Circuit Court for Washington County
Case No. C-21-CV-19-000328

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 22

September Term, 2020

BOARD OF EDUCATION OF
WASHINGTON COUNTY

v.

WASHINGTON COUNTY EDUCATIONAL
SUPPORT PERSONNEL, INC.

Berger,
Arthur,
Woodward, Patrick, L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: January 5, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This administrative appeal arises from a collective bargaining dispute. Washington County Educational Support Personnel, Inc. ("WCESP"), appellee, which is the exclusive bargaining unit for hourly, non-certificated employees of the Board of Education of Washington County ("the County Board"), appellant, submitted a dispute over the negotiability of minimum daily hours worked by its members to the Maryland Public School Labor Relations Board ("PSLRB"). The PSLRB ruled in favor of the County Board, determining that the minimum number of hours worked was an illegal subject of bargaining. On judicial review of that decision, the Circuit Court for Washington County reversed the decision of the PSLRB. The County Board appeals, presenting three issues for our review, which we have condensed and rephrased as one question:[1]

> Did the PSLRB err in determining that the number of hours worked by non-certificated employees of the County Board was an illegal subject of bargaining under sections 6-510(c), 4-103(a), and 6-201(f) of the Education Article?

[1] The issues as posed by the County Board are:

1. Whether the circuit court erred in failing to defer to the interpretation of sections 4-103(a), 6-201(f), and 6-510 of the Education Article made by the PSLRB, a specialized agency that was designated by the General Assembly to interpret Education Article provisions governing public school collective bargaining.

2. Whether the circuit court failed to properly interpret sections 4-103(a), 6-201(f), and 6-510 of the Education Article.

3. Whether the circuit court erred by compelling the Board to negotiate over a bargaining topic that will significantly impede its ability to efficiently operate the Washington County Public Schools.

For the following reasons, we answer "yes" to that question and shall affirm the decision of the circuit court reversing the decision of the PSLRB.

I. LEGAL BACKGROUND

In 2010, the General Assembly enacted the Fairness in Negotiations Act ("FINA"), creating the PSLRB as an independent State agency and revising the collective bargaining statutes. *See* 2010 Md. Laws, chs. 324-325 (codified at Educ. §§ 6-801 *et seq.*).[2] The PSLRB comprises five members: a chairperson who "[r]epresents the public" and has "experience in labor relations," two members selected by the labor organizations representing public school employees, and two members selected by the Maryland Association of Boards of Education and the State Superintendents' Association of Maryland. Educ. § 6-803(a). Previously, the Maryland State Board of Education ("MSBE") was charged with interpreting the Education Article and deciding disputes arising under the article's collective bargaining provisions. *See Montgomery Cnty. Educ. Ass'n, Inc. v. Bd. of Educ. of Montgomery Cnty.*, 311 Md. 303, 309-10 (1987) ("*MCEA*"). In enacting the 2010 legislation, the General Assembly split the authority to interpret the Education Article between the MSBE and the PSLRB. *Bd. of Educ. of Howard Cnty. v. Howard Cnty. Educ. Ass'n-ESP, Inc.*, 445 Md. 515, 524 (2015) ("*Howard Cnty. II*"). FINA also altered the process for resolving collective bargaining disputes by (1) imposing additional duties upon local boards and employee organizations during negotiations, (2) establishing a new procedure for resolving disputes over negotiability, (3) requiring the

[2] All references are to Md. Code, Educ. (1978, 2018 Repl. Vol.) unless otherwise noted.

parties to mediate impasses, and (4) designating the PSLRB as the final arbiter if settlement cannot be reached. 2010 Md. Laws, chs. 324-325 (codified at Educ. §§ 6-801 *et seq.*).

