

BALTIMORE TEACHERS UNION  
AND CITY UNION OF BALTIMORE,

Appellants

v.

BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-62

### OPINION

In this appeal, the Baltimore Teachers Union and the City Union of Baltimore maintain that the local board has engaged in unfair labor practices in violation of various provisions of Title 6, Subtitles 4 and 5, of the Education Article by unilaterally changing the composition of their bargaining units through a reorganization of school headquarters without first negotiating unit composition with the unions. The Unions argue that the local board has disaffiliated employees from their bargaining units and interfered with the rights of employees to be represented with regard to all matters that relate to salaries, wages, hours and other working conditions by the employee unions. The local board contends that the reorganization is a reclassification for which there is no requirement to engage in collective bargaining.

### FACTUAL BACKGROUND

The Baltimore Teachers Union (“BTU”) and the City Union of Baltimore (“CUB”) are the designated exclusive representatives of various public school employees. BTU represents two units in the Baltimore City Public School System (“BCPSS”): (1) teachers and other certificated employees in the professional education public school employee unit (“teachers unit”), and (2) paraprofessional employees in another unit as defined by the current negotiated agreement. As defined in the current negotiated agreement, BTU members in the teacher’s unit include classroom teachers (pre-K through 12), counselors, librarians (and/or their successor job title and/or classification), psychologists, social workers, home and hospital teachers, department heads, master teachers, instructional associates, educational associates, speech/language pathologists, occupational therapists, physical therapists, facilitators, consulting teachers, audiologists, JROTC instructors, and art, music, and physical education resource teachers. BTU members in the paraprofessional unit include children’s aides, research aides, educational assistants, lunch aides, home/school/community liaison workers (home visitors, parent liaison workers, and home community workers), transportation aides, occupational therapist assistants, computer aides, and physical therapist assistants. The CUB represents non-certificated administrative and clerical employees and school police officers.

## Information Technology Department

Since December 2001, the local board has embarked upon a reorganization of its operations at school headquarters. On December 18, 2001, the Unions were notified by BCPSS that the Information Technology Department (“ITD”) was being reorganized to create a more efficient operation. In that regard, the Unions received a document entitled “Reclassification/Transfer Election Form” which stated that the “ITD will be reorganized to reflect current job functions and duties as well as consistency within the department” and gave employees the choice to accept a new position within the ITD, or to retain their old position. The form indicated that if the employee elected a new position in the ITD, the employee would “no longer be represented by a union.”

By letter of December 19, 2001, counsel for the Unions requested that BCPSS negotiate with the Unions over the composition of the bargaining units and asked for more information regarding the reorganization. The Unions never received a response to their request to negotiate over the composition of their bargaining units. Instead, by letter dated January 10, 2002 to the Unions’ attorney, the Chief Human Resources Officer explained the reorganization effort as follows:

Human Resources performed a thorough and exhaustive review of the current ITD organizational structure, conducted a comprehensive analysis of state-of-the-art, best-class organizational structures for information technology departments and devised a proposed organization that will meet the anticipated needs of the schools.

On January 30, 2002, Joseph Kirkman, Director of the IT Department, convened a meeting of all ITD employees and informed them that they would be moved into a unit of Confidential and Professional Technical employees. The Unions allege that they were not informed of this meeting.

In February, 2002, the Unions received a response to their request for information concerning the ITD reorganization. The response also indicated that separate meetings would be held to address the Unions’ concerns. One meeting was held with the President of BTU’s teacher unit, but that meeting consisted of an explanation of the documents that were provided in February. No meetings were held with the President of BTU’s paraprofessional unit or with the President of CUB.

The Unions were present at a meeting convened on April 12, 2002, in which represented and non-represented ITD employees affected by the reorganization were notified that their positions had either been eliminated or reclassified. At that meeting, BCPSS advised employees that they would have to sign a document acknowledging that their new position in the ITD would

not be represented by a union if they wished to remain employed in the ITD.

#### Central Academic and Area Offices

On May 21, 2002, BCPSS sent letters to affected employees informing them that the Central Academic and Area Offices had been restructured; that their positions would be abolished as of June 30, 2002; and that support staff positions would be restructured in the next phase. On May 29, 2002, BTU requested that BCPSS “negotiate concerning the composition of their respective bargaining units” and “meet and confer concerning any possible layoffs or reduction in force.” On June 11, 2002, CUB requested negotiation on the composition of its bargaining unit. BCPSS did not respond to these requests.

