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.	*	

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DISSENTING OPINION OF MEMBER CHANIN

I. INTRODUCTION AND BACKGROUND

On March 15, 2019, the Secretaries and Assistants Association of Anne Arundel County ("SAAAAC") filed with the Public School Labor Relations Board ("PSLRB") a Request to Resolve a Dispute as to Negotiability ("Negotiability Request") under Education Article, Title 6, Subtitle 5, Section 6(c)(5)(i). The dispute in this case is with the Board of Education of Anne Arundel County ("Anne Arundel County case") and the topic at issue is whether the hours worked by hourly employees is a mandatory or an illegal topic for negotiations. In the Decision issued July 12, the PSLRB ruled that this is an illegal topic for negotiations. I disagree with this ruling, and have filed this Dissenting Opinion.

In order to put the Anne Arundel County case in context, it is appropriate to begin with the Decision that the PSLRB issued on May 3, 2019, in PSLRB Case No. N 2019-03 (Washington County Education Support Personnel, Inc. and Board of Education of Washington County) ("Washington County case"). The Washington County case—like the instant case—involved a Negotiability Request.[1]

In the Washington County Case, the Washington County Educational Support Personnel, Inc. ("WCESP") asked the PSLRB to rule that several topics, including the number of hours

[1] Unless otherwise indicated, this and all other all statutory citations in this Opinion are to the Fairness in Negotiations Act, Md. Code Ann., Educ. Art., Title 6, Subtitles 4 and 5.

worked by newly hired hourly employees, were mandatory topics for negotiation. The PSLRB rejected this request, and in its May 3 Decision held that the hours worked by hourly employees was an illegal topic for negotiation.

I considered this ruling by the PSLRB to be flawed in several respects: the PSLRB did not limit its ruling to the topic presented by the WCESP, which involved only newly hired employees, but improperly expanded the topic to include the number of hours worked by both newly hired and currently employed hourly employees; the PSLRB wrongly ruled that this expanded topic was an illegal topic for negotiation; and the reasoning on which the PSLRB based its ruling could be used to undermine negotiations in public education generally, and in effect render the 2010 Fairness in Negotiations Act ("FINA") a nullity. Accordingly, I filed a separate opinion in the Washington County Case dissenting from this aspect of the PSLRB's Decision. Because the PSLRB's Decision in the Anne Arundel County Case is derived in part from its Decision in the Washington County Case, portions of my Dissenting Opinion in the latter case are incorporated into this Opinion.

On May 9, 2019, the WCESP filed with the PSLRB a Motion for Reconsideration of its ruling regarding the negotiability of the number of hours worked in its Decision in the Washington County Case. In the memorandum the WCESP filed in support of its Motion, the WCESP reiterated several of the arguments that were made in my Dissenting Opinion, and contended that the PSLRB's Decision was flawed in certain other respects as well.[2] I voted to grant the Motion for Reconsideration because I believed that further discussion of the PSLRB's Decision, particularly in light of the flaws noted in my Dissenting Opinion and the memorandum filed by the WCESP in support of its Motion, might persuade the PSLRB to reverse or at least modify its decision.

A majority of the PSLRB members disagreed, and voted to deny the Motion to Reconsider. On May 30, the PSLRB sent a letter to the Parties stating, without any explanation, that "the majority of the PSLRB hereby denies the WCESP's Request."

The failure of the PSLRB to avail itself of this opportunity to revisit its Decision in the Washington County Case is both regrettable and surprising. Surprising because on May 30, when the denial letter was sent, the PSLRB was in the process of preparing its Decision in the Anne Arundel County case, which as subsequently indicated, took a position that was in a major respect squarely at odds with a position taken by the PSLRB in its Decision in the Washington County case.

