

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: \*

HOWARD COUNTY \*  
EDUCATION ASSOCIATION \*

Charging Party \*

v. \*

PSLRB Case No. SV 2015-07

BOARD OF EDUCATION \*  
OF HOWARD COUNTY \*

Charged Party \*

\* \* \* \* \*

BOARD OF EDUCATION \*  
OF HOWARD COUNTY \*

Charging Party \*

v. \*

PSLRB Case No. SV 2015-08

HOWARD COUNTY \*  
EDUCATION ASSOCIATION \*

Charged Party \*

\* \* \* \* \*

DECISION AND ORDER DISMISSING CHARGES

I. INTRODUCTION

On June 5, 2015, in PSLRB Case No. SV 2015-07, the Howard County Education Association (“Association”), 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” or “Board”). 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.”

In its Charge, the Association alleges that the Board of Education of Howard County (“County Board”) violated Education Article §§ 6-407(b) and 6-408(a) when it communicated directly with employees represented by the Association regarding a pay increase, during the parties’ most recent negotiations and impasse proceedings concerning a successor collective bargaining agreement.<sup>1</sup> On June 29, 2015, the County Board filed an answer to the Charge and a motion to dismiss. On July 7, 2015, the Association filed a response to the County Board’s motion to dismiss and a motion for

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<sup>1</sup> Section 6-407(b) provides in relevant part:

(b)(1) An employee organization designated as an exclusive representative shall represent all employees in the unit fairly and without discrimination, whether or not the employees are members of the employee organization.

Section 6-408(a) provides:

- (a) When a public school employer and an employee organization negotiate under this section, the public school employer and the employee organization shall:
- (1) Confer in good faith, at all reasonable times;
  - (2) Honor and administer existing agreements;
  - (3) Make every reasonable effort to conclude negotiations with a final written agreement in a timely manner; and
  - (4) Reduce to writing the matters agreed on as a result of the negotiations.

summary decision. The County Board filed a response to the Association's motion for summary decision on July 16, 2015.

On June 29, 2015, in PSLRB Case No. SV 2015-08, the County Board filed a Charge of Violation of Title 6, Subtitle 4 or Subtitle 5, of the Education Article, with the PSLRB. The County Board alleges that the Association violated Education Article § 6-408(a) when it made false and misleading statements about the same negotiations and impasse proceedings underlying the Association's Charge. The Association filed an answer to the Charge and a motion to dismiss, and the County Board filed a response to the Association's motion to dismiss.<sup>2</sup>

The County Board filed a motion to consolidate PSLRB Case Nos. 2015-07 and 2015-08. The Association filed an opposition to the motion to consolidate. The PSLRB grants the motion to consolidate. Code of Maryland Regulations (COMAR) 14.34.04.05E provides, "Upon application of a party or upon its own initiative, the Board may consolidate cases which involve common questions of law or fact." As explained below, PSLRB Case Nos. 2015-07 and 2015-08 involve a common question of law and a common set of facts, warranting consolidation.

## II. STATEMENT OF FACTS

During the course of negotiations for a collective bargaining agreement covering the 2015-2016 and 2016-2017 school years, the parties reached impasse and proceeded to mediation. The PSLRB declared the impasse on May 12, 2015.

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<sup>2</sup> The County Board's response was untimely filed pursuant to Code of Maryland Regulations (COMAR) 14.34.04.04A(3). Pursuant to COMAR 14.34.04.06E(4), the Board accepts the County Board's filing, upon its showing of good cause for the late filing.

On May 27, 2015, Superintendent Renee A. Foose sent an e-mail to all County Board employees, including bargaining unit members of the Association, which read as follows:

Dear Colleagues:

I am pleased to let you know that the Board of Education has approved the Operating Budget for the 2015-2016 school year. The budget totals \$776.3 million, which is \$ 3 million above the Board's budget proposed in March, and includes \$11.5 million for salary increases.

