

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *
LESTINE COLBERT, *
Charging Party, *
v. * PSLRB Case SV 2016-06/SV 2017-01
SERVICE EMPLOYEES *
INTERNATIONAL UNION, *
LOCAL 500, *
Charged Party. *

* * * * *

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

I. INTRODUCTION AND POSITIONS OF THE PARTIES

A. June 22, 2016, Charge

On June 22, 2016, Lestine Colbert filed a Charge of Violation of Title 6, Subtitle 5 of the 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. Colbert claims that Service Employees International Union, Local 500 (“SEIU”), breached its duty of fair representation in violation of Section 6-509(b) of the Education Article. Ms. Colbert includes allegations of a lengthy history of harassment culminating with an assault by her supervisor. The basis for her Charge is that SEIU did not represent her with regard to the alleged assault, and, more specifically, failed to file a grievance on her behalf. Among her claims, Ms. Colbert further contends that SEIU violated its duty of fair representation when Ms. Marva Luke, a union representative, failed to attend a meeting between Ms. Colbert and Human Resources, and that SEIU improperly shared information regarding Ms. Colbert with her supervisors.

On July 19, 2016, SEIU filed its Response denying Ms. Colbert’s Charge. SEIU offers a three-part defense. First, SEIU claims that, even if Ms. Colbert’s allegations are factually correct, they do not meet the standard to show that SEIU has failed to meet its duty of fair representation. Second, SEIU claims that Ms. Colbert has failed to “provide a clear and concise

statement of the facts constituting the alleged statutory violation(s),” and notes numerous factual inaccuracies, some which are substantial in nature. Third, SEIU asserts that a number of Ms. Colbert’s allegations were not timely submitted pursuant to the 60 day filing period required by law.

On August 3, 2016, Ms. Colbert replied to SEIU’s Response, and included additional allegations that were not included in her initial filing. As a result, on August 16, 2016, per the PSLRB’s direction, Executive Director Erica Snipes sent an e-mail to Ms. Colbert indicating that Ms. Colbert’s August 3, 2016, reply would not be accepted as part of the record in this matter. In her e-mail, Executive Director Snipes further indicated that the PSLRB would permit Ms. Colbert to reply to SEIU’s response, but that her reply must be limited only to matters raised in SEIU’s July 19, 2016 Response -- any allegations not raised in Ms. Colbert’s original Charge must be filed in a new and separate charge.¹

On September 1, 2016, Ms. Colbert filed a Reply to SEIU’s Response. In her Reply, Ms. Colbert contests SEIU’s argument that her Charge was not timely filed, and challenges certain minor and immaterial details regarding the assistance that SEIU provided.² Most notably, however, Ms. Colbert acknowledges that “she may not have directly requested” Ms. Luke’s attendance at her meeting with Human Resources, and further, that she “wrongfully assumed they [SEIU] would attend.”

B. September 6, 2016, Charge

On September 6, 2016, while the June 22, 2016, Charge was pending before the PSLRB, Ms. Colbert filed a second Charge alleging that SEIU breached its duty of fair representation under Education Article, Subtitle 5, Section 6-509(b) by failing to represent her with regard to several additional matters. On September 27, 2016, SEIU filed its Response, again defending itself on the basis that Ms. Colbert failed to show that SEIU has engaged in practices that violate its duty of fair representation, and included with it a Motion to Dismiss.

More specifically, in her Charge, Ms. Colbert alleges that SEIU failed to file a grievance on her behalf after she was placed on unpaid leave for six months following an independent medical examination that was ordered by Montgomery County Public Schools (“MGPS”) after the alleged assault. In its Response, SEIU reiterates the three-part defense it provided in its Response to Ms. Colbert’s June 22, 2016, Charge. In addition, SEIU asserts that Ms. Colbert did not provide any facts to demonstrate “that the Union’s conduct was anything other than honest, in good faith, and without hostility or arbitrary discrimination.”

Ms. Colbert also asserts that SEIU refused to grant her sick leave from SEIU’s Sick Leave Bank. In response, SEIU argues that Ms. Colbert “provided no facts to support her

¹ Under COMAR 14.34.04.05(C), “In its discretion, the Board may allow filings to be supplemented and may accept a reply to a response and a sur-reply, with additional time limits to be determined by the Board.” In other words, a Charging Party does not have the right to file a reply, but may do so with the approval of the PSLRB.

