

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: \*  
MICHAEL PUGH, \*  
Charging Party, \*  
v. \* PSLRB Case SV 2018-11  
BALTIMORE TEACHERS UNION, \*  
AFT LOCAL 340, AFL-CIO \*  
Charged Party. \*

\* \* \* \* \*

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

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

On February 12, 2018, Michael Pugh 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). Under Section IV of Form PSLRB-05, Mr. Pugh checked the following Sections of the Education Article, which he alleges the Baltimore Teachers Union (“BTU”) violated: “Section 6-407(b) or 6-509(b): Duty of fair representation”, “Section 6-408(a) or 6-510(a): Negotiations”, “Section 6-409 or 6-512: Interference with right of public school employee to exercise certain statutory rights”, and “Other (Specify statutory section)”. Under the selection for “Other (Specify statutory section)”, Mr. Pugh wrote “Section 6-407(a)”, and “Section 6-408(3)(4) <sup>1</sup> & (c)(1)”.

Prior to receiving a response from the BTU, on February 23, 2018, Mr. Pugh requested from the PSLRB the opportunity to amend his Charge. The PSLRB granted Mr. Pugh’s request, and Mr. Pugh filed his amended Charge on March 1, 2018.

On March 21, 2018, the BTU filed its Answer along with a Motion to Dismiss and/or Motion for Summary Decision with the PSLRB (“Response”).

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<sup>1</sup> “Section 6-408(3)(4)” of the Education Article does not exist; however, elsewhere throughout the Charge, Mr. Pugh refers to “Section 6-408(a)(3)(4)”; therefore, assuming that Mr. Pugh is referring to Education Article, Sections 6-408(a)(3)-(4), we analyze these Sections in conjunction with Section 6-408(a). In addition, it appears that Mr. Pugh is also alleging a violation of Section 6-408(c)(1). We also provide an analysis of this latter Section below.

## II. FACTUAL BACKGROUND

Mr. Pugh's Charge arises out of a workplace incident that took place on November 12, 2015, at the Baltimore Design School, a school within the Baltimore City Public School System ("BCPS"), which ultimately led to Mr. Pugh being placed on paid administrative leave on November 20, 2015, as a result of allegations of misconduct.

On June 30, 2017, and while Mr. Pugh was still on paid administrative leave, Mr. Pugh was terminated because his professional certificate to teach had lapsed.

On August 5, 2017, the BCPS offered Mr. Pugh a provisional contract to work under a conditional teaching certificate, which he signed on August 29, 2017.

On September 21, 2017, the BCPS informed Mr. Pugh that it was rescinding his termination due to the fact that there were no allegations of misconduct that would preclude him from working, and assigned him to Leith Walk Elementary School. In response, and on that same day, Mr. Pugh wrote to the principal of Leith Walk Elementary School informing her that he would not report to work. As a result, Mr. Pugh's reemployment was not executed.

Despite Mr. Pugh not returning to work, on January 5, 2018, in a meeting between Mr. Pugh and representatives from the BTU and BCPS, the BCPS again indicated a willingness to offer Mr. Pugh a provisional contract. Mr. Pugh did not sign this contract.

In January 2018, Mr. Pugh, through e-mails with representatives of the BTU, asked the BTU to assign him legal counsel to answer questions concerning his position with the BCPS. In an e-mail dated January 12, 2018, a BTU representative informed Mr. Pugh that, because "he was no longer a member of the Union, he would not be entitled to confer with the Union's attorney." However, in a subsequent meeting with BTU representatives on January 31, 2018, the BTU authorized Mr. Pugh to meet with counsel. A meeting was scheduled between Mr. Pugh and BTU counsel for February 7, 2018.

On February 1, 2018, Mr. Pugh filed a grievance with the BCPS concerning the BCPS's alleged mishandling of the November 12, 2015, incident.

On February 6, 2018, the BTU received Mr. Pugh's Charge in this matter.

On February 7, 2018, prior to the scheduled meeting between Mr. Pugh and BTU's counsel, BTU's counsel informed Mr. Pugh that that the meeting would be limited to assessing how, if at all, the BTU could assist him with his dispute with the school system, and that the meeting would not be for the purpose of giving Mr. Pugh any legal advice with respect to claims against the BTU. Mr. Pugh declined the meeting.

On February 8, 2018, the BCPS denied Mr. Pugh's grievance.

On February 14, 2018, the BTU notified Mr. Pugh by e-mail that it would not represent him in the grievance that he filed on February 1, 2018, because, after reviewing the grievance,

the response from the BCPS, and Mr. Pugh's history of concern, the BTU was of the opinion that there was no merit to his grievance and the relief he sought was unavailable.

