

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *

SECRETARIES AND ASSISTANTS *

ASSOCIATION OF ANNE ARUNDEL *

COUNTY, *

Employee Organization, *

and * PSLRB Case No. N 2019-04

BOARD OF EDUCATION OF *

ANNE ARUNDEL COUNTY, *

Public School Employer. *

* * * * *

**DECISION AND ORDER ON REQUEST
TO RESOLVE DISPUTE AS TO NEGOTIABILITY**

I. DECISION

a. INTRODUCTION AND PROCEDURAL BACKGROUND

On March 15, 2019, the Secretaries and Assistants Association of Anne Arundel County (“SAAAAC”) filed with the Public School Labor Relations Board (“PSLRB”) Form PSLRB-04 (“Request to Resolve a Dispute as to Negotiability”). Form PSLRB-04 reflects the authority granted to the PSLRB by the Education Article of the Annotated Code of Maryland (“Education Article”) to “decide any controversy or dispute arising under Title 6, Subtitle 4 or 5 of this Article.” Md. Code Ann., Educ. Art. § 2-205(e)(4)(i). Upon receipt of this request, PSLRB Executive Director Erica Snipes captioned this matter PSLRB N 2019-04.

On Form PSLRB-04, under Section IV (“TOPICS IN DISPUTE”), SAAAAC indicates that the topic in dispute is “[w]ork hours of Teaching Assistants/Permanent Substitutes.” SAAAAC asserts that this topic is a mandatory topic of negotiation.

The parties involved in PSLRB N 2019-04 are SAAAAC and the Board of Education of Anne Arundel County (“County Board”).

On May 22, 2019, in accordance with Section 6-510(c)(5)(iii) of the Education Article, Executive Director Snipes sent a letter to the parties requesting that, within 7 days after receipt of her letter, they submit written briefs in support of their respective positions.

On May 28, 2019, SAAAAC submitted its written brief.

The County Board did not submit a timely brief.

b. FACTUAL BACKGROUND

Since February 2019, SAAAAC has put forth in negotiations a proposal to amend the collective negotiations agreement between it and the County Board to increase the number of daily hours worked by teachers' assistants and permanent substitutes. Throughout these negotiations, the County Board maintained that there were insufficient funds in the budget to fund SAAAAC's request to increase the number of hours; however, on May 7, 2019, the County Board took the position that, consistent with WCESP v. Board of Education of Washington County, PSLRB Case No. N 2019-03, it was not obligated to negotiate work hours.

c. POSITIONS OF THE PARTIES

SAAAAC argues that "'hours' is a mandatory subject of bargaining per the plain, unambiguous language of §6-510(c)(1) of the Education Article" and that "[c]onsistent with the principles of statutory interpretation..., the analysis in this case should begin and end with the plain language of §6-510(c)(1) of the Education Article." SAAAAC further asserts that, "[t]o permit local boards of education to interpret the *WCESP* decision as precluding negotiations over work hours as an illegal topic of bargaining would violate the most basic principles of statutory interpretation in that the inclusion of the word 'hours' in 6-510(c)(1) would be rendered meaningless; and therefore, such an interpretation would not withstand judicial scrutiny."

SAAAAC also contends that "any reliance on the statutory provisions referenced in the *WCESP* decision would be in error." Specifically, SAAAAC argues that "both §§ 4-103(a) and 6-201(f) by their plain wording are general statutes that do not address hours or negotiations, but rather discuss a local board's authority to appoint newly hired employees and set initial compensation."

Finally, SAAAAC relies on the bargaining history of the parties to support its claim that hours worked is a mandatory topic of negotiations, asserting that "[t]he parties, since the commencement of bargaining, negotiated work hours of employees designated as part of the bargaining unit."

d. ANALYSIS

The Education Article establishes constraints within which the PSLRB must exercise its authority to render decisions on negotiability disputes. Sections 6-510(c)(1) and (3) state in relevant part:

(c)(1) On request a public school employer or at least two of its designated representatives shall meet and negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on all matters that relate to: (i) Salaries, wages, hours, and other working conditions, including the discipline and discharge of an employee for just cause... [Topics in this category are referred to as mandatory topics of negotiation.]

