

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *
TANYA LASSITER, *
Charging Party, *
v. * PSLRB Case SV 2017-02
BALTIMORE TEACHERS UNION, AFT *
LOCAL 340, AFL-CIO, *
Charged Party. *

* * * * *

**DECISION AND ORDER DENYING REQUEST FOR RELIEF AND DISMISSING
CHARGE**

I. INTRODUCTION AND POSITIONS OF THE PARTIES

On January 30, 2017, Tanya Lassiter filed a Charge of Violation of Title 6, Subtitle 4 or Subtitle 5, of Education Article (Form PSLRB-05) with the Public School Labor Relations Board (the “PSLRB”). Form PSLRB-05 reflects the authority granted to the PSLRB by the Education Article of the Annotated Code of Maryland to “decide any controversy or dispute arising under Title 6, Subtitle 4 or 5 of this article.” Md. Code Ann., Educ. § 2-205(e)(4)(i).

In her Charge, Ms. Lassiter claims that the Baltimore Teachers Union, AFT Local 340, AFL-CIO (the “BTU”) breached its duty of fair representation in violation of Section 6-509(b) of the Education Article. The basis for Ms. Lassiter’s Charge is two-fold.

First, Ms. Lassiter alleges that the BTU has failed to process, in a timely manner, a grievance involving the refusal of Coldstream Park Elementary/Middle School #031 (“Coldstream Park” or the “School”) to pay her for work performed outside of her job classification (“out of title pay”). Ms. Lassiter asserts that, but for her efforts to continually contact BTU representatives to check on the status of her grievance, the BTU would not have processed it. In conjunction with these arguments, Ms. Lassiter contends that “the BTU has made it a repeated practice to miss or avoid set time lines that are clearly spelled out in the contract agreement....” Ms. Lassiter cites two provisions of the collective negotiations agreement between the BTU and the Baltimore City Public School System (the “BCPSS”), which she claims the BTU has violated: Article VII, Section A (Grievance and Arbitration

Procedures, Step 3 – Chief Executive Officer)¹, and Article VII, Section B (Grievance and Arbitration Procedures, Time Limits)².

Second, Ms. Lassiter states that the BTU refused to file a grievance concerning allegations that the principal at Coldstream Park failed to provide her with break time.

On February 24, 2017, the BTU filed with the PSLRB a Motion to Dismiss and Memorandum in Support thereof (collectively, the “Response”). In its Motion to Dismiss, the BTU claims that Ms. Lassiter’s Charge “fails to state a claim upon which relief can be granted.”

On March 30, 2017, the BTU filed with the PSLRB a Supplemental Memorandum in Support of Motion to Dismiss (the “Supplemental Response”). In its Supplemental Response, the BTU asserts an additional defense that “[t]he claim for statutory violation is moot as there is no ongoing controversy between Ms. Lassiter and the BTU” because the BTU continued to process Ms. Lassiter’s grievance, even after she filed the instant Charge.

As noted above, in the Charge filed with the PSLRB, Ms. Lassiter asserts two bases for her claim that the BTU violated its duty of fair representation: (1) the failure to adequately process her grievance regarding out of title pay, and (2) the failure to file a grievance based on allegations that she was denied break time.

Because it may be disposed of summarily, we deal at the outset with Ms. Lassiter’s claim that the BTU breached its duty of fair representation by failing to file a grievance regarding break time. According to the record, Ms. Lassiter requested that the BTU file this grievance on her behalf on August 31, 2016. The information provided indicates that the BTU informed Ms. Lassiter of the denial prior to September 22, 2017. Under COMAR 14.34.04.03(A)(2), “In order to be timely, Form PSLRB-05 must be filed with the Executive Director of the Board within 60

¹ The portion of Article VII, Section A, cited by Ms. Lassiter states:

Subject to any limitations of existing law, any grievance defined as a dispute concerning the application or interpretation of the terms of this Agreement or a claimed violation, misinterpretation or misapplication of the rules or regulations of the Board affecting the terms and conditions of employment may be settled in the following manner:... If the grievance has not been satisfactorily resolved in Step 2, a written appeal may be filed on said form with the Chief Executive Officer or his designee within five (5) school days following the completion of Step 2. Within ten (10) school days of such appeal, the CEO or his designee shall meet with the BTU President, or his designee, the aggrieved employee, and such other parties whose presence may be required to discuss the grievance. The CEO or designee shall respond in writing on the said form within ten (10) school days thereafter.

