

SENATE BILL 378

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2001 Regular Session
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CF 11r0898

By: **Senators Kelley, Astle, Blount, Collins, Conway, Currie, Della, Dorman,
Exum, Forehand, Green, Hughes, Jimeno, Lawlah, McFadden, Mitchell,
Pinsky, Ruben, Sfikas, and Stone**

Introduced and read first time: February 1, 2001
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Education - Negotiations**

3 FOR the purpose of requiring the State Labor Relations Board to decide any
4 controversy or dispute involving a labor organization of certificated or
5 noncertificated public school employees; providing that a decision of the Board is
6 a final decision, subject to certain provisions of law relating to the fiscal
7 limitations of local governments; requiring the Board to supervise the election of
8 exclusive employee representatives; altering the matters which may be
9 negotiated by a designated representative; authorizing the Board, under certain
10 circumstances, to make a certain determination; authorizing the Board to assist,
11 in a bargaining impasse, in resolving the differences leading to the impasse;
12 granting the Board certain authority in making a determination under this Act;
13 authorizing the Board to petition the circuit court to order compliance with a
14 Board order; authorizing the Board to adopt and enforce regulations, guidelines,
15 and policies under this Act; providing that a hearing and determination under
16 this Act is a contested case; repealing a limitation on who may be a certificated
17 employee in Montgomery County; altering the definition of "public school
18 employee"; altering the definition of "public school employer" to eliminate
19 certain exceptions; repealing certain exceptions to the application of certain
20 provisions of law relating to noncertificated employees; defining State Labor
21 Relations Board; and generally relating to the authority of the State Labor
22 Relations Board over controversies and disputes arising in negotiations with
23 certificated and noncertificated public school employees.

24 BY repealing and reenacting, with amendments,
25 Article - Education
26 Section 2-205(e), 6-401, 6-405(f), 6-408, 6-501, 6-506(f), and 6-510
27 Annotated Code of Maryland
28 (1999 Replacement Volume and 2000 Supplement)

29 BY repealing
30 Article - Education

1 Section 6-502
2 Annotated Code of Maryland
3 (1999 Replacement Volume and 2000 Supplement)

4 BY adding to
5 Article - Education
6 Section 6-801 to be under the new subtitle "Subtitle 8. State Labor Relations
7 Board"
8 Annotated Code of Maryland
9 (1999 Replacement Volume and 2000 Supplement)

10 BY adding to
11 Article - State Personnel and Pensions
12 Section 3-211
13 Annotated Code of Maryland
14 (1997 Replacement Volume and 2000 Supplement)

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

17 **Article - Education**

18 2-205.

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

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

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

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

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

27 (4) (I) THE STATE LABOR RELATIONS BOARD SHALL DECIDE ANY
28 CONTROVERSY OR DISPUTE ARISING UNDER TITLE 6, SUBTITLE 4 OR SUBTITLE 5 OF
29 THIS ARTICLE IN ACCORDANCE WITH THE PROVISIONS OF §§ 6-401(F) AND 6-501(G) OF
30 THIS ARTICLE.

31 (II) A DECISION OF THE STATE LABOR RELATIONS BOARD IS FINAL,
32 SUBJECT TO THE PROVISIONS OF THIS ARTICLE RELATING TO THE FISCAL
33 RELATIONSHIP BETWEEN A PUBLIC SCHOOL EMPLOYER AND THE GOVERNING BODY
34 OF A LOCAL JURISDICTION.

1 6-401.

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

3 (b) "Employee organization" means an organization that:

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

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

8 (c) (1) "Home and hospital teacher" means a teacher employed by a public
9 school employer to provide instructional services to a public school student who is
10 unable to function effectively in the classroom setting due to the student's medical,
11 physical, or emotional condition.

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

13 (i) A private home;

14 (ii) A hospital;

15 (iii) A therapeutic center;

16 (iv) A school; or

17 (v) Any other appropriate site.

18 (d) (1) "Public school employee" means a certificated professional individual
19 who is employed by a public school employer or an individual of equivalent status in
20 Baltimore City, except for a county superintendent or an individual designated by the
21 public school employer to act in a negotiating capacity as provided in § 6-408(b) of
22 this subtitle.

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

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

27 (ii) Home and hospital teachers employed by the public school
28 employer for at least 7 days before March 1 of the school fiscal year ending June 30,
29 2000, and each year after.

