

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *

SHARON MOESEL, *

Charging Party, *

v. * PSLRB Case SV 2018-03

TEACHERS ASSOCIATION OF *

ANNE ARUNDEL COUNTY, *

Charged Party. *

* * * * *

DECISION AND ORDER DENYING REQUEST FOR RELIEF AND DISMISSING CHARGE

I. Introduction and Procedural Background

On July 20, 2017, Sharon Moesel 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. Moesel asserts that the Teachers Association of Anne Arundel County (“TAAAC”) violated Sections 6-402, 6-407(b), and 6-409 of the Education Article by “wrongfully expel[ling] her from membership, absent a reasonable and just basis, and without providing... [her] any due process or even an opportunity to respond to TAAAC’s allegations” regarding the reasons for her expulsion.

On August 16, 2017, TAAAC filed an Answer to Ms. Moesel’s Charge, as well a Motion to Dismiss and Memorandum in Support thereof (collectively, the “Response”). In its Response, TAAAC asserts that Ms. Moesel’s Charge should be dismissed for failure to state a claim upon which relief may be granted.

On September 6, 2017, Ms. Moesel filed a Response in Opposition to TAAAC’s Motion to Dismiss.

II. Undisputed Facts

In a letter dated May 30, 2017, TAAAC’s Board of Directors expelled Ms. Moesel from its membership as of May 23, 2017, indicating that Ms. Moesel no longer has “standing to vote,

hold office, or participate in any member-only activity.” Prior to her expulsion, Ms. Moesel was elected as an Association Representative (“AR”) on TAAAC’s Association Representative Council, the governing body of TAAAC consisting of Association Representatives selected by members in the respective schools and worksites. Ms. Moesel also served as Chairperson of the seven-member AR delegation of Annapolis High School (“AHS”).

In its May 30, 2017, letter, TAAAC outlined several reasons for its decision to expel Ms. Moesel from its membership. More specifically, TAAAC stated in relevant part:

... you have persistently used your position as an elected AR to further your personal agenda consisting of ingratiating yourself with public officials, attempting to negotiate salaries for staff members at the high school with administration, and attacking the very Association that you purportedly represent and help to govern...

Nowhere in any of the Guidelines is an AR assigned the role of “negotiator.” However, during the course of negotiations between this Association and the Board of Education for the FY18 Agreement, you took on your own role as negotiator for AHS staff. You orchestrated direct communication with the Board’s chief negotiator; engaged in direct conversations with the funding authority... and you have sent e-mails to the staff (certificated and non-certificated) of AHS that are antagonistic, divisive, and not reflective of the interests of this Association...

Because of the openly rancorous communications with the staff of AHS, TAAAC has been contacted by other members who expressed concern about your continued efforts to divide and incite the staff through your communications wherein you openly take positions against this Association...

Most recently, you demonstrated such hostilities at a special meeting held for the staff at AHS regarding the AHS [Memorandum of Understanding]... You attempted to turn the informational meeting into an acrimonious debate asking irrelevant and inappropriate questions unrelated to the topic in an effort to impugn this Association and apparently the school system administrators...

Finally, and more offensively, while this Association was actively lobbying for the restoration of school funding cuts made by the County Executive, you stood before the County Council during the public budget hearing on May 11, 2017, and had the audacity to ask them to do the contrary.... Keeping in mind that you were first introduced to the County Council as a TAAAC Board of Director member and at the time of the hearing you were a leader, your actions were unethical and contrary to the interests of the bargaining unit as a whole... Your public efforts have been overt attempts to diminish collective strength and bargaining power of this Association in its advocacy for better working conditions for all Unit 1 employees; and thus, cannot be tolerated...

The Association cannot continue to permit your persistent overt flaunting of AR Guidelines, your fiduciary duties and responsibilities as a member of its

governance, and overt undermining of the interests of this Association and the bargaining unit it represents, in order to advance your personal agenda.

