

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTERS OF:
THE BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,
Petitioner,

v.
BALTIMORE TEACHERS UNION,
AMERICAN FEDERATION
OF TEACHERS, LOCAL 340,
AFL-CIO,
Respondent,

PSLRB Case No. N 2019-01

AND,

THE BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,
Petitioner,

v.
BALTIMORE TEACHERS UNION,
AMERICAN FEDERATION
OF TEACHERS, LOCAL 340
(PARAPROFESSIONALS AND
SCHOOL RELATED PERSONNEL
CHAPTER), AFL-CIO,
Respondent.

PSLRB Case No. N 2019-02

* * * * *

**DECISION AND ORDER ON REQUESTS
TO RESOLVE DISPUTES AS TO NEGOTIABILITY**

I. DECISION

a. INTRODUCTION AND PROCEDURAL BACKGROUND

i. PSLRB N 2019-01

On December 13, 2018, the Baltimore City Board of School Commissioners (“City Board”) 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 2019-01.

On Form PSLRB-04, under Section IV (“TOPICS IN DISPUTE”), the City Board indicates that:

[t]he topic centers upon whether the... [City Board] is precluded by law from negotiating the school calendar, whether the existing contract language concerning the spring break concerns an illegal subject of collective bargaining, and whether the specific dispute concerning the designation of inclement weather recovery days during spring break and on President’s [*sic*] Day is an appropriate subject of negotiability and arbitration.

The parties involved in PSLRB N 2019-01 are the City Board and the Baltimore Teachers Union, American Federation of Teachers, Local 340, AFL-CIO (“BTU”).¹

On December 20, 2018, in accordance with Section 6-408(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 December 21, 2018, the City Board submitted its written brief.

On December 21, 2018, the BTU requested that the time for filing briefs be extended to January 3, 2019. The PSLRB did not approve the BTU’s request.

On December 27, 2018, the BTU submitted a “Motion to Dismiss the City Board’s Request to Resolve a Dispute as to Negotiability, or, in the alternative, Brief in Support of Five Uninterrupted Days of Spring Break in the Teacher Agreement.”

On January 11, 2019, pursuant to Section 8-806(a)(2)(ii) of the Education Article, the PSLRB extended the deadline set forth in Section 6-408(c)(5)(v)(3), under which it is required to issue a written decision “within 14 days after receiving written briefs,” to February 7, 2019. On February 7, 2019, the PSLRB further extended this deadline to February 15, 2019.

ii. PSLRB N 2019-02

On December 13, 2018, the City Board filed with the PSLRB a second Form PSLRB-04. Upon receipt of this request, Executive Director Snipes captioned this matter PSLRB N 2019-02.

The topics over which the City Board requests resolution in PSLRB N 2019-02 are the same as those over which it requested resolution in PSLRB N 2019-01.

¹ The BTU is the exclusive negotiating representative of a negotiating unit of approximately 5,965 certificated employees of the Baltimore City Public Schools System (“BCPSS”), including teachers.

The parties involved in PSLRB N 2019-02 are the City Board and the Baltimore Teachers Union, American Federation of Teachers, Local 340 (Paraprofessionals and School Related Personnel), AFL-CIO (“PSRP”).²

On December 20, 2018, 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 December 21, 2018, the City Board submitted its written brief.

On December 21, 2018, the PSRP requested that the time for filing briefs be extended to January 3, 2019. The PSLRB did not approve the PSRP’s request.

On December 27, 2018, the BTU submitted a “Motion to Dismiss the City Board’s Request to Resolve a Dispute as to Negotiability, or, in the alternative, Brief in Support of Five Uninterrupted Days of Spring Break and President’s [*sic*] Day in the Paraprofessionals and School Related Personnel Agreement.”

On January 11, 2019, pursuant to Section 8-806(a)(2)(ii) of the Education Article, the PSLRB extended the deadlines set forth in Section 6-510(c)(5)(v)(3), under which it is required to issue a written decision “within 14 days after receiving written briefs,” to February 7, 2019. On February 7, 2019, the PSLRB further extended this deadline to February 15, 2019.

iii. Consolidation of Case Nos. N 2019-01 and -02

Although there are some factual differences between PSLRB Case Nos. N 2019-01 and -02, these differences are relatively minor. Because the facts that are relevant to the disposition of the two cases, the legal issues that they present, and the arguments advanced by the respondents are virtually identical, we have consolidated the two cases for purposes of this decision.

