

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:

HARFORD COUNTY EDUCATION
ASSOCIATION, INC.,

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PSLRB Case SV 2015-03

Employee Organization,
and

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BOARD OF EDUCATION OF
HARFORD COUNTY,

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Public School Employer.

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DECISION AND ORDER

I. INTRODUCTION

On or about October 13, 2014, the Harford County Education Association, Inc. (“HCEA”) filed a Charge of Violation of Title 6, Subtitle 5 of the 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 its Charge, HCEA asserted that the Board of Education of Harford County (“County Board”) violated Sections 6-402 (“Employees may join organization”), 6-407(b) (“Designated organization is negotiating agent”), and 6-409 (“Interference with employees prohibited”) of the Education Article by impermissibly banning Ryan Burbey, President of HCEA, from all Harford County Public School (“HCPS”) buildings from October 6, 2014 through June 30, 2015.

On or about March 11, 2015, via written agreement between the PSLRB and the Maryland Office of Administrative Hearings (“OAH”), the PSLRB delegated authority to the

OAH to conduct a hearing in the above stated matter and to issue proposed findings of fact.¹ On behalf of the OAH, Administrative Law Judge (“ALJ”) Jennifer M. Carter Jones conducted a hearing on June 29 and 30, July 1, and August 28, 2015. After the timely submission of post-hearing memoranda, the OAH record closed on September 18, 2015.

On November 17, 2015, the ALJ issued her Proposed Decision, including her proposed findings of fact.

On December 21, 2015, the County Board filed a Motion to Dismiss and Exceptions to the Proposed Decision of the Administrative Law Judge. On January 4, 2016, HCEA filed a Response to County Board’s Motion to Dismiss and Exceptions to the ALJ’s Findings of Fact.

II. FINDINGS OF FACT

The PSLRB has considered the Proposed Decision of the ALJ in light of the County Board’s Motion to Dismiss and Exceptions, as well as HCEA’s Response, and has accepted the proposed findings of fact of the ALJ in their entirety.² The facts set forth below are from the ALJ’s decision.

HCEA and the County Board have for many years engaged in collective bargaining over the terms and conditions of employment affecting teachers employed by HCPS. At all times relevant to this matter, Ryan Burbey was the President of HCEA.

As HCEA President, Mr. Burbey speaks on behalf of HCEA at County Council meetings, County budget meetings, County Board meetings, PTA meetings, and community meetings, and meets directly with the Superintendent of HCPS at least one time per month. Many of Mr. Burbey’s meetings occur in Harford County schools. During a typical school year, Mr. Burbey visits schools practically every school day. Mr. Burbey has been aggressive in pushing the County Executive, Council Members, the County Board and school administration on several issues.³

Prior to the 2013-2014 school year, the process Mr. Burbey and other HCEA representatives were required to follow when entering an HCPS school were inconsistent. Some schools required signing in on a computer, other schools required a paper sign in, and some did not require any sign in at all. Dr. Spencer was the principal of Emmorton Elementary School

¹ The written agreement limited the delegation of authority to proposed findings of fact; it did not delegate authority to the OAH to issue proposed conclusions of law.

² Notwithstanding the limitations set forth in the written agreement between the PSLRB and the OAH, the ALJ included certain conclusions of law in the Proposed Decision. The ALJ’s conclusions of law were not included in the PSLRB’s consideration of this matter.

³ By way of illustration, at the beginning of the 2014-2015 school year, HCEA instituted a program called “Work for Change,” which was an effort to organize HCPS employees to galvanize around local political candidates. Through the Work for Change program, teachers could sign up to canvas neighborhoods in an effort to express support for political candidates that were in line with HCEA initiatives. HCEA also advocated for HCEA-endorsed candidates through *HCEA Impact*, the HCEA monthly newsletter. HCEA made endorsements for County Executive, County Council President, County Council members and the Board of Education members.

(“Emmorton”) for the 2014-2015 school year. Under Dr. Spencer, Emmorton had a policy that prohibited visitors to the building after the school day.

