

Maryland Public Employee Relations Board

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Governor

In the Matter of:

Damani Ellington,

Charging Party,

v.

Baltimore City Public Schools,

Respondent.

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PERB ULP 2025-38

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DECISION AND ORDER

Procedural Background

On May 15, 2025, Damani Ellington (Charging Party or Ellington) filed an Unfair Labor Practice Charge with the Public Employee Relations Board (PERB) against the Baltimore City Public Schools (BCPS or the Respondent). Ellington submitted a supplemental brief on June 13, 2025. Ellington alleges BCPS retaliated against him following his engagement in protected concerted activity by way of less favorable performance evaluations and his placement on an Academy Action Plan. BCPS responded to Ellington's submissions on June 4, 2025, and June 26, 2025, respectively.

Factual Background

Ellington is currently employed as a 6th grade science teacher at KIPP Ujima Village Academy (KUVA) within the BCPS system. Ellington has been employed by BCPS since 1997. Teachers within BCPS, including Ellington, are evaluated under the Teacher Effectiveness Evaluation System (TEE) each school year, where teachers can earn ratings of "Ineffective," "Developing," "Effective," and "Highly Effective." TEE scores are comprised as follows: 50% from two Formal Classroom Observations, conducted by "qualified observers" who are trained to identify professional behaviors that support student growth; 35% from the Student Learning

Objective, which measures student growth over the a school year; and 15% from the Professional Expectations Score, which evaluates teachers' proficiency in areas such as communication, professionalism, district expectations, etc.

On September 4, 2024, Ellington sent an email to Ryan Green-Ellis, a teacher and instructional coach employed by BCPS tasked with overseeing and assisting 6th grade teachers at KUVA. Ellington sent this email following a period of time where he and Green-Ellis had been engaged in meetings “almost every day.” Ellington’s email reminded Green-Ellis that, per the bylaws as agreed to by and between his Union, the Baltimore Teachers Union, and BCPS, school administration can take only one planning period per week from teachers for administrative purposes, while all other planning periods are to be uninterrupted. Following receipt of this email, Green-Ellis responded the following day, September 5, 2024, stating that he and Ellington would have just one standing meeting per week, while also noting that Green-Ellis would be more mindful to not schedule meetings during lunch, at the end of contractual hours, or when the meetings may conflict with Ellington’s laboratory preparation days.

On or about November 26, 2024, Ellington received a score of 2.29 on his Formal Observation, which is below the “Effective” rating. For this November 2024 Formal Observation, Ellington was observed by Davalyn Cunningham, Principal at KUVA. Ellington asserts that the class observed during this November 2024 observation was one of his most challenging classes due to roughly eleven (11) out of fifteen (15) students being enrolled in Individualized Education Programs and/or Section 504 plans. For the 2024-25 school year, which included this November 2024 Formal Observation score, Ellington’s overall TEE score was rated as “Effective.”

On or about January 28, 2025, Ellington was placed on an Academy Action Plan, which is intended to provide detailed action steps to improve teaching practice and preparation. Ellington’s Academy Action Plan was completed by both Green-Ellis and Cunningham, who each identified various areas to support Ellington’s teaching. Ellington contends his placement on the Academy Action Plan led to an increased workload when compared to his co-workers, as well as increased meetings and oversight from Green-Ellis.

Following his sending the email to Green-Ellis on September 4, 2024, and continuing until at least March 6, 2025, Ellington alleges that Green-Ellis subjected him to excessive micromanagement and scrutiny, including observing Ellington more often in his classroom, and regularly standing outside of Ellington’s classroom during class time.¹

Positions of the Parties

Charging Party

¹ BCPS denies this allegation and states that Green-Ellis was completing his assigned job duties in observing certain teachers, sitting in a desk in the sixth-grade hallway to support school climate, and providing active support in the classroom to teachers. BCPS states Green-Ellis conducted similar activities in regards to the other four (4) teachers he was tasked with coaching

Ellington contends that BCPS, through Green-Ellis and Cunningham, subjected him to retaliation and discrimination by way of less favorable performance reviews, increased workload, and excessive micromanagement, following the “protected concerted activity” in the form of Ellington’s September 4, 2024 email to Green-Ellis regarding the allotment of planning periods. Ellington alleges discrimination and retaliation under Md. Code, State Gov’t § 22-206(a)(5). Specifically, Ellington asserts that his less than “Effective” Formal Observation score from November, 2024, his placement on an Academy Action Plan on January 28, 2025, and “excessive micromanagement” by Green-Ellis, amounted to discrimination and retaliation under § 22-206(a)(5).

In regards to his November 2024 Formal Observation, Ellington asserts that the less than “Effective” score was retaliation for his engagement in protected concerted activity on September 4, 2024, as demonstrated by the fact that he had not recently received a Formal Observation score below “Effective.” Ellington further objects to and contests claims made by Cunningham regarding Ellington’s job performance and potential areas for improvement, again referencing his recent Formal Observation scores.

