

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: \*  
LUKE DILLON, \*  
Charging Party, \*  
v. \* PSLRB Case SV 2019-01  
BALTIMORE CITY PUBLIC SCHOOL \*  
SYSTEM, \*  
Charged Party. \*

\* \* \* \* \*

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

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

On August 13, 2018, Luke Dillon 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.”<sup>1</sup> Md. Code Ann., Educ. § 2-205(e)(4)(i). In his Charge, Mr. Dillon asserts that the Baltimore City Public School System (“BCPSS”) violated Sections 6-402 and 6-409 of the Education Article.

On September 24, 2018, the BCPSS filed a Motion to Dismiss.<sup>2</sup>

On October 4, 2018, Mr. Dillon filed his Opposition to the BCPSS’s Motion to Dismiss.

**II. FACTUAL BACKGROUND**

On June 30, 2017, Mr. Dillon was notified by e-mail that his employment status within the BCPSS would be impacted by a reduction in force (“RIF”) as a result of budgetary and financial constraints. At the time that Mr. Dillon received notice of the RIF, he was employed in a Unit II position represented by the Baltimore City Public School Administrators and Supervisors

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<sup>1</sup> Because Mr. Dillon was a certificated employee, Subtitle 4 of the Education Article applies to this Charge.

<sup>2</sup> COMAR 14.34.04.03(B)(1) states, “Within 20 days of service of a charge, respondent shall file with the Executive Director a written answer to the charge....” COMAR 14.34.04.06(E)(4) states, “The Board may extend any time period set forth in this chapter for good cause shown.” The BCPSS requested from the PSLRB an extension to file its written answer to Mr. Dillon’s Charge. The PSLRB granted the BCPSS’s request, thereby making the BCPSS’s Motion to Dismiss timely.

Association (“PSASA”). Mr. Dillon’s position was not the only Unit II position impacted by the RIF.

Article 11 D of the Memorandum of Understanding (“MOU”) between the PSASA and the BCPSS states:

Employees who are affected [by a RIF] and who are qualified shall be reassigned, where possible, to an existing vacant position at the same pay grade. The Employer shall make every effort, where possible, to place such employees in positions which carry salaries commensurate with the salaries said employees were receiving at the time of redeployment.

Following the RIF, the PSASA alleged that the BCPSS began hiring new staff into Unit II positions prior to placing those Unit II employees impacted by the RIF into available vacant positions. As a result, on July 27, 2017, the PSASA filed a class action grievance on behalf of Mr. Dillon and other Unit II employees impacted by the RIF. On or about August 2, 2017, Mr. Dillon also filed an individual grievance challenging the BCPSS’s alleged violation of the MOU.

Subsequent to the filing of these grievances, Mr. Dillon was notified by the BCPSS that he was being reassigned to the position of Educational Specialist II in the Office of Suspension Services in the Whole Child Services Department, a Unit II position, effective January 19, 2018. Other Unit II employees covered by the class action grievance likewise received notice of reassignment. Following receipt of the aforesaid notices of reassignment, both the PSASA and Mr. Dillon withdrew their grievances.

On June 25, 2018, Mr. Dillon received a letter from the BCPSS offering him a Staff Associate Position because the Educational Specialist II position into which he was placed effective January 19, 2018, was being eliminated due to financial constraints.<sup>3</sup> The Staff Associate position offered to Mr. Dillon was not a Unit II position.

Mr. Dillon resigned from the BCPSS effective August 13, 2018, the same day he filed the instant Charge.

### **III. POSITIONS OF THE PARTIES**

As noted above, in his Charge, Mr. Dillon asserts that the BCPSS violated Sections 6-402 and 6-409 of the Education Article. More specifically, Mr. Dillon argues that “[i]t is evident... that [the] BCPSS’s actions to resolve the grievance related to the 2017 RIF were not in good-faith and [that the BCPSS] is now retaliating against him” based on his filing of this grievance. Mr. Dillon further contends that “[b]y eliminating his position less than five months after he was placed in it and by failing to hire him into one of several other Unit II positions for which he is well qualified, the BCPSS is discriminating against... [him] for exercising... [his] rights” under Sections 6-402 and 6-409.

