

**State of Maryland  
Public Employee Relations Board**

In the matter of:	)	
	)	
American Federation of Teachers -	)	
Maryland,	)	
	)	
Charging Party	)	
	)	
v.	)	PERB ULP 2024-21
	)	
PRINCE GEORGE’S COMMUNITY	)	
COLLEGE,	)	
	)	
Charged Party	)	
	)	

**DECISION AND ORDER**

**PROCEDURAL BACKGROUND**

On February 7, 2024, the American Federation of Teachers-Maryland (AFT-Maryland) filed with the Public Employee Relations Board (“PERB”) an Unfair Labor Practice Complaint (“Complaint”) against Prince George’s Community College (“PGCC” or “College”) concerning conduct that occurred during AFT-Maryland’s efforts to organize faculty at PGCC. AFT-Maryland alleges that PGCC retaliated against two faculty members who were involved in the organizing campaign, J. David James and Brittani Haynes, by refusing to renew their employment contracts in violation of Public Employment Relations Act (“PERA”), Md. Code Ann. State Govt. (“SG”) §§ 22-205(c) and 22-206(a)(1) and (4).

On March 8, 2024, PGCC filed its response (“Response”) to AFT-Maryland’s Complaint. On May 28, 2024, PERB issued a complaint against PGCC. On August 2 and August 26, 2024, PERB held a hearing in this matter. And on October 18, 2024, both AFT-Maryland and PGCC filed post-hearing briefs.

**FACTUAL BACKGROUND**

Faculty at PGCC began organizing shortly after community college faculty gained the right to engage in collective bargaining in 2021. Jonn Mack, Assistant Professor of Paramedicine

and President of PGCC's Faculty Senate, spearheaded organizing efforts, along with an organizing committee that included Brittani Haynes. J. David James was also an active supporter of the union's organizing efforts, although he did not serve on the organizing committee. After a card check showing that a majority of PGCC's full-time faculty selected union representation, AFT-Maryland was certified as exclusive representative of the faculty on February 15, 2024.

PGCC faculty work under a one year contract for their first year at PGCC. After the first year, contract terms are two years, and there is an expectation that the contract will be renewed for tenure track faculty. In determining not to renew faculty contracts, the process is typically lengthy, lasting a year or two, and involves efforts to identify if the employee can improve as needed. As explained in greater detail below, in December 2024, PGCC notified J. David James and Brittani Haynes that it was not renewing their employment contracts.

#### I. J. David James

In fall 2013, PGCC hired James as a full time faculty member and Program Director for the Medical Assisting Program.<sup>1</sup> James' essential duties included, among others: leading, supervising, and organizing ongoing programmatic accreditation; managing the Medical Assisting Program ("Program"), and more specifically, supervising clinical coordination of the MAS 2060 practicum;<sup>2</sup> and ensuring on-going program quality assurance.

##### A. Organizing Efforts

Prior to his termination, James openly supported the union. He spoke in favor of union representation at an all-faculty meeting at the beginning of the Fall 2023 semester, as well as at several Faculty Senate meetings, and at off-campus meetings with faculty members and representatives of AFT-Maryland. At meetings with President Williams and Provost Railey around this same time, both President Williams and Provost Railey engaged in conversation regarding the union's organizing efforts, indicating the administration's awareness of James' support for the union. In one meeting, James was asked directly by PGCC administration how the organizing efforts were going. In a separate meeting, President Williams opined that it would not benefit the school to have a union.

##### B. Performance Problems

In 2021, Tracey Lloyd, Allied Health Department Chair, became James' supervisor. Upon joining PGCC, Lloyd became aware that there were issues with student clinical

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<sup>1</sup> The role is recognized as the Medical Assisting Program Director for the Medical Assisting Review Board and the Commission on Accreditation of Allied Health Education Programs.