30 (3) In Baltimore County, "public school employee" includes a secondary
31 school nurse, an elementary school nurse, and a special school nurse.

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

1 (e) "Public school employer" means a county board of education or the New
2 Baltimore City Board of School Commissioners.

3 (F) "STATE LABOR RELATIONS BOARD" MEANS THE LABOR BOARD
4 ESTABLISHED UNDER TITLE 3, SUBTITLE 2 OF THE STATE PERSONNEL AND
5 PENSIONS ARTICLE AND HAVING THE AUTHORITY GRANTED UNDER THIS SUBTITLE
6 AND SUBTITLES 5 AND 8 OF THIS TITLE.

7 6-405.

8 (f) (1) The State LABOR RELATIONS Board shall adopt rules and regulations
9 for:

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

14 (ii) Holding elections under this section and the certification of
15 their results.

16 (2) The State LABOR RELATIONS Board shall provide for supervision of
17 these elections.

18 (3) The elections shall be held:

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

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

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

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

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

33 6-408.

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

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

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

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

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

9 (I) ALL MANDATORY SUBJECTS OF BARGAINING, WHICH ARE all
10 matters that relate to salaries, wages, hours, and other working conditions; AND

11 (II) ALL PERMISSIVE SUBJECTS OF BARGAINING, WHICH ARE ALL
12 OTHER MATTERS THAT ARE MUTUALLY AGREED TO BY THE EMPLOYER AND THE
13 EMPLOYEE ORGANIZATION.

14 (2) ON PETITION BY EITHER PARTY TO THE STATE LABOR RELATIONS
15 BOARD, THE STATE LABOR RELATIONS BOARD SHALL DETERMINE IF A MATTER IS A
16 MANDATORY SUBJECT, A PERMISSIVE SUBJECT, OR AN ILLEGAL SUBJECT FOR
17 BARGAINING.

18 [(2)] (3) In Montgomery County, the exclusive negotiating agent for the
19 public school employees in a unit and the public school employer shall meet and
20 negotiate under this section the salaries, wages, hours, and other working conditions
21 of all persons actually employed as substitute teachers or home and hospital teachers.

22 (c) The designation of representatives by the employer under this section does
23 not prevent the designated employee organization from appearing before or making
24 proposals to the public school employer at a public meeting or hearing.

25 (d) (1) If, on the request of either party, the State [Superintendent] LABOR
26 RELATIONS BOARD determines from the facts that an impasse is reached in
27 negotiations between a public school employer and an employee organization that is
28 designated as an exclusive negotiating agent, the assistance and advice of the State
29 LABOR RELATIONS Board may be requested, with the consent of both parties.

30 (2) If consent is not given and at the request of either party, a panel shall
31 be named to aid in resolving the differences.

32 (3) The panel shall contain three individuals chosen as follows:

33 (i) One member is to be named by each party within 3 days; and

34 (ii) The third member is to be chosen by the other two members
35 within 10 days after the request.

1 (4) The State LABOR RELATIONS Board or the panel selected shall meet
2 with the parties to aid in resolving the differences, and, if the matter is not resolved,
3 shall make a written report and recommendation within 30 days after the request.

4 (5) A copy of the report shall be sent to the representatives of the public
5 school employer and the employee organization.

6 (6) All costs of mediation shall be shared by the public school employer
7 and the employee organization.

8 (7) Notwithstanding any other provision of this subtitle, the public
9 school employer shall make the final determination as to matters that have been the
10 subject of negotiation, but this final determination is subject to the other provisions of
11 this article concerning the fiscal relationship between the public school employer and
12 the county commissioners, county council, and Mayor and City Council of Baltimore
13 City.

14 6-501.

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

16 (b) "Confidential employee" includes an individual whose employment
17 responsibilities require knowledge of the public school employer's posture in the
18 collective negotiation process, as determined by the public school employer in
19 negotiations with an employee organization that requests negotiation on this issue.

20 (c) "Employee organization" means an organization that:

21 (1) Includes noncertificated employees of a public school employer; and

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

24 (d) "Management personnel" includes an individual who is engaged mainly in
25 executive and managerial functions, as determined by the public school employer in
26 negotiation with an employee organization that requests negotiation on this issue.

27 (e) ["Noncertificated employee", in Montgomery County, means only a
28 full-time employee.

