

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *

TIOMBE M. OLUMIJI, *

Charging Party *

v. *

PSLRB Case No. SV 2015-01

THE BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS, *

*

Charged Party *

* * * * *

DECISION AND ORDER
GRANTING MOTION TO DISMISS

I. INTRODUCTION

On August 5, 2014, Tiombe M. Olumiji (“Charging Party”), a certificated employee of the Baltimore City Board of School Commissioners (“City 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”). Form PSLRB-05 reflects the authority granted to the PSLRB by § 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 her Charge, Olumiji claims that the City Board violated Education Article §§ 6-403, 6-407(b), and 6-409, and also failed to communicate certain policies pertaining to

her employment. Olumiji's claims against the City Board relate to her unsuccessful efforts to find placement as an Assistant Principal for the 2014-2015 school-year. The City Board has filed a motion to dismiss on grounds that Olumiji's Charge is essentially an appeal from a transfer decision, which, according to the City Board, the PSLRB does not have jurisdiction to review, and on grounds that Olumiji's Charge fails to state a claim for which relief can be granted.¹

II. STATEMENT OF FACTS²

Olumiji was placed in a pool of surplus administrators. In this capacity, Olumiji was given several assignments during the 2013-2014 school-year, including assistant principal assignments. During the period of May 2013 to July 2014, Olumiji sought assistance from City Board personnel in obtaining an assistant principal position, other than in a surplus capacity. During this period, she was represented by the Public School Administrators and Supervisors Association (PSASA), the exclusive representative for Unit II employees of the City Board.³

¹ The PSLRB sought a response from Olumiji to the City Board's motion to dismiss. Olumiji filed a response on September 29, 2014.

² In deciding whether to grant the City Board's motion to dismiss, we assume the truth of all well-pleaded facts in Olumiji's Charge. Accordingly, this part of our decision is more properly styled a "Statement of Facts," as opposed to "Findings of Fact."

³ On the Form PSLRB-05 filed in this case, Olumiji indicates that both the City Board and an "Employee Organization" are Charged Parties. Subsequent to the filing of the instant Charge, Olumiji filed a separate charge, PSLRB Case No. SV 2015-02, related to her placement for the 2014-2015 school-year in which she names only PSASA as the Charged Party. Olumiji has confirmed with the Executive Director of the PSLRB that she intends the instant Charge to name only the City Board as Charged Party. Accordingly, the PSLRB's decision in this case adjudicates only claims made by Olumiji against the City Board.

In support of her Charge, Olumiji has provided copies of numerous e-mails and accounts of other communications from May 2013 to July 2014 between her and City Board personnel. The bulk of these communications contain questions from Olumiji related to her efforts to find an assistant principal position and the responses thereto of City Board personnel. Tenia Rogers, “Human Capital Manager,” in the City Board’s Office of Human Capital, had the most communications with Olumiji regarding her search for an assistant principal position. The two of them discussed the matter by telephone in August 2013 and during three meetings in September 2013, March 2014, and June 2014.

Jimmy Gittings, President of PSASA, communicated with Rogers regarding Olumiji’s efforts to find an assistant principal position. The first such communication occurred in July 2013, with subsequent communications taking place in May 2014. On May 20, 2014, Gittings wrote to Rogers expressing support for Olumiji’s request for a meeting and asking that such be scheduled “as soon as possible to assure Ms. Olumiji that she has an administrative position for the upcoming year.”

A recurring request of Olumiji was for a vacancy list of assistant principal openings and their locations; this was one of her “primary concerns.” Rogers told Olumiji that the vacancy list, as well as most of the assistance that the Office of Human Capital could provide Olumiji, was contained in “iRecruitment” postings. Olumiji explained that the vacancy list posted on “iRecruitment” did not provide the locations of the openings, which Olumiji wanted so that she could contact schools directly. As early as September 2013, Rogers offered to provide Olumiji with a vacancy list with location information;

Rogers provided one such list in June 2014 and another one in July 2014. When Olumiji contacted the schools on the lists, the responses she received were that the assistant principal vacancies had either been filled or were non-existent.

