



SENATE FINANCE COMMITTEE
Senate Bill 298
State Personnel - Collective Bargaining - Supervisory and Managerial Employees
February 16, 2023
Unfavorable

Chair Griffith, Vice Chair Klausmeier and members of the committee, thank you for the opportunity to offer testimony on Senate Bill 298.

Senate Bill 298 would have a significant negative impact on the USM and its constituent institutions. The proposed amendments would materially and substantially expand collective bargaining rights to additional groups of employees by removing certain exclusions from existing law in contravention of long-standing labor relations principles.

Currently, the collective bargaining statute codified in the State Personnel and Pensions Article (SPP), § 3-101 et seq., specifically restricts collective bargaining rights from extending to ***“any supervisory, managerial, or confidential employee of a State institution of higher education...”*** (SPP § 3-102(b)(12)). These exclusions have been in place for over 20 years, since the establishment of public sector collective bargaining rights in the State of Maryland.

Granting collective bargaining rights to supervisory and managerial employees through this bill would defy many years of well-established prior precedent. The National Labor Relations Act (NLRA or the Act), passed in 1935, is the federal law which governs collective bargaining in the federal government and the private sector. While the Act itself is inapplicable to State and local government, the State Higher Education Labor Relations Board (the Board), the body responsible for overseeing our collective bargaining law, looks to the NLRA for guidance when interpreting Maryland’s law. The NLRA has not included supervisory or managerial employees as those to whom collective bargaining rights extend. The Act specifically excludes supervisors and persons in managerial positions from the definition of “employee” (29 U.S.C. § 151, et seq.), and the National Labor Relations Board (NLRB) as a matter of policy further excludes from bargaining units those employees considered to be professional employees and those who act in a confidential capacity.

Excluding supervisory and managerial employees from collective bargaining is well-supported and well-reasoned. Extending collective bargaining rights to supervisory and managerial employees creates an inherent conflict of interest. As the Board of Regents (BOR) has defined these terms, a supervisory employee is an employee who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. A managerial employee is an employee who is engaged predominantly in executive and management functions; or charged with the responsibility of directing the effectuation of management policies and

practices. This is consistent with and similar to how the NLRA/NLRB defines these terms. These types of employees have the authority to speak and act for management and are expected to advance management’s priorities. They must be able to execute and exercise independent judgment about management policies. They are also responsible for holding their employees accountable and making personnel decisions. As such, they are classified as an extension of management and a part of the employer’s bargaining power, not the employees. The priorities of an exclusive representative are often not in alignment, and even sometimes incompatible, with those of management. A supervisory or managerial employee may face pressure from an exclusive representative or from their bargaining unit peers in the exercise of the supervisor’s or manager’s required employment responsibilities. Creating such an inherent conflict of interest through expansion of collective bargaining rights to these groups would hinder the effective and efficient operations of the institutions.

For all of the foregoing reasons, the USM respectfully advocates for an unfavorable report on Senate Bill 298.



About the University System of Maryland

The University System of Maryland (USM)—one system made up of twelve institutions, three regional centers, and a central office—awards eight out of every ten bachelor’s degrees in the State of Maryland. The USM is governed by a Board of Regents, comprised of twenty-one members from diverse professional and personal backgrounds. The chancellor, Dr. Jay Perman, oversees and manages the operations of USM. However, each constituent institution is run by its own president who has authority over that university. 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 Historically Black Colleges and Universities, comprehensive institutions, research universities, and the country’s largest public online institution.

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