Maryland Public Employee Relations Board

45 Calvert Street, Room 102
Annapolis, MD 21401
(410) 260-7291

In the Matter of:	)	
	)	
AFSCME Maryland Council 3, Local 1899,	)	
	)	
Petitioner,	)	
	)	
v.	)	**PERB ULP 2025-39**
	)	
Howard County Public Schools,	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

I. Procedural Background

The Unfair Labor Practice ("ULP") charge in this matter is dated May 23, 2025. The Public Employee Relations Board ("PERB" or "Board") received the charge on May 27, 2025. In the charge, AFSCME Maryland Council 3, Local 1899 ("AFSCME" or "Union") alleges that Howard County Public Schools ("HCPS" or "Employer") unilaterally changed working conditions without providing notice or an opportunity to bargain prior to implementation.

On May 8, 2025, prior to filing the ULP charge, the Union demanded that HCPS cease and desist from implementing the alleged change and bargain over the matter. HCPS did not comply. On May 9, 2025, the Union filed a grievance alleging violations of Articles 1.1, 1.2.8, 1.3, 11.6, and 24.1 of the collective bargaining agreement ("CBA"). HCPS denied the grievance at the first step on May 12, 2025.

PERB requested a response from HCPS by June 12, 2025, advising that failure to respond could be deemed an admission of material facts. HCPS submitted an initial response on June 13, 2025, one day after the deadline, requesting additional time to file its complete response and enclosing the grievance materials. PERB granted an extension to June 20, 2025; however, HCPS submitted its full response on June 21, 2025.

On June 26, 2025, AFSCME filed a motion to strike HCPS's full response as untimely. On June 27, 2025, HCPS filed its opposition to the motion to strike.

II. Factual Background

AFSCME is the exclusive bargaining representative for certain HCPS employees, including custodians. The parties are bound by a CBA effective July 1, 2024, through June 30, 2026. The parties are currently engaged in reopener bargaining, and neither party reopened issues related to overtime or work location assignments.

On April 23, 2025, HCPS issued an email to custodial staff announcing that, effective April 28, 2025, custodial assignments would change from specific school assignments to "regional groupings" of schools. Under this system, custodians could be reassigned within their region to cover staffing shortages at other schools rather than remaining at their regular work location.

The email stated that the policy was intended to reduce opportunities for overtime. Under the prior practice, when a school was short-staffed, HCPS would call in a custodian regularly assigned to that school, often resulting in overtime pay. The Union asserts that this change alters established practices concerning assignments and overtime opportunities.

On May 8, 2025, the Union demanded bargaining over the change and requested that HCPS cease and desist from implementing it. HCPS did not comply. On May 9, 2025, the Union filed a grievance seeking rescission of the policy. HCPS denied the grievance on May 12, 2025, stating it had not altered the existing weekend coverage plan in a way that would deny overtime opportunities.

III. Positions of the Parties

A. Charging Party's Position

The Union alleges that HCPS violated its duty to bargain in good faith by unilaterally changing custodian work assignments from specific schools to regional groupings without providing notice or an opportunity to bargain. The Union contends that this change is a

mandatory subject of bargaining under § 22-206(a)(1) and (a)(8) of the Public Employee Relations Act ("PERA" or the "Act"). The Union further argues that the change violates Article 11.6 of the CBA because it was expressly intended to reduce overtime opportunities. Finally, the Union asserts that HCPS's failure to meet PERB's response deadlines warrants striking the response and precluding HCPS from contesting the allegations or raising affirmative defenses.

B. Respondent's Position

HCPS acknowledges filing its initial response one day late and its full response after the extended deadline. In its initial response, HCPS noted that the Union had filed a grievance "on the exact issue" and provided the grievance and its answer. In its full response, HCPS argues that the charge should be dismissed for lack of jurisdiction because the Union failed to exhaust the CBA's grievance-arbitration procedure, which it contends is the exclusive remedy for contract violations. HCPS does not deny the factual allegations but maintains that the matter should be resolved through arbitration, not PERB adjudication.

IV. Analysis

A. Deferral Authority and Standards

The threshold question before the Board is whether it has the authority to defer resolution of this unfair labor practice charge to the grievance-arbitration procedure set forth in the parties' collective bargaining agreement. The Board concludes that it does.

PERA grants the Board broad authority to "establish the procedures to provide for the protection of the rights of public employees, the public employers, and the public at large." State Gov't Art. § 22-102(b)(3). COMAR § 14.30.09.02E further empowers the Board to adopt procedural mechanisms that promote the peaceful and efficient resolution of labor disputes. Read together with State Gov't Art. §§ 22-102(c) and 22-103, these provisions authorize the Board to look to federal labor law precedent, i.e., decisions of the National Labor Relations Board ("NLRB"), as persuasive authority in developing and applying procedures for resolving disputes under the Act.

