce.

The constitutional amendment portion is necessary to require the Governor to provide sufficient funds in the state budget to implement and fund all terms of a memorandum of understanding agreed to by the state and a public employees union.

It is clear that Maryland's current bargaining system does not work as well as it should. As you are aware, for several years, the Governor and several of the collective bargaining units could not reach an agreement. When that happens, the Governor is free to impose the result of their liking. This has created a scenario where the Governor, at times, favors some constituencies over others. Even in years where all of the parties ultimately agree in the collective bargaining process, it can lead to starkly differential outcomes. For example, this year, a 3% COLA went to the Maryland Professional Employees Council Local 6197 (MPEC), the American Federation of State, County and Municipal Employees (AFSCME) Council 3 and the American Federation of Teachers (AFT). However, a 7% COLA went to the Fraternal Order of Police (FOP), State Law Enforcement Officers Labor Alliance (SLEOLA), and BWI Airport Firefighters Local 142. It is long past time that Maryland comes up with a better process to work out these collective bargaining disputes that does not hinge on the political leanings of whoever occupies the Governor's mansion at a given time.

HB 458 would lay a new framework to better resolve labor disputes by using a neutral third party arbiter. The bill requires that at the beginning of the negotiation period, both sides will agree on a neutral arbiter by July 15 of each year, with negotiations concluding by September 30. If an agreement is not reached by October 1, an impasse is declared and binding arbitration is triggered. Each side will be required to present their best and final offer to the arbiter who is required to make a final determination by December 15. Binding arbitration will avoid the protracted labor disputes that we have seen in recent years by taking the politics out of labor disputes and giving both sides an incentive to come to a mutual agreement.

There is precedent for binding arbitration in Maryland. Eight counties currently impose binding arbitration for fire and EMS bargaining units through Charter and Code-level legislation in addition to certain state transit and public safety workers. Across the country, states such as Connecticut, Delaware and Hawaii have reformed their labor laws to permit binding arbitration for non-public safety state employees.

Maryland's public sector employees, and the residents they serve, deserve a more fair and efficient process to resolve labor disputes. Settling disputes in binding arbitration before a neutral third party will prevent acrimonious labor battles from dragging on and gives Maryland's public sector employees the security they deserve as they serve Maryland.

I urge a favorable report on HB 458 so that we can start the process of reforming a negotiating system that is clearly not working as intended.

HB 458 - CB - Revisions and Budget Bill Appropriat

Uploaded by: Donna Edwards

Position: FAV



MARYLAND STATE & D.C. AFL-CIO

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HB 458 – State Personnel – Collective Bargaining – Revisions and Budget Bill Appropriations House Appropriations Committee February 15, 2022

SUPPORT

**Donna S. Edwards
President**

Maryland State and DC AFL-CIO

Madam Chair and members of the Committee, thank you for the opportunity to submit testimony in support of HB 458 – State Personnel – Collective Bargaining – Revisions and Budget Bill Appropriations. My name is Donna S. Edwards, and I am the President of the Maryland State and District of Columbia AFL-CIO. On behalf of the 340,000 union members, I offer the following comments.

Under current law, when the Governor and State Workers reach an impasse in bargaining, the Governor can simply choose to ignore the process and appropriate funds for workers based on a previous contract. In theory, any Governor could completely bypass the negotiations process and leave workers in the lurch for the entirety of his/her term in office. It creates a perverse incentive for a Governor to do nothing, stalling negotiations indefinitely while workers' wages and benefits remain stagnant for years.

HB 458 addresses this glaring hole in the negotiations process by sending a referendum to the voters, to decide if state workers should be able to use binding arbitration – like millions of unionized workers currently have in their CBA's. This constitutional change, when approved by the voters, will provide balance in the negotiations process, giving both parties every incentive to work toward a timely agreement.

