HOUSE APPROPRIATIONS COMMITTEE
House Bill 114 - Arbitration Reform for State Employees Act of 2024
January 30, 2024
Unfavorable

Chair Barnes, Vice Chair Chang and members of the committee, thank you for the opportunity to offer testimony on House Bill 114.

On behalf of the University System of Maryland (USM) we respectfully oppose HB 114 as written. The USM is comprised of twelve distinguished institutions, and three regional centers. We award eight out of every ten bachelor's degrees in the State. 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 three Historically Black Institutions, comprehensive institutions and research universities, and the country's largest public online institution.

Collective bargaining has existed in the State of Maryland, including for employees of USM's institutions, for more than twenty years. For the past two decades, the institutions (including now the USM as part of the consolidated collective bargaining process) have negotiated in good faith with the exclusive representatives (AFSCME, MCEA, and FOP) of the twenty-five individual bargaining units across the USM. Like the legislative process, the negotiation process can be challenging, but if allowed to work to its natural conclusion, it renders a good product. This has been amply demonstrated over the past two decades; the parties have been able to successfully reach agreement on a MOU without the need for intervention by a third party in almost every instance since the establishment of collective bargaining. The existing process under the statute works.

Putting the ultimate decision-making authority into the hands of a single third party is inconsistent with the process of collective bargaining and could have serious fiscal consequences for the USM, particularly its smaller institutions. While HB 114 purports to bind the Governor to include appropriations in his budget necessary to fund implementation of all wage and other terms and conditions of employment in each MOU, it is unclear whether the General Assembly would be obligated to ultimately fund those terms. If those terms go unfunded, HB 114 would still bind the institutions to "take all actions necessary to carry out and effectuate the final written award and place into effect the memorandum of understand." The unintended result of which would likely be an increase to tuition and fees and/or a reduction in services and positions.

House Bill 114 provides no incentive for the parties to compromise, a vital aspect of collective bargaining. Instead, it establishes a system more akin to litigation than to collective bargaining. Rather than having an end goal of reaching agreement, the parties will be incentivized to unilaterally act to attempt to "win" the case before the arbitrator. It can be expected that impasse will occur more frequently in a system that ends with interest arbitration than in a system that does not. Instead of engaging in realistic negotiations, the parties would use negotiations as a fact-finding

expedition to prepare for litigation, hindering the free flow and exchange of ideas. The adversarial nature of the arbitration process will undoubtedly impact the ability of the parties to achieve and maintain good labor relations regardless of whose final position is deemed most reasonable.

Additionally:

- House Bill 114 significantly restricts the timeframe for negotiations – to between July 1 and September 30 – which is both impractical and unrealistic. Not only does negotiation of a successor contract typically take more than three months to complete, but the negotiation of a new contract takes, on average, well over a year if both parties are meeting on a frequent and regular basis. Further, HB 114 does not establish a different timeline for consolidated collective bargaining which is more complex and takes longer to complete. Finally, the bill does not consider that appropriate budget projections may not be available by September 30 to inform good faith and fiscally responsible proposals.

- As written, House Bill 114 creates a conflict of interest, real or perceived, on the part of the arbitrator, and infringes on the rights and authority of the Public Employee Relations Board.

- 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 or more per day, easily totaling thousands or tens of thousands of dollars in addition to the attorney fees and costs of experts such as an economist.

- While there are certain states and local jurisdictions that make a binding interest arbitration process available, binding interest arbitration is a process generally reserved to public safety employees such as those in police and fire units that are typically smaller and have a unique set of needs and circumstances. Even in those states where regular staff employees have access to an interest arbitration process, that process is often vastly different from the one outlined in HB 114. Many of those states utilize a multi-stage impasse resolution process that incorporates mediation, factfinding, and voluntary interest arbitration, and they do not utilize the same decision-maker at every step of the process. States such as CA, IL, OH, PA, OR, MT, and WA, for example, do not have a binding interest arbitration requirement for public higher education employees.

The USM greatly values the dedication and hard work of its employees who keep our institutions running in support of our providing an affordable and accessible education for Maryland students and their families. The USM remains committed to providing competitive wages and benefits to recruit and retain a highly skilled workforce. Both the institutions and the USM can continue to successfully do that, in part, through good faith negotiations under the existing process with the exclusive representatives across the System. The ability to utilize a third-party neutral already exists through the current fact-finding process as laid out in the statute. While the decision of the factfinder is not binding, it is significant and can be used to bring the parties to resolution; the existing process should be maintained.


BOWIE
STATE UNIVERSITY
1865

COPPIN
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FROSTBURG
STATE UNIVERSITY

Salisbury
UNIVERSITY

TOWSON
UNIVERSITY

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BALTIMORE


UNIVERSITY of MARYLAND
BALTIMORE

UMBC

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University of Maryland
CENTER FOR ENVIRONMENTAL SCIENCE

UNIVERSITY of MARYLAND
EASTERN SHORE

UNIVERSITY OF
MARYLAND

UNIVERSITY
OF MARYLAND
GLOBAL CAMPUS

The Universities
AT SHADY GROVE

USMH
UNIVERSITY SYSTEM of MARYLAND
HAGERSTOWN

UNIVERSITY SYSTEM OF MARYLAND
AT SOUTHERN MARYLAND