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[2] Because neither the FINA nor its accompanying regulations expressly authorize the PSLRB to accept a Motion to Reconsider, PSLRB members who were in the majority in the Washington County Case raised the threshold question of whether the PSLRB had the authority to accept such a Motion. In light of the decision of the Maryland Court of Special Appeals in Cinque, et. al. v. Montgomery County Planning, 173 MD App. 349 (2007), the answer is yes. In Cinque, the court recognized the inherent right of a quasi-judicial state agency (such as the PSLRB) to reconsider prior decisions, "if there is a legitimate basis" for doing so, including, inter alia, "mistake" or a failure to "conform to relevant law." In its supporting memorandum, the WCESP alleged that there were factual and legal "mistakes" in the PSLRB's Decision, and that it "did not conform to relevant law."

On June 7, 2019, the WCESP appealed the PSLRB's Decision in the Washington County case to the Washington County Circuit Court, and the case is now pending.

II. LEGAL FRAMEWORK

This case arises under Section 6-510(c)(5)(i), which provides:

> If a public school employer and an employee organization dispute whether a proposed topic for negotiation is a mandatory, a permissive, or an illegal topic of bargaining, either party may submit a request for a decision in writing to the Board [PSLRB] for final resolution of the dispute.

In making this determination, the PSLRB begins with Section 6-510(c)(1), which states that a school district, if requested to do so by an employee organization that is the recognized representative for a unit of its employees, must negotiate with that employee organization "on all matters that relate to salaries, wages, hours, and others working conditions, including the discipline and discharge of an employee for just cause." If this Section stood alone, Negotiability Requests made to the PSLRB could be relatively easily resolved. When it enacted the FINA in 2010, the Maryland Legislature did not coin this formulation of the scope of negotiations, but rather used terminology that has been used for many years in both public and private labor relations statutes that have been enacted by the federal government, other states, and Maryland itself. The terms "salaries", "wages", and "hours" are self-explanatory, and there is an abundance of legislative history, judicial and agency precedent, and legal commentary fleshing out the phrase "working conditions."

But Section 6-510(c)(1) does <u>not</u> stand alone, and the mandatory scope of negotiations set forth in that Section is expressly limited by Section 6-510(c)(3), which prohibits negotiation regarding certain topics that may be encompassed in Section 6-510(c)(1), and makes them "illegal" topics for negotiation. Section 6-510(c)(3) provides:

> 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.

The references to "school calendar" and "maximum number of students assigned to a class" are not problematic. The controversy in Negotiability Requests generally centers on whether a topic that would otherwise be a mandatory topic for negotiation under Section 6-510(c)(1) is made an illegal topic by Section 6-510(c)(3) because it is "precluded by applicable statutory law."

Two other provisions of FINA relate to a determination of negotiability. One of those provisions is Section 6-510(c)(2). This Section discusses "permissive" topics for negotiation, which are topics that are not mandatory or illegal, and may be negotiated by a school district and an employee organization if they "mutually agree" to do so.

The other provision of FINA that relates to a determination of negotiability is Section 6-510(c)(5)(vi)(2), which provides:

> To resolve disputes under this section, the Board 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 employees.

III. ANALYSIS

On July 12, 2019, the PSLRB issued its Decision in the Anne Arundel County case. At the outset of the Decision are three brief, non-controversial, sections, titled "INTRODUCTION AND PROCEDURAL BACKGROUND," "FACTUAL BACKGROUND," and "POSITIONS OF THE PARTIES." The next section, which begins at the bottom of page 2, is titled "ANALYSIS." The PSLRB's analysis is divided into two parts.

A. Part One of the PSLRB Analysis

The first part of the PSLRB Analysis is a verbatim repeat of Section d (ii), "Number of Hours, Days, and Months Worked" of the PSLRB's Decision in the Washington County case. This part of the PSLRB's Analysis consists of less than one page in length. This brevity is because after briefly establishing a statutory context, the PSLRB "incorporates herein" Section d (ii) from its Decision in the Washington County case, which is approximately three pages in length.

Rather than repeating the response to Section d (ii) that is contained in my Dissenting Opinion in the Washington County case, I have chosen to follow the PSLRB's lead. Attached to this Opinion is the response to Section d (ii) which appears on pages seven through nine of my Dissenting Opinion in the Washington County case.

