

DOUGLAS E. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

March 29, 2010

The Honorable John A. Olszewski, Jr.
Maryland House of Delegates
308 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Olszewski:

You have requested advice concerning House Bill 243, "Fairness in Negotiations Act." Specifically, you have asked whether language that appears in both current law and the bill authorizes a county school board to unilaterally implement the school budget if the parties do not reach an agreement in their negotiations. You further ask, if there is no agreement, whether either party to the negotiations may appeal to the proposed public employee relations board. It is my view that the phrase "before the public school employer makes a final determination" has the same meaning that it has under current law; that is, if the fiscal authority does not approve enough funds to implement the negotiated agreement, the school board would be required to renegotiate with the employee organization before a final determination, but that the 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 authority to make a final determination still rests with the school board.

House Bill 243 would establish a Public School Labor Relations Board (PSLRB) to administer and enforce the labor relations laws for local boards of education and their employees. The bill also would repeal the authority of the State Board of Education to decide public school labor relations disputes and the authority of the State Superintendent of Schools to declare labor impasses. The bill also repeals the authority of the local boards of education to make final determinations of matters that have been the subject of negotiation.

Your question involves the circumstance under which appropriations from the county government are insufficient to fully fund the negotiated agreement. Current Education Article ("ED"), § 6-511 provides:

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If the 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 the timetable and procedure established by the State Board.

The Court of Appeals has said that “[u]nder this section the [county] Board makes the ‘final determination.’” *Koontz v. Assn of Classified Employees*, 297 Md. 521, 527 (1983). In an earlier case, the Court also explained that “the School Board has been given the statutory duty to make the final determination in these matters,... a duty also recognized in the collective bargaining agreement,....” *Montgomery County Council v. Board of Education*, 277 Md. 343. The language of the collective bargaining agreement reflected what is now codified in ED § 6-510(d)(7) which provides:

Notwithstanding any other provision of this subtitle, the public school employer shall make the final determination as to matters which have been the subject of negotiation, but this final determination is subject to the other provisions of this article concerning the fiscal relationship between the public school employer and the county commissioners and county council.

The Court said that it “is not required that the parties reach agreement; nor is it even necessary that concessions be made.” *Id.* at 349. The Court held that, once there was an impasse, it was not bad faith for the School Board to implement the changes without the agreement of the employee negotiators. *Id.* at 354-55. Thus, it is my view under current law, that if insufficient funds are appropriated to fully fund the negotiated agreement, the school board is required to renegotiate with the employee organization, but is not required to reach an agreement, and has the authority to make a final determinations as to changes to reflect the funding appropriated.

House Bill 243 makes substantial changes to current law. It establishes a mediation process to be followed by arbitration under certain circumstances. The bill repeals the authority of the local boards of education to make final determinations as to matters that have been the subject of negotiation under ED § 6-510(d)(7). It does not, however, repeal ED§ 6-511 which grants the school board the authority to make the final determination if insufficient funds are appropriated to fully fund the negotiated

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agreement. In that section, the bill changes authority to establish the timetable and procedure from the State Board to the PSLRB. Further, the bill retains a portion of ED § 6-510(d)(7) by providing that:

(14) ANY NEGOTIATED PROVISION OR DECISION OF THE BOARD is subject to other provisions of this article concerning the fiscal relationship between the public school employer and the county commissioners and county council.

Proposed ED § 6-510(e). While substantial changes are made relating to the process of negotiating an agreement, only one change is made to the statutory provisions relating to renegotiation if the fiscal authority does not approve enough funds to implement the negotiated agreement. Thus, it is my view that the 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.¹

I hope this is responsive to your inquiry.

Sincerely,



Bonnie A. Kirkland
Assistant Attorney General

BAK/kk

¹ The time table and procedure to be established by the PSLRB may not contravene the statute. *See Koontz* at 529.