

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *

MICHAEL PUGH, *

Charging Party, *

v. * PSLRB Case SV 2018-14

BALTIMORE TEACHERS UNION, *

AFT LOCAL 340, AFL-CIO *

Charged Party. *

* * * * *

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

I. PROCEDURAL BACKGROUND

On June 21, 2018, Michael Pugh filed a CHARGE OF VIOLATION OF TITLE 6, SUBTITLE 4 OR SUBTITLE 5, OF 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). Under Section IV of Form PSLRB-05, Mr. Pugh checked the following Sections of the Education Article, which he alleges the Baltimore Teachers Union (“BTU”) violated: “Section 6-402 or 6-503(a): Right of public school employee to form, join, and participate in the activities of employee organization”, “Section 6-407(b) or 6-509(b): Duty of fair representation”, “Section 6-409 or 6-512: Interference with right of public school employee to exercise certain statutory rights”, and “Other (Specify statutory section)”. Under the selection for “Other (Specify statutory section)”, Mr. Pugh wrote “Section 6-405.”

On July 11, 2018, the BTU filed its Answer to Mr. Pugh’s Charge along with a Motion to Dismiss and/or Motion for Summary Decision (“Answer”).

On July 21, 2018, Mr. Pugh filed a response to the BTU’s Answer.

Prior to the filing of the June 21, 2018, Charge, on February 8, 2018, Mr. Pugh filed his first Charge against the BTU. The February 8, 2018, Charge was dismissed by the PSLRB in a decision dated June 8, 2018 (“Pugh I”). The June 21, 2018, Charge arises out of the same factual

circumstances surrounding Pugh I.¹ All facts relevant to the instant Charge occurring subsequent to the PSLRB's decision in Pugh I are explained below.

II. FACTUAL BACKGROUND

On April 22, 2018, Mr. Pugh received a paycheck from the Baltimore City Public School System ("BCPSS"), dated April 20, 2018, with an attached Employee Earnings and Deductions Statement ("Earnings Statement"). The Earnings Statement indicates that the payment was a "Bonus." No union dues were deducted from this payment.

On April 27, 2018, the BCPSS sent Mr. Pugh a letter notifying him that his employment with the BCPSS would terminate on June 30, 2018. This letter was a formal notification of the term of employment listed in the Provisional Contract that Mr. Pugh signed on August 29, 2017, which states, in pertinent part: "The term of this contract shall extend from the date of its signing until the thirtieth day of June next succeeding said date of signing, and this contract shall automatically terminate and expire on the thirtieth day of June next succeeding the date of its signing."

On May 1, 2018, Mr. Pugh sent Marietta English, President of the BTU, an e-mail with a copy of the April 20, 2018, Earnings Statement. In this e-mail, Mr. Pugh stated, among other things, "Last week, I received this paystub from BCPSS. For some reason, it did not include BTU membership dues in the deductions. Please notify how much I need to send to BTU to continue my decade of representation." Mr. Pugh also mentioned in this e-mail that he received notification from the BCPSS for a medical examination concerning his return to work, but that he did not receive the notice until after the date of the examination.

On May 2, 2018, Ms. English responded to Mr. Pugh's May 1, 2018, e-mail, stating, "Dues are deducted through payroll. We do not collect any dues from members personally."² In a separate e-mail, sent later on May 2, 2018, Ms. English informed Mr. Pugh that his medical examination would be rescheduled.

On that same day, Mr. Pugh responded to the earlier of Ms. English's May 2, 2018, e-mails, stating in pertinent part:

BCPSS and BTU have created a conundrum that blocks me from gaining access to union representation. I am receiving a paycheck from BCPSS as an employed teacher, yet BTU and BCPSS maintain I'm not employed and do not get union representation. BTU also maintains their right of exclusive representation over me without providing any representation after a decade of faithful membership.

In this e-mail, Mr. Pugh also asked Ms. English: (1) "[W]ill BTU submit a grievance in [sic] my behalf to complain that I am being denied access to union membership as a paid BCPSS

¹ See Pugh I for factual background leading up to this Charge.

