

**NOTICE OF DETERMINATION THAT AN IMPASSE IN NEGOTIATIONS
HAS NOT BEEN REACHED**
**(Pursuant to MD Code Ann., State Gov't Article §§22-306(e) and Education Article
§§6-406(e) & 507(e),**

Pursuant to the Request filed by the public-school employer [] and/or the employee organization [XX], the Public Employee Relations Board (PERB) has determined from the facts that an impasse has NOT been reached in negotiations between:

Prince George's County Public Schools

Public School Employer

and

Association of Supervisory & Administrative
School Personnel (ASASP)

Employee Organization

This determination was made by the PERB on March 20, 2024.

The parties need not engage in further negotiations in an effort to reach agreement as to the topic of open versus closed negotiation sessions. Under Maryland Code General Provisions Article §3-305(b)(9) a “public body” under Maryland’s Open Meetings Act “may meet in closed session or adjourn an open session to a closed session” to “conduct collective bargaining negotiations.” Maryland highest court, then named the Court of Appeals, held in *Carroll County Educ. Ass'n, Inc. v. Board of Educ. of Carroll County*, 294 Md. 144, 155 (Md. 1982) that a County Board of Education’s representatives in collective bargaining, while engaged in negotiations, are covered by those Open Meetings provisions. The Court of Appeals in that decision also rejected the union’s contention that it and the employer had to agree on whether collective bargaining sessions would be open or closed, such that the employer’s unilateral choice of open bargaining sessions violated “good faith” bargaining. 294 Md. at 153-54.

In a 2014 Public School Labor Relations Board (PSLRB) precedent binding on the PERB, *Howard County Education Association and Board of Education of Howard County*, PSLRB Case No. N 2014-01, the PSLRB considered the union’s argument that the employer’s unilateral choice to collectively bargaining in open sessions was unlawful because that was a “mandatory subject” of bargaining. The PSLRB disagreed, and citing the Open Meetings Act held that the County Board had the

“statutory discretion” to decide whether a bargaining session would be open or closed. Slip op. at 10.¹ The PSLRB then determined, applying the statutory “balancing test” for whether bargaining subjects are mandatory,² that the “the impact of depriving the County Board of its statutory discretion to decide whether to hold negotiations in open session outweighs the direct impact on the . . . employees.” *Id.* at 11. The PSLRB therefore held that whether collective bargaining is conducted in open or closed sessions is a permissible subject, within the control of the County Board and its representatives.

Based on that binding PSLRB precedent, we conclude that an employee organization cannot insist, to impasse, on a County Board agreeing to either open or closed negotiation sessions. Therefore, we determine that there is no impasse on that subject in this case.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD



Michael J. Hayes, Chair

Date: March 21, 2024

¹ The PSLRB in 2014 cited Md. Code Ann., State Govt. § 10-508(a)(9) for the “collective bargaining” provision of the Open Meetings Act. That provision was subsequently re-codified in Maryland Code General Provisions Article §3-305(b)(9), as previously cited in this determination.

² For that, the PSLRB cited Md. Code Ann., Educ. §6-408(c)(5)(vi)(2); the balancing test now is set forth in Maryland Code Education Article §6-406(c)(5)(vi)2.