² The portion of Article VII, Section B, cited by Ms. Lassiter states:

Failure to submit a grievance within the specified time limits or to appeal a grievance to the next successive step or to arbitration within the specified time limits shall be deemed a waiver of the grievance and/or acceptance of the decision rendered at that step.

Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit the Union to lodge an appeal at the next step of this procedure.

days after the charging party knew, or reasonably should have known, of the statutory violation alleged.” Because Ms. Lassiter filed Form PSLRB-05 on January 30, 2017, more than 60 days after the date the BTU denied her request to file a grievance with regard to break time, Ms. Lassiter’s Charge with regard to this grievance is untimely, and hereby dismissed.

II. FINDINGS OF FACT

We turn now to the grievance that the BTU filed on behalf of Ms. Lassiter concerning out of title pay. The BTU asserts as its primary defense that Ms. Lassiter has failed to state a claim upon which relief can be granted. Therefore, for the purposes of this decision, the PSLRB accepts as true the factual allegations made by Ms. Lassiter in her Charge. Moreover, inasmuch as Ms. Lassiter does not challenge the facts set forth by the BTU in its Response, we likewise accept these facts as true.

In November 2014, Ms. Lassiter accepted a position to work as an Office Assistant at Coldstream Park. Shortly thereafter, Ms. Lassiter began performing work outside of her job classification because the School’s secretary was “surplused” to another location. At this time, Ms. Lassiter contacted BTU Field Representative Peggy Gladden, who advised her to continue to work in her position as an office assistant, and to let her know if and when the principal assigned Ms. Lassiter secretarial duties, including specifically pay roll. During the 2014-2015 school year, Ms. Lassiter became Coldstream Park’s primary payroll contact, and performed all duties and responsibilities required to run the School’s main office.

At the beginning of the 2015-2016 school year, Ms. Lassiter informed Ms. Gladden that she was performing payroll duties. Ms. Gladden advised Ms. Lassiter to request both reclassification as a secretary and a salary review. Ms. Lassiter followed Ms. Gladden’s advice, and both of her requests were denied. Ms. Lassiter informed Ms. Gladden of the denial, and Ms. Gladden stated that she would file a grievance on her behalf.

On May 16, 2016, Ms. Gladden filed a grievance on Ms. Lassiter’s behalf with the BCPSS.

On July 17, 2016, Ms. Lassiter sent Ms. Gladden an e-mail inquiring into the status of her grievance, and followed up with an additional e-mail on July 25, 2016. Because Ms. Gladden was out of town, she did not respond until July 28, 2016, at which time she informed Ms. Lassiter that her grievance was still active and that she was awaiting a hearing date. Later that day, Ms. Lassiter sent Ms. Gladden an e-mail inquiring if the grievance could be moved to the next step. Ms. Lassiter did not receive a response.

On September 8, 2016, Ms. Gladden wrote to Jerome Jones, Manager of the Office of Employee and Labor Relations for the BCPSS, in an attempt to resolve Ms. Lassiter’s grievance. Ms. Gladden copied Ms. Lassiter on this e-mail.

On September 22, 2016, Ms. Gladden met with Mr. Jones regarding Ms. Lassiter’s grievance. The record is silent concerning the outcome of this meeting, and whether the results were communicated to Ms. Lassiter.

On October 17, 2016, Ms. Lassiter sent Marietta English, President of the BTU, an e-mail inquiring about the status of her grievance. Ms. English responded by e-mail on October 19, 2016, indicating that she would follow up with Ms. Gladden. Upon speaking with Ms. Gladden, Ms. English learned that Ms. Lassiter's grievance was one of many awaiting a hearing date. The record does not indicate whether this information was communicated to Ms. Lassiter.

On November 23, 2016, Ms. Lassiter sent Ms. English an e-mail threatening to seek legal action against the BTU. Other than the filing of the Charge with the PSLRB on January 30, 2017, there is no indication that Ms. Lassiter took legal action against the BTU.

On December 19, 2016, Ms. Gladden received a voicemail from Ms. Lassiter inquiring about the status of her grievance. On that same date, Ms. Gladden sent an e-mail to Mr. Jones to follow up on Ms. Lassiter's grievance, and forwarded this e-mail to Ms. Lassiter.

On January 4, 2017, Ms. Lassiter again sent Ms. Gladden an e-mail asking her to follow up on her grievance. Ms. Gladden followed up with Mr. Jones that same day via e-mail. Ms. Gladden also sent a follow up e-mail to Ms. Lassiter indicating that she had contacted Mr. Jones and that she would inform her if she did not hear back.