² In her reply to SEIU’s Response, Ms. Colbert provided only immaterial challenges that do not warrant a hearing or further investigation in this matter. As a result, the PSLRB accepts as accurate the factual assertions made by SEIU in its Response.

allegations of the lack of good faith.” SEIU further contends that the rules and practice of the Sick Leave Bank provide that it will not issue a leave grant to cover the same absence covered by Worker’s Compensation, and that sick leave was denied because Ms. Colbert had filed for Worker’s Compensation covering the same time period. In addition, SEIU argues that, although the Sick Leave Bank rules provide for an appeal, Ms. Colbert did not avail herself of that process.

In addition, Ms. Colbert claims that SEIU refused to assist her after she was denied payment for hours of work for which she claims she would have been scheduled in the summer had she not been placed on unpaid leave. In response, SEIU asserts that Ms. Colbert is a ten-month employee whose work during summer months is paid as a temporary employee, and only for hours worked; therefore, any payment for hours for which she did not work are not compensable under the collective bargaining agreement. SEIU further argues that, because a claim for payment would not be enforceable under the collective bargaining agreement, SEIU’s refusal to represent her in this matter did not violate its duty of fair representation.

Ms. Colbert further argues that SEIU did not represent her following claims that she was discriminated against on the basis of her race. In response, SEIU asserts that Ms. Colbert’s Charge “provides no evidence to support that she was discriminated against on the basis of her race” or “that she raised such allegations to the employer, the union, or an administrative authority.” As a result, SEIU contends it did not violate its duty of fair representation.

Finally, Ms. Colbert contends that SEIU failed to escort her to pick up her personal belongings at work after she was placed on unpaid leave. In its Response, SEIU makes clear that Ms. Colbert was not, in this regard, treated differently than other members in the negotiating unit, asserting that “[t]his kind of service is not part of the representative function provided by the Union.”

Under COMAR § 15.34.04.05(E), “Upon application of a party or upon its own initiative, the Board may consolidate cases which involve common questions of law or fact.” Based on a thorough review of the documents provided to the PSLRB by the parties in connection with Ms. Colbert’s June 22, 2016 and September 6, 2016 Charges, the PSLRB has determined that the two charges involve common questions of both law and fact. As a result, the PSLRB has consolidated these cases, and the analysis and decision set forth below applies to both cases.

II. ANALYSIS

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 serve the interests of all members [of the negotiating unit] without hostility or discrimination,” “to exercise its discretion with complete good faith and honesty,” and “to avoid arbitrary conduct.” 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 decision not to represent a member of the negotiating unit does not violate the duty of fair representation unless the decision is arbitrary, discriminatory, or made in bad faith.

As discussed above, Ms. Colbert argues that SEIU violated its duty of fair representation when it failed to represent her following allegations of harassment and assault in the workplace, and again, when Ms. Colbert was placed on unpaid leave. In fact, the record supports the opposite.³ SEIU was heavily involved in the events leading up to Ms. Colbert's placement on unpaid leave, constantly interacted with Ms. Colbert, and provided Ms. Colbert significant advice and guidance. On several occasions, SEIU accompanied Ms. Colbert to meetings with MCPS, made contact with Human Resources to investigate the circumstances surrounding the alleged assault, and made phone calls on Ms. Colbert's behalf.⁴ In addition, as indicated by e-mails between Ms. Colbert and SEIU, which were attached as exhibits to Ms. Colbert's initial Charge, SEIU offered Ms. Colbert support with regard to the independent medical examination, as well as her return to work after she was placed on unpaid leave. SEIU also explained to Ms. Colbert, at length, the reasons for not filing grievances on her behalf. Thus, based on SEIU's constant contact, guidance, and support of Ms. Colbert with regard to the aforementioned matters, it is clear that SEIU's actions were in no way arbitrary, discriminatory, or bad faith, and consequently, that SEIU did not violate its duty of fair representation.