Before turning to the second part of the PSLRB's Analysis, I offer one further observation regarding part one. The following paragraph appears on page nine of the Attachment to this Opinion:

> Equally unfounded in the argument quoted above is the statement that the hourly employees "covered under the Negotiated Agreement are distinguishable from other salaried employees in that their compensation is inextricably linked to the number of hours that they work each day." More accurately, the compensation of these hourly employees is linked both to the number of hours that they work and to the amount that they are paid per hour. In neither of these respects are they materially different from "other salaried employees," whose compensation is inextricably linked to the days and months that they work and the amount that the negotiated salary schedule indicates they will be paid for each day or month. (Emphasis added)

The validity of the point made by the underscored sentence in the above quoted paragraph is buttressed by the underscored sentence in the following paragraph, which appears on page seven of the PSLRB's Decision in the instant case:

> 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. (Emphasis added)

B. Part Two of the PSLRB Analysis

Part two of the PSLRB's Analysis deals with Section 6-510(c)(5)(ii)(2), which provides for the use of a "balancing test" in resolving negotiability requests. The PSLRB cannot in this part of its Analysis use the "incorporated herein" approach that it used in part one to avoid repeating the analysis of the same point that it used in its Decision in the Washington County case. This is because in regard to the balancing test, the position taken by the PSLRB in the Anne Arundel County case Decision is diametrically opposed to the position taken in its Decision in the Washington County case.

Part two of the PSLRB's Analysis begins with the statement that "a central provision of the Education Article (which was not addressed by the majority in [the] WCESP [case] requires the PSLRB to develop a balancing test when resolving disputes as to negotiability." The PSLRB continues as follows:

> 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, 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. PSLRB Decision at pp. 3-4 (Emphasis added)

The forgoing position is contrary not only to the position taken by the PSLRB in the Washington County case, but in all previous Negotiability Request cases, prior to its Decision in the Washington County case. The most immediate casualty of this reversal of the PSLRB's position regarding the application of the balancing test, however, will be the Washington County case, which is now on appeal to the Washington County Circuit Court. Query how the PSLRB's Decision in the Washington County case can be defended in light of its Decision in the Anne Arundel County case, inasmuch as the PSLRB did not in the Washington County case apply a balancing test, and stated in that Decision that "[t]he PSLRB has held that where, as here, a

dispute can be resolved on statutory grounds, application of the balancing test to determine negotiability is unnecessary." PSLRB Decision in Washington County case, at footnote 8.

The PSLRB's Decision in the instant case will surely be appealed, and the Anne Arundel County Court will be asked to rule on the validity of a July 12 PSLRB Decision while the Washington County Circuit Court is considering the validity of a May 3 PSLRB Decision that takes a directly opposite position vis-à-vis the use of a balancing text and reliance on statutory language in dealing with Negotiability Requests.

The courts cannot look to the PSLRB for guidance in dealing with this conundrum. Indeed, the PSLRB's Decision in the Anne Arundel County case does not even acknowledge the conflict between that decision and the PSLRB's Decision in the Washington County case, much less attempt to reconcile that conflict. Moreover, the PSLRB's Decisions in both of these cases is likewise silent with regard to the sources that might produce some insight into the matter—specifically, the legislative history of the 2003 public school labor relations act, which, after lengthy and often heated debate, became the first Maryland statute to include the phrase "precluded by applicable statutory law," or the legislative history of the 2010 FINA, which is the first Maryland statute to expressly refer to the use of a "balancing test" in resolving disputes as to whether a topic is a mandatory or an illegal topic for negotiation.

In attempting to support its position with regard to the use of a "balancing test" in resolving all disputes as to whether a topic is a mandatory or an illegal topic for negotiation, and that "the number of hours worked by hourly employees is an illegal topic of negotiations," PSLRB Decision at p. 7, the PSLRB places its reliance on two cases—the 1987 opinion by the Maryland Court of Appeals in Montgomery County Education Association, Inc. v. Board of Education of Montgomery County, 311 Md. 303 (Md., 1987), and the 2009 opinion by the Maryland State Board of Education in Board of Education of Howard County v. Howard County Education Association, MSBE Op. No. 09-08 (2009). The PSLRB's reliance on these two cases is misplaced.

