

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *

JAMIE LEWIS, *

Charging Party, *

v. * PSLRB Case No. SV 2013-06

THE BALTIMORE CITY PUBLIC *
SCHOOLS ADMINISTRATORS AND *
SUPERVISORS ASSOCIATION, *

Charged Party. *

* * * * *

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

I. INTRODUCTION AND POSITIONS OF THE PARTIES

On September 7, 2012, Jamie Lewis (“Lewis”), a teacher with the Baltimore City Public Schools (“BCPS”), 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, Lewis alleges that her union, the Baltimore City Public Schools Administrators and Supervisors Association (“PSASA”) breached its “Duty of Fair Representation” in violation of Section 6-407(b) of the Education Article.¹

Lewis also charges PSASA 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 an employee organization.²

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

1. Forced by Baltimore City Public Schools (BCPSS) to work in hostile work environment created by Wanda Young, former Principal at Northeast Middle School during SY 11-12
2. Discriminated by Baltimore City Public Schools after filing a substantiated complaint on 12/7/11 against Wanda Young, former Principal at Northeast Middle School
3. Demoted by Kim Lewis, BCPSS Human Capital Officer on 6/29/12
4. Refused reassignment by Tenia Rogers, BCPSS Human Resource Manager on 7/6/12
5. Directed to remain home without pay by Tisha Edwards, BCPSS Chief of Staff on 7/12/12
6. Directed to remain home without pay by Jerome Jones, BCPSS Labor Relations Associate on 7/12/12
7. Evaluated by non-supervisor, Sean Conley, BCPSS Executive Director on 7/26/12

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.”

²Section 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 an employee organization).

8. Demoted by Kim Lewis, BCPSS Human Capital Officer on 8/16/12
9. Reassigned as Elementary/Middle School Teacher by Tenia Rogers, BCPSS Human Resource Manager on 8/21/12
10. Reduced salary of \$91,392.00 to \$75,348.00 w/o notification of change by Jerome Jones, BCPSS Labor Relations Associate on week of 9/4/12 after notification of EEOC Charge – Salary of \$75,348.00 was never previously discussed with me by anyone and is neither commiserate to my 17 years of experience and credentials in education (not even as a teacher)
11. Denied right to file a grievance against Baltimore City Public Schools by Jimmy Gittings, PSASA President on 7/18/12
12. Denied fair representation by Jimmy Gittings, PSASA Union President, who expressed to me on 7/18-19/12 that he had discussed my personnel matters with BCPSS Management without my prior knowledge
13. Denied request of service to have a formal meeting to discuss concerns by Jimmy Gittings, PSASA President on 7/19/12
14. Denied written request of services by Jimmy Gittings, PSASA Union President on 8/6/12 to resolve aforementioned concerns of unfair labor practices; although I have been paying union dues for the past 6 years”

The position of PSASA is as follows:

- (1) The first ten (10) paragraphs in Lewis’ charge involve allegations directed at Baltimore City Public Schools only and therefore PSASA declines to respond.
- (2) As to paragraphs 11 through 14, PSASA denies that it has violated Section 6-407(b) of the Education Article (i.e. the “Fair Representation” section).
- (3) In the concluding paragraph of PSASA’s Response/Answer, PSASA requests that “...Respondent be awarded its costs and attorneys’

fees....” However, PSASA fails to provide a legal argument as to under what authority the PSLRB is permitted to make such an award.

II. ANALYSIS

A. THE ALLEGED VIOLATION OF SECTION 6-409

In regard to Lewis’ charge that PSASA violated Section 6-409 of the Education Article, Lewis has failed to present any facts in support of her charge that her union activity or lack thereof was responsible for her complaints. As a result, Lewis’ charge alleging a violation of Section 6-409 will be DISMISSED.³

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

³ We are in agreement with PSASA that paragraphs 1 through 10 assert claims against the Baltimore City Public Schools (officially, the Baltimore City Board of School Commissioners) and they will therefore be DISMISSED as they relate to matters within the exclusive control of her employer.

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.”

While much 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.

A review of the above cases in conjunction with the evidence submitted convinces us that PSASA and its representative Jimmy Gittings did not violate Title 6, Section 6-407(b) of the Education Article.

The thrust of Lewis’ complaint involves her claim that PSASA, and its president, Jimmy Gittings, refused to file a grievance on her behalf, “discussed my personnel matters with BCPSS management without my prior knowledge,” denied her request “to have a formal meeting to discuss concerns by Jimmy Gittings,” and “denied written request of services...to resolve aforementioned concerns of unfair labor practices....”

According to PSASA, union president Gittings did not file a grievance against BCPS because after conducting an investigation regarding her reassignment, Mr. Gittings concluded that “he did not have a good faith basis to file a grievance.” Lewis does not deny that PSASA conducted an investigation. To the contrary, she in effect concedes that there was an investigation by complaining about the fact that Gittings “discussed my personnel matters with BCPS management without my prior knowledge.” PSASA further asserts that it discussed the facts of Lewis’ situation “with Baltimore City Public Schools’ management as part of his investigation to determine if a good faith basis

existed to assert a MOU violation.” It is the position of PSASA that Mr. Gittings thoroughly investigated Lewis’ complaint and the “circumstances surrounding her reassignment” and concluded that the union did not have a case. As to Lewis’ final charge, PSASA denies that it refused a “written request” for the services of Mr. Gittings to resolve unfair labor practices.

The crucial issue in this case is whether PSASA conducted an investigation and based on that investigation, made a decision that was neither arbitrary nor discriminatory. Or, as Section 6-407(b) states, was not based on “whether or not the employees are members of the employee organization.”

Lewis does not specifically allege that PSASA acted arbitrarily or discriminatorily, and union membership could not have been a factor in that Lewis states that she has “been paying union dues for the past 6 years.”

Thus, we conclude that the record evidence herein indicates that PSASA has fulfilled its statutory obligation of fairly representing Lewis. 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.

Here, Gittings and PSASA made a reasonable decision under the circumstances, that was neither arbitrary nor discriminatory, but was based on their interpretation of the collective bargaining agreement, that Lewis’ position was not a valid one and thus would not be grieved. We further find that PSASA’s decision was not based on Lewis’ union

membership or lack thereof, nor was it otherwise arbitrary and capricious. We would not find that such decision constitutes an egregious disregard for union members' rights.

III. CONCLUSION

We conclude that PSASA concluded that if it filed a formal grievance, it would not prevail.

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

IV. ORDER

- 1) PSASA's request that Lewis' complaint be dismissed is GRANTED.
- 2) PSASA's request that it be awarded its costs and attorneys' fees is DENIED for the reason that attorneys' fees are without basis on the record presented herein.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATION BOARD



Seymour Strongin, Chairman



Robert H. Chanin, Member



Charles I. Ecker, Member

Donald P. Kopp

Donald P. Kopp, Member

Stuart O. Simms

Stuart O. Simms, Member

Glen Burnie, MD
January 14, 2013

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).