

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:

HARFORD COUNTY EDUCATIONAL *
SERVICES COUNCIL, *

Employee Organization, *
and *

BOARD OF EDUCATION OF *
HARFORD COUNTY, *

Public School Employer. *

PSLRB Case SV 2017-05

* * * * *

DECISION AND ORDER

I. INTRODUCTION AND POSITIONS OF THE PARTIES

On May 17, 2017, the Harford County Educational Services Council (“HCESC”) filed a CHARGE OF VIOLATION OF TITLE 6, SUBTITLE 4 OR SUBTITLE 5, OF EDUCATION ARTICLE (Form PSLRB-05) with the Public School Labor Relations Board (“PSLRB”). Form PSLRB-05 reflects the authority granted to the PSLRB by the Education Article of the Annotated Code of Maryland to “decide any controversy or dispute arising under Title 6, Subtitle 4 or 5 of this Article.” Md. Code Ann., Educ. § 2-205(e)(4)(i).

In its Charge, the HCESC asserts that the Board of Education of Harford County (“County Board”) violated Sections 6-501 and 6-505 of the Education Article by removing school nurses from the non-certificated, non-supervisory bargaining unit, represented by the HCESC, and placing them into the non-certificated, supervisory bargaining unit, represented by the Association of Harford County Administrative, Technical, and Supervisory Professionals (“AHCATSP”). More specifically, the HCESC objects to the County Board’s reassignment of school nurses into the bargaining unit represented by the AHCATSP on the basis that the school nurse position is completely void of any responsibilities that could reasonably be viewed as supervisory.

On June 12, 2017, the County Board filed a Statement of Position on Behalf of the Board of Education of Harford County (“Statement of Position”). In its Statement of Position, the County Board asserts that the job duties and responsibilities of school nurses have significantly changed over the past few years, and, as a result, the County Board reassigned the school nurses into a bargaining unit of non-certificated, supervisory employees represented by the AHCATSP. More specifically, the County Board asserts that, as of July 1, 2017, the school nurses will be expected to fully participate in the evaluation of non-nursing employees, thus influencing personnel decisions that will have a direct impact upon the success or failure of other school employees. In addition, the County Board argues that “a logical reading of Sections 5-501(i) and 5-505(b) of the Education Article leaves the final determination as to both supervisory employees and the composition of each non-certificated bargaining unit with the [County] Board as a core managerial function,” and further, that “it is not up to the Association [the HCESC] – or even the PSLRB – to decide who is and who is not a supervisor.” Finally, the County Board asserts that the PSLRB does not have jurisdiction to resolve the instant dispute.

On June 22, 2017, the HSESC filed a Motion for Summary Decision along with a Memorandum of Points and Authorities in support thereof (“Motion for Summary Decision”).

On June 29, 2017, the County Board filed its Opposition on Behalf of the Board of Education of Harford County (“Opposition Motion”) to the HCESC’s Motion for Summary Decision.¹

¹ In its Opposition Motion, the County Board asserts a procedural defense that the HCESC’s Motion for Summary Decision should be dismissed due to “the failure of [the] HCESC to support its factual assertions with a sworn affidavit....”

COMAR 14.34.04.04(B)(1) states, “Any party may file a motion for summary decision on all or part of a charge on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. **The motion for summary decision shall be supported by affidavit.**” (Emphasis added.) COMAR 14.34.04.04(B)(5) states, “An affidavit supporting or opposing a motion for summary decision shall set forth the facts that would be admissible in evidence pursuant to State Government Article, § 10-213, Annotated Code of Maryland. An affidavit shall be in one of the forms set forth in Maryland Rule 1-304, as appropriate.”

Maryland Rule 1-304 states:

The statement of the affiant may be made before an officer authorized to administer an oath or affirmation, who shall certify in writing to having administered the oath or taken the affirmation, or may be made by signing the statement in one of the following forms:

Generally. “I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.”

Personal Knowledge. “I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.”

Included with the HCESC’s Motion for Summary Decision is an Attestation, which states, “I, Larry Ginsburg, declare under the penalty of perjury that the facts set forth in the foregoing are true to the best of my knowledge, information, and belief.” This attestation meets the requirements of COMAR 14.34.04.04(B)(1), (5), as

II. JURISDICTION OF THE PSLRB

As noted above, the HCESC asserts that the PSLRB does not have jurisdiction over the instant Charge. In both its Statement of Position and its Opposition Motion, the County Board asserts that the Education Article leaves the final determination as to unit composition, as well as the identification of supervisory employees, in the hands of the school system employer, and not the PSLRB. In support of this argument, the County Board relies on Section 6-505(b) of the Education Article, which states that a public school employer “shall determine the composition of a [bargaining] unit in negotiation with any employee organization that requests negotiations concerning the composition of the unit.”

