

# Maryland Public Employee Relations Board

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## Membership

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**In the Matter of:** \*

**Pamela Oliver,** \*

**Charging Party,** \*

**v.** \* **PERB ULP 2025-42**

**Baltimore Teachers Union,** \*

**Respondent.** \*

## **DECISION AND ORDER**

### **Procedural Background**

On June 10, 2025, Pamela Oliver (Charging Party or Oliver) filed an Unfair Labor Practice Charge with the Public Employee Relations Board (PERB or the Board) against the Baltimore Teachers Union (BTU, the Union, or the Respondent). Oliver alleges BTU breached the duty of fair representation it owed to her in relation to a *Loudermill*<sup>1</sup> hearing and the resulting grievance/appeal process.

### **Factual Background**

At all times relevant herein, Oliver was an employee of the Baltimore City Board of School Commissioners (BCBSC) and was a member of BTU's Paraprofessional and School Related Personnel Chapter. In February 2023, Oliver filed a response to a lower-than-desired evaluation score which contained several allegations of child abuse against three fellow employees. BCBSC investigated the allegations and concluded there was no evidence to substantiate the allegations, that most of the allegations had previously been investigated and resolved, and that the allegations

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<sup>1</sup> *Loudermill* refers to a U.S. Supreme Court case which held that certain public employees are entitled to pre-termination or pre-disciplinary hearings prior to receiving disciplinary action from their employer. See Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

were, for the most part, false. The investigation also concluded that Oliver, through her own account, had taken no action over a long period of time regarding the allegations.

Following this investigation, BCBSC held a hearing in June 2023. BTU assigned a field representative, John Casey, to represent Oliver for this hearing. During preparation for the hearing, Oliver claims Casey informed her that the hearing was in relation to “some files under [Oliver’s] desk and use of [Oliver’s] cell phone during the day.” At some point during the conversation, Casey stated that Oliver “should not worry” and that the worst that would happen to her would be relocation to a different school.

On the day of the hearing, Hearing Officer Gerry Grant presided over the proceeding and instructed Oliver that the hearing related to her allegations of child abuse and did not relate to any files under her desk or cell phone usage. Grant subsequently made a settlement offer to Oliver, whereby she would be required to write a statement that she had committed misconduct, accept one (1) week off without pay, and be relocated to a different school. When discussing the settlement offer with Casey, Oliver made clear she was not open to writing a statement regarding her alleged misconduct, nor was she open to accepting a week without pay. Casey communicated this decision to Grant, who then provided a copy of his report along with an extension of time to consider the settlement offer.

During these continuing settlement discussions, Casey notified Oliver of the offer and the potential benefits and drawbacks of accepting such an offer, while also advising her regarding her rights related to the potential disciplinary action, including two available procedures for appeal and the consequences of both. Per the agreement between BCBSC and BTU, unit members have the following options when facing most types of discipline:

- a. Grieving the discipline under the negotiated agreement’s grievance provisions, which can result in arbitration; or
- b. Appealing the discipline pursuant to Md. Code Education § 4-205.

Per this negotiated agreement, once an employee chooses which procedure to use to contest the action, the employee may not subsequently choose the other procedure, and that decision shall be final and binding upon the employee and union. Additionally, if the grievance procedure is selected, the case then proceeds to a hearing before BCBSC, where the resulting decision can be appealed to arbitration. Importantly, the negotiated agreement contains the following language: “[t]he Union may advance the employee’s grievance to arbitration if in its discretion the Union finds arbitration to be appropriate, and the employee shall be bound by the Union’s decision whether or not to arbitrate.”

A few days following the hearing, Casey and Oliver spoke regarding the proposed settlement offer, during which Oliver continued to reject the offer. Moving forward, Oliver elected to pursue the grievance option, as outlined in the negotiated agreement. After rejection of the settlement offer, Oliver was terminated by BCBSC for making allegations of child abuse in bad faith without foundation or factual basis.

The two parties dispute whether, when electing the grievance procedure, Casey told Oliver that he or the Union would take the case to arbitration. Oliver claims that this promise was made

by Casey, while the Union states Casey simply instructed Oliver of her options moving forward, but did not pressure or otherwise attempt to influence Oliver in her choice.

Oliver's hearing before BCBSC, pursuant to the elected grievance procedure under the terms of the negotiated agreement, took place on August 22, 2024. Casey and Oliver met beforehand to prepare, where Oliver expressed her opinion that some of the evidence Casey had prepared was incorrect or potentially tampered with, while also voicing complaints regarding procedural issues following her termination and expressing her doubts that she would not have been terminated even if she were to have agreed to the *Loudermill* settlement offer. During the hearing before BCBSC, Oliver and Casey presented evidence to the hearing examiner regarding BCBSC's child abuse policy, among other evidence.

