STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:

HARFORD COUNTY EDUCATION ASSOCIATION, INC.,	*	
	*	PSLRB Case No. I-12-05
Petitioner,	*	
and	*	
HARFORD COUNTY PUBLIC SCHOOL SYSTEM,	*	
Respondent.	*	

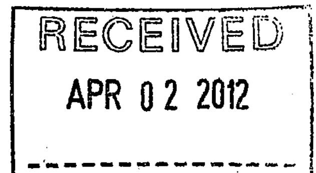
* *

IN THE MATTER OF:

HARFORD COUNTY EDUCATION ASSOCIATION, INC.	*	
	*	PSLRB Case No. SV-12-01
Charging Party,	*	
v.	*	
HARFORD COUNTY PUBLIC SCHOOL SYSTEM,	*	
Charged Party.	*	

* *

DECISION AND ORDER



A. INTRODUCTION

On August 31, 2011, the Harford County Education Association, Inc. ("HCEA") – which is recognized as the exclusive representative for the classified employees of the Harford County School System ("HCSS") – filed two Forms with the Public School Employment Relations Board ("PSLRB"). One is Form PSLRB-01 – Request for Determination That an Impasse in Negotiations Has Been Reached – which is designated as Case No. I-12-05. The other is Form PSLRB-05 – Charge of Violation of Title 6, Subtitle 4 or Subtitle 5, of the Education Article – which is designated as Case No. SV-12-01. In both of these cases, the HCSS is the public school employer.[1]

Subsequent to the filing of those Forms, there were numerous written submissions by both HCEA and HCSS, and, on December 16, 2011, a hearing was held by the PSLRB at which the parties addressed certain legal questions that had been put to them by the PSLRB. The record in these cases has now been closed, and there are no material facts in dispute.[2] Accordingly, these cases are ripe for decision. Because the parties are the same in both cases and the facts and legal issues overlap, the cases have been consolidated for purposes of this Decision and Order.

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[1] In Form PSLRB-01, HCEA identifies the "Harford County Public Schools" as the Public School Employer. Form PSLRB-05 identifies the "Board of Education of Harford County" as the Charged Party. For purposes of consistency, we use "Harford County School System" as the designation in both cases.

[2] Although there are numerous disputed facts in the parties' submissions to the PSLRB, none of these disputed facts are material to the PSLRB's decision. Accordingly, we deny the motions for evidentiary hearings that have been filed in these cases by HCEA on July 27, 2011, and by HCSS on January 4, 2012.

B. FACTS

The conclusions reached by the PSLRB in these cases are based on the facts that are set forth below. We note in this regard that these facts – most of which are based on documentary evidence – are not in dispute.

1. After engaging in negotiations during January 2011 (hereinafter "original negotiations"), HCEA and HCSS reached agreement on a negotiated agreement for the 2011-12 fiscal year (*i.e.,* July 1, 2011, through June 30, 2012). This negotiated agreement (hereinafter "2011-12 Agreement") was ratified by both parties on January 16, 2011.

2. There is nothing in the 2011-12 Agreement that makes the viability of the Agreement itself dependent upon any action taken by the Harford County Council ("HCC"), or any other subsequent event. The Agreement, by its terms, became effective as of July 1, 2011, and currently is in effect.

3. The 2011-12 Agreement includes various salary increases for the members of the bargaining unit represented by HCEA (members of this bargaining unit are hereinafter referred to as "teachers") – including an across-the-board cost of living adjustment of 3%, step increases, and longevity increases. (These salary increases are hereinafter collectively referred to as "teacher salary increases.")

4. Funds sufficient to implement the teacher salary increases were included in the proposed budget that HCSS submitted to HCC. On or about April 1, 2011, HCC rejected in its entirety HCSS's request for additional funds to implement the teacher salary increases in HCSS's proposed 2011-12 budget.