Workers deserve balance and timely decisions. Establishing a binding arbitration process where both the union representative and management representative are participating in the arbitration provides relatively equal bargaining power and provides an incentive for both parties to reach an agreement without invoking binding arbitration. And by putting the conditions of the memorandum of understanding directly into the budget, we ensure that what has been negotiated and agreed upon, is honored. This bill is a fair and balanced approach to providing effective and efficient negotiations for our state employees, and we **urge a favorable vote on HB 458.**

Written Testimony

Uploaded by: Jane Lyons

Position: FAV



Coalition for Smarter Growth

DC • MD • VA

February 14, 2022

Appropriations Committee
House Office Building, Room 121
Annapolis, MD 21401

**HB 438, Washington Metropolitan Area Transit Authority - Funding Formulas - Alteration
(WMATA Dedicated Funding Amendment Act of 2022)**

Testimony for February 15, 2022

Jane Lyons, Maryland Advocacy Manager

Thank you, Chair McIntosh, Vice Chair Chang, and delegates for the opportunity to provide testimony on HB 438, the WMATA Dedicated Funding Amendment Act of 2022. Please accept this testimony on behalf of the Coalition for Smarter Growth, the leading organization advocating for walkable, bikeable, inclusive, and transit-oriented communities as the most sustainable and equitable way for the Washington, DC region to grow and provide opportunities for all.

CSG was proud of the role we played in bringing various stakeholders together to advocate for the 2018 Maryland Metro/Transit Funding Act. We are grateful to the Maryland General Assembly for passing the bipartisan legislation that enabled \$167 million of capital spending per year from Maryland, matched by DC and Virginia.

HB 438 would change the dedicated funding formula to apply a 3% growth formula to the larger dedicated funding account instead of the “base capital” amount, so that the dedicated funding can grow and be bonded on. This would only take effect if DC and Virginia passed parallel legislation.

WMATA continues to be the backbone of the region’s transit system, despite shifts from the COVID-19 pandemic. Throughout the pandemic, many essential workers relied on Metro to get to their jobs. Even though service will likely look different going forward, more than 75% of trips are non-commute trips, and Metro is working to pivot its operations to better serve those non-commuting trips, as well as facilitate the return to office for thousands of workers.

Thus, we urge you to support HB 438. Thank you for your consideration.

Written testimony

Uploaded by: John Hillegass

Position: FAV

February 8, 2022

The Honorable Maggie McIntosh
Chair, House Appropriations Committee
Room 121 House Office Building
Annapolis, MD 21401

Re: Support for House Bill 0438 - Washington Metropolitan Area Transit Authority - Funding Formulas - Alteration (WMATA Dedicated Funding Amendment Act of 2022)

Dear Chair McIntosh and Committee Members,

On behalf of the Greater Washington Partnership (the Partnership), I am writing to express our support for House Bill 0438, which will allow Maryland's contribution to WMATA to grow 3% per Fiscal Year and help the region realize a world class transit network that provides a more connected future.

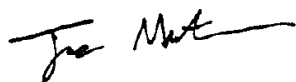
The Partnership is a civic alliance of leading employers in the Capital Region of Baltimore, Washington, and Richmond, who together employ more than 300,000 residents and are committed to making this region one of the best places to live, work, and build a business. In 2018, the Partnership released the [Blueprint for Regional Mobility](#), an action-oriented strategy to transform the Capital Region's transportation system into an asset that ensures our global competitiveness. Two of the seven pillars of the Blueprint, creating high-performing public transit and reforming governance and funding, will be advanced by HB0438.

In 2018, the Greater Washington Partnership cofounded the MetroNow Coalition of Washington-area business and civic groups dedicated to better transit. We recognized that providing high-quality transit cannot be done without adequate and reliable funding for capital and operational needs. The region came together to provide WMATA \$500 million annually in dedicated capital funding across Maryland, the District of Columbia, and Virginia. We thank this Committee for your support at that time. This dedicated capital funding has been essential to help WMATA start to close the gap on its decades of deferred maintenance and return the transit system to a state of good repair. However, there is still much more work to be done to create the high-quality transit network this region needs to compete in the 21st century.

