

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: \*

TIOMBE M. OLUMIJI, \*

Charging Party \*

v. \*

PSLRB Case No. SV 2015-02

PUBLIC SCHOOL \*

ADMINISTRATORS AND \*

SUPERVISORS ASSOCIATION, \*

Charged Party \*

\* \* \* \* \*

DECISION AND ORDER GRANTING  
MOTION TO DISMISS, IN PART, AND  
DENYING MOTION TO DISMISS, IN PART

I. INTRODUCTION

On August 18, 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 Public School Administrators and Supervisors Association (PSASA) violated §§ 6-407(b), 6-408(a), and 6-409 of the

Education Article. Olumiji's claims against PSASA relate to her unsuccessful efforts to find placement as an assistant principal for the 2014-2015 school-year.<sup>1</sup> PSASA has filed a motion to dismiss on grounds that Olumiji's Charge fails to state a claim for which relief can be granted.<sup>2</sup>

## II. STATEMENT OF FACTS<sup>3</sup>

At all times relevant, Olumiji was represented by PSASA, the exclusive representative for Unit II employees of the City Board. Olumiji sought placement as an assistant principal for the 2014-2015 school-year. She sought the assistance of Jimmy Gittings, PSASA President, in obtaining such placement.

In support of her Charge, Olumiji has provided copies of several e-mails and accounts of other communications between her and Gittings from the period of April 2014 to July 2014. In April and May, Olumiji expressed to Gittings her dissatisfaction with the assistance that she had received from the City Board's Office of Human Capital with respect to her efforts to "secure permanent employment." She expressed to Gittings her desire to file a grievance about the matter.

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<sup>1</sup> Olumiji has filed a separate Charge, PSLRB Case No. SV 2015-01, against the City Board in relation to her placement for the 2014-2015 school-year.

<sup>2</sup> The PSLRB sought a response from Olumiji to PSASA's motion to dismiss. Olumiji filed a response on September 29, 2014.

<sup>3</sup> In deciding whether to grant PSASA'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."

In the first part of June, Olumiji followed-up with Gittings, inquiring about the “drafting language for my grievance” and asking him to explain to her “the grievance process and timeline.” Gittings responded on June 17, advising Olumiji that her grievance would be filed that day and that he would forward her a copy. Olumiji immediately responded to Gittings, informing him that he had not provided her with information about the content, process or timeline for the grievance and that he had not shown her the grievance before filing it, as he was supposed to do. Gittings then read to Olumiji over the telephone the content of the grievance he filed on her behalf; he also mailed her a copy of the grievance.

The grievance filed by Gittings on June 17 alleges that “opportunities have not been provided to Tiombe for other job offers” and seeks 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 would be reassigned to a teacher level position effective July 1, 2014.

On June 30, Olumiji informed Gittings about the reassignment notice. She asked Gittings for a status update on her grievance, and he told her that the grievance process could take up to five months. She told Gittings that had she known that the grievance process could take so long, she might have considered filing a grievance sooner. She asked Gittings to expedite the process and, according to Olumiji, he agreed to do so.

On July 2, 2014, Olumiji e-mailed Gittings expressing her concern that several grievance steps might have been omitted and asked for documentation confirming that he had requested that her grievance be expedited. She also asked Gittings for the following information related to her employment and compensation for Summer 2014 and the

2014-2015 school-year: her summer benefits; the status of her accrued sick leave and vacation benefits; her salary as a teacher; her eligibility for “pay all year,” a pay option for teachers; the steps in the reassignment process; whether she would have the option of interviewing for available positions or whether she would be “dumped” into a vacancy; what training, if any, she would receive for the “change of positions”; when her assignment (presumably as a teacher) would be made; and how she could advocate for an Administrator’s position at a July 7 meeting, at which, according to Gittings, additional decisions regarding such positions for the 2014-2015 school-year were to be made. (Hereinafter, Olumiji’s information requests are referred to collectively as her request for information about “employment for the 2014-2015 school year.”).