On October 2, 2024, BCBSC's hearing examiner recommended that BCBSC affirm the termination. When this decision was relayed to Oliver by Casey, he also stated that the Union determined there was no good cause or basis to file exceptions to the recommendation, while informing Oliver she was free to file exceptions on her own if she desired. Oliver subsequently filed exceptions and appeals to the hearing examiner's recommendation. BCBSC voted to accept the hearing examiner's report on November 29, 2024. Oliver says she was not notified of this decision until December 9, 2024. After review by the Union following BCBSC's decision, on December 11, 2024, BTU informed Oliver they were electing to not take her case to arbitration.

### **Positions of the Parties**

#### **Charging Party**

Oliver claims BTU breached the duty of fair representation it owed to her and subsequently committed unfair labor practices in doing so. Initially, Oliver objects to Casey allegedly incorrectly informing her that her *Loudermill* hearing related to files under her desk and use of her cell phone, rather than her child abuse allegations made against co-workers. Oliver further objected to Casey engaging in settlement discussions with the *Loudermill* hearing examiner while Oliver was not present and also believed it inappropriate that Casey "recommended" it would be best for her to accept the settlement offer. Oliver argues that Casey misrepresented the potential adverse employment actions she would receive if she did not accept the settlement offer. Additionally, Oliver claims Casey failed to keep her apprised and updated regarding developments throughout the course of these proceedings.

In regards to the BCBSC hearing in August of 2024, Oliver states that Casey was not properly prepared, nor did he pursue certain arguments that may have assisted her case related to her child abuse allegations. Regarding the Union's decision to not take BCBSC's final determination to arbitration, Oliver contends that she was not provided consultation, explanation of legal or factual reasoning, or an opportunity to respond to the Union's decision and submit additional evidence. Oliver argues this decision was arbitrary, as no evidence was provided that the Union conducted a fair evaluation of her case, and also that the decision was made in bad faith, as the refusal to arbitrate was based on speculation without her full participation or thorough review of the relevant facts and potential mitigating evidence.

Finally, Oliver maintains that the Union failed to properly represent her throughout these procedures, or otherwise fully explore less harmful options for her. Oliver believes that her

termination was related to protected activity, including reporting potential student mistreatment and abuse, making the Union's alleged failures in this regard even more concerning.

Respondent

Substantively, the Union argues it adequately represented Oliver throughout these proceedings and that no factual basis has been established which supports a finding of a breach of the duty of fair representation. In support of this claim, BTU states that mere negligence is not sufficient to show a breach of the duty of fair representation. Citing Cecil v. AFSCME, 261 Md. App. 228 (2024), and Stanley v. AFSCME, 165 Md. App. 1 (1005).

BTU provides that the Maryland Appellate Court had adopted a federal court decision that "an employee has no absolute right to insist that his grievance be pressed through to any particular stage 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 benefitting the membership at large." See *id.* Citing Stanley, 165 Md. App. At 15 (quoting Neal v. Potomac Edison Co., 48 Md. App. 353 (1981)). Accordingly, BTU argues it had control over arbitration, as the decision as to whether to bring a grievance lies in the Union's discretion.

Relatedly, BTU points to the negotiated agreement with BCBSC, which explicitly provides the decision to bring a matter to arbitration, after the employee has chosen this specific grievance procedure, is held within the discretion of the Union. As stated above, Oliver voluntarily chose the grievance procedure as outlined within the negotiated agreement, which explicitly and specifically provides that the Union may, or may not, choose to take a matter to arbitration, and that the employee shall be bound by such a decision.

Further, the Union states Oliver was aware that the final decision as to whether to advance the matter to arbitration rests with the Union at the time she voluntarily elected the grievance procedure. While Oliver contends this decision to not arbitrate was made arbitrarily and in bad faith, she has not provided sufficient factual support to establish those claims. The Union argues it made its decision in this regard based on the facts of the case, the likelihood of success, and whether the significant expense would be justified by its benefit to the membership at large.

Additionally, BTU claims that Oliver's allegations regarding the Union's representation do not reach the level of arbitrariness or bad faith required to find a breach of the duty of fair representation. Throughout the proceedings, Oliver was represented by Casey, who kept Oliver fully informed as the process continued and represented her well during the relevant hearings. No evidence has been produced which suggests Casey's representation was perfunctory, apathetic, indifferent, or cursory, nor do any of Oliver's principal arguments establish that he breached the duty of fair representation.

BTU also alleges that Oliver's Charge was submitted untimely, pursuant to Md. Code, State Gov't § 22-307(b), which requires that unfair labor practice charges be submitted within six (6) months of the alleged unfair labor practice. As Oliver filed her charge with PERB on June 10, 2025, the Union argues the charge is untimely as to all actions which occurred on or before December 9, 2025, which is six months prior to the date Oliver filed her charge.

