Maryland Public Employee Relations Board

45 Calvert Street, Room 102
Annapolis, MD 21401
(410) 260-7291

In the Matters of:	*	
Tiffany Brockington,		*
Charging Party,	*	
v.	*	**PERB ULP 2026-08**
AFSCME Maryland, Council 3,	*	
Respondent.	*	

Tiffany Brockington,		*
Charging Party,	*	
v.	*	**PERB ULP 2026-09**
Coppin State University,	*	
Respondent.	*	

DECISION AND ORDER

In the above-captioned unfair labor practice charges, Charging Party Tiffany Brockington alleges that Respondents, AFSCME Maryland, Council 3 (AFSCME) and Coppin State University (CSU), violated her rights under the Public Employee Relations Act (PERA or the Act). The allegations arise from the decision by CSU that it would not grant her a salary adjustment and AFSCME's decision that it would not file a grievance over CSU's decision.

Procedural Background

On September 8, 2025, the Charging Party filed a charge against her union, AFSCME, and her employer, CSU. CSU filed its initial Response on September 19, 2025 and its supplemental Response on September 29, 2025. AFSCME submitted its initial Response to the charge on September 29, 2025 and its supplemental Response on October 22, 2025.

The Deputy Director investigated both matters and issued a consolidated report to the Board for its consideration. Because the two cases involve the same subject matter and parties to a negotiated agreement that govern the Charging Party's working conditions, the Board consolidates them for decision.

Factual Background

AFSCME is the exclusive representative for all exempt and non-exempt staff employed by CSU, including the Charging Party. AFSCME and CSU are parties to a collective bargaining agreement (CBA)[1] which governs the working conditions and pay structure of exempt and non-exempt staff employed by CSU.

Article 8, section 2(C) of the CBA requires CSU to provide a 2.5% merit pay adjustment to all eligible exempt bargaining unit employees who receive a satisfactory performance rating. The CBA allows for either aggrieved employees or their union representatives to initiate the grievance procedure under Article 15. Meanwhile, CSU is governed by USM Policy VII-1.21 which specifies that merit increases are not provided to non-exempt employees during their probationary period but is silent on whether exempt employees receive merit increases during probation.

On May 19, 2025, the President of CSU, Anthony L. Jenkins, sent a memo to all unionized employees of the College announcing that they would receive a 2.5% merit increase, effective July 1, 2025.

Charging Party began her employment at CSU on December 11, 2024 as an employee exempt from the Fair Labor Standards Act, joining a bargaining unit represented by AFSCME. She attended her first AFSCME meeting on July 9, 2025 and spoke with the President of AFSCME's local union, Kevin Carr, to ensure she qualified for the merit increase due to issues with her performance evaluation. Carr advised her on how to challenge her evaluation with a rebuttal. On July 9, 2025, Carr sent an email to the Charging Party and numerous others asserting that probationary employees are eligible for the 2.5% merit increase. The Charging Party called and spoke with Chynia Lewis who works in CSU's human resources department on July 15, 2025, who told her that she is not eligible for the merit increase as a probationary employee.

On July 16, 2025, CSU's Chief of Human Resources sent an email to employees announcing that the 2.5% merit increase did not apply to exempt staff who are currently on probation but they would receive the increase when they complete probation. The Charging Party spoke with Carr again on July 22, 2025, who stated that CSU may have been relying on USM policies. When the Charging Party asserted that the policy that applies to exempt employees does not prohibit them from receiving merit increases during probation, he asked her to send that policy to him, which she did. The Charging Party encountered Carr on campus a week later where he informed her that AFSCME would not file a grievance and would not otherwise

[1] The parties are covered by a consolidated agreement between AFSCME and the University System of Maryland (USM).

support or engage further on the issue. Neither AFSCME nor the Charging Party filed a grievance over the matter.

Positions of the Parties

Charging Party

A. ULP 2026-09 (Brockington v. CSU)

Against CSU, the Charging Party alleges that failing to provide her with the 2.5% merit increase that it had announced in May amounted to a violation of her rights because she was entitled to the wage adjustment under the CBA. She asserts that, between the announcement by the President of CSU, the terms of the CBA, and USM policy on the subject, she was entitled to receive the 2.5% merit increase and, by failing to do so, CSU violated her rights under the Act, the 14th Amendment to the Constitution, and her right to due process.

