STATE OF MARYLAND

PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:	*	
SUZANNE WINDSOR,	*	
Charging Party,	*	
v.	*	PSLRB Case No. SV 2013-01
PRINCE GEORGE'S COUNTY EDUCATION ASSOCIATION (PGCEA),	*	
Charged Party.	*	

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

I. INTRODUCTION

On July 26, 2012, Suzanne D. Windsor ("Windsor") 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, Annotated Code of Maryland, to "decide any controversy or dispute arising under Title 6, Subtitle 4 or Subtitle 5 of this Article."

In her charge, Windsor, a pupil personnel worker (PPW) employed by the Prince George's County Public Schools ("PGCPS"), alleges that her union, the Prince George's County Education Association ("PGCEA", or the "Union"), breached its "Duty of Fair

Representation" in violation of Section 6-407(b) of the Education Article of the Annotated Code of Maryland.[1]

Windsor also charges PGCEA with violating Section 6-409 of the Education Article which prohibits interference with the right of public school employees to join or not to join or participate in the activities of a union.[2] Windsor has failed to present any evidence in support of this charge and therefore it will be DISMISSED.

In her charge alleging violation of Sec. 6-407(b), Windsor alleges as follows:

(1) On May 29, 2012 Damon Felton (PGCEA's Attorney) "refused to tell me who to report the Union, PGCEA, to in reference of their refusal to assist me at the onset of the school year."

(2) On May 29, 2012, "He [Felton] also reneged on his agreement to file an appeal to the BOE for me but did not inform me of said decision until I reiterated my desire to file."

(3) Windsor also complains that on May 18, 2012, Damon Felton informed her that the Union would not represent her regarding certain EEO claims (alleged racial slurs) but instead referred her to the EEOC.[3]

The position of PGCEA is as follows:

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[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.

[2] Section 6-409. Interference with employees prohibited. A public school employer and employee organization may not interfere with, intimidate, restrain, coerce, or discriminate against any public school employee because of the exercise of his rights under Sections 6-402 and 6-403 of this subtitle (i.e. the right of a public school employee to join or refuse to join or participate in the activities of a labor union.

[3]The filings in this case are as follows: (1) Form PSLRB-05 (Charge of Violation) filed on July 26, 2012. (2) "PGCEA's Response" filed on August 10, 2012. (3) PGCEA's "Motion to Dismiss" and "Memorandum of Law in Support of PGCEA's Motion to Dismiss," was filed on August 15, 2012. (4) "Suzanne Windsor's Opposition to the Motion to Dismiss" was filed on September 7, 2012. (5) And, on September 19, 2012, the Union filed "PGCEA's Reply to Charging Party's Opposition to the Motion to Dismiss." (6) Finally, on September 19, 2012, Windsor filed with the PSLRB three "attachments" comprising a series of emails without commentary.

(1) The allegation that PGCEA breached its statutory duty to fairly represent Ms. Windsor in violation of Sec. 6-407(b) of the Education Article, is not supported by the facts, and

(2) The charge is untimely as it "essentially concerns allegations regarding events that took place in June 2011" and therefore must be dismissed.

II. ANALYSIS

A. THE TIMELINESS ISSUE

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 Windsor on July 26, 2012. Sixty (60) days prior to that date is May 26, 2012. Therefore, alleged failures by PGCEA to properly represent her which pre-dated May 26, 2012 are barred.

In the three matters cited above, two are within the 60 day window and one, the May 18 racial discrimination allegation is outside the timely filing period. As a result, we find that two of Windsor's charges of statutory violation are timely and will be considered and PGCEA's Motion to Dismiss on the basis of untimeliness is DENIED. As to Windsor's allegation of racial discrimination, PGCEA's Motion to Dismiss on the basis of untimeliness is GRANTED.

