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TO: Members of the Maryland State Board of Education
FROM: Nancy S. Grasmick *Nancy*
RE: Session 2010 Legislative Forecast
DATE: December 10 – 11, 2009

PURPOSE:

The purpose of this item is to provide the Maryland State Board of Education Members with a forecast of legislative issues that will be pending before the 2010 General Assembly Session.

EXECUTIVE SUMMARY:

I have asked Ms. Renee Spence to update the Members of the State Board of Education on the status of MSDE's departmental legislation (**Attachment 1**).

Also, I have asked Ms. Spence to review last year's Senate Bill 673, the Fairness in Negotiations Act, which will be re-introduced during the 2010 Session (**Attachment 2**).

A draft proposal from the Maryland Association of Counties on Maintenance of Effort Reform (**Attachment 3**) is enclosed for your review. Ms. Spence will discuss this and any other education issues that will be forthcoming in the 2010 session.

If you have any questions, please call me or Renee Spence at 410-767-0462.

As always, thank you for your continuous support and guidance.

2010 MSDE Departmental Legislation

DORS Consumers in Unpaid Work-Based Learning Experiences

The legislation is necessary in order to encourage employers and businesses to partner with DORS in providing internships and unpaid work experience to DORS consumers. A barrier that has limited employers from participating in this initiative is concern about potential liability if the DORS consumer were to be injured in the workplace. By extending "covered employee" status to the DORS consumer, the employer's liability is mitigated. In addition, DORS would reimburse the business for any increase resulting in its insurance premium up to \$250.00 per consumer.

Disruptive Students Reporting Requirements

For the past several years, there have been no funds in the MSDE budget to allocate for disruptive youth programs. Since funding is not distributed to local school systems or local management boards from the State Department, it would make sense to discontinue the reporting process, which ties to the use of funding in local school systems.

Fitness and Athletic Equity for Students with Disabilities Act

During the past year, the Offices of Physical Education and Athletics at the Maryland State Department of Education have collected data on the number of students with disabilities who are included in physical education and athletic programs.

In order to provide an accurate account of high school athletic participation, it is necessary to adjust the reporting date to accommodate those participating during the spring sports season. An adjustment of the reporting date will also provide an accurate account of the number of students participating in physical education classes for students scheduled during the second semester of the school year.

Changing the date of these specific provisions does not mean that the schools will not provide data, but allows local school systems to give a more complete and accurate report on the number of students with disabilities that are included in physical education and athletic programs.

Nonpublic School Employees - Criminal Convictions

Education Article §2-206.1 clearly states statutory intent prohibiting nonpublic schools from knowingly hiring or retaining individuals who have been convicted of certain crimes (i.e., child abuse, a crime of violence, and sexual offense in the 3rd degree). It further states that the consequence is Departmental revocation of the Certificate of Approval. Legal scrutiny of the statute indicates that the State Board should be the body responsible for the revocation of a Certificate of Approval since they are the body responsible for the issuance of approval (Education Article 2-206). While Education Article §2-102 clearly defines the State Board as the head of the Department, this change will further clarify who has the authority to revoke the approval to operate a nonpublic school.

Master Plan Updates

This Departmental Bill intends to: change the master plan submission date, in order to facilitate new master plan development that is aligned with federal and State expectations; modify the requirement that local boards submit a copy of the CMP or annual update to county officials 30 days before the due date, with a copy of the CMP or annual update to follow, in order to provide additional time that LSSs need to include an analysis of Maryland School Assessment and High School Assessment data in the plan or update; and provide local school systems the option to submit a preexisting management plan to satisfy the CMP requirement.