5. Also included in HCSS's proposed 2011-12 budget was a surplus from the 2010-11 fiscal year. This surplus was not assigned to any of the 14 major expenditure categories in the proposed budget. (These funds are hereinafter referred to as the "unallocated surplus.") The

parties do not agree as to the precise amount of the unallocated surplus as of the date of this Decision and Order.[3]

6. Article II (Procedures), Sections 2.1 and 2.2, of the 2011-12 Agreement provides as follows:

> 2.1. The items of this agreement not requiring fiscal support, when duly ratified by the Association and the Board, shall be valid and binding following said final ratification. The items which require fiscal support shall likewise be valid and binding to the extent that sufficient funds are guaranteed and/or made available by the Harford County fiscal authorities to fully implement said items.
>
> 2.2. If categories which contain requests for funds to support items in this agreement are reduced by the Harford County fiscal authorities, further negotiations on these items shall begin after the action by the County Council and conclude not later that June 16.

7. On April 11, 2011 – prior to any "further negotiations" with HCEA regarding the teacher salary increases, (*see*, Article II, Section 2.2), HCSS adopted a revised budget for the 2011-12 fiscal year that reflected the position taken by HCC with regard to the teacher salary increases in the proposed budget. On May 9, 2011 – prior to the conclusion of further negotiations with HCEA – HCSS submitted its revised 2011-12 budget to HCC for final approval.

8. On May 25, 2011, HCSS and HCEA entered into further negotiations regarding the teacher salary increase in the 2011-12 Agreement in light of the action taken by HCC with regard to HCSS's proposed 2011-12 budget (hereinafter "re-negotiations.") In accordance with

[3] In its submissions to the PSLRB, HCEA requests the PSLRB to direct HCSS to include the unallocated surplus in any re-negotiations ordered by the PSLRB, and to use the surplus to implement the teacher salary increases in the 2011-12 Agreement before using it for non-contractual purposes. In conjunction with this request, HCEA, in a letter dated December 21, 2011, asks the PSLRB to enjoin HCSS from expending any part of the unallocated surplus prior to such re-negotiations. Because the PSLRB's Decision and Order in this case does not single out the unallocated surplus from other funds that may or may not be available to HCSS, HCEA's request for an injunction is denied.

Article II, Section 2.2, of the 2011-12 Agreement, these re-negotiations concluded on June 16, 2011.

9. On July 1, 2011, the 2011-12 Agreement became effective. None of the teacher salary increases in the Agreement have been implemented.

C. POSITIONS OF THE PARTIES

1. Form PSLRB-01

In the Form PSLRB-01 that it filed with the PSLRB, HCEA asks the PSLRB to declare that an impasse exists in both the original negotiations and the re-negotiations.

HCSS does not agree. As to the original negotiations, it asserts that there cannot by definition be an impasse because the parties came to closure on all matters under discussion, and ratified the 2011-12 Agreement.

As to the re-negotiations, HCSS argues that the PSLRB does not have jurisdiction to determine that an impasse exists. In support of this argument, HCSS cites Section 6-408.1 of the Fairness in Negotiations Act ("FINA"), which provides as follows:

> If a 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 [PSLR] Board.

Specifically, it is HCSS's position that because the re-negotiations did not resolve the dispute, HCSS was empowered to "make[ ] a final determination," which it has done.

2. Form PSLRB-05

In the Form PSLRB-05 that it filed with the PSLRB, HCEA alleges that HCSS violated "Section 6-408(a) or 6-510(a): Negotiations," because HCSS engaged in bad faith bargaining in both the original negotiations and the re-negotiations.

As to the former, it is HCEA's position that "there was no real interest or intent on [HCSS's] part to engage in negotiations with HCEA beyond securing concessions in health insurance," and HCSS did not adequately "support funding request [for teacher salary increases] before the County Council." HCEA's Form PSLRB – 05, Section V, Statement of Facts.

