STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:	*	
GEORGE E. HOPKINS, JR.,	*	
Charging Party,	*	
v.	*	PSLRB Case No. SV 2012-09
HOWARD COUNTY EDUCATION ASSOCIATION (HCEA),	*	
Charged Party.	*	

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DECISION AND ORDER DENYING REQUEST
FOR RELIEF AND GRANTING MOTION TO DISMISS

I. INTRODUCTION

On May 29, 2012, George E. Hopkins, Jr. ("Hopkins") filed Form PSLRB-05 – "Charge of Violation of Title 6, Subtitle 4 or Subtitle 5, of the Education Article" with the Public School Labor Relations Board ("PSLRB"). Form PSLRB-05 reflects the authority granted to the PSLRB by Section 2-205(e)(4)(i) of the Education Article to "decide any controversy or dispute arising under Title 6, Subtitle 4 or Subtitle 5 of this Article."

In his charge, Hopkins alleges that his union, the Howard County Education Association ("HCEA"), breached its "Duty of Fair Representation" in violation of Section 6-407(b) of the Education Article of the Annotated Code of

Maryland.[1]

Hopkins also charges HCEA with violating Section 6-409 of the Educational Article which prohibits interference with the right of public school employees to join or not to join a union. Hopkins has failed to present any allegations in support of this charge and therefore it will be DISMISSED.

In support of his charge, Hopkins has submitted documents regarding his position that HCEA has failed to represent him properly in his numerous disputes and confrontations with his employer, the Howard County Public School System ("HCPS").

On June 18, 2012, HCEA filed a "Motion to Dismiss Hopkins' Complaint." In its motion, HCEA argues that the bulk of Hopkins' charges, going back as far as May, 2007, are time-barred and not properly before the PSLRB. As to any timely filed allegations, HCEA argues that any failure to act was neither arbitrary, discriminatory, nor in bad faith and therefore did not constitute a breach of its duty of fair representation.

II. ANALYSIS

On the cover page of Form PSLRB-05, it is clearly stated that "In order to be timely, a charge must be filed with the Executive Director of the PSLRB within sixty (60) days after the charging party knew, or reasonably should have known of the statutory violation alleged." Form PSLRB-05 was filed by Hopkins with the

[1] Section 6-407(b) Fair representation – (1) An employee organization designated as an exclusive representative shall represent all employees in the unit fairly and without discrimination, whether or not the employees are members of the employee organization.

PSLRB on May 29, 2012. Sixty (60) days prior to that date is March 29, 2012. Therefore, alleged failures by HCEA to properly represent him which pre-dated March 29, 2012, are time-barred and not properly before the PSLRB. Thus, Hopkins' listing of numerous incidents beginning with May 22, 2007, through March 19, 2012, are barred. This leaves only 1 (one) timely filed allegation, the May 7, 2012 meeting at HCEA.[2]

According to HCEA, the purpose of the meeting on May 7 was to attempt to determine what it was that Hopkins wanted to see happen and what HCEA could do for him. At this meeting, Hopkins advised Union President Lemle and Ambrose that he wanted Evans, the Principal, fired. Both Lemle and Ambrose explained that seeking termination of an administrator was not within the scope of representation that HCEA would provide to him. It was made clear to Hopkins that such a remedy would not be pursued by HCEA.

HCEA President Paul Lemle, in a letter to HCEA counsel dated June 8, 2012 (HCEA Exhibit 3); reviews his version of the May 7, 2012, meeting. Hopkins has provided no evidence disputing Lemle's version of this meeting. According to Lemle, when he asked Hopkins what needed to be done, Hopkins replied that "Mr. Evans has to be stopped." Lemle says that Hopkins was then asked if this meant removal from his post and Hopkins "replied affirmatively." Lemle further states that Hopkins "became upset" when told that "an employee

[2] As to the phone call on March 29, 2012, Hopkins alleges that Ambrose, MSEA UniServ assigned to HCEA, was "very belligerent" about a purported email he had sent. Hopkins alleges that Ambrose told him he was "tired of this fucking bullshit." Even assuming arguendo that Ambrose used the language alleged (he denies that he did), while coarse, we do not find any statutory violation of the duty of fair representation.

union could not and would not seek this kind of remedy." Lemle states that he assured Hopkins that if there were any new "incidents of problematic behavior" on the part of Principal Evans, HCEA "would address them."

