State of Maryland
Public Employee Relations Board

In the Matter of:	)	
	)	
Ilene Fox,	)	
Tania Schenk,	)	
Janelle Peterson,	)	
Morgan Stevens,	)	
	)	**PERB ULP 2025-04**
Charging Parties,	)	**PERB ULP 2025-05**
	)	**PERB ULP 2025-07**
v.	)	**PERB ULP 2025-08**
	)	**PERB ULP 2025-09**
Montgomery County Public Schools,	)	**PERB ULP 2025-10**
Montgomery County Education	)	**PERB ULP 2025-11**
Association,	)	**PERB ULP 2025-17**
	)	
Respondents.	)	
	)	

DECISION AND ORDER
DISMISSING OF UNFAIR LABOR PRACTICE CHARGES

In the above-captioned Unfair Labor Practice Charges (collectively, "Charges"), Charging Parties Ilene Fox, Tania Schenk, Janelle Peterson, and Morgan Stevens allege that Respondents, Montgomery County Public Schools ("MCPS") and Montgomery County Education Association ("MCEA"), violated their rights under the Public Employee Relations Act ("PERA" or the "Act"). The allegations arise from the closure of the Montgomery Virtual Academy ("MVA"). Respondents responded with motions to dismiss each of the Charges.

Pursuant to COMAR 14.30.08.14, because these cases "involve common questions of law or fact," we hereby consolidate the Charges in the above captioned matter.

I. PROCEDURAL AND FACTUAL BACKGROUND

MCEA is the exclusive bargaining representative for all certificated educators employed by MCPS, including Charging Parties. MCEA and MCPS are parties to a collective bargaining agreement ("CBA") which governs the working conditions of certificated educators employed by MCPS.

Article 4(D) of the CBA requires MCPS to engage in impact negotiations with MCEA within ten (10) duty days of MCEA's request following a unilateral change to working conditions. Article 26 of the CBA, titled INVOLUNTARY TRANSFERS, outlines the procedure for the forced transfer of members of the bargaining unit. Article 27 of the CBA, titled TRANSFERS FROM SCHOOLS THAT ARE CLOSING, outlines the process for the forced transfer of members of the bargaining unit that results from the closure of a school. And Article 30 of the CBA, titled PROCEDURES FOR REDUCTION OF STAFF, outlines the procedure by which MCPS is required to reduce its workforce and the benefits available to those subject to such procedure.

In the latter half of the 2023-24 school year, MCPS began to consider closing MVA, a subdivision of MCPS that provided virtual academic instruction to students.[1] Due to budget constraints, in February 2024, MCPS involuntarily transferred approximately twenty-six teachers from MVA while the remaining teachers received staffing memos stating the continuation of their current role through Fiscal Year 2025.

Charging Parties were employed at MVA as certificated teachers for the 2023-24 school year. On June 11, 2024, the MCPS Board of Education voted to eliminate MVA.

MCEA filed two grievances over the closure of MVA. The first addressed the process employed by MCPS to close MVA and re-allocate the staff there. The second addressed summer supplemental employment (SSE) hours for the employees affected by the closure.

On May 31, 2024, Fox elected to retire from MCPS. Fox asserts that she was "forced to choose retirement… rather than lose even more retirement benefits."

On July 15, 2024, Schenk, Peterson, and Stevens resigned from MCPS. Each of these members resigned pursuant to the CBA between MCEA and MCPS, which states that tenured members "must give written notice to the Office of Human Resources and Development on or before July 15." Teachers who fail to resign by July 15 in the absence of an emergency and without the consent of the local school board may have their teaching license suspended by the State Board of Education for up to a year. COMAR 13A.12.06.02.

None of the Charging Parties have been re-employed by MCPS.

[1] MCPS and the Charging Parties contend that MVA is an academic program or a school, respectively, as MCPS is bound by different requirements under the Maryland Education Article and the negotiated agreement with MCEA, depending on which classification applies.

Shenk filed her Charge on July 29, 2024, Fox filed her Charge on July 29, 2024, and Peterson filed her Charge on August 1, 2024. Shenk, Fox and Peterson filed Charges against both MCEA and MCPS. On July 31, 2024, Stevens filed her Charge against MCPS only.

In early October 2024, MCPS and MCEA signed a settlement agreement which resolved the grievance over the school district's failure to impact bargain and SSE hours. The settlement agreement covered payout of sick leave for affected employees, resignation without prejudice for those who resigned within 60 days of the announced closure, SSE days and supplements, and first right of refusal for a future virtual program by MCPS.