I am especially pleased to announce that you will see a pay increase in your first July paycheck. This increase will include a half step as well as a cash payment equivalent to a half step.\*

As you know, HCPSS is funded primarily by our county government, with additional funding provided by the state. Both Howard County and Maryland have faced serious financial challenges for several years, and many county agencies have experienced budget cuts and layoffs. Despite this difficult fiscal climate, HCPSS employees have received salary increases as a COLA or step in each of the last 10 years. This speaks to the high level of support for HCPSS schools and staff among both county leaders and Board of Education members.

Please be assured that the Board of Education and I remain committed to providing the best possible salary and benefits package for all employees.

Sincerely,

Renee A. Foose, Ed.D.  
Superintendent

\* Increases are not applicable to employees on frozen steps, in accordance with the salary scales included in each negotiated agreement.

On June 2, 2015, Kristy K. Anderson, Association counsel, wrote to the Superintendent objecting to the Superintendent's May 27 e-mail, claiming that it was designed to erode the Association's position as exclusive representative and thus

constituted an unfair labor practice in the form of “direct dealing” with bargaining unit members. Anderson asserted that the e-mail was misleading in that the pay increase referred to in the e-mail was the result of the previous year’s negotiations and that the County Board had yet to submit a proposal on salary and wages for the 2015-16 year. Anderson also objected to the Superintendent’s statement of commitment to provide “the best possible salary and benefits package for all employees,” inasmuch as this statement also related to salaries, a mandatory subject of bargaining.

On June 3, Donald Kopp, Chief Negotiator for the County Board, responded on behalf of the Superintendent to Anderson’s letter. While denying that the Superintendent had directly communicated with bargaining unit members about issues subject to current negotiations, Kopp objected to what he perceived to be violations by the Association of the parties’ Mediation Confidentiality Agreement. Kopp singled out the following statements as inaccurate and violative of the Confidentiality Agreement (alleged inaccuracies italicized in letter):

“The current impasse is over your 2015-16 compensation, along with working conditions and health benefits.” (HCEA Statement of June 1<sup>st</sup> [sic], 2015) *There are no issues in the current impasse regarding health benefits.*

“Teachers’ union leaders are hoping for a full step increase and 2 percent cost of living increase this year, as well as a day off for teachers to write individualized education plans and a reduction in work time for part-time teachers.” (Howard County Times, Thursday, May 21, 2015) *There is no proposal or issue related to reducing work time for part-time teachers under consideration in the current negotiations or impasse.*

On June 3, Anderson wrote back to Kopp, rejecting his characterization of the Superintendent’s May 27 e-mail, denying that the Association had violated the

Confidentiality Agreement, and insisting that the County Board violated said Agreement by attempting to negotiate directly with bargaining unit members and by publishing false and misleading statements regarding salaries. In this regard, Anderson further objected to a page from the County Board's website entitled "Board Approves FY16 Operating and Capital Budgets," on which the County Board noted as "Salary Increases" a "3% COLA and half step" in 2015 and "Half step & cash equivalent half step" in 2016. The website page included the following statement, which, Anderson alleges, was misleading: "The budget includes \$11.5 million of funding for salary increases. These include a half step increase for all staff, plus a cash payment equivalent to a half step increase. Both will be reflected in the first paycheck in July." According to Anderson, the County Board's "inaccurate communications" regarding salaries "resulted in hundreds of emails from members asking about the status of negotiations, and whether, in fact, an agreement has been reached."<sup>3</sup>

On June 26, 2015, the parties made a joint announcement that they had reached a "tentative agreement on a two-year contract, covering the 2015-2016 and 2016-2017 school years," to be ratified and signed during the County Board meeting scheduled for September 3, 2015. In their announcement, the parties explain that the tentative agreement includes "a one-step increment for eligible employees, effective December 24, 2015" and that compensation may be reopened for negotiation for the 2016-2017 school year.

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<sup>3</sup> The Superintendent's May 27 e-mail, the County Board's website page, the letters from Anderson of June 2 and 3, and the letter from Kopp of June 3, referred to herein, are attached as exhibits to various filings by the parties. The authenticity of these documents is not in dispute.