Gittings responded, “I received your emails. It is essential that we let the process for filing a grievance take place. As soon as I receive a response from the grievance then we will decide upon the next step.” Olumiji states that she has not received from Gittings any further update on the status of the grievance or a response to her other questions, although she does acknowledge in the separate Charge filed against the City Board (PSLRB Case No. SV 2015-01) that Gittings informed her that she would be “paid out” for her accrued vacation.<sup>4</sup>

### III. POSITIONS OF THE PARTIES

In her Charge, Olumiji alleges a violation of Education Article §§ 6-407(b), 6-408(a), and 6-409. As discussed more fully below, § 6-407(b), codifying the duty of fair

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<sup>4</sup> We take judicial notice of this statement by Olumiji, which is part of the record in PSLRB Case No. SV 2015-01.

representation, requires employee organizations such as PSASA to represent all employees fairly, without discrimination, and regardless of union membership. Section 6-408(a) imposes certain duties on public school employers and employee organizations in the conduct of negotiations. 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.

As a remedy, Olumiji seeks “Fair, responsive representation,” “Active negotiations [sic] regarding matters of concern,” “shar[ing of] relevant information regarding questions, concerns in writing and orally,” and “reimbursement for dues for 2013-14 school year due to inadequate support and representation.”

PSASA moves to dismiss Olumiji’s Charge on grounds that she has failed to allege facts giving rise to a statutory violation. Regarding § 6-407(b), PSASA contends that Olumiji “has not alleged any facts giving rise to a violation of the requirement...that PSASA treat all public school employees in the unit fairly and without discrimination regardless of whether they are members of PSASA.” Regarding § 6-408(a), PSASA contends that Olumiji “has not alleged any fact that PSASA and/or City Schools have not adhered to the provisions of the statute in its collective bargaining negotiations or otherwise.” With respect to § 6-409, PSASA contends that Olumiji “has failed to allege that PSASA interfered with, intimidated, restrained, coerced, or discriminated against her because of the exercise of her right to join and participate in PSASA or not.”

Regarding Olumiji’s claim that PSASA has failed to provide her with information about her employment for the 2014-2015 school-year, PSASA maintains, “[t]his is not

actionable under the applicable statutes governing the relationship between Ms. Olumiji and PSASA.” PSASA contends that Olumiji’s Charge is “totally meritless” and moves that it be dismissed with prejudice and that PSASA be awarded attorney’s fees and costs.

#### 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 PSASA’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).**

Olumiji alleges that PSASA violated § 6-407(b), which requires it to “represent all employees in the unit fairly and without discrimination, whether or not the employees are members of the employee organization.” The statute 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.” *Stanley v. American Federation of State and Municipal Employees, Local No. 553*, 165 Md. App. 1, 15 (2005). The *Stanley* Court elaborated on the duty:

[A] union is accorded considerable discretion in the handling and settling of grievances. A union does not necessarily breach its duty when it declines to take a member's grievance to arbitration. Indeed, an employee has no

absolute right to insist that his grievance be pressed through any particular stage 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. Mere negligence . . . would not state a claim for breach of the duty of fair representation[.]

[A] union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness . . . as to be irrational.

*Id.* at 15 (citations and quotation marks omitted).

Olumiji's § 6-407(b) claim appears to be based on two aspects of Gittings' representation: his handling of the grievance filed on her behalf; and his lack of a response to Olumiji's questions about her employment for the 2014-2015 school-year. We address these in turn.

### **1. The grievance.**

Olumiji alleges that Gittings failed to provide her with a copy of the grievance before filing it. In effect, she is claiming that Gittings failed to consult with her about her grievance. The mere fact that a union failed to consult with an employee about a grievance does not necessitate a finding that it breached its duty of fair representation. *Office and Professional Employees International Union, Local No. 2*, 268 N.L.R.B. 1353, 1356 (1984) (failure to inform employee of decision not to file grievance was negligent, but "examination of the totality of the circumstances of the case fails to reveal the 'something more than mere negligence' necessary to constitute a violation of the Act.").