29 (f)] (1) "Public school employee" means a noncertificated individual who is
30 employed for at least 9 months a year [on a full-time basis] by a public school
31 employer.

32 (2) "Public school employee" includes a noncertificated employee in
33 Baltimore City AND MONTGOMERY COUNTY notwithstanding that the noncertificated
34 employee does not work for at least 9 months a year [on a full-time basis].

35 (3) "Public school employee" does not include:

36 (i) Management personnel;

1 (ii) A confidential employee; or

2 (iii) Any individual designated by the public school employer to act
3 in a negotiating capacity as provided in § 6-510(b) of this subtitle.

4 [(g)] (F) (1) "Public school employer" means the county board in each county
5 [except:

6 (i) Somerset;

7 (ii) Wicomico; and

8 (iii) Worcester].

9 (2) "Public school employer" includes the New Baltimore City Board of
10 School Commissioners.

11 (G) "STATE LABOR RELATIONS BOARD" MEANS THE LABOR BOARD
12 ESTABLISHED UNDER TITLE 3, SUBTITLE 2 OF THE STATE PERSONNEL AND
13 PENSIONS ARTICLE AND HAVING THE AUTHORITY GRANTED UNDER THIS SUBTITLE
14 AND SUBTITLES 5 AND 8 OF THIS TITLE.

15 (h) "Supervisory employee" includes any individual who responsibly directs
16 the work of other employees, as determined by the public school employer in
17 negotiation with an employee organization that requests negotiation on this issue.

18 [6-502.

19 (a) This subtitle does not apply to Caroline, Cecil, Dorchester, Kent, Queen
20 Anne's, and Talbot Counties.

21 (b) This subtitle does not apply to any public employees who, as of July 1,
22 1974, were covered by a negotiated agreement lawfully made between the employees
23 and any county under local law or ordinance.]

24 6-506.

25 (f) (1) The State LABOR RELATIONS Board shall adopt rules and regulations
26 for:

27 (i) Verifying the number of public school employees who are
28 members in good standing of an employee organization on the date of the certification
29 or who have signed a petition under this section; and

30 (ii) Holding elections under this section and the certification of
31 their results.

32 (2) The State LABOR RELATIONS Board shall provide for supervision of
33 these elections.

34 (3) The elections shall be held:

- 1 (i) In each school facility where public school employees are
2 assigned on a regularly scheduled school day;
- 3 (ii) In a manner assuring the secrecy of the ballot; and
- 4 (iii) On a regular working day for public school employees, between
5 June 1 and June 15, inclusive.

6 (4) In all elections held under this section, the employee organization
7 that receives a majority of the votes cast in a unit shall be declared to be the exclusive
8 representative of all public school employees in the unit. If a majority of the votes in
9 the election are cast not to have exclusive representation, a representative may not be
10 designated for the unit.

11 (5) The two choices on the ballot that receive the most votes shall be
12 placed on a ballot for a runoff election that shall be held in the same manner as the
13 original election if:

- 14 (i) More than one employee organization is on the ballot;
- 15 (ii) No employee organization obtains a majority of the votes; and
- 16 (iii) A majority of the votes is not for "not to have exclusive
17 representation".

18 (6) The public school employer shall provide any assistance required in
19 conducting the elections.

20 6-510.

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

- 22 (i) Confer in good faith, at all reasonable times; and
- 23 (ii) Reduce to writing the matters agreed on as a result of the
24 negotiations.

25 (2) The agreements may provide for binding arbitration of the grievances
26 arising under the agreement that the parties have agreed to be subject to arbitration.

27 (b) (1) On request, a public school employer or at least two of its designated
28 representatives shall meet and negotiate with at least two representatives of the
29 employee organization that is designated as the exclusive negotiating agent for the
30 public school employees in a unit of the county on:

31 (I) ALL MANDATORY SUBJECTS OF BARGAINING, WHICH ARE all
32 matters that relate to salaries, wages, hours, and other working conditions,
33 INCLUDING DISCIPLINE AND DISCHARGE FOR JUST CAUSE; AND

1 (II) ALL PERMISSIVE SUBJECTS OF BARGAINING, WHICH ARE ALL
2 OTHER MATTERS THAT ARE MUTUALLY AGREED TO BY THE EMPLOYER AND THE
3 EMPLOYEE ORGANIZATION.