Section 2-205(e)(4)(i) of the Education Article states, “The Public School Labor Relations Board shall decide any controversy or dispute arising under Title 6, Subtitle 4 or Subtitle 5 of this article.” The instant matter clearly involves a dispute concerning the interpretation of Sections 6-501 and 6-505 of the Education Article, and, therefore, falls within the jurisdiction of the PSLRB. As a result, the County Board’s arguments with regard to the jurisdiction of the PSLRB are invalid, and hereby rejected.

III. UNDISPUTED FACTS GIVING RISE TO THE CHARGE

In a letter, dated November 1, 2016, the County Board initially notified the HCESC that composition bargaining regarding the school nurse position would be taking place, and directed the HCESC to contact Jeffrey Fradel, Senior Manager of Staff and Labor Relations for the County Board, “no later than November 9, 2016 if... [the HCESC is] interested in participating in composition negotiations.”

In response to this notice, in a letter dated November 7, 2016, the HCESC requested an explanation of the County Board’s request, and outlined its position that there had been no significant changes in the responsibilities of school nurses that would warrant such negotiations. The County Board did not respond to the HCESC’s November 7, 2016, letter.

In a letter, dated January 30, 2017, the County Board advised the HCESC “that composition bargaining regarding the school nurse position will initiate in March,” and invited the HCESC to “join in negotiations with representatives from other bargaining units who have expressed interest in the process.” Unit composition negotiations took place on March 23, 2017. Present at this meeting were the American Federation of State, County, and Municipal Employees (“AFSCME”), the HCESC, and the AHCATSP. At this meeting, the County Board presented the then-current job description of school nurses, as well as a revised description, scheduled to become effective as of July 1, 2017, and indicated that, based upon the school nurses’ responsibilities in the revised job description, it intended to reassign the school nurses to the bargaining unit represented by the AHCATSP. The HCESC asserted that the changes made

well as Maryland Rule 1-304. As a result, the County Board’s argument with regard to the procedural deficiency of the HCESC’s Motion for Summary Decision is rejected.

in the County Board's revised job description did not warrant placement of the school nurses in a supervisory unit.²

Shortly thereafter, the County Board sent the HCESC a letter, dated April 5, 2017, stating:

After a review of the information shared during [the March 23, 2017, meeting]... the [County] Board has further updated the job description to clarify the supervisory role of Harford County Public School nurses effective July 1, 2017... Please note the clarifying language that the school nurses will directly supervise and evaluate the team nurses and the part time nurses. Additionally, the new school nurse position will supervise and assist in the evaluation of the inclusion of helpers and para educators who are delegated/trained to assist in the care of students with medical needs.

On April 27, 2017, the HCESC and the County Board held one final negotiations session regarding the placement of school nurses. The parties failed to reach agreement at this session.

In a letter dated May 4, 2017, Mr. Fradel informed the HCESC that “[t]he [County] Board determined that the newly restructured School Nurse position will be assigned to the AHCATSP bargaining unit effective July 1, 2017.”

IV. ANALYSIS

Under Section 6-501(i) of the Education Article, a “Supervisory employee’ includes any individual who responsibly directs the work of other employees, as determined by the public school employer in negotiation with an employee organization that requests negotiation on this issue.” The plain language of this Section expressly provides that it is the public school employer who has the right to determine whether or not an employee “responsibly directs the work of other employees,” and is therefore, a “supervisory employee”; however, it may only do so after it has negotiated with the employee organization where so requested. Implicit in this prerequisite is the obligation of the public school employer to negotiate in good faith with the employee organization.³

In this case, the HCESC has not alleged that the County Board failed to negotiate in good faith with the HCESC over the supervisory status of the school nurses, nor does the evidence support this conclusion. To the contrary, as noted above, the County Board initiated negotiations with the HCESC, and two negotiations session were held to discuss the supervisory role of

² AFSCME disclaimed interest in representation of the school nurses.