Analysis

BTU is the certified exclusive representative of the PSRP unit within the BCBSC, subject to the Public Employee Relations Act (PERA) pursuant to Md. Code, State Gov't § 22-101(e). Oliver is a public employee subject to PERA, pursuant to Md. Code State Gov't § 22-101(h) and Md. Code, Education § 6-501(g).

#### Timeliness

Under Md. Code State Gov't § 22-307(b), the Board may not issue a complaint if the alleged unfair labor practice occurred more than six months prior to the filing of the charge. Here, Oliver filed her Charge with PERB on June 10, 2025. Accordingly, we find that any alleged unfair labor practices which occurred on or before December 9, 2024, are untimely and cannot be considered on their merits.

#### Duty of Fair Representation

PERA provides that employee organizations and its representatives are prohibited from engaging in any unfair labor practice, including 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, State Gov't, § 22-206(b)(6).

The Supreme Court of the United States has held that a union breaches its duty of fair representation only if its actions are either arbitrary, discriminatory, or in bad faith. Vaca v. Sipes, 386 U.S. 171 (1967). The Supreme Court has also held a union's actions are in bad faith if the complainant presents "substantial evidence of fraud, deceitful action or dishonest conduct by the union." Humphrey v. Moore, 375 U.S. 335 (1964). Further, for matters which involve individual bargaining unit representatives, unions have wide discretion in settling such matters, so long as the union acts in good faith. Offutt v. Montgomery County Education Association, 285 Md. 557 (1979). In regards to the duty of fair representation owed by unions to constituents, the Supreme Court stated "we are not ready to find a breach of the collective bargaining agent's duty of fair representation in taking a good faith position contrary to that of some individuals whom it represents..." Humphrey, at 349.

In Stanley v. American Federation of State and Mun. Employees Local No. 533, et al., the Maryland Court of Special Appeals, citing the United States Supreme Court, explained that the duty of fair representation has three requirements. It requires a union "[1] to serve the interests of all members without hostility or discrimination toward any, [2] to exercise its discretion with complete good faith and honesty, and [3] to avoid arbitrary conduct." Stanley, 165 Md. App. 1 (Md. Ct. Spec. App. 2005). Simply stated, a union's actions with regard to its representation of bargaining unit members does not violate the duty of fair representation unless it is arbitrary, made in bad faith, or discriminatory. In Stanley, the Court 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. The Court explained that "[A] union's 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)).

Additionally, per the terms of the negotiated agreement, when the employee has elected to follow the outlined grievance procedure, as Oliver had, "[t]he Union may advance the employee's grievance to arbitration if in its discretion the Union finds arbitration to be appropriate, and the

employee shall be bound by the Union's decision whether or not to arbitrate." Thus, the negotiated agreement explicitly provided that in a situation such as this, it shall be in the Union's sole discretion to decide whether a case is to be brought to arbitration.

Under these circumstances, we find that Oliver has not produced sufficient evidence to support her contention that BTU breached its duty of fair representation owed to her in its refusal to take her case to arbitration following BCBSC's final vote affirming her termination. Ultimately, the Union has stated it based its decision in this regard based on the facts of the case, the likelihood of success, and whether the significant expense would be justified by its benefit to the membership at large. This reasoning is rational and not arbitrary. Oliver has produced insufficient evidence to rebut the Union's claim, and she accordingly has not met the high burden required to establish a breach of the duty of fair representation.

In sum, probable cause does not exist that the Union breached its duty of fair representation owed to Oliver. Accordingly, Oliver's Charge is dismissed.

**Order**

IT IS HEREBY ORDERED THAT THE CHARGE IN PERB ULP 2025-42 IS DISMISSED.

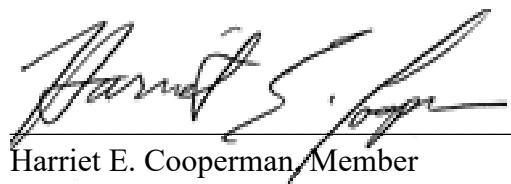
**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

Date: July 31, 2025

Reissue Date: August 8, 2025



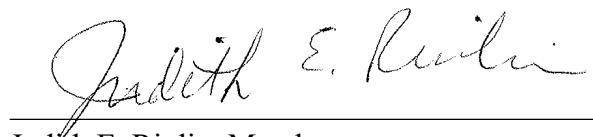
Lafe E. Solomon, Chair



Harriet E. Cooperman, Member



Jennifer Epps, Member



Judith E. Rivlin, Member



Richard A. Steyer, Member

**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.