

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: \*  
JAMES CURTIS, \*  
Charging Party, \*  
v. \* PSLRB Case SV 2016-03  
SERVICE EMPLOYEES \*  
INTERNATIONAL UNION, \*  
LOCAL 400 PG, \*  
Charged Party. \*

\* \* \* \* \*

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

I. INTRODUCTION

On December 11, 2015, James Curtis 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 his Charge, Mr. Curtis alleges that Service Employees International Union, Local 400 PG (“SEIU”), breached its “duty of fair representation” in violation of Section 6-509(b) of the Education Article by failing to represent him with regard to the termination of his employment from the Prince George’s County Public Schools (“PGCPS”).

II. FINDINGS OF FACT

On April 1, 2015, Mr. Curtis was arrested by the Prince George’s County Police Department on several drug related charges. On June 2, 2015, as part of a Special Investigation concerning these charges, Mr. Curtis met with his union representative, William Sellman, SEIU President, and Robert L. Foster, Jr., Special Investigator for the PGCPS, and completed a written statement regarding the same. On June 10, 2015, Mr. Sellman accompanied Mr. Curtis to a “Loudermill Hearing” (a pre-termination hearing). On June 24, 2015, Mr. Curtis’ employment was terminated. On June 25, 2015, Mr. Sellman met with Mr. Curtis and helped him draft a letter appealing his termination to the PGCPS Board of Education.

On July 20, 2015, Mr. Curtis met with two members of SEIU's Grievance Committee, Shawn Butler and Phillip Saunders. The purpose of this meeting was to determine whether SEIU would provide further representation to Mr. Curtis with regard to his termination.

Subsequent to the July 20, 2015, Grievance Committee meeting, SEIU determined that it would not provide further representation to Mr. Curtis. Included in the file reviewed by SEIU in making this determination were the following: (1) a Memorandum from PGCPSS's Department of Security Services regarding the Special Investigation of June 2, 2015, (2) Mr. Curtis' written statement to the Department of Security Services in which Mr. Curtis answered questions concerning the drug related charges for which he was arrested, and (3) Mr. Curtis' arrest warrant, including a statement of charges.

### III. POSITIONS OF THE PARTIES

Mr. Curtis claims that SEIU violated its duty of fair representation by failing to represent him with regard to his termination. In support of this claim, Mr. Curtis contends that, on July 6, 2015, he was informed by Mr. Sellman that SEIU "did not want to touch my case," and that Mr. Sellman "has managed to avoid me on every level."

Despite these contentions, Mr. Curtis acknowledges that Mr. Sellman contacted him on the morning of July 20, 2015, to inform him of the Grievance Committee meeting taking place later that day, which Mr. Curtis attended. Mr. Curtis alleges that, at this meeting, not all relevant information was made available to the Grievance Committee, and that the Grievance Committee never took a final vote on whether to represent him.

Mr. Curtis further argues that SEIU has, throughout this proceeding, misrepresented to the PSLRB that it sent him a letter on July 20, 2015, notifying him of its decision that it would not represent him, when, in fact, he was never notified. In support of his allegation that SEIU did not send a letter notifying him that he would not be represented, Mr. Curtis points out that the July 20, 2015 letter, which was provided by SEIU in support of its response to his Charge, was printed on SEIU letterhead using the address of a new office to which SEIU was in the process of moving, but had not yet moved. Mr. Curtis appears to claim that, because the letterhead used an address to which SEIU had not yet moved, the letter must have been written after July 20, 2015, and fabricated in response to his Charge.

Finally, Mr. Curtis asserts that SEIU "has represented through the grievance process other bargaining unit members charged criminally with violations similar to Complainant [Mr. Curtis] and has failed to articulate any objective reason for its decision not to provide that same fair representation to Complainant [Mr. Curtis] in this matter."

In response to the Charge, SEIU denies Mr. Sellman's statement that SEIU "did not want to touch my [Mr. Curtis'] case," and asserts that neither Mr. Sellman nor any other SEIU official avoided or attempted to avoid Mr. Curtis.

SEIU acknowledges that it does not have a written procedure for determining whether or not to represent its members. However, SEIU asserts that, after the Grievance Committee meeting, the Grievance Committee reviewed the complete file and determined that SEIU would

not represent Mr. Curtis. SEIU contends that, on July 20, 2015, it sent a certified letter, return receipt requested, to Mr. Curtis notifying him that SEIU would not represent him.

