

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: \*

BRIAN G. TALTOAN \*

Charging Party, \*

v. \*

PSLRB Case No. SV 2014-03

PUBLIC SCHOOL  
ADMINISTRATORS AND  
SUPERVISORS ASSOCIATION \*

Charged Party \*

\* \* \* \* \*

DECISION AND ORDER DENYING REQUEST FOR RELIEF  
AND DISMISSING CHARGE

I. INTRODUCTION

Brian G. Taltoan (“Charging Party”) is employed in a certificated position with the Baltimore City Board of School Commissioners (“City Board”). On July 22, 2013, he filed a Charge of Violation of Title 6, Subtitle 4 or Subtitle 5 of the Education Article (“Form PSLRB-05”), with the Public School Labor Relations Board (“PSLRB” or “Board”). 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, Charging Party alleges that the Public School Administrators and Supervisors Association (“PSASA”) breached its “duty of fair representation” in

violation of Section 6-407(b)<sup>1</sup> of the Education Article by failing to properly represent him in a pre-disciplinary hearing and in the grievance process.

## II. FINDINGS OF FACT<sup>2</sup>

Brian Taltoan (“Charging Party”) was employed as an Assistant Principal for the Baltimore City Board of School Commissioners (“City Board”). At all material times herein, Charging Party’s position was included in a bargaining unit for which the Public School Administrators and Supervisors Association (“PSASA”) is the exclusive representative.

In August 2012, Charging Party was assigned to work at Western High School. On January 11, 2013, Charging Party received a letter of reprimand from his supervisor, Principal Alisha Trusty, for “willful neglect of duty.” On January 22, 2013, Charging Party sent an email to City Board Labor Relations Manager, Jerome Jones, to which he attached a three-page letter challenging the reprimand and seeking its removal from his personnel file. Charging Party copied a number of individuals on his email, including PSASA President, Jimmy Gittings, PSASA Executive Director, Shirley Johnson, Western High School Executive Director, Roger Shaw, and City Board Chief Executive Officer, Andres Alonso.

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<sup>1</sup> 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.”

<sup>2</sup>The facts herein and all reasonable inferences drawn therefrom are considered in the light most favorable to the Charging Party.

Labor Relations Manager Jones responded to Charging Party by email dated January 22, 2013. He explained that “the first step to address your concern is to request a meeting with the Executive Director for your school.” Jones copied PSASA President Gittings, PSASA Executive Director Johnson, and Western High School Executive Director Shaw on his response.

On January 30, 2013, Charging Party received notice that Executive Director Shaw would be meeting with him to discuss the letter of reprimand. Charging Party thereupon sent an email to Shaw seeking permission to have a representative attend the meeting with him. Among those copied on Charging Party’s email were Labor Relations Manager Jones, PSASA President Gittings, and William Johnson (Charging Party’s private attorney).

In response to Charging Party’s January 30 email, PSASA President Gittings emailed Charging Party and Shaw stating, “[a]s of today, this is not a union matter! If concerns remain after the meeting this morning the union will make recommendations.” Copied on this email were Labor Relations Manager Jones, Principal Trusty, and Attorney William Johnson.

On February 14, 2013, Charging Party sent an email to PSASA Executive Director Johnson stating, “I am trying to locate a union grievance form, would you be able to forward me a copy today. Thank you in advance!” Johnson responded to Charging Party as follows: “The grievance is filled out by the union. In order to file a grievance it must be in violation of an article in our contract. The forms are kept here in our office.”

By letter dated February 18, 2013, Charging Party wrote to Shaw and Jones recounting their meeting of February 7, 2013, and describing his understanding of the grievance procedure. He stated, “[t]he process indicates that I have to respond within five school days of any written decision if the grievance is not resolved. I am formally submitting my written response to have my grievance moved to the next step.”

Charging Party went on to state:

As my meeting with Mr. Shaw was outlined as step 1, I am asking for clarity as to who step 2 would begin with or does this move to step 3 of the process. If the process is beyond Mr. Shaw, I ask that this letter be forwarded to the appropriate party immediately as to not delay the process. This is being submitted as an attachment electronically on February 19, 2013 as the submission date and time will reflect the email documentations.

Copied on Charging Party’s February 18 letter were PSASA Executive Director Johnson and Attorney William Johnson.

On February 19, 2013, Labor Relations Manager Jones responded to Charging Party:

Mr. Shaw is step two of the grievance process, Ms. Trusty is step one since she is your immediate supervisor. However, I am sure Mr. Shaw did not approach the meeting with the understanding this was a grievance meeting as he had not received a grievance from PSASA.

On February 22, 2013, Charging Party sent a number of documents related to his letter of reprimand to PSASA Executive Director Johnson. Charging Party did so in apparent furtherance of his desire to have Johnson attend a scheduled March 5, 2013 meeting concerning the reprimand.