³ Because Section 6-501(i) states that the public school employer shall make the determination of supervisory status “in negotiation with an employee organization” -- as opposed to “after” negotiation with an employee organization, *cf.*, the language of Section 6-511 -- an employee organization might argue that, if the parties fail to resolve the issue of supervisory status through negotiations, the statutory impasse procedures may be involved. We need not, at this juncture, determine the merits *vel non* of such an argument, since neither party has, in this case, asked the PSLRB to determine whether an impasse has been reached as to the unit placement of school nurses.

school nurses, and the transfer of these nurses from the non-certificated, non-supervisory bargaining unit into the non-certificated, supervisory bargaining unit. In addition, the parties exchanged several letters regarding this matter. Because the County Board met its obligation under Section 6-501(i) to negotiate with the HCESC over the supervisory status of the school nurses, and, more specifically, whether or not a school nurse “responsibly directs the work of other employees,” it was then within the County Board’s discretion to determine that the school nurses are “supervisory employees” under the statute.⁴

The foregoing is not meant to suggest that a public school employer has absolute and unfettered authority to identify any employee as a supervisory employee in an unchallenged manner, or that there is no basis on which an employee organization may challenge a public school employer’s decision in this regard. In the opinion of the PSLRB, if a public school employer’s determination of supervisory status is wholly arbitrary and not grounded in any plausible interpretation of the relevant facts, the PSLRB would have the authority to overturn that determination. We do not believe that this case falls into this category.

That being said, we now turn to the HCESC’s argument that placing school nurses in the non-certificated, supervisory bargaining unit violates Section 5-505(c)(1) of the Education Article because supervisory and non-supervisory employees will be “in the same bargaining unit contrary to statute.”

Section 6-505(c)(1) of the Education Article states in relevant part, “a unit may not include both supervisory and non-supervisory employees.” As discussed above, the County Board properly exercised its authority under Section 6-501(i) of the Education Article by negotiating with the HCESC concerning the supervisory status of the school nurses, and subsequently, making the determination that they are “supervisory employees.” Based on this determination, the County Board had no choice but to remove the school nurses from the non-certificated, non-supervisory bargaining unit, and place them in the non-certificated, supervisory bargaining unit inasmuch as failure to do so would result in the inclusion of supervisory and non-supervisory employees in the same unit in violation of Section 6-505(c)(1). Therefore, the HCESC’s argument with regard to Section 6-505(c) of the Education Article is invalid.

Finally, we turn to the HCESC’s Motion for Summary Decision.

COMAR 14.34.04.04(B)(6) states, “The Board may issue a final decision in favor of or against the moving party if the motion for summary decision and response show that there is no

⁴ In their filings, both the HCESC and the County Board cite case law from the National Labor Relations Board, as well as various state public sector labor relations boards. It is worth noting that the language contained in Section 6-501(i) is unique and differs in significant respects from the counterpart language contained in the National Labor Relations Act and the other state statutes relied upon by the parties. First, while the definition of “supervisory employee” under Section 6-501(i) of the Education Article “includes any individual who responsibly directs the work of other employees,” it does not require any of the other responsibilities found in the NLRA or similar state laws, such as hiring, transferring, suspending, laying off, recalling, promoting, discharging, assigning, rewarding, disciplining, adjusting grievances, or recommending any of these actions. *Compare, e.g.*, 29 U.S.C. § 152(11); W.S.A. § 111.81(19). Second, Section 6-501(i) is unique in providing that the supervisory status of employees is “determined by the public school employer in negotiation with an employee organization that requests negotiation on this issue.” As a result, the parties’ reliance on these other statutes and case law is misplaced.

genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.”

Because the County Board met its obligation under Section 6-501(i) to negotiate with the HCESC over the supervisory status of the school nurses, it was then within the discretion of the County Board to determine whether or not the school nurses were “supervisory employees” under the statute. Accordingly, the PSLRB concludes that there is “no genuine dispute as to any material fact” in this case, and that the County Board is entitled to judgment as a matter of law.

V. CONCLUSIONS OF LAW

For the reasons stated herein, we conclude that the County Board did not violate either Section 6-501(i) or Section 6-505(c) of the Education Article by removing school nurses from the non-certificated, non-supervisory bargaining unit, and placing them into the non-certificated, supervisory bargaining unit.

VI. ORDER

IT IS HEREBY ORDERED THAT THE HCESC’S MOTION FOR SUMMARY DECISION IS DENIED, AND THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2017-05, IS DISMISSED.

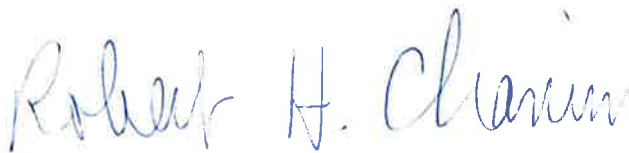
BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



Elizabeth M. Morgan, Chair



Ronald S. Boozer, Member



Robert H. Chanin, Member

Donald W. Harmon

Donald W. Harmon, Member

John A. Hayden, III, Member, dissents from the PSLRB's Decision and Order.

Annapolis, MD

September 11, 2017

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).