² The BTU does not accept cash or checks from bargaining unit members for dues. The only payment of dues that the BTU accepts are those remitted to it from the BCPSS based on dues checkoff and authorization cards signed by bargaining unit members.

teacher?”, and (2) “Are all teacher’s [sic] stripped of their union membership when their certification lapses for a day without [being] given an option to rejoin the union, or was I singled out?”

On May 3, 2018, Ms. English sent Mr. Pugh an e-mail stating:

I suggest you contact [the Office of] Human Capital to make sure that they have a current home address and current email so you are given adequate notice of the medical examination.

Concerning your statements about union dues, the BTU has never had a process for collecting dues in any manner other than through dues checkoff from employees on the active payroll. This is nothing new and you are not being ‘singled out.’ My understanding of your employment status with the BCPSS is that you are not on the active payroll. You are on an unpaid leave of absence and subject to a Provisional Contract due to the lapse in your certification in June 2017. If and when you pass a medical examination, it is my understanding that BCPSS will assign you to work under the Provisional Contract. If you return to the active payroll, please make sure to sign a BTU membership card at that time. There is no reason to sign a new membership card at the present time because you are not on the active payroll.

Your request to file a grievance for ‘being denied access to union membership as a paid BCPSS teacher,’ is denied. The definition of grievance under Section 4.2 of the Teacher Agreement is: ‘A grievance is a violation, misapplication or misinterpretation of any provision of the Agreement or of a policy of the Board of School Commissioners which affects the terms and conditions of employment.’ The Board cannot presently deduct dues from your pay because you are not on the active payroll. As a result, there is no violation of the Teacher Agreement. Again, once you are on the active payroll, you may sign a membership card and dues will be deducted.

On May 16, 2018, the BTU held an election for delegates to the American Federation of Teachers 2018 Convention. Mr. Pugh was not eligible to vote in that election.

On May 18, 2018, Mr. Pugh sent Ms. English an e-mail concerning the April 27, 2018, notice of termination. In this e-mail, Mr. Pugh states, in relevant part:

Two weeks ago, I received a paycheck from BCPSS. Despite my having a contract of employment, certification, and a paycheck, you continue to insist that I am not employed by BCPSS as a teacher and therefore do not qualify for representation by BTU... You said I could not pay my dues because I’m not an employee...

Yesterday I received this notice of termination by BCPSS. It does not state the reason for my termination.

- (1) Does BTU acknowledge that I am indeed employed if I am to be terminated by the same organization?
- (2) Does BTU Represent me under their sole duty and right of representation?

On May 22, 2018, Ms. English sent Mr. Pugh an e-mail informing him that if he wished to contest the notice of termination that he needed to file an appeal by no later than May 29, 2018. Ms. English further stated that the BCPSS “is not obligated to provide you with any reason for your termination” because “by its terms, the contract expires on June 30, 2018.” Ms. English also informed Mr. Pugh that, “[b]ased on the automatic termination of the Provisional Contract, the BTU sees no basis upon which to file an appeal for you.” Ms. English informed Mr. Pugh that the BTU would not file an appeal on his behalf because the process for filing an appeal is “not a process that was negotiated by the BTU on behalf of its members,” but instead is governed by Section 4-205 of the Education Article. Ms. English further directed Mr. Pugh to the website where he could find the procedures and forms for filing an appeal.

On May 22, 2018, Mr. Pugh appealed the April 27, 2018, letter terminating his employment.

III. POSITIONS OF THE PARTIES

a. Mr. Pugh’s Allegations

i. Section 6-407

Mr. Pugh asserts that the BTU violated Section 6-407(a) of the Education Article because the “BTU requires me to self-advocate as I work to enforce contractual agreements with my employer, BCPSS,” and “actively neglects their duties as my negotiating agent.”

