

**Maryland Association of Boards of Education
Comments to the
Public School Labor Relations Board
July 14, 2016**

The Maryland Association of Boards of Education (MABE), representing all of the State's twenty-four local boards of education, appreciates this opportunity to respond to the request of the Public School Labor Relations Board (PSLRB) for comments on the issues raised in legislation proposed by the PSLRB in the 2016 legislative session, House Bill 145.

The Maryland Association of Boards of Education (MABE) opposed House Bill 145 (2016) and House Bill 475 (2013), which included the proposals to make the final contract renegotiation process a subject for collective bargaining; and the proposal to establish Anne Arundel County as the venue for judicial proceedings involving PSLRB.

The Fairness in Negotiations Act enacted in 2010 included several major, and even nationally unprecedented, reforms in public school labor relations. The Act abolished Maryland's system of resolving contract disputes through an impasse negotiation overseen by the State Superintendent of Schools; and abolished the State Board of Education's authority to resolve scope of bargaining disputes as to whether a specific proposal is a permissible, mandatory or illegal subject for bargaining. In both instances, these responsibilities were shifted to the PSLRB. For local boards of education, the passage of the 2010 legislation represented a major shift in bargaining power from local boards and superintendents to employee organizations and the PSLRB.

Final Renegotiations

One provision of the law enacted in 2010 stands out as ensuring that local boards of education retain the ability to make the final determination of employee contracts in cases when the local government fails to fully fund the negotiated agreement (Md. Code Ann., Ed. Art. §6-408.1 and §6-511). Under current law, "If a fiscal authority does not approve enough funds to implement the negotiated agreement, the public school employer shall renegotiate the funds allocated for these purposes by the fiscal authority with the employee organization before the public school employer makes a final determination *in accordance with a timetable and procedure established by the Board.*" (*emphasis added*)

House Bill 145 proposed to substantively amend and thereby weaken this "keystone" provision of the law, by opening the door to employee associations demanding the development of an alternative renegotiation process, through local negotiations subject to the review of the PSLRB.

MABE's fundamental objection to this provision of House Bill 145 is that such locally negotiated processes may not preserve the role of the local board of education as clearly established in current law. Local boards advocated strenuously in 2010 for the "final determination" provision because it protects the local board's governance role. Such locally negotiated agreements could weaken the assurance of finality in each of the 24 local school systems' contract negotiations with multiple unions – finality which is critical in order to inform final action on the annual budget.

Finality is paramount in the context of resolving the contract and school system budget prior to the new fiscal year, which is followed only weeks later by the new school year. The timely resolution of cases coming before the PSLRB is essential given the impact such decisions have on the fiscal relationship between the local government and school system. During deliberations on the Fairness in Negotiations Act, the office of the Attorney General clarified the meaning of the "final determination" provision:

[T]he phrase "before the public school employer makes a final determination" has the same meaning that it has under current law; that is, under that circumstance the school board would be required to renegotiate with the employee organization before a final determination, but that the authority to make a final determination rests with the school board. It is further my view that under the statutory language and case law, if there is an impasse, the final determination authority still rests with the school board" (Letter to Delegate John A. Olszewski, Jr. from Bonnie A. Kirkland, Assistant Atty. Gen. (March 29, 2010)).

The negotiations of local renegotiation procedures which would be authorized by House Bill 145 would become a new source of complaints to the PSLRB and allow the PSLRB to engage in binding arbitration of these disputes. This outcome is antipodal to the intent of the Fairness in Negotiations Act.

MABE opposed House Bill 145 primarily because it would usher in a new contentious issue for bargaining in each of Maryland's 24 school systems. School boards would be pressured to concede to an alternative renegotiation process that does not preserve this "final determination" authority. But MABE's opposition is not only concerned with preserving the local board's authority to resolve the contract aligned with budget realities. To be clear, allowing locally negotiated processes would lead to reopening the contract negotiations very late in the process, and place already resolved educational positions and programs at risk. The delay caused by a new renegotiation process could lead to uncertainty as to whether there will be sufficient funding to properly staff programs and classroom instruction. Therefore, MABE opposes the renegotiation provisions of House Bill 145 because they would extend, not expedite, the dispute resolution process.

