

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *

MARK J. RESNICK, *

Charging Party, *

v. * PSLRB Case No. SV 2014-06

ASSOCIATION OF SUPERVISORY *

AND ADMINISTRATIVE SCHOOL *

PERSONNEL *

Charged Party *

* * * * *

DECISION AND ORDER DENYING REQUEST FOR RELIEF
AND DISMISSING CHARGE

I. INTRODUCTION

On October 16, 2013, Mark J. Resnick (“Charging Party”), a non-certificated employee of the Prince George’s County Board of Education (“County Board”), 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”).¹ 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 claims that his union, the Association of

¹ Although the Charge is dated “8/16/2013,” it was not filed with the PSLRB until October 16, 2013.

Supervisory and Administrative School Personnel (“ASASP”), violated Section 6-509(b) (“Fair Representation”), Section 6-503(a) (“Right of public school employee to form, join, and participate in the activities of an employee organization”), and Section 6-504(c) – (e) (“Service or representation fee”) of the Education Article by: (1) failing to timely provide him with information on the fees paid to an ASASP consultant; (2) failing to timely provide him with information on the contract and benefits package of ASASP employees; (3) improperly establishing a representation fee that is substantially equivalent to the amount of union dues; (4) removing him from membership in ASASP, and; (5) denying him readmission to membership in ASASP.

II. FINDINGS OF FACT

The facts in this case are largely not in dispute and may be summarized as follows. ASASP represents a bargaining unit of non-certificated employees who work for the County Board. Charging Party was a member of ASASP. Beginning in September 2012 and continuing through May 2013, Charging Party raised issues and engaged in communications with ASASP concerning its payment to an outside consultant, the payout of accrued leave to ASASP’s Executive Director, and his use of the County Board’s email system.

On April 30, 2013, Charging Party states that he received a letter from the ASASP Board of Directors which provides, in pertinent part, that it was written “in response to [Charging Party’s] most recent letter ... expressing [Charging Party’s] dissatisfaction with the union and ... possible withdrawal.” The letter also provided Charging Party

with instructions on how to withdraw from representation in accordance with Section 2.05 of the collective bargaining agreement. By letter dated June 24, 2013, ASASP notified Charging Party that “effective immediately, you will no longer be required to remit union dues from your paycheck, as ASASP will honor your request for resignation.” On July 18, 2013, Charging Party sent an email to Jones and Johnson stating that he “did not request to withdraw from the ASASP.” Charging Party states that he did not receive a response to his email from either Jones or Johnson. Charging Party indicates that he thereafter sent another email to Jones and Johnson restating that he “did not request to withdraw from the ASASP.”

On August 20, 2013, Charging Party states that he submitted a nomination form to ASASP in which he nominated himself for a position on the ASASP Board. Charging Party indicates that he received an email from the ASASP Nominations and Elections Committee on August 27, 2013, stating that he was “ineligible” to run for office because he was not a “dues paying member.”

After several communications with ASASP in which Charging Party attempted to resolve this issue, Charging Party states that he received an email from the County Board payroll office on September 3, 2013, advising that his ASASP membership had been reinstated and that payroll deductions for ASASP dues would again be withheld from his paycheck.²

On October 7, 2013, Charging Party exchanged a series of emails with the County

² Charging Party has submitted a copy of his payroll invoice for the period of August 24 through September 6, 2013, indicating a biweekly payroll deduction for “Dues ASASP II” in the amount of \$41.25. The total year-to-date dues deduction is listed as \$647.66.

Board payroll office inquiring about the status of his membership in ASASP. In one such email, the payroll office informed Charging Party that ASASP had confirmed that he was “no longer a member of the union”

By letter dated October 8, 2013, ASASP President Jones advised Charging Party on the process to follow in order to have his membership reinstated:

In other words, an employee who previously withdrew from the union, is required to submit his or her request to a change in the membership status directly to ASASP for submission to Human Resources department, and not to the Payroll and Benefits or any other department.

On October 15, 2013, Charging Party received an email from the ASASP President stating that Charging Party is “not a member of this union.” Charging Party then filed his Charge with the PSLRB on October 16, 2013.