<sup>2</sup> MAS 2060 is a specific course within the Program requiring student placements for clinical rotation.

placements. Work regarding student placement for MAS 2060 involves soliciting sites to accept students for placement and meeting contractual requirements with clinical sites, which, according to Lloyd “should begin before students register for the course (usually the semester prior to the practicum) given the logistics of placing students with hospitals, doctors’ offices, and clinics.”

In addition, Lloyd learned that James was “conferring a lot of incomplete grades for students” contrary to college policy. College policy for conferring incomplete grades “is that the student has to have 75 percent of the... course done during the semester they’re registered. And they also have to have an end time indicated with a contract, with the professor, [addressing] what they’re going to do to complete the course.” James was not adhering to this policy. As a result, in August 2023, Lloyd raised these concerns with James, and subsequently provided James with multiple resources to assist him including a practicum handbook with policies and forms along with a spreadsheet of practicum information (sites, names, phone numbers, and addresses), a review of Program policies, a guide for practicum sites to facilitate their understanding of the Program, draft template documents, and suggestions on how to improve Program logistics.

By September 2023, it became apparent to Lloyd that James was still not meeting performance expectations. He was not keeping students informed, did not have appropriate processes in place to perform his job duties, and was not properly arranging clinical sites for students to get on-site education. For example, even if selected by a clinical site, some students could not begin their clinical experiences because James had not informed them that they had to complete prerequisite screenings for clinical placements.

For the summer 2023 term, there were two sections of the practicum with 20 students in each section; however, only three students successfully completed the course, while 16 students were given an incomplete grade (with one student outstanding).<sup>3</sup> Leading to the Fall 2023 semester, James scheduled another MAS 2060 practicum course, but no students enrolled. The purpose of scheduling the fall practicum was to allow students who had received an incomplete in the summer semester to complete the course. James requested that the coordinator for the fall practicum be paid, which was contrary to PGCC practice.

In an effort to set expectations with James, on September 19, 2023, Lloyd issued James a performance expectations memorandum, which iterated Lloyd’s concerns with the practicum, including the two sections that occurred in summer 2023 for which only three of twenty students successfully completed (and that led to the zero enrollment fall course).

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<sup>3</sup> The issue of incompletes is significant because accreditation requires that certain benchmarks be met to maintain accreditation and the conference of incompletes can impact whether the Program remains accredited. Lloyd worked with James through mid-November to help him address Program concerns; however, James continued to not follow instructions.

During this time, Lloyd discovered yet another issue, this time concerning James' handling of Program admissions. There are two ways to handle admission into the Program: use of a trigger course and use of a selective admissions process; however, for accreditation purposes, only one method can be used. PGCC policy requires a selective admissions process for the Program, as indicated on PGCC's website; however, James unilaterally implemented a trigger course despite PGCC policy and notified the body in charge of accreditation for PGCC of the change. By unilaterally moving to a trigger course model and notifying the accrediting body of this change, James placed PGCC at risk of being placed on probation.<sup>4</sup>

Seeing no improvement, on November 16, 2023, Lloyd issued a second memorandum of expectations that again identified what should be done to improve the Program, her expectations, and the support she initiated to assist James, all of which Lloyd had discussed with James during weekly meetings from September to November 2023. Lloyd also noted in her memorandum that James had improperly given a Program coordinator access to software that contained confidential student information.

Finally, among other issues, after conducting a department-wide review of courses, Lloyd discovered that James did not follow PGCC policy regarding online/hybrid courses. PGCC policy requires that faculty login to courses twice a week at a minimum. For at least one course, James had not logged on for 30 days, and further, did not appropriately interact with the gradebook, lacked sufficient "discussion interaction," failed to regularly access and update course information, and engaged too infrequently with students.

As a result, on December 8, 2023, based on a recommendation from Lloyd, and consistent with PGCC's policy regarding non-renewal of faculty, PGCC Executive Vice President and Provost Calvin Railey recommended to President Falecia Williams that James' contract not be renewed because James "failed to meet [the College's] performance standards." Provost Railey testified that neither James' views on unionization, his union-organizing activity, nor faculty organizing generally played any role in his decision to support the non-renewal recommendation.