On November 9, 2024, Stevens filed a subsequent Charge against MCEA.

Collectively, the Charging Parties allege that MCPS violated its duty to bargain with their union over the effects of the decision to close MVA, specifically over the staffing decisions for the impacted teachers who were subject to involuntary transfer rather than reduction-in-force (RIF) procedures. The Charging Parties, excluding Ms. Stevens, also allege that MCEA violated its duty of fair representation through its conduct and omissions before, during, and after the closure of MVA.

MCEA submitted a Motion to Dismiss each of the Charges. MCEA's initial response sought dismissal of the charges on jurisdictional grounds for lack of standing as "public employees" because the Charging Parties had been severed from their employment.

We now turn to the issue of whether the Charging Parties lacked standing to bring the instant Charges.

II. STANDING

In support of their assertion that PERB lacks standing over the Charging Parties, Respondents assert that PERA defines a "public employee" as "an individual who holds a position by appointment or employment in the service of a public employer." Respondents cite Coleman v. Waters, PSLRB Case No. SV 2022-01 (2022), in which the PSLRB found that the Charging Party lacked standing to proceed with a ULP against her former union because she had resigned from her public school position. Respondents also cite Blake v. Balt. Cty. School System, PSLRB Case No. SV 2018-04 (2017), in which the PSLRB found that the Charging Party, a substitute teacher, lacked standing for her charge against the school system because she was not a "public school employee" at the time she filed her charge. Finally, Respondents cite Allied Chemical & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971), and Anderson v. Alpha Portland Indus., 727 F.2d 177 (8th Cir. 1983), for the assertion that

employers do not owe retirees a duty to bargain absent a "clear and unmistakable inclusion" in the grievance procedure.

In a preliminary examination of these Charges, and as explained more fully below, we find that the Charging Parties have standing under PERA and meet the definition of a "public employee" despite being separated from public employment.

State Government § 22-309 states that PERB is "bound by prior opinions and decisions" of its preceding Boards, including the Public School Labor Relations Board ("PSLRB"), State Labor Relations Board ("SLRB"), and State Higher Education Labor Relations Board ("SHELRB"). Therefore, whether the Charging Parties have standing to file charges against Respondents depends on whether PERB is bound by PSLRB precedent that excludes separated "public employees" from relief under the Act.[2]

Looking to past precedent, we note that the standing requirement has only applied to charges filed by parties whose separation from public employment is immaterial to their unfair labor practice allegations and has not yet been applied when the alleged violations of PERA precipitated their separation from public employment. *See* Branham v. Dept. of Public Health, PERB Case No. ULP 2024-20 (2024)(dismissing a charge against an employer for failure to bargain by a supervisor who was not a member of the affected bargaining unit)(*citing* Blake, in which the PSLRB dismissed a charge by a former substitute teacher who was not employed by the district at the time of the alleged ULP)) and Coleman (dismissing a charge by an employee who "voluntarily resigned" from her position). Applying the same statutory exclusion to the charging parties in these cases would expand those who are excluded from relief under the Act to those whose status as "public employee" was extinguished by the conduct they allege violates the Act.

In other cases of terminated public employees before the SLRB, PSLRB and Maryland courts, neither the predecessor Boards nor the courts treated the employee's standing as an obstacle and reached the merits of the dispute despite their separation as a "public employee." In the Matter of Jerome Lewis III, SLRB Case No. 2018-U-04 (2018)(dismissing a charge of a terminated employee because it was untimely, not for lack of standing); Roberts v. PGCEA, PSLRB Case No. SV 2014-11 (2014)(dismissing a duty of fair representation charge of terminated employee on its merits, not for lack of standing); Howard Cty. Educ. Ass'n. – ESP v. Board of Ed. Of Howard Cty., PSLRB Case No. 2012-01 (2012) *aff'd by* Board of Educ. of Howard Cty. v. Educ. of Howard Cty. Educ. Ass'n-ESP, 445 Md. 515 (Md. 2015)(adopting the reasoning of Howard Cty. Educ. Ass'n- ESP v. Board of Educ. Howard Cty, 220 Md.App. 282 (Md. Ct. App. 2014)); *see also* Anderson v. Dep't of Public Safety and Correctional Services,

[2] The recent PERB decision in Branham v. Dept. of Public Health, PERB Case No. ULP 2024-20 (2024), found that the decisions of predecessor Boards act as "statutory criteria" for PERB to follow.