Mr. Pugh also alleges that the BTU has refused to represent him in violation of Section 6-407(b) of the Education Article. More specifically, in support of this allegation, Mr. Pugh states that: (1) “I have made every patient effort to ask for representation, ask clear questions, and self advocate when my career is being destroyed by BCPSS”; (2) “BTU has continued a pattern of intentional delay, obfuscation, and failure to deliver contractual services month-after-month, year-after-year”; (3) “BTU has attempted to force me to forfeit my contractual rights via unnecessary delay and stalling tactics; (4) “BTU refuses to acknowledge that I am employed by BCPSS despite clear evidence”; (5) “BTU has NEVER answered one of my legal questions or provided any support. Instead they have... ignored questions and provided consistent refusal to consider clear, obvious crimes that are being committed against me by BCPSS”; (6) “BTU has partnered with BCPSS to ignore my rights and crimes that have been committed against me for years”; (7) “... although I suffer from PTSD caused by my classroom injury, BTU has continually ignored my injury while I seek representation. Instead, they seek to trigger my illness with intentional obfuscation instead of representation.”

In addition, Mr. Pugh contends that the BTU violated Section 6-407(b) by failing to represent him with regard to the following grievances: (1) a grievance appealing the BCPSS’s

decision to place him on administrative leave following allegations of misconduct arising from a November 20, 2015, workplace incident, and (2) a grievance challenging his June 30, 2018, termination.

ii. Section 6-402

Mr. Pugh argues that the BTU has violated Section 6-402(a) of the Education Article, stating that they “they refuse to represent me” with regard to the following claims: (1) that “[a]lthough BCPSS acknowledges I am employed, they have not paid me a salary or wages that correspond with the BTU-BCPSS Contract of Agreement,” and (2) that BCPSS “continue[s] to ignore the fact that my doctor has cleared me for work after I was injured in the classroom...[,] notified me of a medical appointment to clear me for placement *after* the appointment had passed, and... refuses to reschedule the appointment after multiple attempts.”

Mr. Pugh further asserts that the BTU has violated Section 6-402(a) by “refus[ing] to represent me to seek accommodations for employment with BCPSS (alternative placement).”

In addition, Mr. Pugh alleges that the BTU has violated Section 6-402(b)(1) because it “has not established a restriction that would bar me from membership or representation rights, yet they pretend that I am restricted from union membership because they have allowed BCPSS to place me in an arbitrary employment purgatory despite contractual mandates.”

Mr. Pugh also claims that the BTU has violated Section 6-402(b)(2) because it “has not established provisions for my dismissal from membership... [y]et, BTU pretends that I have been dismissed from BTU membership despite being employed by BCPSS as a Public School Teacher during the 2017-2018 term.”

iii. Section 6-409

Mr. Pugh contends that the BTU violated Section 6-409, stating that the BTU “colluded with my employer, BCPSS, to interfere, restrain, and discriminate against me when they refused to represent me on contractual matters of salary, wages, and working conditions after it became apparent that BCPSS lies that I was not currently employed...,” and further, because it “falsely insists... that I may not receive union representation over contractual issues regarding my salary, wages, and working conditions because I am not employed by BCPSS.”

Mr. Pugh further argues that the BTU violated Section 6-409, “when they established arbitrary restrictions of membership by denying my membership when they refused to accept payment....”

Mr. Pugh also alleges that the “BTU has interfered with my access to medical care by allowing my benefits to stop against contractual agreements.”

iv. Section 6-405

Mr. Pugh contends that the BTU violated Section 6-405 when it “refused to allow me to participate in the elections that re-elected Marietta English by insisting that I do not (and cannot) qualify to be a BTU member despite multiple attempts to demonstrate that I qualify and multiple attempts to pay union dues.”

b. The BTU’s Defenses

In its Answer to Mr. Pugh’s Charge, the BTU asserts the following defenses.

First, the BTU argues that, “all allegations and complaints that Mr. Pugh made concerning actions or inaction of the BTU before April 22, 2018 must be dismissed because they are outside the time limits mandated by COMAR 14.34.04.03(A)(2).”

