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Patrick Moran - President

SB 255
State Personnel Management System - Office of the Public Defender –
Placement and Collective Bargaining
Finance Committee
February 10, 2022
FAVORABLE WITH AMENDMENT

AFSCME Council 3 supports SB 255. This legislation enables collective bargaining for the state employees at Maryland Office of the Public Defender (OPD). SB 255 also provides that the assistant public defenders, who would otherwise be described as “professional service” under the State Personnel Management System (SPMS), be removed from the category of “special appointee.” Upon enactment, OPD employees will still have to hold an election with the State Labor Relations Board to certify a collective bargaining agent before they are eligible to bargain.

SB 255 strives to give OPD employees the same collective bargaining rights that roughly 30,000 Maryland state employees currently enjoy. The lawyers, paralegals, social workers, and clerical staff for the OPD are employees with supervisors and managers, just like other state employees who have collective bargaining. Doctors and other human service professionals who work for the state have merit protections and collective bargaining. OPD attorneys deserve these same rights – they too have caseloads of Marylanders who are seeking the state’s help during the most vulnerable times in their life.

There is no legal justification for excluding OPD employees from collective bargaining. In fact, eighteen (18) other states allow employees of the Public Defender, including its attorneys, to collectively bargain. (SEE CHART ON PAGE 2). The original collective bargaining legislation in 1998 codified an Executive Order from 1996. Governor Glendening’s Executive Order could only cover agencies under his direct control. The OPD, by being independent and having its own board, could not legally be covered under an Executive Order. Since 1998, independent agencies have largely been added piecemeal as workers within that agency have organized.

The COVID-19 pandemic has served as catalyst for employee organizing. OPD employees often work right alongside state employees who have collective bargaining in our state hospitals, prisons, juvenile detention centers, and courthouses. OPD employees, however, were never given the opportunity to negotiate for higher wages or better safety protocols like their colleagues in other agencies. They have also been more vulnerable to losing their job for speaking up about safety concerns since “at-will” special appointees do not have the same merit protections and due process rights as those in the “skilled” and “professional” service.

Ultimately, collective bargaining is about having a voice, and the nearly 650 employees of the OPD who stand to benefit from this legislation have been denied one for far too long. SB 255 helps to ensure that the state employees who work for the OPD have a fair and just workplace. A minor technical amendment is needed – a sentence prohibiting OPD attorneys from engaging in private criminal practice was struck out. Our members would like to maintain this prohibition. We urge the committee to provide a favorable recommendation on SB 255.

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

STATES WHERE OPD ATTORNEYS CAN COLLECTIVELY BARGAIN

States with Collective Bargaining for OPD Employees, Including the Attorneys	Government level**
California	Local
Connecticut*	State
Illinois*	Local
Iowa*	State
Massachusetts	State
Michigan*	Local
Minnesota*	State/Local
Montana*	State
Nevada	Local
New Hampshire	State/Private
New Jersey	State
New Mexico*	State
New York*	Local/Private
Ohio*	Local
Oregon*	Local/Private
Pennsylvania*	Local
Vermont	State
Washington*	Local
<p>*State has PD employees organized with AFSCME</p> <p>**Nationally, OPD services are operated either at local and county levels, through private organizations, or like Maryland through a statewide agency.</p>	