

## **MEMBER HARMON, Dissenting**

I dissent from the majority opinion that any substantive aspects of evaluation, including criteria or scores, are a permissive topic for collective bargaining. It is my opinion that all substantive aspects of evaluation are an illegal topic for collective bargaining having been precluded by applicable statutory law, specifically §6-202(c)(3)(ii) and §6-202(c)(6) of the Education Article, *Annotated Code of Maryland*.

I believe that an interpretation that substantive aspects of evaluation are illegal topics for negotiations is abundantly clear from the plain language of the statutes at both §6-202(c)(3)(ii) and §6-202(c)(6) and that it was clear legislative intent to preclude the topic from collective bargaining by these applicable statutes. Therefore, I dissent from the majority's conclusions deriving from the attempt to read harmonizing meaning between §6-408 and §6-202(c)(3)(ii) and §6-202(c)(6) where it does not otherwise exist.

The majority's conclusion that substantive evaluation aspects are permissive topics of negotiations creates an untenable disconnect between the two statutes. Section 6-408(c)(2) defines permissive topics as those that the parties "may negotiate" and as "other matters that are mutually agreed to by the employer and the employee organization." In contrast, §6-202(c)(3)(i) mandates that the parties have collaborative discussion on evaluations; "A county board shall establish performance evaluation criteria . . . that are mutually agreed on by the local school system and the exclusive employee representative." The majority decision creates the paradox of substantive evaluation suddenly being the only permissive topic for negotiations that is also mandated. Lastly, by declaring it a permissive topic, the majority decision misaligns §6-202(c)(6) with §6-408(c)(4). The former, deriving its authority from the exclusion from collective bargaining in §6-202(c)(3)(ii), prohibits any formal impasse proceedings on this topic while the latter imposes the impasse process on this permissive topic, which is mandated in the first place.

Finally, it is my opinion that, as the plain meaning of the law deliberately sets aside substantive evaluation from collective bargaining, specifically prohibiting the topic from being "governed by Subtitles 4 and 5 of this title," this matter amounts solely to an interpretation of the meaning of §6-202 of the Education Article, *Annotated Code of Maryland*. The State Board has rendered a decision on this very subject, MSDE Op. No 11-05 (2011), and I adopt their conclusion.