



SENATE BUDGET AND TAXATION COMMITTEE
Senate Bill 218
Arbitration Reform for State Employees Act of 2023
February 1, 2023
Unfavorable

Chair Guzzone, Vice Chair Rosapepe, and members of the committee, thank you for the opportunity to offer testimony on Senate Bill 218.

Senate Bill 218 proposes a significant overhaul of the collective bargaining process in the state of Maryland including for the institutions that comprise the University System of Maryland (USM). The bill (1) puts the ultimate decision-making authority into the hands of a single third party, (2) undermines the process of negotiations by imposing binding interest arbitration, and (3) expands the scope of bargaining, among other changes. As proposed, the establishment of binding interest arbitration would have serious, potentially grave fiscal consequences for the USM and particularly its smaller institutions.

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 their decisions, to unilaterally decide the terms of a union contract and award wage and other increases requiring expenditure of tax dollars – raising a constitutional question about a state’s delegation of such broad authority. Public employees and their exclusive representatives may make unrealistic demands during negotiations believing that arbitrators, who are often oblivious to fiscal pressures, will be more amenable than their employers. This will inevitably lead to inflationary wages and exorbitant costs that will have a harmful impact on the State’s budgets.

Senate Bill 218 provides no incentive for the parties to compromise by essentially establishing a system more akin to litigation than to collective bargaining. It can be expected that impasse will be higher in a system that ends with interest arbitration than in a system that does not. Rather than engage in realistic negotiations, the parties could game the process, and the availability of arbitration will have a “chilling effect” upon the parties’ efforts to honestly negotiate an agreement. Over time the parties may begin to default to arbitration, relying on arbitrators to write their labor contracts. The adversarial nature of the arbitration process will undoubtedly impact the ability of the parties to achieve and maintain good labor relations.

Additionally:

- Senate Bill 218 simultaneously expands the scope of collective bargaining in an overly broad manner, inconsistent even with federal law, by including “fringe benefits, health benefits, and pension benefits” as mandatory subjects of bargaining, while abbreviating the timeframe for negotiations – between July 1 and September 30. The bill does not establish a different timeline for consolidated collective bargaining.

- The parties are required to utilize a paid arbitrator throughout the process. The cost of arbitrator services can range from \$1,000 to \$3,000 per day, easily totaling thousands or tens of thousands of dollars.
- Under current law, the State Higher Education Labor Relations Board (“Board”) has the statutory authority to resolve complaints of unfair labor practices. The bill would improperly infringe on the rights of the Board by authorizing an arbitrator to resolve certain disputes during the bargaining process through issuance of advisory opinions. Arbitrators, who are using their own independent judgment, may resolve bargaining disputes in a manner inconsistent with and contrary to prior Board precedent.
- Senate Bill 218 creates a conflict of interest, real or perceived, on the part of the arbitrator. The arbitrator would function first as a proctor to “meaningfully” engage with the parties throughout the course of bargaining, then as a mediator to “attempt to resolve the impasse,” and would finally function as the hearing officer responsible for making the final determination and choosing to award one side’s last, best, and final offer over the other. Mediation and arbitration are two separate and distinct processes. The longstanding principles underlying the protection and importance of confidentiality in mediation and in settlement discussions are undermined by this process.

Even with the new consolidated collective bargaining process, the USM has 25 individually certified collective bargaining units across its constituent institutions, represented by three different exclusive representatives. These units are on a unique bargaining schedule, and each has a high potential to reach an impasse with implementation of this type of “no compromise” arbitration.

Senate Bill 218 would have a significant impact on the USM and we urge an unfavorable report.



About the University System of Maryland

The University System of Maryland (USM)—one system made up of twelve institutions, three regional centers, and a central office—awards eight out of every ten bachelor’s degrees in the State of Maryland. The USM is governed by a Board of Regents, comprised of twenty-one 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.

USM Office of Government Relations - Patrick Hogan: phogan@usmd.edu