This bill builds on the dedicated funding effort by ensuring the Maryland's contribution to WMATA's capital budget continues to grow by 3% each year, attempting to keep pace with the cost of living and allowing WMATA to expand services and the transit network over time. If the region does not continue to adequately invest in its transit systems, we will quickly find ourselves returning to a transit system that is plagued by shutdowns and deteriorating and unsafe infrastructure.

I hope this bill receives a favorable report because it will help expand access to opportunities for Maryland residents and help the state achieve its vision for a 21st-century regional rail system.

Sincerely,



Joe McAndrew

Vice President for Regional Mobility & Infrastructure

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Position: FAV



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Patrick Moran - President

Testimony
HB 458 – State Personnel - Collective Bargaining - Revisions and Budget Bill
Appropriations
Appropriations Committee
February 15, 2022
Support

AFSCME Council 3 strongly supports HB 458. This legislation and proposed amendment to the Maryland Constitution would alter the collective bargaining process for State and Higher Education employees, including by requiring the selection of a neutral arbitrator to oversee all aspects of collective bargaining; establishing a process of arbitration in the event of impasse; and providing that the decisions of a neutral arbitrator are binding. It would also require that each budget bill submitted by the Governor contain the appropriations necessary to implement all terms and conditions of employment in collectively bargained memoranda of understanding for the next ensuing fiscal year.

May of this year will mark the 26th anniversary of collective bargaining for Maryland's state employees. In the years since Governor Parris Glendening's executive order, Maryland has continued to improve its collective bargaining practices to have in place processes that are fair, balanced, efficient, and conclusive. This proposal adheres to that path.

The concept behind collective bargaining is to establish a forum for management and labor to periodically sit down at the table to formally discuss issues including equitable compensation, leave, and benefits; processes for employee input and participation; and myriad other terms and conditions of employment. The linchpin of collective bargaining is a mutual understanding and respect for the process itself, where finding common ground through deliberation and compromise is acknowledged by all parties.

Unfortunately, compromise is not always the case, and under present Maryland law an employer within state collective bargaining can effectively refuse to move from their initial positions and thus create a stalemate that has no resolution. Without incentive to work toward agreement through compromise, there is no concern for the consequences of inaction.

Every AFSCME Maryland State and University contract guarantees a right to union representation.
An employee has the right to a union representative if requested by the employee.
800.492.1996

This legislation would create a mutual incentive to compel parties to reach an agreement around collective bargaining negotiations by instilling a binding interest arbitration process, whereby if the two sides cannot come to agreement through negotiations by a specified deadline the proposals from the two sides would be presented to a professional, neutral third-party arbitrator – hearing from witnesses and experts, with data and evidence – for consideration of all of the facts involved with the purpose of determining which proposal is most appropriate to implement. The choice by the arbitrator would then be considered a binding resolution to be implemented by the Governor and exclusive bargaining representative, as well as the General Assembly for whatever appropriations are necessary to implement and fund the memorandum of understanding.

HB 458 is a strong and positive step toward enhancing fairness, balance, efficiency and resolution. It follows a model that is well-established in other states and among Maryland counties. We thank you, and urge a favorable report.

HB 458 State Personnel - Collective Bargaining tj

Uploaded by: Anna Yates

Position: FWA

House Bill 458
State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations
House Appropriations Committee
February 15, 2022

Request for Exemption

Chair McIntosh, Vice Chair Chang, and Members of the Committee,

St. Mary's College of Maryland opposes House Bill 458, which requires the use of a third-party, neutral arbitrator to serve as proctor during Memorandum of Understanding negotiations between the College and the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME).

This requirement would create a significant financial burden, as negotiations typically last several months. We estimate that the cost of hiring a third-party, neutral, arbitrator to negotiate a Memorandum of Understanding would cost approximately \$50K, plus an additional \$40K per year for negotiations related to various reopeners, amendments, or other matters that may arise. These estimates include their daily rate and travel expenses.