Olumiji does not allege that Gittings' failure to share with her the contents of the grievance before filing it was discriminatory or motivated by personal hostility toward

her.<sup>5</sup> Nor does she express any dissatisfaction with the contents of the grievance or assert that the failure to share the contents of the grievance before filing has had any adverse effect on the grievance, which, we infer, is still pending. Considered as a whole, Olumiji's factual assertions do not show that Gittings' failure to share the content of the grievance before filing it was "so far outside a 'wide range of reasonableness' . . . as to be irrational." *Stanley*, 165 Md. App. at 15.

Olumiji also alleges that Gittings failed to tell her at some earlier point that the grievance process could take five months and that had she known earlier about the grievance timeline "perhaps [she] would have looked into filing a grievance sooner." To be clear, Olumiji does not allege that PSASA breached its duty of fair representation because Gittings filed the grievance in an untimely manner resulting in its dismissal; even if she had, that allegation standing alone would be insufficient. *See Union of Security Personnel of Hospitals*, 267 N.L.R.B. 974, 979 (1983) ("negligent failure to timely file a grievance is not by itself a breach of a union's duty of fair representation"). Nor does she allege that Gittings' failure to inform her earlier about the grievance timeline was discriminatory or motivated by personal hostility toward her. There simply are no factual assertions from which it reasonably could be inferred that the failure to inform her earlier about the grievance timeline was anything more than negligence, if that, and thus actionable as a breach of the duty of fair representation.

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<sup>5</sup> In her response to PSASA's motion to dismiss, Olumiji states, "Mr. Gittings frequently gave me the impression that I was annoying him." We do not find in this statement an assertion of hostility on the part of Gittings.

Finally, Olumiji alleges that she asked Gittings to request that the grievance be expedited. Assuming Gittings did not do so, there still is no allegation that the failure to make the request was discriminatory or based on personal hostility toward her. Nor are there any factual assertions showing that the failure to make the request to expedite the grievance was anything more than mere negligence, if that. And if it was a deliberate decision on the part of Gittings, consistent with his representation that it “is essential that we let the process for filing a grievance take place,” Olumiji’s disagreement with this decision, standing alone, does not prove that the decision is arbitrary. *Landry v. Cooper/T. Smith Stevedoring Co.*, 880 F.2d 846, 853 (5th Cir. La. 1989) (“disagreement over tactics and discretionary decisions” does not establish breach of duty of fair representation).

**2. Olumiji’s requests for information about her employment for the 2014-2015 school-year.**

As set out above, Olumiji asked Gittings for information related to her employment for the 2014-2015 school-year. In its response, PSASA maintains that “the fact that [Olumiji] was not provided with a response to all of her questions from Baltimore City Public Schools and/or Mr. Gittings regarding her reassignment” “is not actionable under the applicable statutes governing the relationship between Ms. Olumiji and PSASA.” In effect, without differentiating among Olumiji’s questions, PSASA makes a blanket argument that it has no duty to respond. With that legal position, we disagree.

The duty of fair representation includes the duty to provide an employee with a range of information, including information about the terms of a collective bargaining agreement as those affect employment. *See Letter Carriers Branch 47 (Postal Service)*, 330 N.L.R.B. 667, 668 (2000) (“The Board holds that a union may breach its duty of representation, and thus violate the Act, if it fails to provide employees with a wide range of requested information.”); *Teamsters Local 896 (Anheuser-Busch)*, 280 N.L.R.B. 565, 575 (1986) (“The requirement of ‘fair dealing’ owed members by their union representatives includes the duty to inform employees about the terms and conditions of the agreement that would affect their employment.”).

Olumiji seeks information about her salary and benefits pending reassignment, and once reassigned, as well as information about the timing of her reassignment and how it will be carried out. To the extent that the information Olumiji seeks is derivable from the terms and conditions of the collective bargaining agreement, would affect her employment, and has not already been provided to her, PSASA has a duty to provide that information to Olumiji. In sum, we reject PSASA’s argument that Olumiji has failed to state a claim for which relief can be granted, with respect to this particular claim.

**B. Alleged violation of § 6-408(a).**

Olumiji claims that PSASA violated § 6-408(a), which provides:

(a) In general. -- When a public school employer and an employee organization negotiate under this section, the public school employer and the employee organization shall:

- (1) Confer in good faith, at all reasonable times;
- (2) Honor and administer existing agreements;

(3) Make every reasonable effort to conclude negotiations with a final written agreement in a timely manner; and

(4) Reduce to writing the matters agreed on as a result of the negotiations.

