SB 188 - SLEOLA - FAV - B&T 01-17-2024.pdf
Uploaded by: Brian Gill
Position: FAV

State Law Enforcement
Officers Labor Alliance
542 Ritchie Highway
Severna Park, Maryland 21146

January 17, 2024

The Honorable Guy Guzzone
Chair, Budget and Taxation Committee
3 West Miller Senate Office Building
11 Bladen Street
Annapolis, Maryland 21401

Re: SB 188 – Arbitration Reform for State Employees Act of 2024 - SUPPORT

Dear Chair Guzzone:

The State Law Enforcement Officers Labor Alliance (SLEOLA) is the exclusive representative for 1,757 active state law enforcement officers. We are writing in Support of Senate Bill 188.

Senate Bill 188 is seeking to modify the current collective bargaining process for State employees. The current collective bargaining process that is used by the State is both unfair and unproductive. Binding Interest arbitration does not guarantee the employees will receive raises, rather it ensures the reasonableness and fairness of the collective bargaining process. Binding Interest arbitration would help make the process fair for both SLEOLA and the State.

This is an important proposal for each of the members of SLEOLA, and we ask for a favorable report of SB 188.

Sincerely,

Brian Gill
President

cc: Members, Senate Budget and Taxation Committee

1.15.2024 SB 188 Testimony_FAV.pdf
Uploaded by: Christian Gobel
Position: FAV

MARYLAND STATE EDUCATION ASSOCIATION

140 Main Street
Annapolis, MD 21401
800 448 6782
410 263 6600

marylandeducators.org

FAVORABLE
Senate Bill 188
Arbitration Reform for State Employees Act of 2024

Senate Budget and Taxation Committee
January 17, 2024

Christian Gobel
Government Relations

The Maryland State Education Association supports Senate Bill 188. This legislation amends the collective bargaining process for state employees by establishing specified timelines for the commencement and termination of negotiations, requiring the selection of a neutral arbitrator to oversee the collective bargaining process, and creating an arbitration process to resolve impasse in bargaining including final and binding arbitration on the parties. The legislation also requires that each budget bill submitted by the Governor contains the appropriations necessary to implement all terms and conditions of employment in each agreement reached with the state.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our almost 900,000 students so they can pursue their dreams. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

While the bill does not directly affect our members, Senate Bill 188 represents a significant step forward to ensure state employees receive the dignity and respect they deserve by establishing an effective dispute resolution process in collective bargaining negotiations. Unlike private sector employees and certain public employees in other state jurisdictions, Maryland public employees do not have the right to strike. Binding arbitration provides a peaceful, timely, and final resolution to disputes between public employers and public employees concerning essential terms and conditions of employment such as compensation, benefits, leave, and

working conditions. These issues are of profound importance to workers and their families and weigh heavily on retaining current employees and attracting new workers into state government to deliver essential services to the residents of Maryland.

Twenty-seven states and the District of Columbia have authorized binding arbitration for certain categories of public employees or all public employees including Alaska, California, Connecticut, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, Wisconsin, and Wyoming.

In Maryland, binding interest arbitration is authorized for certain state employees in the Maryland Transit Administration, and certain county and municipal employees in eight counties and the Town of Ocean City. Additionally, binding interest arbitration provided by the Public Employee Relations Board is available to public school employers and exclusive representatives of public school employees to resolve impasse in negotiations.

Under current law, fact finding is the only alternative dispute resolution mechanism available to resolve impasse in negotiations between the state and the exclusive representative representing state employees. Fact-finding only provides the parties with non-binding recommendations and is inadequate to promote the timely resolution of impasse in negotiations.

Maryland must do all it can to compete with neighboring jurisdictions and the private sector to make employment with the state competitive and attractive. The peaceful, timely resolution of disputes in collective bargaining negotiations through binding arbitration is a significant step forward to accomplish that goal. MSEA applauds the sponsors for bringing this legislation forward and standing with working families.

We urge the committee to issue a Favorable Report on Senate Bill 188.

2024.01.17 SB 118 KSC Testimony.pdf
Uploaded by: David Maher
Position: FAV

KSC KAHN SMITH & COLLINS, P.A.

Attorneys At Law
201 North Charles Street • Tenth Floor
Baltimore, Maryland 21201
410-244-1010 phone
410-244-8001 fax

www.kahnsmith.com

Francis J. Collins
Keith J. Zimmerman
David Gray Wright
Christopher R. Ryon
Daniel E. Udoff
David Maher
Daniel Russo
Samantha Safchinsky

Testimony of David Maher
SB 118 – Arbitration Reform for State Employees Act of 2024
Budget & Taxation Committee
January 17, 2024
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.