b. FACTUAL BACKGROUND

i. Statutory Landscape and Executive Order 01.01.2016.03

The City Board is required to develop a school calendar that provides for a minimum of 180 instructional days in a school year. Md. Code Ann., Educ. Art. § 7-103(a)(1)(i). Pursuant to Executive Order 01.01.2016.13, the City Board is required to start the school year after Labor Day and end the school year by June 15. The City Board is authorized to extend the length of the school year for up to five school days beyond June 15 without approval from the Maryland State Board of Education (“State Board”). Md. Code Ann., Educ. Art. § 7-103(b)(3). The City Board may also apply to the State Board to shorten the length of the school year, or extend the length of the school year beyond the five-day extension. Md. Code Ann., Educ. Art. § 7-103(b)(1)(i).

² The PSRP is the exclusive negotiating representative of a negotiating unit of approximately 1,496 non-certificated paraprofessionals and school related personnel of the BCPSS.

Presidents' Day is a statutorily mandated "public school holiday." Md. Code Ann., Educ. Art. § 7-103(c)(1)(iv). If the City Board submits a written application to the State Board that describes a demonstrated, but unsuccessful effort by the City Board to comply with the 180 instructional day requirement, the State Board may permit schools to be open on holidays. Md. Code Ann., Educ. Art. § 7-103(b)(1)(iv).

ii. The Parties' Collective Bargaining Agreements

Article 7.1(B) of the collective bargaining agreement between the City Board and the BTU states, "There shall be two (2) breaks during the school year, each of no less than five (5) working days. One break shall be in the month of March or April or both. One break shall be in December."

Article VI.A of the collective bargaining agreement between the City Board and the PSRP states, "Paraprofessionals covered under this Agreement shall work the same calendar as teachers." Article VIII-B, Section A, of this agreement also states, "All employees covered by this Agreement shall be entitled to the following paid holidays:... President's [*sic*] Day (February – 1 day)...."

iii. The 2018-2019 School Calendar and Related Grievances

On May 22, 2018, the City Board approved the calendar for the 2018-2019 School Year, which included Presidents' Day and the first two days of Spring Break (April 15, 2019, and April 16, 2019) as "inclement weather recovery days."

The term "inclement weather recovery days" is not defined by statute, regulation, executive order, or the parties' collective bargaining agreements. Based on the materials provided by the parties, we conclude that inclement weather recovery days are days that schools were originally scheduled to be closed, but that the City Board has converted to instructional days because inclement weather has resulted in school closings which would otherwise result in a failure of the City Board to meet the 180 day instructional requirement.

On June 5, 2018, in response to the City Board's approval of the 2018-2019 school calendar, the BTU filed a step 5 class action grievance request for arbitration, which it amended on August 15, 2018, alleging as follows:

On or about May 23, 2018, the BTU was informed that the [City] Board was considering using April 15, 2019 and April 16, 2019 as Inclement Weather Recovery Days in School Year 2018-2019, thereby causing a violation of Article 7.1B which mandates a five working day break in March or April. Spring break is presently scheduled to take place from either April 15, 2019 or April 16, 2019 to April 22, 2019.³

³ It can only be concluded that, to meet the five day requirement and start on April 16, 2019, spring break would include April 22, 2019.

For relief in this grievance, the BTU seeks the following: “That the [City] Board be ordered to not violate Article 7.1B and ensure that spring break in the 2018-2019 school year consists of no less than a five (5) working day break.”

On June 5, 2018, the PSRP also filed a step 5 class action grievance request for arbitration, which it amended on August 15, 2018, alleging as follows:

On or about May 23, 2018, the BTU was informed that the [City] Board was considering using April 15, 2019 and April 16, 2019 as Inclement Weather Recovery Days in School Year 2018-2019, thereby causing a violation of Article VI.A which for paraprofessionals, mandates the same school calendar as teachers. In the Teacher Agreement, Section 7.1B mandates a five (5) working day break in March or April. Spring break is presently scheduled to take place from either April 15, 2019 or April 16, 2019 to April 22, 2019.⁴ On or about August 8, 2018, the Baltimore City Public Schools published notice that Presidents’ Day (February 18) would be a regular day of school if the district closes for one ‘snow day’ during the 2018-2019 school year, which violates Article VIII-B, Section A.

For relief in this grievance, the PSRP seeks the following: “That the [City] Board be ordered to not violate Article VI.A and ensure that spring break in the 2018-2019 school year consists of no less than a five (5) working day break, and that the Board be ordered not to violate Article VIII-B, Section A and ensure that schools be closed on President’s [*sic*] Day.”