330 Md. 187 (Md. 1993)(implicitly finding that the public employee had standing by reaching the merits of the appeal of his termination).

Finally, we find that the intent and purpose of PERA would be frustrated by finding that those who are separated from their employment, regardless of whether the alleged unlawful conduct under PERA caused their separation, are without recourse. The intent of PERA is to protect the full freedom of association of Maryland's public employees, which could not be accomplished if PERB could not remedy violations of the Act because the separated public employee complaining of the violation lacks standing. Md. Code Ann., State Government § 22-102(a). The intent to protect employees unlawfully separated from their employment can be shown through one of the PERA's enumerated unfair labor practices which prohibits "discharging… an employee" for participating in proceedings thereunder. Md Code Ann., State Government § 22-206(a)(5). And PERA itself tasks the Board with establishing procedures that protect the rights of employees, which would not be possible under such a precedent. Md Code Ann., State Government § 22-102(b)(3). And though the National Labor Relations Board ("NLRB") does not suffer from the standing constraint examined here, PERA is intended to follow the rights of employees under the National Labor Relations Act ("NLRA") who explicitly have the right to challenge their terminations.[3] Md. Code Ann., State Government § 22-102(c).

III. CHARGES FILED AGAINST MCEA

A. Positions of the Parties

The Charging Parties allege that MCEA failed to represent them when MCPS closed MVA and re-assigned its entire staff through involuntary transfer. They do not specify which provisions of PERA they allege MCEA violated, but instead allege a list of seven (7) specific unfair labor practices which are: "constructed discharge," "detrimental reliance," "unfair representation," "resignation under duress," "discriminatory representation," "conflict of interest," and "lack of support in grievance that MVA staff requested MCEA follow on our behalf."

Though the volume of each of the charges range from four (4) to twenty-five (25) pages, each charge is consistent in alleging that the Respondent's failure to advocate for the use of Articles 26 and 30 to implement a reduction in force was a violation of its obligations owed to the Charging Parties. They argue that application of Articles 26 and 30 would have resulted in the best outcome for "teachers deciding to leave," and further, "for those choosing to stay."

[3] Under the NLRA, "[t]he term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act [this subchapter] explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice[.]"

The charges also identify specific conduct by agents of MCEA that Charging Parties allege supports their charges. Fox, Shenk, and Stevens refer specifically to acting MCEA President Jennifer Martin's stated opposition to layoffs and a shift in position by MCEA that, they allege, resulted from undisclosed, closed-door negotiations with MCPS. They also refer to a group grievance that MCEA refused to pursue on the basis that Article 30 did not apply. Finally, they point out that, after they resigned or retired, MCEA has not communicated with them about any grievances or the resulting settlement.

Though the allegations do not specify which provisions of PERA have been violated, we can infer from the language and context of the charges that they implicate State Government Article § 22-206(b)(2) and (6). § 22-206(b)(2) prohibits employee organizations from "causing or attempting to cause a public employer to discriminate in hiring, tenure, or any term or condition of employment to encourage or discourage membership in an employee organization[.]" § 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."

The Charging Parties' remedies all focus on the relief provided by Article 30's provisions for laid off teachers with little material variation. They request full payment of their earned leave and severance of one month for every year of service with MCPS with a limit of 12 months' salary as described by Article 30. Ms. Peterson seeks an additional $10,000 for emotional distress, unfair labor practices, and operating in bad faith. Ms. Fox asks for the same $10,000 as Ms. Peterson for every staff member. Ms. Stevens asks for compensatory damages "equal to above payout for emotional distress" and states further, constructed discharge and detrimental reliance. And Ms. Shenk asks for her resignation to be considered without prejudice to protect her professional record.

In response, MCEA details the manner in which it met its duty of fair representation of the Charging Parties. Respondent argues that Article 27 of the CBA governed the process for closing schools because it was more specific than Article 30, but that grievances pursuant to Article 27 were "limited and frustrated by the late decision of MCPS to close MVA[.]" It states that MCEA is limited to "negotiating a process to address employee transfers and assignments" due to the existence of the Superintendent's ultimate authority to assign and transfer pursuant to Education Article §6-201. MCEA asserts it pursued discussions with MCPS to ensure that all employees maintained a position within MCPS, "not a specific position of their desire or choosing." And given the union's lack of confidence in efforts to pursue a grievance under Article 30's RIF language, it contends it maintained a demand for impact bargaining and filed a grievance over MCPS's failure to do so under Article 4(b). MCEA also points out that it filed a grievance for SSE and negotiated a "priority placement list" for all MVA employees.