On October 1, 2014, Mr. Burbey visited Emmorton, and upon exiting via the school’s main entrance, Dennis Edwards was standing there with his young daughter, who was a student at Emmorton. Mr. Burbey was wearing a tee-shirt with an HCEA logo. Mr. Edwards attempted to catch the door as Mr. Burbey was leaving the school, but Mr. Burbey denied Mr. Edwards access and advised Mr. Edwards that he, Mr. Burbey, could get in trouble for letting him in the school. Mr. Burbey did not know Mr. Edwards or his daughter. Mr. Edwards advised Mr. Burbey that he needed to get into the school to get his daughter’s homework, and that he had been knocking on the door, but no one answered.

At the time Mr. Burbey was speaking to Mr. Edwards, Talitha Lyons, then-Group Leader for the YMCA before and after school care at Emmorton, was welcoming parents into the school to pick up their children from afterschool care. At around 5:15 p.m., there were eleven children remaining in the YMCA after care program. One additional staff member was present. Ms. Lyons’ attention was primarily focused on her job, caring for the children and letting parents in and out. Mr. Burbey and Ms. Lyons provided different versions of the events that happened next.

Mr. Burbey’s version of the events is as follows: Mr. Burbey noticed Ms. Lyons standing in the exterior doorway to the cafeteria. Mr. Burbey walked toward Ms. Lyons until he was no more than fifteen feet away from her, said in a loud voice “pardon me,” and asked her to let the parent in or to send someone to let the parent in. Ms. Lyons curtly advised Mr. Burbey that there was no one in the school office. Mr. Burbey responded that he had just left the office and Dr. Spencer was there. Ms. Lyons then brusquely told Mr. Burbey that it doesn’t matter because the office staff doesn’t let anyone in after 4:00 p.m. Mr. Burbey turned away from Ms. Lyons, shook his head, and stated “It doesn’t make any sense.” Mr. Burbey then said to Mr. Edwards, “Sorry, I tried,” and walked to his car. There was no further contact between Mr. Burbey and Ms. Lyons regarding this matter.

Ms. Lyons’ version of the events is as follows: Mr. Burbey yelled at Ms. Lyons from the end of the walkway outside of the Emmorton main entrance, “Hey, could you let Ms. Spencer and them know that they have a parent at the front door?” Ms. Lyons responded to Mr. Burbey, “Sir, the office is closed.” Mr. Burbey responded, “I know Ms. Spencer and them are in the fucking office because I just left out of there with them.” Ms. Lyons responded, “Sir, they are in the office, but the office is closed and I’m not allowed to let anybody in.” Mr. Burbey became upset, turned away from Ms. Lyons, walked off, stated “This is stupid,” and referred to Ms. Lyons as a “stupid bitch.” Mr. Burbey was not facing Ms. Lyons when he called her a “stupid bitch.”

With regard to this exchange, the ALJ concluded that: (1) “[i]t is more likely than not that Ms. Lyons could not have heard Mr. Burbey curse at her, without Mr. Edwards hearing [him],” (2) “[i]t is more likely than not that Mr. Burbey would refrain from cursing at a school-based employee, while wearing his HCEA tee-shirt on school grounds in front of a parent and a student, with children and parents periodically entering and exiting... [Emmorton’s] cafeteria

door,” and (3) “[a]lthough Mr. Burbey can be forthright and loud, he has never cursed in the presence of colleagues on HCPS property,” and “was not a threat to children or to staff at HCPS at the time of his ban.”

Shortly after the exchange, Mr. Burbey received a letter, dated October 6, 2014, from the County Board. The letter advised Mr. Burbey that he was banned from all HCPS buildings until June 30, 201[5]⁴ as a result of his actions at Emmorton on October 1, 2014. The letter also advised Mr. Burbey that he would only be allowed to enter the County Board building in Bel Air, Maryland, for legitimate HCEA business purposes. In instituting the ban, the County Board relied upon Section 26-102 of the Code of Maryland (“Trespass on the ground of a public institution of elementary, secondary, or higher education”), which states in relevant part:

The governing board, president, superintendent, or principal of any public institution of elementary, secondary, or higher education, or a person designated in writing by the board or any of these persons, may deny access to the buildings or grounds of the institution to any person who... [a]cts in a manner that disrupts or disturbs the normal educational functions of the institution.