Of significance here, FINA empowered the PSLRB to "decide controversies and disputes" arising under Title 6, Subtitles 4 and 5, of the Education Article, which govern collective bargaining disputes involving certificated and non-certificated employees.[3] Educ. §§ 2-205(e)(4), 6-807(a). Section 6-510 governs collective bargaining between a public school employer, like the County Board, and a designated bargaining unit for non-certificated employees, like WCESP. Subsection (c)(1) sets out the "mandatory topics of negotiation; (c)(2) specifies the permissive topics of negotiation; and (c)(3) prescribes the illegal topics of negotiation." *Howard Cnty. II*, 445 Md. at 532. Subsection (c)(1) mandates negotiation "*on all matters that relate to* . . . [s]alaries, wages, *hours*, and other working conditions[.]" Educ. § 6-510(c)(1) (emphasis added). Subsection (c)(3) carves out of mandatory bargaining "the school calendar, the maximum number of students assigned to a class, or *any matter that is precluded by applicable statutory law*[,]" making those topics illegal subjects of bargaining. Educ. § 6-510(c)(3) (emphasis added). A topic that is neither mandatory nor illegal may be a permissive topic of bargaining if the parties mutually agree to negotiate on that subject. Educ. § 6-510(c)(2). The PSLRB has exclusive jurisdiction over disputes as to "whether a proposed topic for negotiation is a mandatory, a

[3] A non-certificated employee is "an employee who does not have a professional teaching certificate issued by the Maryland State Board of Education[.]" *Howard Cnty. II*, 445 Md. at 518.

permissive, or an illegal topic of bargaining[.]" Educ. § 6-510(c)(5)(i); *Howard Cnty. II*, 445 Md. at 532.

II. FACTUAL BACKGROUND

WCESP represents non-certificated support services employees of the County Board, including bus drivers, cafeteria workers, clerical staff, paraprofessionals, and maintenance workers. These employees are paid by the hour.

A. The Negotiations

On September 26, 2017, the parties executed a negotiated agreement ("Negotiated Agreement") that would remain in effect for four years, from July 1, 2017 through June 30, 2021. By its terms, salaries were negotiable annually and, in fiscal year 2020, each party could select "one sub-article" of the Negotiated Agreement to renegotiate.

During the negotiations for fiscal year 2020, WCESP reopened negotiations under sub-article 6.3 of the Negotiated Agreement, governing "[w]orkdays/[m]onths/[h]ours." That sub-article incorporated by reference a memorandum of understanding ("MOU") establishing the number of paid days, duty days, months, and "standard hours" for ten categories of positions. As pertinent, the MOU set standard daily hours for three categories of positions and otherwise designated the standard hours as "[v]aries."[4]

Sub-article 6.4 of the Negotiated Agreement provided that employees would work "up to eight (8) hours per day, excluding lunch, as are necessary to provide the services

[4] The three positions with standard hours under the MOU were: "Food Service Manager/Assistant Manager" (8 hours); "Garage/Maintenance" (8 hours); and "Technical" (7.5/8 hours). The seven other categories of positions with standard hours that "varied" included transportation, clerical, custodial, and paraprofessionals.

required and determined by a supervisor." The County Board was empowered to "adjust the hours for employees included in groups in [the MOU] at the beginning of each work year[,]" but after the budget was approved, the hours could not be "reduced for the duration of that year, except in an emergency."

On November 13, 2018, and January 23, 2019, WCESP submitted draft proposals to the County Board proposing standard daily hours or ranges of standard daily hours for most, but not all, job positions.[5] The County Board took the position at the bargaining table and in its counteroffers that it was not obligated to negotiate any standard daily hours. Its counteroffer stated that "[e]mployee standard daily hours will be 8 hours per day *or less*[,]" with the "[i]nitial assignment of and adjustment to standard daily hours . . . made to support the needs of the school system pursuant to Article 6.4." (Emphasis added.)

B. WCESP's Request for Resolution of Dispute with the PSLRB

On March 11, 2019, WCESP filed with the PSLRB a "Request to Resolve a Dispute as to Negotiability." WCESP identified three topics in dispute, only the third of which is relevant to this appeal. WCESP took the position that the "number of hours worked per day, known as standard hour[s]," was a mandatory subject of bargaining under Educ. § 6-510(c). It argued that non-certificated employees "must be able to rely upon a guaranteed standard number of hours per week[,]" because such number "formulates the basis of

[5] WCESP's initial proposal, which also set standard numbers of paid days, duty days, and months worked per year, was broken down into 101 specific job classifications rather than the general categories under the MOU. A subsequent WCESP counterproposal grouped the positions into 46 categories.