### III. POSITIONS OF THE PARTIES

Relying on the Superintendent's May 27 e-mail and the County Board's website page as well as the correspondence between Anderson and Kopp summarized above, the Association alleges that the County Board provided misleading information about salary increases and bypassed the Association as exclusive representative, i.e., engaged in direct dealing. As a remedy, the Association requests the PSLRB to: 1) direct the County Board to remove from its website any reference to "FY16 salary increases or increases in July 2015 paychecks"; 2) direct the County Board to cease any further communications with "members of the bargaining unit, parents, or community regarding FY 16 salary increases"; and 3) determine that the County Board violated §§ 6-407(b) and 6-408(a) when the Superintendent sent the May 27 e-mail, thereby "interfering with and bypassing the Association's role as the designated exclusive bargaining representative." In moving for summary decision, the Association argues that the Superintendent's May 27 e-mail and the County Board's website page, presenting salaries as a resolved topic for FY 2016, when the parties were actually engaged in impasse proceedings regarding the topic, sufficiently support a finding that the County Board engaged in direct dealing as a matter of law and violated §§ 6-407(b) and 6-408(a).

The County Board moves to dismiss the Charge in PSLRB Case No. SV 2015-07 on the following grounds: 1) that the Charge is moot in light of the tentative agreement reached on a successor collective bargaining agreement; 2) that the Declaration section of the Form PSLRB-05 filed by the Association was required to have been signed by an

officer of the Association with personal knowledge of the facts alleged in the Charge; and (3) that the Charge fails to state a claim for which relief can be granted under § 6-407(b).

With respect to its Charge in PSLRB Case No. SV 2015-08, the County Board alleges that the Association's false communications, as identified in Kopp's letter of June 3, constituted a failure to abide by the Confidentiality Agreement and an attempt to gain a tactical advantage in impasse proceedings, in violation of the duty to bargain in good faith under § 6-408(a). As a remedy, the County Board requests the PSLRB to: 1) determine that the Association violated § 6-408(a) by making the two statements cited in Mr. Kopp's letter and "by failing to maintain the confidentiality of the impasse mediation process"; and 2) direct the Association to cease from making "any further communications regarding the impasse proceedings except as mutually agreed by the parties."

The Association moves to dismiss the Charge in PSLRB Case No. SV 2015-08 on the following grounds: (1) that the communications cited in the County Board's Charge were neither issued with the intent of undermining the negotiation process nor had such effect; (2) that the County Board's Charge is moot due to the tentative agreement reached by the parties on June 26, 2015; and (3) that the County Board's Charge was filed only in retaliation against the Association for filing its Charge in PSLRB Case No. SV 2015-07.

#### IV. ANALYSIS

In deciding this matter, we assume the truth of the factual allegations of the Charges and the reasonable inferences that may be drawn from those allegations in the light most favorable to the non-moving party.

Each party moves to dismiss the other's Charge on mootness grounds. The County Board argues that the matter has become moot "due to the tentative agreement reached by the parties on June 26, 2015, and subsequent joint communication issued by the President of HCEA and Superintendent Foose," which, according to the County Board, "have more than clarified any alleged miscommunication that HCEA complains of in its Charge...." (County Board Motion to Dismiss at 3-4.) In support of its argument, the County Board cites to *Adkins v. State*, 324 Md. 641, 646 (1991), and *Smoot v. Charles County Board of Education*, MSBE Op. No. 03-27, at 3 (2003), for the principle that a case is moot when there is no longer an existing controversy between the parties which can be resolved through the fashioning of an effective remedy. (County Board Motion to Dismiss at 4.)

In support of its mootness argument, the Association also relies on the fact that the parties reached a tentative agreement on June 26. The Association argues that it is "obvious that the communications that the County Board complains of had no impact on the ability of the parties to reach an agreement with the assistance of a mediator" and, accordingly, that "there is no effective remedy that the PSLRB can fashion for the specific statutory charge" that the Association violated § 6-408(a). (Association Motion to Dismiss at 6.)