In a letter dated December 12, 2023, James was informed that PGCC would not renew his contract at the end of the school year. On February 2, 2024, James was relieved of his duties, and his employment with PGCC terminated on May 18, 2024.

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<sup>4</sup> Using a trigger model also impacts student data accuracy because Program students would not be counted for reporting purposes until they take the trigger course, which skews enrollment data, "is not equitable for students[,] and [gives the appearance] that [the College] is cherry picking [students] based on their performance in the medical assisting courses."

## II. Brittani Haynes

### *A. Employment History*

In fall 2020, PGCC hired Brittani Haynes as Associate Professor of Nursing. Haynes was on tenure track. Her supervisor, Nursing Department Chair Vivian Kuawogai, previously held Haynes' position and worked closely with Haynes to help her become acclimated with her teaching duties.

In January 2022, Kuawogai recommended Haynes for alternate credit hours to coordinate training and the implementation of new technology for the Nursing Department. Kuawogai also enlisted Haynes to manage the Department's webpage. Around this time, and through midyear 2022, Haynes and Kuawogai had a positive working relationship.

In 2023, Kuawogai recommended to senior management that Haynes' contract not be renewed because of an "accumulation" of issues including "inability to accept corrections [and] inability to work collegially." Kuawogai's recommendation was reviewed by Dean Angela Anderson and Provost Railey and submitted to President Williams. Anderson and Railey testified that they did not instruct Kuawogai to recommend that Haynes' contract not be renewed. The testimony indicates that they relied on the information provided by Kuawogai and did not conduct an independent investigation.

On or around December 12, 2023, during a Department of Nursing Faculty meeting, and despite a positive evaluation in October of that year, Kuawogai delivered Haynes a letter indicating that her contract would not be renewed at the end of the school year. The letter did not contain any information about the reason for non-renewal.

Prior to receiving this letter, Haynes had no discipline in her record, nor had she been placed on any performance improvement plan, a departure from past practice for non-renewals. Haynes did not receive information regarding the reasons for non-renewal of her contract until well after PGCC's decision was made and effectuated, when, in its Response to AFT-Maryland's Complaint, PGCC alleged a number of reasons for Haynes' termination.

### *B. Organizing Efforts*

In Fall 2022, Mack asked Haynes if she wanted to be involved in organizing a faculty union at PGCC. Haynes agreed. From Fall 2022 through January 2023, Haynes engaged in outreach to individual faculty members, first in the Division of Allied Health, then to faculty in other departments.

In Fall 2023, Haynes helped to solicit faculty members to sign cards indicating that they wanted to be represented by the union. She helped set up tables where faculty members could talk to AFT-Maryland representatives and sign union cards, and she stood in the lobby and asked faculty members to sign cards.

Haynes frequently wore t-shirts expressing support for the union, including at faculty meetings. These shirts had QR codes printed on them, which faculty could scan to access information about the union and its mission. Haynes also hung a poster expressing her support for the union on the door to her office, which was visible to anyone walking by.

During this time, Kuawogai became concerned about “cliques” forming to discuss vital aspects of workplace life and working conditions. According to Kuawogai, these cliques consisted of employees talking, complaining and acting together regarding working conditions and workplace issues, which made it difficult to run the Department the way she believed to be effective. Most notably, faculty stopped accepting “overload” cases<sup>5</sup> that they had previously accepted. Kuawogai acknowledged that her relationship with Haynes changed when she noticed Haynes’ involvement with these “cliques.”

## ANALYSIS

As discussed above, AFT-Maryland asserts in its Complaint that “[t]he terminations of Mr. James and Ms. Haynes are the direct result of their outward support of a union campaign at PGCC[C].” In response, PGCC contends that “[u]nion activity had nothing to do with the non-renewal of James’ or Haynes’ contracts or the College relieving James of his duties in February 2024. The decisions were entirely performance-based.”