anticipated take home pay for personal budgeting purpose[s] as well as school system budgeting[.]" WCESP emphasized that local boards in other Maryland counties routinely bargained over standard hours, attaching copies of negotiated agreements from those jurisdictions that set out standard hours for non-certificated employees.[6]

The County Board responded that minimum standard hours were either a permissive or an illegal subject of bargaining. Given that local boards of education were empowered to hire non-certificated employees and to "set their salaries" under Educ. § 4-103(a), the County Board argued that forcing it to negotiate minimum standard hours interfered with its statutory right to set salaries because "the precise number of daily hours has a direct relationship to salaries." It further analogized setting hours for hourly employees to reclassification, a topic that the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)[7] has held falls within a local board's management prerogative and is not subject to bargaining. *See MCEA*, 311 Md. at 322 (reasoning that the MSBE's

[6] WCESP attached collective bargaining agreements between the bargaining units for non-certificated employees and their local boards in Calvert County, Carroll County, Frederick County, and Prince George's County. Although the County Board argues that these bargaining agreements do not reference minimum hours, it is clear that these agreements address substantially similar topics, such as "guaranteed" hours and "shall work" X number of hours.

[7] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also*, Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

determination that "salary determination[s] incident to the reclassification process [are] a management prerogative" was not "clearly contrary to the Education Article or otherwise in violation of law"). Alternatively, the County Board urged that upon application of the statutory balancing test set forth at Educ. § 6-510(c)(5)(vi)(2),[8] it was clear that the impact on the school system of obligating the County Board to negotiate minimum hours for most of the positions outweighed the impact on non-certificated employees because it would lead to waste and decreased flexibility in allocating scarce budget resources.

C. The PSLRB's Decision

On May 3, 2019, the PSLRB issued a 4-1 decision. On the only issue raised in this appeal, the PSLRB concluded that "minimum hours" were an illegal subject of bargaining. It reasoned that the Education Article obligated the County Board to "negotiate 'on all matters that relate to . . . hours,' except where such negotiations are 'precluded by applicable statutory law.'" (quoting Educ. § 6-510(c)(1), (3)). The PSLRB determined that negotiations on standard hours were "precluded" by two other statutory provisions: Educ.

[8] Educ. § 6-510(c)(5)(vi)(2) states: "To resolve disputes under this section, the Board shall develop a balancing test to determine whether the impact of the matter on the school system as a whole outweighs the direct impact on the employees."

§ 4-103(a)[9] and § 6-201(f),[10] both of which granted the County Board the authority to set the salaries and compensation of its employees, including non-certificated employees. The PSLRB explained:

> Because Sections 4-103(a) and 6-201(f) grant the County Board the express authority to set compensation for public school employees, the County Board is precluded from negotiating over the number of hours worked. This is due to the fact that the employees covered under the Negotiated Agreement are distinguishable from other salaried employees in that their compensation is inextricably linked to the number of hours that they work each day. Because the compensation of these hourly employees depends directly on the number of hours worked, negotiation over the number of hours worked would interfere with the County Board's statutory authority under Sections 4-103(a) and 6-201(f) to set compensation. As a result, we conclude that negotiation over the number of hours worked by hourly employees is illegal, and reject the WCESP's argument that hours worked is a "working condition," and therefore, a mandatory topic of negotiation.

(Footnotes omitted.) In a footnote, the PSLRB added that, because the "dispute [could] be resolved on statutory grounds, application of the [statutory] balancing test to determine negotiability is unnecessary."

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[9] Educ. § 4-103(a) states:

> (a) On the written recommendation of the county superintendent and subject to the provisions of this article, each county board shall:
>
> (1) Appoint all principals, teachers, and other certificated and noncertificated personnel; and
>
> (2) *Set their salaries*.

(Emphasis added.)

[10] Educ. § 6-201 governs the appointment of all public school personnel by county boards. At subsection (f), it states that "the qualifications, tenure, and *compensation of each appointee shall be determined by the county board*." (Emphasis added.)