On November 14, 2018, pursuant to Section 7-103(b)(1)(iv) of the Education Article, *supra*, the City Board submitted a request to the State Board seeking to open schools on Presidents’ Day, if needed, due to inclement weather. On December 4, 2018, the State Board granted the request.

Hearings on the above grievances were consolidated, and scheduled for December 6, 2018, and December 7, 2018. Arbitrator Homer C. La Rue was selected to preside over both grievances.

On December 6, 2018, at the scheduled arbitration hearing, both the BTU and the PSRP proffered their positions before Arbitrator La Rue. At the hearing, the City Board requested dismissal of the grievances arguing that the issues raised by the BTU and the PSRP involve a dispute with regard to the school calendar, which is an illegal topic of negotiation, and that the dispute is therefore not subject to arbitration.

After hearing the arguments of the parties, Arbitrator La Rue ordered the City Board to file an expedited Request to Resolve a Dispute as to Negotiability with the PSLRB concerning inclement weather recovery days.

c. POSITIONS OF THE PARTIES

⁴ See Footnote 3, *supra*.

i. The City Board's Position

The City Board asserts that the scheduling of inclement weather recovery days is an illegal topic of negotiation, and, therefore, not subject to collective negotiations or arbitration.

In support of this position, the City Board cites Sections 6-408(c)(3) and 6-510(c)(3) of the Education Article, arguing that the “the plain language” of these Sections makes negotiation over the school calendar, including inclement weather recovery days, an illegal topic of negotiation.

In further support of this position, the City Board cites the Maryland Court of Appeals decision, Montgomery County Education Association v. Board of Education of Montgomery County, 311 Md. 303 (1987) (“MCEA”). The City Board contends that, in this decision, the Court of Appeals “held... that the determination of the school calendar was not a negotiable topic.”

In addition, the City Board argues that the State Board “has also held that setting the school calendar is within the local... [b]oard’s prerogative and is not negotiable,” citing Dorchester Educators, et al. v. Dorchester County Board of Education, MSBE Op. No. 03-35 (2003) (“Dorchester”).

The City Board also relies on the State Board’s decision in New Board of School Commissioners of Baltimore City v. Baltimore Teachers Union, MSBE Op. No. 99-53 (1999) (“New Board”), asserting that the State Board, relying on MCEA, found that “the beginning and end date of the school calendar” is an illegal topic of negotiation.

ii. The BTU’s and the PSRP’s Positions

While the BTU and the PSRP filed separate written briefs, accompanied by motions to dismiss, their positions with regard to each of the negotiability disputes are nearly identical.

The BTU and the PSRP do not contest the City Board’s argument that the school calendar is an illegal topic of negotiation; in fact, they concede that “[t]he school calendar... is an illegal subject of bargaining... [and] a matter of educational policy that is exclusively under the control” of the State Board and local boards of education.

Instead, the BTU and the PSRP argue that the contractual provisions in dispute with regard to the underlying grievances “do not concern... illegal subject[s] of bargaining because they concern the duration and existence of days off [i.e., Presidents’ Day and spring break], and do not concern any union control over or involvement in the scheduling or setting of the school calendar.”

The BTU and PSRP further argue that “[t]ime off from work (spring break and President’s [*sic*] Day in this proceeding) is the quintessential working condition” within the meaning of Sections 6-408(c)(1)(i) and 6-510(c)(1)(i) of the Education Article, and that “the ability to bargain over the length of breaks is, and has been, an important part of collective

bargaining.” In support of this position, the BTU and the PSRP cite the Maryland Court of Appeals decision, Atkinson v. Anne Arundel County, 236 Md. App. 139 (2018) (“Atkinson”), for the proposition that “[t]he term working conditions ‘clearly’ includes such subjects as ‘days off from work, whether [they are] sick days, holidays, personal days, or vacation days.’”

In addition, the BTU and the PSRP assert that the Maryland Court of Appeals “is quite clear about what ‘determining the school calendar’ entails,” defining it as follows:

The school calendar sets the beginning and end of the school year. In addition, the calendar determines the days during the school year on which the schools are open for instructional purposes and for teacher ‘duty days.’ Conversely, the calendar determines the days during the school year on which the schools are closed for holidays and teacher ‘professional days.’

MCEA at 305. The BTU and the PSRP argue that, using this definition, “the control over the school calendar enjoyed by local boards concerns the actual scheduling of particular days. It does not... extend to more general principles such as the existence of days off or the number of days off.”

