STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:	*	
MYRNA ROBERTS	*	
Charging Party,	*	
v.	*	PSLRB Case No. SV 2014-11
	*	
PRINCE GEORGE'S COUNTY EDUCATORS' ASSOCIATION	*	
Charged Party	*	

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DECISION AND ORDER DENYING REQUEST FOR RELIEF
AND DISMISSING CHARGE

I. INTRODUCTION

Myrna Roberts ("Charging Party") is employed in a certificated position with the Prince George's County Board of Education ("County Board"). On December 18, 2013,[1] she 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 ("Board" or "PSLRB"). Form PSLRB-05 reflects the authority granted to the PSLRB by Section 2-205(e)(4)(i) of the

[1] Charging Party used a single PSLRB Form-05 to file her December 18 Charge against Crossland High School, the County Board and PGCEA. Upon notice from the PSLRB that "a separate form must be filed for each party," Charging Party requested that the December 18 Charge be filed against the Crossland High School, and then filed two separate Charges against the County Board and PGCEA on December 20, 2013.

Education Article to "decide any controversy or dispute arising under Title 6, Subtitle 4 or Subtitle 5 of this Article."

In her Charge, Charging Party alleges that her union, the Prince George's County Educators' Association ("PGCEA"), violated Sections 6-407(b)[2] and 6-409[3] of the Education Article in connection with its representation of her in a *Loudermill* hearing.[4]

II. FINDINGS OF FACT

Charging Party has been employed as a Mathematics teacher at Crossland High School since 1999. Charging Party states that she received notice of a *Loudermill* hearing scheduled for October 23, 2013. Charging Party indicates that she attended the hearing with her PGCEA representative, and was informed by the County Board that her "Independent Medical Evaluation (IME) was denied," and of the "schools [sic] allegations and [her] past behavior of unprofessionalism dating back to 1999." Charging Party also states that "the school read some evidence into the record" at the hearing, but that neither she nor her

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[2] 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."

[3] 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 §§ 6-402 and 6-403 of this subtitle."

[4] A *Loudermill* hearing provides tenured public employees with "oral or written notice of the charges against [them], an explanation of the employer's evidence, and an opportunity to present [their] side of the story" 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).

PGCEA representative "were provided a copy of this evidence until it was mailed to [her] on November 19, 2013."

At the conclusion of the hearing, Charging Party states that she was asked by the County Board to respond to the allegations concerning her past behavior. Charging Party indicates that she was "unable to comment on any of the allegations" because she "d[id] not have the documents for review." Charging Party states that the County Board then notified her that she was being transferred "to an alternative site or to the 'John E. Howard' building."

By letter dated October 24, 2013, PGCEA contacted the County Board on Charging Party's behalf requesting that it provide her "with a copy of any and all personnel records" in the County Board's "custody, possession or control, concerning her employment with the [County Board]."

On November 19, 2013, PGCEA received notice from Charging Party's private legal counsel that he had been retained to represent her in connection with the issues arising out of the *Loudermill* hearing. To this end, Charging Party's legal counsel stated that he was serving as Charging Party's "legal representative in all matters concerning her case, be that be against the PG County School System, at any Loudermill or any and all subsequent hearings; and if need be against the union for unfair representation."

III. POSITIONS OF THE PARTIES

Charging Party contends that PGCEA failed to inform her about the nature of the *Loudermill* hearing or its ramifications in advance of the hearing. More specifically, Charging Party alleges that PGCEA did not prepare her for the hearing or discuss any

evidence with Charging Party prior to the hearing. Charging Party also contends that she was not provided a copy of this evidence at the hearing. While Charging Party states that some documentary evidence was mailed to her on November 19, 2013, she notes that there were numerous other documents referred to during the October 23 hearing that were never sent to her at all. Charging Party claims that PGCEA's actions in connection with these matters failed to "recognize its responsibility to represent [me] fully and equally...." in accordance with Article 2.03 of the Negotiated Agreement between PGCEA and the County Board.

PGCEA maintains that it provided appropriate representation to Charging Party until she voluntary elected to retain private legal counsel to represent her in the *Loudermill* hearing and related matters. PGCEA also indicates that Charging Party had been given an opportunity to respond "in writing" to the allegations against her prior to obtaining private counsel but that she did not avail herself of this opportunity. PGCEA also suggests that Charging Party may be confused as to the nature of her rights in a *Loudermill* hearing, and rejects the notion that it subjected her to discrimination or unequal treatment in violation of Section 6-409 of the Education Article.

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)).

As to Charging Party's claim that PGCEA breached its duty of fair representation by failing to discuss the evidence with her in advance of the *Loudermill* hearing, she has not pointed to any provision in the Negotiated Agreement, or identified any rule, regulation or policy, that would entitle PGCEA to receive evidence in advance of the hearing. Nor have the federal appeals courts ruled that such advance notice is required. Thus, for example, in *Gniotek v. City of Philadelphia*, 808 F.2d 241, 244 (3d Cir. 1986), cert. denied, 481 U.S. 1050, 107 S. Ct. 2183, 95 L. Ed. 2d 839 (1987), the Third Circuit Court of Appeals considered the propriety of a *Loudermill* hearing in which an employee received "no advance notice" of the charges or evidence against him but was instead notified of these matters at the hearing itself. According to the court, "[l]ack of advance notice … does not constitute a per se violation of due process." *See also Linton v. Frederick County Bd. of County Comm'rs*, 964 F.2d 1436 (4th Cir. 1992) (documentary evidence need not be provided at *Loudermill*-type hearing); *Schmidt v. Creedon*, 639 F.3d 587 (3d Cir. 2011) ("[a]n employee is generally not entitled to notice of the reasons for his discharge in advance of a [*Loudermill*-type] hearing.").