The United States Supreme Court's landmark Vaca v. Sipes decision (386 U.S. 1710 (1967), posited a violation of the duty of fair representation occurs when a union's "conduct toward a member is arbitrary, discriminatory, or in bad faith," but it also provided a wide area of union discretion, subject to the requirement of good faith. Thus, said the Court, "though we accept the proposition that a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion, we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration." Later cases specified a wide range of reasonableness which must be allowed a statutory bargaining representative in serving the unit it represents. Ford Motor Co. v. Huffman, 345 U.S. 330 (1953).

The inquiry in every fair representation case must be whether the union's acts or omissions show hostile discrimination, based on irrelevant and invidious considerations, or whether they show good faith within a wide range of reasonableness granted bargaining agents. The bargaining agent's latitude in contract administration was specifically addressed in Humphrey v. Moore, 375 U.S. 355 (1964), where the Supreme Court affirmed that a union does not breach its duty of fair representation so long as it acts "honestly, in good faith, and without hostility or arbitrary discrimination."

The United States Court of Appeals for the 4th Circuit, which includes Maryland, reiterated the principles cited above. In the case of Buchanan v. N.L.R.B., 597 F.2d 388 (1979), the Court stated: "The duty to avoid arbitrary conduct does not require a union to take every employee grievance to arbitration, and it has considerable discretion in sifting out grievances which it regards as lacking merit."

While most of the case law on the duty of fair representation is found on the federal level, the Maryland Court of Special Appeals held that the duty of fair representation includes the following requirements. "(1) to serve the interests of all members without hostility or discrimination toward any, (2) to exercise its discretion with complete good faith and honesty, and (3) to avoid arbitrary conduct." Stanley v. American Federation of State and Mun. Employees Local No. 553, 165 Md.App. 1, 15; 884 a.2d 724, (2005) (citing: Vaca v. Sipes, 386 U.S. at 177, 87 S.Ct. 903. And most importantly and bearing on the case before the PSLRB, the *Stanley* court made clear that a union is not necessarily in breach of the duty of fair representation if it opts to not process a particular grievance.

Indeed, "an employee has no absolute right to insist that his grievance be pressed through any particular stage of the contractual grievance procedure. A union may screen grievances and press only those that it concludes will justify the expense and time involved in terms of benefitting the membership at large." Neal v. Potomac Edison W., 48 Md.App. at 358-59, 427 A.2d 1033

(1981).

The record herein is replete with evidence showing that HCEA has acted in good faith in trying to resolve Hopkins' numerous complaints and issues. File documents show that HCEA was pursuing the issues raised by Hopkins by calling for the administration to conduct another investigation into his numerous complaints, many of which were personal attacks on principal Evans. HCEA even conducted a survey of Hopkins' fellow teachers designed to gather information to determine if Hopkins' assertions regarding the environment at his school were shared by other staff members.

The survey results failed to produce sufficient evidence of a widespread concern. (HCEA Exhibit 4).

A review of the record indicates that there exists a great deal of personal animosity between Hopkins and Evans and even though HCEA refused to prolong this personal battle to the satisfaction of Hopkins, HCEA nevertheless aggressively pursued Hopkins' concerns regarding student discipline and other matters.

Most significantly, the record indicates that even after telling Hopkins on May 7 that HCEA would not seek the termination of principal Evans, HCEA would still continue to address any new complaints that Hopkins might have in the future. According to HCEA, at the May 7 meeting, "Mr. Hopkins was told that if, however, any new information arises or he is subjected to disciplinary action or a negative evaluation that he should contact HCEA so that the matter may be

addressed appropriately."

The record herein is clear that HCEA never told Hopkins that it would refuse to represent him in the future or file future grievances on his behalf. All Hopkins was told was that his disputes with the school principal had become so personal that continuing the battle would have a detrimental effect on HCEA's job of fairly representing all employees in the unit. Moreover, HCEA informed Hopkins that the union would follow up if any new matters were brought to its attention.

HCEA has the right to exercise its discretion to determine whether or not a grievance is worthy of pursuing. HCEA's decision in this matter not to accede to Hopkins' request is neither arbitrary, discriminatory, nor made in bad faith.

ORDER

Hopkins' request for relief is DENIED, and HCEA's Motion to Dismiss is GRANTED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD

Seymour Strongin, Chairman

Robert H. Chanin, Member

Charles I. Ecker, Member

Donald P. Kopp, Member

Stuart O. Simms, Member

Glen Burnie, MD
August 6, 2012

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).