Under PERA, public employees have the right to engage in concerted activities for the purposes of mutual aid or protection, and to form, join or participate in a union. State Gov’t §§ 22-201(a)(1) and (b)(1). “A public employer... may not interfere with, intimidate, restrain, coerce or discriminate against a public employer because the public employee exercises rights” under PERA. Md. Code Ann., State Gov’t § 22-205(c). PERA further prohibits “[a] public employer and its officers, employees, agents, or representatives... from engaging in any unfair labor practice, including: (1) interfering with, restraining, or coercing employees in the exercise of their rights under this title;... [and] (4) discriminating in hiring, tenure, or any term of condition of employment to encourage or discourage membership in an employee organization....” Md. Code Ann. State Gov’t §§ 22-206(a)(1) and (4).

The federal corollary to these provisions can be found in Sections 7 and 8 of the National Labor Relations Act (“NLRA”). Section 7 of the NLRA guarantees employees “the right to self-

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<sup>5</sup> “Overload” is effectively overtime with additional pay for teaching more courses.

organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities." 29 U.S.C. § 157. Section 8(a)(1) makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed" under Section 7. 29 U.S.C. § 158(a)(1). And Section 8(a)(3) prohibits an employer from engaging in "discrimination in regard to hire or tenure of employment or any term of condition of employment to encourage or discourage membership in any labor organization." 29 U.S.C. § 158(a)(3).

In considering whether an employer took a negative employment action because of the employee's engagement in protected concerted activity, the National Labor Relations Board ("NLRB") applies a test first set out in Wright Line, 251 NLRB 1083 (1980).<sup>6</sup> Under the Wright Line test, a preponderance of the evidence must show that (1) the employee was engaged in protected activity, (2) that the employer was aware of the activity, and (3) that the activity was a substantial or motivating reason for the employer's action.<sup>7</sup> The NLRB has clarified that, under Wright Line, it is not sufficient to show that the employer had anti-union animus, but that "the evidence must be sufficient to establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee." Tschiggfrie Properties, Ltd., 368 NLRB No. 120 (2019).<sup>8</sup> "[T]emporal proximity can be a sufficient basis from which to infer anti-union animus as a matter of law." Gaetano & Associates Inc. v. NLRB, 183 Fed. Appx. 17, 20 (2d Cir. 2006). *See also* FiveCAP, Inc. v. NLRB, 294 F.3d 768, 777 (6th Cir. 2002) ("To determine anti-union animus the evidence 'can be purely circumstantial, and that many factors can contribute to a finding of anti-union motive.'").

The presence of all three factors is enough to establish a prima facie case that the adverse employment action was discriminatory, but the employer can rebut the evidence by showing that it would have discharged the employee even "in the absence of the protected conduct." Wright Line at 1089. The Board may then find that the employer's proffered explanation is an excuse, rather than a reason, and may infer a discriminatory motive based on direct or circumstantial evidence. Mondelez Global LLC v. N.L.R.B., 5 F.4th 759, 769-770 (7th Cir. 2021).

In AFSCME v. Bowie State University, SHELRB Case No. 2002-15 (2003), the former SHELRB adopted and applied the Wright Line test in a case in which Bowie State University

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<sup>6</sup> "Decisions of the National Labor Relations Board," the body that enforces the NLRA, "may be afforded persuasive weight in any interpretation of" PERA. Md. Code Ann. SG, § 22-103.

<sup>7</sup> The Wright Line test was upheld in NLRB v. Transp. Mgmt. Corp., 462 U.S. 393, 400-04 (1983) but the case was abrogated on other grounds by Dir., Off. of Workers' Comp. Programs v. Greenwich Collieries, 512 U.S. 267 (1994).

<sup>8</sup> The NLRB later further clarified that Tschiggfrie Properties did not modify the Wright Line test. Intertape Polymer Corp., 372 NLRB No. 133 (2023).

laid off an employee who had actively participated in organizing a non-exempt bargaining unit and was subsequently elected president of his union.<sup>9</sup> In that case, the SHELRB explained:

*Wrightline* [sic] established the parties' shifting burdens of proof in a case of alleged anti-union discrimination. In both pretext and dual motive cases, the employee/petitioner must first establish a prima facie case of the alleged discriminatory action by the employer. The employer/respondent must then present any affirmative defense for its action, and, finally, the employee may offer any rebuttal to the employer's affirmative defense.