We need not for present purposes express our agreement or disagreement with the opinion by the Maryland Court of Appeals in Montgomery County Education Association, because that case preceded the 2003 public school labor relations statute providing that an otherwise mandatory topic for negotiation is converted to an illegal topic only if it is "precluded by applicable statutory law." (Emphasis added)

As far as the State Board's opinion in the Howard County case is concerned, the negotiability of the number of hours worked by hourly employees was not a topic of dispute. The issue in the Howard County case was whether low level discipline of an employee (such as warnings and reprimands) was a mandatory or an illegal topic for negotiation. The State Board's conclusion that it is an illegal topic has no direct relevance to the negotiability vel non of the number of hours worked by hourly employees.

What is relevant in the Howard County case, however, is the articulation by the State Board of four rules that it believes should be followed in determining whether and under what circumstances a balancing text should be used to determine whether a topic for negotiation is a

mandatory, a permissive or an illegal topic for negotiation: Although a "prior" opinion issued by the State Board ...may be considered as precedent...but is not binding on the PSLRB, §6-807(d), I will, for purposes of this Opinion, use the State Board's interpretation and application of the phrase "precluded by applicable statutory law" in Section 6-510(c)(3). This should not be construed to mean that I consider the State Board's interpretation and application to be the most appropriate interpretation and application of the phrase "precluded by applicable statutory law." But that is not a question that needs to be addressed at this time. I have relied on the Howard County case in order to demonstrate that the PSLRB's Decision is wrong even under the authority that has been relied on by the PSLRB itself.

In the Howard County case, the State Board articulates four rules that it believes should be followed in determining whether and under what circumstances a balancing test should be used to determine whether a topic for negotiation is a mandatory, a permissive, or an illegal topic for negotiation:

> First a matter is illegal if it is class size, schedule, or if there is a specific statute, excluding §4-101 and 4-108, addressing the matter at issue. The proponent must show, by a preponderance of the evidence, that a topic falls into one of those categories. If it does not, the topic is arguably permissive subject to mutual agreement to bargain over it. No balancing test will be applied.
>
> Second, a matter is mandatory if it relates directly to salary, wages, hours. The proponent of the proposition must show, by a preponderance of the evidence, that a topic falls into one of these categories. If it does not, it is arguably a permissive topic for bargaining subject, of course, to mutual agreement to bargain over it. No balancing test will be applied.
>
> Third, any other matter, including an educational policy matter, is a legal topic if the parties mutually agree that it is a permissive topic of bargaining. If the parties do not agree, the matter is final and closed. There is, by law, no opportunity to go to impasse and, we conclude, there is no opportunity to request a declaratory ruling from this Board because the Board cannot direct the parties to "agree."
>
> Fourth, there will be other topics, however, that the Teachers' Union believes fall under the mandatory "other working conditions" topic (like the discipline issue here), but the local board believes are illegal because they are under the educational policy umbrella (like the discipline issue here). When we are faced with such a dispute, we will employ a balancing test because, no matter how we look at it, any topic in education could fall easily into those two categories. We must have some way to make distinctions. Therefore we will balance the "intimate and direct affects" of the issue on the work and welfare of the teachers against the extent to which negotiating on the matter *significantly* interferes with the "intrinsic essential" management prerogatives governing the

operation of the school system.

Although my focus will be on the fourth rule articulated by the State Board which deals with the use of the balancing test, the underscored language in the first and second rules—i.e., "No balancing test will be applied"—should not be overlooked. The position taken by the State Board in this regard is, of course, directly contrary to the following statement that appears on p. 3 of the PSLRB's Anne Arundel County case Decision:

> 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 dispositions under this Section. PSLRB Decision at p. 3.

The PSLRB cites no authority for this statement, and since the State Board disagrees, the PSLRB appears to stand alone in this regard.