In addition to the above, the BTU and the PSRP make several other arguments. First, the BTU and the PSRP contend that the City Board’s requests to resolve disputes as to negotiability “must be denied because it has admitted that it is obligated to honor the spring break provision in the Teacher Agreement.” Second, the BTU and the PSRP argue that “[t]he Executive Order setting a mandatory beginning and end date for the school calendar is void, illegal, and does not constrain” the City Board’s ability to comply with the provisions of the parties’ collective bargaining agreement providing for a spring break that is five working days. Finally, the BTU and the PSRP assert that the City Board “must be barred from relief due to limitations, laches, and the doctrine of unclean hands.”

d. ANALYSIS

As discussed above, the City Board’s requests to resolve disputes as to negotiability arise out of two grievances filed by the BTU and the PSRP, respectively, challenging the City Board’s decision to schedule certain days – i.e., the Presidents’ Day holiday and first two days of spring break – as inclement weather recovery days. The question before the PSLRB is whether the scheduling of inclement weather recovery days falls within the definition of the term “school calendar” under Sections 6-408(c)(3) and 6-510(c)(3) of the Education Article, and, is therefore, not subject to negotiation.

i. Sections 6-408 and 6-510 of the Education Article

The Education Article establishes constraints within which the PSLRB must exercise its authority to render decisions on negotiability disputes. Sections 6-408(c) and 6-510(c) state in relevant part:

(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... [Topics in this category are referred to as mandatory topics of negotiation.]; and

(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. § 6-408(c)(1), (3); § 6-510(c)(1), (3). Sections 6-408(c)(5)(vi)(2) and 6-510(c)(5)(vi)(2) further provide, “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.”

1. The “School Calendar”

Neither the Education Article, nor the PSLRB’s regulations with regard thereto define the term “school calendar.” In addition, the legislative history of Sections 6-408(c)(3) and 6-510(c)(3) provides no guidance on this term. Therefore, in interpreting these provisions, the PSLRB is left with only the plain language of the statute and applicable Maryland case law.⁵

As indicated above, the PSLRB is bound by the constraints of Sections 6-408(c) and 6-510(c), which make clear that the “school calendar” is an illegal topic of negotiation. Our task in this case is to determine whether or not the scheduling of inclement weather recovery days fits within this definition.

We conclude that the term “school calendar” as used in Sections 6-408(c) and 6-510(c) of the Education Article, means the determination of when the school system will or will not be open to perform its function of providing instructional services to students.

This definition is supported by the Maryland Court of Appeals’ decision in MCEA. In that case, the Maryland Court of Appeals affirmed the decision of the State Board in MCEA v. Board of Educ. of Montgomery Co., No. 84-31, 3 Opinions of the Md. State Bd. of Educ. 602 (1984), in which the State Board found that the school calendar was an illegal subject of bargaining, and, therefore, that the Board of Education of Montgomery County was not required to engage in good faith negotiations on that subject. In doing so, the Court explained:

⁵ Although the PSLRB often looks to the decisions of labor boards in other states and the National Labor Relations Board for guidance, such guidance is unavailable here because the relevant statutory language is unique to Maryland.

The school calendar sets the beginning and end of the school year. In addition, the calendar determines the days during the school year on which the schools are open for instructional purposes and for teacher ‘duty days.’ Conversely, the calendar determines the days during the school year on which the schools are closed for holidays and teacher ‘professional days.’

Id. at 305. Our definition of “school calendar,” set forth above, comports with this decision.⁶

The dispositive question is whether the scheduling of inclement weather recovery days falls within the statutory definition of “school calendar.” We now address that question.

As indicated above, inclement weather recovery days are days that schools are scheduled to be closed, but that, as here, the City Board may designate as instructional days to meet the 180 instructional day requirement where inclement weather causes unscheduled school closings. Because the scheduling of inclement weather recovery days, is, by definition, the determination of when the school system will or will not be open to perform its function of providing instructional services to students, we conclude that the scheduling of these days falls within the definition of “school calendar” under Sections 6-408(c) and 6-510(c) of the Education Article. As a result, negotiation over the scheduling of inclement weather recovery days -- including the scheduling of such days during spring break -- is illegal.⁷

We now turn to the BTU’s and the PSRP’s argument that “[t]ime off from work (spring break and President’s [*sic*] Day in this proceeding) is the quintessential working condition” within the meaning of Sections 6-408(c)(1)(i) and 6-510(c)(1)(i) of the Education Article.