SENATE BILL 673

P4, F1

9lr0903
CF HB 1243

By: Senators Raskin, Brochin, Dyson, Exum, Frosh, Garagiola, ~~Glassman, Harrington, Jones, King, Madaleno, Muse, Peters, Pinsky, Pugh, Rosapepe, and Stone~~ Harrington, Jones, King, Madaleno, Muse, Peters, Pinsky, Pugh, Rosapepe, Stone, and Kelley

Introduced and read first time: February 6, 2009

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 9, 2009

CHAPTER _____

1 AN ACT concerning

2 **Fairness in Negotiations Act**

3 FOR the purpose of ~~requiring certain collective bargaining agreements to provide for~~
 4 ~~binding arbitration of the grievances arising under the agreements that the~~
 5 ~~parties have agreed to be subject to arbitration; requiring a public school~~
 6 ~~employer and an exclusive representative of certain public school employees to~~
 7 ~~negotiate in a certain manner; for certain certificated employee organizations,~~
 8 ~~including employee transfers and assignments among the matters that may be~~
 9 ~~negotiated on request under certain circumstances; for certain noncertificated~~
 10 ~~employee organizations, including the discipline and discharge of an employee~~
 11 ~~for just cause and employee transfers and assignments among the matters that~~
 12 ~~may be negotiated on request under certain circumstances; repealing certain~~
 13 ~~provisions of law concerning negotiations between a public school employer and~~
 14 ~~certain employee organizations; requiring a public school employer and an~~
 15 ~~exclusive representative to mediate certain differences upon the demand of the~~
 16 ~~public school employer or the exclusive representative under certain~~
 17 ~~circumstances; requiring the party demanding mediation to deliver a copy of the~~
 18 ~~demand to the State Superintendent; authorizing the public school employer~~
 19 ~~and the exclusive representative to mutually consent to request the State~~
 20 ~~Superintendent to provide certain assistance and advice; requiring the public~~
 21 ~~school employer and the exclusive representative to select a neutral mediator to~~
 22 ~~conduct the mediation within a certain period of time and in a certain manner;~~
 23 ~~requiring mediation to commence within a certain period of time after a neutral~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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1 ~~party is selected; requiring mediation to conclude within a certain period of~~
2 ~~time; prohibiting the mediator from issuing certain written findings or other~~
3 ~~documents under certain circumstances; requiring the parties to the mediation~~
4 ~~to share equally the costs of the mediator; requiring the public school employer~~
5 ~~and the exclusive representative to arbitrate all differences under certain~~
6 ~~circumstances; requiring the party demanding arbitration to deliver a copy of~~
7 ~~the demand to the State Superintendent; requiring the public school employer~~
8 ~~and the exclusive representative to select an arbitrator to conduct the~~
9 ~~arbitration within a certain period of time and in a certain manner; requiring~~
10 ~~arbitration to commence within a certain period of time after an arbitrator is~~
11 ~~selected; providing that arbitration commences under certain circumstances;~~
12 ~~requiring last and best offers to list separately certain terms or conditions and~~
13 ~~demands; requiring the public school employer and the exclusive representative~~
14 ~~to each deliver a copy of their last and best offer to the arbitrator; requiring the~~
15 ~~arbitrator to perform certain duties under certain circumstances; providing that~~
16 ~~the arbitrator has full authority to hear and decide certain issues in dispute;~~
17 ~~requiring the arbitrator to conclude the arbitration within a certain period of~~
18 ~~time; requiring the arbitrator to issue the written award within a certain period~~
19 ~~of time; requiring the arbitrator to decide between certain last and final offers of~~
20 ~~the public school employer and the exclusive representative; establishing that~~
21 ~~the arbitrator's finding on an issue in dispute is final and binding on the public~~
22 ~~school employer and the exclusive representative and is a self-executing~~
23 ~~mandate on certain parties; providing that the written award is subject to~~
24 ~~certain provisions of law; requiring the arbitrator to deliver a copy of the~~
25 ~~written award to certain parties; authorizing the public school employer and the~~
26 ~~exclusive representative to agree to waive certain time limits; requiring the~~
27 ~~parties to the arbitration to share the costs of the arbitration equally;~~
28 ~~establishing that certain provisions of law apply to certain disputes between a~~
29 ~~public school employer and an exclusive representative; requiring the public~~
30 ~~school employer and the exclusive representative to arbitrate certain disputes~~
31 ~~under certain circumstances; requiring the party demanding arbitration to~~
32 ~~deliver a copy of the demand to certain parties; requiring the public school~~
33 ~~employer and the exclusive representative to select an arbitrator to conduct the~~
34 ~~arbitration within a certain period of time and in a certain manner; requiring~~
35 ~~the arbitrator to commence the arbitration within a certain period of time;~~
36 ~~authorizing the arbitrator to perform certain acts; establishing that a prior~~
37 ~~order, action, or opinion issued by the State Board of Education does not~~
38 ~~constitute binding precedent in arbitration after the enactment of certain~~
39 ~~provisions of law; requiring an arbitrator to conclude an arbitration within a~~
40 ~~certain period of time in a certain manner; requiring an arbitrator to issue a~~
41 ~~ruling within a certain period of time; establishing that the arbitrator's finding~~
42 ~~is final and binding on the public school employer and the exclusive~~
43 ~~representative and is a self-executing mandate on certain parties; requiring the~~
44 ~~parties to the arbitration to share the costs of the arbitration equally; requiring~~
45 ~~the arbitrator to deliver a copy of the written award to certain parties;~~
46 establishing as an independent unit of State government a Public School Labor
47 Relations Board to assume certain duties previously held by the State Board of
48 Education; requiring the Public School Labor Relations Board to hear certain