On March 18, 2013, Charging Party sent an email to Executive Director Shaw and Labor Relations Manager Jones to which a letter was attached stating in part:

Based upon our 2<sup>nd</sup> meeting on March 5, 2013 and the notes that followed on Sunday March 10, 2013, where there was no resolution for the letter of reprimand I received. I am again submitting a grievance based upon the information below.

\* \* \*

As my meeting with Mr. Shaw was outlined as step 1, I am asking for clarity as to who step 2 would begin with or does this move to step 3 of the process. If the process is beyond Mr. Shaw, I ask that this letter be forwarded to the appropriate party as to not delay the process.

Charging Party copied Attorney William Johnson, PSASA Executive Director Johnson and PSASA President Gittings on this communication.

On March 19, 2013, Charging Party filed a grievance alleging that he “[r]eceived his mid-year conference write up one day late.”<sup>3</sup> On March 22, 2013, Charging Party sent an email to PSASA President Gittings stating the following:

I am following up on your 3/19/13 phone call. You stated you were going to follow-up with the grievance on 3/21/13. I am contacting you to find out where you are in the process, and what are the next steps and the timeline associated with the process.

On April 3, 2013, Charging Party sent an email to PSASA President Gittings recounting their discussion from the previous day in which Gittings had agreed to

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<sup>3</sup> Charging Party filed this grievance despite having received a March 14 letter from PSASA President Gittings advising him not to do so. Gittings’ letter stated in part, “I strongly recommend that we do not file a grievance because you received a copy of your mid-year conference a day late.” Gittings copied Trusty, Shaw and Jones on his letter.

“follow[] up with [Charging Party’s] grievance” and explained that the “grievance process may take as long as 4-to-5 months to be heard.”

By letter dated June 11, 2013, the City Board notified Charging Party that he was scheduled to attend a *Loudermill*<sup>4</sup> hearing on June 17, 2013. On June 13, 2013, Charging Party sent an email to Chief of Staff Tisha Edwards<sup>5</sup> requesting to meet with her prior to the *Loudermill* hearing. In the email, Charging Party also recounted his efforts to file a grievance over the letter of reprimand:

Originally I received a letter of reprimand in January 2013 from Principal Alisha Trusty stating I willfully neglected my duties, which I filed a grievance and requested an investigation .... As of this date the grievance process has not been followed properly ....

Charging Party copied Attorney William Johnson on the Edwards email.

Edwards responded to Charging Party by letter dated June 13, 2013. She explained that it would “not be appropriate for [her] to comment” on Charging Party’s case, and encouraged him to contact his union representative if he had “any questions or concerns about this process.”

Charging Party attended the June 17, 2013 *Loudermill* hearing with Attorney Johnson. There is no indication that a PSASA representative attended the hearing, or that

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<sup>4</sup> A *Loudermill* hearing provides tenured public employees with notice of a proposed disciplinary action and an opportunity to be heard prior to discipline being imposed. *See Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532 (1984) (public employees dismissible only for cause have a property interest in continued employment which is subject to deprivation only through procedures that satisfy the Due Process Clause of the Fourteenth Amendment); *see also Demesme v. Montgomery County Gov’t*, 63 F. Supp. 2d 678 (D. Md. 1999), *aff’d*, 208 F.3d 208 (4<sup>th</sup> Cir. 2000) (applying *Loudermill* protections to involuntary demotion).

<sup>5</sup> Tisha Edwards is now the City Board’s Interim Chief Executive Officer.

Charging Party requested such a representative to attend. On June 28, 2013, the City Board notified Charging Party that “today will be your last day reporting to Western High School,” and that “[e]ffective July 1, 2013 you are reassigned to a teacher level position with commensurate pay ....” On July 22, 2013, Charging Party filed his Charge with the PSLRB.

### III. POSITIONS OF THE PARTIES

Charging Party claims that PSASA breached its duty of fair representation by failing to “follow-up with [his] prior grievance request,” and by not providing assistance to him in connection with his *Loudermill* hearing. He also claims that the structure of PSASA “may cause a conflict of interest and information shared with the [PSASA] President has been shared with the parties I filed a grievance [sic] without my authorization.”

PSASA denies Charging Party’s claims and maintains that he has failed to allege any violation of Title 6, Subtitle 4 or 5 of the Education Article. In this regard, PSASA contends that Charging Party elected to be represented by his private attorney at the *Loudermill* hearing, and that the breach of duty allegation is therefore without merit. PSASA also rejects the assertion that any alleged conflict of interest constitutes a breach of its duty of fair representation, and maintains that the investigation and/or settlement of grievances often requires that information be shared with individuals against whom allegations have been made. Finally, PSASA notes that it filed two grievances on

Charging Party’s behalf—the first relating to his mid-year conference evaluation, and the second concerning his subsequent reassignment to a teacher position.

