



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.



UNIVERSITY SYSTEM
of MARYLAND