1 controversies and disputes; establishing that certain decisions by the Public
2 School Labor Relations Board are final; requiring the Public School Labor
3 Relations Board to adopt certain rules and regulations related to the
4 designation of an exclusive representative; requiring the Public School Labor
5 Relations Board to supervise certain elections concerning employee
6 representation; requiring a public school employer and an employee
7 organization to negotiate in a certain manner under certain circumstances;
8 including procedures regarding employee transfers and assignments among the
9 matters a public school employer must meet and negotiate with a certain
10 employee organization on request; including the discipline and discharge of an
11 employee for just cause among the matters a public school employer must meet
12 and negotiate with a certain employee organization on request; establishing
13 certain processes and requirements for the resolution of disputes over the
14 negotiability of certain topics; authorizing the Public School Labor Relations
15 Board to adopt certain regulations, guidelines, and policies; repealing certain
16 provisions of law regarding the resolution of certain impasses in negotiations;
17 requiring the Public School Labor Relations Board to facilitate the beginning of
18 mediation of certain disputes within a certain period of time and in a certain
19 manner; establishing a certain process for the mediation of certain disputes;
20 requiring a mediator to conclude certain mediations within a certain period of
21 time; requiring a public school employer and employee organization to share
22 certain dispute resolution costs equally; establishing certain processes for
23 arbitration of certain disputes left unresolved by mediation; requiring the Public
24 School Labor Relations Board to facilitate certain arbitration processes within a
25 certain period of time and in a certain manner; requiring the Public School
26 Labor Relations Board to issue a certain award at the end of arbitration;
27 subjecting certain negotiated provisions or decisions to certain provisions of law
28 concerning the fiscal relationship between public school employers and certain
29 governing bodies; requiring public school employers to renegotiate certain
30 agreements with employee organizations under certain circumstances in a
31 certain manner; specifying the manner of appointment, membership, duties,
32 and responsibilities of the Public School Labor Relations Board; providing for
33 the staffing of the Public School Labor Relations Board; providing for the
34 staggering of terms of the members of the Public School Labor Relations Board;
35 requiring the Public School Labor Relations Board to decide certain
36 controversies and disputes involving public school employers and employee
37 organizations; authorizing a member of the Public School Labor Relations Board
38 to petition a circuit court to seek enforcement of an order of the Public School
39 Labor Relations Board; providing that a certain hearing and determination
40 under this Act is a contested case; establishing the significance of certain prior
41 orders, actions, and opinions of the State Board of Education in deciding certain
42 matters arising after the enactment of this Act; providing for the application
43 and construction of this Act; requiring the Public School Labor Relations Board
44 to report to the General Assembly on or before a certain date; providing for the
45 termination of this Act; defining certain terms; making stylistic changes; and
46 generally relating to public school education, collective bargaining, and dispute
47 resolution.

1 BY repealing and reenacting, with amendments,

2 Article – Education

3 Section ~~6-401, 6-408, 6-501, and 6-510~~ 2-205(e), 6-401, 6-405(f), 6-408,
4 6-501, 6-506(f), 6-510, and 6-511

5 Annotated Code of Maryland

6 (2008 Replacement Volume)

7 BY adding to

8 Article – Education

9 Section 6-408.1; and 6-801 through 6-807 to be under the new subtitle

10 “Subtitle 8. Public School Labor Relations Board”

11 Annotated Code of Maryland

12 (2008 Replacement Volume)

13 BY repealing and reenacting, with amendments,

14 Article – State Personnel and Pensions

15 Section 3-204

16 Annotated Code of Maryland

17 (2004 Replacement Volume and 2008 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Education**

21 2-205.