Based on the entire record, one of three determinations is made: whether (a) the employee's prima facie case was successfully rebutted by a showing that protected activity played no role in the employer's action, or that unprotected activities (e.g., legitimate business or disciplinary reasons), standing alone, would have caused the employer's action (i.e., were substantially relied upon); (b) the employer's alleged reason for the action was not, in fact, the one relied upon (i.e., a pretext case); or (c) the employer's asserted reason was relied upon in part, but the employer cannot show that such a reason alone would have caused the employer's action (i.e., a so-called "mix- or dual-motive" case)... In dual motive cases, the employer's ability to prove that non-discriminatory reasons would have caused its action notwithstanding the employee's protected activity will determine the existence of a violation or not...

The SHELRB further explained:

Under the *Wrightline* [sic] analysis, [the employee/petitioner's]... "prima facie showing creates a kind of presumption that the unfair labor practice has been committed." *Wrightline* [sic], *supra*, 662 F.2d at 905. Once this showing is made, the burden shifts to the employer... to produce evidence of an actually legitimate reason for its action... This burden, however, does not place on the employer the onus of affirmatively proving that the unfair labor practice did not occur. Rather, the employer's burden is limited to a rebuttal of the presumption created by the Petitioner's... *prima facie* case showing. The First Circuit in *Wrightline* [sic] articulated this burden as 'producing evidence to balance, not to outweigh, the evidence produced ...' establishing the *prima facie* showing. *Id.* As an affirmative defense, the employer is charged further with a burden of persuasion as well as

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<sup>9</sup> Prior opinions and decisions of PERB's predecessors, which include the State Higher Education Labor Relations Board ("SHELRB"), are binding on PERB. Md. Code Ann. SG, § 22-309(b).



production. [FN 12] The burden of persuasion is met by establishing its affirmative defense by a preponderance of the evidence.

Id.

Pursuant to SG, § 22-309(b), making decisions of the SHELRB binding on PERB, and SG, § 22-103, affording persuasive weight to decisions of the NLRB in interpreting PERA, we apply Wright Line to the instant case. In doing so, we must first determine whether AFT-Maryland has established a prima facie case that PGCC has committed an unfair labor practice in violation of SG §§ 22-206(a)(1) and (4) by not renewing the employment contracts of James and Haynes. As mentioned above, to meet this burden, AFT-Maryland must first prove, by a preponderance of the evidence, the following elements: (1) that James and/or Haynes were engaged in protected activity, (2) that PGCC was aware of the activity, and (3) that the activity was a substantial or motivating reason for the employer's action. We address each of these elements in turn.

(1) Were James and/or Haynes engaged in protected activity?

As previously explained, under PERA, public employees have the right to engage in concerted activities for the purposes of mutual aid or protection, and to form, join or participate in a union. State Gov't §§ 22-201(a)(1) and (b)(1).

Based on the evidence provided by AFT-Maryland, while not a member of the union's organizing committee, James spoke in favor of union representation at an all-faculty meeting at the beginning of the Fall 2023 semester, as well as at several Faculty Senate meetings, and at off-campus meetings with faculty members and representatives of AFT-Maryland. Similarly, in Fall 2022, Haynes became a member of AFT-Maryland's organizing committee, and throughout 2023, engaged in outreach to individual faculty members. Haynes helped to solicit signatures for the union's card check and provided information to faculty concerning the union and its mission.

We find that the evidence provided by AFT-Maryland establishes, by a preponderance of the evidence, that by joining and participating in the organizing efforts of AFT-Maryland, James and Haynes engaged in protected activity. As a result, the first element of the Wright Line test has been met.

(2) Was PGCC aware of James' and/or Haynes' efforts to organize faculty members at PGCC?