With regard to the re-negotiations, HCEA argues bad faith in the unwillingness of HCSS to use the unallocated surplus or to "consider[ ] or discuss[ ] . . . cuts in other categories in an attempt to support" the teacher salary increases. *Ibid.*

By way of remedy, HCEA asks that the PSLRB "declare bad faith on the part of [HCSS] as a result of its actions/inactions in [the original] negotiations and re-negotiations with HCEA."[4] In its subsequent submissions, HCEA fleshes out its requested remedy, asking the PSLRB to order the parties to once again re-negotiate, and to direct HCSS to apply the unallocated surplus to funding the teacher salary increases.

HCSS denies that it engaged in bad faith bargaining in either the original negotiations (*inter alia*, specifically recounting the actions that HCSS took in an effort to obtain approval by HCC and the County Executive of its request for additional funds to implement the teacher salary increases), or in the re-negotiations (reiterating its Section 6-408.1 authority to make the "final determination" regarding the allocation of funds approved by HCC to implement the teacher salary increases). HCSS also contends that the PSLRB does not have jurisdiction over re-negotiations that take place pursuant to Section 6-408.1.

D. ANALYSIS

The various allegations made by HCEA in the two Forms that it filed with the PSLRB may be divided into three distinct issues:

[4] HCEA also asks in its Form PSLRB-05 that "the parties be declared at impasse." This duplicates the relief requested in HCEA's Form PSLRB-01, and is in any event an improper request in a Form PSLRB-05 charge.

1. Does an impasse exist in the original negotiations? If so, what is the appropriate remedy?;

2. Did HCSS engage in bad faith bargaining in the original negotiations? If so, what is the appropriate remedy?; and

3. Does the PSLRB have jurisdiction over the dispute involving re-negotiations after HCC failed to approve sufficient funds to implement the teacher salary increases in the 2011-12 Agreement? If the PSLRB does have jurisdiction, it must then address two subsidiary questions:

   a. Did HCSS engage in bad faith bargaining in the May/June 2011 re-negotiations?; and

   b. If so, what is the appropriate remedy?

We address these three issues in turn below.

1. Impasse In Original Negotiations

An "impasse" in labor negotiations means the point at which the parties are stalemated or deadlocked and unable to reach an agreement without resort to economic weapons or procedures designed to foster agreement. *See, e.g.,* E. Dannin & C. Gilson, Getting to Impasse: Negotiations under the National Labor Relations Act and the Employment Contracts Act, 11:6 AMERICAN UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLICY 917, 921, n.28 (1996). In *Scofield v. NLRB,* 394 U.S. 423, 432 (1969), the U.S. Supreme Court addressed the interplay between an impasse and the execution of a negotiated agreement. The Court stated that the employer "could have pressed [a position it sought at the bargaining table] to impasse, [but] . . . it has never done so. Instead, it has signed contracts recognizing the [Union's position on the issue]."

The purpose of the determination of an impasse by the PSLRB under Title 6, Subtitle 4, Section 6-408(e)(i), of the FINA is to trigger the impasse resolution procedure in Section 6-408(e). The purpose of that procedure, in turn, is to resolve the impasse, and bring about the execution of a negotiated agreement. Inasmuch as HCSS and HCEA already have executed a negotiated agreement, it follows that granting HCEA's request for a determination that impasse has been reached in the original negotiations would serve no purpose, and that request is denied.

2. Bad Faith Bargaining in Original Negotiations

We need not, for purposes of this issue, determine whether any of the allegations made by HCEA about what HCSS did or did not do in the original negotiations would constitute bad faith negotiations. As explained below, for much the same reasoning as in issue 1, we dismiss HCEA's charge.

