

MEMORANDUM

TO: File
FROM: Gareth D. Bye, Director of Legal Affairs, OPM
DATE: 12.17.2018
RE: West Haven BOE / Nurse Collective Bargaining Agreement

I have been asked to consider the issue of whether the Municipal Accountability Review Board (the "MARB") has the statutory power to approve or reject collective bargaining agreements or amendments negotiated and agreed to by the City of West Haven's Board of Education ("BOE") with its school nurses.¹ The powers of the MARB are set forth in June Special Session, P.A. No. 17-2 (the "MARB Act").

Briefly, Section 367 of the MARB Act, provides, in part, the following:

(b) Each designated tier III municipality shall work with the Municipal Accountability Review Board and report to it as provided for in this section. In addition to possessing such powers granted to such board with respect to the designated or certified tier II municipalities referred to it, the following responsibilities and authorities of the board shall apply:

(6) With respect to any proposed collective bargaining agreement or amendments negotiated pursuant to sections 7-467 to 7-477, inclusive, of the general statutes or pursuant to section 10-153d of the general statutes, ***the board [MARB] shall have the same opportunity and authority to approve or reject, on not more than two occasions, collective bargaining agreements or amendments as is provided to the legislative body of such municipality in said respective sections. (Emphasis added).***

Accordingly, in order to understand the powers the MARB may have over the applicable bargaining contract, an examination of the legislative body powers of the City of

¹ This opinion is intended only for the Office of Policy and Management ("OPM") pursuant to General Statute Section 52-146r, and nothing in this opinion should be construed as legal advice or counsel for the MARB or the City of West Haven. Pursuant to June Special Session, P.A. No. 17-2, Section 367, the MARB shall be within OPM for administrative purposes, but such functions do not include rendering legal opinions or providing legal counsel to the MARB. Per General Statutes Section 3-125, the role of providing legal counsel to all boards resides exclusively with the Office of the Attorney General ("OAG") or through the retention of OAG sanctioned private counsel, as was the case in the oversight of Waterbury a decade ago, or via the delegation of such authority from the OAG to me, which is absent. Hence, any reliance on this opinion by the MARB or West Haven is strictly prohibited.

West Haven (the “City”) and the BOE are in order. It is basic that through state statute the City’s Charter and Code, the West Haven City Council and the BOE each have distinct powers and responsibilities. With that principle in mind, I begin my analysis with a review of General Statutes Section 7-474(d), commonly referred to as the Municipal Employee Retirement Act (“MERA Act”), which provides, in relevant part:

If the municipal employer is a ... school board ... ***which by statute, charter, special act or ordinance has sole and exclusive control over the appointment of and the wages, hours and conditions of employment of its employees, such ... school board shall represent such municipal employer in collective bargaining and shall have the authority to enter into collective bargaining agreements with the employee organization which is the exclusive representative of such employees, and such agreements shall be binding on the parties thereto . . . , and no such agreement or any part thereof shall require approval of the legislative body of the municipality.*** C.G.S. § 4-474(d) (Emphasis added).

The case law and statutes on the topic of local municipal board of education powers are fairly well defined, so much so that it is axiomatic that “[a] town board of education is an agency of the state in charge of education in the town; to that end it is granted broad powers by the legislature; and it is beyond control by the town or any of its officers in the exercise of those powers or in the incurring of expense, to be paid by the town, necessitated thereby, except as limitations are found in statutory provisions. *Groton & Stonington Traction Co. v. [Town of] Groton*, 115 Conn. 151, 155, 160 A. 902; *Board of Education of Town of Stamford v. Board of Finance*, 127 Conn. 345, 349, 16 A.2d 601, 603.” *Board of Education of the West Haven v. Carlo, et al.*, 20 Conn. Supp. 220, 220, 131 A.2d 217 (1957). The BOE has duties, powers and responsibilities granted or imposed on it by State statute and the City Charter. Those further powers are examined next.