Assuming that the negotiability of the number of hours that hourly employees work creates a dispute that falls under the umbrella of the fourth rule articulated by the State Board in the Howard County case, it then becomes necessary to balance "the 'intimate and direct effects' of the issue on the work and welfare of the teachers [i.e., non-certificated hourly employees in this case] against the extent to which negotiating on the matter significantly interferes with 'intrinsic essential' management prerogatives governing the operation of the school system."

Beginning on the employee side of the scale, the number of hours worked would be reflected in the wages that the employees receive, and, accordingly, if as a result of the negotiations there is an increase in the number of hours worked, this would in turn increase their wages. Because it is reasonable to assume that many of the employees affected are on the lower end of the wage scale, this would, in the words of the State Board, "have an 'intimate and direct affect [ ]'" on the "welfare of the" employees.

It is against this impact on the affected employees that the PSLRB states "we must 'balance…the interests of the school system as a whole'," quoting from the Montgomery County Education Association case and "[i]n doing so, we look to the statutory authority granted to the State and County Boards." PSLRB Decision at p. 5. Although the statutory balancing test refers to "the impact of the matter on the school system" (with no mention of the State Board) the PSLRB then proceeds to cite, without specificity as to the nature of the alleged "impact" that might result from negotiations, a string of statutes that set forth the basic responsibilities that are given to the State and County boards (and that undoubtedly are comparable to those given to any governmental agency with regard to its particular area of operation), such as "[t]he general care and supervision of public elementary and secondary education," "to the best of [a county board's] ability carry out the applicable provisions of this article and the bylaws rules, regulations, and policies of the State Board"; "Maintain throughout its county a reasonably uniform system of public schools…"; "prepare an annual budget…to include…instructional salaries," etc.

It is perhaps possible that certain topics for negotiation might impact in some way on one

or more of the foregoing responsibilities, but in this case there is no need to speculate as to which of these responsibilities the Anne Arundel County Board believes would be impacted by negotiations regarding the number of hours worked. The Anne Arundel County School District has by its own actions clearly indicated the reason why it seeks to avoid negotiations regarding the number of hours worked: it is because such negotiations might (but would not necessarily) require the expenditure of funds. As the PSLRB notes in Section I.b. on page two of its Decision:

> 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. (Emphasis added)

It is difficult to take seriously the PSLRB's suggestion that the potential financial impact that might result from negotiating the number of hours worked, as the State Board put it in the Howard County case, "significantly interferes with 'intrinsic, essential' management prerogatives governing the operation of the school system." This is particularly true when, as here, the PSLRB has made available an alternate route to the same end by expressly stating that "the hourly rate of employees" is a mandatory topic for negotiation. PSLRB Decision, at p. 7.

IV. CONCLUSION

In sum, the immediate consequence of the PSLRB's Decision in the Anne Arundel County case is that a proposal by an employee organization that, if implemented, would require a school district to expend more funds is, for that reason, an illegal topic for negotiation. And, that being so, the long range consequence is that the PSLRB's Decision could undermine the purpose and intent of the FINA, and in effect render the FINA a nullity.

Robert H. Chanin

Robert H. Chanin, Member
Date: July 11, 2019

ATTACHMENT

EXCERPT FROM OPINION OF MEMBER CHANIN DISSENTING IN PART AND CONCURRING IN PART IN PSLRB CASE NO. N 2019-03 (WASHINGTON COUNTY EDUCATIONAL SUPPORT PERSONNEL, INC. V. WASHINGTON COUNTY PUBLIC SCHOOLS)

NEGOTIABILITY OF HOURS WORKED
(FROM PAGES 7 – 9 IN THE DISSENTING & CONCURRING OPINION)

** ** ** ** ** ** **

We are left then with the question of whether the topic of hours worked is, as the WCESP contends, a mandatory topic of negotiation. Because "hours" are expressly listed in Section 6-510(c)(1) as a "mandatory" topic of negotiation, the number of hours that the employees represented by the WCESP work can be an "illegal" topic only if such negotiation is "precluded by applicable statutory law" under Section 6-510(c)(3).

