

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: \*

REGINA CURRY, \*

Charging Party, \*

v. \* PSLRB Case SV 2018-09

PRINCE GEORGE'S COUNTY \*

EDUCATORS' ASSOCIATION, \*

Charged Party. \*

\* \* \* \* \*

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

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

On January 23, 2018, Regina Curry 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"). 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. Curry asserts that the Prince George's County Educators' Association ("PGCEA") violated Sections 6-403 ("Right of public school employee to refuse to form, join, or participate in the activities of employee organization"), 6-407(b) ("Duty of fair representation"), 6-407(c) ("Service or representation fee"), and 6-408(a) ("Negotiations") of the Education Article.

On February 7, 2018, the PGCEA filed a Motion to Dismiss Ms. Curry's Charge. In its Motion to Dismiss, the PGCEA asserts that Ms. Curry's allegations with regard to Sections 6-403, 6-407(b), and Section 6-407(c) are "not supported by the facts." The PGCEA also asserts that Ms. Curry's allegation with regard to Section 6-408(a) "is without merit."

**II. UNDISPUTED FACTS**

Ms. Curry is a certificated employee of the Prince George's County Public School System ("PGCPSS") and works a 10-month schedule.

Under Article 7.01 of the negotiated agreement between the PGCEA and the PGCPSS, an employee who works a 10-month schedule only receives payment of her salary during the 10 months of the year that she works. An employee may elect to have payments extended over a 12-month period by having a portion of her salary withheld, on a pro-rated basis. The portion of

the employee's salary that is withheld is later paid to the employee during the 2-month period that she is not working. Once an employee has elected to have her salary extended over a 12-month period, her election of this pay option may not be rescinded until the next school year.

For School Year 2017-2018, Ms. Curry elected the 12-month pay option.

On November 27, 2017, Ms. Curry contacted the PGCEA to discuss her election of the 12-month pay option. During this conversation, the PGCEA asked Ms. Curry if she was a dues paying member of the PGCEA. Ms. Curry indicated that she was.

### **III. POSITIONS OF THE PARTIES**

In her Charge, Ms. Curry asserts that the PGCEA violated Sections 6-403 and 6-407(c) of the Education Article by automatically deducting PGCEA dues from her salary; however, Ms. Curry also admits in her Charge that she willingly agreed to pay union dues. In its Motion to Dismiss, the PGCEA asserts that Ms. Curry's allegations with regard to Sections 6-403 and 6-407(c) are "not supported by the facts."

In her Charge, Ms. Curry also asserts that the PGCEA violated Section 6-407(b) by failing to "[r]epresent professional certificated public employees in relationship with the public school employer with regard to salaries, wages, hours, and other working conditions," in addition to a laundry list of allegations including, failing to "[d]evelop the highest standard of professional practices within the Prince George's County Public School System...[,] [s]eek the advancement and improvement of education in the Prince George's County Public School System...[,] and [s]eek those conditions necessary for an effective and productive educational environment..." Ms. Curry further asserts that the PGCEA violated Section 6-407(b) by asking her whether she was a dues paying member of the PGCEA when she contacted it for assistance. In its Motion to Dismiss, the PGCEA asserts that Ms. Curry's allegations with regard to Section 407(b) are "not supported by the facts," and further, that asking Ms. Curry whether she was a dues paying member was not a violation of Section 6-407(b).

Finally, Ms. Curry asserts in her Charge that the PGCEA violated Section 6-408(a) when it "failed in protecting... [her] interests" by negotiating into the collective bargaining agreement between the PGCEA and the PGCPSS language providing for the 12-month pay option without also negotiating into the agreement language that would permit employees who elected that option to claim a financial hardship allowance against the unpaid portion of their salary that was withheld in order to extend the payments. In its Motion to Dismiss, the PGCEA asserts that Ms. Curry's allegation with regard to Section 6-408(a) "is without merit."