Assuming, *arguendo*, that HCEA had filed a charge of bad faith bargaining against HCSS during the original negotiations, and that the administering agency had found that HCSS was in fact engaging in bad faith bargaining, the appropriate remedy would have been to order HCSS to discontinue its impermissible conduct, and engage in good faith bargaining toward the end of achieving a negotiated agreement. But HCEA did not file a charge of bad faith bargaining against HCSS during the original negotiations (nor did it seek a determination of impasse at that time); HCEA chose instead to continue the negotiations, and ultimately to enter voluntarily into the 2011-12 Agreement. In short, the purpose of a remedy for bad faith bargaining by HCSS in the original negotiations would have been to achieve what in fact already has been achieved – *i.e.*, a negotiated agreement.

The foregoing should be correctly understood. We are not suggesting that the execution of a negotiated agreement would in all cases necessarily preclude a subsequent charge of bad faith bargaining in the negotiations that led to such an agreement. If, for example, an employee

organization did not learn until after a negotiated agreement had been executed that a public school employer during the negotiations knowingly had provided false factual information that the employee organization relied upon in entering into a negotiated agreement, a bad faith bargaining charge might well lie. The appropriate remedy in such a case could be to invalidate the negotiated agreement, in whole or in part, and order the parties to re-negotiate.

HCEA contends that this is what happened here. Thus, HCEA indicates in its Form PSLRB-05, Section V, that one of the reasons that it entered into the 2011-12 Agreement was because of "promises by the County Board [*i.e.*, HCSS] to support its funding request before the County Council." We are persuaded by HCSS's argument on pages 7-12 of its September 13, 2011, Response on Behalf of the Harford County Public School System that this is not such "fraudulent inducement" as would sustain a finding of bad faith bargaining by HCSS in the original negotiations. Accordingly, HCEA's charge of bad faith bargaining by HCSS in the original negotiations is dismissed.

3. Impasse and Bad Faith Bargaining in Re-Negotiations

We turn now to the dispute between the parties that has arisen as a result of HCC's failure to approve sufficient funds to implement the teacher salary increases in the 2011-12 Agreement. Indeed, HCC did not merely reduce the amount of the funds requested for this purpose in HCSS's proposed budget; HCC failed to approve *any* funds for this purpose, rejecting HCSS's request for the necessary additional funds in its entirety.

HCSS's threshold argument in regard to the re-negotiations dispute is that the PSLRB lacks jurisdiction. As HCSS states on page 18 of its September 13, 2011, Response to the Forms filed by HCEA on August 31, 2011:

> To be true to the legislative intent of FNA (sic), we respectfully urge the PSLRB to give appropriate deference to AAG Kirkland's interpretation of the renegotiations provision incorporated into

> FNA [*i.e.,* Section 6-408.1] . . . and to decline to assert jurisdiction over the renegotiations process, which rests ultimately with the final determination of [HCSS].

HCSS's position is bottomed on two basic propositions:

a. The PSLRB does not have jurisdiction over disputes arising under Section 6-408.1; and

b. The re-negotiations that took place between HCSS and HCEA in May/June 2011 were pursuant to Section 6-408.1, and, accordingly, HCSS has the right to make "a final determination" in the event of an impasse.

Neither proposition is correct.

As to the first proposition, Section 6-806(a) provides that the PSLRB "shall administer and enforce the provisions of Subtitles 4 and 5 of this title." One of those provisions is Section 6-408.1. It follows that the PSLRB has the authority – indeed, the obligation – to assure that Section 6-408.1 – like all other provisions in Subtitles 4 and 5 – is properly implemented. That means, among other things, that re-negotiations that take place pursuant to Section 408.1 are conducted in good faith.