Again, the current law dictates that it is the PSLRB's responsibility to establish a timetable and procedures for renegotiations pertaining to certificated and noncertificated employees (Md. Code Ann., Ed. Art. §6-408.1 and §6-511). These steps should be taken first, through regulations, well before any substantial amendments to the law are enacted.

Balancing Test

The Fairness in Negotiations Act enacted in 2010 included another key provision, and mandated responsibility of the PSLRB, which has never been fulfilled. MABE urges the PSLRB to develop and routinely utilize a “balancing test” in resolving disputes. Six years have passed since the Fairness in Negotiations Act passed, and the PSLRB has failed to carry out its legal obligation to develop such a test. The failure of the PSLRB to do so arises, in part, from a misinterpretation of the statute articulated in decisions of the PSLRB.

The law enacted in 2010 clearly dictates that regarding certificated employees: “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 teachers or employees” (Md. Code Ann., Ed. Art. §6-408(c)(5)(vi)(2)); and regarding noncertificated employees: “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” (Md. Code Ann., Ed. Art. §6-510(c)(5)(vi)(2)).

The sections referred to in these provisions are, in fact, sections 6-408 and 6-510; not subsection (5) which would limit the application of the balancing test to the resolution of disputes concerning the status of a topic for negotiation as either permissive or mandatory. Unfortunately, in a recent decision the PSLRB expressed the view, in a footnote, that “The balancing test is only relevant to the PSLRB’s analysis if there is any question as to whether a proposal is a mandatory or permissive subject of negotiation. Because there is no question as to whether the proposal is a mandatory subject of negotiation, the directive to develop a balancing test is not applicable in this case” (*Harford County Education Assoc., Inc. v. Board of Education of Harford County*, PSLRB Case No. N-2016-01). MABE requests the reconsideration of this limiting characterization of the applicability of a balancing test.

MABE believes the best interests of students would be served if the PSLRB undertook the responsibility to develop a balancing test which would be applied in precisely such cases in which a matter in dispute may be deemed to affect salary or working conditions but is determined to be a subject which has a greater impact upon educational policy or the administration of the school system than it does over salary or working conditions. Developing such a test would empower the PSLRB to exercise its discretion to equitably balance the interests of students and employees.

In addition, MABE encourages the PSLRB to consider prior decisions of the State Board of Education as it develops the balancing test. The law provides this discretionary authority to the PSLRB. “A prior order, action, or opinion issued by the State Board [of Education] before the enactment of this section may be considered as precedent in matters arising after the enactment of this section, but it is not binding on the Board [PSLRB]” (Md. Code Ann., Ed. Art. § 6-807(d)).

Notwithstanding the need to clarify the scope and application of a balancing test, the law remains. The PSLRB is called upon under statute to develop a balancing test; and MABE urges expedited action to do so.

Venue

MABE opposes the proposal in House Bill 145 to establish Anne Arundel County as the sole venue for judicial proceedings and the circuit court cases arising from decisions made by the PSLRB. Shifting the burden to each local school system to remove educators and administrators from their home county to travel to Anne Arundel County rather than local courts would present an unwarranted burden on these professionals and the students they serve relative to burden on the agency officials representing the PSLRB. Furthermore, the attendance at such proceedings would pose an undue financial hardship on certain local boards that would incur hotel and travel costs for witnesses and counsel.

Conclusion

In conclusion, MABE respectfully requests that the PSLRB not pursue the amendments to school system collective bargaining law regarding venue or the renegotiation process as proposed in the previously introduced legislation, House Bill 145 (2016) or House Bill 475 (2013). Instead, MABE reiterates the request that the PSLRB fulfill its statutory charge to adopt a balancing test, and the timeline and procedures pertaining to final renegotiations of contracts.

For more information on this or any other education matter, please contact MABE's Director of Governmental Relations, John R. Woolums, Esq., at jwoolums@mabe.org or 410-841-5414.