According to the evidence produced, PGCC was aware of James' union organizing efforts. As explained above, at meetings with PGCC President Williams and Provost Railey, both

President Williams and Provost Riley engaged in conversation regarding the union's organizing efforts, indicating the administration's awareness of James' support for the union. In one meeting, James was asked directly by the PGCC administration how the organizing efforts were going. In a separate meeting, President Williams opined that it would not benefit the school to have a union.

Similarly, PGCC was aware of Haynes' union organizing efforts. Provost Railey testified that the administration knew Haynes was active in the union's organizing efforts. Furthermore, Haynes was an outspoken union organizer. While at PGCC, she expressed support for the union by wearing t-shirts that were imprinted with a QR code linked to information about the union and its mission, including while at faculty meetings. Haynes also decorated her office door with a poster expressing her support for the union, which was noticed by Kuawogai and visible to anyone walking by, and she set up tables where faculty members could talk to AFT-Maryland representatives and sign union cards. Haynes also stood in the lobby at PGCC asking faculty members to sign up for membership in AFT-Maryland.

We find that the evidence provided by AFT-Maryland establishes, by a preponderance of the evidence, that PGCC administration was aware of both James' and Haynes' efforts to organize faculty members at PGCC. As a result, we find that the second element of the Wright Line test has been met.

- (3) Was either James' or Haynes' engagement in union organizing efforts at PGCC a substantial or motivating reason for PGCC's decision not to renew their respective contracts?

- (a) J. David James

While PGCC was aware of James' union organizing efforts, the evidence does not support a finding that such efforts were a substantial or motivating reason for PGCC's decision not to renew his contract. Instead, the record shows that PGCC's decision was based on performance of job duties, his actions putting PGCC's accreditation at risk, and refusal to follow directives.

As previously described, Lloyd became aware of issues concerning James' performance as Program Director for the Medical Assisting Program as early as 2021 when Lloyd noticed that James' was not following PGCC's policy with regard to issuing incomplete grades and conferring an abnormally high percentage of incompletes to his students. Despite guidance, including multiple resources provided by Lloyd to assist James in reducing the number of incomplete grades given, James' overall performance did not improve. For example, in summer 2023, 16 of 20 students were given incomplete grades for the MAS 2060 practicum. This was a

direct result of James' failure to keep students informed, lack of appropriate processes to adequately perform his job duties, and inability to arrange clinical sites for students to receive on-site education. Consequently, James scheduled a MAS 2060 practicum in the fall 2023 semester for those students who received an incomplete grade in the summer course, pressuring PGCC to pay a coordinator for an additional semester.

In addition, James' conduct put PGCC's accreditation at risk. As explained above, for accreditation purposes, program admissions can be handled in one of two ways: through a selective admissions process or through a trigger course. To remain accredited, a college may only use one of these methods. James unilaterally implemented a trigger course for admission into the Medical Assisting Program, despite PGCC's policy of selective admissions as indicated on its website, and unilaterally informed the accreditation body of this change, placing PGCC at risk of being placed on probation. Additionally, if continued, this method could improperly skew student enrollment data, leading to an inaccurate appearance of how students are selected for the Program.

Furthermore, James did not follow PGCC's policy with regard to participation in online/hybrid courses - failing to: log in as frequently as required, regularly update course information, engage in sufficient discussion with students, and update course information, among other tasks.

Finally, despite the guidance and resources provided to James to assist him in improving his job performance, as well as weekly meetings between September and November 2023, James' performance still did not improve. Over this time period, Lloyd issued James two memorandum of expectations outlining steps James needed to adequately complete; however, these expectations were not met.

As a result, PGCC informed James that it would not renew his contract, and his employment with PGCC was terminated effective May 18, 2024. It was his performance that led to PGCC's decision not to renew James' contract, not his efforts to organize a faculty union at PGCC.