On January 5, 2017, Ms. Gladden sent Mr. Jones another e-mail following up on Ms. Lassiter's grievance. Ms. Gladden copied Ms. Lassiter on this e-mail; however, the e-mail was returned as undeliverable because Ms. Gladden used the incorrect e-mail address.

On February 13, 2017, two weeks after Ms. Lassiter filed her Charge with the PSLRB, Ms. Gladden sent Ms. Lassiter an e-mail informing her that a hearing date for her grievance was scheduled for February 22, 2017. On February 16, 2017, Ms. Gladden met with Ms. Lassiter to prepare for the hearing. On February 22, 2017, the BCPSS held a hearing on Ms. Lassiter's grievance. On March 9, 2017, the BCPSS issued a decision denying Ms. Lassiter's grievance. Following this decision, Ms. Gladden advanced Ms. Lassiter's grievance to the next step. The PSLRB assumes that the grievance is still pending.

III. ANALYSIS

A. DUTY OF FAIR REPRESENTATION

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." As the PSLRB has previously stated, this statute codifies the "duty of fair representation" owed by an exclusive negotiating representative "to avoid arbitrary conduct," "to exercise its discretion with complete good faith and honesty," and "to serve the interests of all members [of the negotiating unit] without hostility or discrimination." Sylvia Walker, et al. v. The Baltimore Teachers Union, et al., PSLRB Case No. SV 2012-10 (2010) (*quoting Stanley v. American Federation of State and Mun. Employees Local No. 533*, 165 Md. App. 1, 15 (Md. Ct. Spec. App. 2005) (citations omitted)). Simply stated, a union's conduct with regard to the representation of a member of the negotiating unit does not violate the duty of fair representation unless the conduct is arbitrary, in bad faith, or discriminatory.

In her Charge, Ms. Lassiter does not indicate whether her claim that the BTU breached its duty of fair representation is grounded in arbitrariness, bad faith, or discrimination, or a combination of these bases. As a result, we shall consider in turn whether the BTU's representation of Ms. Lassiter with regard to the processing of the grievance falls short with regard to any of these standards – i.e., whether it was arbitrary, in bad faith, or discriminatory.

1. The Arbitrary Standard

In Stanley v. American Federation of State and Mun. Employees Local No. 533, et al., the Maryland Court of Special Appeals outlined the standard for determining whether a union's conduct in representing its members is arbitrary, and therefore, a breach of the duty of fair representation. 165 Md. App. 1 (Md. Ct. Spec. App. 2005). The Court explained that, “[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.” Stanley, 165 Md. App. at 15 (*citing Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 67 (1991)). Most importantly, and bearing on the current matter before the PSLRB, the Court explained that a union violates its duty of fair representation, “for example, when it arbitrarily ignore[s] a meritorious grievance or process[es] it in [a] perfunctory fashion.” Stanley, 165 Md. App. at 15-16 (*citing Int'l Bd. of Elec. Workers v. Foust*, 442 U.S. 42, 47 (U.S. 1979) (*quoting Vaca v. Sipes*, 386 U.S. 171, 191 (U.S. 1967))).

As explained above, Ms. Lassiter asserts that the BTU failed to process her grievance in a timely manner in violation of the duty of fair representation. As part of this argument, Ms. Lassiter asserts that the BTU failed to meet certain deadlines under Article VII, Sections A and B, of the parties' collective negotiations agreement with regard to the processing of grievances.

At the outset, it must be noted that Ms. Lassiter has provided no evidence or specifics as to how the BTU failed to meet the deadlines set forth in Article VII, Sections A and B, of the parties' collective negotiations agreement. However, even accepting as true Ms. Lassiter's claim that the BTU failed to meet these deadlines, this fact alone -- without evidence that the BTU acted in a manner that was arbitrary -- is insufficient to indicate that the BTU violated its duty of fair representation.

In addition, as previously discussed, Ms. Lassiter asserts that the BTU would not have processed her grievance had she not followed up with its representatives on multiple occasions. According to Ms. Lassiter, when she had not heard from the BTU concerning the status of her grievance, she contacted either Ms. Gladden or Ms. English, who only corresponded with her when she reached out to them. That being said, Ms. Lassiter acknowledges that -- despite the BTU's alleged failure to initiate communications with her concerning her grievance -- the BTU never stopped processing her grievance. We can only speculate as to whether, in the absence of the contacts initiated by Ms. Lassiter, the BTU would have stopped processing her grievance. As a result, it cannot be found that the BTU's representation of Ms. Lassiter fell “so far outside a ‘wide range of reasonableness’... as to be irrational,” and therefore, arbitrary.