22 (e) (1) Without charge and with the advice of the Attorney General, the
23 State Board shall explain the true intent and meaning of the provisions of:

24 (i) This article that are within its jurisdiction; and

25 (ii) The bylaws, rules, and regulations adopted by the Board.

26 (2) [The] EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS
27 SUBSECTION AND IN TITLE 6, SUBTITLES 4 AND 5 OF THIS ARTICLE, THE Board
28 shall decide all controversies and disputes under these provisions.

29 (3) The decision of the Board is final.

30 (4) (I) THE PUBLIC SCHOOL LABOR RELATIONS BOARD
31 SHALL DECIDE ANY CONTROVERSY OR DISPUTE ARISING UNDER TITLE 6,
32 SUBTITLE 4 OR SUBTITLE 5 OF THIS ARTICLE.

33 (II) A DECISION OF THE PUBLIC SCHOOL LABOR
34 RELATIONS BOARD IS FINAL.

1 6-401.

2 (a) In this subtitle the following words have the meanings indicated.

3 ~~(B) "ARBITRATE" MEANS THE PRESENTATION TO AN ARBITRATOR FOR~~
4 ~~A FINAL AND BINDING DETERMINATION OF A DISPUTE;~~

5 ~~(1) ABOUT THE PROPER APPLICATION OR INTERPRETATION OF A~~
6 ~~PROVISION OF THIS SUBTITLE; OR~~

7 ~~(2) ARISING UNDER THIS SUBTITLE.~~

8 ~~(C) "ARBITRATOR" MEANS A NEUTRAL INDIVIDUAL ENGAGED BY A~~
9 ~~PUBLIC SCHOOL EMPLOYER AND AN EXCLUSIVE REPRESENTATIVE TO MAKE A~~
10 ~~FINAL AND BINDING DETERMINATION OF A DISPUTE UNDER THIS SUBTITLE.~~

11 ~~[(b)] (D) "BOARD" MEANS THE PUBLIC SCHOOL LABOR RELATIONS~~
12 ~~BOARD ESTABLISHED UNDER SUBTITLE 8 OF THIS TITLE.~~

13 (C) "Employee organization" means an organization that:

14 (1) Includes certificated employees of a public school employer or
15 individuals of equivalent status in Baltimore City; and

16 (2) Has as one of its main purposes the representation of the
17 employees in their relations with that public school employer.

18 [(c)] ~~(E)~~ (D) (1) "Home and hospital teacher" means a teacher employed by a
19 public school employer to provide instructional services to a public school student who
20 is unable to function effectively in the classroom setting due to the student's medical,
21 physical, or emotional condition.

22 (2) A home and hospital teacher may teach in:

23 (i) A private home;

24 (ii) A hospital;

25 (iii) A therapeutic center;

26 (iv) A school; or

27 (v) Any other appropriate site.

28 [(d)] ~~(F)~~ (E) (1) "Public school employee" means a certificated professional
29 individual who is employed by a public school employer or an individual of equivalent

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1 status in Baltimore City, except for a county superintendent or an individual
 2 designated by the public school employer to act in a negotiating capacity as provided
 3 in § 6-408(b) of this subtitle.

4 (2) In Montgomery County, "public school employees" include:

5 (i) Certificated and noncertificated substitute teachers
 6 employed by the public school employer for at least 7 days before March 1 of the school
 7 fiscal year ending June 30, 1978, and each year after; and

8 (ii) Home and hospital teachers employed by the public school
 9 employer for at least 7 days before March 1 of the school fiscal year ending June 30,
 10 2000, and each year after.

11 (3) In Baltimore County, "public school employee" includes:

12 (i) A secondary school nurse, an elementary school nurse, and a
 13 special school nurse; and

14 (ii) Supervisory noncertificated employees as defined under §
 15 6-501(h) of this title.