We find that AFT-Maryland has not proven, by a preponderance of the evidence, that James' engagement in union organizing efforts was a substantial or motivating reason for PGCC's decision not to renew his contract. Because the evidence provided does not establish a causal relationship between James' union organizing efforts and PGCC's decision not to renew his contract, the third element of the Wright Line test has not been met, and AFT-Maryland has not met its burden in establishing a prima facie case of anti-union discrimination. Therefore, we conclude that PGCC's actions in refusing to renew James' contract did not violate PERA §§ 22-206(a)(1) and (4), and we hereby dismiss this matter with respect to James.

(b) Brittani Haynes

The evidence provided by AFT-Maryland supports a finding that Haynes' engagement in union organizing efforts at PGCC was a substantial and motivating reason for PGCC's decision not to renew her contract.

Prior to receiving the December 12, 2023, letter indicating that her contract would not be renewed, Haynes had no discipline in her record, nor had she been placed on any performance improvement plan. As previously described, Haynes did not receive any information about the reasons for the non-renewal of her contract until well after PGCC's decision was made and effectuated.

As explained above, Haynes' efforts in union organization efforts were highly visible to the PGCC administration. Haynes became involved in such efforts beginning in 2022. From Fall 2022 through 2023, Haynes engaged in outreach to individual faculty members. In Fall 2023, Haynes helped AFT-Maryland solicit signatures of faculty members for membership in AFT-Maryland and set up tables where faculty members could talk to AFT-Maryland representatives. In addition, Haynes frequently wore t-shirts expressing support for the union, including at faculty meetings, and hung a poster expressing her support for the union on the door to her office.

Most notably, however, the evidence indicates that the relationship between Haynes and her supervisor, Kuawogai, began to negatively change in the Fall of 2022, when Kuawogai became concerned about Haynes' engagement with "cliques" forming in the workplace. Kuawogai explained that the "cliques" consisted of employees talking and acting together regarding working conditions, complaining about issues in the workplace, and refusing to volunteer for overload work. Such actions by a group of employees amount to protected concerted activity.

The temporal relationship between Kuawogai's disapproval or displeasure with Haynes' involvement with cliques and the union's organizing efforts in general, as well as Haynes' highly visible and outspoken efforts in support of AFT-Maryland indicate that she was targeted for non-renewal based on her union activity. As a result, we find that the third element has been met, and that AFT-Maryland has met its burden in establishing a prima facie case under the Wright Line test.

However, as explained above, PGCC can rebut the evidence by showing that it would have discharged the employee even "in the absence of the protected conduct." Wright Line at 1089. But, in such cases, where the employer's proffered explanation is an excuse, rather than a reason, a discriminatory motive may be inferred based on direct or circumstantial evidence. Mondelez Global LLC v. N.L.R.B., 5 F.4th 759, 769-770 (7th Cir. 2021).

Among the reasons alleged for the non-renewal of Haynes' contract, PGCC alleges that Haynes "did not ensure that students were always supervised at clinical placement sites and required students to drive interpreters in their (the students') cars to the clinical placement sites." One particular clinical placement site, provided by the City of Greenbelt, required home visits with patients. Haynes would take the students two at a time to a patient's home so she could supervise their care. The other four students would stay in the conference room to complete their documentation for the course. At no point were students ever attending to patients unsupervised. And after learning that the driving of interpreters by students presented liability issues, this practice ceased. Kuawogai did not express any concerns with this arrangement or address this with Haynes, but instead only asked for information about the site. No further issues regarding Haynes' supervision of students occurred after this clinical was completed. PGCC provided no evidence to indicate Haynes was formally investigated, disciplined, or otherwise put on notice about this issue, and Haynes did not learn about the concern of site supervision until receiving PGCC's Response to the Charge.