As to the second proposition, the record indicates that the May/June re-negotiations between HCEA and HCSS were not conducted pursuant to Section 6-408.1, but rather pursuant to Article II, Section 2.2, of the 2011-12 Agreement. This is conceded by HCSS. Thus, in its September 13, 2011, Response on Behalf of the Harford County Public School System, at pp. 12-13, HCSS makes the following comments with regard to the re-negotiations:

> The previous and existing contracts between the Board and the Union contained specific language addressing the precise manner in which negotiations were to proceed in the event that a final agreement lacked "fiscal support" from the County Council. Specifically, [citing and quoting Article II, Section 2.1 through 2.3, of the 2011-12 Agreement].
>
> * * *
>
> Once the County Executive and County Council indicated that they had unequivocally rejected funding the Board's requested salary

> increases, the Board's negotiators *assiduously followed these contractual procedures*, and entered into serious re-negotiations with the Union over the consequences of the County Council's disappointing decision. (Emphasis added)

As evidence of this adherence to the contractual procedures, the "final re-negotiations session" was, as required by Article II, Section 2.2, "held on June 16, 2011." *Id.* at p. 13. *See, also,* Transcript of December 16, 2011, PSLRB Hearing, at p. 50: "MR. STELLMAN [HCSS's counsel]: '[W]e have a June 16th deadline to complete re-negotiations...'."

Significantly, Section 2.2 obligates the parties to engage in "further negotiations" regarding the teacher salary increases, but makes no reference to a "final determination" by HCSS if these further negotiations reach an impasse. And, to paraphrase a statement made by HCSS in a different context:

> Had the parties intended [HCSS to make a final determination], the agreement would have had appropriately qualifying language so stating. That the Agreement did not is reflective of the fact that [HCSS does not have that power.]

October 26, 2011, Rebuttal on Behalf of the Harford County Public School System to HCEA's Reply, at p. 3, fn. 1.[5]

The foregoing raises the question of whether a public school employer and an employee organization can in negotiations agree to use a procedure for dealing with a shortfall in funding

[5] In its October 26, 2011, Rebuttal on Behalf of the Harford County Public School System to HCEA's Reply, at p. 13, HCSS attempts to qualify its concession that the May/June 2011 re-negotiations were solely contractual in nature. Thus HCSS states that:

> As soon as the Board learned that the Harford County fiscal authorities did not intend to fund the agreement reached between the parties,[] it attempted to recommence negotiations with the Union, as it was obligated to do both under the statute [*i.e.*, Section 6-408.1] and the terms of its Negotiated Agreement [*i.e.*, Article II, Section 2.2].

But even this reformulation concedes that the re-negotiations took place pursuant to Article II, Section 2.2 – albeit perhaps not "solely."

by the fiscal authority other than the procedure set forth in Section 6-408.1. HCSS and HCEA answer this question "yes," and they have used a contractual procedure of their own making – *i.e.*, Article II, Section 2.2, of the 2011-12 Agreement – in an effort to deal with the failure of HCC to approve sufficient funds to implement the teacher salary increases in the 2011-12 Agreement. Under the facts in this case, the PSLRB also answers this question in the affirmative.

Although Section 6-408.1 uses the term "shall" in referring to the procedure to be followed when the fiscal authority does not approve sufficient funds to fully implement a negotiated agreement, this usage should be viewed in context. The purpose and intent of Section 6-408.1 is to provide a vehicle to adjust financial commitments that a public school employer made in a negotiated agreement to reflect the fact that there is a fiscal shortfall. But the PSLRB does not believe that the Maryland Legislature envisioned a "one size fits all" solution to this problem, so as to preclude the parties from including in their negotiated agreement a procedure that they concluded was more appropriately suited to their particular circumstances – which is what HCSS and HCEA did here. This does not mean that a public school employer and an employee organization are free to adopt any type of dispute resolution procedure that they desire. The alternative procedure must itself be lawful. Thus, for example, the parties could not agree to allow the employee organization to resort to a strike, inasmuch as that would be in conflict with the express prohibition in Section 6-410(a).

For purposes of this case, the PSLRB need not decide as a general proposition whether and to what extent a public school employer and an employee organization may in a negotiated agreement modify and/or replace the procedure set forth in Section 6-408.1. As far as the instant case is concerned, we can, under the facts presented, conclude on narrower grounds that the May/June 2011 re-negotiations and any further re-negotiations that may be ordered by the PSLRB as a remedy are controlled by Article II, Section 2.2, of the 2011-12 Agreement.