Second, the BTU contends that “most of the complaints Mr. Pugh raises in the present Charge are a regurgitation of the complaints made in Pugh I, concerning violations of Section 6-407(b), duty of fair representation, and Section 6-409, interference with, intimidation, restraint, coercion, or discrimination in exercise of rights protected by Sections 6-402 and 6-403.” The BTU further argues that Mr. Pugh’s claim concerning “the failure of the BTU to represent him in a grievance concerning his being placed on administrative leave... must be dismissed here, under the principle of res judicata, and limitations under COMAR 14.34.04.03(A)(2).”

Third, the BTU claims that it did not violate Section 6-407(b) by refusing to represent Mr. Pugh in the appeal of his June 30, 2018, termination because “Ms. English made a discretionary decision not to offer Mr. Pugh representation in a statutory appeal of a termination based on an automatic provision in the Provisional Contract...” and that, “[t]hat information, coupled with the fact that Mr. Pugh did not report to work for even one day between August 29, 2017 and June 30, 2018, led Ms. English to the reasoned conclusion that the appeal could not be won.”

Fourth, the BTU asserts that “Mr. Pugh’s timely complaint under Section 6-402 that he was denied or dismissed from membership in the BTU is without merit.”

Fifth, the BTU argues that Mr. Pugh’s claims with regard to Section 6-409 should be dismissed for the following two reasons. First, the BTU asserts that Mr. Pugh’s claims that “the BTU colluded with BCPSS by not providing representation to him with regard to: 1) an alleged arbitrary salary, 2) not receiving contractual benefits, 3) not receiving medical care, and 4) not processing a grievance... must be dismissed because they either raise matters that do not fall within the 60-day time frame mandated by COMAR 14.34.04.03(A)(2), or were considered and rejected in Pugh I.” Second, the BTU contends that Mr. Pugh’s claims “that the BTU and BCPSS colluded to deny him membership in the BTU” should be dismissed because “Mr. Pugh offers no evidence in support of his allegation... [and] the BTU has sound historical reasons for not accepting payment of dues directly from bargaining unit employees.”

Finally, the BTU claims that Mr. Pugh’s argument “that the BTU violated Section 6-405 by not permitting him to become a member” should be dismissed because “Section 6-405 concerns elections to determine the exclusive employee representative. It has nothing to do with

whether a bargaining unit member can join a union or be dismissed from membership in the Union, and it makes no reference to internal elections or procedures.”

IV. ANALYSIS

At the outset, COMAR 14.34.04.03(A)(2) states, “[i]n order to be timely, Form PSLRB-05 must be filed with the Executive Director of the Board within 60 days after the charging party knew, or reasonably should have known, of the statutory violation alleged.” As noted above, Mr. Pugh filed his Charge on June 21, 2018. Therefore, for the purposes of this decision, we must only address the statutory violations that Mr. Pugh alleges took place in the 60-day period leading up to the date he filed the instant Charge, i.e., April 22, 2018, and after.

We now turn to the arguments made by Mr. Pugh.

a. Section 6-407

i. Section 6-407(a)

As noted above, Mr. Pugh asserts that the BTU has violated Section 6-407(a) because it “requires me to self-advocate as I work to enforce contractual agreements with my employer, BCPSS,” and “actively neglects their duties as my negotiating agent.”

Section 6-407(a) of the Education Article states, “[a]n employee organization designated as an exclusive representative shall be the negotiating agent of all public school employees in the unit in the county.” Section 6-407(a) codifies the designation of an exclusive representative as the negotiating agent of public school employees in a particular bargaining unit and county.

