
February 16, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis MD 21401

RE: Letter of Information – Senate Bill 367 – Public Employee Relations Act

Dear Chair Griffith and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 367 but offers the following information for the Committee’s consideration.

Senate Bill 367 includes a definition of “public employee” and the only group excluded from that definition are confidential employees. “Confidential employee” is narrowly defined, allowing an employee without direct knowledge of management’s position in negotiations to unionize. This conflicts with exclusions in State Personnel and Pensions Article § 3-102(b), which are in place because certain employees (e.g., MTA union employees, appointed employees, temporary and contractual employees, supervisory/managerial employees, etc.) should not, for various reasons, be eligible to participate in collective bargaining.

Next, Senate Bill 367 states that Maryland’s collective bargaining law should “follow” the federal National Labor Relations Act (NLRA), the law for private employers. The MDOT seeks clarification on how to avoid confusion and contradiction between this and Maryland law. For example, the NLRA allows employees to strike under certain conditions; under Maryland law and Senate Bill 367, State employees are not permitted to strike. Further, it is important to note the difference in the operations between government employers and private employers. For these reasons, and others, the federal government has its own distinct collective bargaining law that does not defer to the NLRA.

There is a provision outlined in Senate Bill 367 that gives employee organizations that are involved in an election unlimited access to MDOT grounds and facilities without limitations. This could result in disruptions and higher costs, especially due to the annual elections permitted in Senate Bill 367, which is more frequent than current law. To comply, MDOT would need to increase staff and extend operating hours at affected buildings and facilities. After an election, Senate Bill 367 requires MDOT to provide certain information to the newly elected representative; however, not all the information required in the bill is on file with MDOT and this could result in confidential information needing to be shared.

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Senate Bill 367 includes a binding arbitration provision that will move the State's collective bargaining process from a negotiation to a process that provides little incentive for the parties to agree. Arbitration will have a significant fiscal impact, due to the cost of an arbitrator and the potential for extremely costly awards. By way of example, the Maryland Transit Administration (MTA) 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 faced the Great Recession and was forced to eliminate employee increments (steps), cost-of-living increases, and deferred compensation matches; implement a furlough and service reduction plan; and effectuate significant pension reform. Meanwhile, at MTA, a binding arbitration award was made that granted employees of three MTA unions significant wage and pension enhancements costing \$35 million over three years.

Senate Bill 367 gives the exclusive representative standing to bring a grievance without requiring employee involvement. Under current law, only an employee has standing to file a grievance. Allowing the union to file a grievance contradicts collective bargaining laws and circumvents the collaborative process of clarifying issues and resolving disputes at Labor/Management Committee meetings and negotiations. Further, if the union utilizes the adversarial process and pursues a grievance to the final level of administrative appeal, it allows an Administrative Law Judge to make broad policy decisions for MDOT. Additionally, because the Department bears the cost throughout the grievance process, there would be nothing to prevent the union from filing a grievance any time it disagrees with a management decision.

Finally, the bill creates an imbalance by eliminating the management rights section of the State Personnel and Pensions Article (§3-302) while maintaining the employees' rights section of the collective bargaining law.

The Maryland Department of Transportation respectfully requests that the Committee consider this information when deliberating Senate Bill 367.

Respectfully Submitted,

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Maryland Department of Transportation
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