It is clear from the plain language of Section 6-408.1 that the re-negotiations called for by that Section involve *only* the funds allocated by the fiscal authority for the purpose of implementing the negotiated agreement. HCSS makes this point repeatedly in its submissions to the PSLRB. *See, e.g.*, Tr. of December 16, 2011, hearing at p. 27: MR. STELLMAN: "Re-negotiations is a process that's very narrowly defined in the statute . . . if insufficient funds are approved by the Fiscal Authority's [sic] following negotiations, the parties are to re-negotiate 'the funds allocated for these purposes by the Fiscal Authorities.'"; *id.* at p. 30: MR. STELLMAN: "I think re-negotiations has to be confined under the statute to the funds allocated for these purposes by the Fiscal Authority"; *id.* at p. 31: MEMBER: "[T]he funds allocated for these purposes means the funds that have been allocated for the purpose of implementing the negotiated agreement. MR. STELLMAN: "That's right."

In the instant case, *no* funds were allocated by HCC for the purpose of implementing the teacher salary increases in the 2011-12 Agreement. As HCSS emphasized in its October 26, 2011, Rebuttal on Behalf of the Harford County Public School System to HCEA's Reply, at p. 8:

> The major distinction between the facts in the case at bar and the cases cited by the HCEA is that here, *the County Council refused to fund a single penny of the Board's increased salaries.*

(Emphasis added). What this means in practical terms is that re-negotiations between HCSS and HCEA pursuant to Section 6-408.1 in May/June 2011 would have served no purpose.

But even if HCC had approved some of the funds necessary to implement the teacher salary increases in the 2011-12 Agreement, but less than the amount necessary to fully implement them, Section 2.2 of the Agreement still would be controlling. Article II, Section 2.1, provides that the agreed-upon teacher salary increases will be "valid and binding to the extent that sufficient funds are guaranteed and/or made available by the Harford County fiscal authorities to fully implement said items." Because this full-funding precondition has not been

met, the teacher salary increases are not valid and binding and there are no negotiated teacher salary increases to be implemented.

In sum, for the above reasons, the PSLRB concludes that the May/June 2011 re-negotiations took place pursuant to Article II, Section 2.2, of the 2011-12 Agreement, and any further re-negotiations that may be ordered by the PSLRB as a remedy likewise will take place pursuant to Article II, Section 2.2. Whether any such further re-negotiations will be ordered by the PSLRB depends on whether we sustain HCEA's charge that HCSS engaged in bad faith bargaining during the May/June 2011 re-negotiations. We now turn to a consideration of the merits of that charge.

Article II, Section 2.2, of the 2011-12 Agreement uses the term "further negotiations," and implicit in that term is the concept of "good faith." If HCSS re-negotiated in good faith, it fulfilled its contractual obligation, and this aspect of HCEA's charge should be dismissed. If, on the other hand, there is merit to HCEA's allegation that HCSS did not re-negotiate in good faith, the PSLRB would then have to fashion an appropriate remedy. For the reasons set forth below, we find that HCSS did not re-negotiate in good faith.

On January 4, 2012, HCSS filed with the PSLRB a Motion to Conduct an Evidentiary Hearing. HCEA opposed this Motion, and in its January 17, 2012, Response to HCEA's Opposition, at p. 4, HCSS stated:

> The current record clearly lacks the complete context of collective bargaining between the parties, since the Board's bargaining minutes [which are part of the record] did not capture everything said or done during each negotiations session . . . . Without such a record, it is impossible to determine whether the Board engaged in bad faith bargaining. "Determining good faith requires the [PSLR] Board and the courts to draw inference concerning a party's state of mind from many facts, no one of which may have great significance standing alone." Quoted from M. Mandelman and K. Maners, "Staying Above the Surface – Surface Bargaining Claims Under the National Labor Relations Act," 24 HOFSTRA LABOR

& EMPLOYMENT JOURNAL 261, 263 (2007), *citing NLRB v. Milgo Industries, Inc.*, 567 F.2d 540, 543 (2d Cir. 1977).