In addition, PGCC further argues that Haynes wrongly accessed information from a course she was not teaching. Haynes had the role of training new faculty members on how to use the three types of software related to grading and assignments and student communications, including Canvas. Canvas only permits instructors to see the courses they are teaching. Therefore, when Haynes was asked by a new faculty member how to put grades into Canvas, the new member had to log in and access her account so Haynes could provide instruction. Upon learning of this instruction, Kuawogai e-mailed Haynes about her concerns and Haynes explained her reasons. Haynes continued in her training role and these issues never recurred. Again, PGCC provided no evidence to indicate Haynes was formally investigated, disciplined, or otherwise put on notice about this issue beyond the brief e-mail interaction with Kuawogai, which revealed no wrongdoing by Haynes.

Furthermore, in support of its decision not to renew her contract, PGCC asserts that Haynes' failed to teach a lab for the required period of time on one specific occasion, which could adversely impact PGCC's accreditation. This lab was observed and evaluated by Kuawogai. According to testimony, Haynes ended the lab about seven to ten minutes early; this was an isolated incident. Kuawogai acknowledged that Haynes had never before ended a class early, including classes they taught together. Other than a note in Kuawogai's evaluation of the lab, there was no evidence provided to indicate Haynes was formally investigated, disciplined, or otherwise put on notice about this issue.

Finally, PGCC claims that, in Fall 2023, Haynes volunteered to serve on the Faculty Senate but later declined this responsibility. While Haynes did, in fact, agree to serve on the Faculty Senate, Faculty Senate meetings conflicted with Haynes' lab. As a result, Haynes

realized she could not serve on the Faculty Senate. Haynes' decision to prioritize her academic responsibilities does not support a reason to non-renew her contract.

Based on the evidence provided, we find that PGCC did not succeed in showing that it would have refused to renew Haynes' contract absent her engagement in union activities. And furthermore, we find that the above-described rationale proffered by PGCC in support of its decision not to renew Haynes' contract was pretextual. The evidence provided supports a finding that Haynes' engagement in union organizing efforts was a substantial and motivating reason for PGCC's decision not to renew her contract. Therefore, we conclude that PGCC's actions in refusing to renew Haynes' contract violated PERA §§ 22-206(a)(1) and (4).

### **CONCLUSIONS OF LAW**

For the reasons stated herein, we conclude that PGCC violated PERA §§ 22-206(a)(1) and (4) when it refused to renew Haynes' employment contract; but that it did not violate either PERA §§ 22-206(a)(1) or (4) when it refused to renew the employment contract of James.

### **ORDER**

**PURSUANT TO THE AUTHORITY GRANTED TO PERB PURSUANT TO PERA §§ 22-306(C) , IT IS HEREBY ORDERED THAT:**

- (1) The Complaint in PERB ULP 2014-21 is dismissed with regard to the charges alleged by AFT-Maryland on behalf of J. David James;**
- (2) The Complaint in PERB ULP 2014-21 is upheld with regard to the charges alleged by AFT-Maryland on behalf of Brittani Haynes;**

**AND IT IS FURTHER ORDERED THAT PGCC:**

- (1) Cease and desist its commission of unfair labor practices;**
- (2) Cease and desist any retaliatory actions towards the union or public employees;**
- (3) Cease and desist from any actions which deny public employees or the union of rights under PERA;**
- (4) Post notice regarding its commission of unfair labor practices;**
- (5) Reinstate Ms. Haynes to her position at PGCC immediately; and**
- (6) Make whole Ms. Haynes and restore any lost pay, benefits, or financial loss resulting from PGCC's unfair labor practices, less mitigated losses.**

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD:**



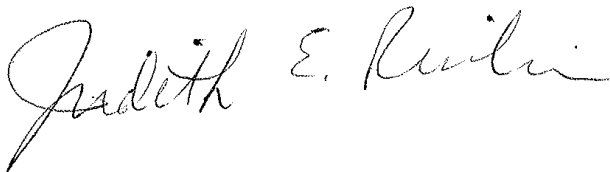
Lafe E. Solomon, Acting Chair



Harriet E. Cooperman, Member



Lynn A. Ohman, Member



Judith E. Rivlin, Member



Richard A. Steyer, Member

**Issue Date: February 25, 2025**

### **APPEAL RIGHTS**

Any party aggrieved by this action of the PERB 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).