2. The “Bad Faith” Standard

In its decision, the Stanley Court also outlined the standard for determining whether a union's conduct with regard to its representation of negotiating unit members was in bad faith. The Court held that, in order to succeed on a theory of a bad faith breach of the duty of fair representation, the party alleging the breach must show "fraud, or deceitful or dishonest action" on behalf of the union. Stanley, 165 Md. App. at 19 (*citing In re ABF Freight Sys., Inc., Labor Contract Litigation*, 988 F.Supp. 556, 564 (D.Md. 1997)). The Court further explained that, "[b]ad faith focuses not on 'the objective adequacy of that union's conduct,' but 'on the subjective motivation of the union officials.'" Stanley, 165 Md. App. at 20 (*quoting Thompson v. Aluminum Co. of Am.*, 276 F.3d 651, 658 (4th Cir. 2002)).

In Ms. Lassiter's Charge, there is no evidence, nor are there any allegations, to suggest that the BTU acted fraudulently, or in a deceitful or dishonest matter. Therefore, we cannot find that the BTU's conduct with regard to the processing of Ms. Lassiter's grievance shows bad faith on the part of the BTU.

3. The "Discriminatory" Standard

Unlike the standards outlined above concerning a union's duty to refrain from "arbitrary" and "bad faith" conduct when representing negotiating unit members, Maryland courts have not specifically addressed what constitutes "discriminatory" behavior in this regard. Federal case law, including decisions from the National Labor Relations Board (the "NLRB"), upon which the PSLRB has relied in previous cases, provides significant guidance on this matter.

In determining whether a union has acted in a "discriminatory" manner, federal courts have held that a union cannot draw "invidious" distinctions between members when carrying out efforts relating to contract negotiations or administration. Airline Pilots Ass'n Int'l V. O'Neill, 499 U.S. 65 (U.S. 1991). Discrimination is "invidious" if it is based upon impermissible classifications or if it arises from animus. Steele v. Louisville & Nashville R.R. Co., 323 U.S. 192, 203 (U.S. 1944). Thus, a union violates the duty of fair representation by refusing representation to negotiating unit members based on distinctions such as race, Goodman v. Lukens Steel Co., 482 U.S. 656, 665-667 (U.S. 1987), gender, Perugini v. Food & Commercial Workers Local 916, 935 F.2d 1083, 1086-1087 (9th Cir. 1991), citizenship, NLRB v. Longshoreman's Local 1581, 489 F.2d 635, 637-638 (5th Cir. 1974), national origin, religion, Agosto v. Correctional Officers Benevolent Ass'n, 107 F.Supp. 2d 294, 303-04 (S.D.N.Y. 2000), or union membership, Zimmerman v. French Int'l School, 830 F.2d 1316 (4th Cir. 1987), or whether or not the employee in question is an internal union dissident. Postal Service, 272 NLRB 93 (1984).

Ms. Lassiter has neither alleged nor provided any evidence to support a claim that the BTU acted in a discriminatory manner toward her, or that its decisions with regard to her representation throughout the grievance process were in anyway based on any impermissible classification or "invidious" distinction.

In sum, there is no evidence in the record of this case to support a finding that the BTU's representation of Ms. Lassiter violated any of the three "duty of fair representation" standards as

articulated by the Maryland Court of Special Appeals -- i.e., it was not arbitrary, in bad faith, or discriminatory.³

IV. CONCLUSIONS OF LAW

For the reasons stated herein, we conclude that the BTU did not violate its duty of fair representation under Section 6-509(b) of the Education Article.

V. ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2017-02, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



Elizabeth M. Morgan, Chair



Robert H. Chanin, Member



Ronald S. Boozer, Member

³ Because we have concluded that the BTU did not violate its duty of fair representation, we need not reach the secondary defense of mootness asserted by the BTU in its Supplemental Response, or address the broader question as to whether or under what circumstances matters occurring after the filing of a charge can be taken into account when dealing with the charge.

Donald W. Harmon

Donald W. Harmon, Member

John A. Hayden III

John A. Hayden, III, Member

Annapolis, MD

June 7, 2017

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).