B. THE DUTY OF FAIR REPRESENTATION

The Supreme Court's early definitions of the duty of fair representation imposed on the bargaining agent the responsibility of representing the interests of all employees "fairly, impartially and in good faith" (Steel v. Louisville & Nashville R.R., 323 U.S. 192 (1944). The NLRB's first definition in Miranda Fuel Co., 140 NLRB 181 (1962)) assured employees of the right "To be free from unfair or invidious treatment by their bargaining agent." The Supreme Court's Vaca v. Sipes decision, (386 U.S. 1710 (1967) posited a violation 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, has 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), *accord* Marquez v. Screen Actors Guild, Inc., 525 U.S. 33. 44. 119 S. Ct. 292 (1998). And most importantly and bearing on the current 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. The *Stanley* court stated:

> "' [A] union is accorded considerable discretion in the handling and settling of grievance.' "Neal, 48 Md. App. at 358, 427 A.2d 1033. A union does not necessarily breach its duty when it declines to take a member's grievance to arbitration. *See*, Vaca, 386 U.S. at 191-92, 87 S. Ct. 903; *accord* Meola v. Bethlehem Steel Co., 246 Md. 226, 235, 228 A.2d 254 (1967). Indeed, "an employee has no absolute right to insist that his grievance be pressed through any particular state 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." (Emphasis added) Neal, 48 Md. App. at 358-59, 427 A.2d 1033.

Additionally, the law is clear that a union need not process an employee's grievance if the chances for success are slight. See Williams v. Sea-Land Corp., 844 F.2d 17 (1st Cir. 1988). "the union must provide 'some minimal investigation of employee grievances,' but the thoroughness of this investigation depends on the particular case, and 'only an egregious disregard for union members' rights constitutes a breach of the union's duty.'" Garcia v. Zenith elec. Corp., 58 F.3d 1171, 1176 (7th Cir. 1995).

A review of the above cases in conjunction with the evidence submitted by the parties convinces us that PGCEA, and its representative, Damon Felton, did not violate Title 6, Section 6-407(b) of the Education Article's duty of fair representation.

The thrust of Windsor's complaint involves her claim that she was not given a position as a PPW in the Homeless Education Office of PGCPS in the fall of 2011. She felt that she was discriminated against because of her ethnicity (Native American/African American). She also felt that her contractual seniority should have given her preference over the employee given the job. Upon contacting PGCEA, Windsor was advised that she could file a complaint of discrimination with the PGCPS Equity Office, which she then did. The Equity Office conducted an investigation and failed to find evidence of illegal discrimination or harassment. The Equity Office informed Windsor of her right to file an appeal with the Board of Education of Prince George's County.

Windsor filed an appeal of the Equity Office's decision with the Board of Education of Prince George's County on February 10, 2012.

On February 28, 2012, Felton and another PGCEA representative met with Windsor to discuss her case. She basically felt that her seniority had been ignored because the position she applied for was given to a less senior Caucasian. Felton advised Windsor that PGCEA would assist her in having her case remanded to the Equity Office for further consideration and that he would work with her to make sure the Equity Office understood her position. Through Felton's efforts, the matter was remanded to the Equity Office for reconsideration. The Equity Office conducted another investigation and on May 7, 2012, issued another decision, again finding no discrimination or harassment, explaining to Windsor that seniority was not the crucial factor in her case and that awarding the position to a less senior person was in accordance with the collective bargaining agreement.

Windsor again contacted Felton and on May 29, 2012, at 3:50 p.m., Felton informed her that PGCEA "wouldn't be able to represent you" on another appeal of the same matter, unless there was something he could argue was illegal, that is in the absence of any new evidence, PGCEA would not file another appeal on her behalf. After being so informed, Windsor was not satisfied and asked Felton how she could go about reporting her dissatisfaction regarding PGCEA. By email, Felton, on May 29, 2012, at 3:55 p.m., informed Windsor that since PGCEA was his client he could not advise her in this regard. Felton, in the same conversation, informed Windsor that "if you have any particular specific concerns. . .I can let you know if there is anything the

State organization (MSEA) could address for you." According to Felton, he did inform the Equity Office that Windsor desired to appeal in a timely fashion.[4]