Olumiji was ultimately dissatisfied with the assistance she received from City Board personnel. With respect to her dissatisfaction, in addition to the delay in receiving vacancy lists with location information, Olumiji alleges the following: that she was not informed until June 2014 that “Executive Directors” facilitated placement for surplus employees (the Executive Director assigned to Olumiji’s “Network” had retired); that her questions about how new assistant principals received vacancy information and whether she was on a list of surplus assistant principals were “not really answered”; and, generally, that she did not receive significant assistance beyond what was available through “iRecruitment” postings. Olumiji acknowledges that as early as September 2013 Rogers gave advice to Olumiji regarding her efforts to find placement as an assistant principal, including that Olumiji should continue to apply through “iRecruitment,” that the best time to look for vacancies was in the Spring, and that Olumiji should obtain current references and evaluations.

On June 17, 2014, Gittings filed a grievance alleging that “opportunities have not been provided to Tiombe for other job offers” and seeking as relief “a job equivalent to her present job of Acad. Dean.” By letter dated June 27, 2014, the City Board notified Olumiji that she was to be reassigned at a teacher level position effective July 1, 2014, a possibility that Rogers had raised in an earlier conversation with Olumiji in March 2014. In the same notice, Olumiji was encouraged to utilize the services of the Office of Human

Capital in applying for “any position” for which she was qualified. In response, Olumiji sent an e-mail to Rogers and other City Board personnel asking about the status of her pay and whether she could use accrued vacation as a form of pay while waiting for her 2014-2015 assignment. She did not receive a response.

III. POSITIONS OF THE PARTIES

In her Charge, Olumiji alleges a violation of Education Article §§ 6-403, 6-407(b), and 6-409. As discussed more fully below, § 6-403 protects a public school employee’s right to refuse to join or participate in the activities of employee organizations. Section 6-407(b), codifying the duty of fair representation, requires employee organizations to represent all employees fairly, without discrimination, and regardless of union membership. And § 6-409 prohibits public school employers and employee organizations from taking adverse action against employees “because of” their exercise of rights under Education Article §§ 6-402 and 6-403. Olumiji also alleges a “[f]ailure to communicate policies, procedures and/or information pertaining to employment, pay and compensation.”

As a remedy, Olumiji requests that the PSLRB order the following: 1) that the City Board reinstate her to her “position, benefits and pay for the 2014-15 school year (Academic Dean)”⁴; 2) that the City Board “actively support, provide current information about and communicate pertinent opportunities” for comparable positions; 3) that the City Board communicate “policies, procedures and information pertaining to

⁴ While the titles “Academic Dean” and “Assistant Principal” might not be fully interchangeable, for our purposes there is no relevant distinction.

employment, pay and compensation”; and 4) that the City Board “meet with employee [sic] to discuss questions/concerns as appropriate.”

The City Board contends that the substance of Olumiji’s Charge is her reassignment from an administrative position to a teacher position. The City Board further contends that Education Article § 6-201(b)(2)(i)-(ii) grants the Chief Executive Officer the authority to assign and transfer personnel “as the needs of the schools require.” Because, according to the City Board, Olumiji’s Charge is really “an appeal of the reassignment in every aspect,” the City Board maintains that it is a matter subject to appeal pursuant to § 4-205 and thus within the jurisdiction of the Maryland State Board of Education, not the PSLRB.

In addition to its position that the PSLRB lacks jurisdiction in this matter, the City Board contends that Olumiji’s Charge lacks any facts to support her various allegations: that the City Board took an adverse action against her based upon her participation or refusal to participate in the activities of an employee organization; that the City Board owes her a duty of fair representation; or that the City Board failed to communicate certain policies, procedures and/or information.

IV. ANALYSIS

In deciding this matter, we “assume the truth of the factual allegations of the complaint and the reasonable inferences that may be drawn from those allegations in the light most favorable” to Olumiji. *Heavenly Days Crematorium, LLC v. Harris, Smariga & Assocs.*, 433 Md. 558, 568 (2013). To survive the City Board’s motion to dismiss, Olumiji’s Charge must set forth more than legal conclusions. *Pulte Home Corp. v. Parex*,

Inc., 174 Md. App. 681, 726 (2007) (“The language used did not reveal any facts that would support the claim, however, but merely set forth a legal conclusion.”).