Testimony of David Maher - SB 118 – Arbitration Reform for State Employees Act of 2024
Budget & Taxation Committee – January 17, 2024 - Support / Favorable

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 its sees fit, and non-budget items are left unresolved.

Testimony of David Maher - SB 118 – Arbitration Reform for State Employees Act of 2024
Budget & Taxation Committee – January 17, 2024 - Support / Favorable

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 118 and HB 114 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.
- Yes, for public school employees.
- The Maryland Court of Appeals has approved of binding arbitration.

Testimony of David Maher - SB 118 – Arbitration Reform for State Employees Act of 2024
Budget & Taxation Committee – January 17, 2024 - Support / Favorable

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 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;
- 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.

Testimony of David Maher - SB 118 – Arbitration Reform for State Employees Act of 2024
Budget & Taxation Committee – January 17, 2024 - Support / Favorable

Timeline Comparisons for Maryland Collective Bargaining

Under Present Law	**Under SB 118 / HB 114**
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 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

SB188_AFSCME3_FAV.pdf
Uploaded by: Denise Gilmore
Position: FAV

Council 3 AFSCME MARYLAND
190 W. Ostend St., #101
Baltimore, MD 21230
Phone: 410-547-1515
Email: info@afscmemd.org

Patrick Moran – President

SB 188 - Arbitration Reform for State Employees Act of 2024
Budget and Taxation Committee
January 17, 2024

FAVORABLE

AFSCME Council 3 supports SB 188. Currently, if impasse is reached during contract negotiations for State and higher and education employees a neutral factfinder is selected to evaluate the parties' proposals. Then, the factfinder makes non-binding recommendations. Management can still choose to impose the budget they see fit, and non-budget items are left unresolved. The current negotiating process leads to unproductive dynamics. Management does not have to negotiate in good faith towards an agreement since they can ultimately just impose what they want, regardless.

SB 188 motivates the parties to bargain in good faith by establishing more workable timelines to ensure negotiations are concluded in time for budget submissions; allows for the selection of a neutral arbitrator to mediate the negotiations if necessary; and in the event of an impasse, establishes a process for binding interest arbitration. Binding interest arbitration is like factfinding during contract negotiations: a neutral third party is still selected during impasse to evaluate proposals based on objective and rational evidence. However, binding interest allows the arbitrator to issue a decision that is binding upon the parties, and this provides the opportunity for an actual resolution to the dispute, unlike factfinding which is just a recommendation.

SB 188 is important because unlike State employees in Pennsylvania and in 9 other states[1], Maryland state employee cannot strike. Without the right to strike, arbitration is a much-needed tool for successful and cooperative public-sector labor relations. Most states in America allow binding interest arbitration for some or all employees[2]. Most Big 10 Institutions, including all 4 schools that will be added next in conference realignment have arbitration provisions in their union contracts with staff. In Maryland state government, the Maryland Transit Administration already has binding interest arbitration authorized in the Transportation Article. Eight Maryland county and municipal jurisdictions have authorized binding arbitration for its employees[3]. Binding interest arbitration has not led to a collapse of government anywhere and there's no reason to believe it will happen in our state government or higher education institutions if this bill passes.

SB 188 simply ensures is that the parties work together in good faith to reach an agreement and avoid impasse, but should impasse occur, it guarantees that there will at least be a resolution ultimately. The dedicated public servants who choose a career with the State deserve fair contract negotiations regardless of the administration sitting across the table from them.

We urge you to please support our dedicated and hard-working state employees by passing the Arbitration Reform for State Employees Act of 2024.

It's time for Maryland to catch up with the 26 states and District of Columbia that already authorize binding interest arbitration. We urge a favorable report on SB 188.

