

CARROLL ASSOCIATION OF SCHOOL
EMPLOYEES,

Appellants,

v.

CARROLL COUNTY BOARD
OF EDUCATION,

Appellees.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-41

OPINION

This appeal involves a dispute over the process for determining the composition of a collective bargaining unit for an organization of noncertificated employees. Carroll Association of School Employees (“CASE”) asks that the State Board declare the true intent and meaning of § 6-505(b) of the Education Article by ruling that the Carroll County Board of Education must upon request from an employee organization always engage in bargaining unit determinations prior to and separate from substantive contract negotiations. CASE argues that such an interpretation of § 6-505(b) makes legal and practical sense and that local boards that have faced this issue, with the exception of the Carroll County Board of Education, have entered into bargaining unit determinations prior to substantive negotiations.

The local board argues that there is nothing in Maryland law that supports the union’s position that unit composition “must” always be a separate negotiation distinct from substantive contract negotiations. The local board therefore urges the State Board to reject the union’s request to expand the meaning of § 6-505(b).

FACTUAL BACKGROUND

The local board has designated five employee organizations as the exclusive representatives of five units of public school employees in its jurisdiction – CASE; American Federation of State, County and Municipal Employees (“AFSCME”); Carroll County School Food Services Association (“CCSFSA”); Carroll County Education Association (“CCES”); and Association of Public School Administrators and Supervisors of Carroll County (“APSASCC”).¹ CASE is the exclusive representative of the unit of noncertificated clerical employees, assistants,

¹AFSCME represents all regular full-time and part-time employees who work a minimum of twenty hours per week in plant maintenance, plant operations, and transportation, excluding the plant operations supervisor, the plant maintenance supervisor, all management personnel, professionals, and clerical employees. CCSFSA represents all food service employees. CCEA represents all certificated professional employees, excluding employees with administrative and supervisory responsibilities. APSASCC represents all certificated professional employees with administrative and supervisory responsibilities.

and licensed practical nurses employed for nine months or more per year. The parties have stipulated that the local board also employs some individuals in noncertificated non-supervisory positions who are not represented by any of these five employee organizations and who could be considered “eligible public school employees” within the scope of § 6-505(d) of the Education Article. The parties have further stipulated that these positions could be included in the bargaining unit represented by CASE.

Beginning in November 2000, CASE notified the local board that it believed persons employed in the position of elementary support room assistant should be part of the bargaining unit represented by CASE. On February 1, 2001, CASE raised this issue with the local board during contract negotiations. On February 14, 2001, the local board advised CASE that it was not interested in having CASE represent elementary support room assistants because the board did not believe that these individuals who were working on an hourly non-FTE basis filled positions eligible for inclusion in the bargaining unit.²

On or about October 16, 2001, James R. Whattam on behalf of CASE notified the local superintendent, Dr. Charles Ecker, that CASE wanted the local board to redefine its bargaining unit to include elementary support room assistants and that negotiations on the issue should precede contract negotiations. Edmund J. O’Meally, counsel for the local board, advised Mr. Whattam that the local board was willing to engage in good faith negotiations on whether elementary support room assistants should be part of the CASE bargaining unit, but that the local board would not bifurcate the process and would only negotiate the issue in conjunction with substantive contract negotiations. CASE agreed to negotiate the matters together without prejudice to its position in order to move forward with substantive contract negotiations. The parties engaged in negotiations for the 2002 – 2003 and 2003 – 2004 school years without resolving the issue of adding elementary support room assistants to the CASE bargaining unit.

In September, 2003, Mr. Whattam informed Dr. Ecker that CASE had discovered numerous noncertificated employees who were not included in any bargaining unit. Mr. Whattam requested that negotiations to determine bargaining unit alterations be initiated prior to substantive contract negotiations for the 2004 – 2006 school years. Mr. O’Meally advised that the local board would only hold such negotiations during substantive contract negotiations. This appeal to the State Board followed.

The appeal was initially referred to the State Office of Administrative Hearings for review by an administrative law judge (ALJ) who conducted a hearing and issued a proposed decision. The ALJ determined that given the dictates of 2-205(e) of the Education Article, she lacked the power to issue any legal interpretation on the matter because the State Board could not appropriately delegate to the State Office of Administrative Hearings a petition seeking an

²FTE stands for “full time equivalent.” Elementary support room assistants have no established schedule across the county and work such hours as individual principals deem necessary. (Local board memorandum, p.4 n.1).

explanation of the “true intent and meaning” of an Education Article statute.³ In light of that determination, this matter is currently before the State Board for consideration of the original issue presented by CASE.