Separately, we believe that Charging Party's claim that PGCEA did not properly prepare her for the hearing reveals a misunderstanding of the *Loudermill* hearing process. As the U.S. Supreme Court explained, a *Loudermill* hearing does not require "a full evidentiary hearing …" and "need not definitively resolve the propriety" of any proposed disciplinary

sanction. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 545-546 (1985). Instead, the hearing "should be an initial check against mistaken decisions -- essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action." *Id.* At its essence, therefore, all that is required in a *Loudermill* hearing are "notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement." *Id.* Here, the evidence indicates that Charging Party received such an opportunity. Moreover, there is no indication that any advance preparation – as limited as that may have been given the absence of any obligation to provide evidence prior to the hearing – would have materially impacted the outcome of the hearing.

More fundamentally, Charging Party has not explained why the duty of fair representation should extend to PGCEA's actions in the context of the *Loudermill* hearing. No evidence has been presented that the hearing derives from the Negotiated Agreement or PGCEA's exclusive authority to negotiate and administer that agreement. As such, there is no basis for extending the duty of fair representation to PGCEA in connection with the hearing. *See McConnell v. AFSCME, Local 1693*, PSLRB Case No. SV 2013-07 (2013) ("the duty of fair representation stems from the union's grant of exclusive authority to negotiate and administer collective bargaining agreements covering bargaining unit employees … [and] attaches only in matters over which the union exercises this exclusive grant of authority.").

For this reason, public sector labor relations boards in other states have declined to impose the duty of fair representation on unions representing bargaining unit members in *Loudermill* hearings. *See, e.g., Glover v. IBEW, Local 46*, 2001 WA PERC Lexis (2001)

(Washington Public Employment Relations Commission ruling that its jurisdiction in a duty of fair representation case does not extend "to enforce[ing] the constitutional due process rights on which *Loudermill* is based."); *Finnegan v. Amalgamated Transit Union*, 20 FPER ¶ 25088 (1994), aff'd, 20 FPER ¶ 25120 (1994) (Florida Public Employment Relations Commission ruling that union had no duty to represent employee in non-contractual *Loudermill*-type meeting).

To the extent Charging Party contends that PGCEA breached its duty of fair representation by failing to obtain documentation of the charges from the County Board during the hearing, this claim must also fail. As the Fourth Circuit Court of Appeals has explained, "[d]ue process does not mandate that all evidence on a charge or even the documentary evidence be provided, only that such descriptive explanation be afforded as to permit [an individual] to identify the conduct giving rise to the dismissal and thereby to enable him to make a response." *Linton v. Frederick County Bd. of County Comm'rs*, 964 F.2d 1436 (4th Cir. 1992).

In the matter now before us, Charging Party acknowledges that the County Board provided her with descriptive information about the charges and gave her an opportunity to respond to them. Charging Party does not contend that the charges were not specific, that she did not understand the charges, or that she needed additional time in which to respond to them. Indeed, the only reason offered by Charging Party for not responding at the hearing is that the documentary evidence supporting the charges was not provided to her.

In short, Charging Party has not established that PGCEA breached its duty of fair representation by failure to prepare for the hearing, failure to discuss any evidence with

Charging Party prior to the hearing, or failure to secure copies of the documentary evidence during the hearing.[5]

V. CONCLUSIONS OF LAW

For the reason set forth herein, we conclude that Charging Party has failed to establish a violation of Sections 6-407(b) or 6-409 of the Education Article, and therefore DISMISS the Charge.

ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2014-11, IS DISMISSED.

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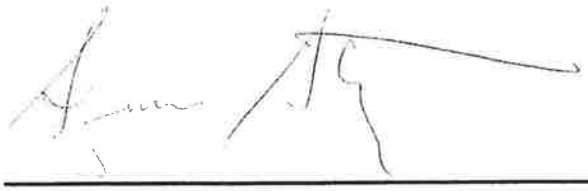
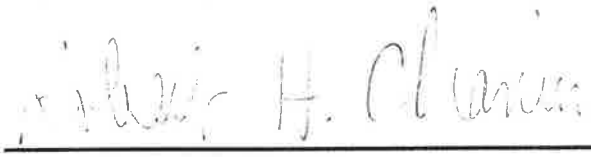
[5] We reject Charging Party's claim that PGCEA violated Section 6-409 of the Education Article as there is no evidence that PGCEA took any action against Charging Party based on the exercise of her rights under Sections 6-402 and 6-403. We also decline Charging Party's invitation to interpret the Negotiated Agreement in deciding whether PGCEA has violated its provisions. As the U.S. Supreme Court explained in its seminal Steelworkers Trilogy, "the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for." *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960).

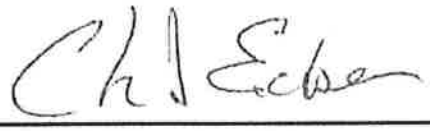
BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



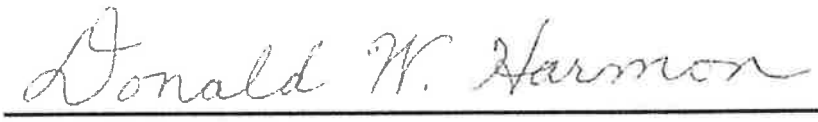
Seymour Strongin, Chairman



Robert H. Chanin, Member



Charles I. Ecker, Member



Donald W. Harmon, Member

Annapolis, MD
January 13, 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).