In reviewing the effect of the ban, the ALJ concluded that the County Board’s actions had a negative impact on the ability of Mr. Burbey and HCEA, in general, to carry out the business of HCEA. The ban made it almost impossible for Mr. Burbey to meet face-to-face with teachers and HCEA building representatives because all of these meetings had to take place after school hours at an off-site location. The ban further prevented Mr. Burbey from recruiting members to HCEA, and conducting in-service and professional development assemblies and HCEA’s monthly representative assembly.⁵ The ban also prevented Mr. Burbey from attending public input sessions, which were conducted by the Superintendent, the County Board, and the County Executive, and related to the education budget, as these sessions took place at HCPS buildings. In sum, the ban prevented Mr. Burbey from being an effective spokesperson for HCEA.

Prior to October 1, 2014, the County Board and HCEA were engaged in a number of contentious matters.⁶ Most relevant to the instant case, on September 11, 2014, HCEA filed a grievance alleging that the County Board violated the collective bargaining agreement with HCEA by imposing a requirement that HCEA representatives complete and submit a Use of Facilities Form before they could conduct meetings in HCPS schools.⁷ The grievance was

⁴ There was a typographical error in the letter stating that the ban was in effect until June 30, 2014, which had already passed.

⁵ At HCEA’s monthly representative assembly, the membership addresses HCEA policies, some of critical interest to the membership and HCPS non-member teachers.

⁶ HCEA filed three or four grievances in the months immediately before the ban, which were resolved through arbitration.

⁷ Prior to the 2014-2015 school year, HCEA representatives were allowed to enter HCPS school buildings before or after the instructional portion of the day for small or informal meetings without completing a Use of Facilities Form. HCEA representatives understood this somewhat unfettered access to be memorialized in the Negotiated Agreement between HCEA and the County Board. When HCEA representatives wished to host a meeting with a large attendance, they were aware that they had to complete and submit a Use of Facilities Form to ensure that the space was available and the logistical requirements for the meeting were feasible for the particular school. In the fall of 2014, HCPS began requiring HCEA representatives to complete and submit a Use of Facilities Form for all HCEA meetings and activities in HCPS school buildings. HCEA vehemently objected to this policy. HCEA also alleged

submitted to arbitration, the outcome of which was pending as of the conclusion of the OAH hearing in this matter.

As of the date of the OAH hearing, Mr. Burbey had completed his third year as President of HCEA. Prior to the ban, Mr. Burbey had never been disciplined by the County Board.

III. POSITIONS OF THE PARTIES

In its Motion to Dismiss and Exceptions to the Proposed Decision of the Administrative Law Judge, the County Board argues that the instant case was rendered moot on July 1, 2015, when the ban expired by its own terms. The County Board also contends that adopting the ALJ's proposed findings of fact would, among other things, impinge upon the statutory right of school administrators to protect the peace, safety, and orderly operations of Maryland's public schools under Section 26-102 of the Maryland Code.

In response, HCEA asserts that the instant case was not rendered moot by the expiration of the ban, and that the County Board committed an unfair labor practice in violation of §§6-402, 6-407(b), and 6-409 of the Education Article by banning President Burbey from all HCPS buildings. HCEA further contends that the ALJ's proposed findings of fact should be accepted.

IV. ANALYSIS

A review of the ALJ's findings of fact leads the PSLRB to conclude that the County Board had no basis for using the standard set forth in Section 26-102 of the Maryland Code -- that access may be denied to any person who acts in a manner that disrupts or disturbs the normal educational functions of the institution -- to ban Mr. Burbey from all HCPS buildings. The ALJ found that the sole basis for the ban -- Ms. Lyons's version of the October 1, 2014, encounter with Mr. Burbey -- "more likely than not" did **not** occur. Based on this finding -- that the PSLRB accepts -- the PSLRB need not reach the question of whether Mr. Burbey's actions were sufficient to justify the ban under Section 26-102.

Instead, the PSLRB need only focus on whether the ban constituted an unfair labor practice in violation of Sections 6-402 and 6-409 of the Education Article. Section 6-409 of the Education Article provides that a public school employer "may not 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...." Section 6-402 protects employees in the exercise of their right to "form, join, and participate in the activities of employee organizations...." Section 6-403 guarantees the right of employees to "refuse to join or participate in the activities of employee organizations." Taken together, these provisions prohibit a public school employer from taking adverse action against employees based on their participation in activities of employee organizations.