#### Human Resources Department, Department of Compensatory and Funded Programs, and Office of Pupil Services

On July 24, 2002, BCPSS notified the Unions of its intent to reorganize Human Resources, Grants Administration and the Office of Pupil Services. As part of that reorganization, the existing Department of Grants Administration was eliminated and a new office with new procedures, processes, and job descriptions was established. Senior positions in that office were now unaffiliated with any union, but the support positions remained with the CUB’s bargaining unit. Additionally, each position in the Department of Human Resources was designated as unaffiliated or non-represented because BCPSS deemed those employees to be “confidential employees” who have regular access to confidential information concerning BCPSS’ collective bargaining strategy. The Office of Pupil Services was also eliminated and the Office of Attendance and Suspension was created in its place.<sup>1</sup> Employees in the new Office of Attendance and Suspension were now affiliated with the Public School Administrators and Supervisors Association (“PSASA”). These changes were announced at a meeting on July 26, 2002 at which the Unions were present.

BCPSS called a meeting with the Unions on October 21, 2002. At that meeting, the Unions were given a letter that was to be distributed to employees in the Office of Pupil Services indicating that their positions would be abolished with the restructuring, and encouraging them to apply for new positions. The letter also advised the employees that they would be placed on layoff status if they were not accepted for the new positions.

In its response to this appeal, counsel for the local board has indicated that the

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<sup>1</sup>Counsel for the local board maintains that the proposed reorganization of the Pupil Services was done to comply with the court ordered 2002-03 Implementation Plan in *Vaughn G., et al. v. Mayor and City Council of Baltimore, et al.*, Civil Action No. MJG-84-191. Under Outcome #7 of the plan, BCPSS agreed to increase the timely implementation of the suspension policies and procedures mandated for students who have been suspended or expelled.

reorganization of the Departments of Human Resources, Information Technology, Curriculum and Instruction, and Grants Administration has been completed.

## ANALYSIS

The issue in this case is whether the relevant provisions of Title 6, subtitles 4 and 5, of the Education Article were violated when there was a reorganization and reclassification of personnel in the BCPSS central office. For certificated employees, § 6-404 provides that all eligible public school employees must be included in one of two bargaining units.<sup>2</sup> Further, § 6-404(b)(1) requires that “the public school employer shall determine the composition of the unit in negotiation with any employee organization that requests negotiation concerning the composition of the unit.”

For noncertificated employees, § 6-505 indicates that all eligible public school employees must be represented by one of three bargaining units unless the employee is designated as management personnel or a confidential employee. Under § 6-505(b), the public school employer is required to determine the composition of the unit “in negotiation with any employee organization that requests negotiation concerning the composition of the unit.” Moreover, § 6-501(b) states that a “‘confidential employee’ includes an individual whose employment responsibilities require knowledge of the public school employer’s posture in the collective negotiation process, as determined by the public school employer in negotiations with an employee organization that requests negotiation on this issue.” Under § 6-501(d) management personnel includes “an individual who is engaged mainly in executive and managerial functions, as determined by the public school employer in negotiation with an employee organization that requests negotiation on this issue.”

In this case, the Unions do not dispute that the local board had the unilateral right to do a reorganization and a reclassification of employees. *See Montgomery County Educators Assn v. Montgomery County Bd. of Educ.*, 311 Md. 303 (1987). Rather, the Unions argue that the determination of confidential employees and management personnel must be done through negotiation. Further, the Unions requested negotiation on the composition of the units because of the reorganizations that occurred. Although the Unions were present at various meetings conducted by BCPSS on the reorganization, from the facts presented in this record, we do not find that any negotiations on the matters raised by the Unions actually occurred.<sup>3</sup>

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<sup>2</sup>For certificated employees, under § 6-401(d) only a local superintendent/chief executive officer or an individual designated by the local board to act in a negotiating capacity would be excluded from membership in one of the two bargaining units.

<sup>3</sup>Although §§ 6-404, 6-501(b) & (d), and 6-505 use the phrase “in negotiation with,” that phrase is not defined in any of those three statutes. We believe therefore that the plain meaning of the term “negotiation” would apply to the process of determining the composition of a unit or

## CONCLUSION

For these reasons, we are remanding this case to the Baltimore City Board of School Commissioners for negotiation with any interested employee organizations on the composition of the certificated and noncertificated units and the determination of confidential employees and management personnel consistent with the requirements set out in §§ 6-404 and 6-505 of the Education Article, Annotated Code of Maryland.

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designating a confidential employee or management personnel, *i.e.*, to meet and confer. *See American Heritage Dictionary*, 2d. College Ed. At 836. Although both §§ 6-408 and 6-510 define the term “negotiate,” both statutes further provide that that definition applies only to process set out in those specific sections. *See* §§ 6-408(a)(1) and 6-510(a)(1).

Walter Sondheim, Jr.

John L. Wisthoff

December 13, 2002