SEIU further acknowledges that, around the time of the Grievance Committee meeting, SEIU was in the process of moving, and, as a result, is unable to find the certified mail receipt for its July 20, 2015 letter.

#### IV. 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 bargaining 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 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. Curtis does not indicate whether his claim that SEIU breached its duty of fair representation is grounded in arbitrariness, discrimination, or bad faith, or a combination of these bases. As a result, we shall consider in turn whether SEIU’s decision not to continue its representation of Mr. Curtis falls short with regard to any of these standards – i.e., whether it was arbitrary, discriminatory, and/or made in bad faith.

##### A. The “Arbitrary” Standard

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] unions 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>1</sup>

According to the evidence provided by the parties, SEIU represented Mr. Curtis in his meeting with Special Investigator Foster on June 2, 2015, and subsequently, at Mr. Curtis’ Loudermill Hearing on June 10, 2015. In addition, Mr. Sellman met with Mr. Curtis on June 25, 2015, and assisted Mr. Curtis in drafting a letter appealing his termination. On July 20, 2015, Mr. Curtis met with two members of the Grievance Committee to discuss his termination. SEIU reviewed the PGCPS’s Special Investigation Memorandum, Mr. Curtis’ arrest warrant and statement of charges, and Mr. Curtis’ written statement concerning the criminal charges filed against him prior to making its determination that it would not represent Mr. Curtis further.

As noted above, unions are afforded considerable discretion in determining whether or not to represent members of the negotiating unit in disciplinary proceedings. Based upon the evidence, the PSLRB finds that SEIU’s decision not to represent Mr. Curtis did not fall “so far outside a ‘wide range of reasonableness’ ... as to be irrational,” and was therefore, not arbitrary.

As previously discussed, in support of his Charge, Mr. Curtis also asserts that the Grievance Committee was not provided all relevant evidence with regard to his termination, and further, that the Grievance Committee never made a final decision as to whether it would represent him. Mr. Curtis also asserts that Mr. Sellman stated that SEIU “did not want to touch my case,” and that Mr. Sellman “has managed to avoid me on every level.” In light of the above facts, the PSLRB finds that this alleged misconduct asserted by Mr. Curtis, even if true, does not rise to a level that falls “so far outside a ‘wide range of reasonableness’ ... as to be irrational,” and therefore, arbitrary.

Finally, in reviewing this Charge, it was brought to the attention of the PSLRB that SEIU does not have a written or formal procedure in place for deciding whether or not to represent its negotiating unit members in disciplinary proceedings. The PSLRB does not believe that the duty of fair representation requires unions to have such procedures in place -- it only requires that a union’s decision concerning representation not fall “so far outside a ‘wide range of reasonableness’ ... as to be irrational.”

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<sup>1</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.*

## B. The “Bad Faith” Standard

In its decision, the Stanley Court also outlined the standard for determining whether a union’s decision not to represent its negotiating unit members was made in bad faith. The Court held that, in order to succeed on a theory of a bad faith breach of the duty of fair representation, the party alleging the breach must show “fraud, or deceitful or dishonest action” on behalf of the union.<sup>2</sup> Stanley, 165 Md. App. at 19 (*citing In re ABF Freight Sys., Inc., Labor Contract Litigation*, 988 F.Supp. 556, 564 (D.Md. 1997)). The Court further explained that, “[b]ad faith focuses not on ‘the objective adequacy of that union’s conduct,’ but ‘on the subjective motivation of the union officials.’” Stanley, 165 Md. App. at 20 (*quoting Thompson v. Aluminum Co. of Am.*, 276 F.3d 651, 658 (4<sup>th</sup> Cir. 2002)).<sup>3</sup>

As discussed above, Mr. Curtis appears to argue that SEIU acted in bad faith by failing to notify him of its decision not to represent him. A union’s failure to notify a member that it is not representing him/her does not -- standing alone -- show a subjective motivation to commit “fraud, or deceitful or dishonest action.” Thus, even assuming, arguendo, that SEIU failed to notify Mr. Curtis that it would not represent him, such conduct on the part of SEIU does not rise to the level of a “bad faith” breach of the duty of fair representation.