The PSLRB "further bolstered" its conclusion by reference to other statutes "vesting with the County Board . . . the responsibility and authority to implement the Education Article[,]" including Educ. § 4-108, which directed local boards to "[m]aintain throughout its county a reasonably uniform system of public schools that is designed to provide quality education and equal educational opportunity for all children . . . [,]" and Educ. § 4-204(b)(1), which empowered the superintendent of each local board to ensure that "[t]he laws relating to the schools" were carried out. The PSLRB reasoned that, if "the number of hours, days, or months worked was a mandatory, or even permissive topic of negotiation," it "would interfere with the County Board's obligations under [those statutes]."

The dissenting member of the PSLRB wrote separately that, because Educ. § 6-510(c)(1) specifically lists "hours" as a mandatory topic of bargaining, such topic could be illegal only if it were "precluded by applicable statutory law" under Educ. § 6-510(c)(3). The dissent emphasized the legislature's use of the qualifier "statutory" as evidence that the legislature intended for the PSLRB to look directly to the Education Article to determine if a topic was an illegal subject of bargaining. Turning to the statutory law relied upon by the majority, Educ. §§ 4-103(a) and 6-201(f), the dissent noted that neither provision referenced "hours worked" or distinguished in any way between hourly and salaried employees. Both statutes empowered a local board to set salaries and compensation upon the "appointment" of an employee, which the dissent reasoned applied to new employees, not to negotiations about compensation and hours for existing

employees. The dissent also rejected the majority's conclusion that hourly employees were distinguishable from salaried employees, explaining:

> [T]he compensation of these hourly employees is linked both to the number of hours that they work and to the amount that they are paid per hour. In neither of these respects are they materially different from "other salaried employees," whose compensation is inextricably linked to the days and months that they work and the amount that the negotiated salary schedule indicates they will be paid for each day or month.

WCESP moved for reconsideration of the PSLRB decision. The County Board opposed the motion and, in the alternative, moved to strike it. By letter order dated May 30, 2019, the PSLRB denied the motion for reconsideration. That same day, WCESP petitioned for judicial review of the PSLRB decision in the circuit court.[11]

D. The Circuit Court's Reversal of the Decision of the PSLRB

The circuit court held a hearing on November 1, 2019 and, on February 20, 2020, issued a memorandum opinion and order reversing the PSLRB's decision. The circuit court held that the plain and unambiguous language of Educ. § 6-510(c)(1) mandated that the County Board negotiate "hours," which necessarily encompassed WCESP's request to negotiate on the topic of the minimum standard hours for its employees. The court further concluded that, contrary to the PSLRB's decision, Educ. §§ 6-510(c), 4-103(a), and 6-201(f) all "exist harmoniously." According to the court, the latter two provisions empower the County Board to appoint employees, including non-certificated hourly employees, and to set their salaries and compensation. Once the County Board exercises that power,

[11] WCESP moved in the circuit court to stay enforcement of the PSLRB decision, which the County Board opposed. The circuit court denied the motion to stay.

bargaining units, such as WCESP, are authorized to negotiate salaries, wages, hours, and working conditions on behalf of employees as set out in § 6-510(c)(1). Thus, the court determined that Educ. §§ 4-103(a) and 6-201(f) were not "applicable statutory law" precluding negotiation on the topic of hours worked. The court remanded the case to the PSLRB for it to "issue a directive requiring the [County Board] and the [WCESP] to enter into negotiations consistent with this Court's Order."

By order entered March 30, 2020, the PSLRB ordered the parties to enter into negotiations consistent with the circuit court order.[12]

This timely appeal followed.

III. STANDARD OF REVIEW

In reviewing a decision of an administrative agency, we "look through" the decision of the circuit court and evaluate the decision of the agency directly. *MVA v. Medvedeff*, 466 Md. 455, 464 (2019). "We are tasked with determining whether the administrative agency, as opposed to the circuit court, erred." *Balt. Police Dep't v. Antonin*, 237 Md. App. 348, 359 (2018). The scope of our review is "limited to determining if there is substantial evidence in the record as a whole to support the agency's finding[s] and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Id.* "[I]n undertaking judicial review of an agency action, [this] [C]ourt may not uphold the agency order unless it is sustainable on the agency's findings and for

[12] The County Board moved to stay the remand order pending the resolution of this appeal. By letter dated May 1, 2020, the PSLRB chairperson advised the parties that the PSLRB had determined that it lacked the authority to enter a stay.

the reasons stated by the agency." *Mayor & City Council of Balt. v. ProVen Mgmt., Inc.*, 472 Md. 642, 667 (2021).