### III. POSITIONS OF THE PARTIES

In his Charge, Mr. Pugh asserts that the BTU breached its duty of fair representation in violation of Section 6-407(b) of the Education Article. In support of his claim, Mr. Pugh makes several allegations. First, Mr. Pugh alleges that the BTU failed to file a grievance on his behalf following the BCPS's alleged mishandling of his case involving the November 12, 2015, incident, and subsequently, refused to represent him with regard to the grievance that he filed individually on February 1, 2018, with regard to the same matter. Mr. Pugh also asserts that the BTU refused to provide him with legal counsel on the basis that he criticized the BTU for the manner in which it handled hearing issues within the BCPS, and further, for filing the instant Charge. Finally, Mr. Pugh asserts that the BTU failed to file a grievance on his behalf concerning "a stepping-up of rank during the grievance process."<sup>2</sup>

In its Response, the BTU asserts two affirmative defenses. First, the BTU asserts that certain allegations in Mr. Pugh's Charge "are barred by limitations" pursuant to COMAR 14.34.04.03(A)(2). Second, the BTU asserts that the Charge "must be dismissed for failure to state a claim upon which relief can be granted."

### IV. ANALYSIS<sup>3</sup>

As noted above, the BTU asserts that certain allegations made by Mr. Pugh are barred by the time limitations set forth in COMAR 14.34.04.03(A)(2), and therefore, must be dismissed.

COMAR 14.34.04.03(A)(2) states, "[i]n order to be timely, Form PSLRB-05 must be filed with the Executive Director of the Board within 60 days after the charging party knew, or reasonably should have known, of the statutory violation alleged." The allegations contained in Mr. Pugh's Charge and the amendments thereto date from November 2015 to March 6, 2018. Because Mr. Pugh's Charge was filed on February 12, 2018, the PSLRB must only consider the allegations made by Mr. Pugh in the 60-day period leading up to the date he filed the Charge, i.e., December 14, 2017, and forward.

We now turn to the allegations made by Mr. Pugh for the period including December 14, 2017, and after.

#### a. Section 6-407(b)

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.

<sup>2</sup> Mr. Pugh also asserts that the BTU's refusal to provide representation as alleged herein is also a violation of Sections 6-408 and 6-409 of the Education Article.

<sup>3</sup> Because Mr. Pugh is a certificated employee, we analyze his Charge under Title 6, Subtitle 4 of the Education Article.

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 decision not to represent a member of the negotiating unit with regard to his/her termination does not violate the duty of fair representation unless the decision is arbitrary, discriminatory, or made in bad faith.

In his Charge, Mr. Pugh asserts that his claim that the BTU breached its duty of fair representation is grounded in arbitrariness.

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 made clear that a union is not necessarily in breach of the duty of fair representation if it opts to not process a particular grievance. 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))). In other words, while a union may refuse to process a grievance, "it may not do so without reason, merely at the whim of someone exercising union authority." Stanley, 165 Md. App. at 16 (*citing Neal*, 48 Md. App. at 358).<sup>4</sup>

As noted above, Mr. Pugh alleges that the BTU refused to represent him with regard to a grievance that he filed individually on February 1, 2018. According to the evidence provided by the parties, the BTU met with Mr. Pugh to discuss the status of his position with the BCPS. While the BTU did not represent Mr. Pugh with regard to the grievance that he filed individually on February 1, 2018, its decision was based on several communications with Mr. Pugh, and an analysis that the grievance lacked merit. As a result, it cannot be said that the BTU's decision

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<sup>4</sup> The Court further stated:

"[A] union is accorded considerable discretion in the handling and settling of grievances.' *Neal*, 48 Md. App. At 358, 427 A.2d 1033. A union does not necessarily breach its duty when it declines to take a member's grievance to arbitration. *See Vaca*, 386 U.S. at 191-92, 87 S. Ct. 903; *accord Meola v. Bethlehem Steel Co.*, 246 Md. 226, 235, 228 A.2d 254 (1967). Indeed, "an employee has no absolute right to insist that his grievance be pressed through any particular state 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 benefiting the membership at large." *Neal*, 48 Md. App. At 358-59, 427 A.2d 1033 (citation omitted)(emphasis deleted). '[M]ere negligence... would not state a claim for breach of the duty of fair representation[.]' *United Steelworkers of Am., AFL-CIO-CLC v. Rawson*, 495 U.S. 362, 372-73, 110 S. C. 1904, 109 L.Ed.2d 362 (1990)."

*Id.*

not to process Mr. Pugh's grievance was "so far outside a wide range of reasonableness as to be irrational," and therefore, "arbitrary."

Furthermore, as aforementioned, Mr. Pugh alleges that the BTU violated its duty of fair representation by failing to provide him with legal counsel after he criticized the BTU's handling of hearing issues within the BCPS, and further, after he filed the instant charge. As discussed above, the BTU offered Mr. Pugh legal counsel, which Mr. Pugh declined – a fact that is accepted by Mr. Pugh and the BTU.