In its Motion to Dismiss, the BCPSS provides two defenses. First, the BCPSS asserts that Mr. Dillon’s Charge should be dismissed because the “reduction in force was in no way related

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<sup>3</sup> Again, this position was not the only Unit II position impacted by the RIF.

to [Mr.] Dillon’s membership or participation in union activities,” and that Mr. Dillon “fails to state a claim for which relief can be granted.” Instead, the BCPSS claims “that district wide financial considerations were the only motivating factor...,” and that “there is no dispute that [Mr.] Dillon’s position was among other positions identified for elimination through a district wide reduction in force because City Schools could not afford to fund positions for the following fiscal year.” Second, the BCPSS argues that Mr. Dillon’s Charge “has now been rendered moot by his resignation.”

#### IV. ANALYSIS

Section 6-402 of the Education Article establishes the right of public school employees “to form, join, and participate in the activities of employee organizations of their own choice for the purpose of being represented on all matters that relate to salaries, wages, hours, and other working conditions.” Section 6-409 makes it unlawful for “[a] public school employer... [t]o interfere with, intimidate, restrain, coerce, or discriminate against any public school employee because of the exercise of his rights under §§ 6-402 and 6-403...”<sup>4</sup> Read together, these Sections provide that a public school employee may file a charge against a public school employer only if the public school employer interferes with, intimidates, restrains, coerces, or discriminates against the public school employee because he exercised his right to form, join, or participate in the activities of an employee organization of his own choosing. Blake v. Baltimore County Public School System, PSLRB Case No. SV 2018-04.

As indicated above, on June 30, 2017, due to financial and budgetary constraints for the 2018-2019 School Year resulting in a RIF, the BCPSS notified Mr. Dillon that his position as a Unit II employee was being eliminated. Mr. Dillon’s position was not the only position eliminated as a result of the RIF. Following the BCPSS’s June 30, 2017, notification to Mr. Dillon, the BCPSS assigned Mr. Dillon to the Whole Child Services Department as an Educational Specialist II, a Unit II position for which Mr. Dillon was compensated at his previous rate of pay. On June 25, 2018, the BCPSS sent Mr. Dillon a letter indicating that the Educational Specialist II position into which he was assigned was being eliminated, again due to budgetary and financial constraints resulting in a RIF. As with the prior RIF, this position was not the only one eliminated. Although the BCPSS worked with Mr. Dillon to identify positions for which he was qualified, and ultimately offered Mr. Dillon a Staff Associate position, Mr. Dillon declined the offer and resigned from the BCPSS.

The sole basis for Mr. Dillon’s Charge is his assertion that the BCPSS’s elimination of the Unit II position that he held until June 25, 2018, and its failure to offer him another Unit II position, were based upon the fact that he filed a grievance challenging the June 30, 2017, RIF. Mr. Dillon cites nothing to support this assertion, or to in any way discredit the alternative financial and budgetary justification offered by the BCPSS for its June 25, 2018, action. Indeed, the assertion that this was retaliation is belied by the fact that Mr. Dillon was not the only Unit II employee impacted by the June 25, 2018, RIF, nor was Mr. Dillon the only RIFed Unit II

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<sup>4</sup> Because there is no challenge under Section 6-403, which establishes the right of public school employees “to refuse to join or participate in the activities of employee organizations,” the PSLRB need not address this Section.

employee who was not offered another Unit II position. Based upon the record as a whole, the PSLRB finds that Mr. Dillon's bare assertion lacks credibility, and concludes that the BCPSS did not interfere with, intimidate, restrain, coerce, or discriminate against him because of the exercise of his rights under § 6-402 of the Education Article.<sup>5</sup>

**V. CONCLUSIONS OF LAW**

For the reasons stated herein, we conclude that the BCPSS did not violate Sections 6-402 or 6-409 of the Education Article.

**VI. ORDER**

IT IS HEREBY ORDERED THAT THE CHARGE IN PSLRB Case No. SV 2019-01 IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



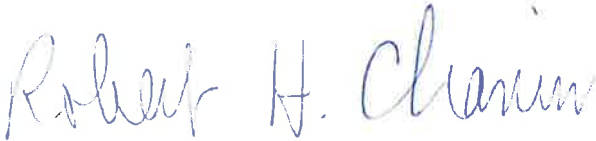
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Elizabeth Morgan, Chair



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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

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<sup>5</sup> Because we dismiss Mr. Dillon's Charge on the basis that he has failed to provide sufficient evidence to support his allegations, we need not address the BCPSS's defense of mootness.

Annapolis, MD

March 14, 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).