In addition, Mr. Curtis seems to assert that SEIU fabricated the July 20, 2015 letter in support of its response to his Charge. The only evidence that Mr. Curtis provides in support of this assertion is that the letterhead on which SEIU’s July 20, 2015 letter was written used the address of the office to which SEIU was moving, not the address of SEIU’s then-current office. Without more, the mere fact that the letterhead used SEIU’s new address, instead of its then-current address does not support the allegation that the letter was fabricated, and it does not prove a subjective motivation on the part of SEIU to commit “fraud, or deceitful or dishonest action.”

Mr. Curtis does not provide any further evidence that would support a finding of a “bad faith” breach of the duty of fair representation on the part of SEIU, and, accordingly, the PSLRB finds that SEIU did not act in bad faith.

## C. The “Discriminatory” Standard

Unlike the standards outlined above concerning a union’s duty to refrain from “arbitrary” and “bad faith” conduct when determining whether or not to represent negotiating unit members in disciplinary proceedings, Maryland courts have yet to address what constitutes

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<sup>2</sup> The Stanley Court cited several examples of what might constitute a bad faith breach of the duty of fair representation, if properly established, including a union official providing misinformation to union members prior to a membership vote on whether to pursue a grievance or a union official working “behind the scenes” to convince the union not to provide representation to a member. Because allegations of a similar type have not been made in this case, these examples do not apply to the instant matter.

<sup>3</sup> Even if a union’s decision not to provide representation to its negotiating unit members is not the wisest or fairest one, that does not necessarily constitute a violation of the duty of fair representation. Jeffreys v. Communications Workers of America, 354 F.3d 270 (4<sup>th</sup> Cir. 2003).

“discriminatory” behavior in this regard. Federal case law, including decisions from the National Labor Relations Board (“NLRB”), upon which the PSLRB has relied in previous cases, provides significant guidance on this matter.

In determining whether a union has acted in a “discriminatory” manner, federal courts have held that a union cannot draw “invidious” distinctions between members when carrying out efforts relating to contract administration and enforcement, or negotiations. Airline Pilots Ass’n Int’l V. O’Neill, 499 U.S. 65 (U.S. 1991). Discrimination is “invidious” if it is based upon impermissible classifications or if it arises from animus. Steele v. Louisville & Nashville R.R. Co., 323 U.S. 192, 203 (U.S. 1944). Thus, a union violates the duty of fair representation by refusing representation to negotiating unit members based on distinctions such as **race**, Goodman v. Lukens Steel Co., 482 U.S. 656, 665-667 (U.S. 1987), **gender**, Perugini v. Food & Commercial Workers Local 916, 935 F.2d 1083, 1086-1087 (9<sup>th</sup> Cir. 1991), **citizenship**, NLRB v. Longshoreman’s Local 1581, 489 F.2d 635, 637-638 (5<sup>th</sup> Cir. 1974), **national origin**, **religion**, Agosto v. Correctional Officers Benevolent Ass’n, 107 F.Supp. 2d 294, 303-04 (S.D.N.Y. 2000), or **union membership**, Zimmerman v. French Int’l School, 830 F.2d 1316 (4<sup>th</sup> Cir. 1987), or whether or not the employee in question is an internal union dissident.

Mr. Curtis has provided no evidence to support a claim that SEIU’s decision concerning his representation was discriminatory. While Mr. Curtis asserts that SEIU has, in the past, represented other members in disciplinary proceedings resulting from alleged criminal activity, the evidence provided does not support a conclusion that SEIU’s decision was based on animus, or any impermissible classification or “invidious” distinction between Mr. Curtis and these other members.

In sum, because the evidence provided by Mr. Curtis does not support a finding that SEIU’s decision not to represent Mr. Curtis violated any of the three “duty of fair representation” standards as articulated by the Maryland Court of Special Appeals -- i.e., it was not arbitrary, discriminatory, or made in bad faith -- the PSLRB finds that SEIU did not violate the duty of fair representation as set forth in Section 6-509(b) of the Education Article.

## V. 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.

## VI. ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2016-03, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



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Seymour Strongin, Chairman



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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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John A. Hayden, III, Member

Annapolis, MD

March 17, 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).