Mr. Pugh has not contested the BTU’s designation as the exclusive representative of public school employees in the BCPSS, nor has he contested its role as the negotiating agent for those employees. As a result, the PSLRB dismisses Mr. Pugh’s Charge with regard to Section 6-407(a).

ii. Section 6-407(b)

Section 6-407(b) 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 avoid arbitrary conduct,” “to exercise its discretion with complete good faith and honesty,” and “to serve the interests of all members [of the negotiating unit] without hostility or discrimination.” 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 noted above, in support of his allegation that the BTU violated Section 6-407(b), Mr. Pugh makes the following claims: (1) “I have made every patient effort to ask for representation, ask clear questions, and self advocate when my career is being destroyed by BCPSS”; (2) “BTU has continued a pattern of intentional delay, obfuscation, and failure to deliver contractual services month-after-month, year-after-year”; (3) “BTU has attempted to force me to forfeit my contractual rights via unnecessary delay and stalling tactics; (4) “BTU refuses to acknowledge that I am employed by BCPSS despite clear evidence”; (5) “BTU has NEVER answered one of my legal questions or provided any support. Instead they have... ignored questions and provided consistent refusal to consider clear, obvious crimes that are being committed against me by BCPSS”; (6) “BTU has partnered with BCPSS to ignore my rights and crimes that have been committed against me for years”; and (7) “... although I suffer from PTSD caused by my classroom injury, BTU has continually ignored my injury while I seek representation. Instead, they seek to trigger my illness with intentional obfuscation instead of representation.”

Mr. Pugh has failed to provide any evidence to support his assertions. In contrast, the BTU has provided ample evidence to counter Mr. Pugh’s claims as described below.

Despite Mr. Pugh’s claims to the contrary, Ms. English, in her May 3, 2018, e-mail, recognized Mr. Pugh’s employment with the BCPSS, indicating that it was her understanding that, even though he was not on the active payroll, he was on an unpaid leave of absence and subject to a Provisional Contract. Moreover, between the period of April 22, 2018, and the June 21, 2018, the date on which Mr. Pugh filed the instant Charge, Ms. English assisted Mr. Pugh in the rescheduling of his medical examination, advised him with regard to the likelihood of success of his appeal of his June 30, 2018, termination, advised him on the deadline for filing such an appeal, and directed him to the statute and website where he could find the proper procedures for filing such an appeal.

As a result, Mr. Pugh’s claims in this regard are dismissed.

As previously discussed, Mr. Pugh also asserts that the BTU violated Section 6-407(b) by failing to represent him in a grievance appealing the BCPSS’s decision to place him on administrative leave following allegations of misconduct arising from a November 20, 2015, workplace incident. As noted above, in response, the BTU asserts that Mr. Pugh’s assertions are precluded by *res judicata*.

Res judicata, or claim preclusion, is a common law defense under Maryland law.³ The following three elements must be present for the principle of *res judicata* to apply: (1) the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) there has been a final judgment on the merits. Bank of New York Mellon v. Georg, 456 Md. 616 (2017).

³ The defense of *res judicata* applies to proceedings before administrative agencies acting in quasi-judicial capacities, as is the case here. See Smalls v. Maryland State Dept. of Educ., Office of Child Care, 226 Md. 224, 252 (2015).

Mr. Pugh's claim that the BTU violated Section 6-407(b) by failing to represent him in this grievance meets these three elements – the parties involved are the same, the claim is identical to the claim adjudicated in Pugh I, and the PSLRB issued a final judgment on the merits of that claim. It is therefore precluded from adjudication before the PSLRB. As a result, the PSLRB dismisses Mr. Pugh's claim under the principle of *res judicata*.

Finally, and as aforementioned, Mr. Pugh also claims that the BTU violated Section 6-407(b) by refusing to represent him in a grievance challenging his June 30, 2018, termination.

