David Gray Wright (AFSCME - KSC) 2.15.22 (SENATE).
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Testimony of David Gray Wright
SB 472: State Personnel – Collective Bargaining – Revisions and Budget Bill

February 16, 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.

Testimony of David Gray Wright
SB 472: State Personnel – Collective Bargaining – Revisions and Budget Bill
February 16, 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 its sees fit, and non-budget items are left unresolved.

Testimony of David Gray Wright
SB 472: State Personnel – Collective Bargaining – Revisions and Budget Bill
February 16, 2021

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.

Testimony of David Gray Wright
SB 472: State Personnel – Collective Bargaining – Revisions and Budget Bill
February 16, 2021

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.

Testimony of David Gray Wright
SB 472: State Personnel – Collective Bargaining – Revisions and Budget Bill
February 16, 2021

Timeline Comparisons for Maryland Collective Bargaining

Under Present Law	Under SB 472 / HB 458
No set date to begin	Negotiations begin on or around July1
	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 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

SB 472 - CB - Revisions and Budget Bill Appropriat

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Position: FAV

MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

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President
Donna S. Edwards

Secretary-Treasurer
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SB 472 – State Personnel – Collective Bargaining –
Revisions and Budget Bill Appropriations
Senate Budget and Taxation Committee
February 16, 2022

SUPPORT

Donna S. Edwards
President
Maryland State and DC AFL-CIO

Chairman and members of the Committee, thank you for the opportunity to submit testimony in support of SB 472 – 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.

SB 472 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 SB 472.**

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JOHN A. OLSZEWSKI, JR.
County Executive

JOEL N. BELLER
Acting Director of Government Affairs

JOSHUA M. GREENBERG
Associate Director of Government Affairs

MIA R. GOGEL
Associate Director of Government Affairs

BILL NO.: **SB 472**

TITLE: State Personnel – Collective Bargaining – Revisions and Budget Bill Appropriations

SPONSOR: Senator Kramer

COMMITTEE: Budget and Taxation Finance

POSITION: **SUPPORT**

DATE: February 16, 2022

Baltimore County **SUPPORTS** Senate Bill 472 - State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations. This legislation would establish a binding arbitration process in collective bargaining negotiations.

Baltimore Country Executive Johnny Olszewski is an avid supporter of the empowerment of workers through collective bargaining agreements. Collective bargaining provides employees with the opportunity to gain representation in decisions made by an employer that will have consequences for the system at large, and allows employees to advocate with one unified voice for working conditions that suit their needs.

Neutral arbitrators facilitate the negotiation process between employees participating in a collective bargaining program and their employers. Binding arbitration strengthens the neutral arbitration process by holding all parties involved to the decision of the arbitrator. By including fringe benefits, health benefits, and pension benefits in collective bargaining negotiations, SB 472 would also significantly expand the rights for which workers in a collective bargaining agreement may negotiate.

Accordingly, Baltimore County requests a **FAVORABLE** report on SB 472. For more information, please contact Joel Beller, Acting Director of Government Affairs at jbeller@baltimorecountymd.gov.

AFSCME_FAV_SB472.pdf
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Patrick Moran - President

Testimony
SB 472 – State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations
Budget & Taxation Committee
February 16, 2022
Support

AFSCME Council 3 strongly supports SB 472. 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 employees 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.

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.

SB 472 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.

LauriceJonesAFSCMELocal112_FAV_SB472.pdf
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Patrick Moran - President

Testimony
SB 472 – State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations
Budget & Taxation
February 16, 2022
Support

Good afternoon committee members, my name is Laurice Jones, and I work as a Family Service Caseworker II – Independent Living, 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 SB 472.

Anne Arundel County _FAV_SB 472.pdf
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Position: FAV

ANNE ARUNDEL COUNTY
MARYLAND
County Executive Steuart Pittman

February 16, 2022

Senate Bill 472

State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations

Senate Budget and Taxation Committee

Position: FAVORABLE

Anne Arundel County **SUPPORTS** SB 472. 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.