(3) A public school employer may not negotiate the school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law. [Topics in this category are referred to as illegal topics of negotiation.]

Md. Code Ann., Educ. § 6-510(c)(1), (3). Read together, these Sections require that, upon request by an exclusive negotiating agent, a public school employer is required to negotiate “on all matters that relate to... hours,” except where such negotiations are “precluded by applicable statutory law.”

In WCESP, *supra*, which we incorporate herein, we concluded in part that the number of hours worked by hourly public school employees is an illegal topic of negotiation. In making this conclusion, our analysis focused on Section 6-510(c)(3) of the Education Article, which, as indicated above, makes illegal those topics that are “precluded by applicable statutory law.” After reviewing the Education Article, and the authority granted to county boards of education as set forth therein, we determined that Sections 4-103(a) and 6-201(f) precluded the Washington County Board of Education from negotiating the number of hours worked by hourly employees.¹

Because the instant dispute involves the same topic that we reviewed in WCESP, i.e., whether the number of hours worked by hourly employees is a mandatory topic of negotiation, we, too, conclude here that the number of hours worked by the teachers assistants and permanent substitutes in question is also a non-negotiable topic.²

That being said, a central provision of the Education Article (which was not addressed by the majority in WCESP) requires the PSLRB to develop a balancing test when resolving disputes as to negotiability. More specifically, § 6-510(c)(5)(vi)(2) provides, “To resolve disputes under this section, the... [PSLRB] shall develop a balancing test to determine whether the impact of the matter on the school system as a whole outweighs the direct impact on the teachers or employees.” Based on the plain language of this provision, it is clear that the legislature did not intend to limit development of the balancing test to only particular matters or topics – but, instead, intended for the PSLRB to develop a balancing test to resolve all disputes under this Section. Therefore, even where a negotiability dispute involves “matters that relate to... salaries,

¹ More specifically, we explained that these Sections provide county boards with “the express authority to set compensation for public school employees...,” and that, because hourly employees “are distinguishable from other salaried employees in that their salary and compensation is inextricably linked to the number of hours that they work each day...,” “negotiation over the number of hours worked would interfere with the... statutory authority [of county boards] under Sections 4-103(a) and 6-201(f) to set compensation.”

² For this reason, we need not consider the additional arguments raised by SAAAAC.

wages, hours, and other working conditions, including the discipline and discharge of an employee for just cause,” we are nevertheless required to develop a balancing test to determine whether such matters are mandatory, permissive, or illegal in nature. Accordingly, we do not agree with SAAAAC’s position that our analysis must begin and end with the plain language of §6-510(c)(1) of the Education Article.

The development and application of balancing tests to resolve negotiability disputes is not a new concept under Maryland law. Before the enactment of the Fairness in Negotiations Act in 2010, decisions with regard to negotiability fell within the jurisdiction of the Maryland State Board of Education³, which utilized a balancing test approach to resolve negotiability disputes – an approach that has been reviewed and upheld by the Court of Appeals of Maryland, as described below. In applying the balancing approach, the State Board interpreted the term “applicable statutory law” to encompass Sections 4-101 and 4-108 of the Education Article, which establish the local boards’ authority to determine and control matters of educational policy. Board of Education of Howard County v. Howard County Education Association, MSBE Op. No. 09-08 (2009)

In Montgomery County Education Association, Inc. v. Board of Education of Montgomery County, 311 Md. 303 (Md. 1987), the Court of Appeals of Maryland upheld a State Board decision finding that job reclassification was an illegal topic of negotiation. In doing so, the Court analyzed the State Board’s decision, which used a balancing approach to weigh the Board of Education of Montgomery County’s right to determine elementary and secondary educational policies⁴ against its obligation to negotiate under Section 6-408(b)(1) of the Education Article. The Court explained,

In requiring collective bargaining with public school employees, we do not believe that the General Assembly intended to authorize local boards thus to evade their statutory duty to carry out the State Board’s policies....