Each party alleges that the other made misleading statements about the status of the parties' most recent contract negotiations and impasse proceedings. It is undisputed that these negotiations and impasse proceedings resulted in the parties reaching a tentative agreement on a two-year contract, covering the 2015-2016 and 2016-2017 school years. Also, there is no allegation by either party that the alleged misleading

statements caused that party to tentatively agree to the two-year contract. While each party accuses the other of negotiating in bad faith, the negotiations in question resulted in an agreement, which, by every indication, is satisfactory to both. The controversies between the parties, as raised in their respective Charges, were effectively resolved with the satisfactory completion of negotiations.

The Association, nonetheless, argues that the PSLRB should recognize an exception to the mootness doctrine and address “the overriding question of the appropriateness of the Superintendent’s e-mail....” (Association Response to Motion to Dismiss at 3.) The Association adds that “given the statutory timelines for the conduct of mediation, it is very likely that such a dispute would not ever be resolved prior to the conclusion of impasse process.” *Id.*<sup>4</sup>

In *Comptroller of the Treasury v. Zorzit*, 221 Md. App. 274 (2015), a case cited by the Association, the Court of Special Appeals identified two exceptions to the mootness doctrine (citation omitted). Under the first exception, a court may reach the merits of a moot action “where a controversy that becomes non-existent at the moment of judicial review is capable of repetition but evading review.” *Id.* at 292 (citation omitted). The second exception applies “where the urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest,....” *Id.* (citation and emphasis omitted). The particulars of the alleged direct dealing in the Superintendent’s e-mail do not seem likely to recur. Nor is it the case that any future alleged direct dealing by the County Board will necessarily occur in the relatively narrow statutory timeframe

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<sup>4</sup> The timeframes for mediation and impasse proceedings are set forth at Education Article § 6-408(e).

of impasse proceedings. Finally, there is no urgency for this Board to create a rule of conduct regarding direct dealing as an unfair labor practice, where such already exists. *See Americare Pine Lodge Nursing & Rehab. Ctr. v. N.L.R.B.*, 164 F.3d 867, 874-75 (4th Cir. 1999) (describing rule against direct dealing).

## V. CONCLUSIONS OF LAW

For the reasons stated herein, the PSLRB grants the County Board's motion to dismiss the Charge in PSLRB Case No. SV 2015-07 on mootness grounds and likewise grants the Association's motion to dismiss the Charge in PSLRB Case No. SV 2015-08 on mootness grounds.<sup>5</sup>

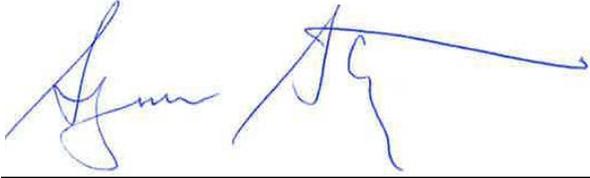
### ORDER

1. The County Board's Motion to Dismiss the Charge in PSLRB Case No. SV 2015-07 as moot is GRANTED, and the Charge in PSLRB Case No. SV 2015-07 is DISMISSED;
2. The Association's Motion to Dismiss the Charge in PSLRB Case No. SV 2015-08 as moot is GRANTED, and the Charge in PSLRB Case No. SV 2015-08 is DISMISSED.

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<sup>5</sup> Because of our decision to dismiss the Charges in these consolidated cases on mootness grounds, we need not address the other grounds for dismissal raised by the parties in their respective motions to dismiss, nor need we address the Association's motion for summary decision on the merits.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



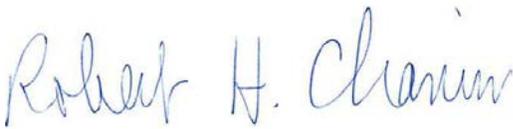
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Seymour Strongin, Chairman



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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, Member

Annapolis, MD

August 31, 2015

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).