B. ULP 2026-08 (Brockington v. AFSCME)

The Charging Party alleges that AFSCME failed to represent her when CSU denied her a merit pay increase due to her probationary status. She also alleges that AFSCME infringed upon her right to liberty and property as guaranteed by the CBA, as well as her right to due process under the 14th Amendment to the Constitution. Her position is that, because it did not file a grievance or advocate further on her behalf, AFSCME violated her rights under the Act.

Respondents

A. ULP 2026-09 (Brockington v. CSU)

In its Response, CSU asserts that the Charging Party has failed to identify any conduct on its part which can be construed as a violation of PERA and the matter should be dismissed.

B. ULP 2026-08 (Brockington v. AFSCME)

AFSCME asserts that it properly responded to the Charging Party's concerns and acted reasonably and within its discretion to cease advocating on her behalf. Its representatives, including Mr. Carr, reviewed the applicable contractual provisions, USM policies, relevant bargaining history, and drew on their experience to conclude that the Charging Party had no clear entitlement to a merit increase before the conclusion of her probationary period. The Respondent also notes that the Charging Party is entitled to file a grievance without AFSCME under both the CBA and state law. Though AFSCME did not interfere or otherwise inhibit her from filing a grievance, the Charging Party never initiated the grievance procedure. As a result, AFSCME asserts it properly carried out its duties as the exclusive representative and did not violate its duty of fair representation or otherwise commit an unfair labor practice.

Analysis

The Charging Party is a public employee subject to PERA, pursuant to Md. Code, State Gov't § 22-101(h). CSU is a public employer subject to PERA, pursuant to Md. Code, State Gov't §22-101(i). AFSCME is an exclusive representative subject to PERA, pursuant to Md. Code, State Gov't § 22-101(e). PERA requires claims of unfair labor practices be submitted within six (6) months after the unfair labor practice occurred. This matter was timely submitted, as the alleged unfair labor practices occurred on July 1, 2025, at the earliest, and the Charging Party filed her charges on September 8, 2025.

§ 22-307(a)(2) of PERA states, "[i]f the Board, through the deputy director's investigation, finds that probable cause exists to support the charge of an unfair labor practice, the Board shall: (i) issue a complaint against the party stated in the charges…." The issue now before us is whether probable cause exists to support the issuance of a complaint in this matter.

A. ULP 2026-09 (Brockington v. CSU)

Based on the Recommendation of the Deputy Director and the Board's consideration of the relevant law and evidence, none of the allegations against CSU are cognizable by PERB. The Charge fails to allege, and the Charging Party fails to present, any evidence that the alleged action by CSU was in response to her exercise of her rights under PERA, §22-201, or otherwise constituted a ULP under PERA under §22-206(a). Whether her allegations about violations of internal policy and its CBA with AFSCME have merit or not, neither constitute a violation of PERA, and PERB does not play a role in the administration of collective bargaining agreements. *Fox et. al. v. Montgomery Cnty. Educ. Ass'n.*, PERB ULP 2025-04, -05, -07, -08, -09, -10, -11, -17. Accordingly, the charge is dismissed.

B. ULP 2026-08 (Brockington v. AFSCME)

PERA § 22-206(b)(6) prohibits employee organizations from "not fairly representing employees in collective bargaining or in any other matter in which the employee organization has the duty of fair representation." Md. Code Ann., State Government § 22-206(b)(6). "Employee organization" is defined under § 22-101(d) as "a labor organization in which public employees participate that has as one of its primary purposes representing public employees." Md. Code Ann., State Government § 22-101(d). The United States Supreme Court's *Vaca v. Sipes* decision posited a duty of fair representation violation when a union's "conduct toward a member is arbitrary, discriminatory, or in bad faith" and provided a wide area of union discretion. 386 U.S. 1710 (1967). The Fourth Circuit Court of Appeals reiterated these principles regarding this duty in contract administration, stating, "[t]he duty to avoid arbitrary conduct does not require a union to take every employee grievance to arbitration, and it has considerable discretion in sifting out grievances which it regards as lacking merit." *Buchanan v. N.L.R.B.*, 597 F.2d 388 (4th Cir. 1979). And Maryland courts have reiterated that "[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." *Stanley v. American Fed. Of State and Mun. Employees Local No. 533*, 165 Md. App. 1, 15 (Md. Ct. Sp. App. 2005) citing *Vaca v. Sipes*. This