Looking to the ALJ's findings of fact, the PSLRB concludes that the County Board banned Mr. Burbey from access to HCPS buildings because of his actions as HCEA President.

contract violations concerning lunch and planning time, end of duty day, and taxation of the sick leave bank and health insurance.

The ban, imposed on October 6, 2014, was issued on the heels of the September 11, 2014, grievance filed by HCEA concerning access to HCPS facilities, a matter closely related to the instant Charge. It is equally clear from the ALJ's findings of fact, that the ban had a negative impact on the ability of Mr. Burbey to act as union president, and prevented him from providing union representation to HCEA negotiating unit members. As a result, the PSLRB concludes that the County Board violated Sections 6-204 and 6-409 of the Education Article when it banned Mr. Burbey from all HCPS buildings.⁸

That being said, by the time the ALJ issued her decision on November 17, 2015, June 30, 2015, had passed and the ban had expired by its own terms. As a result, the Charge became moot in terms of the remedy requested by HCEA in its Charge, i.e. a PSLRB Order requiring the County Board to lift the ban on Mr. Burbey. Nevertheless, because the County Board committed an unfair labor practice by banning Mr. Burbey from all HCPS schools, the PSLRB would have required the County Board to lift the ban had it still been in effect at the time of this decision. However, because this remedy is moot, the PSLRB finds that the imposition of an available secondary remedy, requiring the County Board to post notice regarding this violation, is appropriate. Therefore, the PSLRB hereby orders the County Board to post notice at all HCPS buildings concerning its violation of Sections 6-402 and 6-409 of the Education Article in accordance with the below Order.

V. CONCLUSION

The PSLRB hereby finds that the County Board violated Sections 6-402 and 6-409 of the Education Article by banning Mr. Burbey from all HCPS buildings.

ORDER

The PSLRB orders the County Board to take the following actions:

- (1) Cease and desist from denying union representatives, including HCEA President Ryan Burbey, access to HCPS buildings based on their participation in activities of the union.
- (2) Within 14 days from the date of this Order, post at all HCPS buildings copies of the attached Notice along with this Decision. Copies of the Notice and Decision shall be posted for a period of 60 days in conspicuous places, including all places where notices to employees are customarily posted. The Notice and Decision shall not be altered, defaced, or covered by any other material. If those documents are so altered, defaced, or covered, HCEA shall notify the County Board and the PSLRB, and the County Board shall promptly post replacement copies. In addition to physical posting of paper copies, the Notice and Decision shall be distributed electronically by posting

⁸ In its initial Charge (Form PSLRB-05), HCEA also cited Section 6-407(b) as a "Statutory Violation Alleged." Section 6-407(b) deals with the duty of fair representation of a union to the members of its negotiating unit with regard to negotiations and contract implementation. A charge of a violation of the duty of fair representation may not be brought by a union against an employer. As a result, the PSLRB dismisses this portion of HCEA's Charge.

on an intranet or internet and/or other electronic means if the County Board customarily communicates with its employees by such means.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD⁹:



Ronald S. Boozer, Member



Robert Chanin, Member



Donald W. Harmon, Member



John A. Hayden, III, Member

Annapolis, MD

April 4, 2016

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).

⁹ Seymour Strongin was Chair of the PSLRB until his successor was appointed on March 21, 2016. Mr. Strongin participated in the processing of this matter, and concurred in the outcome.

NOTICE TO EMPLOYEES

**POSTED BY THE BOARD OF EDUCATION OF HARFORD COUNTY
PURSUANT TO A DECISION AND ORDER ISSUED ON APRIL 4, 2016
OF THE MARYLAND STATE PUBLIC SCHOOL LABOR RELATIONS
BOARD¹⁰**

STATE LAW GIVES YOU THE RIGHT TO:

Form, join, and participate in the activities of unions;

Choose representatives to bargain with the Board of Education on your behalf;

Act together with other employees for your benefit and protections; or

Choose not to engage in any of these protected activities.

WE WILL NOT deny union representatives access to HCPS buildings based on their participation in activities of the union.

WE WILL NOT in any other manner interfere with, intimidate, restrain, coerce, or discriminate against you because of the exercise of the rights guaranteed to you by Sections 6-402 or 6-409 of the Education Article of the Annotated Code of Maryland.

¹⁰ The Board of Education of Harford County shall provide a copy of the Decision and Order to any employee upon request.