

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: \*

BALTIMORE CITY BOARD OF \*

SCHOOL COMMISSIONERS, \*

Public School Employer, \*

and \* PSLRB Case No. N 2018-01

BALTIMORE TEACHERS UNION, \*

AMERICAN FEDERATION OF \*

TEACHERS, LOCAL 340, \*

AFL-CIO, \*

Employee Organization. \*

\* \* \* \* \*

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

I. DECISION

a. INTRODUCTION AND PROCEDURAL BACKGROUND

On January 11, 2018, the Baltimore City Board of School Commissioners (“City Board”) filed a “Request to Resolve a Dispute as to Negotiability” (“Form PSLRB-04”), with the Public School Labor Relations Board (“PSLRB”). 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. § 2-205(e)(4)(i). The topic over which the City Board requests resolution is the School Performance Measure (“SPM”), which is a component of the performance evaluation criteria for certificated teachers.

b. FACTUAL BACKGROUND

For the 2015-2016 School Year, calculation of the SPM was mutually agreed on by the City Board and the BTU. Schools were scored based on “how they performed relative to all other schools in their grade band.”

Beginning in 2016, the City Board and the BTU engaged in collective bargaining negotiations for a new collective bargaining agreement for the years 2016-2019. During these negotiations, the parties, pursuant to § 6-510(e), jointly filed with the PSLRB a Request for Determination That An Impasse in Negotiations Has Been Reached limited to the topic of “Compensation - Wage Rates.” The PSLRB declared impasse on June 20, 2017. Subsequently, through mediation, the parties reached an agreement as to this topic leading to ratification of the 2016-2019 collective bargaining agreement. The parties did not engage in negotiations over performance evaluation criteria, including the SPM, for the 2016-2019 School Years, and performance evaluation criteria was not addressed by the PSLRB in the impasse proceedings brought before it.

In the 2016-2017 School Year, the City Board, without agreement from the BTU, unilaterally began to score each school relative to its unique group of four nearest neighbor schools, and no longer calculated the SPM in relation to all other schools in that school’s grade band.

On April 26, 2017, the BTU filed a grievance under the 2016-2019 collective bargaining agreement against the City Board. In its grievance, the BTU asserted, among other things, that the City Board failed to negotiate the change to the SPM in violation of Section 6-202(c)(3)(i) of the Education Article. The BTU sought the following relief: “[t]hat the SPM ranking system using the four nearest neighbor schools not be used in 2016-2017 School Year evaluations and that the [City] Board negotiate with the Baltimore Teachers Union to mutually agree on all components and rankings used in the 2016-2017 annual evaluation.” While still pending, arbitration over this grievance has been postponed.

c. ANALYSIS

Section 6-202(c) of the Education Article provides in relevant part:

...

(2) (i) Subject to subparagraph (iii) of this paragraph, the State Board shall adopt regulations that establish general standards for performance evaluations for certificated teachers and principals that include observations, clear standards, rigor, and claims and evidence of observed instruction.

(ii) The regulations adopted under subparagraph (i) of this paragraph shall include default model performance evaluation criteria.

(iii) Before the proposal of the regulations required under this paragraph, the State Board shall solicit information and recommendations from each local school system and convene a meeting wherein this information and these recommendations are discussed and considered.

(3) Subject to paragraph (6) of this subsection:

(i) A county board shall establish performance evaluation criteria for certificated teachers and principals in the local school system based on the general standards adopted under paragraph (2) of this subsection that are mutually agreed on by the local school system and the exclusive employee representative.

(ii) Nothing in this paragraph shall be construed to require mutual agreement under subparagraph (i) of this paragraph to be governed by Subtitles 4 and 5 of this title.

...

(6) If a local school system and the exclusive employee representative fail to mutually agree under paragraph (3) of this subsection, the default model performance evaluation criteria adopted by the State Board under paragraph (2)(ii) of this subsection shall take effect in the local jurisdiction 6 months following the final adoption of the regulations.

Educ. Art. § 6-202(c). Read together, these Sections provide that local school systems may establish performance evaluation criteria for certificated teachers that are mutually agreed on by the local school system and exclusive employee representative, or, in the absence of such mutual agreement, must utilize the default model performance criteria adopted by the State Board of Education.

Of particular relevance for this case is Section 6-202(c)(3)(ii), which specifically states that the attempt by a local school system and an exclusive employee representative to reach mutual agreement as to performance evaluation criteria for certificated teachers is a *sui generis* process, and the resolution of any controversy or dispute that may arise in this regard – including, *inter alia*, resolution of a dispute as to negotiability – is not “to be governed by Subtitles 4 and 5 of the title.” As indicated at the outset of this Decision, the statutory authority granted to the PSLRB is only to “decide any controversy or dispute arising under” Subtitles 4 and 5 of the Education Article. Accordingly, the PSLRB does not have the jurisdiction to resolve the instant dispute, which arises under Title 6, Subtitle 2, of the Education Article, and the Request to Resolve a Dispute as to Negotiability filed by the City Board is denied.<sup>1</sup>