This Association will continue to provide you with statutorily required representation in your terms and conditions of employment as it does other non-members, and has notified the Anne Arundel County Public Schools Office of Payroll of the changes in your membership status....

In a letter dated June 9, 2017, from Ms. Moesel to TAAAC, Ms. Moesel requested that TAAAC provide her with “a detailed description of the internal appeal procedure.”

On June 20, 2017, TAAAC responded to Ms. Moesel’s Request, indicating that:

If an appeal is submitted, it will be considered by TAAAC’s Review Board, who will in turn render a binding determination. Members of the Review Board are appointed by TAAAC’s President with approval of the Board of Directors. The next opportunity to approve appointees to the Review Board is on Wednesday, August 23, 2017. There will be appointees’ names and credentials brought to the Board of Directors for approval or rejection. Once a Review Board of seven members is constructed in accordance with the pertinent bylaws, those members will convene as soon as practicable.

With the assistance of legal counsel, procedures for fact-finding, deliberation, and disposition are developed for each proceeding ensuring an opportunity for you to be heard and all facets of the case considered prior to a final decision on the merits.

Prior to July 20, 2017, Ms. Moesel requested a hearing before TAAAC’s Review Board to appeal her expulsion from TAAAC, and subsequently filed the instant Charge before the PSLRB. As a result, TAAAC notified Ms. Moesel that her request for a hearing was stayed pending the PSLRB’s decision with regard to the instant Charge.

On December 4, 2017, the PSLRB issued a letter to the parties indicating that it would hold the instant Charge in abeyance pending a final decision from TAAAC’s Review Board.

On February 19, 2018, Ms. Moesel petitioned TAAAC’s Review Board to review and remand the May 30, 2017, decision of TAAAC to expel her from its membership. After receiving memoranda and exhibits from Ms. Moesel and TAAAC’s Board of Directors, and receiving from Ms. Moesel a request for oral arguments pursuant to the Review Board’s Rules of Procedure, a hearing was scheduled for May 10, 2018.

On May 7, 2018, Ms. Moesel withdrew her request for oral arguments before TAAAC’s Review Board, and requested that the Review Board proceed with its decision. The Review Board convened on May 10, 2018 to consider the arguments considered by both parties.

On June 4, 2018, TAAAC's Review Board issued its Final Decision, upholding the Board of Director's May 30, 2017, decision to expel Ms. Moesel from TAAAC's membership.

III. Positions of the Parties

As noted above, in her Charge, Ms. Moesel asserts that TAAAC violated Sections 6-402, 6-407(b), and 6-409 of the Education Article by wrongfully expelling her from the union. More specifically, Ms. Moesel asserts that: (1) TAAAC has unjustifiably deprived her of her right to join and participate in the activities of an employee organization in violation of Section 6-402, (2) "TAAAC has patently deprived her of any and all due process rights, and has engaged in actions which are completely arbitrary and unjustified" by "unilaterally expelling her without so much as providing her opportunity to respond to their allegations or any type of progressive discipline" in violation of Section 6-402, (3) TAAAC's decision to expel her directly interferes with her right to participate in TAAAC under Section 6-409, and (4) TAAAC's decision to expel her deprived her of her right to fair representation under Section 6-407(b).

In support of these assertions, Ms. Moesel claims that, prior to its May 30, 2017, letter, TAAAC had not communicated with her whatsoever concerning her expulsion, nor had it provided her a warning of a potential expulsion. Furthermore, Ms. Moesel asserts that there is no mention of expulsion in TAAAC's bylaws, and that TAAAC failed to provide her with an opportunity to respond to the wrongful allegations of misconduct. Accordingly, Ms. Moesel contends that she was not provided any due process, and that TAAAC's actions in expelling her are completely arbitrary and unjustified.

As previously stated, in its Response, TAAAC argues that Ms. Moesel's Charge fails to allege facts sufficient to state a claim upon which relief may be granted by the PSLRB.