A. Alleged violation of § 6-407(b).⁵

Olumiji alleges that the City Board violated § 6-407(b), which provides:

(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) In addition, in Montgomery County the exclusive representative shall represent fairly and without discrimination all persons actually employed as substitute teachers without regard to whether they are included in § 6-401(e) of this subtitle as public school employees.

By statutory definition, the duty imposed under § 6-407(b) is imposed only on an “employee organization.” And by statutory definition the City Board is not an employee organization. Education Article § 6-401(c) and (f). Thus, the City Board owes no duty to Olumiji under § 6-407(b), and nothing alleged in her Charge could support a claim that it violated § 6-407(b).

B. Alleged violation of § 6-409/§ 6-403.

Olumiji also alleges that the City Board violated § 6-403 and § 6-409, which are interrelated. Section 6-403 provides:

A public school employee may refuse to join or participate in the activities of employee organizations.

And § 6-409 provides:

⁵ For organization purposes, we begin with the alleged violation of § 6-407(b).

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.

Olumiji fails to state any facts that would support a claim based on § 6-403. Olumiji has made no allegation that she has sought to refrain from joining or participating in the activities of an employee organization, let alone that the City Board has interfered with, intimidated, restrained, coerced, or discriminated against her because of her efforts to refrain from such participation. In short, neither § 6-403, nor § 6-409 by reference to § 6-403, have any applicability to the facts alleged by Olumiji.

C. Alleged violation of § 6-409/§ 6-402.

Section 6-402 provides:

(a) Employees may form and join organization. -- Public school employees may form, join, and participate in the activities of employee organizations of their own choice for the purpose of being represented on all matters that relate to salaries, wages, hours, and other working conditions.

(b) Membership restriction and dismissal. -- An employee organization may establish reasonable:

(1) Restrictions as to who may join; and

(2) Provisions for the dismissal of individuals from membership.

Olumiji has not separately alleged a violation of § 6-402. Section 6-402, however, is implicated by her allegation that the City Board violated § 6-409. The scope of § 6-409 is delimited by the phrase “because of the exercise” of rights under § 6-402. This means that Olumiji must allege facts showing that the City Board was motivated by her exercise of rights under § 6-402 in acting adversely against her. *See Wy'East Educ. Ass'n v. Or.*

Trail Sch. Dist. No. 46, 260 P.3d 626, 634 (Or. Ct. App. 2011) (construing a statute similar to § 6-409 and explaining, “[i]n a claim based on the ‘because of’ prohibition, motive is an element. Hence, to succeed on such a claim, a complainant ‘must establish that the employer was motivated by the exercise of the protected right to take the disputed action’”) (citation omitted).

With respect to Olumiji’s § 6-409/§ 6-402 claim, we note first that nowhere does she state that any action or inaction on the part of the City Board was motivated by the exercise of her rights under § 6-402. That Olumiji checked the box to indicate an alleged violation of § 6-409 amounts to nothing more than a legal conclusion and does not suffice to state a claim for which relief can be granted.

Olumiji does not expressly identify the protected activity implicated in her § 6-409/§ 6-402 claim. There appears to be only two possible protected activities: Gittings’ communications with Rogers on behalf of Olumiji prior to the filing of the grievance and the filing of the grievance itself. From the perspective of either of these protected activities, Olumiji’s Charge fails to state a claim for which relief can be granted.

Olumiji wanted more assistance than she received from City Board personnel. Of particular importance to Olumiji was the provision of a vacancy list with location information. Approximately one week before the filing of the grievance, and two weeks after the filing, Rogers sent Olumiji just such a vacancy list. Olumiji has not presented any facts from which we could reasonably infer that notwithstanding the City Board’s eventual provision of these vacancy lists, it initially withheld them because of Olumiji’s exercise of rights under § 6-402.

The same deficiency attends Olumiji's other points of dissatisfaction with the response she received from City Board personnel. There simply are no factual assertions from which it reasonably could be inferred that any alleged deficiency in the City Board's response was motivated by Olumiji's exercise of her rights under § 6-402. Indeed, the only factual assertion that suggests an illegitimate motive for the City Board's response is the assertion that newer administrators received more support from the City Board than veteran, surplused administrators in obtaining assistant principal positions.⁶ But the motive suggested here is that the City Board acted or failed to act in the manner alleged because Olumiji was a veteran, surplused administrator, not because she exercised rights under § 6-402.