MCEA further argues that it, nonetheless, negotiated a settlement of its impact bargaining grievance that includes the Charging Parties, and the charges must therefore be dismissed. The settlement provisions it highlights in its Response are accumulated sick leave payout, resignation without prejudice for those who resigned within 60 days of notification of MVA closure, payment of SSE supplements, and first right of refusal to fill similar positions in a new virtual/blended learning program.

Finally, in response to the charge filed by Ms. Stevens on November 9, 2024, MCEA again submitted a motion to dismiss the charge nearly identical to its initial response to Shenk, Peterson, and Fox and re-submitted an unaltered copy of its initial response. MCEA reiterated positions already articulated in its prior responses.

B. Analysis

§ 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.

1. Probable Cause

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. Each of these cases was relied

upon by the PSLRB in Windsor v. Prince George's Cnty. Ed. Ass'n., PSLRB Case No. SV 2013-01 (2012).

Though there are intervening acts which implicate the duty of fair representation in their claims, the charges primarily challenge the Respondent's decision not to grieve and potentially arbitrate the MCPS's decision not to lay them off under Article 30. However, an employee organization does not violate the duty of fair representation when it takes a position in good faith that is contrary to that of some members it represents. Strick Corp., 241 NLRB 210 (1979) *citing* Humphrey v. Moore, 375 U.S. 355 (1964). Unions are allowed a wide range of reasonableness in the administration of their collective bargaining agreement given that differences inevitably arise in the manner and degree to which it affects individuals and classes of employees. *Id.* The Charging Parties would have preferred to leave their employment under the terms of Article 30. MCEA instead bargained a solution where every MVA employee retained a position with MCPS through a forced transfer. Though it was not the solution that the Charging Parties would have preferred, a resolution to the closure of MVA that avoids any layoffs of its members was reasonable for MCEA to take. This remains true even if it was foreseeable that the Charging Parties and others accustomed to virtual instruction would not wish to be transferred.

Throughout the process of negotiating the effects of MCPS's abrupt decision to close MVA late in the school year, the Respondent acted reasonably and maintained a good faith position for its members. MCEA's acting President, Jennifer Martin, announced during a meeting discussing district-wide position cuts and increased class sizes that MCPS's plan to lay off the entire MVA staff of eighty-one (81) tenured teachers was a "non-starter." Though the Charging Parties would have preferred to be laid off, MCEA took the early position that it would seek to avoid a conclusion where teachers at MVA all lost their jobs. The late decision by MCPS to close MVA meant that it could not follow the timelines under the collective bargaining agreement's transfer provisions and that no language under the collective bargaining agreement applied "in whole to the situation." Instead, MCEA and MCPS agreed initially that MVA teachers would be placed in a pool of educators that would receive priority placement for new openings. This led to each of the Charging Parties receiving transfers elsewhere within MCPS. When the Charging Parties brought a group grievance to MCEA under Article 30's RIF provisions, MCEA filed a "class action" grievance, which included the Charging Parties, over MCPS's failure to engage in effects bargaining under Article 4(D) of the collective bargaining agreement. This grievance resulted in a settlement that includes the Charging Parties.

The settlement reached by MCPS and MCEA in October 2024 similarly reflects the good faith position of Respondent. The settlement includes the Charging Parties and addresses their sick leave payout, resignation without prejudice, SSE days and supplements, and a first right of refusal for new positions in the virtual/blended learning program. Though the Charging Parties have all expressed dissatisfaction with these terms, the fact that the settlement does not meet

their perception of fairness is not offensive to the standard required for MCEA to meet its duty of fair representation. Loc. 909, Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. (UAW), AFL-CIO, 325 NLRB 859, 865 (1998) *citing* Strick Corp.. Moreover, MCEA has asserted that the terms apply to the Charging Parties even though it has asserted it has no duty to represent them, and Ms. Peterson confirmed receiving additional pay under the sick leave payout provision of the agreement.

