

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: \*

BALTIMORE TEACHERS UNION, \*  
AMERICAN FEDERATION \*  
OF TEACHERS, LOCAL 340 \*  
(PARAPROFESSIONAL AND \*  
SCHOOL RELATED PERSONNEL), \*

Charging Party \*

v. \*

PSLRB Case No. SV 2014-14

BALTIMORE CITY BOARD \*  
OF SCHOOL COMMISSIONERS, \*

Charged Party \*

\* \* \* \* \*

DECISION AND ORDER DENYING REQUEST FOR RELIEF  
AND DISMISSING CHARGE

I. INTRODUCTION

On March 27, 2014, the Baltimore Teachers Union, American Federation of Teachers, Local 340, AFL-CIO, Paraprofessional and School Related Personnel Chapter (“BTU”), 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 § 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.”

The BTU claims that the Baltimore City Board of School Commissioners (“City Board” or “BCBSC”), violated § 6-510(a) of the Education Article and breached its duty to bargain in good faith when it designated school secretaries and office assistants essential employees who are required to report to work when schools are closed due to a weather-related emergency or disaster.

## II. FINDINGS OF FACT

Pursuant to § 6-506 of the Education Article, the BTU is the designated exclusive bargaining representative of non-certificated employees in the Paraprofessional and School Related Personnel bargaining unit (Unit III), which includes school secretaries and office assistants employed by the City Board. The City Board is a public school employer as defined in § 6-401(f) and § 6-501(h) of the Education Article. The BTU and the City Board were parties to a negotiated agreement that covers Unit III employees and was in effect from July 1, 2010 to June 30, 2014 (“PSRP Agreement”).

When the BTU and the City Board concluded negotiations for the PSRP Agreement, procedures related to weather-related school closings were set forth in several documents, including Board Rule 704.02. Certain of these documents contain a list of essential personnel required to report to work during school closings due to weather-related emergencies. Neither school secretaries nor office assistants are listed as essential personnel in these documents, and the same documents provide that “school-based secretaries” “do not report to work when schools are closed because of weather-related emergencies.”

On June 12, 2012, at a public meeting of the City Board, Tisha S. Edwards, then Chief of Staff to former Chief Executive Officer, Andrés Alonso, and Interim Chief Executive Officer effective July 1, 2013, presented a policy containing procedures for school delays and closings due to weather-related emergencies. The policy, referred to as the “EBCD Policy,” was listed on the published agenda.

Both Marietta English (BTU President) and Dr. Loretta Johnson (BTU Secretary-Treasurer/chief negotiator) were present at the June 12 meeting. Ms. English delivered general comments about the working relationship between the parties but did not make any reference to the EBCD Policy. According to affidavits of Ms. English and Dr. Johnson, both of them left the June 12 meeting after Ms. English spoke and before the EBCD Policy was considered; neither Ms. English nor Dr. Johnson turned to the last page of the agenda on which the EBCD Policy was referenced.<sup>1</sup>

On July 16, 2012, the Governance Committee of the City Board held a public meeting at which the EBCD Policy was identified as a subject for discussion. On July 24, 2012, the City Board held a public meeting at which the EBCD Policy was on the agenda and discussed. On August 14, 2012, the City Board held a public meeting at which the EBCD Policy again was on the agenda and discussed, and, on this occasion, adopted. According to their affidavits, neither Ms. English nor Dr. Johnson attended “any of the subsequent BCBSC meetings that took up the proposed policy EBCD,....”

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<sup>1</sup> The affidavits were included in the BTU’s reply to the City Board’s motion to dismiss the instant Charge.

As adopted by the City Board on August 14, 2012, the EBCD Policy designates school secretaries and office assistants as essential employees who must report to work when schools are closed due to weather-related emergencies or disasters.