Negotiation impasses are currently adjudicated by the State Higher Education Labor Relations Board (SHELRB). House Bill 458 is unclear regarding the role of the arbitrator and their authority to circumvent the SHELRB. We believe that in the case of an impasse, the SHELRB process provides the same service that the Bill requires, but utilizes a panel of arbitrators, rather than just a single arbitrator. The process currently utilized with SHELRB has been very effective.

The College and AFSCME have negotiated many Memoranda of Understanding successfully. Both parties are committed to the best interest of the College's staff, which is evident through their collaboration and teamwork. The College does not find it necessary to add a third-party arbitrator to the process.

For these reasons, St. Mary's College of Maryland requests exemption from House Bill 458.

Thank you for your consideration and continued support of St. Mary's College of Maryland.



Tuajuanda C. Jordan, Ph.D.
President



HB 458 Collective Bargaining-Revisions and Budget

Uploaded by: Barbara Wilkins

Position: UNF



Maryland

DEPARTMENT OF BUDGET
AND MANAGEMENT

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Lieutenant Governor

DAVID R. BRINKLEY
Secretary

MARC L. NICOLE
Deputy Secretary

HOUSE BILL 458 State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations (Korman)

POSITION: OPPOSE

DATE: February 15, 2022

COMMITTEE: House Appropriations

SUMMARY OF BILL: HB 458 is a Constitutional Amendment (to be submitted to the voters at the November 2022 general election) and implementing legislation that will establish binding arbitration for employee unions that collectively bargain with the State, institutions of higher education, and Maryland Environmental Service (MES).

EXPLANATION: The Department of Budget and Management (DBM) is responsible for negotiating and funding collective bargaining agreements with the six exclusive representatives of approximately 30,000 State employees. DBM does not negotiate agreements on behalf of the University System but the System would also be subject to this bill.

DBM opposes HB 458 because it grants undue influence and control to a private sector arbitrator over significant public fiscal and policy affairs of the State, and because it confers the private arbitrator with an inappropriate amount of power over the State's collective bargaining process.

Binding arbitration is a significant curtailment of the Governor's budgetary authority. The Governor is the only statewide elected official that is accountable to all residents for meeting the State's public service needs. The proposed Constitutional Amendment gives to a non-elected and non-accountable third-party arbitrator the power to determine the appropriate level of limited public funds that should be included in the proposed budget for State employee compensation. About 16.8% of the State's annual budget is dedicated to employee salaries. Thus, this Bill and the proposed constitutional amendment would inappropriately hand significant influence over public funds and public policy determinations to a private arbitrator chosen from a national list, with no accountability to the taxpayers of Maryland.

Regarding the State's collective bargaining process, HB 458 empowers the private arbitrator to "proctor" the negotiation process, including the authority to determine whether a party is negotiating in good faith under Maryland's collective bargaining law and to issue final, binding, and immediately effective "remedial" orders in this regard, as well as to hold hearings, compel the production of documents and testimony from the State and the unions and control the timing of the arbitration process once impasse is declared.

The Department opposes HB 458 because it grants undue influence and control over important public fiscal and policy affairs of the State and its collective bargaining process to a private arbitrator with no accountability to the voters of Maryland. It also eliminates any incentive for employee unions to reach an agreement with the State when they can initiate binding arbitration to ask an arbitrator to award the union either the State’s best and final offer or the union’s more lucrative counter offer. The State’s willingness to put forward reasonable first offers is likewise diminished.

Operational Impacts (Timeline for Collective Bargaining and the Arbitration Process Impedes Budget Preparation):

- Arbitrator to be chosen by July 15 and be available for all bargaining sessions.
- If an impasse is declared on or after October 1, arbitration shall proceed.
- On the fifth business day after the impasse, each party shall submit to the arbitrator a Last, Best, and Final Offer.
- The arbitrator shall hold a formal hearing within 30 calendar days.
- The formal hearing shall conclude within 45 days after the impasse.
- The arbitrator shall issue a final written award on or before December 15.
- After December 15, if requested by either party, the arbitrator shall issue by January 20 a statement of reasons for the final written award.

