A Union of Professionals

American Federation
of Teachers, AFL-CIO

AFT Teachers
AFT PSRP
AFT Higher Education
AFT Public Employees
AFT Nurses and Health
Professionals

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March 9, 2023

Assemblyperson Selena Torres, Chair
Members, Assembly Government Affairs Committee
Nevada State Legislature
Carson City, Nevada

RE: Testimony in Support of AB 224

Dear Chair Torres and Members of the Committee:

My name is Michael Piccinelli and I am an attorney in the American Federation of Teacher's Legal Department. The American Federation of Teachers (AFT) is the national affiliate of the Nevada Faculty Alliance and the American Association of University Professors. We support AB 224 and I am submitting the following written testimony to supplement my oral statement to the committee. The American Federation of Teachers, an affiliate of the AFL-CIO, was founded in 1916 and today represents 1.7 million members in more than 3,000 local affiliates nationwide. Five divisions within the AFT represent the broad spectrum of the AFT's membership: pre-K through 12th-grade teachers; paraprofessionals and other school-related personnel; higher education faculty and professional staff; federal, state and local government employees; and nurses and other healthcare professionals. In addition, the AFT represents approximately 80,000 early childhood educators and nearly 250,000 retiree members. The AFT has longed championed collective bargaining and has been at the forefront of expanding labor rights for public employees.

The proposed legislation, AB 224, is similar to other state collective bargaining laws; it grants similar rights to public employees generally and higher education/faculty employees specifically. The bill's standards and mechanisms to recognize bargaining units and an exclusive representative, settle disputes between higher education employees and employers, and ensure an orderly process to arrive at a collective bargaining agreement are all similar to those in other states the AFT has affiliates. The following compares a few aspects of the proposed bill with other state laws and the National Labor Relations Act, the federal law that governs private sector labor relations.

<u>Right to Organize</u>
At least some public employees, be they employees of school districts, local governments, or state governments, enjoy the right to organize and collectively bargain in 34 states and the District of Columbia. Faculty of higher education institutions enjoy some collective bargaining rights in 30 states and the District of Columbia. Twenty-five of those states statutorily require employers bargain with all of their faculty at community colleges and four-year institutions, and provide protections for faculty to act together to address wages, hours, and terms and conditions of employment. This bill would align Nevada with these states.

Such protections give faculty and staff the ability to advocate for students at the bargaining table and beyond without fear of retaliation by the employer. This gives them a protected voice on key issues, from pushing back against skyrocketing tuition and fees, to fighting for better pandemic safety on campus, to taking bold steps to cut the overwhelming burden of student debt.

Weingarten Rights for Public Employees

Like this legislation, at least 19 states have recognized a public sector right to representation at investigatory interviews by the employer where discipline may occur, including private sector right to work states such as Arizona and Florida. State courts and administrative adjudicative agencies have found this right by analogizing Section 7 of the National Labor Relations Act (NLRA) to a state public employment statute, have found the right in the text of a public employment state statute without reference to Section 7 of the NLRA, or have found the right in the public policy rationale for public employee collective bargaining in a state. These rights help keep administrators accountable.

Bargaining Unit Determination

Most AFT affiliates are organized in units using some form of the community of interest standard similar to the National Labor Relations Act and this legislation. Some state statutes add additional criteria to guide administrative agency determinations of proper bargaining units. While community of interest is usually the most critical criteria, additional criteria include whether a proposed unit has bargaining history or prior employee organization; would disrupt the efficiency of agency operations; would excessively fragment the agency workforce; represents the desires of employees seeking representation; or whether employees meet the definition of a supervisor or confidential employee (often defined in another part of the statute). The standard in this bill provides both flexibility and stability for new units and collective bargaining relationships in the state.

Collective Bargaining Process

All state collective bargaining laws provide a process for how bargaining impasses between the employee organization and the employer are resolved. Although rare, some negotiations in the public sector go through this process. The impasse procedure process usually includes some sort of mediation if the parties initially cannot agree to terms of a collective bargaining agreement followed by either the employees having the ability to strike (in 11 states for some public employees) and/or a neutral third party being utilized to help the parties come to a settlement.

In at least 9 states, impasse for some classes of public employees, after mediation, can be resolved, like this legislation, through interest arbitration. Binding interest arbitration is a fair and equitable method to resolve contract disputes involving employers and the employee representatives, particularly in places where employee's right to strike or take other job actions is banned. Under interest arbitration, both parties agree to a neutral third party that conducts a hearing in which both sides present their positions and whose decisions are final and binding on both sides. However, state legislatures, especially on economic matters with state employees, are often free to implement a different settlement than the arbitrator, as is the case with this proposed legislation.

Through the collective bargaining process employee organizations have helped colleges spend more wisely, whether working with management to save on healthcare benefits or helping prevent the administrator from paying high costs lavishing money on outside contractors. Numerous studies have concluded that collective bargaining agreements improve effectiveness and efficiency. Moreover, employee organizations don't just negotiate pay and benefits. They believe in the promise and purpose of our public higher education system—to help students thrive and succeed. Employee organizations can serve as quality watchdogs and social justice advocates, such as fighting program cuts and raising awareness to address student poverty and food insecurity

Individual Disputes under a Collective Bargaining Agreement

Most public employee bargaining laws require a grievance procedure culminating in binding grievance arbitration to enforce the terms of collective bargaining agreements. If not in the statute itself, the inclusion of such a process is a mandatory subject of negotiation between the employer and the employee organization, and practically all collective bargaining agreements resulting from these negotiations include this process. Otherwise, contractual disputes fall on either employers or the courts to decide; neither of these options is desirable. It is unreasonable to expect employers to be able to impartially settle disagreements with their employees. Relying on the courts to decide grievances creates a lengthy and expensive dispute-resolution process. A grievance process ending in binding arbitration is a tried and true method of settling disputes over the application and interpretation of a collective bargaining agreement.