

SLIDE 1: INTRO

- Thank You for allowing me time to present on behalf of AFSCME and Walters Workers United, and on behalf of AFSCME president Lee Saunders and the 1.4 million members of AFSCME that stand in solidarity with Walter Workers United.
- There's one major problem here: Walters management won't accept the employees' choice to have a union, refuses to respond, and is working actively to defeat its employees' desire to be represented by their union and retaliate against them.
- Walters management has not come out and said that, instead they state only that there must be an NLRB conducted election.
- Today I hope to explain how Walters management's claim to want an NLRB election is a ruse designed to bust the union and defeat to its employees' rights;
 - Walters is not within the NLRB's jurisdiction
 - NLRB would not hold an election for WWU;
- Fortunately there is an established, clear and easy solution to this: Voluntary Recognition including a Private Election Agreement that many non-profits and cultural institutions have agreed to, going back more than fifty years.
- But we are here to ask that if Walters' policy continues to be to ignore its employee' union, the Mayor and City Council should adopt an ordinance granting these employees the same basic rights as others, which is within your authority to do because it is consistent with state law.

SLIDE 2: NLRA Coverage / Jurisdiction of NLRB

- The NLRA applies only to private industry, the NLRB does not have jurisdiction over public entities or public corporations. That's found in Title 29 of the USC section 152(2).
- In *NLRB v. Hawkins County Utility District* the US Supreme Court adopted a test to determine if an entity, including a corporation, is exempt as a public entity:
- The test asks: Is the entity:
 - (1) created directly by the state, so as to constitute departments or administrative arms of the government,
 - OR
 - (2) administered by individuals who are responsible to public officials or to the general electorate?

(*NLRB v. Natural Gas Utility District of Hawkins County*, 402 US 600 (1971).)

If the answer to either question is “yes”, then the NLRB lacks jurisdiction.

Slide 3: Walters' Status and Hawkins County Test

- Walters was established and created by City Ordinance and then confirming state legislation in 1933. The state law gives authority to the Walters Board and to the Mayor and City Council of Baltimore, to fulfill a “municipal purpose”, the Walters is the City’s “agent” under that law.
- The City significant authority of Walters and elected officials hold positions on its board by statute...
- In Walter’s Words: “The Walters’ is a “public institution” and “its art is owned by the public,” as is its property, meaning owned by the city. That’s from the Walter’s own website.
- The City’s Law Department agrees Walters is “public corporation.” Its tax exempt status is based on it being a governmental instrumentality, as noted by the MD Court of Appeal.
- ***It is beyond clear that the first Hawkins County question establishes Walters as exempt from the NLRA as a public entity.***
- “Prong 2” also satisfied, but further analysis unnecessary if the first part is satisfied.

SLIDE 4: Why Does Walters' Management Insist on an NLRB Election?

- Walters management says its open to an NLRB election.
- It's not about elections, we also want an election: it's about union busting.
- The question of the NLRB's jurisdiction presents an issue in any NLRB proceeding that can be appealed at every level, from the regional field offices, to the full NLRB, to the Circuit Court and then Supreme Court if it takes up the case.
- The demand for an NLRB election is a trap to drag the process out for a decade or more, I can tell you from experience and that at the end of the day—or decade--will result in a finding that the NLRB doesn't even have jurisdiction, leaving us back at square 1.
- There's also another reason.
- Overwhelming number of Walters employees have formed a cohesive union of their choice. This includes gallery monitors which the NLRB would consider to be "plant guards".
- The NLRA allows guards and non-guards to bargain together in a single unit—which is common--but requires the consent of the employer. But because of the way the NLRA is drafted, through an anachronistic quirk--the NLRB cannot **certify** the results of an election for a unit that includes guards and nonguards or a union that has members of both types of members.....and the NLRB will not process an election petition for a unit that it cannot certify.
- That means the Board could not even hold an election for Walters Workers United even if it did have jurisdiction, which of course it does not.
- So you see, Walter's management's stated public position is just a trap.
- How do we know this? Because Walters management could seek an election with the NLRB because the union has demanded to be recognized by.
- Walters management could petition the NLRB for an election due to the existence of a "*question concerning representation.*" Called an RM petition
- But Walters management hasn't done that. Why? Because it knows there is no "*question*"—the union has overwhelming support.