The NLRB's deferral doctrine emerged gradually through a series of decisions recognizing that, in appropriate circumstances, certain unfair labor practice charges should be resolved through the grievance-arbitration procedure negotiated by the parties themselves. Three landmark cases form the foundation of this doctrine: *Collyer Insulated Wire Co.*, 192 NLRB 837 (1971); *Dubo Manufacturing Corp.*, 142 NLRB 431 (1963); and *Spielberg Manufacturing Co.*, 112 NLRB 1080 (1955). Each of these decisions acknowledged the effectiveness of collectively bargained grievance-arbitration procedures and established standards for determining when deferral is appropriate.

The policy of pre-arbitral deferral, first articulated in *Collyer*, is rooted in the twin goals of promoting collective bargaining and encouraging private dispute resolution. In *Collyer*, the NLRB announced it would withhold a determination on certain charges when the parties, particularly the employer, agreed to process a grievance involving the same issue under the contract's grievance-arbitration provisions. Deferral was found appropriate where the dispute arose out of a long and productive bargaining relationship, there was no claim of employer hostility toward employees' exercise of protected rights, the arbitration clause covered the dispute, the employer demonstrated a willingness to arbitrate, and the alleged unfair labor practice lay at the center of the dispute. 192 NLRB 837; see also *United Technologies Corp.*, 268 NLRB 557, 558–59 (1984) ("dispute resolution under the grievance-arbitration process is as much a part of collective bargaining as the act of negotiating the contract"). The rationale was straightforward: disputes turning on contract interpretation "can better be resolved by arbitrators with special skill and experience in deciding matters arising under established bargaining relationships" than by an administrative agency applying statutory provisions in isolation. *Collyer*, 192 NLRB at 839-40.

The *Dubo* standard, which predates *Collyer*, applies where a grievance has already been filed over the same conduct alleged in the unfair labor practice charge. In *Dubo*, the NLRB determined that deferral is appropriate when the parties have voluntarily submitted their dispute to the contractual grievance-arbitration procedure, that procedure culminates in final and binding arbitration, and there is a reasonable chance the arbitration will resolve the dispute. 142 NLRB at 431; see also General Counsel Memorandum 79-36 (May 14, 1979). Unlike *Collyer*, which contemplates deferral before the grievance process has been invoked, *Dubo* applies to ongoing grievance-arbitration proceedings and reflects the policy judgment that, once the parties have invoked their agreed-upon process, it should proceed to conclusion before the NLRB exercises jurisdiction.

Whether under *Collyer* or *Dubo*, the central inquiry remains the same: is the contractual grievance-arbitration mechanism accessible, functioning, and capable of producing a resolution consistent with statutory rights? If so, deferral honors the parties' agreement, reinforces the collective bargaining relationship, and advances the policies underlying both federal labor law and the Act.

The NLRB refined its pre-arbitral deferral analysis in *San Juan Bautista Medical Center*, 356 NLRB 736 (2011), by articulating a set of practical considerations to guide the exercise of discretion under both *Collyer* and *Dubo*. The NLRB explained that the decision whether to defer depends not only on the formal availability of the grievance-arbitration process, but also on whether the process is suited to resolve the dispute in a manner consistent with statutory protections. In *San Juan Bautista*, the NLRB stated that it would consider "(1) whether the dispute arose within the confines of a long and productive collective-bargaining relationship; (2) whether there is a claim of employer animosity to the employees' exercise of protected rights;

(3) whether the agreement provides for arbitration in a very broad range of disputes; (4) whether the arbitration clause clearly encompasses the dispute at issue; (5) whether the employer asserts its willingness to resort to arbitration for the dispute; and (6) whether the dispute is eminently well suited to resolution by arbitration." 356 NLRB at 737.

These factors build upon the principles first established in *Collyer* and *Dubo*. The first looks to the maturity and stability of the parties' bargaining relationship, recognizing that parties with a demonstrated history of resolving disputes through collective bargaining are more likely to make effective use of the grievance-arbitration process. The second guards against deferral where there is evidence that the employer acted out of hostility toward protected activity, which could undermine the fairness or integrity of arbitration. The third and fourth focus on the breadth of the arbitration provision and its applicability to the dispute at hand, ensuring the arbitrator has authority to decide the matter. The fifth looks for an affirmative willingness by the employer to proceed through arbitration, indicating the process remains viable. The sixth recognizes that disputes involving contract interpretation and application are often particularly well suited to arbitration, while others may present statutory issues that require NLRB resolution.

By articulating these considerations, *San Juan Bautista* clarified that deferral is not automatic even where a grievance-arbitration procedure exists; it is a matter of discretion informed by whether that process is likely to produce a fair and final resolution that addresses the dispute and protects statutory rights.