Such statutory powers are found in General Statutes Sections 10–220, 10–240, 10-241, and 10–241a. For example, General Statutes Section 10-220(a), in part, states the following:

Each local or regional board of education shall maintain good public elementary and secondary schools, implement the educational interests of the state, as defined in section 10-4a, and provide such other educational activities ***as in its judgment will best serve the interests of the school district;***

shall provide an appropriate learning environment for all its students which includes (1) adequate instructional books, supplies, materials, equipment, staffing, facilities and technology, (2) equitable allocation of resources among its schools, (3) proper maintenance of facilities, and (4) **a safe school setting**;

shall cause each child five years of age and over and under eighteen years of age who is not a high school graduate and is living in the school district to attend school in accordance with the provisions of section 10-184, **and shall perform all acts required of it by the town or necessary to carry into effect the powers and duties imposed by law.** (Emphasis added).

In addition, General Statutes Section 10-240 states the following:

Each town shall through its board of education maintain the control of all the public schools within its limits and for this purpose shall be a school district and shall have all the powers and duties of school districts, except so far as such powers and duties are inconsistent with the provisions of this chapter.

Hence, it is understood General Statutes Section 10-220(a) empowers members of the local board of education to **“perform all acts requires of them by the town.”** This means all acts which may be lawfully required of them by the town. See *State ex rel. Huntington v. Huntington School Committee*, 82 Conn. 563, 566, 74 A. 882 (1909). Further, subject to statute, charter, special act or ordinance, Section 7-474(d) of the MERA Act makes it clear that the BOE has sole and exclusive control over the appointment of and the wages, hours and conditions of employment of its employees.

In addition, the City’s Charter, in Chapter IX (Department of Education), Sections 3 and 4, respectively, provide the following:

The Board of Education shall have all the powers and duties conferred and imposed by the laws of the State of Connecticut on Boards of Education in respect to the control and management of schools, except² as otherwise provided in this Charter.

² The Charter does provide some limitations on certain powers. For example, Chapter X, Section 1 states that the Finance Director provides that he/she shall be responsible for all purchases and insurance, except that all purchasing for the BOE shall be done in accordance with the specifications as to quality by the BOE. *Also Compare*, Chapter X, Section 3, Chapter XIX, Part A, Sections 1 and 3.

It shall be the duty of the Board of Education to submit its budget estimates to the Mayor at the same time as other departments of the City, and in the established form. All purchasing shall be done through the City Department of Finance, in accordance with the specifications as to quality supplied to said Department of Finance by the Board of Education.

Although the Mayor of the City, through Section 3 of Chapter III, has the powers to appoint City employees, such powers are expressly limited as specified by that Section and elsewhere in the Charter. As stated above, the BOE has all the powers conferred on it by the cited State statutes and City Charter with respect to the control and management of its schools, including the hiring of school staff and the related collective bargaining responsibilities with the employee unions. In addition, pursuant to General Statutes Section 10-212, each local or regional BOE *shall* appoint one or more school nurses or nurse practitioners. Furthermore, it is without doubt that schools are frequently on the frontline of every seasonal outbreak of a myriad of health related ailments, and consistent with the foregoing statutory and Charter paradigm, school nurses provide general health and safety oversight to ensure an appropriate learning environment for the students, school faculty and administrators alike. *See also* C.G.S. §§ 10-154a, 10-206(e), 10-206d(e), 10-212, 10-212a, 10-212c, and 10-212f.

Turning back to the starting place in this discussion, it is abundantly clear that the MARB does not have powers beyond those of the legislative body or the City Council. As the BOE has its own distinctive and separate collective bargaining responsibilities, the MARB does not get to step in to such shoes as its powers presently do not encompass such authority.

Based on the forgoing, it is my opinion that the MARB does not have present the authority to approve or reject BOE collective bargaining agreement with the school nurses. If such authority is sought by the MARB, the MARB Act would have to be changed by the Legislature.