



## b. FACTUAL BACKGROUND

Mr. Phelps is employed as a custodian by the Board of Education of Anne Arundel County (“Board of Education”), and is a member of the bargaining unit represented by AFSCME, Local 1693. Local 1693 is affiliated with AFSCME, Council 67. Roland Johnson is the President of AFSCME, Local 1693. Kory Blake is an employee of AFSCME, Council 67.

In 2019, Mr. Phelps was transferred several times – on February 20, 2019, May 8, 2019, and May 15, 2019. Sometime in February 2019, Mr. Phelps was called in to attend a pre-disciplinary meeting at Crofton Elementary School. Mr. Johnson represented Mr. Phelps at that meeting.

On April 24, 2019, Mr. Phelps visited the offices of Council 67, and requested a “new representative.” It is disputed whether Mr. Phelps was provided with the contact information for an alternative representative.

## c. POSITIONS OF THE PARTIES

Mr. Phelps alleges that, following his transfer on February 20, 2019, Mr. Johnson failed “to make a proper inquiry into the reason” why he was transferred, and that “the failure to do so constitute [sic] negligence and incompetence.” Mr. Phelps claims that “[d]uring this entire ordeal... [Mr.] Johnson... was missing in action and made no attempts to challenge the unwarranted transfer... [on his] behalf.” In addition, Mr. Phelps asserts that Mr. Johnson did not “come to... [his] aid” to challenge allegations of unfair work distribution, and “conspired with” the Board of Education against him.

Mr. Phelps also alleges that, following his second transfer on May 8, 2019, Mr. Johnson “again neglected his duties and fail [sic] to require the school board to comply with the union contract” because he did not “make any objections to the unwanted transfer,” and failed “to obtain adequate information from the school board to appraise [sic]... [him] of the nature of the move and possible defenses... clearly show[ing] his lack of due diligence.”

Finally, Mr. Phelps asserts that “[t]o further compound the issue of willful misrepresentation[,] the union... also, denied... [his] request for a new representative.”

In their Response, the Charged Parties assert the following defenses: (1) the “[r]elevant allegations made by Mr. Phelps are barred by limitations and must be dismissed” because “Mr. Phelps filed his Charge on August 30, 2019, 97 days after his last transfer, and 118 days after his request to be provided with alternative representation,” (2) the PSLRB “lacks jurisdiction over two of the Charged Parties” – Mr. Johnson and Mr. Blake, and (3) “... there are no alleged facts that support a conclusion that AFSCME[,] Local 1693 failed to represent Mr. Phelps fairly and without discrimination.”

## d. ANALYSIS

Because Mr. Phelps is a non-certificated employee, his Charge must be analyzed under Subtitle 5 of the Education Article.

i. Jurisdiction

The PSLRB has jurisdiction over “employee organizations,” “public school employees,” and “public school employers.” Md. Code Ann., Educ. Article, Sections 6-501(d), (g), and (h). It does not have jurisdiction to decide any controversy or dispute involving individuals acting in their capacity as representatives of an employee organization. Walker v. Baltimore Teachers Union, et al., PSLRB Case No. SV 2012-10. For these reasons, the Charge as it pertains to Mr. Johnson and Mr. Blake is dismissed.

We proceed with the Charge against AFSCME, Local 1693.

ii. Timeliness

As indicated above, AFSCME, Local 1693 asserts that Mr. Phelps Charge is untimely because Mr. Phelps filed his Charge 97 days after his final transfer, and 118 days after his request to be provided with alternative representation.

COMAR 14.34.04.03(A)(2) states, “In order to be timely, Form PSLRB-05 must be filed with the Executive Director of the Board within 60 days after the charging party knew, or reasonably should have known, of the statutory violation alleged.” Therefore, in order to be timely, the alleged incidents of statutory violation must have occurred in the 60 day period leading up to the Charge, i.e., between June 30, 2019 and August 30, 2019. Looking to his Charge, Mr. Phelps has failed to establish that the alleged statutory violations took place between June 30, 2019, and August 30, 2019. Therefore, Mr. Phelps’ Charge is dismissed as untimely.

e. CONCLUSION

For the foregoing reasons, Mr. Phelps’ Charge is hereby dismissed.

II. ORDER

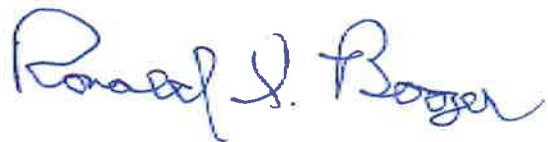
IT IS HEREBY ORDERED THAT THE CHARGE IN PSLRB Case No. SV 2020-01 IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



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Elizabeth Morgan, Chair



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Ronald S. Boozer, Member



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Robert H. Chanin, Member



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R. Allan Gorsuch, Member



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Philip S. Kauffman, Member

Annapolis, MD

November 12, 2019

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).