Generally, we afford "considerable weight" to an "agency's interpretation and application of the statute which the agency administers . . . ." *Potomac Valley Orthopaedic Assocs. v. Md. State Bd. of Physicians*, 417 Md. 622, 636 (2011). The deference owed to an agency like the PSLRB is heightened because its "paramount role" is the interpretation of "public education law[, which] sets it apart from most administrative agencies." *Howard Cnty. Educ. Ass'n-ESP, Inc. v. Bd. of Educ. of Howard Cnty.*, 220 Md. App. 282, 293 (2014) ("*Howard Cnty. I*"). Nevertheless, if a decision of the PSLRB "would clearly be contrary to the statute's plain meaning[,]" an appellate court must "reject [the] decision[.]" *Howard Cnty. II*, 445 Md. at 523.

IV. DISCUSSION

A. Contentions

The County Board contends that this Court must defer to the PSLRB's decision determining that the subject of "minimum hours" is "precluded by 'applicable statutory law'" as a topic of collective bargaining.[13] The County Board maintains that the term "hours," as used in Educ. § 6-510(c)(1), is susceptible "of more than a single meaning" and does not necessarily contemplate "minimum hours," permitting the PSLRB to look beyond that language to other statutes bearing upon the bargaining topic at issue. The County

[13] Much of the County Board's brief is addressed to the reasoning employed by the circuit court on judicial review of the PSLRB decision. As explained, however, our focus on appellate review is on the decision of the administrative agency, not the circuit court.

Board also urges us to consider the PSLRB's decision in a companion case, *In re Secretaries & Assistants Association of Anne Arundel County*, PSLRB Case No. N 2019-04 (July 12, 2019) ("*In Re SAAAAC*"), that was rendered after the PSLRB's opinion in the instant case. In *In Re SAAAAC*, the PSLRB expanded upon its reasoning that setting standard hours for hourly employees is akin to job reclassification.

WCESP responds that the term "hours" is plain and unambiguous and that, in the face of this clear legislative directive, the PSLRB was "without authority to impose its own will on the [p]arties." WCESP maintains that the PSLRB's reliance upon Educ. §§ 4-103(a) and 6-201(f) was misplaced because neither statute has any bearing upon the negotiation of hours.

B. The PSLRB's Decision in *In Re SAAAAC*

As a threshold matter, we conclude that the PSLRB's subsequent decision in *In Re SAAAAC* is not properly before us. While the instant case was pending before the PSLRB, the Secretaries and Assistants Association of Anne Arundel County ("SAAAAC"), the bargaining unit for non-certificated employees of the Board of Education of Anne Arundel County ("AAC Board"), was negotiating an increase in the daily hours for teaching assistants and permanent substitutes with the AAC Board. Upon the PSLRB's decision in this case, the AAC Board ended negotiations, taking the position that daily hours were an illegal topic of bargaining. Thereafter, the SAAAAC submitted the dispute to the PSLRB.

On July 12, 2019, the PSLRB, by the same 4-1 split, decided the dispute in favor of the AAC Board, incorporating its rationale from this case. The PSLRB also made two

significant additions. First, the PSLRB determined, unlike in our case, that the balancing test set forth in Educ. § 6-510(c)(5)(vi)(2) was intended to be applied to all disputes arising under section 6-510(c), including matters related to "salaries, wages, hours, and other working conditions[.]" Applying that test, the PSLRB concluded that requiring "negotiation over the number of hours worked by hourly employees" would interfere with the ability of the AAC Board to budget and operate the school system, and that such interference outweighed any adverse impact on the employees. Second, the PSLRB reasoned that assignment of daily hours was a matter of job reclassification, which the MSBE, in a decision affirmed on appeal in *MCEA*, 311 Md. at 303, had determined to be an illegal topic of negotiation. For those reasons and for the reasons outlined in the decision in this case, the PSLRB ruled that the AAC Board was not required to negotiate over an increase in daily hours for the SAAAAC members.

