

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:	*	
ROBERT SCHMIDT,	*	
Charging Party,	*	
v.	*	PSLRB Case SV 2017-04
TEACHERS ASSOCIATION OF	*	
ANNE ARUNDEL COUNTY,	*	
Charged Party.	*	
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**DECISION AND ORDER DENYING REQUEST FOR RELIEF AND DISMISSING CHARGE**

I. INTRODUCTION AND POSITIONS OF THE PARTIES

On May 2, 2017, Robert Schmidt 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 (“PSLRB”). Mr. Schmidt stated that he was filing the Charge on behalf of “Unit 1 Employees of Anne Arundel County Public School assigned to Annapolis High School.”<sup>1</sup> 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 his Charge, Mr. Schmidt claims that the Teachers Association of Anne Arundel County (“TAAAC”) violated its duty of fair representation by failing to represent Unit 1 Employees (“Unit 1 Members”) at Annapolis High School (“AHS”) “fairly and without discrimination with respect to negotiating for the continuation of...” the AHS Memorandum of Understanding (“MOU”). Mr. Schmidt further asserts that the “TAAAC willfully worked against the interests of [Unit 1 Members at] AHS... with both hostility and discrimination” resulting in the discontinuation of their MOU, and that the “TAAAC concurrently negotiated to secure benefits for select portions of the entire bargaining unit at the expense of Unit 1 [Members]” at AHS.

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<sup>1</sup> There is no indication of whether or not any of the Unit 1 Members at AHS have granted Mr. Schmidt the authority to file this Charge on their behalf, or to represent them in any capacity with regard to the violations alleged therein. We address this issue more fully below.

On May 18, 2017, the TAAAC filed a response to Mr. Schmidt's Charge. In its response, the TAAAC asserts that "it fairly represented members of its bargaining unit through good faith negotiations with the Board of Education of Anne Arundel County."

## II. FINDINGS OF FACT

The following facts are not in dispute. In the fall of 2006, AHS was identified for Corrective Action by the Maryland Department of Education for failing to meet state and federal standards for four consecutive years. In the spring of 2007, as part of a required restructuring plan, the Superintendent for Anne Arundel County unilaterally reclassified all Unit 1 Members at AHS to 12-month positions and required all who wished to remain at AHS to re-interview for their positions.

To encourage educators to remain at, or transfer to AHS, the TAAAC and the Board of Education of Anne Arundel County ("Board of Education") negotiated incentives – which included higher pay, various bonuses (i.e., a signing bonus, annual assignment bonus, retention bonus, and a performance bonus), and a higher hourly rate for extra-instructional activities -- and memorialized them in a MOU with a duration of 3 years.<sup>2</sup> These incentives were not provided to Unit 1 Members at other schools in the district.

Over the course of multiple extensions and modifications to the MOU, the incentives provided to Unit 1 Members at AHS diminished as a result of progress made; however, these members still received incentives over and above what Unit 1 Members at other schools in the district received. The MOU was set to expire on June 30, 2017.

In early 2017, a proposal was introduced by the Board of Education to modify the existing MOU, by allowing the Board of Education to repurpose approximately \$172,000 from the amount that would have been necessary to fund the MOU in its present form to be used for the benefit of all Unit 1 Members. Due to opposition from a group of approximately 60 Unit 1 Members at AHS, the TAAAC conducted a survey of all Unit 1 Members. The survey requested members to vote on one of three positions: (1) let the MOU for Unit 1 Members at AHS expire, (2) allow the proposed modification, or (3) extend the MOU in its current form.

Based on feedback from the survey, the Board of Education and the TAAAC mutually agreed to phase out the remaining incentives of the MOU over the next two school years. As a result, starting in Fiscal Year 2020, the MOU would no longer exist and the Unit 1 Members at AHS would serve under the same negotiated terms and conditions of employment as the remaining Unit 1 Members across the district.

## III. 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." As the PSLRB has previously stated, this statute codifies the "duty of fair

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<sup>2</sup> The incentives were not meant to be permanent, but were designed to effect positive change and be altered accordingly as progress was made.

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.

As indicated above, Mr. Schmidt claims that the TAAAC violated its duty of fair representation by phasing out the MOU for Unit 1 Members at AHS, and repurposing the funds recouped as a result thereof to benefit Unit 1 Members as a whole. Mr. Schmidt’s Charge is based solely on the TAAAC’s alleged treatment of Unit 1 Members at AHS as compared to other Unit 1 Members throughout the district – as Mr. Schmidt puts in his Charge, the “TAAAC willfully worked against the interests of [Unit 1 Members at] AHS... with both hostility and discrimination.” Accordingly, the PSLRB need only focus on whether the TAAAC’s conduct was discriminatory; it need not address the other duty of fair representation standards, i.e., whether the TAAAC’s conduct was arbitrary or in bad faith.<sup>3</sup>

In determining whether a union has acted in a “discriminatory” manner, the PSLRB has held that a union cannot draw “invidious” distinctions between members when carrying out efforts relating to contract negotiations or administration. Lassiter v. Baltimore Teacher’s Union, PSLRB SV 2017-02 (*quoting 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. Id. (*citing 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, gender, citizenship, national origin, religion, or union membership, or whether or not the employee in question is an internal union dissident. Id.

Even more relevant to the matter at hand, the PSLRB has held that unions are “accorded considerable discretion in the context of negotiations.” Deal v. Association of Supervisory and Administrative Personnel, PSLRB Case No. SV 2014-16. Quoting the U.S. Supreme Court, the PSLRB has stated:

Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected.

Id., *quoting Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953); *see also Washington State Ferries (International Organization of Masters, Mates & Pilots)*, Decision 11899 (MRNE, 2013) (“Individual dissatisfaction with the outcome of bargaining is to some extent unavoidable and does not necessarily indicate any breach of the duty of fair representation.”).

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<sup>3</sup> The PSLRB notes in passing that nothing in the record indicates that the TAAAC acted in an arbitrary or bad faith manner in phasing out the MOU for Unit 1 Members at AHS.

As noted above, Mr. Schmidt's Charge states that he is representing Unit 1 Members at AHS; however, there is no indication of whether or not any of the Unit 1 Members at AHS have granted Mr. Schmidt the authority to file this Charge on their behalf, or to represent them in any capacity with regard to the violations alleged therein. That being said, even assuming that Mr. Schmidt was authorized to represent the Unit 1 Members at AHS with regard to the instant Charge, he has not provided any evidence, or even alleged that the TAAAC treated Unit 1 Members at AHS differently based on any "invidious" classification. His only claim is that the TAAAC did not represent Unit 1 Members at AHS fairly in comparison to other Unit 1 Members in the district.<sup>4</sup> Without any evidence that the TAAAC acted in a discriminatory manner, there is no basis to support a Charge that the TAAAC violated its duty of fair representation.

#### IV. CONCLUSIONS OF LAW

For the reasons stated herein, we conclude that the TAAAC did not violate its duty of fair representation under Section 6-407(b) of the Education Article.

#### V. ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2017-04, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



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Elizabeth M. Morgan, Chair



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Robert H. Chanin, Member

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<sup>4</sup> Nor is there any basis for arguing that the TAAAC may have violated its duty of fair representation when, in negotiating the 2007 MOU and its successor memorandum, the TAAAC treated Unit 1 Members at AHS differently than it did other Unit 1 Members. As indicated above, the circumstances that existed at the time of those previous negotiations provided sufficient justification for such special treatment. The relevant circumstances have changed during the intervening years.



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Ronald S. Boozer, Member



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Donald W. Harmon, Member



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John A. Hayden, III, Member

Annapolis, MD

July 25, 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).