The Governor is required to submit a balanced budget proposal to the General Assembly on or by the third Wednesday in January, or in the first year of a new term, by the tenth day of the Legislative Session. The timeline contained in the legislation does not conform to the requisite deadlines for submitting the budget to the General Assembly Article III, Section 52 of the Constitution.

Significant Fiscal Impacts:

The fiscal impact of binding arbitration has the potential to be significant. Just the addition of a 1% COLA across all of Maryland state government would equate to more than \$60 million in taxpayer dollars in the FY 2023 budget. Depending on the size of a final binding arbitration decision under the proposed constitutional amendment, it is possible that a properly balanced budget being prepared by the Governor could be put out of balance, which could require substantial last minute reductions to important priority spending programs of the Executive or the General Assembly.

Not only would binding arbitration impact the budget being considered by the General Assembly, but could impose significant additional costs on future budgets because of the costly price tags. This year’s negotiation between the State and its largest bargaining unit - AFSCME - provides a good example of the outyear impact of negotiations. The table below summarizes the final offers put forward by the State and AFSCME along with the final year and cumulative price tags.

	FY 22-24 Cost	FY 24 Cost	Description
State of Maryland	\$262 M	\$124 M	Cumulative 11.2% ongoing, plus \$1,000 bonus
AFSCME	\$1264 M	\$486 M	Cumulative 40.6% ongoing, plus \$20,000 bonus

One can see from the \$778 million price tag of the AFSCME proposal for fiscal years 2022 and 2023 above that the State’s \$584 million FY 2023 surplus would have been eclipsed by almost \$200 million. Further, the cumulative costs of the AFSCME proposal would lead to a projected budget gap of more than \$500 million in FY 2024.

The projected gaps in both FY 2023 and 2024 are concerning because this reflects the cost of negotiating with just one union. If the AFSCME proposal were applied to all state employees, the ongoing cost would be in excess of **\$2.4 billion a year**. Even if an arbitrator could split the cost of the State and AFSCME proposals in half, the ongoing cost of an additional 14.7% increase in salary would be more than \$880 million a year - clearly unaffordable even with the State's recent good fortune.

It's important to note that the legislation requires the arbitrator to pick either the State's or the union's last, best and final offer in its entirety.

One additional fiscal complexity that would be created with this legislation is that binding arbitration would also apply to both retirement and health benefits. Retirement benefits generally have not been part of negotiations, heretofore. Arbitration decisions could require the state to create multiple health benefit programs that currently do not exist, which would undermine the State's buying power as a large employer while at the same time increasing administrative costs.

Furthermore, bond rating agencies will not look favorably on the imposition of binding arbitration because it unduly restricts the State's ability to restrain spending when needed. Costly decisions of the arbitrator will add unplanned risk for the implementation of each budget.

**For additional information, contact Barbara Wilkins at
(410) 260-6371 or barbara.wilkins1@maryland.gov**

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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.

State Labor Relations Boards Testimony on HB 458.S

Uploaded by: Erica Snipes

Position: UNF

Maryland State Labor Relations Boards

State Higher Education Labor Relations Board

State Labor Relations Board

Public School Labor Relations Board

45 Calvert Street, Room 102

Annapolis, MD 21401

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Governor

Leadership/Executive Staff

Harriet E. Cooperman, Esq., Chair, SHELRB

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Erica L. Snipes, Agency Executive Director

Testimony on Cross-filed House Bill 458 and Senate Bill 472

Chair McIntosh & Members of the House Appropriations Committee:

Chair Guzzone & Members of the Senate Budget & Taxation Subcommittee:

This proposed cross-filed legislation significantly encroaches on the jurisdiction of the State Labor Board (SLRB) and the State Higher Education Labor Relations Board (SHELRB)(together the “Labor Boards”). Under current law, the Labor Boards have authority to investigate and take appropriate action in unfair labor practices cases, including those involving refusing to bargain in good faith and providing information in collective bargaining. Under the proposed legislation, a neutral arbitrator would be appointed in collective bargaining with authority to resolve disputes and issue remedial orders in “any dispute between the parties regarding the conduct of negotiations, including whether the conduct of a party is in good faith” and to “resolve disputes over the timeliness and sufficiency of information demands and production.”