According to the BTU, “[a]t some point during the 2012-2013 school year,” Ms. Edwards notified employees that school secretaries and office assistants, among others, were considered essential employees with regard to school closings due to weather-related emergencies. According to the BTU, “[o]ver the ensuing months and into school year 2013-2014,” Ms. English and Dr. Johnson conferred and negotiated with Ms. Edwards, protesting the change in the designation of essential employees. While neither party provides specific dates as to when these negotiations began, it is reasonable to infer from the BTU’s statement of facts that the negotiations began no later than in 2013 and, accordingly, that the BTU knew in 2013, if not sooner, of the change in the designation of essential employees at issue in the instant Charge.

On March 3, 2014, Baltimore City Public Schools were closed due to a snowstorm, and school secretaries and office assistants were expected to report to work. In response, the BTU filed an appeal, pursuant to § 4-205(c) of the Education Article, from the Interim Chief Executive Officer’s (Ms. Edward’s) purported decision to maintain the designation of school secretaries and office assistants as essential employees. On March 20, 2014, the Interim Chief Executive Officer filed a motion to dismiss the appeal, arguing that the designation of school secretaries and office assistants as essential employees was not a decision of the Interim Chief Executive Officer, from

which an appeal could be taken pursuant to § 4-205(c), but rather a policy adopted by the City Board on August 14, 2012.

### III. POSITIONS OF THE PARTIES

The BTU alleges that the adoption of the EBCD Policy constituted a unilateral change in working conditions, in violation of § 6-510(a) of the Education Article. The BTU alleges that with respect to other policy changes adopted August 14, 2012, the City Board gave the BTU notice and an opportunity to negotiate, but that with respect to the designation of school secretaries and office assistants as essential employees, no notice or opportunity to negotiate was provided.

The City Board filed a motion to dismiss the instant Charge on grounds that it was not filed within the 60-day filing period established under the Code of Maryland Regulations (COMAR) 14.34.02.01B. The City Board identifies several points in time, more than sixty days prior to the BTU's filing of the Charge on March 27, 2014, in which it contends that the BTU knew or reasonably should have known of the change in designation adopted in the EBCD Policy. First, the City Board notes that the EBCD Policy was discussed at open meetings on June 12, 2012 (at which Ms. English and Dr. Johnson were present), July 16, 2012, July 24, 2012, and August 14, 2012, and adds that "[a]ll of the Board's meetings and minutes are posted for the public on the Baltimore City Public Schools website...."

Second, the City Board points to the BTU's admission that "into the school year 2013-2014 school year," the BTU "conferred and negotiated with Tisha Edwards protesting the unilateral change in working conditions of school secretaries and office

assistants, making them essential employees.” Finally, the City Board notes that essential employees, including school secretaries and office assistants, were required to report to work for school delays/closures on October 29-31, 2012, January 24, 2013, January 28, 2013, and March 6, 2013.

In its reply to the motion to dismiss, the BTU insists that the “first time that any representative of the BCBSC notified the BTU of [the EBCD Policy] was on March 20, 2014.” The BTU argues that the City Board is estopped from raising the timeliness defense for two reasons. According to the BTU, the City Board is estopped on contractual grounds because it violated a provision in the PSRP Agreement (Art. III, § N) requiring the City Board to notify the BTU of changes in working conditions. The BTU also argues that the City Board is equitably estopped from raising the timeliness defense because it was only due to Ms. Edwards’s failure to inform the BTU of the EBCD Policy, which amounted to a “voluntary misrepresentation,” that the BTU did not file its Charge earlier.

#### IV. ANALYSIS

The Board’s Regulations provide that a Charge “must be filed with the Executive Director of the PSLRB within 60 days after the charging party knew, or reasonably should have known, of the statutory violation alleged.” COMAR 14.34.02.01B. In deciding whether the instant Charge is untimely, the facts and all reasonable inferences drawn therefrom are considered in the light most favorable to the BTU.

It is beyond dispute that the BTU knew of the designation of school secretaries and office assistants as essential employees in 2013, if not sooner. The BTU maintains, however, that it did not know until March 20, 2014 that the City Board was actually

responsible for the designated change through its adoption of the EBCD Policy. This position cannot be sustained in light of statutory provisions defining the powers and duties of the City Board and the Chief Executive Officer. Section 4-303 of the Education Article provides in relevant part:

(d) Powers and duties. --

(1) The board shall have the authority and be responsible for all functions relating to the Baltimore City Public School System.

