

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *

ANNA TICHNELL, *

Charging Party, *

v. * PSLRB Case SV 2019-07

BOARD OF EDUCATION OF *

CECIL COUNTY, *

Charged Party. *

* * * * *

**DECISION AND ORDER DENYING REQUEST FOR RELIEF
AND DISMISSING CHARGE**

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On May 7, 2019, Anna Tichnell filed a CHARGE OF VIOLATION OF TITLE 6, SUBTITLE 4 OR SUBTITLE 5, OF EDUCATION ARTICLE (Form PSLRB-05) with the Public School Labor Relations Board (“PSLRB”). Form PSLRB-05 reflects the authority granted to the PSLRB by the Education Article of the Annotated Code of Maryland to “decide any controversy or dispute arising under Title 6, Subtitle 4 or 5 of this Article.” Md. Code Ann., Educ. § 2-205(e)(4)(i). In her Charge, Ms. Tichnell asserts that the Board of Education of Cecil County (“Board of Education”) violated Sections 6-503(a) and 6-512 of the Education Article.

On May 23, 2019, the Board of Education filed a Motion to Dismiss along with a Request for Hearing on its Motion to Dismiss (“Response”).

On June 3, 2019, Ms. Tichnell filed her Reply to the Board of Education’s Response (“Reply”).¹

On June 6, 2019, the Board of Education filed a Memorandum in Reply to Ms. Tichnell’s Reply.

¹ COMAR 14.34.04.04A(3) states, “A response to a motion to dismiss shall be filed within 10 days of service of a motion to dismiss.” COMAR 14.34.04.06E(1) states, “Time periods in this regulation refer to calendar days unless otherwise indicated.” COMAR 14.34.04.06E(2) states in relevant part, “A time period which would otherwise end on a weekend or State holiday instead ends on the following business day.” As indicated above, the Board of Education filed its Motion to Dismiss on May 23, 2019. Therefore, under COMAR 14.34.04.04A(3), Ms. Tichnell’s Reply would have been due on June 2, 2019; however, because June 2, 2019, fell on a Sunday, her Reply was timely under COMAR 14.34.04.06E(2).

II. FACTUAL BACKGROUND

Ms. Tichnell was hired in 2014 by the Board of Education as a Level V Administrative Secretary in the Transportation Department, a non-certificated position included in the bargaining unit represented by the Cecil Education Support Personnel Association (“CESPA”).

Throughout September 2018, Ms. Tichnell “encouraged and pushed” CESPA to address certain working conditions in the Transportation Department relating to non-competitive pay for Driving Instructors, use of the time clock, and implementation of the bereavement leave policy.

On September 24, 2018, the Superintendent of Cecil County Public Schools reassigned Ms. Tichnell to a newly created Level V Administrative Secretary position in the Division of Education Services.

Ms. Tichnell challenged her reassignment through the grievance process established in the collective bargaining agreement between the Board of Education and CESPA, as well as through the appeal process established under Md. Code Ann., Educ. § 4-205(c). Both the grievance and appeal were initially heard and denied by the Superintendent, and appealed to the Board of Education, which issued an Order, dated March 15, 2019, affirming the Superintendent’s decision to reassign her. The Order was followed by a written Opinion from the Board of Education, dated April 9, 2019.

III. POSITIONS OF THE PARTIES

In her Charge, Ms. Tichnell asserts that her “reassignment was retaliatory and in violation of the statutory provisions contained in Title 6, Subtitle 5 of the Education Article. In other words... [she] was punished for her participation in union activities.”

In its Response, the Board of Education asserts that Ms. Tichnell’s “Charge was not timely filed in accordance with the provisions of COMAR 14.34.04.03A(2) because it was not filed within 60 days of the date that... [she] knew, or reasonably should have known of the alleged statutory violation.”

The Board of Education also asserts that the PSLRB lacks jurisdiction: (1) “over a Superintendent’s exercise of statutory authority under Md. Code Ann., Educ. § 6-201(b) and (c) to assign and transfer employees to their positions within the schools as the Superintendent deems that the needs of the schools require,” and (2) “to consider appeals from decisions of the county board of education.”