[1]***States where state employees have the right to strike:*** *Alaska, California, Hawaii, Illinois, Minnesota, Montana, Ohio, Oregon, Pennsylvania, and Vermont.*

[2]***States with binding interest arbitration for some or all state employees****: Alaska, California, Connecticut, District of Columbia, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, Wisconsin, & Wyoming*

[3]***Maryland jurisdictions with binding arbitration authorized for some or all employees:*** *Anne Arundel County, Baltimore City, Baltimore County, Frederick County, Howard County, Montgomery County, Prince George's County, and the Town of Ocean City.*

Council 3 AFSCME MARYLAND

SB 188_SenMcCray Testimony 1.16.pdf
Uploaded by: Destiny Bell
Position: FAV

CORY V. MCCRAY
Legislative District 45
Baltimore City

DEPUTY MAJORITY WHIP

Budget and Taxation Committee
Subcommittees
Chair, Health and Human Services
Vice Chair, Capital Budget

Executive Nominations Committee

Legislative Policy Committee
Joint Committee on Gaming Oversight

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

James Senate Office Building
11 Bladen Street, Room 221
Annapolis, Maryland 21401
410-841-3165 · 301-858-3165
800-492-7122 *Ext.* 3165
Cory.McCray@senate.state.md.us

Vote Yes to SB 188

Title: Arbitration Reform for State Employee's Act of 2024
Budget and Tax Committee
Hearing: January 17, 2024

Dear Chair, Vice Chair, and Members of the Committee,

I am writing to request a favorable vote for **SB188**, the Arbitration Reform for State Employees Act of 2024, which aims to enhance the collective bargaining process for State employees in Maryland. **SB188** introduces key improvements, including workable timelines for negotiations, neutral arbitration in case of an impasse, and binding interest arbitration for effective resolution. The bill addresses the need for enforceable bargaining timelines, particularly in higher education, preventing wasteful expenditure on prolonged negotiations. Binding interest arbitration, a proven concept in other states, becomes crucial for Maryland state employees who lack the right to strike.

SB188 aligns with successful practices in other jurisdictions, including the Maryland Transit Administration, without compromising government stability. It addresses past challenges and emphasizes fair and equitable labor relations.

The support from the Public Employee Relations Board (PERB) adds credibility, reflecting collaborative efforts to refine the role of the mediator and arbitrator. While the bill doesn't alter legislative budget discretion, making awards binding on the executive may require further consideration.

Aligning with national and local trends is imperative, as 27 states and D.C. already authorize binding interest arbitration. Maryland should be in the forefront in adopting practices proven successful elsewhere.

Before closing, I would like to add, the OAG looked at the bill and concluded in an advice letter in December that the Legislature's discretion over the budget remains unaltered in the bill. To make any award binding on the executive however, we do still need to make this a constitutional amendment this year.

I urge a favorable vote for **SB188**, representing a critical step towards fostering a fair, efficient, and cooperative labor relations environment for Maryland state employees.

Respectfully,

Cory V. McCray
45th District

SB 188 - Arbitration Reform for State Employees Ac
Uploaded by: Donna Edwards
Position: FAV

MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

7 School Street • Annapolis, Maryland 21401-2096

Balto. (410) 269-1940 • Fax (410) 280-2956

President
Donna S. Edwards

Secretary-Treasurer
Gerald W. Jackson

SB 188 - Arbitration Reform for State Employees Act of 2024
Senate Budget & Taxation Committee
January 17th, 2024

SUPPORT

Donna S. Edwards
President
Maryland State and DC AFL-CIO

Chairman and members of the Committee, thank you for the opportunity to provide testimony in support of SB 188 - Arbitration Reform for State Employees Act of 2024. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 300,000 union members in the state of Maryland, I offer the following comments.

Under current law, when a Governor and state workers reach an impasse in bargaining, a Governor can simply choose to ignore the process and appropriate funds for workers based on their previous contract. In theory, any Governor could completely bypass the negotiations process and leave workers in the lurch for the entirety of his/her term in office. It creates a perverse incentive for a Governor to do nothing, stalling negotiations indefinitely while workers' wages and benefits remain stagnant for years.

SB 188 fixes these issues by amending the Maryland Constitution to include binding arbitration for state worker collective bargaining. Binding arbitration is a common dispute resolution process in both private and public sector labor relations. It recognizes that both parties do not always agree and that negotiations can reach an impasse. When this happens, a neutral arbitrator is tasked with drafting a written award that lays out the terms of a settlement that both parties must respect and adhere to.

Public sector workers in the following states have some form of binding interest arbitration for their collective bargaining processes: Alaska, California, Connecticut, District of Columbia, Hawaii, Illinois, Iowa, Main, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, Wisconsin, Wyoming. Even in Maryland, our county workers in Allegany, Anne Arundel, Baltimore City, Baltimore County, Frederick County, Prince George's, Wicomico have binding interest arbitration for some or all of their units. During the Senate Finance Committee's briefing on collective bargaining during the interim, the invited witness Zackary Barnes of the National Conference of State Legislatures confirmed that Maryland is in the minority of states with public sector collective bargaining that do not also have binding interest arbitration.

MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

7 School Street • Annapolis, Maryland 21401-2096

Balto. (410) 269-1940 • Fax (410) 280-2956

President
Donna S. Edwards

Secretary-Treasurer
Gerald W. Jackson

SB 188 will provide balance in the negotiations process, giving both parties every motivation to work toward a timely agreement. Management will no longer have the incentive to wait out negotiations in the hopes that they can save money and unilaterally implement and fund their own proposals. The process listed in the bill for the selection of neutral arbitrators is shared by many unions and employers across the country. Workers deserve balance and timely decisions. By putting the conditions of the memorandum of understanding directly into the budget, we ensure that what has been negotiated and agreed upon, is honored. This bill is a fair and balanced approach to providing effective and efficient negotiations for our state employees. We urge a favorable report on SB 188.

BaltimoreCounty_FAV_SB0188.pdf
Uploaded by: William Thorne
Position: FAV

JOHN A. OLSZEWSKI, JR.
County Executive

JENNIFER AIOSA
Director of Government Affairs

AMANDA KONTZ CARR
Legislative Officer

WILLIAM J. THORNE
Legislative Associate

BILL NO.: **SB 188**

TITLE: Arbitration Reform for State Employees Act of 2024

SPONSOR: Senator McCray

COMMITTEE: Budget and Taxation

POSITION: **Support**

DATE: January 17, 2024

Baltimore County **SUPPORTS** Senate Bill 188 – Arbitration Reform for State Employees Act of 2024. This legislation proposes an amendment to the Maryland Constitution requiring the Governor to include in the budget bill the appropriations necessary to fund and implement all terms within each Memoranda of Understanding reached between the State and exclusive representatives for the employees of the State, State institutions of higher education and the Maryland Environmental Service. The bill also outlines detailed processes for collective bargaining and binding arbitration, including the required use of a neutral arbitrator.

Currently, unresolved collective bargaining disputes between the State and exclusive representatives are addressed by fact finders who make nonbinding recommendations. SB 188 removes from law the role of a fact finder, and replaces this process with binding arbitration. Baltimore County has updated its own County Charter to establish binding arbitration for dispute resolution when consensus can not be reached through collective bargaining. The process outlined in SB 188 for State employee collective bargaining and arbitration clearly establishes timeframes and expectations so that both sides in a dispute can be heard and a binding resolution can be made before the beginning of the next year's State budget cycle.

Accordingly, Baltimore County requests a **FAVORABLE** report on SB 188. For more information, please contact Jenn Aiosa, Director of Government Affairs at jaiosa@baltimorecountymd.gov.

2024PublicEmployeeRelations Boards Testimony on HB

Uploaded by: Michael Hayes

Position: FWA

Maryland Public Employee Relations Board

45 Calvert Street, Room 102
Annapolis, MD 21401
(410) 260-7291 ** (410) 267-7014 (Fax)

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
Erica L. Snipes, Acting Agency Executive Director

PERBProposed Amendments, HB114.SB188.pdf
Uploaded by: Michael Hayes
Position: FWA

Maryland State Labor Relations Boards

Public Employee Relations Board
45 Calvert Street, Room 102
Annapolis, MD 21401
(410) 260-7291 ** (410) 267-7014 (Fax)

Wes Moore,
Governor

PERB Proposed Amendments to SB188/HB114

3-501

(b)

(2)(I) For each bargaining unit, whenever a memorandum of understanding is to be negotiated, reopened, or amended, the parties shall first select a neutral **[**arbitrator**]** **mediator** for the negotiations on or before July 15.

(II) The **[**arbitrator**]** **mediator** shall be elected from a list of 15 **[**arbitrators**]** **mediators** provided by the **[**American Arbitration Association's Labor Arbitration Panel**]** **Federal Mediation and Conciliation Service**.

[(III) The list shall consist of qualified, nationwide arbitrators who are members of the National Academy of Arbitration.**]**

[(IV)**]** **(III)** The parties shall select the **[**arbitrator**]** **mediator** by alternately striking names from the list until one name remains.

[(V)**]** **(IV)** The selected **[**arbitrator**]** **mediator** must be able and available to perform the duties and to hold hearings, both in person and through remote communication consistent with this title.

[(VI)**]** **(V)** The **[**arbitrator**]** **mediator** shall have the powers and responsibilities under §3-503**(A)** of this subtitle.