By the terms of this statute, it applies to negotiations between a public school employer and an employee organization. The duties and correlative rights codified in § 6-408(a) are the potential subject matter of a charge brought by a public school employer against an employee organization, or vice versa. As a result, Olumiji does not have standing to bring a charge of violation against either the City Board or PSASA for violating § 6-408(a) and has failed to state a claim upon which relief can be granted in this regard. *See Case v. Hazleton Area Sch. Dist.*, 915 A.2d 1262, 1267 (Pa. Commw. Ct. 2007) (“individual employees do not have standing to seek to have an unfair labor practices complaint lodged against an employer for allegedly violating its bargaining duty”); *Jackson v. Sedgwick Claims Mgmt. Servs.*, 731 F.3d 556, 563 (6th Cir. 2013) (“Where a plaintiff lacks statutory standing to sue, her claim should be dismissed for failure to state a claim upon which relief can be granted . . .”).

### **C. Alleged violation of § 6-409.**

Olumiji also alleges that PSASA violated § 6-409, which provides:

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.

Section 6-402, in turn, 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.

And § 6-403 provides:

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

Inasmuch as Olumiji's claim that PSASA violated § 6-409 is construed as implicating her rights under § 6-403, she fails to state any facts that would support such a claim. 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 PSASA has interfered with, intimidated, restrained, coerced, or discriminated against her because of her efforts to refrain from such participation.

Construing Olumiji's § 6-409 allegation as implicating her rights under § 6-402, her Charge fares no better. 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 PSASA 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).

Even assuming that PSASA mishandled the grievance and/or failed in its duty to provide information to Olumiji, her Charge is still deficient because she has not provided factual allegations from which it reasonably could be inferred that any of PSASA’s actions were motivated by Olumiji’s exercise of rights under § 6-402.

#### 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 as to the following claims: that PSASA violated § 6-407(b) with respect to the filing of the grievance at issue; that PSASA violated § 6-408(a); and that PSASA violated § 6-409. We therefore DISMISS the Charge with respect to these claims.

We further conclude that the Charge states a claim for which relief can be granted with respect to the claim that PSASA violated § 6-407(b) by failing to provide Olumiji with information about her employment for the 2014-2015 school-year.

#### ORDER

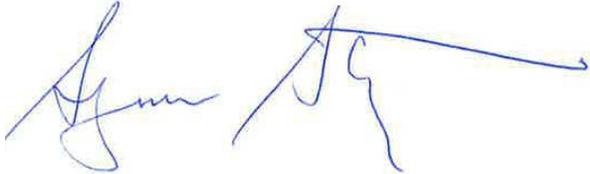
In accordance with the above decision, it is hereby ORDERED that the motion to dismiss filed in the instant matter, PSLRB Case No. SV 2015-02, is GRANTED, in part, and DENIED, in part.

It is further ORDERED that PSASA shall have ten (10) days from receipt of the Decision and Order issued in this case (PSLRB Case No. SV 2015-02) to file a response to the Charge with respect to the claim that PSASA violated § 6-407(b) by failing to

provide Olumiji with information about her employment for the 2014-2015 school-year. In its response, PSASA may set forth any factual and/or legal basis for denying the Charge, consistent with the analysis and conclusions of law set forth in this Decision and Order.

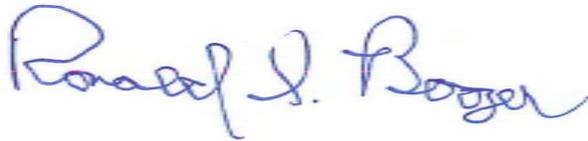
It is further ORDERED that Olumiji shall have ten (10) days from service of any response filed by PSASA in accordance with this Decision and Order to file a reply.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



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Seymour Strongin, Chairman



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Ronald S. Boozer, Member



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Robert H. Chanin, Member



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Charles I. Ecker, Member



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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).