On judicial review of the *In Re SAAAAC* decision, the Circuit Court for Anne Arundel County reversed, ruling that the plain language of Educ. § 6-510(c)(1) made daily hours a mandatory subject of bargaining. Unlike in this case, however, the AAC Board did not appeal that adverse decision and, on remand, the PSLRB ordered the AAC Board to negotiate with the SAAAAC. Consequently, the PSLRB's decision in *In Re SAAAAC*, which the County Board relies upon in its brief to this Court, was nullified by reversal. *See Carpenter Realty Corp. v. Imbesi*, 369 Md. 549, 562 (2002) ("'It has been held that the effect of a general and unqualified reversal of a judgment, order or decree is to nullify it completely and to leave the case standing as if such judgment, order or decree had never

been rendered . . . .'") (quoting *Balducci v. Eberly*, 304 Md. 664, 671 n.8 (1985)). The PSLRB's reasoning in its opinion in *In Re SAAAAC*, including its determination that the balancing test was applicable to the dispute on "hours," is not before us and may not be considered in assessing the PSLRB's decision in this case.

C. Construction of Educ. § 6-510(c)

In construing the relevant provisions of the Education Article, we are guided by the familiar principles of statutory interpretation. "'The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature.'" *Kemp v. Nationstar Mortg. Ass'n*, 248 Md. App. 1, 12 (2020) (quoting *State v. Bey*, 452 Md. 255, 265 (2017)). "[W]e begin 'with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology.'" *Blackstone v. Sharma*, 461 Md. 87, 113 (2018) (quoting *Schreyer v. Chaplain*, 416 Md. 94, 101 (2010)). "The statutory language should be read so that no word or phrase renders any part of it 'meaningless, surplusage, superfluous, or nugatory.'" *Howard Cnty. II*, 445 Md. at 533 (quoting *Blitz v. Beth Isaac Adas Israel Congregation*, 352 Md. 31, 40 (1998)). "'We, however, do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone.'" *Johnson v. State*, 467 Md. 362, 372 (2020) (quoting *Wash. Gas Light Co. v. Md. Pub. Serv. Comm'n*, 460 Md. 667, 685 (2018)). Instead, "'[w]e presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the

statute's object and scope.'" *Gerety v. State*, 249 Md. App. 484, 498 (2021) (quoting *State v. Bey*, 452 Md. at 266). "We avoid any interpretation that would lead to illogical or absurd results." *GenOn Mid-Atl., LLC v. Md. Dep't of Env't*, 248 Md. App. 253, 271 (2020).

With these principles in mind, we turn to Educ. § 6-510(c). As previously stated, subsection (c)(1) mandates a local board to negotiate with the bargaining unit for non-certificated employees on "*all matters that relate to* . . . [s]alaries, wages, *hours*, and other working conditions, including the discipline and discharge of an employee for just cause[.]" (Emphasis added.) Subsection (c)(3) then prohibits a local school board from negotiating "the school calendar, the maximum number of students assigned to a class, *or any matter that is precluded by applicable statutory law*." (Emphasis added.) The County Board contends that Educ. §§ 4-103(a) and 6-201(f) are "applicable statutory law" that preclude negotiation on minimum standard hours for hourly employees because those statutes empower a local board to appoint personnel and set their salaries or compensation. WCESP maintains that we need not look beyond Educ. § 6-510(c)(1), which expressly makes "all matters" that relate to "hours" a mandatory subject of bargaining.