We note in passing, however, that this denial does not mean that the parties are without recourse in this matter. If the grievance that has been filed by the BTU is resolved in its favor,

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<sup>1</sup> In a 2014 PSLRB case involving the same parties who are involved in this case -- *The Baltimore City Board of School Commissioners v. Baltimore Teachers Union, American Federation of Teachers, Local 340*, PSLRB Case No. N 2015-01 (2014) -- the City Board filed a Request to Resolve a Dispute as to Negotiability contending that teacher evaluation criteria was an illegal subject of negotiations. In rejecting the City Board’s contention in that case, the PSLRB stated that “evaluation criteria that are to be mutually agreed on by the local school system and exclusive representative, pursuant to § 6-202(c)(3)(i), constitute a permissive subject of bargaining....” In making that statement, however, the PSLRB did not treat the 2014 case as arising under Subtitle 4 of the Education Article, but rather used the term “permissive” in a generic sense based upon the express language in Section 6-202(c).

the parties would presumably be required to adhere to the SPM that was in effect during the 2015-2016 School Year. If, on the other hand, the BTU's grievance is denied, and the BTU is unwilling to agree to the changes in the SPM proposed by the City Board, the parties presumably will be required to adhere to the standards for performance evaluations of certificated teachers set forth in the regulations adopted by the State Board of Education.

Member Harmon has filed a Dissenting Opinion in this case. Because that Opinion misstates what the PSLRB has held in this case, we find it necessary to offer the following responsive comments.

Member Harmon states that he "concur[s] with the majority to the extent that performance evaluation is an illegal topic for negotiations," but he cites nothing in the PSLRB's Decision to support his assertion that the PSLRB found "performance evaluation is an illegal topic for negotiations." Nor could he, because the PSLRB has made no such finding. And any such finding would exceed our jurisdiction. The PSLRB is authorized to deal with negotiability disputes that arise under Title 6, Subtitles 4 and 5, of the Education Article, and, as we emphasize in our Decision, the dispute in this case arises under Title 6, Subtitle 2. Indeed, Member Harmon's reliance on Section 6-202(c)(3)(ii) for his assertion that performance evaluation is "an illegal topic for negotiations" is plainly incorrect in light of Section 6-202(3)(c)(i), which expressly provides that a local school system and an employee organization may attempt to "mutually agree[ ]" (i.e., in other words, may negotiate) regarding performance evaluation.

Member Harmon next argues that because performance evaluation is an illegal topic for negotiations (which, as we have shown, is incorrect), the PSLRB acted illegally when it "ordered [the topic] to grievance under a collective bargaining agreement." The PSLRB has issued no such order. Because this dispute did not arise under Title 6, Subtitle 4 or 5, the PSLRB has no authority to order the parties to take any action, much less to file and process a grievance. The only reference made to a grievance in our Decision is to note the undisputed fact that the BTU previously has filed a grievance in this matter, and that this grievance is now pending.

Finally, Member Harmon not only misstates the PSLRB's holding in this case, but he also misstates its 2014 holding in PSLRB Case No. N 2015-01. Contrary to Member Harmon's assertion, the two cases are wholly consistent. In the previous case, as in the instant case, the PSLRB held that it has no jurisdiction to deal with a negotiability dispute arising under Section 6-202(c) of the Education Article. We address this previous case in Footnote 1 of our Decision, and believe that the footnote speaks for itself.

#### d. CONCLUSIONS OF LAW

Pursuant to Section 6-202(c)(3)(ii) of the Education Article, a Request to Resolve a Dispute as to Negotiability involving performance evaluation criteria for certificated teachers may not be filed with the PSLRB.

## II. ORDER

It is hereby ORDERED that the City Board's Request to Resolve a Dispute as to Negotiability is DENIED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



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Elizabeth Morgan, Chair



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Ronald S. Boozer, Member



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Robert Chanin, Member



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John A. Hayden, III, Member

Annapolis, MD

March 5, 2018

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).

**Member Harmon, Dissenting**

I concur with the majority to the extent that performance evaluation is an illegal topic for negotiations as it is precluded by applicable statutory law in Section 6-202 (c) (3) (ii) of the Education Article. I dissent, however, from the majority's decision that this dispute should be remanded to arbitration. A topic that is illegal for bargaining, and therefore non-negotiable, is likewise illegal to be ordered to grievance under a collective bargaining agreement.

Furthermore, I believe that the majority's legal analysis in this matter effectively reverses the majority conclusion that performance evaluation is a permissive topic of bargaining from a prior case decided by this Board, PSLRB Case No. N 2015-01. Additionally, I find the majority's decision in this case to directly conflict with the rationale offered herein for the decision in PSLRB N 2015-01. In their analysis of this decision, the majority concludes that this Board has no authority to decide this case as the underlying dispute arises out of Section 6-202 of the Education Article and not Subtitle 4, which would fall under this Board's purview. Simultaneously, in their footnote in the Analysis on page 3, the majority clarifies that the decision in PSLRB N 2015-01 arose from Section 6 – 202 (c) of the Education Article. In my opinion, these two analyses are irreconcilable.



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**Donald W. Harmon, Member**