[(VII)**]** **(VI)** The selected **[**arbitrator**]** **mediator** shall accept the appointment before July 15, or the parties may agree to make an alternative appointment from**[**:**]** **the list of mediators originally provided by the Federal Mediation and Conciliation Service.**

[1. The list originally provided by the American Arbitration Association; or

2. A list of nationwide arbitrators provided by the Federal Mediation and Conciliation Service.**]**

3-503

(A)(1) A Neutral **[**Arbitrator**] mediator** selected under §501**[**(B)**] (b)(2)** of this subtitle:

(I) May 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;**]**.

* * * *

(III) May issue opinions in order to help resolve disputes **[**over requests for information or promote bargaining in good faith**]** consistent with this title; and

* * * *

(B) (1) If an impasse is declared on or after October 1, Arbitration shall proceed as described in this subsection**[**.**]:**

(I)(a) The parties shall select a neutral arbitrator as described under this subsection.

(b) The neutral arbitrator shall not be the same person selected by the parties under §3-501(b)(2) as neutral mediator under §3-503(A).

(II) The arbitrator shall be elected from a list of 15 arbitrators provided by the American Arbitration Association's Labor Arbitration Panel.

(III) The list shall consist of qualified, nationwide arbitrators who are members of the National Academy of Arbitration.

(IV) The parties shall select the arbitrator by alternately striking names from the list until one name remains.

(V) The selected arbitrator must be able and available to perform the duties and to hold hearings, both in person and through remote communication consistent with this title.

(VI) The arbitrator shall have the powers and responsibilities under §3-503(A) of this subtitle.

(VII) The selected arbitrator shall accept the appointment before July 15, or the parties may agree to make an alternative appointment from:

1. The list originally provided by the American Arbitration Association; or

2. A list of nationwide arbitrators provided by the Federal Mediation and Conciliation Service.

*** * * ***

(B)(3) The neutral arbitrator **[**acting as a mediator**]** shall attempt to resolve the impasse before a formal hearing on the impasse.

SB188_USM_UNF.pdf
Uploaded by: Andy Clark
Position: UNF

BUDGET AND TAXATION COMMITTEE
Senate Bill 188 -Arbitration Reform for State Employees Act of 2024
January 17, 2024
Unfavorable

Chair Guzzone, Vice Chair Rosapepe and members of the committee, thank you for the opportunity to offer testimony on Senate Bill 188.

On behalf of the University System of Maryland (USM) we respectively oppose SB 188. 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. Such a significant overhaul of the process as contemplated by SB 188 is unnecessary, nor should it: 1) replace the judgment of the Governor and legislature with that of a single third-party arbitrator; 2) undermine the process of collective bargaining; or 3) create a conflict of interest on the part of the arbitrator while disregarding the authority of the newly established Public Employee Relations Board (PERB).

Putting the ultimate decision-making authority into the hands of a single third party drastically impacts the State's authority to manage its priorities and is inconsistent with the process of collective bargaining. 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. Public employees and their exclusive representatives may make unrealistic demands during negotiations believing that arbitrators, who are often oblivious to fiscal pressures and may not even reside in the state, will be more amenable than their employers. This will inevitably lead to exorbitant costs that will have a harmful impact on the State's budget.

Senate Bill 188 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:

- Senate Bill 188 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, SB 188 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.

- Senate Bill 188 creates a conflict of interest, real or perceived, on the part of the arbitrator. The arbitrator would function first as a mediator or "aid" to the parties throughout the course of bargaining, then as a mediator to "attempt to resolve the impasse," and finally 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.

- Under current law, the newly established PERB has the statutory authority to resolve complaints of unfair labor practices. The bill would infringe on the rights of the Board by authorizing an arbitrator to resolve certain disputes during the bargaining process through issuance of advisory opinions which may be inconsistent with prior Board precedent.

- 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 a economist.

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
STATE UNIVERSITY


FROSTBURG
STATE UNIVERSITY


Salisbury
UNIVERSITY


TOWSON
UNIVERSITY


UNIVERSITY OF
BALTIMORE


UNIVERSITY of MARYLAND
BALTIMORE


UMBC


UNIVERSITY SYSTEM
of MARYLAND


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

SMCM SB118_HB144 INFO Testimony 1.pdf
Uploaded by: Brandon Engle
Position: INFO

ST MARY'S COLLEGE of MARYLAND
The National Public Honors College

OFFICE OF THE PRESIDENT
47645 College Drive
St. Mary's City, MD 20686

www.smcm.edu
TEL: 240-895-4410
FAX: 240-895-4462

Senate Bill 188 / House Bill 114
Arbitration Reform for State Employees Act of 2024
Senate Budget & Taxation Committee / House Appropriations Committee
January 17th, 2024 / January 30th, 2024

Letter of Information

Chair Guzzone, Chair Beidle, and members of the Budget & Taxation Committee and Finance Committee, thank you for the opportunity to share St. Mary's College of Maryland's analysis of Senate Bill 188.