Mr. Pugh has provided no evidence that the BTU's decision not to represent him in this grievance was in any way arbitrary, discriminatory, or made in bad faith. As indicated in the BTU's Answer, "Ms. English made a discretionary decision not to offer Mr. Pugh representation in a statutory appeal of a termination based on an automatic provision in the Provisional Contract...." As a result, the PSLRB also dismisses Mr. Pugh's Charge with regard to this claim.

a. Section 6-402

As previously discussed, Mr. Pugh claims that the BTU has violated Section 6-402(a) of the Education Article by refusing to represent him with regard to claims: (1) that "[a]lthough BCPSS acknowledges I am employed, they have not paid me a salary or wages that correspond with the BTU-BCPSS Contract of Agreement," and (2) that BCPSS "continue[s] to ignore the fact that my doctor has cleared me for work after I was injured in the classroom..., notified me of a medical appointment to clear me for placement *after* the appointment had passed, and... refuses to reschedule the appointment after multiple attempts." In addition, and as discussed above, Mr. Pugh also asserts that the BTU has violated Section 6-402(a) by "refus[ing] to represent me to seek accommodations for employment with BCPSS...."

Section 6-402(a) of the Education Article establishes the right of public school employees "to form, join, and participate in the activities of employee organizations of their own choice for the purpose of being represented on all matters that relate to salaries, wages, hours, and other working conditions." It does not establish the duty of fair representation owed by an exclusive negotiating representative to its negotiations unit members. That duty is established by Section 6-407(b), as discussed above. Therefore, the appropriate section of the Education Article under which a charging party may bring a duty of fair representation claim is not Section 6-402(a), but Section 6-407(b). As a result, the PSLRB dismisses Mr. Pugh's claim with regard to Section 6-402(a).

That being said, even applying the duty of fair representation standard to these allegations, Mr. Pugh has failed to provide any evidence that the BTU acted in an arbitrary, discriminatory, or bad faith manner – and a finding that the BTU did not violate its duty of fair representation under Section 6-407(b) would be appropriate.

As discussed above, Mr. Pugh also claims that the BTU violated Section 6-402(b)(2) because it “has not established provisions for my dismissal from membership... [y]et, BTU pretends that I have been dismissed from BTU membership...”⁴

Section 6-402(b)(2) states, “An employee organization may establish reasonable... [p]rovisions for the dismissal of individuals from membership.”

As indicated in the BTU’s Answer, “[t]here is no evidence in the record that the BTU took any action to dismiss Mr. Pugh from membership in the Union.” It is the BTU’s policy that employees who are not on the active payroll are ineligible for membership. Because Mr. Pugh was no longer on the BCPSS’s active payroll, he was no longer eligible to be a member of the BTU. Since the BTU did not dismiss Mr. Pugh from its membership, Section 6-402(b)(2) is not applicable.⁵ As a result, the PSLRB dismisses Mr. Pugh’s Charge with regard thereto.

As previously discussed, Mr. Pugh also claims that the BTU violated Section 6-402(b)(1) because it “has not established a restriction that would bar me from membership... yet they pretend that I am restricted from union membership...”⁶

Section 6-402(b)(1) states, “An employee organization may establish reasonable... [r]estrictions as to who may join.”

As discussed above, Ms. English informed Mr. Pugh that it was the policy of the BTU not to accept union dues in any manner other than through dues deductions remitted from the BCPSS to the BTU from the paychecks of employees on the active payroll. Ms. English further indicated that it was her understanding that Mr. Pugh was not on the active payroll, and thus, unable to remit union dues; however, if he returned to the active payroll, Mr. Pugh could sign a new membership card to re-join the union.

Mr. Pugh has not provided any basis to support a finding that that the BTU’s policy restricting membership to only those on the active payroll is unreasonable. Nor is there any evidence in the record to support such a conclusion. Therefore, the PSLRB finds that the BTU has not violated Section 6-402(b)(1) of the Education Article by restricting its membership to employees on the active payroll.

For the foregoing reasons, the PSLRB dismisses Mr. Pugh’s Charge with regard to Section 6-402(b).

b. Section 6-409

Section 6-409 of the Education Article makes it unlawful for an employee organization to “interfere with, intimidate, restrain, coerce, or discriminate against any public school employee because of the exercise of his rights under §§ 6-402 and 6-403....” As indicated above, Section

⁴ It is unclear what Mr. Pugh means by “pretends.”