The record evidence herein indicates that PGCEA has acted in good faith in fulfilling its statutory obligation of fairly representing Windsor. As noted previously, 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.[5]

Here, Felton and PGCEA made a reasonable decision under the circumstances, based on their interpretation of the collective bargaining agreement, that Windsor's position was not a valid one and thus would not be appealed. Felton also made a reasonable decision when he told Windsor that in the absence of any new evidence, he felt she had no case as to racial discrimination and declined to appeal further. We

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[4] Record evidence confirms that on June 6, 2012, Felton sent an email to the Chair, Board of Education of Prince George's County, stating the following:

> "Pursuant to Section 4-205© of the Education Article of the *Annotated Code of Maryland*, this letter will serve to note the appeal of Ms. Suzanne Windsor to the Board of Education of Prince George's County from a May 7, 2012 decision of Ms. Elizabeth Davis, PGCPS Compliance Officer.
>
> Please be aware that at this point in time, Ms. Windsor will be representing herself before the Board of Education. Therefore, all correspondence should be sent directly to Ms. Windsor at the following address:
>
> Suzanne Windsor
> 2501 17th Street, NE
> Washington, DC 20018
>
> Thanks in advance for your assistance with this matter. If you have any questions, feel free to contact me at the above listed number."

[5] See Humphrey v. Moore, 375 U.S. 355 (1964). We do not regard the alleged statement made by a PGCEA representative in October, 2011, that Windsor had "a long standing personality issue not a professional one," as evidence of union hostility affecting her representation. Additionally, Windsor confirms that she did not learn of this alleged remark until "March of 2012," which places this allegation outside the 60 day filing period of May 26, 2012.

would not find that such decision constitutes an egregious disregard for union members' rights" as found in the previously cited Garcia v. Zenith case.

Likewise, we find Felton did not violate his duty of fair representation by telling Windsor that he could not advise her as to how to complain about him and his client, PGCEA. He did, however, advise her that he would assist her in going to the State (MSEA) organization.[6]

Finally, as to Windsor's complaint that PGCEA refused to represent her in regard to her racial complaints, even assuming arguendo that this allegation is timely, the record reveals that Felton did explain that the union's policy was not to take such cases in that an attorney is not necessary to present a complaint but that the expense is shouldered by the government. We see nothing wrong with such a policy as long as it is applied equally to all members.

We conclude that PGCEA analyzed the evidence before it and concluded that if it filed another appeal it would not prevail. We further conclude that PGCEA did not violate its duty of fair representation when it declined to represent her before the EEOC or another EEO agency. Finally, we conclude that PGCEA did not violate its duty of fair representation when Felton informed Windsor that he could not advise her further in regard to taking action against his client, PGCEA.

We conclude that PGCEA's decisions in this matter were neither arbitrary, discriminatory, nor made in bad faith. Therefore, we find that PGCEA did not violate its duty of fair representation and we DISMISS the charge against PGCEA.

[6] According to record evidence, Felton, on May 29, 2012, by email, informed Windsor: "However, if you have any particular specific concerns that you want to inform me about, I can let you know if there is anything the State organization (MSEA) could address for you."

ORDER

(1) PGCEA's Motion to Dismiss for untimeliness is GRANTED as to events occurring prior to May 26, 2012

(2) PGCEA's Motion to Dismiss for Untimeliness as to events occurring during the period from May 26, 2012 to July 26, 2012 is DENIED.

(3) Windsor's charge against PGCEA for violating Section 6-409 of the Education Article which prohibits interference with the right of public school employees to join or not to join a union was not supported by any evidence and therefore it will be DISMISSED.

(4) PGCEA's Motion to Dismiss Windsor's charge of breach of the duty of fair representation is GRANTED.

(5) Suzanne Windsor's request for relief is DENIED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATION BOARD

Seymour Strongin, Chairman

Robert H. Chanin, Member

Charles I. Ecker, Member

Donald P. Kopp, Member

Stuart O. Simms, Member

Glen Burnie, MD
October 3, 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).