

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: \*

BRIAN G. TALTOAN \*

Charging Party, \*

v. \* PSLRB Case No. SV 2014-02

BALTIMORE CITY BOARD OF \*  
SCHOOL COMMISSIONERS \*

Charged Party \*

\* \* \* \* \*

DECISION AND ORDER DENYING REQUEST FOR RELIEF  
AND DISMISSING CHARGE

I. INTRODUCTION

Brian G. Taltoan (“Charging Party”) is employed in a certificated position with the Baltimore City Board of School Commissioners (“City Board”). On July 19, 2013, he filed a Charge of Violation of Title 6, Subtitle 4 or Subtitle 5 of the Education Article (“Form PSLRB-05”), with the Public School Labor Relations Board (“PSLRB”). Form PSLRB-05 reflects the authority granted to the PSLRB by Section 2-205(e)(4)(i) of the Education Article to “decide any controversy or dispute arising under Title 6, Subtitle 4 or Subtitle 5 of this Article.”

In his Charge, Charging Party alleges that the City Board violated Section 6-409<sup>1</sup>

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<sup>1</sup> Section 6-409. “Interference with employees prohibited” – “A public school employer and employee organization may not interfere with, intimidate, restrain, coerce, or discriminate

of the Education Article by demoting him from his position as Assistant Principal and reducing his pay. He also alleges that the City Board violated the Whistleblower Policy established under the Baltimore City Public Schools Handbook, Section 3 Employment Practice (3.1 – nondiscrimination and equal opportunity), and Article 9 – Evaluation, of the Memorandum of Understanding between the City Board and the Public School Administrators and Supervisors Association (PSASA).

## II. FINDINGS OF FACT<sup>2</sup>

Charging Party was assigned to the position of Assistant Principal at Western High School in August 2012. On January 11, 2013, Charging Party received a letter of reprimand from Principal Alisha Trusty for “willful neglect of duty.” Charging Party thereafter had several communications with City Board officials in which he challenged the reprimand. Charging Party also notified the City Board of his intention to file a formal grievance over the reprimand.

On March 15, 2013, Charging Party filed a complaint against Principal Trusty with the City Board’s Office of EEO Compliance. In his complaint, Charging Party alleged that Trusty was “possibly attempting to collaborate to defame my professional character and using false statements to accomplish this process.”

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against any public school employee because of the exercise of his rights under §§ 6-402 and 6-403 of this subtitle.”

<sup>2</sup>The facts herein and all reasonable inferences drawn therefrom are considered in the light most favorable to the Charging Party.

By letter dated June 11, 2013, the City Board notified Charging Party that a *Loudermill*<sup>3</sup> hearing had been scheduled for June 17, 2013. On June 28, 2013, the City Board notified Charging Party that “today will be your last day reporting to Western High School,” and that “[e]ffective July 1, 2013 you are reassigned to a teacher level position with commensurate pay ....”

On July 19, 2013, Charging Party submitted a grievance to the City Board challenging the fact that he was “demoted in both pay and position, without having an evaluation.” In his grievance, Charging Party alleged that the June 17 *Loudermill* hearing was deficient “as there was no official process/recording of evidential material presented.”

Charging Party’s July 19 grievance also alleged that the decision to demote him and reduce his pay “appears to be an act of retaliation for his filing misconduct allegations against Baltimore City Public Schools (BCPS) management a violation of your ‘whistleblower’ policy and Article 9-Evaluation of the PSASA and Baltimore City Board of Schools Commissioners MOU contract.”

Also on July 19, 2013, Charging Party filed this Charge with the PSLRB. On August 14, 2013, the City Board filed a Motion to Dismiss the Charge. The Motion to Dismiss asserts that the PSLRB does not have jurisdiction over issues related to Charging Party’s reassignment to a teacher position, and that Charging Party has failed to allege

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<sup>3</sup> See *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532 (1984) (public employee dismissible only for cause is entitled to pre-termination hearing prior to dismissal). See also *Demesme v. Montgomery County Gov’t*, 63 F. Supp. 2d 678 (D. Md. 1999) *aff’d* 208 F.3d 208 (4<sup>th</sup> Cir. 2000) (applying *Loudermill* protections to involuntary demotion).

sufficient facts to support a claimed violation of Section 6-409. The City Board also filed a Petition for Declaratory Ruling with the Maryland State Board of Education (MSBE) which likewise asserts that the PSLRB does not have jurisdiction to address the issues incident to Charging Party's reassignment.

### III. POSITIONS OF THE PARTIES

Charging Party claims that the City Board violated Section 6-409 by demoting him to a teacher position with a corresponding pay reduction. Charging Party contends that this action was in retaliation for his filing misconduct allegations against City Board management officials, and thereby also violates the City Board's "Whistleblower Policy." Charging Party further claims that the City Board's actions violate Article 9 – Evaluation, of the Memorandum of Understanding between the City Board and Public School Administrators and Supervisors Association (PSASA).

The City Board maintains that Charging Party's reassignment and transfer are covered by §§4-205(c) and 6-201 of the Education Article over which the MSBE has jurisdiction. The City Board also contends that the Charge should be dismissed because it fails to allege a violation of Title 6, Subtitle 4 or Subtitle 5 of the Education Article. In support of this position, the City Board states that the Charge "is bereft of any allegation that ... City schools took any action because of [Charging Party's] union activity or failing to participate in union activity."

### IV. ANALYSIS

Section 6-409 of the Education Article provides that a public school employer “may not interfere with, intimidate, restrain, coerce, or discriminate against any public school employee because of the exercise of his rights under §§ 6-402 and 6-403 ....” Section 6-402 protects employees in the exercise of their right to “form, join, and participate in the activities of employee organizations ....” Section 6-403 guarantees the right of employees to “refuse to join or participate in the activities of employee organizations.” Taken together, these provisions prohibit a public school employer from taking adverse action against employees based on their participation, or refusal to participate, in activities of employee organizations.

In the case now before us, Charging Party has not alleged that the City Board took action against him based either on his participation in activities of an employee organization or refusal to participate in such activities. Accordingly, there is no factual basis on which to find a violation of Section 6-409.

As to Charging Party’s contention that his reassignment violates the County Board’s Whistleblower Policy, we decline to consider this claim as the PSLRB does not have jurisdiction over such matters. The PSLRB also does not have jurisdiction over contractual claims, and we will therefore not consider Charging Party’s allegation that the City Board violated the Memorandum of Understanding.

## V. CONCLUSIONS OF LAW

For the reasons stated herein, we conclude that Charging Party failed to allege a violation of his statutory rights, and therefore DISMISS the Charge.

ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT  
MATTER, PSLRB Case No. SV 2014-02, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



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Seymour Strongin, Chairman



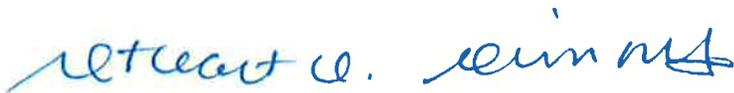
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Robert H. Chanin, Member



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Charles I. Ecker, Member



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Stuart O. Simms, Member

Glen Burnie, MD  
August 26, 2013

APPEAL RIGHTS

Any party aggrieved by this action of the PSLRB may seek judicial review in accordance with Title 10, Subtitle 2 of the State Government Article, Annotated Code of Maryland, Sec. 10-222 (Administrative Procedure Act—Contested Cases), and Maryland Rules CIR CT Rule 7-201 *et seq.* (Judicial Review of Administrative Agency Decisions).