

State of Maryland
State Higher Education Labor Relations Board

In the matter of:)	
<i>Steven Jones,</i>)	
)	
)	SHELRB ULP
)	Case No. 11-02
Petitioner)	
)	
v.)	
)	
<i>Carolane Williams, President,</i>)	
<i>Baltimore City Community College,</i>)	
<i>Kim James</i>)	
<i>Tony Warner</i>)	
<i>Alvin Winkler</i>)	
<i>AFSCME,</i>)	
)	
Respondents)	
)	

Decision & Order

On October 19, 2010, the State Higher Education Labor Relations Board (Board) received notice of an unfair labor practice petition filed by Steven Jones against various representatives of Baltimore City Community College (BCCC) and the American Federation of State County & Municipal Employees (AFSCME). Mr. Jones sent a copy of his filing only to BCCC at the school's address, and did not appear to have sent a copy to AFSCME. BCCC's time stamp indicates that the charge was received on September 30, 2010, but notice of the case was not sent to the Board until October 19, 2010. The Executive Director communicated to the parties on October 21, 2010 by letter, indicating that the official filing date of the case would be October 19, 2010, the date the college gave notice of the filing.

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."

Therefore, the Executive Director conducted an investigation which included the interviewing of the Petitioner and the receipt and consideration of various documents and materials provided by the parties in support of their positions.

On February 2, 2011, the Executive Director issued her report for consideration by the members of the Board.

The Board has considered the Executive Director's report, and has decided to adopt her report and recommendations as modified herein, as set forth below.

Executive Director's Report and Recommendation to the Board

In his filing, Mr. Jones states that he has been employed by BCCC since July of 2008, and that during the first six months of his employment he had received overtime compensation for any additional time he worked, beyond his regular hours. Mr. Jones alleges that during late November and early December 2009, he and other staff met with Chief of Police Alvin Winkler and the Director of Human Resources (Tony Warner) regarding Jones' and the other employees' status as essential employees. Jones alleges that at the meeting, it was discussed that anyone working overtime would be compensated for it. Mr. Jones alleges further that he worked certain overtime hours during the large blizzards affecting the area in February 2010, but he has yet to be paid for those overtime hours.

Further, Mr. Jones alleges that he was notified in August of 2009, that he was going to be reclassified and supervise an additional shift of employees and would not be compensated for it. Jones notes that he continues to supervise the shift.

Mr. Jones alleges that this reclassification violates state labor laws, and states that he attempted to meet with Chief Winkler and Kim James (Vice President, Business-Finance), but that they were not inclined to answer his questions and Jones states in his claim that during this meeting, he felt threatened by Winkler and James, in that if he continued his complaints he would be disciplined or terminated.

Ultimately Mr. Jones filed a grievance about the reclassification, which has been through the Office of Administrative Hearings, and was accompanied by a notice to Maryland State Senator Nathaniel McFadden's office. Mr. Jones alleges that to date, BCCC has been unable to show documentation that he is a manager or at will employee and wouldn't be eligible to get certain benefits or overtime. The Administrative Law Judge from the Office of Administrative Hearings, according to Mr. Jones' allegations, wanted to mediate the issue, and a meeting was set up for late September 2010.

Finally, alleging that he was dissatisfied with the treatment and information he was getting from BCCC, Mr. Jones contacted an AFSCME representative for assistance, but was told that since he was a supervisor, the union could not help him.

Recommended disposition: Dismissal

Pursuant to statutory direction, and SHELRB Regulations, it is the recommendation of the Executive Director, upon reviewing the written documents included in this case, and doing a case investigation, that this case should be dismissed

due to its untimely and improper filing by the petitioner, Steven Jones.

Based on his information and allegations, Mr. Jones had notice of the failure to pay overtime by late February 2010. He had notice of the reclassification in August of 2009—despite the current continuation of the grievance process about this reclassification, Mr. Jones knew about the reclassification as of August 2009. SHELRB regulations at COMAR 14.30.07.04(A) require that unfair labor practice petitions be filed with the Executive Director of SHELRB within ninety days of knowledge of the occurrence. Mr. Jones did not file his ULP with the Executive Director, and based on the dates given in his petition, Mr. Jones had knowledge of the underlying issues longer than ninety days previous to his petition being given to BCCC, let alone when it was sent to the Executive Director by the college. Additionally, Mr. Jones appears to not have properly served the petition on AFSCME.

Finally, while Petitioner labels his complaint as an “Unfair Labor Practice” I can find no evidence that an unfair labor practice within the meaning of State Personnel & Pensions Article §§ 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 pending that is currently on hold, pending the SHELRB’s determination on the filing herein.

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

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As per the recommendation of the Executive Director in this report, this case is dismissed.

ANNAPOLIS, MARYLAND

February 22, 2011



Robert R. Neall, Chair,
MD 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 and Procedure.