Ellington further argues that Green-Ellis subjected him to heightened scrutiny and excessive micromanagement following his September 4, 2024 email, resulting in his being treated in an unusual and disparate manner by Green-Ellis. Ellington points to an email sent from Green-Ellis on March 6, 2025 in effort to highlight this point, where Green-Ellis stated: “[p]lease send me a copy of your lesson for tomorrow. I plan to be in each period supporting students. Please let me know if you have any questions.” Ellington argues other teachers coached by Green-Ellis were not subject to similar conditions.

Continuing, Ellington states the Academy Action Plan from January 28, 2025 was premised solely on the less than “Effective” November 2024 Formal Observation, which he maintains was an act of retaliation in itself, thereby mandating the Academy Action Plan as an additional act of retaliation. As a result of this Action Plan, Ellington contends he was required to co-plan lessons with Green-Ellis twice per week, Green-Ellis was to observe Ellington at least twice per week, and that Ellington was required to complete a larger amount of student grades per week when compared to fellow teachers.

In effort to establish that KUVA administrators viewed Ellington as an exemplar teacher and establish retaliatory motive in regards to the November 2024 Formal Observation, Ellington points to a number of occasions during the 2024-25 school year where he was asked to take on additional responsibilities, such as overseeing KUVA’s after school science programs, mentoring younger teachers, and providing an example of classroom management strategy and effective teaching practices for newly hired teachers. Ellington contends it does not follow logically that he should have received a less than “Effective” Formal Observation score while also being tasked with demonstrating effective teaching techniques for new teachers and taking on additional responsibilities.

Respondent

BCPS principally argues that the November 2024 Formal Observation score and subsequent Academy Action Plan were not retaliatory or discriminatory acts but were rather

actions taken pursuant to Ellington's teaching abilities and practices. While acknowledging that the email sent from Ellington on September 4, 2024 likely constituted protected concerted activity, BCPS asserts that any argument which contends the subsequent actions taken by BCPS were retaliatory are bald allegations unsupported by the factual record, as no evidence has been produced which links the September 4 email to the November Formal Observation score or later Academy Action Plan.

BCPS contends the Academy Action Plan was not a punitive measure, but rather an informal, supportive document which details action steps to improve teaching practice and preparation. While Ellington states that he was placed on the Academy Action Plan solely as a result of his November 2024 Formal Observation, BCPS contests this claim, while also stating that Ellington did not, in fact, agree to or take part in the Academy Action Plan. Rather, BCPS claims that Ellington's lack of lesson internalization, which KUVA teachers are expected and provided paid blocks of time to complete, in conjunction with less than ideal classroom management, contributed to his being placed on an Academy Action Plan. It is also worth noting that while Ellington's November 26, 2024 Formal Observation score may have been less than "Effective," BCPS states that Ellington's total TEE score for the 2024-25 school year was "Effective," which is consistent with the majority of his previous scores.

Regarding Green-Ellis, BCPS claims that he engaged with Ellington in the same manner in which he engaged with the other four teachers he was tasked with coaching, and that Ellington has produced nothing more than speculation to support his claim that he was subjected to excessive micromanagement or disparate treatment by Green-Ellis. It was common practice for Green-Ellis to spend time in classrooms to provide proactive support with school climate, while also often sitting at a desk in the sixth grade hallway.

BCPS also contends that Green-Ellis' initial response to Ellington's September 4, 2024 email supports its contention that it did not retaliate against Ellington. Specifically, BCPS argues that since Green-Ellis acquiesced to Ellington's reminder about the allocation of time for administrative purposes during planning periods, by agreeing to meet only one time per week and being mindful of the timing of that meeting, there was no retaliatory intent in BCPS' future actions. BCPS refutes the contention that Green-Ellis influenced the less than "Effective" score received by Ellington during his November 2024 Formal Observation, stating again that Ellington has provided no support for this claim other than speculation.

BCPS further points to the lapse in time between the protected concerted activity taken by Ellington on September 4, 2024, and the Formal Observation score from November 26, 2024 and subsequent Academy Action Plan issued on January 28, 2025. BCPS argues Ellington has produced no factual basis supporting his claims for retaliation or discrimination stemming from his September 4, 2024 email, but rather has provided only conjecture and speculation.

Analysis

BCPS is a public employer subject to the Public Employee Relations Act (hereinafter referred to as "PERA"), pursuant to Md. Code, State Gov't § 22-101(i) and Md. Code, Education

§ 6-401(f). Ellington is a public employee subject to PERA, pursuant to Md. Code, State Gov't § 22-101(h) and Md. Code, Education § 6-401(e)(1). PERB has the authority to investigate and act on unfair labor practice complaints pursuant to Md. Code, State Gov't § 22-306(b)(4).

Md. Code, State Gov't § 22-201(a)(1) provides that employees of a public employer have the right to engage in concerted activities for the purposes of mutual aid or protection. Relatedly, Md. Code, State Gov't § 22-206(a)(1) and (5) state it is an unfair labor practice for a public employer to interfere with, restrain, or coerce employees in the exercise of their rights, while also stating it is an unfair labor practice for public employers to discharge or discriminate against an employee due to their signing or filing of an affidavit, petition, or complaint, or giving information or testimony in connection with matters under PERA.