#### IV. ANALYSIS

Section 6-407(b) of the Education Article provides that “[a]n 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.”

The statute therefore codifies the “duty of fair representation” owed by an exclusive bargaining representative “to serve the interests of all members without hostility or discrimination,” “to exercise its discretion with complete good faith and honesty,” and “to avoid arbitrary conduct.” *Sylvia Walker, et al. v. The Baltimore Teachers Union, et al.*, PSLRB Case No. SV 2012-10 (2012) (quoting *Stanley v. American Federation of State and Municipal Employees, Local No. 553, et al.*, 165 Md. App. 1 (2005) (citations omitted)).

##### A. Loudermill Hearing

For purposes of Charging Party’s claims regarding the *Loudermill* hearing, we need not determine if PSASA complied with the substantive standard imposed by the duty of fair representation. This is because the duty of fair representation does not apply in situations where the exclusive representative is not representing an employee. *See McConnell v. AFSCME, Local 1693*, PSLRB Case No. SV 2013-07 (2013).



The PSLRB's ruling in *McConnell* is consistent with decisions of both the courts and other state labor relations boards which have held that a union's duty of fair representation does not extend to matters for which it is not acting as an employee's representative. *See, e.g., Barrett v Ebasco*, 868 F.2d 170 (5th Cir. 1989) (“[i]f a union does not serve as the exclusive agent for the members of the bargaining unit with respect to a particular matter, there is no corresponding duty of fair representation.”); *Simo v. Union of Needletrades*, 316 F.3d 974, 983 (9th Cir. 2003) (duty of fair representation does not attach if union is not acting as employee's exclusive representative); *Parisi v. California State Employees Association*, CA PERB Case No. S-CO-85-S (1989) (no duty of fair representation where bargaining unit members may seek representation outside of the exclusive representative).

In this case, PSASA did not serve as Charging Party's exclusive representative in the *Loudermill* hearing. Instead, as already stated, Charging Party was represented by his own attorney. As a consequence, PSASA owed no duty of fair representation to Charging Party in the context of the *Loudermill* hearing.

B. Grievance Processing

As to Charging Party's allegations regarding the processing of his grievance over the January 11, 2013 reprimand, we need not determine whether PSASA breached its duty of fair representation in violation of Section 6-407(b) of the Education Article. As we explain below, this is because Charging Party has failed to file his Charge in a timely fashion.

The PSLRB's Regulations provide that a Charge "must be filed with the Executive Director ... within 60 days after the charging party knew, or reasonably should have known, of the statutory violation alleged." Code of Maryland Regulations (COMAR) 14.34.02.01B.

In the case now before us, Charging Party's claims about the processing of his reprimand grievance arise out of events which are alleged to have occurred in January through April, 2013. Charging Party does not allege any act or omission on the part of PSASA with regard to the grievance subsequent to this time period.

On these facts, and in the absence of any claim by Charging Party that PSASA committed a statutory violation within the 60-day limitations period, we find that Charging Party "knew, or reasonably should have known, of the statutory violation alleged" before July 22, 2013, the date on which he filed his Charge. Because Charging Party did not file his Charge until after the 60-day limitations period had expired, it is time-barred and dismissed on this basis.

### C. Conflict of Interest and Related Matters

We also reject Charging Party's claim that the structure of PSASA "may cause a conflict of interest and information shared with the [PSASA] President has been shared with the parties I filed a grievance [*sic*] without my authorization." First, the PSLRB does not have jurisdiction over structural "conflict of interest" matters. Second, the allegation that PSASA shared information in the context of processing Charging Party's

grievance—without more—does not constitute a violation of the Title 6, Subtitle 4 of the Education Article.

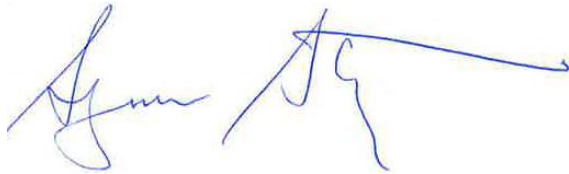
V. CONCLUSIONS OF LAW

For the reasons stated herein, we conclude that Charging Party failed to state a claim for a violation of his rights with regard to the *Loudermill* hearing, that he did not assert his claims concerning the processing of his grievance over the January 11, 2013 reprimand in a timely fashion, and that he failed to allege a violation of the statute with regard to his claims regarding the structural conflict of interest and sharing of information.

ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2014-03, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



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Seymour Strongin, Chairman



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Robert H. Chanin, Member



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Charles I. Ecker, Member

*Stuart O. Simms*

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Stuart O. Simms, Member

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Donald W. Harmon, Member

Glen Burnie, MD  
October 22, 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).