

State of Maryland
State Higher Education Labor Relations Board

In the matter of:)	
<i>Gloria Jean Johnson,</i>)	
)	
)	
Petitioner)	
)	SHELRB ULP 2020-01
v.)	
)	
<i>Baltimore City Community College,</i>)	
<i>Kijaffa Butler, Director of Admissions</i>)	
)	
Respondent)	
)	

DECISION AND ORDER

On July 11, 2019, Petitioner, Gloria Jean Johnson filed an unfair labor practice before the State Higher Education Labor Relations Board (SHELRB) against the Baltimore City Community College and Kijaffa Butler, Director of Admissions.

On August 7, 2019, the Baltimore City Community College filed its Response to the unfair labor practice in which it moved for dismissal on the basis that, “[t]he allegations contained in Ms. Johnson’s Complaint and the attached documents, even if true, do not establish an unfair labor practice.”

Pursuant to State Personnel and Pensions Article, Annotated Code of Maryland (SPP), § 3-2A-07(a), the SHELRB, through its Executive Director, may investigate “a possible violation of this title, or any regulation adopted under it; and (2) any other relevant matter.” In accordance with § 3-2A-07(a), the Executive Director conducted an investigation and reviewed written documents presented by the parties in this case. On September 3, 2019, the Executive Director issued her Investigative Report and Recommended Determinations for consideration by the SHELRB.

The SHELRB has considered the Executive Director’s report and recommendation, and has decided to adopt it as set forth below.

**Executive Director’s Investigative Report & Recommended
Determinations**

On July 11, 2019, Ms. Johnson filed this matter against the Baltimore City Community College (“BCCC”) and Kijaffa Butler (“Butler”), Director of Admissions.

Pursuant to SHELRB Regulations at COMAR §14.30.07.04F - G, the Executive Director must investigate allegations contained in a properly filed ULP petition to determine whether probable cause exists for the SHELRB to proceed on the case. After having reviewed the pleadings in this matter as applied to SHELRB Regulations at COMAR §14.30.07.04A, I recommend to the SHELRB that this matter be dismissed for the reasons outlined in this report and recommendation.

Petitioner’s Position/Information

Ms. Johnson argues that Butler took discriminatory actions against her as regards her performance evaluation. She alleges that in the critiques and comments in the evaluation, she was treated less favorably than other employees. Further, Ms. Johnson alleges that the evaluation was improper because she was never given the opportunity to be trained according to her job description. Ms. Johnson states that, opposing the evaluation, she did provide documentation to Butler regarding the department’s Standard Operating Procedures, and that Butler never responded to that documentation. Ms. Johnson alleges that unlike the other members of her employment team, she was denied the opportunity to assist in late night work, and to subsequently have a flexible schedule—leaving early, arriving late, attend appointments as needed—during the daytime work hours.

Ms. Johnson further alleges that her performance evaluation references “formal reprimands” issued to her but states that the union had addressed these reprimands, stating that the reprimands were invalid because BCCC has no policy on written reprimands and has advised unit members that they should request a copy of their personnel files and have BCCC remove the written reprimands. Ms. Johnson indicates that she is in the process of doing this. Regarding one of those reprimands, Ms. Johnson argues that Butler was not fair in her judgement of Ms. Johnson, as another employee had accused Ms. Johnson of doing something she did not do, and the write up about the incident was incorrect in the reprimand. As regarding the second warning, which Ms. Johnson alleges was regarding her questioning of the Human Resources office about the validity of her job description. Ms. Johnson states that, contrary to what the Human Resource’s Office indicates, she did have a job description given to her after she was transferred to the Admissions Department.

Ms. Johnson alleges that there has been a history of problems every time she has asked for time off—that procedures have been inconsistent in terms of discussing it with her supervisor, sending e-mail, filling out a leave request form. She alleges that responses to her requests and certain procedures required have been made known to her too late. Ms. Johnson also states that she has more hours of leave accrued than the paperwork she has been given indicates.

Returning to her evaluation, Ms. Johnson states that her evaluation notes that her communication and writing skills hinder her from being a productive employee. However,

she claims that this assessment only comes from conversations with individuals who have had problems with her in the past, or who have harassed her for various reasons. Ms. Johnson notes that she has only signed her evaluation to indicate that she has received it, but she does not agree with its contents, and believes that signing the evaluation gives Butler the opportunity to retaliate against her or terminate her employment.

Ms. Johnson offers qualities of a leader that she expects as an employee, and notes the improvements that Butler should be making. Finally, Ms. Butler references various documentation included with her charge, to support the allegations she has made.