The NLRB, in reviewing charges of alleged discrimination based on protected concerted activity, evaluating such a case under an analogous NLRA provision,² have utilized the *Wright Line* approach. *Wright Line*, 251 NLRB 1083 (1980). Pursuant to Md. Code, State Gov't § 22-103, PERB may afford persuasive weight to decisions of the NLRB. Maryland labor boards preceding PERB have adopted and implemented this approach as well. See AFSCME v. Bowie State University, SHELRB Case No. 2002-15. Under *Wright Line*, to establish a prima facie case of discrimination or retaliation by the employer in response to protected concerted activity, the charging party must establish: (1) engagement in union or other protected concerted activity by the employee; (2) employer knowledge of that activity; and (3) animus toward the protected activity as well as a causal connection between the alleged discriminatory action and the protected activity. See *Wright Line*, 251 NLRB 1083 (1980). See also Intertape Polymer Corp., 372 NLRB 133 (2023). Courts and the NLRB have long held that animus and a causal connection may be “inferred from circumstantial evidence based on the record as a whole.” See *id.* citing Overnite Transportation Co., 335 NLRB 372 (2001).

Here, while elements (1) and (2) of the *Wright Line* analysis may have been met, Ellington has failed to establish support for element (3) by failing to provide a sufficient factual basis establishing the requisite causal connection between the alleged adverse action and his engagement in protected concerted activity. Rather, Ellington claims that his less than “Effective” Formal Observation score from November 26, 2024, and following placement on an Academy Action Plan on January 28, 2025, relate directly to his email sent to Green-Ellis on September 4, 2024. Immediately following this email, Green-Ellis complied with Ellington’s request. From the time of this interaction until November 26, 2024, a period of roughly two and a half months, Ellington does not claim any specific retaliatory or discriminatory acts were made by BCPS.

Yet, on November 26, 2024, when Ellington received a less than “Effective” score on his Formal Observation – which was not conducted by Green-Ellis, but rather by Cunningham – he asserts this must have been a result of his September 4 email. The only support provided by Ellington in this regard is the fact that he had not received such a rating in the past. While Ellington argues Green-Ellis may have influenced this score, no evidence for this claim exists, nor is there any factual support for the contention that Cunningham even knew of the relevant September 4 email at the time she conducted Ellington’s evaluation.

² 29 U.S. Code § 158(a)(1).

The same is true for Ellington's claims regarding his placement on an Academic Action Plan and the alleged "excessive micromanagement" and "scrutiny" from Green-Ellis. While Ellington asserts these actions directly relate to his engagement in protected concerted activity, no factual support exists in the record to support this contention or otherwise link such actions to animus resulting from his September 4 email. Rather, BCPS has contended that Ellington was placed on the Academy Action Plan due to a combination of his Formal Observation score, his lack of lesson internalization, and his struggles with classroom management. Without additional factual support to dispute this claim from BCPS, it cannot logically follow that Ellington's placement on such a plan must have been causally related to his protected concerted activity.

Relatedly, while Ellington claims that he alone was subject to excessive micromanagement from Green-Ellis, Ellington has failed to provide factual support backing this claim. BCPS contends that Green-Ellis was simply performing the responsibilities he was tasked with, in a manner similar to how he interacted with other teachers, and Ellington has failed to rebut this claim. Rather, Ellington asserts the excessive micromanagement and disparate treatment can be established through Green-Ellis frequently being present in his classroom and often observing the classroom from the hallway, however BCPS maintains this is regular behavior from Green-Ellis in accordance with his job responsibilities.

In sum, Ellington has failed to provide sufficient factual support to support his claim that the September 4 protected concerted activity was causally related to the November 26, 2024, Formal Observation Score, the January 28, 2025, Academy Action Plan, or the alleged "excessive micromanagement" from Green-Ellis. Under these circumstances, we find that Ellington has failed to establish he was discriminated against, or that BCPS otherwise committed an unfair labor practice pursuant to Md. Code, State Gov't § 22-206. Accordingly, Ellington's Charge is dismissed.

Order

IT IS HEREBY ORDERED THAT THE CHARGE IN PERB ULP 2025-38 IS DISMISSED.

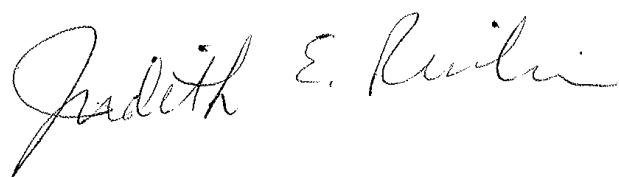
BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD:

A handwritten signature in blue ink that reads "Lafe E. Solomon". The signature is fluid and cursive, with "Lafe" on the first line and "E. Solomon" on the second line.

Lafe E. Solomon, Acting Chair



Harriet E. Cooperman, Member



Judith E. Rivlin, Member



Jennifer Epps, Member

Annapolis, MD

Issue Date: August 8, 2025

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 Rules, 7-201 et. seq.