### **IV. ANALYSIS**

#### **a. Sections 6-403 and 6-407(c) of the Education Article**

As noted above, Ms. Curry alleges that the PGCEA violated Sections 6-403 and 6-407(c) of the Education Article by automatically deducting PGCEA dues from her salary.

Section 6-403 of the Education Article states that "[a] public school employee may refuse to join or participate in the activities of employee organizations." Ms. Curry admits in her

Charge that she willingly agreed to pay dues to the PGCEA. Therefore, Ms. Curry's Charge with regard to Section 6-403 is dismissed.

The entirety of Section 6-407(c) applies to non-members and the service or representation fees that may be charged to them. As noted above, Ms. Curry agreed to join the PGCEA and pay union dues. On November 27, 2017, the most recent date upon which Ms. Curry's allegations are based, Ms. Curry remained a dues-paying member of the PGCEA. Therefore, Section 6-407(c) does not apply to Ms. Curry, and her Charge with regard to Section 6-407(c) is dismissed.

**b. Section 6-407(b) of the Education Article**

As previously discussed, Ms. Curry asserts that the PGCEA violated Section 6-407(b) by failing to "[r]epresent professional certificated public employees in relationship with the public school employer with regard to salaries, wages, hours, and other working conditions...." Ms. Curry further asserts that the PGCEA violated Section 6-407(b) by asking her whether she was a dues paying member of the PGCEA.

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 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.

Ms. Curry does not allege that the PGCEA's representation of her was in any way arbitrary, in bad faith, or discriminatory. Inquiring whether an employee is a dues-paying member alone, without any further evidence of arbitrary, bad faith, or discriminatory conduct by an exclusive representative does not support a finding of a duty of fair representation violation. As a result, Ms. Curry's Charge with regard to Section 6-407(b) is dismissed.

**c. Section 6-408(a) of the Education Article**

As mentioned above, Ms. Curry asserts that the PGCEA violated Section 6-408(a) when it "failed in protecting... [her] interests," and more specifically, when it negotiated into the collective bargaining agreement language providing for the 12-month pay option without also negotiating into the agreement language that would permit employees who elected that option to claim a hardship allowance against the unpaid portion of their salary that was withheld in order to extend the payments.

Section 6-408(a) provides that "[w]hen 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.” This Section establishes the duty to negotiate in good faith between a public school employer and an employee organization.

The threshold question in this regard is whether an individual employee can file a charge against an employee organization that represents her alleging a violation of Section 6-408(a). The answer to this question may in certain circumstances be “yes” — if, for example, an employee organization that has been recognized as an exclusive representative chooses not to enter into negotiations with the public school employer, or fails to reduce to writing matters agreed upon in negotiations. But the PSLRB need not reach this question in the instant case, because it is clear that an employee may not file a Section 408(a) charge simply because she is dissatisfied with a provision that was negotiated by the employee organization and included in the negotiated agreement, which is what Ms. Curry has done here. Accordingly, Ms. Curry’s Section 6-408(a) Charge is dismissed.

This is not meant to suggest that an employee is necessarily without recourse if he or she is dissatisfied with a provision that is included in a negotiations agreement. We do not rule out the possibility that an employee who contends that a contractual provision treats certain members of a negotiating unit in a manner that is in bad faith, arbitrary, or discriminatory as compared to other members of the negotiating unit may be able to file a charge under Section 6-407(b) alleging a violation of the duty of fair representation.<sup>1</sup>

V. CONCLUSIONS OF LAW

For the reasons stated herein, we conclude that the PGCEA did not violate Section 6-403, 6-407(b), 6-407(c), or 6-408 of the Education Article.

I. ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2018-09, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



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Elizabeth M. Morgan, Chair

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<sup>1</sup> We note in passing that Ms. Curry’s challenge to Article 7.01 does not meet this standard.

Robert H. Chanin

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Robert H. Chanin, Member

Ronald S. Boozer

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Ronald S. Boozer, Member

Donald W. Harmon

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Donald W. Harmon, Member

John A. Hayden III

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John A. Hayden, III, Member

Annapolis, MD

March 26, 2018

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).