In her Reply, Ms. Tichnell contends that the Charge was timely as it was filed within 60 days of the Board of Education’s April 9, 2019, Opinion.

IV. ANALYSIS

a. Jurisdiction

As indicated above, Section 2-205(e)(4)(i) of the Education Article grants the PSLRB the authority to “decide any controversy or dispute arising under Title 6, Subtitle 4 or 5 of this Article.” Because this matter involves allegations that the Board of Education unlawfully

retaliated against Ms. Tichnell based on her participation in the activities of CESPAs in violation of Sections 6-503(a) and 6-512, it clearly falls within the jurisdiction of the PSLRB. The PSLRB is not deprived of its jurisdiction over a dispute involving an alleged violation arising under Title 6, Subtitle 4 or 5 of the Education Article because, as in this case, a public school employer attempts to claim that its use (or misuse) of a power is granted to the public school employer by another statute. Therefore, the Board of Education's arguments with regard to jurisdiction are hereby dismissed.

b. Timeliness

COMAR 14.34.04.03A(2) states, "In order to be timely, Form PSLRB must be filed with the Executive Director within 60 days after the Charging Party knew, or reasonably should have known, of the statutory violation alleged."

On several occasions, the PSLRB has dismissed charges on the basis of timeliness. *See, e.g., Bingham v. Prince George's County Board of Education*, PSLRB SV 2013-14 (dismissing charge as untimely due to the fact that claims against the Board of Education arose out of conduct that allegedly occurred outside of the 60-day limitations period); *Townsend v. Baltimore County Public Schools*, PSLRB SV 2013-03 (dismissing charge as untimely because the alleged incidents of statutory violation occurred outside of the 60-day limitations period). Most notably, in *Hill-Gilchrist v. Baltimore City Board of School Commissioners and Public School Administrators and Supervisors Association*, PSLRB Case No. SV 2014-01, the Charging Party filed a Charge on July 9, 2013, challenging the Baltimore City Board of School Commissioners' decision to reassign her, which the PSLRB concluded the Charging Party, "knew, or reasonably should have known of... as early as September 2011," when she was reassigned. The PSLRB explained that:

On these facts, and in the absence of any claim by the Charging Party that either of the Charged Parties committed a statutory violation within the 60-day limitations period, we find that Charging Party 'knew, or reasonably should have known, of the statutory violation alleged' well before July 9, 2013, the date on which she filed her Charge. Because the Charging Party did not file her Charge until after the 60-day limitations period had expired, it is time-barred and dismissed on this basis.²

In her Charge to the PSLRB, Ms. Tichnell argues that her charge is timely because it was filed within 60 days from the date the Board of Education issued its final decision with regard to her challenge to the alleged unlawful action previously taken by the Superintendent. Because this argument reflects some confusion as to what triggers the 60-day filing period, it is appropriate for future reference to clarify the difference, in this regard, between the commission of the alleged statutory violation and the exhaustion of internal administrative remedies. The day for calculating timeliness starts on the date of the action giving rise to the charge – in this case,

² The PSLRB also explained in a footnote that, "[t]hrough not necessary to the outcome in this case, we note that the Circuit Court for Baltimore City likewise concluded that the 'time period for... [the Charging Party] to request relief from the PSLRB had lapsed.'"

the date that the Superintendent took the alleged unlawful act of reassigning Ms. Tichnell – not the date on which the Board of Education issued its final decision sustaining that act.

We further note that, where a charging party is attempting to exhaust such internal administrative remedies, upon receipt of a timely charge, it is up to the PSLRB to decide whether or not to process the charge (or hold the charge in abeyance) pending exhaustion of those remedies, not the charging party.

For these reasons, the PSLRB dismisses Ms. Tichnell's Charge.³

V. CONCLUSIONS OF LAW

Because the PSLRB finds that the Charge in this case is untimely, it must be dismissed.

VI. ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2019-07, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



Elizabeth Morgan, Chair



Ronald S. Boozer, Member



Robert H. Chanin, Member

³ Because Ms. Tichnell's Charge is untimely, the PSLRB need not reach the merits of her case.

R Allan Gorsuch

R. Allan Gorsuch, Member

Philip S Kauffman

Philip S. Kauffman, Member

Annapolis, MD

September 13, 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).