Finally, as previously discussed, Mr. Pugh asserts that the BTU has failed to file a grievance on his behalf concerning "a stepping-up of rank during the grievance process." Other than the claim itself, Mr. Pugh has failed to provide any evidence to support his assertion that the BTU's decision not to file a grievance on his behalf with regard to this matter was in any way arbitrary.

For the foregoing reasons, Mr. Pugh's Charge with regard to Section 6-407(b) is dismissed.

**b. Section 6-408(a)**

As noted above, under Section IV of Form PSLRB-05, Mr. Pugh also checked Section 6-408(a), thereby alleging that the BTU violated this Section of the Education Article.

Section 6-408(a) states, "[w]hen a public school employer and an employee organization negotiate under this section, the public school employer and the employee organization shall: (1) [c]onfer in good faith, at all reasonable times; (2) [h]onor and administer existing agreements; (3) [m]ake every reasonable effort to conclude negotiations with a final written agreement in a timely manner; and (4) [r]educe to writing the matters agreed on as a result of negotiations." Section 6-408(a) of the Education Article codifies the duty to negotiate in good faith, and only applies to the collective negotiations process between a public school employer and employee organization. Because Mr. Pugh's Charge does not in any way involve the collective negotiations process, or an alleged violation thereof, Section 6-408(a) does not apply to the instant Charge. Therefore, Mr. Pugh's Charge with regard to Section 6-408(a) is dismissed.

**c. Section 6-408(c)(1)**

As previously discussed, under Section IV of Form PSLRB-05, Mr. Pugh also checked "Other (Specify statutory section)", specifying Section 6-408(c)(1) of the Education Article, thereby alleging a violation of this Section.

Section 6-408(c)(1) states, "[o]n request a public school employer or at least two of its designated representatives shall meet and negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on all matters that relate to salaries, wages, hours, and other working conditions, including procedures regarding employee transfers and assignments." Similar to Section 6-408(a), Section 6-408(c)(1) only applies to the collective negotiations process between a public school employer and employee organization. Because Mr. Pugh's Charge does not in any way involve the collective negotiations process, or an alleged violation

thereof, Section 6-408(c)(1) does not apply. Therefore, Mr. Pugh's Charge with regard to Section 6-408(c)(1) is dismissed.

**d. Section 6-409**

As noted above, Mr. Pugh asserts that the BTU violated Section 6-409 of the Education Article by refusing to provide him with legal counsel on the basis that he criticized the BTU for the manner in which it handled heating issues within the BCPS, and further, for filing the instant Charge.

Section 6-409 of the Education Article makes it unlawful for an employee organization to "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..." Section 6-402 of the Education Article establishes the right of public school employees "to 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." Section 6-403 establishes the right of public school employees "to refuse to join or participate in the activities of employee organizations." Read together, these Sections provide that a public school employee may file a charge against an employee organization only if the employee organization interferes with, intimidates, restrains, coerces, or discriminates against the public school employee because he exercised his right to form, join, or participate in the activities of an employee organization of his own choosing, or because he exercised his right to refuse to do so.

Mr. Pugh has not provided any evidence to support a finding that the BTU in any way interfered with, intimidated, restrained, coerced, or discriminated against him based on his right to form, join, or participate in the activities of an employee organization, or for exercising his right to refuse to do so – nor has he even made an allegation to that effect. As a result, Mr. Pugh's Charge with regard to Section 6-409 of the Education Article is dismissed.

**e. Section 6-407(a)**

As noted above, under Section IV of Form PSLRB-05, Mr. Pugh also checked Section 6-407(a), alleging that the BTU violated this Section of the Education Article.

Section 6-407(a) of the Education Article states, "An employee organization designated as an exclusive representative shall be the negotiating agent of all public school employees in the unit in the county." Section 6-407(a) codifies the designation of an exclusive representative as the negotiating agent of public school employees in a particular bargaining unit and county. Mr. Pugh has not contested the BTU's designation as the exclusive representative of public school employees in the BCPS, nor has he contested its role as the negotiating agent for those employees. As a result, Mr. Pugh's Charge with regard to Section 6-407(a) is dismissed.

**V. CONCLUSIONS OF LAW**

For the reasons stated herein, we conclude that the BTU did not violate Section 6-407(a), 6-409, 6-408(c)(1), 6-408(a), or 6-407(b) of the Education Article.

**VI. ORDER**

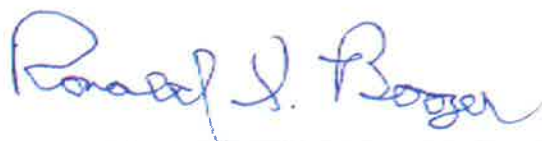
IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER,  
PSLRB Case No. SV 2018-11, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



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Elizabeth Morgan, Chair



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Ronald S. Boozer, Member



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Robert H. Chanin, Member



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Donald W. Harmon, Member



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Philip S. Kauffman, Member

Annapolis, MD

June 8, 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).