An analogous analytical framework and arguments were presented to this Court in *Howard Cnty. I*, 220 Md. App. at 282. That case involved a dispute between the local board and the bargaining unit for non-certificated public school employees in Howard County concerning the enforceability of a provision in a collective bargaining agreement requiring the local board to arbitrate disputes over the discharge of covered employees. *Id.* at 284. As in this case, at issue was the construction of Educ. §§ 6-510(c)(1), (3). The

bargaining unit maintained that a 2009 amendment to Educ. § 6-510(c)(1), which added the requirement that a local board negotiate on "all matters that relate to . . . working conditions, including the . . . discharge of an employee for just cause," was dispositive and required enforcement of the arbitration provision. *Id.* at 288. The local board countered that Educ. § 6-201(c), which empowered the county superintendent to appoint nonprofessional staff, and which had been construed by the MSBE to also vest in the superintendent the power to terminate those employees, was "applicable statutory law" that precluded negotiation on that topic. *Id.* at 292. The MSBE and the PSLRB issued conflicting decisions, with the MSBE agreeing with the local board and the PSLRB agreeing with the bargaining unit. *Id.* at 284.

On appeal following judicial review, this Court held that the PSLRB was vested with the exclusive jurisdiction to resolve a negotiability dispute and agreed with the PSLRB's determination that discharge of nonprofessional employees was a mandatory topic of bargaining and, consequently, arbitrable. *Id.* at 306. In so holding, we reasoned:

> Section 6-510(c)(3) provides: "A public school employer may not negotiate the school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law." But the discipline and discharge of an employee for just cause was *expressly made a mandatory subject of bargaining* in the subsection of "statutory law" immediately above: *i.e.*, in § 6-510(c)(1). We reject the [local board]'s argument that, when the legislature expressly included the discharge of an employee as a mandatory subject of collective bargaining, the legislature simultaneously intended to exclude that topic because of the general reference to "applicable statutory law."

Id. (emphasis in original). This Court emphasized that, even if Educ. § 6-201(c) was "applicable statutory law," which it was not, we would conclude that the specific, later-

adopted amendment to Educ. § 6-510(c)(1) controlled over the general, earlier-adopted § 6-201(c). *Id*. at 307 (citing *State v. Harris*, 327 Md. 32, 39 (1992)). The Supreme Court of Maryland affirmed this Court's decision, expressly adopting "in full [this Court's] reasoning[.]" *Howard Cnty. II*, 445 Md. at 535.

In the instant case, as in *Howard Cnty. I*, the disputed topic of bargaining—the hours worked by non-certificated employees of the County Board—is expressly included within the mandatory topics of bargaining set out in § 6-510(c)(1). The term "hours" as used in that phrase is unambiguous and, in the context of the collective bargaining statute, means the hours worked by a public school employee. It would render the legislative dictate requiring a local board to negotiate on "all matters that relate to . . . hours" nugatory if that phrase were construed to exclude the regular number of hours worked by an employee—whether that be the maximum hours an employee may work or the minimum hours an employee will work (and be paid for) in a given day, week, or pay period. For the same reasons set out in *Howard Cnty. I*, we reject the PSLRB's conclusion that the legislature would expressly make "all matters that relate to . . . hours" a mandatory subject of bargaining, but simultaneously exclude that topic by "general reference to 'applicable statutory law.'" *Howard Cnty. I*, 220 Md. App. at 306.[14]

[14] In *Howard Cnty. I*, unlike in the instant case, we affirmed a decision of the PSLRB. We recognize the import of that difference given our deferential standard of review in administrative agency appeals. The deference owed to an agency like the PSLRB is not boundless and we are not obligated to defer to a construction of § 6-510 that is contrary to the plain meaning of the statute. *See Howard Cnty. I*, 220 Md App. at 307 (reiterating that an appellate court must reject an agency's interpretation of the statute it is tasked with implementing if that interpretation is clearly contrary to the plain meaning of the statute).