Aside from not pursuing Article 30 and the settlement with MCPS, the only remaining allegation implicating the duty of fair representation is that MCEA failed to communicate with the Charging Parties about the class action grievance. While MCEA's conduct fell short of the Charging Parties' expectations, there is no evidence that the decision not to communicate the terms of the settlement was discriminatory, arbitrary, or in bad faith. OPEIU Local 2, 268 NLRB 1354 (1984). MCEA communicated on October 8, 2024, that it would work with MCPS to communicate the settlement to those affected but had not notified the Charging Parties that the grievance had been settled by November 8, 2024. Even if such a delay could be considered negligent, that would not be sufficient to constitute a breach. Id. And it falls far short of NLRB precedent which finds that deliberately misleading a grievant, leading to material harm, violates the duty of fair representation. Union of Security Personnel of Hospitals, 267 NLRB 974, 980 (1983).

Taking into consideration the evidence provided concerning communication, or lack thereof, by Respondent, as well as Respondent's good faith position that it would seek to avoid layoffs for its members at MVA, and the terms of the negotiated settlement agreement, we do not find probable cause that MCEA violated PERA § 22-206(b)(6). Additionally, there is no evidence that MCEA caused or attempted to cause MCPS to discriminate in any manner against the Charging Parties to encourage or discourage membership. For these reasons, we dismiss the Charges as filed against MCEA.

IV. CHARGES FILED AGAINST MCPS

A. Positions of the Parties

Most relevant to our analysis, the Charging Parties allege that MCPS refused to bargain with MCEA over a unilateral change affecting MVA staff, and further, denied MVA staff proper representation. While the Charging Parties do not explicitly specify the provisions of PERA they allege MCPS violated, we can infer from the language of the Charges that Charging Parties allege violations of § 22-206(a)(8), which prohibits an employer's refusal to bargain, and § 22-206(b)(6), which prohibits employee organizations from not fairly representing employees in collective bargaining or any other matter in which the duty of fair representation applies.

In addition, the Charging Parties allege that MCPS misrepresented whether MVA constituted a school or a program for the applicable closure procedures, applied the incorrect contractual provisions to the closure of MVA under the collective bargaining agreement with MCEA, and failed to provide SSE compensation as outlined in the collective bargaining agreement. They also allege numerous additional claims against MCPS including lack of transparency and adequate notice, inconsistent and conflicting communication, breach of trust, and unequal access to opportunities.

MCPS submitted a Motion to Dismiss each of the Charges, but did not admit or deny the specific allegations. In addition to moving for dismissal on jurisdictional grounds for lack of standing as discussed above, MCPS also argues that the Charging Parties' claims should be dismissed for the following reasons.

First, MCPS asserts that the Charges should be dismissed because the Charging Parties failed to exhaust the CBA's grievance process before filing charges with PERB. At the time that MCPS filed this response, MCEA still had active grievances with MCPS but the parties to the collective bargaining agreement have since settled or resolved all grievances related to the closure of MVA. MCPS included evidence in its motion that the Charging Parties had knowledge that MCEA and MCPS were continuing to process grievances relating to their charges.

MCPS further argues that PERB has no jurisdiction over the matter raised by the Charging Parties because only the Maryland State Board of Education can designate whether MVA is a school or a program for the purposes of its closure. Relying upon Md. Educ. Code Ann. § 205(e), MCPS asserts that the State Board has exclusive authority over the "true intent and meaning" of state education law and the "visitorial power of such comprehensive character as to invest the State Board' with the last word on any matter concerning educational policy or the administration of the system of public education." Bd. of Educ. of Prince George's County v. Waeldner, 298 Md. 354, 360 (1984). MCPS also argues that the State Board has primary jurisdiction over the issue of the educational status of MVA in the event there is concurrent jurisdiction because it involves questions regarding the "interplay between various provisions of the Education Article." Clinton v. Board of Education, 556 A.2d 273, 279 (Md. 1989).

Separately, MCPS argues that PERB has no jurisdiction over educational decisions that fall into the sole discretion of the Montgomery County Board of Education, such as decisions regarding reductions in force. They assert that the statutory provision that requires the Board of Education to engage in collective bargaining does not supersede its authority under §§ 4-101 and 4-108 of the Education Article to determine and implement educational policy and administer public schools. Montgomery County Educ. Assoc., Inc. v. Board of Educ. of Montgomery County, 311 Md. 303 (1987). MCPS alleges further that its collective bargaining agreement with

MCEA recognizes this authority because it exempts decisions regarding reductions in the teaching force from the grievance procedure.