16 (4) In Frederick County, "public school employee" includes a social
 17 worker employed by a public school employer.

18 (5) In Prince George's County, "public school employee" includes home
 19 and hospital teachers and Junior Reserve Officer Training Corps (JROTC) instructors.

20 (6) In Charles County and Garrett County, "public school employee"
 21 includes Junior Reserve Officer Training Corps (JROTC) instructors.

22 (7) In Carroll County, "public school employee" includes supervisory
 23 noncertificated employees as defined under § 6-501(h) of this title.

24 [(e)] ~~(G)~~ (F) "Public school employer" means a county board of education or the
 25 Baltimore City Board of School Commissioners.

26 6-405.

27 (f) (1) The [State] Board shall adopt rules and regulations for:

28 (i) Verifying the number of certificated employees of the public
 29 school employer or individuals of equivalent status in Baltimore City who are
 30 members in good standing of an employee organization on the date of the certification
 31 or who have signed a petition under this section; and

1 (ii) Holding elections under this section and the certification of
 2 their results.

3 (2) The [State] Board shall provide for supervision of these elections.

4 (3) The elections shall be held:

5 (i) In each school facility where public employees are assigned
 6 on a regularly scheduled school day;

7 (ii) In a manner assuring the secrecy of the ballot; and

8 (iii) On a regular working day for public school employees,
 9 between June 1 and June 15, inclusive, except in Baltimore City where the elections
 10 shall be held between November 1 and November 15 following the date on which
 11 certification of required membership enrollment is made.

12 (4) In any election held under this section, the employee organization
 13 that receives the largest number of votes cast in a unit shall be declared to be the
 14 exclusive representative of all public school employees in the unit. If the largest
 15 number of votes in the election is cast not to have exclusive representation, a
 16 representative may not be designated for the unit.

17 (5) The public school employer shall provide any assistance required
 18 in holding the elections.

19 6-408.

20 (a) [(1) In this section, "negotiate" includes the duty to:

21 (i) Confer in good faith, at all reasonable times; and

22 (ii) Reduce to writing the matters agreed on as a result of the
 23 negotiations.

24 (2)] **WHEN A PUBLIC SCHOOL EMPLOYER AND AN ~~EXCLUSIVE~~**
 25 **~~REPRESENTATIVE~~ EMPLOYEE ORGANIZATION NEGOTIATE UNDER THIS**
 26 **SECTION, THE PUBLIC SCHOOL EMPLOYER AND THE ~~EXCLUSIVE~~**
 27 **~~REPRESENTATIVE~~ EMPLOYEE ORGANIZATION SHALL:**

28 (1) **CONFER IN GOOD FAITH, AT ALL REASONABLE TIMES;**

29 (2) **HONOR AND ADMINISTER EXISTING AGREEMENTS;**

30 (3) **MAKE EVERY REASONABLE EFFORT TO CONCLUDE**
 31 **NEGOTIATIONS WITH A FINAL WRITTEN AGREEMENT IN A TIMELY MANNER; AND**

1 (4) **REDUCE TO WRITING THE MATTERS AGREED ON AS A RESULT**
2 **OF THE NEGOTIATIONS.**

3 (B) The agreements ~~may~~ **SHALL** provide for binding arbitration of the
4 grievances arising under the agreement that the parties have agreed to be subject to
5 arbitration.

6 **[(b)] (C)** (1) On request a public school employer or at least two of its
7 designated representatives shall meet and negotiate with at least two representatives
8 of the employee organization that is designated as the exclusive negotiating agent for
9 the public school employees in a unit of the county on all matters that relate to:

10 ~~(I)~~ salaries~~,¹₁~~

11 ~~(II)~~ wages~~,¹₁~~

12 ~~(III)~~ hours~~,¹₁~~ and

13 ~~(IV)~~ other working conditions, **INCLUDING PROCEDURES**
14 **REGARDING EMPLOYEE TRANSFERS AND ASSIGNMENTS.**

15 (2) Except as provided in paragraph (3) of this subsection, a public
16 school employer or at least two of its designated representatives may negotiate with at
17 least two representatives of the employee organization that is designated as the
18 exclusive negotiating agent for the public school employees in a unit of the county on
19 other matters that are mutually agreed to by the employer and the employee
20 organization.

