Maryland State Labor Relations Boards

State Higher Education Labor Relations Board
State Labor Relations Board
Public School Labor Relations Board
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Lawrence J. Hogan, Jr.,
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<u>Testimony on Cross-filed Senate Bill 472 and House Bill 458</u>

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
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