

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:

EDUCATION ASSOCIATION OF
ST. MARY'S COUNTY,

Petitioner,

and

DR. MICHAEL MARTIRANO,

Respondent.

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PSLRB Case No. SV-12-05

DECISION AND ORDER

A. INTRODUCTION

On January 30, 2012, the Education Association of St. Mary's County ("EASMC") filed with the Public School Labor Relations Board ("PSLRB") a Form PSLRB-05 -- "Charge of Violation of Title 6, Subtitle 4 or Subtitle 5, of Education Article." Dr. Michael J. Martirano, Superintendent of the St. Mary's County School System ("SMCSS") is named as the Charged Party. On January 31, 2012, EASMC filed an Amended Form PSLRB -05 ("Amended Form"). The Amended Form -- which differs from the previously filed Form in certain minor respects, none of which are relevant for purposes of this Decision and -- has been designated as PSLRB Case No. SV 12-05.

B. POSITIONS OF THE PARTIES

In the Amended Form, EASMC alleges that Martirano violated Sections 6-402 and 6-409 of the Education Article. The essence of EASMC's Charge is that Martirano committed these statutory violations by participating in and supporting an effort by a

competing organization to divide the bargaining unit of SMCSS employees for which EASMC has been recognized as the exclusive representative since 1968.

On February 8, 2012, Martirano filed a Motion to Dismiss on a variety of procedural grounds, asserting that “EASMC’s Charge is untimely and otherwise improperly filed.” If his Motion to Dismiss is denied, Martirano asks, *inter alia*, for a full evidentiary hearing “on the merits of EASMC’s Charge.”

C. ANALYSIS

The PSLRB finds it unnecessary to reach the merits of the allegations made by EASMC in the Amended Form, or of the procedural objections raised by Martirano in his Motion to Dismiss. Although we dismiss EASMC’s Charge on a procedural ground, we do so because of a basic defect in the Amended Form that was not raised by Martirano in his Motion to Dismiss. Specifically, a Form PSLRB-05 alleging a violation of Section 6-402 or Section 6-409 can be filed against an employee organization or a public school employer, but not – as EASMC has done here – against an individual representative of an employee organization (*e.g.*, its president) or a public school employer (*e.g.*, its superintendent). An employee organization and a public school employer are responsible for the actions of their representatives, and if those actions violate Section 6-402 or Section 6-409, the employee organization and the public school employer are in turn liable.

To be sure, Section III of Form PSLRB -05 – “CHARGED PARTY” – offers a filing party three choices:

- A. EMPLOYEE ORGANIZATION
- B. PUBLIC SCHOOL EMPLOYER

C. *OTHER (Identify Party)*

(Emphasis added)

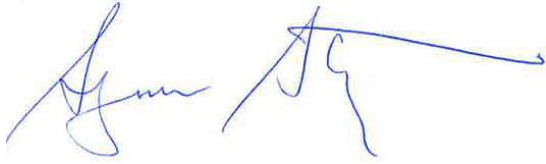
We need not for present purposes consider whether and under what circumstances a party other than an employee organization or a public school employer might be charged with a violation of some provision of Title 6, Subtitle 4 or Subtitle 5, of the Education Article. Suffice it to say that a superintendent may not be named as a Charged Party for actions that he or she has taken in his or her capacity as a representative of a public school employer—which is the situation here.

Nor can this filing defect be treated as merely a drafting error, in which EASMC inadvertently named Martirano as a proxy for the real party in interest – i.e., SMCSS. EASMC clearly understands the difference between SMCSS as an entity and Martirano as an individual, as evidenced by the fact that, on December 22, 2011, EASMC filed a Form PSLRB-05 in which it named SMCSS as the Charged Party, and alleged, *inter alia*, a violation of Sections 6-402, 6-404, and 6-405. This latter Charge – which is now pending as PSLRB Case No. SV 12-04 – derives from essentially the same actions as does the instant case. In short, the intent of the Amended Form is to charge Martirano with violating Sections 6-402 and 6-409, and Martirano is not subject to such a charge.

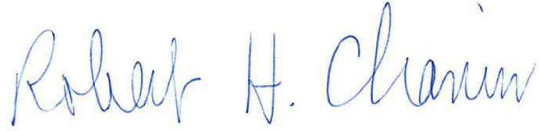
ORDER

IT IS HEREBY ORDERED THAT SMCSS' Motion to Dismiss is GRANTED, and PSLRB Case No. SV 12-05 is DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



Seymour Strongin, Chairman



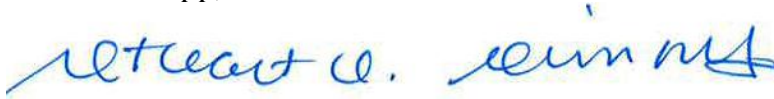
Robert H. Chanin, Member



Charles I. Ecker, Member



Donald P. Kopp, Member



Stuart O. Simms, Member

Glen Burnie, MD

March 30, 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).