The authority the proposed legislation grants to the arbitrator directly conflicts with the Labor Boards’ authority under existing law and makes no attempt to resolve this conflict. If the bill is interpreted as divesting the Labor Boards of jurisdiction to decide good faith bargaining unfair labor practices, it would seriously compromise the Labor Boards’ ability to investigate and take appropriate action in critical areas of collective bargaining. If the bill results in both the Labor Boards and the arbitrator having jurisdiction over good faith bargaining disputes, the conflict would cause considerable confusion among stakeholders. Would the arbitrator be bound by existing law and Labor Board precedent? If not, a foreseeable consequence would be inconsistent legal interpretations and outcomes both between decisions of the Labor Boards and the arbitrators, as well as among the different arbitrators selected by the various unions and multiple state agencies/universities.

The proposed legislation provides that the arbitrator’s orders are “self-executing” and does not provide a process for appeal. Under existing law, if a party is dissatisfied with a Labor Board decision, the party can appeal to the Circuit Court in the applicable county, and there is a body of law for the reviewing Court to apply. If the arbitrator’s decision were appealable, the

proposed legislation leaves many questions unanswered. Would a party first appeal to the Labor Board or would the party have the right to go directly to Circuit Court and bypass the Labor Boards entirely? What would be the standard of review on appeal—under Maryland law, the standard of review of an arbitrator’s decision is drastically narrower than the standard of review of a decision issued by an administrative agency.

The SLRB and the SHELRB question the need and prudence of appointing an arbitrator at the inception of negotiations to serve as a “Proctor” of the negotiations. The SHELRB has existed for more than twenty years, and the SLRB, in its current iteration, for fifteen years. In the experience of both Boards, neither the Chairs, Members nor Staff are aware of widespread or chronic turmoil and disharmony in negotiations that would necessitate a third party proctor in collective bargaining negotiations. Moreover, both Boards question whether an arbitrator can properly serve as proctor, decision-maker on disputed issues arising during the course of the negotiations, mediator, fact finder, and as final offer arbitrator actually deciding the final terms of the parties’ memorandum of understanding. Too many conflicts could arise by an arbitrator having so many roles. Another concern is that this will make collective bargaining and negotiation disputes rather expensive for the parties as they would be paying for both the arbitrator’s fees, which given the scope of the arbitrator’s authority and role will likely be exorbitant, and the administration fees of the American Arbitration Association.

The State Personnel & Pensions Article unfortunately does not provide the SLRB or the SHELRB a clear role with respect to impasse in negotiations. The fact finding process does not provide any real resolution of the issues if the parties do not accept the fact finder’s decision. All that happens is that the fact finder’s decision goes to the Governor, the President of the Senate, and the Speaker of the House. The law is silent after that. We agree that the impasse procedures should be strengthened, but we suggest that, rather than creating a whole new process outside the existing framework of the law, the State Personnel and Pensions Article could be amended to give a stronger role and an effective process for the Labor Boards to implement if the parties reach impasse – whether that is fact finding with submission to an arbitrator or, as regards the SHELRB, for interest arbitration, much like the new Community College law provides with respect to non-economic items, or some other approach. The members of the SHELRB and the SLRB are concerned that House Bill 458 and Senate Bill 472 are the not answer.

The leadership and executive staff of the SHELRB and SLRB will present oral testimony in the hearings for this proposed legislation, and look forward to answering any questions you may have regarding the impact of these cross-filed bills.

Thank you for your consideration.