Ms. Colbert also asserts that SEIU violated its duty of fair representation by refusing to grant her sick leave from the Sick Leave Bank. As indicated in its Rules of Procedure, the Sick Leave Bank is administered by the SEIU Local 500 Sick Leave Bank Committee, which consists of two SEIU representatives and one MCPS representative "who shall act on behalf of the Office of Human Resources to ensure that the Committee's actions are consistent with MCPS Policies, Regulations, and Procedures." As explained by SEIU, the rules and practice of the Sick Leave Bank plainly provide that it will not issue a leave grant to cover the same absence covered by Worker's Compensation. In a letter dated July 29, 2016, SEIU indicated to Ms. Colbert that her sick leave request was denied because she had filed for Worker's Compensation covering the same absence. This reasoning, and the subsequent denial, which is based on the rules set forth by the Sick Leave Bank, is not arbitrary, discriminatory, or made in bad faith.⁵ Therefore, the PSLRB does not find that SEIU violated its duty of fair representation by denying Ms. Colbert sick leave from the Sick Leave Bank.

³ As indicated above, SEIU asserts a three-part defense with regard to these claims; however, the PSLRB need not go beyond the first defense – that Ms. Colbert's allegations do not meet the standard to show that SEIU has failed to meet its duty of fair representation – because, even accepting Ms. Colbert's allegations as true, they do not support a finding that SEIU acted arbitrarily, discriminatorily, or in bad faith.

⁴ While Ms. Colbert claims in her initial Charge that SEIU Representative Marva Luke did not accompany her to a meeting with Human Resources following the alleged assault, she later recants this statement, admitting that "she may not have directly requested" Ms. Luke's attendance at the aforementioned meeting with Human Resources, and further, that she "wrongfully assumed they [SEIU] would attend."

⁵ A question exists as to whether SEIU can be held accountable under the duty of fair representation for its actions with regard to the Sick Leave Bank since the Sick Leave Bank Committee is composed of members from both SEIU and MCPS. That being said, we need not reach that question because, even assuming that SEIU was fully responsible for the decision of the Sick Leave Bank Committee in denying Ms. Colbert leave, there is nothing in the record to indicate that the decision was arbitrary, discriminatory, or made in bad faith.

Ms. Colbert further argues that SEIU did not represent her after she was denied payment for hours of work for which she claims she would have been scheduled had she not been placed on unpaid leave. As indicated above, under the collective bargaining agreement, Ms. Colbert is a ten-month employee whose work during summer months is paid as a temporary employee, and only for hours actually worked. Reviewing the materials provided, it is clear that SEIU's refusal to pursue a grievance for this payment was not arbitrary, discriminatory, or made in bad faith – it was, in fact, based on a good faith belief that a claim would not be enforceable under the collective bargaining agreement. As a result, the PSLRB does not find that SEIU violated its duty of fair representation by refusing to file a grievance with regard to these payments.

In addition, Ms. Colbert alleges that SEIU failed to represent her following claims that she was discriminated against on the basis of her race. There is nothing in the record to support this allegation or to rebut SEIU's assertion that Ms. Colbert never "raised such allegations to the employer, the union, or an administrative authority."

Finally, Ms. Colbert claims that SEIU failed to escort her to pick up her personal belongings at work after she was placed on unpaid leave. We agree with SEIU's position that this kind of service is not part of the representative function required under the duty of fair representation, and therefore, that SEIU did not violate its duty of fair representation in this regard.

In sum, the PSLRB finds nothing in the record to indicate that SEIU's decisions with regard to its representation of Ms. Colbert were arbitrary, discriminatory, or made in bad faith. As a result, the PSLRB has determined that SEIU did not violate its duty of fair representation. For this reason, the Charges against SEIU must be dismissed.

III. CONCLUSIONS OF LAW

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

IV. ORDER

IT IS HEREBY ORDERED THAT THE CHARGES IN PSLRB Case Nos. SV 2016-06/SV 2017-01 ARE DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



Elizabeth M. Morgan, Chair

Robert H. Chanin

Robert H. Chanin, Member

Ronald S. Boozer

Ronald S. Boozer, Member

Donald W. Harmon

Donald W. Harmon, Member

John A. Hayden III

John A. Hayden, III, Member

Annapolis, MD

October 24, 2016

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).