B. Application to the Present Case

The Board finds that the *Dubo* standard applies because the Union has already filed a grievance under the parties' collective bargaining agreement alleging the same conduct set forth in the unfair labor practice charge. That grievance alleges violations of multiple provisions of the CBA, including Article 11.6, which prohibits altering work schedules to avoid the payment of overtime. The grievance directly challenges the Employer's decision to reassign custodians to "regional groupings" of schools, which the Union asserts reduces overtime opportunities. These allegations fall squarely within the scope of the CBA's grievance and arbitration provisions.

Considering the *San Juan Bautista* factors in light of the record, the Board concludes that each supports deferral. While the current CBA has been in place for less than two years, it represents a negotiated and functioning agreement between the parties, and the dispute has arisen in the midst of ongoing reopener negotiations. The relationship is sufficient to provide a framework within which the contractual process can operate effectively.

There is no allegation or evidence that the Employer's actions were motivated by hostility toward protected activity. The absence of animus supports confidence that the

grievance-arbitration process can proceed without being undermined by retaliatory or bad-faith conduct.

The CBA contains a broad grievance-arbitration mechanism, extending to "a violation or misapplication" of the agreement relating to "wages, salaries, hours, and other working conditions." That language plainly encompasses disputes over assignments and overtime opportunities – the issues presented here. The Union's grievance expressly invokes those contractual protections, including Article 11.6.

The Employer has indicated its willingness to resolve the matter through the contractual process, and the grievance is being processed under the CBA's procedure, which culminates in final and binding arbitration. The availability and active use of this mechanism further supports deferral.

Finally, the dispute is eminently well suited for resolution through arbitration. The core question is whether the Employer's policy change violates the CBA. That inquiry centers on contract interpretation and application, a domain in which labor arbitrators possess particular expertise. Allowing the arbitrator to address these issues in the first instance is consistent with the policy objectives underlying *Collyer* and *Dubo*, while the Board's retention of jurisdiction ensures protection of statutory rights should the contractual process prove inadequate.

In light of the foregoing, the Board determines that deferral to the parties' grievance-arbitration procedure is warranted.

C. Motion to Strike

The Union's motion to strike the Employer's full response as untimely is denied. While the Employer's submissions were late, PERB's standard processing letter makes clear that the decision to treat untimely responses as admissions is discretionary. COMAR § 14.30.09.02D authorizes the Executive Director to extend deadlines for good cause, and the Board retains discretion to consider late filings where doing so advances the purposes of the Act. Given that the matter will proceed through the grievance-arbitration process and the Board retains jurisdiction thereafter, striking the response would serve no useful purpose.

V. Conclusions of Law

For the reasons set forth above, the Board finds that this matter is appropriately deferred to the parties' grievance-arbitration procedure pursuant to the principles articulated in *Dubo Manufacturing Corp.*, 142 NLRB 431 (1963), and *Collyer Insulated Wire Co.*, 192 NLRB 837 (1971), as informed by the factors identified in *San Juan Bautista Medical Center*, 356 NLRB

736 (2011). The Board further concludes that the grievance-arbitration procedure established by the parties' collective bargaining agreement is available, functioning, and capable of resolving the contractual dispute underlying the unfair labor practice allegations in a manner consistent with the purposes of PERA.

The Board will therefore defer consideration of the merits of the unfair labor practice charge pending the outcome of the contractual process. The Board will retain jurisdiction to consider the matter following the conclusion of arbitration if the arbitral process fails to resolve the dispute or otherwise does not adequately protect statutory rights.

The Board also denies the Charging Party's Motion to Strike the Respondent's full response. Although the response was untimely, the Board exercises its discretion to consider the filing, finding that doing so will not prejudice the parties and is consistent with the purposes of the Act.

VI. ORDER

Accordingly, it is hereby ORDERED that:

1. Further proceedings in Case No. PERB ULP 2025-39 are deferred to the grievance-arbitration procedure set forth in the parties' collective bargaining agreement.

2. The Board retains jurisdiction to consider the unfair labor practice allegations after the conclusion of arbitration upon the request of either party, or on the Board's own motion, if necessary to ensure that statutory rights are protected.

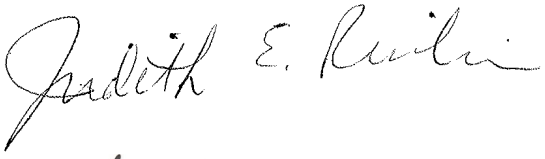
3. The Charging Party's Motion to Strike the Respondent's full response is DENIED.

4. Within fourteen (14) days of the issuance of an arbitration award resolving the grievance, or of any other final disposition of the grievance-arbitration process, the parties shall jointly notify the Board in writing of the outcome and provide a copy of any written decision. If either party believes that the award or disposition does not resolve the statutory issues or otherwise fails to protect rights under the Act, that party may request that the Board resume consideration of the unfair labor practice charge.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD,

Lafe E. Solomon, Chair

Harriet E. Cooperman, Member



Judith E. Rivlin, Member

Jennifer Epps, Member

Annapolis, MD

Issue Date: August 19, 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).