

Maryland Public Employee Relations Board

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Wes Moore,
Governor

Testimony on Cross-filed House Bill 114 and Senate Bill 188

SUPPORT ONLY WITH AMENDMENTS

Chair Guzzone & Members of the Senate Budget & Taxation Subcommittee:

Having reviewed this cross-filed legislation, the Maryland Public Employee Relations Board will support these bills with the amendments discussed here. The PERB has submitted proposed language for such amendments. The PERB also does not take a position on the question of an arbitrator imposing economic terms on a public entity.

This proposed cross-filed legislation is in all relevant aspects the same as House Bill 380 & Senate Bill 218 from last year, with the same impact on Maryland's Public Employee Relations Board (PERB) that last year's bill had on prior Maryland labor relations Boards. Under current law, the PERB has authority to investigate and take appropriate action in unfair labor practices cases, including those involving refusing to bargain in good faith and providing information in collective bargaining. Under the proposed legislation, a neutral arbitrator would be appointed in collective bargaining with authority to "mediate or aid in the resolution of any dispute between the parties regarding the conduct of negotiations, including whether the conduct of a party is in good faith" and to "mediate or aid in the resolution of disputes over the timeliness and sufficiency of information demands and production." Although the bill provides that the opinions and guidance issued by the neutral arbitrator regarding these matters are to be "advisory" on the parties and the Governor, there is a direct conflict with the PERB's jurisdiction to decide good faith bargaining unfair labor practices, potentially causing delay and confusion.

This is rather surprising in 2024, after in 2023 the Maryland General Assembly passed and Governor Moore signed into law the Public Employee Relations Act, which established the PERB. That law created Deputy Director positions to investigate unfair labor practices, including those regarding conduct in and provision of information during bargaining. Moreover, it decrees an expedited schedule for claims that conduct in bargaining has affected bargaining. From the party's filing of the charge, through a Deputy Director's investigation and recommendation to the PERB, to the PERB's decision whether to conduct a hearing, must be no longer than 30 days. And only 90 days may elapse from the date of the charge, through the

hearing, to the PERB's final decision in the case.

Despite the PERA Act's requirement that the PERB resolve quickly claims about negotiations, this proposed legislation adds a new layer in resolving such disputes, and may actually delay their resolution. As parties are not precluded from filing unfair labor practices, what would happen if one party files a good faith bargaining claim with the arbitrator, but the charged party prefers a PERB decision on the claim? Could the charged party remove the case to the PERB? If not, the charged party would be compelled to proceed with arbitration, and would not have the benefit of a PERB hearing and decision. Also, because the arbitrator's opinions are advisory, if the opinion concludes that the charged party is not bargaining in good faith, the charged party could simply ignore the arbitrator's opinion, necessitating the charging party then to file an unfair labor practice to obtain relief. This is an undue delay. We have proposed amendments to address these concerns.

The bill provides that "For each bargaining unit, whenever a memorandum of understanding is to be negotiated, reopened, or amended, the parties shall first select a neutral arbitrator for the negotiations on or before July 15." The appointment of the arbitrator is mandatory regardless of whether the parties need or even want an arbitrator involved in their negotiations. The PERB questions the need and prudence of requiring the appointment of an arbitrator at the inception of every negotiation.

Although the PERB was created less than a year ago, two of its Members previously Chaired the State Labor Relations Board and State Higher Education Labor Relations Board, respectively. Those are the two Boards that had jurisdiction over the same public employers and employees covered by this bill. Moreover, all five persons on the PERB have decades of experience with Maryland collective bargaining and the law governing it. Also, the PERB's Executive Director has worked for Maryland's labor relations Boards for more than twenty years. In the experience of all these persons, Maryland public sector collective bargaining has not involved widespread or chronic turmoil and disharmony in negotiations that would necessitate a third party arbitrator in every collective bargaining negotiation. There currently are a combined total of approximately fifty-two (52) collective bargaining relationships that would be covered by this bill, with each having their own separate collective bargaining negotiations and memorandum of understanding. Requiring the appointment of a third party arbitrator for each of these negotiations strikes us as being an unnecessary burden and unwarranted expense.

Next, the PERB questions whether an arbitrator can properly serve as proctor, decision-maker on disputed issues arising during the course of the negotiations, mediator, fact finder, and as final offer arbitrator actually deciding the final terms of the parties' memorandum of understanding. Too many conflicts could arise by an arbitrator having so many roles. Another concern is that this will make collective bargaining and negotiation disputes rather expensive for the parties, who would be required to pay the arbitrator's fees, which, given the scope of the arbitrator's authority and role, will likely be costly, as well as administrative fees to the American Arbitration Association.

The State Personnel & Pensions Article does not provide the PERB a clear role with respect to impasse in negotiations. The proposed bill provides a detailed impasse process. The PERB's leadership agrees that a clear, binding impasse process is needed. However, we remain concerned about the inherent conflict of interest that arises when a single arbitrator mediates the negotiations, decides negotiation disputes, and serves as final offer impasse arbitrator, where the arbitrator is empowered to select one party's entire package of contract proposals over the other

party's package, and impose terms and conditions on the parties. The PERB suggests that the law provide for one individual to serve as mediator to assist the parties during contract negotiations and a different individual to serve as impasse arbitrator.

The leadership and executive staff of the PERB offer to answer any questions you may have regarding the impact of these cross-filed bills.

Thank you for your consideration.

Submitted by: Michael J. Hayes, Acting Chair, PERB
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