

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF	*	
AKOBI SCHUSTER,	*	
Charging Party,	*	PSLRB Case No.
	*	SV 2012-02
v.	*	
BALTIMORE TEACHERS UNION, LOCAL	*	
340, AMERICAN FEDERATION OF TEACHERS	*	
Charged Party.	*	



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

I. INTRODUCTION

On October 6, 2011, Akobi Schuster 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.”<sup>1</sup>

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<sup>1</sup> On the Form that he filed with the PSLRB, Schuster identifies Marietta English, BTU President, and Neal Ross, a BTU Field Representative, as the “Charged Party.” It is evident from the context, however, that Schuster’s complaint is against BTU as an entity, and that he views English and Ross as representatives of BTU. In this Decision and Order, we refer to BTU as the Charged Party.

In his Charge, Schuster alleges that the Baltimore Teachers Union (“BTU”), the employee organization that is recognized as the exclusive representative of the teachers of the Baltimore City School District, and two BTU representatives – Marietta English, BTU President, and Neil Ross, a BTU Field Representative – violated the duty of “fair representation” imposed upon BTU by Section 6-407 (b)(i) of the Education Article, which provides as follows:

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.

## II. POSITIONS OF THE PARTIES

### A. Charging Party

In his Charge, Schuster alleges that BTU violated its duty of fair representation (“DFR”) by failing to provide adequate representation following his “suspension, suspended employment and discipline without reason on June 1, 2009” by the Baltimore City School District. Schuster acknowledges that BTU assigned attorney Keith Zimmerman to represent him, and that he had numerous interactions with Zimmerman and other BTU representatives regarding his dispute with the School District. The most recent interaction that Schuster cites in his submissions to the PSLRB took place in December 2009.

By way of remedy, Schuster requests that the PSLRB “investigate and penalize [BTU] to the full extent of the Board’s power.” Specifically, Schuster requests that

the PSLRB “order \$5,000,000 in restitution be given to [him] from BTU,” that BTU’s right to exclusively represent the School District’s teachers be “overturned or visited,” and that English and Ross “be asked to step down,” presumably from their positions with BTU.

### B. Charged Party

On November 14, 2011, Zimmerman, now representing BTU, filed a response to Schuster’s DFR Charge. In this response, Zimmerman does not address the merits of Schuster’s Charge that BTU violated its DFR, but rather files a Motion to Dismiss the Charge on two grounds: (1) The PSLRB “lacks jurisdiction over the subject matter of the Charge” because “the acts Mr. Schuster complains of took place during the 2008-2009 school year,” which ended on June 30, 2009, a year prior to the creation of the PSLRB on July 1, 2010; and (2) Even if the PSLRB has jurisdiction, Schuster’s Charge was not filed in a timely manner, and is “barred by limitations.” If his Motion to Dismiss is denied, Zimmerman requests that BTU “be permitted to respond substantively to the allegations in the Charge.”

### III. ANALYSIS

The PSLRB need not for present purposes reach the merits of Schuster’s Charge. We note in passing, however, that Schuster’s quarrel with the representation that he received from Zimmerman and other BTU representatives, including English and Ross, reflects, for the most part, disagreements as to legal/strategic judgments.

Schuster does not in his submissions to the PSLRB specifically or by inference allege that BTU violated its statutory obligation to represent all employees in the unit “fairly and without discrimination, whether or not the employees are members of the employee organization,” Section 6-407(b)(i), or that its conduct toward him was “arbitrary, discriminatory, or in bad faith.” Vaca v. Sipes, 386 U.S. 171, 190 (1967).

Nor do we need to reach Zimmerman’s argument that the PSLRB lacks jurisdiction over the subject matter of the Charge because the actions that Schuster complains of took place during the 2008-09 school year, which ended on June 30, 2009, a year prior to the creation of the PSLRB on July 1, 2010. We again note in passing, however, that the actions taken by the Baltimore City School District during the 2008-09 school year cited by Zimmerman are not dispositive in this regard; the focus must rather be on the actions taken by BTU in representing Schuster, and Schuster does not allege that any such actions continued beyond December 2009.

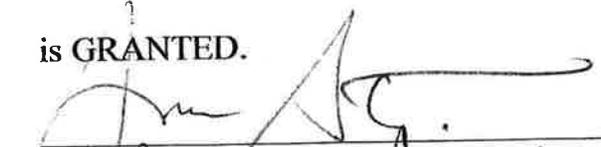
The PSLRB need not reach the forgoing matters because we agree with BTU that the Charge filed by Schuster on October 6, 2011, which is some 20 months after the December 2010 interaction with BTU – and is the latest such interaction cited by Schuster -- is untimely. Although Schuster initially contacted the PSLRB in mid-December 2010, he did not at that time express any dissatisfaction with the

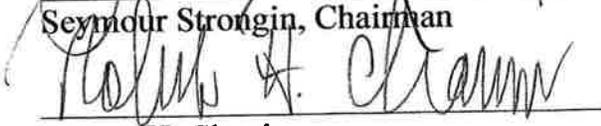
representation that had been provided to him by BTU, but complained only about his treatment by the Baltimore City School District. The first time that Schuster alleged a breach of the DFR by BTU was in the Charge that he filed on October 6, 2011.

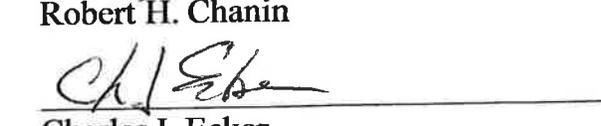
By any reasonable standard—including that used by other boards in Maryland, by public sector labor relations boards in other states, and by the National Labor Relations Board, much less the 60-day deadline for filing a DFR charge that is provided in the regulation that has been proposed by the PSLRB – Schuster’s DFR Charge against BTU is untimely, and for that reason must be dismissed.

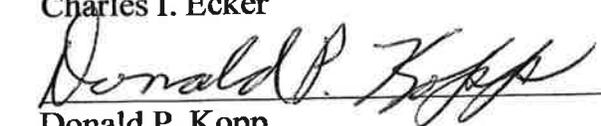
ORDER

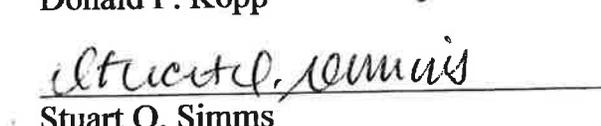
Schuster’s request for relief is DENIED, and BTU’s Motion to Dismiss the Charge is GRANTED.

  
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Seymour Strongin, Chairman

  
\_\_\_\_\_, Member  
Robert H. Chanin

  
\_\_\_\_\_, Member  
Charles I. Ecker

  
\_\_\_\_\_, Member  
Donald P. Kopp

  
\_\_\_\_\_, Member  
Stuart O. Simms

Glen Burnie, MD

February 17, 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 (Administrative Procedure Act – Contested Cases) and Maryland Rules, CIR CT Rule 7-201 et seq. (Judicial Review of Administrative Agency Decisions).**