In support of this argument, TAAAC asserts the following. First, TAAAC asserts that, as an employee organization, Section 6-402 vests with it the authority "to establish reasonable restrictions as to who may join,... [and] provisions for the dismissal of individuals from membership." Second, TAAAC asserts that Ms. Moesel has not been denied representation for any matter arising under the collective bargaining agreement. Third, TAAAC asserts that it has not violated Sections 6-402, 6-407(b), or 6-409 "as it has neither interfered with, restrained, or coerced Ms. Moesel" because of the exercise of her rights under the Education Article. Finally, TAAAC asserts that the statutory authority granted to it under Section 6-402, "combined with the Supreme Court's pronouncement that no provisions of the... [National Labor Relations Act ("NLRA")] were designed to interfere with internal union affairs, divests the PSLRB of the authority over TAAAC's decision to expel Ms. Moesel from membership."¹

¹ In addition, in its Response, TAAAC also included additional reasons for its decision to expel Ms. Moesel from its membership – mainly that Ms. Moesel:

repeatedly undermined TAAAC and refused to honor its collective efforts in obtaining full funding for its negotiated agreements by engaging in the following acts: (1) testifying before the City Council against full funding of the union's ratified tentative agreement...; (2) publicly complimenting the County Executive, as a TAAAC member, when the union threatened impasse negotiations stemming from insufficient funding levels in 2016...; (3) refusing to engage in

IV. ANALYSIS

At the outset, we dismiss TAAAC's argument that Section 6-402, "combined with the Supreme Court's pronouncement that no provisions of the... [National Labor Relations Act ("NLRA")] were designed to interfere with internal union affairs, divests the PSLRB of the authority over TAAAC's decision to expel Ms. Moesel from membership."

In making this argument, TAAAC relies on Section 158(b)(1)(A) of the NLRA, which provides in relevant part,

It shall be an unfair labor practice for a labor organization or its agents – (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of the labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein...

29 U.S.C. § 158(b)(1)(A). The language contained in Section 158(b)(1)(A) is separate and distinct from the language contained in Section 6-402(b), which states, "An employee organization may establish reasonable: (1) Restrictions as to who may join; and (2) Provisions for the dismissal of individuals from membership." Therefore, TAAAC's argument in this regard is inapplicable.

Furthermore, as explained above, the PSLRB has been granted the authority 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). Therefore, where a dispute arises under Section 6-402(b) concerning the reasonableness of a union's restrictions as to who may join, or, in the alternative, the reasonableness of a union's provisions for the dismissal of individuals from membership, the PSLRB has been given the statutory authority to resolve that dispute.

a. Section 6-402 (Right of public school employee to form, join, and participate in the activities of employee organization)

As noted above, Ms. Moesel asserts that TAAAC has unjustifiably deprived her of her right to join and participate in the activities of an employee organization in violation of Section 6-402. Ms. Moesel further asserts that "TAAAC has patently deprived... [her] of any and all due process rights, and has engaged in actions which are completely arbitrary and unjustified" by "unilaterally expelling... [her] without so much as providing her opportunity to respond to their allegations or any type of progressive discipline."

approved organized picketing activities to support full funding of negotiated agreements...; (4) attempting to negotiate directly with the Board of Education's Chief Negotiator for terms and conditions of employment for those assigned to AHS...; and 5) calling for a separate bargaining unit....

To the extent that these reasons are not cited in TAAAC's May 30, 2017, letter, which was the basis for which Ms. Moesel was expelled, they are irrelevant to the matter before us.

Section 6-402(a) of the Education Article states that “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.” *See* Section 6-402(b). Read together, a public employee may form, join, and participate in the activities of employee organizations for the purpose of being represented on all matters that relate to salaries, wages, hours, and other working conditions; however, employee organizations may establish: (1) reasonable restrictions as to who may join, and (2) reasonable provisions for the dismissal of individuals from membership.