III. POSITIONS OF THE PARTIES

Charging Party contends that ASASP violated his rights under Title 6, Subtitle 5, of the Education Article by failing to provide him information on the fees paid to an ASASP consultant, and on the benefits package of ASASP employees. Charging Party also contends that ASASP improperly established a representation fee that is substantially equivalent to the amount of union dues, that it delayed and/or refused to respond to his inquiries concerning internal union financial matters, and that it wrongfully removed him from membership in ASASP despite the fact that he never sought to resign his membership, and never gave “notice in writing to Human Resources” of his intent to resign.

ASASP maintains that it treated Charging Party fairly and in a non-discriminatory fashion, and that any alleged violations asserted by Charging Party prior to August 16, 2013, are time-barred having been filed outside the limitations period. As to any allegations that are not found to be time-barred, ASASP contends that Charging Party has failed to establish that it interfered with his “right to form, join and participate in the activities of [ASASP],” or otherwise “failed to discharge its duty of fair representation” to Charging Party.

More specifically, ASASP states that it allowed Charging Party the opportunity to address concerns about contractual relationships with vendors and financial issues concerning the payment of leave to ASASP employees upon their resignation. ASASP also states that Charging Party has failed to establish that it interfered with his statutory rights concerning his usage of the County Board’s email system. ASASP further contends that Charging Party was on notice beginning August 29, 2013, as to how to restore his membership status, and that his issues concerning the representation fee are without merit given that the fee was appropriately established.

IV. ANALYSIS

Section 6-509(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)).

1. ASASP Consultant Fees; Leave Issues; Financial Records; Representation Fees; Email Access

For present purposes, we need not determine whether ASASP has complied with the substantive standard imposed by the duty of fair representation, or by other provisions of Title 6, Subtitle 5, of the Education Article. As we explain below, this is because the matters at issue—i.e., fees paid to ASASP consultants, ASASP staff leave and benefits issues, denial of access to ASASP financial records, the representation fee assessed to non-members, and interference with email access—all occurred more than 60 days prior to the date on which Charging Party filed his Charge with the PSLRB.

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. Here, Charging Party’s allegations concerning the matters identified above arose out of events that occurred between September 2012 and July 2013. Charging Party therefore knew, or reasonably should have known, of these matters more than 60 days prior to the date on which he filed his Charge.

Even if Charging Party had timely challenged these matters, we would still

dismiss the Charge as they are not within the scope of the duty of fair representation and do not otherwise constitute violations of Title 6, Subtitle 5. In other words, these matters do not impact Charging Party's relationship with his employer, or relate to his "salar[y], wages, hours, and other working conditions, including the discipline and discharge of an employee for just cause." Md. Code Ann., Educ. § 6-510(c)(1).

This determination is consistent with decisions of public sector labor relations boards in other states that have addressed claims similar to those advanced by Charging Party. These decisions have held that such claims fall under the general rubric of "internal union affairs" over which the boards either do not have jurisdiction, or which do not constitute a breach of the duty of fair representation. Thus, for example, in *West Branch-Rose City Education Association and Michigan Education Association*, 17 MPER ¶25, 2004 MI ERC Lexis 216 (2004), the Michigan Employment Relations Commission ruled that "[a] union's duty of fair representation extends to union conduct in representing employees in their relationship with their employer, such as negotiating a collective bargaining agreement or resolving a grievance, and in related decision making procedures." "The duty does not apply to matters that are strictly internal union affairs, which do not impact the relationship of bargaining unit members to their employer."

Likewise, in *Communication Workers of America v. James Williams*, 21 NJPER ¶26.098, NJ PERC Lexis 187 (1995), the New Jersey Public Employment Relations Commission rejected a complaint filed by a bargaining unit member who sought access to the union's "audited financial records," challenged the union's practice of "reimbursing its officials for questionable expenditures," and claimed that the union

“threaten[ed] employees ... because they questioned its expenditures.” In refusing to consider the employee’s complaint, the Commission explained that his allegations “involve a continuing internal union disagreement ... rather than any issue of unfair representation in contract negotiations or grievance processing.”