Even if we were to look beyond the legislative mandate of Educ. § 6-510(c)(1) and consider the two statutes relied upon by the PSLRB, neither is "applicable." Educ. § 4-103(a) governs the appointment of principals, teachers, and other personnel, and empowers local boards to appoint those employees and "[s]et their salaries." Educ. § 6-201, which is the same statute the local board relied upon in *Howard Cnty. I*, pertains to the appointment of certificated and non-certificated personnel by local boards to "the positions that that the county board considers necessary for the operation of the public schools in the county." Educ. § 6-201(a). Section 6-201(f) provides that the local board determines "the qualifications, tenure, and *compensation* of each appointee . . . ." (Emphasis added.) Both statutes expressly pertain to a local board's appointment power, and thus apply to the determination of *initial* compensation of newly hired employees or newly created positions.[15] Further, were we to follow the PSLRB's reasoning to its logical conclusion, the salaries and compensation of personnel, which are expressly mentioned in sections 4-103(a) and 6-201(f), respectively, would be excluded as mandatory subjects of bargaining. Such construction would not only render the language in Educ. § 6-510(c)(1) mandating negotiation on "salaries, [and] wages" surplusage, but would also lead to an illogical result,

[15] Significantly, the County Board did not advance the position before the PSLRB that Educ. § 6-201(f) was "applicable statutory law" precluding negotiation of standard hours. Rather, it relied upon that statute to argue, on an issue not before us in this appeal, that the County was not obligated to negotiate over pay grades assigned to job classifications for newly created positions because Educ. § 6-201(f) "delegates the determination of *initial compensation* of newly hired employees or newly created positions" to a local board. (Emphasis added.) The County Board's construction of this provision before the PSLRB supports our conclusion that the statute is addressed to setting compensation upon initial appointment of public school personnel.

given that compensation is a fundamental subject of collective bargaining. *See GenOn Mid-Atl.*, 248 Md. App. at 271 (discussing the principle of avoidance of absurd or unreasonable results). Finally, even if we agreed that a local board's authority to set compensation for appointees conflicted with the mandate set out in Educ. § 6-510(c)(1) requiring negotiation on "all matters that relate to . . . hours," which we do not, we would nevertheless conclude that the specific statute, section 6-510(c), controls over the more general statutes, sections 4-103(a) and 6-201(f). *See Dixon v. Dep't of Pub. Safety & Corr. Servs.*, 175 Md. App. 384, 421 (2007) ("[W]hen two statutes appear to apply to the same situation" and cannot be reconciled, "the specific statute will be regarded as an exception to the general statute.").

The legislative scheme likewise does not support the PSLRB's conclusion that a distinction should be drawn between hourly workers and salaried workers with respect to the negotiation of hours. The PSLRB reasoned that, for hourly workers, requiring a local board to negotiate minimum standard hours would impermissibly interfere with its authority to "set salaries" and determine "compensation" because of the direct connection between hours worked and compensation paid. The short answer to this argument is that, because Educ. § 6-510(c)(1) mandates that a local board negotiate with bargaining units on "all matters that relate to . . . [s]alaries, wages, hours," the fact that negotiating "hours" may impact the total "salaries" or "wages" paid to hourly workers actually reinforces the placement of "hours" in the domain of mandatory bargaining. The legislature also did not differentiate between mandatory topics of bargaining with organizations representing

certificated, primarily salaried personnel and non-certificated, primarily hourly personnel. *See* Educ. § 6-408(c)(1) (mandating a local board to negotiate with a designated organization of certificated employees on the topics of "[s]alaries, wages, hours, and other working conditions[.]"); Educ. § 6-510(c)(1) (mandating a local board to negotiate with a designated organization of non-certificated employees on the topics of "[s]alaries, wages, hours, and other working conditions[.]"). It is not our prerogative to draw a distinction that the legislature chose not to draw.

V. CONCLUSION

For all these reasons, we hold that Educ. § 6-510(c)(1), which expressly mandates the bargaining on "all matters that relate to . . . hours," unambiguously obligated the County Board to bargain in good faith on the topic of minimum standard hours for non-certificated employees and that the PSLRB erred by ruling that "applicable statutory law" precluded negotiation on that topic. Because the PSLRB's decision can only be upheld on the grounds upon which it is based, we decline to consider the County Board's arguments that setting standard hours is akin to the managerial task of reclassification or that the statutory balancing test applied in *In Re SAAAAC* is applicable to this negotiability dispute. *See ProVen Mgmt., Inc.*, 472 Md. at 667 (explaining that the decision of an administrative agency may only be sustained on the grounds relied upon by the agency). We thus affirm the judgment of the circuit court reversing the PSLRB's decision.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.