We note that the only question currently before the PSLRB is whether the provisions established by TAAAC in expelling Ms. Moesel were “reasonable” under Section 6-402(b).

As explained above, TAAAC’s Board of Directors voted to expel Ms. Moesel from membership, and notified Ms. Moesel of this decision in a letter dated May 30, 2017.² Following Ms. Moesel’s request that TAAAC provide her with “a detailed description of the internal appeal procedure,” TAAAC provided Ms. Moesel with an outline of how to proceed – mainly, that if Ms. Moesel were to submit an appeal, that TAAAC’s Board of Directors would appoint a Review Board, who, with the assistance of legal counsel, would establish “procedures for fact-finding, deliberation, and disposition... ensuring an opportunity... to be heard and all facets of the case considered prior to a final decision on the merits.” Subsequent to the filing of Ms. Moesel’s appeal, the parties were provided an opportunity to submit briefs in support of their respective positions, and oral arguments were scheduled before TAAAC’s Review Board.

Based on these facts, the PSLRB concludes that the provisions established by TAAAC in expelling Ms. Moesel were “reasonable” within Section 6-402(b). Therefore, Ms. Moesel’s Charge with regard to Section 6-402 is dismissed.

b. Section 6-409 (Interference with right of public school employee to exercise certain statutory rights)

As discussed above, Ms. Moesel argues that TAAAC’s decision to expel her directly interferes with her right to participate in TAAAC under Section 6-409.

Section 6-409 of the Education Article states, “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 article.” *See* Section 6-402. Section 6-403 states, “A public school employee may refuse to join or participate in the activities of employee organizations.” Read together, these provisions make clear that an employee organization may not interfere with, intimidate, restrain, coerce or discriminate against a public school employee for exercising his/her right to form, join, or participate in the activities of the employee organization of his/her choice, or from exercising his/her right to refrain from joining or participating in the activities of employee organizations.

The evidence provided in the record does not support a finding that TAAAC in any way interfered with, intimidated, restrained, coerced or discriminated against Ms. Moesel for

² See Footnote 1 for an explanation of why the additional reasons set forth in TAAAC’s Response are irrelevant.

exercising her right to form, join, or participate in the activities of the employee organization of her choice, or for exercising her right to refuse to do so. As a result, Ms. Moesel's claim with regard to Section 6-409 is dismissed.

c. Section 6-407(b)

As previously explained, Ms. Moesel asserts that TAAAC's decision to expel her deprived her of her right to fair representation under Section 6-407(b) of the Education Article.

Ms. Moesel's allegations are not within the scope of the duty of fair representation. The expulsion of Ms. Moesel does not impact her relationship with the employer, or relate to matters arising under the collective negotiations agreement, or, even more broadly, matters arising out of her status as a member of the negotiating unit represented by TAAAC. *See Resnick v. Association of Supervisory and Administrative School Personnel*, PSLRB SV 2014-06 (explaining that the duty of fair representation "does not apply to matters that are strictly internal union affairs, which do not impact the relationship of bargaining unit members to their employer").³ As a result, Ms. Moesel's Charge with regard to Section 6-407(b) is dismissed.

V. CONCLUSIONS OF LAW

For the reasons stated herein, we conclude that TAAAC did not violate Sections 6-402, 6-407(b), or 6-409 of the Education Article.

VI. ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2018-03, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



Elizabeth Morgan, Chair

³ This decision interpreted Section 6-509(b) of the Education Article, which applies to non-certificated employees, not 6-407(b)(1), which applies to certificated employees in the instant matter. Because these Sections contain identical language, it is appropriate for the PSLRB to rely on its interpretation of Section 6-509(b) in making its decision here.



Ronald S. Booser, Member



Robert H. Chanin, Member



R. Allan Gorsuch, Member



Philip S. Kauffman, Member

Annapolis, MD

September 11, 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).