As a general proposition, it is, as HCSS asserts, often necessary to conduct a hearing to elicit sworn testimony and evidence with respect to what was said and done by the parties during the negotiations process in order to distinguish between unlawful bad faith bargaining and lawful "hard" bargaining -- but that is not always the case. There are certain actions that may be taken outside of the bargaining process that have been recognized by courts and labor boards as indicative in and of themselves of bad faith bargaining. That is what we have in this case.

The essence of good faith bargaining is for a party to participate in the process with an open mind – to be willing to consider and react to the proposals and arguments put forth by the other party on their merits, without pre-established restraints that necessarily dictate a rejection of those proposals and arguments. As the court stated in N.L.R.B. v. Big Three Industries, Inc., 497 F.2d 43, 46 (5th Cir., 1974), "Congress has required the parties not simply to convene, but to meet and negotiate in a certain frame of mind – to bargain in good faith. Negotiating parties are thus statutorily adjured to enter discussions with an 'open and fair mind, and a sincere purpose to find a basis of agreement…'."

The purpose and intent of the May/June 2011 re-negotiations was to re-negotiate HCSS's 2011-12 budget in light of the action taken by HCC, and to determine whether and to what extent the parties could agree to make adjustments in HCSS's revised final budget that could salvage some or all of the unfunded teacher salary increases.

Notwithstanding this clear purpose and intent, HCSS, on April 13, 2011 – well before the re-negotiations even commenced – adopted a final revised budget. This budget mirrored the position taken by HCC, and did not provide any funds for teacher salary increases. It might at first glance seem possible to argue that HCSS had not yet submitted the prematurely revised

2011-12 budget to HCC for final approval, and HCSS could have reconsidered its position *vis-à-vis* teacher salary increases in light of what took place during the re-negotiations, but this argument misses the point. The approval of a revised final budget by HCSS on April 13, at the very least, adversely affected the likelihood that HCSS's negotiators would assess fairly and respond favorably to proposals and arguments made by HCEA – and, perhaps more importantly, sent a clear message to these negotiators of their superiors' desired and expected outcome of the re-negotiations. Moreover, in early June 2011 – before the scheduled June 16, 2011 conclusion of the re-negotiations – HCSS submitted the budget that it had adopted on April 13 to HCC for final approval.

Because of these actions, the PSLRB finds that HCSS did not engage in good faith re-negotiations in May/June 2011. As a remedy, the PSLRB orders HCSS and HCEA to engage in good faith re-negotiations regarding the teacher salary increases as required by Article II, Section 2.2, of the 2011-12 Agreement. If HCSS and/or HCEA believe that an impasse has been reached in these re-negotiations it (or they) may file a Form PSLRB-01 with the PSLRB, and the matter will be processed in accordance with Section 6-408(e) of the FINA. The PSLRB has the authority to issue such a remedial Order pursuant to Section 6-806(a), which provides that the PSLRB "shall administer and enforce the provisions of Subtitles 4 and 5 of this title." One of those provisions is Section 6-408(a)(2), which requires HCSS and HCEA to "[h]onor and administer existing agreements" – in this instance, Article II, Section 2.2, of the 2011-12 Agreement.[6]

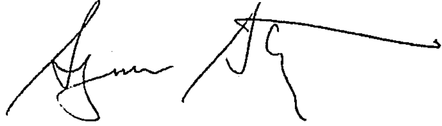
[6] The broad authority of the PSLRB to require a public school employer and an employee organization to "[h]onor and administer existing agreements" does not intrude into the jurisdiction of the contractual grievance/arbitration procedure, the purpose of which is to resolve disputes between the parties as to the meaning and application of specific provisions in a negotiated agreement.