Even if we assume that the topics at issue constitute “working conditions” within the meaning of Sections 6-408(c)(1)(i) and 6-510(c)(1)(i), it is a well-established principle that the more general statutory provision making “working conditions” a mandatory topic of negotiations would be subject to the specific statutory provision making the “school calendar” an illegal topic of negotiation. RadLAX Gateway Hotel v. Amalgamated Bank, 566 U.S. 639 (2012) (finding that it is a commonplace principle of statutory construction that the specific governs the general).

As previously discussed, Section 7-103 of the Education Article establishes Presidents’ Day as a public school holiday, and expressly grants statutory authority to the City Board to request, and the State Board to grant permission to open schools on Presidents’ Day in order to meet the 180 day instructional requirement. Accordingly, if the City Board makes such a request and it is granted, that would constitute a change in the “school calendar,” and, as such, negotiation over the Presidents’ Day holiday is an illegal topic of negotiation.

⁶ It is important to emphasize in this regard the distinction alluded to in the Court of Appeals decision in the MCEA case. If a school system is open to provide instructional services to students, whether and to what extent individual employees may be entitled to take vacations, sick leave, personal days, and other days off are not included within the term “school calendar,” but are working conditions that are mandatory topics of negotiation.

⁷ The 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. The Baltimore Board of School Commissioners v. Baltimore Teachers Union, American Federation of Teachers, Local 340, PSLRB N 2015-01.

In sum, our definition of “school calendar” is the determination of when the school system will or will not be open to perform its function of providing instructional services to students. Closing the school system for spring break and Presidents’ Day falls directly within this definition. Accordingly, the existing language in the collective negotiations agreement between the City Board and the BTU/PSRP concerning spring break and Presidents’ Day deals with illegal topics of negotiation.

ii. Additional Arguments Made by the BTU and the PSRP

As indicated above, the BTU and the PSRP contend that the City Board’s “Request to Resolve a Dispute as to Negotiability must be denied because it has admitted that it is obligated to honor the spring break provision in the Teacher Agreement,” and the parties have for many years been engaged in negotiation regarding the topic. As explained above, the determination of whether or not a topic of negotiation is illegal falls within the exclusive jurisdiction of the PSLRB. Neither bargaining history nor a party’s “admission” that a topic of negotiation is illegal impacts its status with regard to negotiability. Therefore, the BTU’s and the PSRP’s arguments in this regard are rejected.

The BTU and the PSRP also argue that “[t]he Executive Order setting a mandatory beginning and end date for the school calendar is void, illegal, and does not constrain” the City Board’s ability to comply with the provisions of the parties’ collective bargaining agreement providing for a spring break that is five working days. The PSLRB does not have the authority or jurisdiction to determine the legality of Executive Orders issued by the Governor of Maryland – nor is this argument relevant to the matter at hand. As indicated above, the question before the PSLRB involves defining the term “school calendar,” and determining whether inclement weather recovery days fit within this definition.

Finally, the BTU and the PSRP assert that the City Board “must be barred from relief due to limitation, laches, and the doctrine of unclean hands.” These defenses do not apply when the challenge is directed to an illegal action.

For the above reasons, the BTU’s and the PSRP’s additional arguments are without merit.

e. CONCLUSION

Based on the foregoing, the PSLRB concludes that the term “school calendar” as used in Sections 6-408(c) and 6-510(c) of the Education Article, means the determination of when the school system will or will not be open to perform its function of providing instructional services to students. The PSLRB finds that the scheduling of inclement weather recovery days falls within the definition of “school calendar,” and, is therefore, an illegal topic of negotiation, and the language in the existing collective negotiations agreement between the City Board and the BTU/PSRP concerning spring break and Presidents’ Day is, therefore, of no effect.

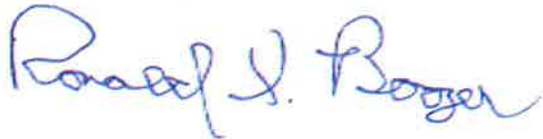
II. ORDER

Having considered the City Board's requests to resolve disputes as to the negotiability of inclement weather recovery days in PSLRB N 2019-01 and -02, the PSLRB finds that the topics at issue are illegal topics of negotiation.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



Elizabeth Morgan, Chair



Ronald S. Boozer, Member



Robert H. Chanin, Member



R. Allan Gorsuch, Member



Philip S. Kauffman, Member

Annapolis, MD

February 13, 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).