⁵ As used in this Section, we do not interpret the term “dismissal” to encompass those circumstances when an individual becomes ineligible for membership in an employee organization.

⁶ Again, it is unclear what Mr. Pugh means by “pretend.”

6-402 of the Education Article establishes the right of public school employees “to form, join, and participate in the activities of employee organizations of their own choice for the purpose of being represented on all matters that relate to salaries, wages, hours, and other working conditions.” Section 6-403 establishes the right of public school employees “to refuse to join or participate in the activities of employee organizations.” Read together, these Sections provide that a public school employee may file a charge against an employee organization only if the employee organization interferes with, intimidates, restrains, coerces, or discriminates against the public school employee because he exercised his right to form, join, or participate in the activities of an employee organization of his own choosing, or because he exercised his right to refuse to do so.

As explained above, Mr. Pugh alleges that the BTU violated Section 6-409 because it “colluded with my employer, BCPSS, to interfere, restrain, and discriminate against me when they refused to represent me on contractual matters of salary, wages, and working conditions after it became apparent that BCPSS lies that I was not currently employed...” and further, because it “falsely insists... that I may not receive union representation over contractual issues regarding my salary, wages, and working conditions because I am not employed by BCPSS.”

Section 6-409 is not the appropriate section under which to bring a claim alleging a duty of fair representation violation, as Mr. Pugh does here. As discussed above, the appropriate section under which to bring such a claim is Section 6-407(b). Nevertheless, and as previously explained, there is no evidence in the record to support a finding that the BTU violated this duty. As a result, Mr. Pugh’s claim in this regard is dismissed.

Mr. Pugh further argues that the BTU violated Section 6-409, “when they established arbitrary restrictions of membership by denying my membership when they refused to accept payment....”

Section 6-409 is also not the appropriate section under which to bring a claim alleging that an employee organization improperly denied membership to an individual. The appropriate section under which to bring such a claim is Section 6-402(b)(1). Nevertheless, turning to Section 6-409, there is no evidence in the record that the BTU interfered with, intimidated, restrained, coerced, or discriminated against Mr. Pugh because he exercised his right to form, join, or participate in the activities of the BTU, or for exercising his right to refuse to do so. Therefore, the PSLRB also dismisses this claim.

Finally, Mr. Pugh alleges that the BTU violated Section 6-409 because it “has interfered with my access to medical care by allowing my benefits to stop against contractual agreements.” Mr. Pugh has provided no evidence to support his allegation that the BTU interfered with Mr. Pugh’s access to medical care. That being said, even assuming that the BTU interfered with Mr. Pugh’s access to medical care, Section 6-409 is not the appropriate section under which to bring such a claim. As a result, Mr. Pugh’s claim is dismissed.

For the foregoing reasons, the PSLRB dismisses Mr. Pugh’s Charge with regard to Section 6-409.

c. Section 6-405

As explained above, Mr. Pugh contends that the BTU violated Section 6-405, stating that it “refused to allow me to participate in the elections that re-elected Marietta English by insisting that I do not (and cannot) qualify to be a BTU member despite multiple attempts to demonstrate that I qualify and multiple attempts to pay union dues.”

As asserted in the BTU’s Answer, “Section 6-405 concerns elections to determine the exclusive employee representative. It has nothing to do with whether a bargaining unit member can join a union or be dismissed from membership in the Union, and it makes no reference to internal elections or procedures.” Therefore, the PSLRB dismisses Mr. Pugh’s claims with regard to Section 6-405.

V. CONCLUSION

For the foregoing reasons, the PSLRB dismisses Mr. Pugh’s claims with regard to Sections 6-407, 6-402, 6-409, and 6-405 of the Education Article.

VI. ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2018-14, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



Elizabeth Morgan, Chair



Ronald S. Boozer, Member



Robert H. Chanin, Member



R. Allan Gorsuch, Member



Philip S. Kauffman, Member

Annapolis, MD

October 10, 2018

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).