21 (3) A public school employer may not negotiate the school calendar,
22 the maximum number of students assigned to a class, or any matter that is precluded
23 by applicable statutory law.

24 ~~(4)~~ A matter that is not subject to negotiation under paragraph (2) of
25 this subsection because it has not been mutually agreed to by the employer and the
26 employee organization may not be raised in any action taken to resolve an impasse
27 under subsection (d) of this section.

28 **(5) (I) IF A PUBLIC SCHOOL EMPLOYER AND AN EMPLOYEE**
29 **ORGANIZATION DISPUTE WHETHER A PROPOSED TOPIC FOR NEGOTIATION IS A**
30 **MANDATORY, PERMISSIVE, OR ILLEGAL TOPIC OF BARGAINING, EITHER PARTY**
31 **MAY SUBMIT A REQUEST FOR A DECISION IN WRITING TO THE BOARD FOR FINAL**
32 **RESOLUTION OF THE DISPUTE.**

33 **(II) A REQUEST FOR A DECISION SHALL:**

1 **1. CLEARLY IDENTIFY EACH TOPIC OF BARGAINING**
2 **FOR WHICH THE PARTY IS REQUESTING A DECISION; AND**

3 **2. BE MADE BEFORE THE BOARD DETERMINES THAT**
4 **AN IMPASSE HAS BEEN REACHED.**

5 **(III) IF THE BOARD RECEIVES A REQUEST FOR A DECISION,**
6 **WITHIN 7 DAYS AFTER RECEIPT OF THE REQUEST THE BOARD SHALL ISSUE A**
7 **LETTER TO THE PUBLIC SCHOOL EMPLOYER AND THE EMPLOYEE**
8 **ORGANIZATION, THAT REQUESTS WRITTEN BRIEFS IN SUPPORT OF THEIR**
9 **RESPECTIVE POSITIONS.**

10 **(IV) WITHIN 7 DAYS AFTER RECEIPT OF A REQUEST FROM**
11 **THE BOARD FOR WRITTEN BRIEFS, THE PUBLIC SCHOOL EMPLOYER AND THE**
12 **EMPLOYEE ORGANIZATION SHALL DELIVER TO THE BOARD A WRITTEN BRIEF**
13 **ON THE ISSUE OF WHETHER THE TOPIC IS MANDATORY, PERMISSIVE, OR**
14 **ILLEGAL IN NATURE.**

15 **(V) AFTER RECEIPT OF WRITTEN BRIEFS FROM THE PUBLIC**
16 **SCHOOL EMPLOYER AND THE EMPLOYEE ORGANIZATION, THE BOARD SHALL:**

17 **1. CONSIDER THE MERITS OF EACH PARTY'S**
18 **ARGUMENTS;**

19 **2. RENDER A DECISION DETERMINING WHETHER**
20 **THE TOPIC OF NEGOTIATION IS MANDATORY, PERMISSIVE, OR ILLEGAL; AND**

21 **3. ISSUE THE WRITTEN DECISION TO THE PARTIES**
22 **WITHIN 14 DAYS AFTER RECEIVING THE WRITTEN BRIEFS.**

23 **(VI) 1. THE BOARD MAY ADOPT REGULATIONS,**
24 **GUIDELINES, AND POLICIES TO CARRY OUT ITS RIGHTS AND RESPONSIBILITIES**
25 **UNDER THIS SECTION.**

26 **2. TO RESOLVE DISPUTES UNDER THIS SECTION,**
27 **THE BOARD SHALL DEVELOP A BALANCING TEST TO DETERMINE WHETHER THE**
28 **IMPACT OF THE MATTER ON THE SCHOOL SYSTEM AS A WHOLE CLEARLY**
29 **OUTWEIGHS THE DIRECT IMPACT ON THE TEACHERS OR EMPLOYEES.**

30 ~~(5)~~ **(6)** In Montgomery County, the exclusive negotiating agent for
31 the public school employees in a unit and the public school employer shall meet and
32 negotiate under this section the salaries, wages, hours, and other working conditions
33 of all persons actually employed as substitute teachers or home and hospital teachers.