As noted previously, see p.6, supra, it is important to focus on the Legislature's use of the qualifying term "statutory" before the term "law" because it reflects the legislative judgement that a ruling by a state agency, such as the Maryland State Board of Education, or even a court opinion, will not suffice. It may be for this reason that the PSLRB does not follow the lead of the WSCD and rely on the 1987 decision by the Maryland Court of Appeals in Montgomery County Educators Association, Inc. v. Board of Education of Montgomery County or the 1999 decision by the Maryland State Board of Education in New Board of School Commissioners of Baltimore City v. Baltimore Teachers' Union. The PSLRB searches instead for "statutory law", and it cites in this regard Section 4-103(a) and Section 6-201(f) of the Education Article.[3]

In order to determine the possible preclusionary effect of these two statutes, they must be viewed in context. Section 4-103 is captioned "Appointment and salaries of principals, teachers, and personnel." Section 4-103 (a) is captioned "Appointments by County Board", and provides in relevant part:

> On the written recommendation of the county superintendent and subject to the provisions of this article, each county board shall:
>
> 1. Appoint all principals, teachers, and other certificated and noncertificated personnel;
> 2. Set their salaries.

Section 6-201 is captioned "Appointment of employees by county board." Section 6-201(f) is captioned "Qualifications, tenure, and compensation of appointees", and provides:

> Subject to the provisions of this article, the qualifications, tenure, and compensation of each appointee[4] shall be determined by the county board.

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[3] The failure to deal in this Opinion with the two cases cited in text is not meant to suggest that the WCSD's argument regarding these cases has merit. The cases are not dealt with because Section 6-510(c)(3) specifically refers to "statutory law."

[4] Pursuant to Section 6-201(c)(1), the term "appointee" includes "clerical and other nonprofessional personnel."

Despite the fact that neither Section 4-103(a) nor Section 6-201(f) makes any reference to hours worked or to hourly as opposed to salaried employees, the PSLRB attempts to use these factors as its bridge to relevancy. In its Decision, the PSLRB devotes only a single paragraph (on page 9) to explaining why these two statutes make hours worked an illegal topic of negotiation:

> Because Sections 4-103(a) and 6-201(f) grant the County Board the express authority to set compensation for public school employees, the County Board is precluded from negotiating over the number of hours worked. This is due to the fact that the employees covered under the Negotiated Agreement are distinguishable from other salaried employees in that their compensation is inextricably linked to the number of the hours that they work each day. Because the compensation of these hourly employees depends directly on the number of hours worked, negotiation over the number of hours worked would interfere with the County Board's statutory authority under Sections 4-103(a) and 6-201(f) to set compensation. As a result, we conclude that negotiation over the number of hours worked by hourly employees is illegal, and reject the WCESP's argument that hours worked is a "working condition," and therefore, a mandatory topic of negotiation.

The first point to note in responding to the PSLRB's argument is that Sections 4-103(a) and 6-201(f) both deal with the appointment of employees to County Board positions. In the terminology of this case, this means that the authority that these statutes grant to a County Board relates only to newly hired employees, and the PSLRB's assertion in the argument quoted above that these statutory sections "grant the County Board the express authority to set compensation for public school employees" is therefore incorrect. Indeed, if this assertion were to be taken at face value, it would logically follow that these Sections also make the salaries, wages, and other forms of compensation paid to "public school employees" illegal topics of negotiation, which would in effect render FINA a virtual nullity.

Equally unfounded in the argument quoted above is the statement that the hourly employees "covered under the Negotiated Agreement are distinguishable from other salaried employees in that their compensation is inextricably linked to the number of hours that they work each day." More accurately, the compensation of these hourly employees is linked both to the number of hours that they work and to the amount that they are paid per hour. In neither of these respects are they materially different from "other salaried employees," whose compensation is inextricably linked to the days and months that they work and the amount that the negotiated salary schedule indicates they will be paid for each day or month.

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