Collective bargaining only works as well as the participants in the process. To work toward a final resolution requires the ability not only to present one side's proposals in a compelling and meaningful way, but just as importantly to listen and seriously consider the other side's proposals in order to reach an understanding of the perspective and standing of both parties. When both sides engage with this frame of reference, mutual understanding and common ground can be found, and a satisfactory resolution achieved for all involved.

But there are times where situations seemingly dictate an inability to find compromise and resolution. Frankly this usually occurs when one side cannot or will not work to reach that satisfactory resolution – they would rather dig in and refuse to budge.

Binding arbitration through the process of a neutral mediator/arbitrator can overcome those obstacles to resolution. In Anne Arundel County we have a binding arbitration process which can be employed when contract negotiations occur between the county and the Uniformed Public Safety Exclusive Representatives. Binding arbitration creates an added incentive – to both sides – to reach that common ground and understanding toward a resolution. It also ensures that one side cannot game the system to their advantage. It is a referee ensuring fairness, balance and fact are the rules enforced.

Anne Arundel County supports SB 472, and we request a **FAVORABLE** report.

Steuart Pittman
County Executive

Peter Baron, Government Affairs Officer Phone: 443.685.5198 Email: Peter.Baron@aacounty.org

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Senate Bill 472
State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations
Senate Budget and Taxation Committee
February 16, 2022

Request for Exemption

Chair Guzzone, Vice Chair Rosapeppe, and Members of the Committee,

St. Mary's College of Maryland opposes Senate Bill 472, 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). Senate Bill 472 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 Senate Bill 472.

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

Tuajuanda C. Jordan, Ph.D.
President

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UNIVERSITY SYSTEM of MARYLAND

SENATE BUDGET & TAXATION COMMITTEE
Senate Bill 472
State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations
February 16, 2022
Carolyn W. Skolnik, USM Associate Vice Chancellor
Unfavorable

Chair Guzzone, Vice Chair Rosapepe and committee members, thank you for the opportunity to share our thoughts on Senate Bill 472. The USM opposes SB 472 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 SB 472 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
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Public School Labor Relations Board
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Governor

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Richard A. Steyer, Chair, SLRB
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Erica L. Snipes, Agency Executive Director

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

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

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MORGAN STATE UNIVERSITY
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Office of the President

Morgan State University Testimony
Dr. David Wilson, President

Senate Bill 0472 (Senator Kramer) / **House Bill 0458** (Delegate Korman)
State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations
Committee: Budget and Taxation Committee
February 16, 2022

Unfavorable

Chair Guzzone, Vice Chair Rosapepe, and members of the Budget and Taxation Committee. We, at Morgan, thank you for the opportunity to share our position on Senate Bill 472. The summary of the Bill states the following: *Altering the collective bargaining process for State 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 certain decisions of a neutral arbitrator are binding; requiring that each budget bill contain the appropriations necessary to implement all terms and conditions of employment in certain memoranda of understanding for the next ensuing fiscal year; etc.*

Morgan State University is the premier public urban research university in Maryland, known for its excellence in teaching, intensive research, effective public service and community engagement. Morgan prepares diverse and competitive graduates for success in a global interdependent society.

Morgan State University opposes this bill for the reasons below. Morgan has been involved in collective bargaining since 2001 and the process has gone well without the mandatory involvement of an arbitrator, even in the absence of reaching impasse.

As stated, this bill requires the parties to select an arbitrator who will act as a "proctor," overseeing all aspects of the collective bargaining process. This does not mean that an arbitrator will be assigned only when there is an impasse, but will have involvement throughout the entire process. The bill gives the arbitrator extensive involvement and authority over the parties and many issues in the collective bargaining process. The bill extends collective bargaining to include fringe benefits, health benefits and pension benefits. This would interfere with the authorities of the State of Maryland that oversee fringe benefits, health benefits and pension benefits for State employees.

Among other problematic provisions, the bill states:

A. *Shall hear and resolve any dispute between the parties regarding the conduct of negotiations, including whether the conduct of a part is in good faith.*

This gives the arbitrator the ability to determine if the conduct of the parties is considered to be in good faith. What happens if the parties believe they are conducting negotiations in good faith, but the arbitrator does not? Currently, if a party believes that another party is not bargaining in good faith, they can file an Unfair Labor Practice (ULP) with the State Higher Education Labor Relations Board (SHELRB). Thus, there is already an established mechanism to address such concerns, with an agency that has been in existence for years and has specialized expertise to address these issues. Moreover, the parties would be required to pay the arbitrator's fees, which is unnecessary given the existence of SHELRB.