4 (2) ON PETITION BY EITHER PARTY TO THE STATE LABOR RELATIONS
5 BOARD, THE STATE LABOR RELATIONS BOARD SHALL DETERMINE IF A MATTER IS A
6 MANDATORY SUBJECT, A PERMISSIVE SUBJECT, OR AN ILLEGAL SUBJECT FOR
7 BARGAINING.

8 (c) The designation of representatives by the employer under this section does
9 not prevent an employee organization from appearing before or making proposals to
10 the public school employer at a public meeting or hearing.

11 (d) (1) If, on the request of either party, the State [Superintendent] LABOR
12 RELATIONS BOARD determines from the facts that an impasse is reached in
13 negotiations between a public school employer and an employee organization that is
14 designated as an exclusive negotiating agent, the assistance and advice of the State
15 LABOR RELATIONS Board may be requested, with the consent of both parties.

16 (2) If consent is not given and at the request of either party, a panel shall
17 be named to aid in resolving the differences.

18 (3) The panel shall contain three individuals chosen as follows:

19 (i) One member is to be named by each party within 3 days; and

20 (ii) The third member is to be chosen by the other two members
21 within 10 days after the request.

22 (4) The State LABOR RELATIONS Board or the panel selected shall meet
23 with the parties to aid in resolving the differences, and, if the matter is not resolved,
24 shall make a written report and recommendation within 30 days after the request.

25 (5) A copy of the report shall be sent to representatives of the public
26 school employer and the employee organization.

27 (6) All costs of the impasse proceedings, including mediation, shall be
28 shared equally by the public school employer and the employee organization.

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

SUBTITLE 8. STATE LABOR RELATIONS BOARD.

2 6-801.

3 (A) IN THIS SUBTITLE, "STATE LABOR RELATIONS BOARD" MEANS THE LABOR
4 BOARD ESTABLISHED UNDER TITLE 3, SUBTITLE 2 OF THE STATE PERSONNEL AND
5 PENSIONS ARTICLE.

6 (B) IN DECIDING MATTERS COVERED UNDER THE PROVISIONS OF SUBTITLES
7 4 AND 5 OF THIS TITLE, THE STATE LABOR RELATIONS BOARD:

8 (1) MAY:

9 (I) CONDUCT HEARINGS;

10 (II) SUBPOENA WITNESSES AND DOCUMENTS;

11 (III) ADMINISTER OATHS;

12 (IV) TAKE THE TESTIMONY OR DEPOSITION OF A PERSON UNDER
13 OATH; AND

14 (V) CONDUCT INVESTIGATIONS; AND

15 (2) SHALL DECIDE CONTROVERSIES AND DISPUTES.

16 (C) (1) IF A PERSON FAILS TO COMPLY WITH AN ORDER ISSUED BY THE
17 STATE LABOR RELATIONS BOARD, A MEMBER OF THE BOARD MAY PETITION THE
18 CIRCUIT COURT TO ORDER THE PERSON TO COMPLY WITH THE BOARD'S ORDER.

19 (2) THE STATE LABOR RELATIONS BOARD MAY NOT BE REQUIRED TO
20 POST BOND IN AN ACTION UNDER PARAGRAPH (1) OF THIS SUBSECTION.

21 (D) EACH HEARING AND DETERMINATION OF AN APPEAL OR COMPLAINT BY
22 THE STATE LABOR RELATIONS BOARD IS A CONTESTED CASE, SUBJECT TO THE
23 PROVISIONS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

24 (E) THE STATE LABOR RELATIONS BOARD MAY:

25 (1) ADOPT AND ENFORCE REGULATIONS, GUIDELINES, AND POLICIES
26 TO CARRY OUT ITS RIGHTS AND RESPONSIBILITIES UNDER THIS ARTICLE; AND

27 (2) MAKE RECOMMENDATIONS FOR LEGISLATIVE ACTION REGARDING
28 THE OPERATION OF THIS SUBTITLE.

29 **Article - State Personnel and Pensions**

30 3-211.

31 (A) THE BOARD SHALL ADMINISTER AND ENFORCE THE LABOR RELATIONS
32 PROVISIONS OF TITLE 6, SUBTITLES 4 AND 5 OF THE EDUCATION ARTICLE.

1 (B) THE AUTHORITY OF THE BOARD WITH REGARD TO LABOR RELATIONS
2 MATTERS IS SET OUT IN TITLE 6, SUBTITLE 8 OF THE EDUCATION ARTICLE.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2001.