Respondents' Position/Information

In response to this unfair labor practice charge, BCCC argues that Ms. Johnson has failed to allege any activity or facts that would constitute an unfair labor practice. BCCC notes that Ms. Johnson's year end performance review evaluation rating was 1.69, which causes Ms. Johnson to be in the "needs improvement" category. BCCC notes that Ms. Johnson submitted a rebuttal to the evaluation, which, BCCC argues, appears to be the substance of her claim in this matter. Additionally, BCCC states that through her American Federation of State, County and Municipal Employees (AFSCME) representative, Ms. Johnson has filed a grievance matter regarding her end of year evaluation. BCCC notes that the college has opted to revise Ms. Johnson's evaluation, which put the grievance process on hold. At present, Ms. Johnson's revised evaluation is completed and BCCC is in the process of scheduling a time for her to review it with Butler.

BCCC offers the State Personnel & Pensions Article §3-306 identifying of unfair labor practices to support its argument that Ms. Johnson has failed to state a claim upon which SHELRB relief may be granted. BCCC argues that none of the allegations in Ms. Johnson's complaint, or any of the documentation she attaches, constitute an unfair labor practice. BCCC argues that there are no facts indicating that the evaluation and alleged conduct by Ms. Johnson's supervisor is connected to Ms. Johnson's membership in the union or participation in union activities. Further, BCCC argues that the grievance process given in the collective bargaining agreement between AFSCME and BCCC, which Ms. Johnson is currently using, is the appropriate means and venue for Ms. Johnson to obtain relief.

Based on the arguments and information given by BCCC, the college requests that this matter be dismissed.

Analysis

COMAR §14.30.07.04F – G authorizes various actions undertaken by the Executive Director regarding unfair labor practices filed before the SHELRB. Under these sections, the Executive Director shall, subject to SHELRB review, consider properly filed complaints, and investigate the facts. Further, the Executive Director should recommend SHELRB dismissal of the matter if a petitioner fails to state an actionable claim under State Personnel & Pensions Article §§3-101 through 3-602, or appropriate COMAR regulations; or determines that the SHELRB has no jurisdiction over the claims presented. Appropriate COMAR

regulations administered and enforced by the SHELRB are found at §14.30.01 - §14.30.11.

State Personnel & Pension Article at §3-306 indicates unfair labor practices as follows:

- (a) The State and its officers, employees, agents, or representatives are prohibited from engaging in any unfair labor practice, including:
- (1) interfering with, restraining, or coercing employees in the exercise of their rights under this title;
 - (2) dominating, interfering with, contributing financial or other support to, or assisting in the formation, existence, or administration of any labor organization;
 - (3) granting administrative leave to employees to attend employer sponsored or supported meetings or events relating to an election under §3-405 of this title, unless the employer grants employees at least the same amount of administrative leave to attend labor organization sponsor or supported meetings or employee meetings;
 - (4) discriminating in hiring, tenure, or any term or condition of employment to encourage or discourage membership in an employee organization;
 - (5) discharging or discriminating against an employee because of the signing or filing of an affidavit, petition, or complaint, or giving information nor testimony in connection with matters under this subtitle;
 - (6) failing to provide all employee organizations involve in election the same rights of access as prescribed by the Board through regulation;
 - (7) engaging in surveillance of union activities;
 - (8) refusing to bargain in good faith; or
 - (9) engaging in a lockout.

Ms. Johnson's allegations do not fall under any of these subsections, and in particular, she offers no nexus between the actions she alleges and her involvement or activities with AFSCME. Further, as there has been a grievance filed by AFSCME on her behalf in this matter, which is currently on hold, it appears that Ms. Johnson is availing herself of the appropriate venue through which to identify concerns with her employee evaluation.

For the reasons identified here, I recommend to the State Higher Education Labor Relations Board that this matter be dismissed.

Recommendation

Based on the evaluation of the evidence gathered during the course of this investigation, and discussed in the above analysis, the Executive Director finds and recommends that Ms. Johnson has not filed an actionable claim under State Personnel & Pensions Article §3-306, and thus the matter should be dismissed.

Pursuant to SLRB Regulations at COMAR §14.30.05.02G - H, this report will be sent to the full membership of the SLRB as well as to the parties. Any party aggrieved by the Executive Director's Report and Recommended Determinations is permitted to request reconsideration by the full board **no later than fifteen days** after the issuance of this report.

FOR THE STATE HIGHER EDUCATION LABOR RELATIONS BOARD



Karl K. Pence, Chair

Annapolis, MD

November 21, 2019

APPEAL RIGHTS

Any party aggrieved by this action of the Board may seek judicial review in accordance with Title 10 of the State Government Article, Annotated Code of Maryland, Section 10-222, and Maryland Rule 7-201, *et seq.*, Maryland Rules of Practice and Procedure.