

**State of Maryland**  
*State Higher Education Labor Relations Board*

In the matter of:	)	
	)	
<i>Steven L. Jones,</i>	)	
	)	
	)	SHELRB ULP
	)	Case No. ULP 2014-05
Petitioner	)	
	)	
v.	)	
	)	
<i>Baltimore City Community</i>	)	
<i>College</i>	)	
	)	
Respondent	)	
	)	

DECISION AND ORDER

On March 5, 2014, Petitioner, Steven L. Jones filed an unfair labor practice (ULP) before the State Higher Education Labor Relations Board (SHELRB) against Baltimore City Community College (BCCC).

On March 28, 2014, BCCC filed a response to the ULP in which it moved for dismissal on three grounds: (1) Petitioner’s complaint is barred because it is not timely filed; (2) the SHELRB does not have jurisdiction over Petitioner’s claims; and (3) the SHELRB decided identical issues regarding the Petitioner in its February 22, 2011 decision and order dismissing his complaint.

Pursuant to State Personnel and Pensions Article, Annotated Code of Maryland (SPP), § 3-2A-07(a), the SHELRB, through its Executive Director, may investigate “a possible violation of this title, or any regulation adopted under it; and (2) any other relevant matter.” In accordance with § 3-2A-07(a), the Executive Director conducted an investigation and reviewed written documents presented by the parties in this case. On June 26, 2014, the Executive Director issued her investigation report and recommendation for consideration by the SHELRLB.

The SHELRB has considered the Executive Director’s report and recommendation and has decided to adopt her report and recommendation as modified and set forth below.

## **Executive Director's Investigation and Recommendation to the Board**

On March 5, 2014, the State Higher Education Labor Relations Board (SHELRB, Board) received notice of an unfair labor practice petition filed by Steven Jones against Baltimore City Community College (BCCC).

Pursuant to State Personnel & Pensions Article, Title 3 Collective Bargaining, §3-2A-07(a), the Board, through its Executive Director, may investigate "a possible violation of this title, or any regulation adopted under it; and (2) any other relevant matter."

### **Undisputed Facts**

Mr. Jones is employed at BCCC as a Police Officer Supervisor, holding the title of Lieutenant. He has held this position since July 2008. As an employee of BCCC, he was provided with an offer letter and job description. His job description included supervisory duties, as well as the fact that the College has exempted his position from the bargaining unit.

### **Disputed Items**

Mr. Jones disputes the classification that places him outside of the bargaining unit. He states that he is the only one of the employees in his job classification that is placed outside of the bargaining unit. He also disputes the shift work requirements, arguing that he should be paid overtime.

### **Petitioner's Position/Information**

In his filing, Mr. Jones states that an unfair labor practice has been committed against him by his employer, because he had been ordered to work an additional shift, and not been paid for it. This shift addition lasted for thirty months, beginning in 2010. Also, Mr. Jones states that he has been misclassified as a manager, when all of his documents with the office of budget and management indicate otherwise. He states that his employer has continuously refused to provide documentation supporting his classification as a manager. Mr. Jones states that he has filed grievances that are nearly four years old about this classification and shift differential issue, and that these grievances have been ignored.

Mr. Jones claims that he has been harassed, given disparate treatment, cursed out in public in front of a line of subordinate officers, not permitted to take light duty due to an on the job injury, and not allowed to continue his education. He states that he has informed his employer that they are in violation of various sections of COMAR, and Mr. Jones alleges that they are acting in violation of preceding SHELRB case law. Mr. Jones alleges that despite his protests and concerns, nothing has been done by BCCC to address the problems.

### **Respondent's Position/Information**

BCCC disputes Mr. Jones' claim, stating that it is untimely filed, that the Board does not have jurisdiction, and that the current issues are identical to those raised by Mr. Jones in an earlier case before the SHELRB, and decided by the Board on February 22, 2011. In its decision in February 2011, the Board dismissed Mr. Jones' claim, and BCCC argues that the same recommendation should be made here. BCCC states that nothing has changed in Mr. Jones' employment classification since his initial filing in September 2010, and that filing itself was found to be untimely. BCCC states that due to the challenge of classification and demand for overtime pay, this matter is not properly filed before the SHELRB, but rather it should be dealt with through the contractual grievance procedure. BCCC includes in its response

the SHELRB decision from February 2011 to support its position that this matter has already been considered and ruled upon.

### Analysis

It is clear from Mr. Jones' arguments that he was aware of a problem in terms of his work shift versus pay issues as early as 2010, possibly earlier. He raises the issue of classification; however, he has had notice of this classification since 2009, possibly 2008 in the offer letter he would have received upon being hired by BCCC. Indeed, he states that he has filed a number of grievances on the issue of being entitled to receive overtime since he is, he argues, a regular shift employee, and not a supervisor or manager. Mr. Jones notes that other employees have the same title as he does, but are included in the Nonexempt bargaining unit at BCCC; however, as even Mr. Jones has pointed out, mere job title will not indicate bargaining unit placement. BCCC has correctly looked to job duties apart from title, and made unit placement decisions accordingly.

Mr. Jones has indicated that he has overtime paid to him, which he argues alters his classification. However, the overtime payments made to him, occurred in 2012, and are too distant from this case filing date to be used in argument on behalf of Mr. Jones. BCCC indicates those payments were made in error, although agrees they did cause some confusion.

### Recommendation

#### **Recommended disposition: Dismissal**

Based on Maryland's Collective Bargaining Law and SHELRB Regulations, as well as the information presented by the parties, it is the recommendation of the Executive Director, upon reviewing the written documents presented by the parties, and conducting a case investigation, this case should be dismissed due to its untimely and improper filing by the petitioner, Steven Jones.

SHELRB regulations at COMAR 14.30.07.04(A) require that unfair labor practice petitions be filed with the Executive Director within ninety days of knowledge of the occurrence. Petitioner had knowledge of his alleged misclassification well outside the ninety-day filing period. For that reason, his ULP is untimely and should be dismissed.

Furthermore, although Petitioner labels his complaint as an "Unfair Labor Practice," I can find no evidence that an unfair labor practice within the meaning of SPP §§ 3-301 and 3-306 has occurred. Rather, Petitioner's complaint deals with the allegation that he has been misclassified and therefore is entitled to overtime pay. Such allegations are not within the jurisdiction of the SHELRB but should be pursued through the applicable State of Maryland grievance policy. According to both Petitioner and Respondent, there is already a grievance procedure (possibly more than one) pending that is currently on hold. Additionally, Petitioner's claims about harassment, disparate treatment, being cursed out in front of subordinate officers, being denied educational opportunity and light duty, per request, do not stand as unfair labor practices either, under the same statutory reference given above.

For the reasons stated here, I recommend that the Board dismiss this case.

Annapolis MD

October 29, 2014

A handwritten signature in blue ink that reads "Karl K. Pence". The signature is stylized with a large, looped initial "K" and a distinct "P" at the end.

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Karl K. Pence, Chair  
State Higher Education Labor Relations Board

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 Rule 7-201, *et seq.*, Maryland Rules of Practice of Procedure.