Board relied on each of these cases in *Fox et. al. v. Montgomery Cnty. Educ. Ass'n.*, PERB ULP 2025-04, -05, -07, -08, -09, -10, -11, -17.

The only act that implicates the duty of fair representation in this case is the Respondent's decision not to grieve and potentially arbitrate CSU's decision that it would not provide a merit increase to the Charging Party. However, an employee organization does not violate the duty of fair representation when it takes a position in good faith which may be contrary to a member it represents. *Id.* at 8 *citing Strick Corp.*, 241 NLRB 210 (1979). Therefore, the crucial inquiry is whether the Respondent took its position in good faith even though "it was not the solution that the Charging Part[y] would have preferred[.]" *Id.*

AFSCME ultimately took a position regarding the Charging Party's wage adjustment after investigating and considering the matter. After initially advising the Charging Party on her performance evaluation, Mr. Carr seemed to adopt the Charging Party's interpretation of the CBA. However, within days of his initial support, Mr. Carr expressed doubt about whether it was a viable position. The following week, he made it unequivocally clear to the Charging Party that the Union had to "choose our battles" and would not "support or further engage" on the issue. These events all occurred within the thirty (30) day statute of limitations to file a grievance under the AFSCME's negotiated agreement with CSU.

The decision by AFSCME that it would not file a grievance on the Charging Party's behalf, without more, does not evidence its bad faith. A decision that does not meet a member's perception of fairness is not itself offensive to the standard required for AFSCME to meet its duty of fair representation. *See Fox et. al.* In its Response, the Union makes it clear that it was not convinced that a grievance would have merit. Mr. Carr's comments to the Charging Party also suggest that the Union did not believe that CSU's resolution of the issue was worth challenging. The Union then communicated its final decision to the Charging Party with time remaining for her to file under the grievance procedure's timelines, if she so desired. And there is no evidence that the Union impeded her ability to do that. Such conduct by the Union does not fall into the category of grievance handling prohibited under PERB precedent. *Id. citing Union of Security Personnel of Hospitals*, 267 NLRB 974, 980 (1983)(finding that deliberately misleading a grievant, leading to material harm, violates the duty of fair representation).

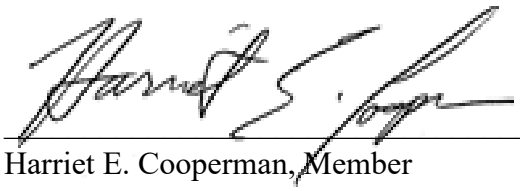
We, therefore, find that the Charging Party has failed to produce sufficient evidence to establish probable cause that AFSCME acted arbitrarily or in bad faith, demonstrating a breach of the duty of fair representation. The charge against AFSCME is dismissed.

Order

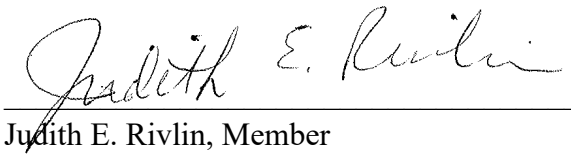
IT IS HEREBY ORDERED THAT THE CHARGES IN PERB ULP 2026-08 AND PERB ULP 2026-09 ARE DISMISED.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Lafe E. Solomon, Chair



Harriet E. Cooperman, Member



Judith E. Rivlin, Member

Jennifer Epps, Member

ISSUE DATE: December 16, 2025

Appeal Rights

Any party aggrieved by this action of the Board may seek judicial review in accordance with Title 10 of the State Government Article, Annotated Code of Maryland, Section 10-222, and Maryland Rules, 7-201 et. seq.