ORDER

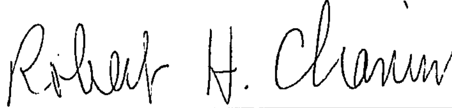
IT IS HEREBY ORDERED THAT:

1. The requests by HCEA and HCSS in Cases Nos. I-12-05 and SV-12-01 for evidentiary hearings are DENIED.
2. The request by HCEA in Case No. SV-12-01 for an injunction enjoining HCSS from expending any part of the unallocated surplus pending conclusion of the PSLRB-ordered re-negotiations is DENIED.
3. HCEA's request in Cases Nos. I-12-05 and SV-12-01 for a determination that an impasse has been reached in the original negotiations is DENIED.
4. HCEA's charge in Case No. SV-12-01 that HCSS engaged in bad faith bargaining in the original negotiations is DENIED.
5. HCEA's request in Case No. 1-12-05 that an impasse has been reached in the May/June 2011 re-negotiations is DENIED.
6. HCEA's charge in Case No. SV-12-01 that HCSS engaged in bad faith bargaining in the May/June 2011 re-negotiations is SUSTAINED. HCSS and HCEA are ordered to engage in good faith re-negotiations regarding the teacher salary increases included in the 2011-12 Agreement, said re-negotiations to commence not later than five (5) calendar days after issuance of this Order. If HCSS and/or HCEA believes that impasse has been reached in these re-negotiations, it (or they) may file a Form PSLRB-01 with the PSLRB, and the matter will be processed in accordance with Section 6-408(e) of the Education Article.

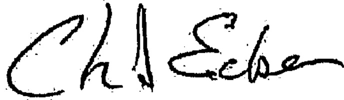
BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



Seymour Strongin, Chairman



Robert H. Chanin, Member



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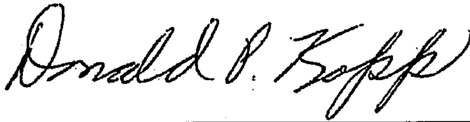
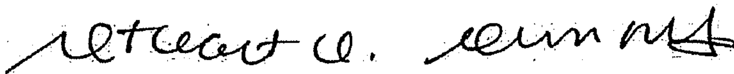


Donald P. Kopp, Member



Stuart O. Simms, Member

Glen Burnie, MD

March ___, 2012

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).

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

Certificate of Service

It is hereby certified that the attached DECISION AND ORDER in Public School Labor Relations Board Case Nos. I-12-05 and SV-12-01, was sent (via electronic mail and/or U.S. mail) to the following parties on this 30 day of March, 2012.

For Charging Party:

Kristy K. Anderson, Esq.
Maryland State Education Association
140 Main Street
Annapolis, MD 21401

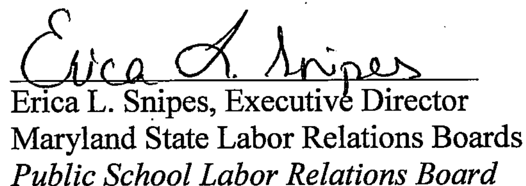
For Charged Party:

Leslie R. Stellman, Esq.
Hodes, Pessin & Katz, P.A.
901 Dulaney Valley Rd., Suite 400
Towson, MD 21204

Patrick P. Spicer, Esq.
Office of General Counsel
Board of Education of Harford County
102 Hickory Ave.
Bel Air, MD 21034

Board Counsel:

Joseph K. Pokempner, Esq.
Assistant Attorney General &
State Labor Relations Board Counsel
200 St. Paul Place
Baltimore, MD 21202-2021



Erica L. Snipes, Executive Director
Maryland State Labor Relations Boards
Public School Labor Relations Board

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