It is true that the City Board gave Olumiji notice of her reassignment to a teacher level position after the filing of the grievance. Nowhere does Olumiji allege, however, that she was reassigned because of the filing of the grievance or the exercise of some other right under § 6-402. Moreover, by its own terms, the notice did not foreclose Olumiji from further seeking and eventually obtaining an assistant principal position. To this end, Rogers sent a vacancy list *after* the filing of the grievance; and in March 2014, months before the filing of the grievance, Rogers reminded Olumiji of the possibility that she could be reassigned to a teacher level position. For purposes of analyzing the sufficiency of Olumiji's § 6-409/§ 6-402 claim, there is nothing in the timing or content

⁶ At the meeting with Rogers in June 2014, Olumiji stated that she knew "aspiring Assistant Principals (straight out of the assessment center) who were somehow informed about and managed to get hired for Assistant Principal positions." Olumiji "shared with Rogers that every veteran Administrator that I know, who had been put on surplus had retired prematurely because they had not been given assistance/information with securing a comparable position."

of the reassignment notice that supports a reasonable inference that the City Board reassigned Olumiji because of her exercise of rights under § 6-402.

D. Alleged failure to communicate certain policies and procedures.

Finally, Olumiji alleges that the City Board failed “to communicate policies, procedures and/or information pertaining to employment, pay and compensation.” The PSLRB is charged with deciding matters under Title 6, Subtitles 4 and 5 of the Education Article. There is no provision under Subtitle 4 (which is the only applicable Subtitle) that requires the City Board “to communicate policies, procedures and/or information pertaining to employment, pay and compensation.” Thus, even assuming that the City Board failed as alleged here, that failure does not state a claim upon which the PSLRB has authority to grant relief. Inasmuch as Olumiji’s specific allegation that the City Board failed to communicate certain policies, etc. could, in theory, sound as a violation of § 6-409/§ 6-402, it fails for the reasons given immediately above – there are no factual assertions from which it reasonably could be inferred that the City Board failed to communicate certain policies, etc. “because of” Olumiji’s exercise of rights under § 6-402.

In sum, Olumiji’s Charge fails to state a claim for which relief can be granted by the PSLRB. In light of this conclusion, the PSLRB need not determine whether, as the City Board maintains, Olumiji’s Charge is “an appeal of the reassignment in every respect, and therefore should be heard by the MSBE.”

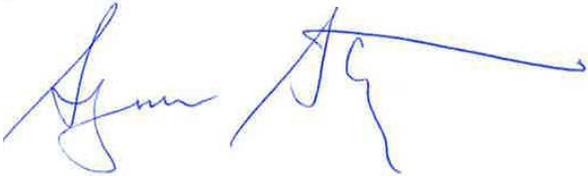
V. CONCLUSIONS OF LAW

For the reasons stated herein, we conclude that the Charge filed in the instant matter fails to state a claim for which relief can be granted, and therefore DISMISS the Charge.

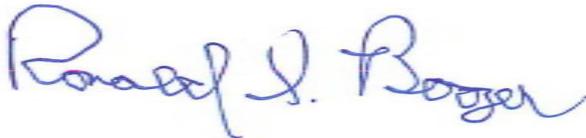
ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2015-01, IS DISMISSED.

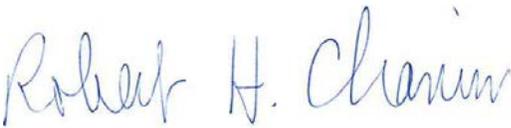
BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



Seymour Strongin, Chairman



Ronald S. Boozer, Member



Robert H. Chanin, Member



Charles I. Ecker, Member

Donald W. Harmon

Donald W. Harmon, Member

Annapolis, MD
December 1, 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, Sec. 10-222 (Administrative Procedure Act – Contested Cases), and Maryland Rules 7-201 *et seq.* (Judicial Review of Administrative Agency Decisions).