As many courts have observed, however, no clear line distinguishes matters of educational policy from matters subject to collective bargaining... For example, matters that fall directly under § 6-408(b)(1) such as salary levels and hours of work also implicate educational policy considerations: higher salaries for some teachers may be necessary to attract or retain qualified personnel, and longer hours may enhance educational achievement... In fact, virtually every managerial decision in some way relates to ‘salaries, wages, hours, and other working conditions,’ and is

³ We note that “[a] prior order, action, or opinion issued by the State Board... may be considered as precedent... but it is not binding on the” PSLRB. Md. Code Ann., Educ. § 6-807(d).

⁴ More specifically, the Court looked to several provisions of the Education Article that charged local boards of education with “substantial responsibility in matters that affect the county,” i.e., Section 4-101(a) (vesting local boards of education with control over educational matters that affect the county), Section 4-107(1) (requiring local boards of education to carry out the applicable provisions of the Education Article and the State Board’s bylaws, rules, and regulations), Section 4-107(2) (requiring local boards of education to maintain a reasonably uniform system of public schools), Section 4-107(3) (requiring local boards of education to determine educational policies of the county school system subject to the provisions of the Education Article and to the State Board’s Bylaws, rules, and regulations), and Section 4-204 (requiring the county superintendent to see that policies of the State Board and the local board are carried out).

therefore arguably negotiable. At the same time, virtually every such decision also involves educational policy considerations and is therefore arguably nonnegotiable. Consequently, to determine whether a particular matter falls within § 6-408(b)(1), the State Board has balanced the interests of employees against the interests of the school system as a whole....

Id. at 316. (Citations omitted). With regard to the specific topic of reclassification, the Court stated,

The salary impact of reclassification decisions appears to relate directly to ‘salaries’ or ‘wages.’ Moreover, individual reclassifications may have a particularly severe impact on affected employees...

Although the impact of reclassification decisions upon individual employees may be significant, there was record support for the... conclusion that submitting such decisions to collective bargaining would have a serious impact on the County Board’s ability to operate its school system.

Id. at 323-323.

We adopt the reasoning of the Court of Appeals in Montgomery County Education Association, and find that, to determine whether a particular matter falls within § 6-510(c)(1), we must “balance... the interests of employees against the interests of the school system as a whole...” In doing so, we look to the statutory authority granted to the State and County Boards.

The Education Article establishes the powers of the State Board of Education with regard to educational policy. More specifically, the Education Article states that the State Board “has authority over:... [t]he general care and supervision of public elementary and secondary education,” Md. Code Ann., Educ. § 2-106(2), and that, “[a]cting under the bylaws, rules, and regulations of the State Board, the State Superintendent is responsible for the administration of the Department,” Md. Code Ann., Educ. § 2-103(a). The Education Article also requires the State Board to “[d]etermine the elementary and secondary educational policies of this State,” Md. Code Ann., Educ. § 2-205(b)(1), and states that, “[t]hrough the State Superintendent, the State Board shall exercise general control and supervision over the public schools and educational interests of this State,” Md. Code Ann., Educ. § 2-205(g)(2).

The Education Article also vests county boards of education with control over educational matters, Md. Code Ann., Educ. § 4-101(A), and further requires that each county board,

- (1) To the best of its ability carry out the applicable provisions of this article and the bylaws, rules, regulations, and policies of the State Board;
- (2) Maintain throughout its county a reasonably uniform system of public schools that is designed to provide quality education and equal education opportunity for all

children; [and] (3) ... determine, with the advice of the county superintendent, the educational policies of the county school system....