Submitted by: Harriet E. Cooperman, Chair, SHELRB
Richard A. Steyer, Chair SLRB
Erica L. Snipes, Agency Executive Director

HB0458 - HR - Collective Bargaining - OPP_FINAL.pd

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Position: UNF

February 15, 2022

The Honorable Maggie McIntosh
Chair, House Appropriations Committee
121 House Office Building
Annapolis, MD 21401

***Re: Letter of Opposition – House Bill 458 – State Personnel – Collective Bargaining –
Revisions and Budget Bill Appropriations***

Dear Chair McIntosh and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes House Bill 458 as it implements a binding arbitration process that may result in awards that do not reflect the economic conditions of the State, that disincentivizes true negotiation and compromise between the parties, and that could last as long as six months to negotiate Memorandum of Understanding (MOU) provisions with the unions for the next fiscal year.

MDOT recognizes the hard work and dedication of its employees and enjoys collaborative relationships with the eight unions that represent various employees within MDOT and the Maryland Transportation Authority. Recently concluded union negotiations resulted in multi-year agreements that include increments (steps), cost-of-living increases, bonuses, additional COVID leave, and stronger health and safety measures.

House Bill 458 requires mandatory participation by an arbitrator from the onset of the negotiations process to “proctor” negotiation sessions regardless of whether it is full contract negotiations or just an economic reopener. If after three months the parties reach an impasse, the arbitrator is engaged for the next three months to conduct a hearing and decide which party prevails.

House Bill 458 moves the State’s collective bargaining process from an actual negotiation to a process that incentivizes parties to take extreme views for the “winner takes all” decision process outlined in the bill. It provides little incentive for the parties to come to an agreement when and if the initial proposals are far apart. If the parties cannot agree on certain provisions of the MOU that are at issue, they will spend considerable time preparing for and participating in the arbitration process. Under the bill, the arbitrator is required to pick the last best and final offer of one of the parties as the final award. No compromise or neutral ground decisions by the arbiter are contemplated in the bill. Furthermore, the bill severely limits the ability of both the executive and legislative branches to take actions related to employee compensation as needed to balance the budget in times of significant economic hardship.

It is anticipated that the proposed process will have a significant fiscal impact, both in the cost of engaging an arbitrator, and also due to the potential for extremely costly awards. By way of example, the Maryland Transit Administration's (MTA) three unions are subject to binding arbitration because of a federal law that dates back to the inception of the MTA. During the 2010 session, the General Assembly was faced with a significant decline in revenues associated with the Great Recession and were forced to eliminate employee increments (steps), cost-of-living increases, and deferred compensation matches; implemented a furlough and service reduction plan; and established a commission on pension sustainably that ultimately resulted in significant pension reform. Meanwhile, at MTA, a binding arbitration award was made that granted certain MTA employees a significant wage and pension enhancement package of over \$35 million over the course of three years

It would be irresponsible for MDOT to support binding arbitration, as it cedes fiscal responsibility and control to a third party, who is unfamiliar with the impacts that these financial decisions may have; per the bill, the third party is not permitted to consider the potential need to increase/implement taxes, fees, or charges. A third party should not be making unilateral financial decisions that bind MDOT and consequently, the taxpayers of Maryland.

In addition, House Bill 458 prolongs the negotiating process from three months to six months, which does not comply with the deadlines for submitting the budget to the General Assembly. Once the arbitration process proposed by the bill is completed, it would begin again six months later, each step of the way involving the costly services of an arbitrator.

Finally, it is not clear what happens when provisions of an MOU are negotiated outside of the bill's prescribed timeframes for negotiations. For example, there are occasions when both parties agree that a provision of the MOU needs to be amended to reflect current practice. House Bill 458 does not make an exception for such scenarios, so presumably an arbitrator would need to be engaged each time this occurs, which is approximately once per year for each union. The added cost of hiring an arbitrator may act as a deterrent for management and the unions to amicably resolve issues outside the contract negotiation timelines proposed in the bill. The willingness of management and the unions to work together could be hindered due to efforts to save money on additional costly arbitrator fees.

For these reasons, the Maryland Department of Transportation respectfully requests an unfavorable report on House Bill 458.

Respectfully Submitted,

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090