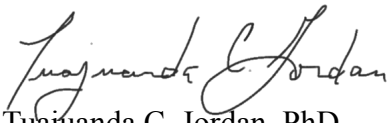
In general, this bill alters the collective bargaining process for State employees by requiring the selection of a neutral arbitrator to oversee all aspects of collective bargaining, establishes an arbitration process in the event of impasse, and requires that the annual budget bill contain the appropriations necessary to implement all terms and conditions of employment. In our assessment, this bill would heavily condense the existing negotiation process, expand collective bargaining to include fringe, health, and pension benefits beyond existing state benefit programs for employees, and provide an arbitrator with broad decision-making authority over the College. Additionally, this bill would result in significantly increased operational complexities and financial cost to the College.

Currently, the collective bargaining process requires considerable participation by nearly half of our human resources office staff, as well as managers of several essential operational departments. Condensing the negotiation process to three months – from July 1 to September 30 of each year – would impede these employees from performing their normal duties during the critical transition to our annual fall semester. In order to simultaneously accommodate the condensed schedule and ensure a smooth transition for first-year and returning students, the College would be required to retain outside legal counsel, resulting in additional costs of approximately $156,000 per year. Further, the cost of including an arbitrator throughout the negotiation process is estimated at $50,000 or more per year – an expense that both the College and bargaining units would share.

Beyond altering the negotiation time frame, Senate Bill 188 would expand collective bargaining to include fringe, health, and pension benefits. As a state institution, St. Mary's College participates in all applicable state benefit programs; requiring the College to separately negotiate over benefits for which it has no authority would result in significant operational and financial

costs to the College. Finally, granting an arbitrator final decision-making power during the collective bargaining process would supersede the St. Mary's College of Maryland Board of Trustees' existing statutory authority over governance and management of the College - including the Board's authority over personnel and financial matters.

St. Mary's College of Maryland has traditionally enjoyed a productive and collaborative relationship with our employees and collective bargaining units. Further, we have always found common ground and reached mutual agreement without the use of an arbitrator. Thank you for your consideration and continued support of St. Mary's College of Maryland.



Tuajuanda C. Jordan, PhD
President

DBM Info

Uploaded by: Department Budget and Management
Position: INFO

WES MOORE
Governor

ARUNA MILLER
Lieutenant Governor

Maryland
DEPARTMENT OF BUDGET AND MANAGEMENT

HELENE GRADY
Secretary

MARC L. NICOLE
Deputy Secretary

SENATE BILL 188 Arbitration Reform for State Employees of 2024

STATEMENT OF INFORMATION

DATE: January 16, 2024

COMMITTEE: Senate Budget and Taxation

SUMMARY OF BILL: Senate Bill 188 includes a broad binding arbitration provision that will require binding arbitration to take place whenever there is a dispute between the State and an exclusive bargaining representative regarding the terms and applications of a negotiated agreement. Under current law, if an impasse is reached during negotiations, either party may request a neutral fact finder whose recommendations are advisory.

EXPLANATION: Giving a private arbitrator the power to mandate funding in the proposed budget represents a significant policy shift toward granting a private, unelected official the power to prioritize among public policy needs. When deciding on the State's budget each year, the Governor and the General Assembly must balance a wide range of public policy needs within a set of resource constraints. Since employee compensation is a significant portion of the State's non-mandated spending, this bill will allow a private arbitrator to have significant influence over the State's fiscal and policy priorities. The bill provides for no method of appeal or review of the private arbitrator's decision. This legislation also strikes language requiring collective bargaining negotiations to conclude before January 1st for any item requiring an appropriation of fund for the next fiscal year, which would be operational problematic. While DBM supports the rights of employees to collectively bargain, DBM respectfully suggests that it is in the best interest of the State to retain control and discretion over budget priorities and to maintain clearly enumerated agency rights.

For additional information, contact Laura Vykol-Gray at
(410) 260-6371 or laura.vykol@maryland.gov