Md. Code Ann., Educ. § 4-108.⁵

Finally, the Education Article requires county boards of education to “prepare an annual budget... to include... instructional salaries, which means those activities which deal directly with teaching students, including 1. Teachers; 2. Aides;... [and] (v) Other instructional costs.” Md. Code Ann., Educ. §5-101(a)(1), (b)(2)(iii).

In our view, changes to “hours” for hourly employees is a matter of job reclassification, which the Court has defined as, “... the process of reassessing a classified employee’s duties and responsibilities in order to assign a new classification or status to the employee’s position... Reclassification is a continuous process, which sometimes requires administrators to move employees from one classification to another while a collective bargaining agreement is in effect. This movement may result in an increase or a reduction of the affected employee’s salary.” *Id.* at 320-321.

Following Montgomery County Education Association, the State Board continued to rely on the balancing approach in resolving negotiability disputes on job reclassifications. *See New Board of School Commissioners v. BTU*, MSBE Opin. No. 99-53 (1999), *aff’d* New Board of School Commissioners v. BTU, No. 938, Sept. Term 2000 (October 1, 2001) (relying on Montgomery County Education Association, and finding that job reclassification is an illegal subject of bargaining); Baltimore Teacher’s Union v. Baltimore City Board of School Commissioners, Opin. No. 03-34 (2003) (relying on Montgomery County Education Association and New Board of School Commissioners, and finding that job reclassification of an academic coach position from an 11-month to a 10-month position is an illegal topic of negotiation). Notably, the State Board held that reclassifications were not subject to negotiation because the matter is within the appointment authority vested in local boards under §6-201, and therefore precluded by statute. It is that appointment authority we cited in WCESP as our basis for determining that the Washington County Board of Education was precluded from negotiating the number of hours worked by hourly employees

We recognize that negotiation over the number of hours worked by hourly employees has an impact on their compensation; however, requiring negotiation over this topic would directly interfere with ability of both the State Board and County Board to control educational policy. Such negotiations would also interfere with the County Board’s obligation to maintain a reasonably uniform system of public schools, and would impose an insurmountable burden on the County Board’s ability to prepare its budget and operate the school system. For these reasons, we find that negotiation over the number of hours worked by hourly employees has a greater direct impact on the school system as a whole than on teachers or employees, and, as a result, that the number of hours worked by hourly employees is an illegal topic of negotiation.

⁵ It is further mandated that, “[a]s the executive officer of the county board, the county superintendent shall see that the following are carried out: (1) the laws relating to the schools.” Md. Code Ann., Educ. § 4-204.

In closing, while we conclude that the number of hours worked by hourly employees is an illegal topic of negotiation, this decision is limited to negotiations over a public school employer's ability to reclassify employees, as described herein. It is not our intent here, nor was it our intent in WCESP, to negate the ability of employee organizations and public school employers to negotiate over compensation, including negotiations over topics such as salary and wages (including the hourly rate of employees) – those remain mandatory topics of negotiation.

e. CONCLUSION

Based on the foregoing, the PSLRB finds that the number of hours worked by hourly public school employees is an illegal topic of negotiation.

II. ORDER

Having considered SAAAAC's Request to Resolve a Dispute as to Negotiability with regard to the number of hours worked by public school employees in PSLRB N 2019-04, the PSLRB finds that the topic at issue is an illegal topic of negotiation.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



Elizabeth Morgan, Chair



Ronald S. Boozer, Member



R. Allan Gorsuch, Member



Philip S. Kauffman, Member

Annapolis, MD

July 12, 2019

APPEAL RIGHTS

Any party aggrieved by this action of the PSLRB may seek judicial review in accordance with Title 10, Subtitle 2 of the State Government Article, Annotated Code of Maryland, Sec. 10-222 (Administrative Procedure Act—Contested Cases) and Maryland Rules CIR CT Rule 7-201 *et seq.* (Judicial Review of Administrative Agency Decisions).