(2) Notwithstanding any provision of local law governing the Baltimore City Public School System, the board may adopt rules and regulations and prescribe policies and procedures for the management, maintenance, operation, and control of the Baltimore City Public School System.

Section 4-304 provides in turn:

(b) Powers and duties. -- The Chief Executive Officer shall:

(1) Be responsible for the overall administration of the Baltimore City Public School System;

(2) Report directly to the board;

(3) Be a member of the cabinet of the Mayor; and

(4) Designate individuals with primary responsibility for each of the following functions:

(i) Management and administration of the Baltimore City Public School System;

...

(c) Accountability. -- Notwithstanding the provisions of subsection (b)(4) of this section, **the Chief Executive Officer and the board shall be held accountable for the delegated functions.**

(Emphasis added).

In *Education Association of St. Mary's County and Dr. Michael Martirano*, PSLRB Case No. SV-12-05 (March 30, 2012), the PSLRB recognized the principle of board responsibility codified in §§ 4-303 and 4-304:

Specifically, a Form PSLRB-05 alleging a violation of Section 6-402 or Section 6-409 can be filed against an employee organization or a public school employer, but not...against an individual representative of an employee organization (e.g., its president) or a public school employer (e.g., its superintendent). **An employee organization and a public school employer are responsible for the actions of their representatives, and if those actions violate Section 6-402 or Section 6-409, the employee organization and the public school employer are in turn liable.**

*Id.* at 2 (emphasis added). See also *Sylvia Walker, et al. v. The Baltimore Teachers Union, American Federation of Teachers, Local 340, AFL-CIO, and Marietta English, BTU President, and Chandra Carriere, BTU Field Representative*, PSLRB Case No. SV 2012-10 (August 6, 2012) (dismissing charge as to BTU President and Field Representative and concluding that BTU, properly named as Charged Party, did not violate its duty of fair representation).

The adoption and implementation of policy regarding school closings due to weather-related or other emergencies is plainly encompassed within the realm of the City Board's statutory responsibility. Accordingly, the BTU knew or reasonably should have known that the City Board was responsible for the alleged unilateral change on which its Charge is based. The BTU cannot rely on estoppel principles, contractual or equitable, to relieve it of this knowledge derived from statute. There is nothing that Ms. Edwards allegedly did or failed to do that left the BTU blamelessly ignorant of the legal fact that the City Board was responsible for the change in designation of essential employees.



In 2013, if not sooner, the BTU knew of the change designating school secretaries and office assistants as essential employees and knew or reasonably should have known that the City Board was responsible for that change. Thus, at some point in 2013, if not sooner, the 60-day time period for the BTU to file the instant Charge began to run. The BTU's Charge filed on March 27, 2014 is untimely.

V. CONCLUSIONS OF LAW

For the reasons stated herein, we conclude that the Charge filed in the instant matter is untimely, and therefore DISMISS the Charge.<sup>2</sup>

ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2014-14, IS DISMISSED.

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<sup>2</sup> In its reply to the City Board's motion to dismiss, the BTU advises that on the same date that it filed its Charge it also filed a Step 5 Class Action Grievance regarding the same subject matter, and that an arbitrator has been selected. Our decision to dismiss the Charge in this case as untimely is without prejudice to any claims raised in the Class Action Grievance.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



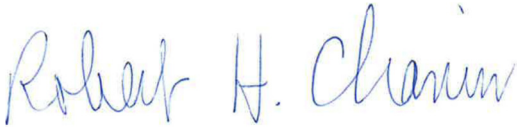
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Seymour Strongin, Chairman



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Ronald S. Boozer, Member



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Robert H. Chanin, Member



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Charles I. Ecker, Member



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Donald W. Harmon, Ed.D., Member

Annapolis, MD  
July 8, 2014

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 7-201 *et seq.* (Judicial Review of Administrative Agency Decisions).