B. *May receive from the parties' copies of information requests presented and responses received, to resolve disputes over the timeliness and sufficiency of information demands and production.*

This appears to give the arbitrator the authority to judge whether information requests are within reason, not understanding the work required to produce the information or whether the parties have access to such information. This also may have the impact of taking the parties focus off the negotiations to devote substantial resources to filing and defending claims before the arbitrator.

C. *May issue remedial orders to resolve disputes over requests for information or promote bargaining in good faith consistent with this title.*

Again, this gives the arbitrator authority over a matter for which they would have no or little knowledge. Once more, there is no reason to deviate from the agency already in place, SHELRB.

In addition to the above, the arbitrator may:

- Call and conduct meetings and hearings
- Determine whether it is appropriate to conduct meetings or hearings in person or virtually
- Issue subpoenas to compel the production of documents and other evidence and attendance and testimony by witnesses
- Receive evidence directly or by sworn deposition
- Make findings of fact
- Reach and issue conclusions of law over any disputed negotiation issue that may arrive between the parties and
- Issue final, self-executing orders.
- The final written order issued by the arbitrator shall be final and binding and self-executing on the parties and the GOVERNOR.

In addition to potentially becoming overly embroiled in the negotiation process, the arbitrator has unfettered authority to resolve a bargaining impasse. The arbitrator, after a hearing, has the authority to sustain the "entirety" of either party's Last, Best and Final Offer. In reaching such decision, the arbitrator is empowered to consider wages, hours and conditions of employment of

employees performing similar services in public employment in adjacent states. The arbitrator can also look to collective bargaining patterns in other states and among county employees in Maryland.

The arbitrator's decision is "final and binding."

It should be noted that once there is interest arbitration, it is highly unlikely that the parties will reach agreement without it. Both sides will be inclined to hold back their best offer, so they have a cushion in case the negotiation goes to arbitration.

Moreover, interest arbitration for public employees is fundamentally anti-democratic. It takes budget/management responsibility away from elected officials, or appointed officials who report to elected officials and gives it to arbitrators, who have no responsibility to the voters/taxpayers and whose decisions are unreviewable.

In addition to the extensive authority of the arbitrator, there will be extensive costs associated with this bill. Arbitration fees can be quite high, with many labor arbitrators charging $2,000 or more per day. Moreover, it is quite possible that an arbitrator will award wage rates and benefits well beyond what has historically been affordable based on funding that the Legislature has approved and authorized since collective bargaining in higher education became the law.

Again, Morgan State University opposes this bill for the reasons outlined.

SB0472 - HR - Collective Bargaining - OPP_FINAL.pd
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Position: UNF

MARYLAND DEPARTMENT OF TRANSPORTATION

Larry Hogan
Governor

Boyd K. Rutherford
Lt. Governor

James F. Ports, Jr.
Secretary

February 16, 2022

The Honorable Guy Guzzone
Chairman, Senate Budget and Taxation Committee
3 West Miller Senate Office Building
Annapolis, MD 21401

Re: Letter of Opposition – Senate Bill 472 – State Personnel – Collective Bargaining – Revisions and Budget Bill Appropriations

Dear Chairman Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes Senate Bill 472 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.

Senate Bill 472 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.

Senate Bill 472 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, Senate Bill 472 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. Senate Bill 472 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 Senate Bill 472.

Respectfully Submitted,

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

SB 472 Collective Bargaining-Revisions and Budget

Uploaded by: Barbara Wilkins

Position: INFO

LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lieutenant Governor

Maryland
DEPARTMENT OF BUDGET AND MANAGEMENT

DAVID R. BRINKLEY
Secretary

MARC L. NICOLE
Deputy Secretary

SENATE BILL 472 State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations (Kramer)

POSITION: OPPOSE

DATE: February 16, 2022

COMMITTEE: Senate Budget & Taxation and Senate Finance

SUMMARY OF BILL:. SB 472 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 SB 472 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, the bill 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.

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. This provision 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.

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
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