LEGAL BACKGROUND AND ANALYSIS

Maryland’s collective bargaining laws for public school employees are contained in the Education Article, Annotated Code of Maryland: §§ 6-401 *et seq.* for organizations of certificated employees and §§ 6-501 *et seq.* for organizations of noncertificated employees. Because this appeal concerns the composition of a unit of noncertificated employees, we look to § 6-505 which provides as follows:

(a) *Public school employer may designate exclusive employee representative; designation required in Garrett County and Frederick County.* – (1) Each public school employer may designate, as provided in this subtitle, which employee organization, if any, shall be the exclusive representative of all public school employees in a specified unit in the county.⁴

(2) In Baltimore City, Garrett County, and Frederick County, the public school employer shall designate, as provided in this subtitle, which employee organization, if any, shall be the exclusive representative of all public school employees in a specified unit in the county.

³Although the ALJ issued proposed Findings of Fact, she did so only in the event that the State Board were to return the case to OAH directing the issuance of a decision with Conclusions of Law and Recommendations on the issue posed. ALJ’s Proposed Decision at 14, Exhibit 1.

⁴The term “public school employee” is defined for purposes of Title 6, Subtitle 5 of the Education Article as:

- (1) "Public school employee" means a noncertificated individual who is employed for at least 9 months a year on a full-time basis by a public school employer.
- (2) "Public school employee" includes a noncertificated employee in Baltimore City notwithstanding that the noncertificated employee does not work for at least 9 months a year on a full-time basis.
- (3) "Public school employee" does not include:
 - (i) Management personnel;
 - (ii) A confidential employee; or
 - (iii) Any individual designated by the public school employer to act in a negotiating capacity as provided in § 6-510(b) of this subtitle.

(b) *Composition of unit.* – The public school employer shall determine the composition of the unit in negotiation with any employee organization that requests negotiation concerning the composition of the unit.

(c) *Three unit limit for each county.* – (1) There may not be more than three units in a county and a unit may not include both supervisory and nonsupervisory employees.

(2) If a county has more than three recognized units and, as of July 1, 1974, the units have exclusive representation for collective negotiations, these units may continue as negotiating units.

(3) In Baltimore County, there shall only be three nonsupervisory units in addition to the supervisory unit defined under § 6-404 (c)(2) of this title.

(d) *Membership.* – (1) All eligible public school employees shall:

- (i) Be included in one of these units; and
- (ii) Have the rights granted in this subtitle.

(2) Except for an individual who is designated as management personnel or a confidential employee under this subtitle, each public school employee is eligible for membership in one of the negotiating units.

Section 6-506 of the Education Article sets forth the method of designating the exclusive employee representative.

The Maryland Court of Special Appeals in *Charles County Employees Local Union v. Board of Education*, 48 Md. App. 339 (1981), analyzed the interplay of § 6-505(a)(1) with other provisions in that statute on the composition of units and with § 6-506 on the method of designating the exclusive employee representative. The Court held that §6-505(a)(1) is discretionary and therefore a local board is not duty bound to engage in the procedures for determining the composition of units for noncertificated employees unless the local board first decides to designate an exclusive representative for noncertificated staff.

Unlike the local board in the *Charles County Employees* case, here the Carroll County Board made the decision decades ago to designate exclusive representation for various units of noncertificated employees. Thus, the Carroll County Board of Education must comply with the procedures set forth in § 6-505(b). The issue for the State Board to decide is whether under the circumstances of this case that statutory provision requires the determination of the composition of a unit prior to substantive negotiations.

CASE'S POSITION

CASE maintains that the unit determination issue in this case should be resolved in a process separate from and preceding the substantive contract negotiations, and should involve any other interested employee organization in the unit determination process. In support of its position, CASE asserts the following:

- Section 6-505(b) grants a right to any interested employee organization to participate in unit determination negotiations with the local board. Therefore, negotiations cannot occur during CASE's substantive contract negotiations with the local board because all three organizations in Carroll County representing noncertificated employees cannot be present during these substantive talks. To do so would violate CASE's statutory status as exclusive bargaining agent for the unit of employees it represents. If all organizations are not present during the unit determination negotiations, this would violate the rights of other employee organizations to participate in the unit determination process.
- Unit determination issues need to be resolved in a separate process prior to substantive contract negotiations because CASE needs to know exactly who it is bargaining for before it can intelligently negotiate on contractual issues. For example, CASE must know the number of positions in the bargaining unit and the types of positions so that it can properly calculate the costs of any financial proposals made during contract negotiations.
- The process established in § 6-505(b) was designed to avoid the scenario in which a local board might attempt to trade the inclusion of other employees into a bargaining unit in exchange for concessions made by the employee organization during contract negotiations. It was also designed to avoid a situation in which the organization abandons its effort to have additional employees included in the bargaining unit in return for favorable contract language or benefits to existing unit members, thereby depriving the other employees of their right to be included in a bargaining unit.
- CASE refers in its memorandum to the unit determination practice recently followed by some Eastern Shore boards of education in which formal notice was published in local newspapers announcing the Eastern Shore boards' intention to designate bargaining units and inviting any interested employee organizations to contact the boards by a date certain. CASE argues that this same process is applicable in this instance.

LOCAL BOARD'S POSITION

The local board maintains that unit determination in this instance should be part of the substantive contract negotiations and argues in support of its position as follows:

- The local board concedes that there are times when it would make sense for a public school employer to conduct unit composition negotiations as a separate process distinct from regular collective bargaining negotiations. An example would be a local board implementing collective bargaining for noncertificated employees for the first time such as occurred with some Eastern Shore counties following the passage of Ch. 287, Section I, Acts 2002.⁵ Those particular Eastern Shore counties were literally “starting from scratch” and by necessity the units needed to be defined before the county board could choose whether or not to designate exclusive bargaining representatives. The Carroll County situation is different because there are three established noncertificated bargaining units which have long been defined, each of which has an exclusive bargaining representative and an existing collective bargaining agreement that spells out the recognition and composition of the unit.
- Unlike the Eastern Shore situation, in this appeal CASE is the only noncertificated bargaining representative that requested negotiation to expand the composition of its unit by bringing in the non-FTE hourly elementary support room assistants. Neither AFSCME nor CCSFSA expressed any interest in this group of employees despite discussion of this matter during the public participation segments of open meetings of the Carroll County Board.
- Consideration of the non-FTE hourly elementary support room assistants requires consideration of the collective bargaining contract itself. The existing recognition clause needs to be considered as well as a number of other contractual provisions, including the definition of who is considered a “full-time” employee.

ANALYSIS

As noted above, this case does not present the situation where no bargaining units have been defined. The composition of five separate units representing various employees of the Carroll County Public School System was determined decades ago. Further, counsel for the local board indicated during oral argument that CASE's request to redefine its unit to include employee support room assistants has been referenced during several open meetings of the Carroll County Board of Education. This notwithstanding, no other employee organization has requested negotiation concerning the composition of a unit.

⁵Prior to the passage of Ch. 287, Acts 2002, Caroline, Cecil, Dorchester, Kent, Queen Anne's, and Talbot counties were exempted from collective bargaining for noncertificated staff.

As the local board counsel has also asserted, consideration of including hourly non-FTE elementary support room assistants requires consideration of other provisions in the existing collective bargaining agreement between CASE and the Carroll County Board of Education including the recognition clause as well as the agreement definition of a full-time employee.

The Court of Appeals has reiterated the following well-established rules of statutory construction:

The cardinal rule of statutory construction is to ascertain and carry out the intention of the Legislature. *State v. Pagano*, 341 Md. 129, 133 (1996). Our search for legislative intent begins and usually ends with the words of the statute at issue. *Schuman, Kane v. Aluisi*, 341 Md. 115, 119 (1995). When the statutory language is clear, we need not look beyond the statutory language to determine the Legislature's intent. *Kaczorowski v. Mayor & City Council of Baltimore*, 309 Md. 505, 515 (1987).

Applying these principles to the matter at issue, we observe that the plain language of § 6-505(b) requires the local board to “determine the composition of the unit in negotiation with any employee organization that requests negotiation” concerning unit composition. However, the statutory language does not require that negotiation on unit composition must always be separate from and precede substantive contract negotiations. We concur that there are circumstances when it is logical and reasonable to conduct unit composition negotiations first. One such example is when a local board implements collective bargaining for its employees for the first time. Defining the units is a necessary first step that must precede the process of designating the exclusive bargaining representative. Furthermore, as previously noted, no other employee organization has requested negotiation concerning the composition of a unit as specified in § 6-505(b) despite public knowledge of CASE's request.

CONCLUSION

For all of these reasons and under the specific circumstances of this case, we find that § 6-505(b) of the Education Article does not require that negotiation on unit composition must be separate from and precede substantive contract negotiations between Carroll County Board of Education and CASE.

Edward L. Root
President

Dunbar Brooks
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

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