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Testimony of David Maher
 HB 380 – Arbitration Reform for State Employees Act of 2023
 Appropriations Committee
 February 7, 2023
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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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 218 and HB 380 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.

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.

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

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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 may hear and help resolve any disputes, including bargaining in good faith, that arise during bargaining, though these decisions are not binding on the parties and the State Labor Relations Board and State Higher Education Labor Relations Board retain jurisdiction over unfair labor practices;
- 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 mediate and aid in resolving any disputes in negotiation.
- May issue a final, self-executing order resolving the impasse that is 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 218 / HB 380
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 continue with arbitrator available to help resolve disputes quickly
	September 30: targeted conclusion of negotiations
	October 1: impasse can be declared (if 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 If impasse is not resolved or negotiations does not result in an MOU, management imposes budget as it sees fit	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