SLIDE 5: Clear Path Forward:

Voluntary recognition or private election agreements.

- Voluntary recognition agreements are common and typical. They can provide for an election conducted by a neutral third party.
- NLRB.gov: “In addition to NLRB-conducted elections, federal law provides employees a second path to choose a representative: They may persuade an employer to voluntarily recognize a union after showing majority support by signed authorization cards or other means.”
- They are particularly common in public and non-profit sector.
- Although statistics are hard to come by, between 2007-2011 at least 1,333 voluntary recognitions were reported to the NLRB in the private sector, that is an undercount because many are not reported (*Lamons Gasket Co.*, 357 NLRB 739 (2011).)
- We do Not Object to a Secret Ballot Election– We want one!
- There are many ways to have an election without the Board, through a private election agreement, a common provision in a voluntary recognition agreement under which the employer agrees to recognize based on the results of the private election, conducted by
 - Federal Mediation and Conciliation Service (FMCS)
 - American Arbitration Association
 - Baltimore Labor Commissioner
 - Other officials, elected or otherwise
 - Anyone else the parties agree to hold a secret ballot election to determine majority support.

SLIDE 6: Voluntary Recognition and non-profits, public and cultural institutions

- Even the City of Baltimore has authorized voluntary / card check recognition, specifically as to home care providers.
- Executive order providing for card check recognition for these workers adopted.

SLIDE 7: There are countless examples of Voluntary Recognition and private elections in non-profits, public and cultural institutions

- Non-Profits often extend voluntary recognition or accept private election agreements, here are just a few examples, there are of course too many to name.
 - In light of the public good and the public missions non-profits serve;
 - Quasi-public status;
 - To focus on their charitable/beneficial mission without distraction;
 - Because of limits on use of resources for improper purposes/against donor's wishes;
 - Because public-facing institutions do not wish to have a drawn out or protracted process or public disputes
 - But most of all because they realize the benefits a cooperative labor-management relationship can bring to the organization, its mission and service to the public. You will hear from Walters workers about how this can happen.

SLIDE 8: Case Study: Open Society Institute-Baltimore

- Case in Point: The Open Society Institute-Baltimore:
 - Agreed to a AAA-supervised election for OSI-Baltimore, in 2016.
 - Employees elected CWA as their union, and negotiated a contract.
 - Walters Board Chairperson, James H. DeGraffenreidt, Jr., is an advisory board of OSI-Baltimore
 - Alicia Wilson, also sits on both the Walters and OSI-Baltimore boards.
 - Judge Andre Davis, the former city solicitor of Baltimore is a Walters board member and was an OSI-Baltimore Board Member at the time.
- This arrangement was been extremely beneficial to OSI.
- Why would voluntary recognition be appropriate and proper for OSI-Baltimore but not Walters?

SLIDE 9: The Mayor and City Council Have the Authority to Solve This Problem

- If Walters will not agree to resolve this through a consensual agreement, we ask the Mayor and City Council to exercise their clear authority to give Walters employees the same rights as all other workers.

SLIDE 10: The Mayor and City Council Have the Authority to Resolve This Problem

- The Baltimore Charter provides the Council can adopt laws that do not conflict with state law, including in the field of employment and labor relations. It has done so in the past, for example minimum wages, which the Maryland courts found to be proper.
- An ordinance providing for the right to bargain for Walters workers would not conflict with any state law;
- It would not conflict with the 1933 law establishing the Walters, which grants significant reserved power to the Mayor and City Council

SLIDE 12: CONCLUSION

- It is be consistent with state policy and the policy of the City of Baltimore, the County of Baltimore.
- It is the official policy of the state that workers have the right to organize and designate a union of their choosing to represent them. Md. Lab. & Empl. Code § 4-302; Its also federal policy, and even set forth in the universal declaration of human rights.
- But Walters Workers are being denied this fundamental right and even punished for exercising it.
- The City can correct this if Walters' management does not move swiftly to enter into an agreement for a private election to confirm its employees' choice to be represented by Walters Workers United.
- On behalf of WWU, Council 67, AFSCME and its 1.4 million members I thank you for holding this hearing, and I hope afterwards you will be moved to take action solve this easily solved problem.