And lastly, MCPS refers to the claims by Ms. Peterson as "speculative" and alleges that it fails to comply with COMAR 14.30.09.01 which requires the identification of "the individuals involved in the alleged act [and] the dates and places of the alleged occurrence[.]"

B. Analysis

None of the allegations alleged by the Charging Parties against MCPS are cognizable by the PERB.

Good faith exists between the employer and the exclusive representative of the employer's bargaining unit employees. University of Maryland v. American Federation of State, County, and Municipal Employees, SHELRB ULP 2002-13, Opinion No. 10 (2002). This is evidenced throughout PERA and Maryland's collective bargaining law governing public sector employees. PERA § 22-501 states, "[r]epresentatives of public employers and exclusive representatives shall meet at reasonable times and engage in collective bargaining in good faith to conclude a written memorandum of understanding or other negotiated agreement…." Md. Code Ann., State Government § 22-501(a)(8). Collective bargaining is defined, in relevant part, as "good faith negotiations by authorized representatives of employees and their employer with the intention of: (i) 1. reaching an agreement about wages, hours, and other terms and conditions of employment; and 2. incorporating the terms of the agreement in a written memorandum of understanding or other written understanding; or (ii) clarifying terms and conditions of employment." Md. Code Ann., State Personnel and Pensions § 3-101(d). Furthermore, both public employers and exclusive representatives are required to "designate one or more representatives to participate as a party in collective bargaining on behalf of the State or… institution" or on behalf of the exclusive representative" respectively. Md. Code Ann., State Personnel and Pensions § 3-501(a). Because public employers only owe a duty to bargain collectively with the exclusive representative of its employees, and do not owe this duty to individual employees, we dismiss the Charge with respect to Charging Parties' failure to bargain claims.

a) Duty of Fair Representation

§ 22-206(b)(6) of PERA outlines an employee organization's duty of fair representation, and 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). PERA defines an "employee organization" 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). This duty does not apply to public employers.

MCPS is a public employer, and not an employee organization under PERA. Therefore, it does not owe a duty of representation to the Charging Parties. As a result, we dismiss the Charges with regard to the allegations that MCPS violated its duty of fair representation because this duty does not apply to MCPS.

b) Remaining Allegations

Aside from those already discussed, Charging Parties included numerous additional allegations against MCPS which do not encompass any conduct prohibited under the Act. These remaining allegations fall under the heading "Specific Unfair Labor Practices" on the Charges, but none are enumerated as prohibited practices by public employers under State Government § 22-206(a). Many of the allegations describe violations of the collective bargaining agreement when MCPS used the involuntary transfer procedure rather than the "Reduction In Force" procedure during the closure of MVA. However, in keeping with the practice of the PSLRB, PERB does not play a role in the administration of collective bargaining agreements between public employers and exclusive bargaining representatives. AFSCME Local 434 v. Balt. Cnty. Bd. of Ed., PSLRB Case SV 2017-03 (2017). And, as discussed earlier, the parties to the instant collective bargaining agreement have already settled the contractual violations that arose out of the closure of MVA, leaving nothing for PERB to remedy. This includes the failure to pay SSE stipends, full payout of remaining sick leave at the rate of 35%, and resignation without prejudice.

And, finally, those remaining allegations that are neither contractual violations nor prohibited unfair labor practices under PERA, including allegations of breach of trust, selective engagement, and psychological harm, which state no discernable legal violation, are also dismissed. These alleged violations, which by themselves do not implicate the rights of public employees under PERA, are not actionable under PERA.

ORDER

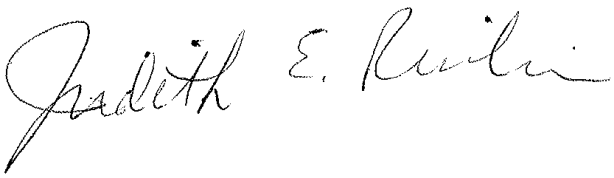
IT IS HEREBY ORDERED THAT THE CHARGES IN PERB ULP 2025-04, -05, -07, -08, -09, -10, -11, and -17 ARE HEREBY DISMISSED.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD:

Lafe E. Solomon, Acting Chair

Harriet E. Cooperman, Member

Lynn A. Ohman, Member



Judith E. Rivlin, Member

Richard A. Steyer, Member

Annapolis, MD
March 6, 2025

APPEAL RIGHTS

Any party aggrieved by this action of the PERB 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).