On the issue of whether a union violated its duty of fair representation by failing to allow a representation fee payer to serve on its leadership council, the California Public Employment Relations Board affirmed the dismissal of a charge on the basis that it “has limited jurisdiction over cases involving internal union affairs.” *Maaskant v. Kern High Faculty Association, CTA/NEA*, 2007 Cal. PERB Lexis 14 (2007). In reaching this conclusion, the Board explained that it has traditionally “refused to interfere in the internal affairs of an employee organization unless those affairs impact the member’s relationship with his/her employer.”

2. Revocation of ASASP Membership

Charging Party states that he was not aware that ASASP revoked his membership until October 15, 2013. In this regard, Charging Party claims that he received an email that day from the County Board’s payroll office stating “[t]he Union informed me that you are not a member.”³ Charging Party maintains that this was contrary to the information previously provided to him by the County Board payroll office on September 3, 2013, i.e., that his union membership had been restored at that time. Indeed, the evidence shows that ASASP dues were withheld from Charging Party’s paycheck as late

³ In fact, the email from the County Board’s payroll office is dated October 7, 2013. However, Charging Party did receive an email from the ASASP President on October 15, 2013, stating “[y]ou are not a member of this union.”

as the biweekly pay period ending September 6, 2013.

Accordingly, while Charging Party received notice from ASASP by letter dated June 24, 2013, that “effective immediately, you will no longer be required to remit union dues from your paycheck, as ASASP will honor your request for resignation,” we believe that the conflicting information Charging Party received from the County Board payroll office may have created genuine confusion on his part as to the status of his membership in ASASP. We therefore do not find that Charging Party was untimely in challenging the decision of ASASP to remove him from membership.

It is an entirely different matter, however, as to whether Charging Party has established a statutory violation based on his removal from membership. In this regard, Section 6-503(b) is the only provision in the collective bargaining statute restricting the right of an exclusive representative to remove an individual from membership. It states as follows:

An employee organization may establish reasonable restrictions as to who may join and reasonable provisions for the dismissal of individuals from membership, except that these restrictions and provisions may not discriminate with regard to the terms or conditions of membership because of race, color, marital status, creed, sex, age, or national origin.

Here, Charging Party has not alleged or offered any evidence that ASASP removed him from membership in violation of Section 6-503(b). In the absence of such allegation or evidence, we find that ASASP’s decision to revoke Charging Party’s membership does not constitute a violation of Title 6, Subtitle 5, of the Education Article.

Nor has it been established that ASASP restricted Charging Party’s right to restore

his membership in violation of Section 6-503(b). Not only is there no evidence to support such an allegation, we note that ASASP's November 13, 2013 response to the Charge filed with the PSLRB included an October 8, 2013 letter from the ASASP President to Charging Party explaining the process to follow in order to have his membership reinstated:

In other words, an employee who previously withdrew from the union, is required to submit his or her request to a change in the membership status directly to ASASP for submission to Human Resources department, and not to the Payroll and Benefits or any other department.

In light of the above, and in the absence of evidence that ASASP violated Charging Party's rights under Section 6-503(b), we find no basis for concluding that it wrongfully denied Charging Party's request for reinstatement of membership.⁴

V. CONCLUSIONS OF LAW

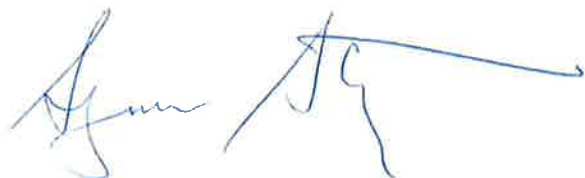
For the reasons stated herein, we conclude that ASASP did not violate its duty of fair representation to Charging Party, or otherwise violate his rights under Title 6, Subtitle 5, and therefore DISMISS the charge.

ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2014-06, IS DISMISSED.

⁴ We recognize that communications from ASASP and its attorney may have sent mixed signals to Charging Party with regard to the reinstatement of his membership. Should ASASP refuse to reinstate Charging Party's membership consistent with its representations in the October 8, 2013 letter, Charging Party may elect to file a new Charge with the PSLRB based on this refusal.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



Seymour Strongin, Chairman



Robert H. Chanin, Member



Charles I. Ecker, Member



Donald W. Harmon, Member

Annapolis, MD
January 6, 2014

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, Section 10-222 (Administrative Procedure Act—Contested Cases), and Maryland Rule 7-201 *et seq.* (Judicial Review of Administrative Agency Decisions).