

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:	*	
WICOMICO COUNTY EDUCATION	*	
ASSOCIATION,	*	
Charging Party,	*	
v.	*	PSLRB Case SV 2016-04
WICOMICO COUNTY BOARD OF	*	
EDUCATION,	*	
and	*	
RICK HAIRR,	*	
Charged Parties.	*	
* * * * * * * * * * * *		

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

I. INTRODUCTION AND POSITIONS OF THE PARTIES

On December 11, 2015, the Wicomico County Education Association (“WCEA”) filed a Charge of Violation of Title 6, Subtitle 4 or Subtitle 5 of the Education Article (Form PSLRB-05) with the Public School Labor Relations Board (“PSLRB”).¹ Form PSLRB-05 reflects the authority granted to the PSLRB by the Education Article of the Annotated Code of Maryland (“Education Article”) 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 its Charge, WCEA alleges that the Wicomico County Board of Education (“Board of Education”) and Rick Hairr, an employee of the Board of Education, violated Section 6-503(a) (“Employees may join organization; membership restrictions”) and Section 6-512 (“Interference with employees prohibited”) of the Education Article by unlawfully interfering with union activities.

WCEA claims that, on November 19, 2015, Mr. Hairr, a supervisor for the Board of Education, followed Marinus van Kuilenburg, a representative for WCEA, from a Wicomico

¹ As an employee organization representing noncertificated employees in this matter, WCEA’s Charge falls under Subtitle 5.

County facility to WCEA's office. WCEA states that when Mr. van Kuilenburg pulled into WCEA's parking lot, Emerson Black, an employee of the Board of Education whom Mr. Hairr supervises, "was standing outside his truck, visible to anyone driving past." WCEA contends that Mr. Hairr then returned to the Wicomico County facility and told other employees that Mr. Black "wasn't on the team anymore." WCEA asserts that, "[t]his behavior by Mr. Hairr... of interfering with union activities has been going on for a long time."

As a remedy, WCEA requests that the Board of Education "cease and desist from interfering with the right of their employees to exercise union activities," and notify all supervisors, managers, and administrators in writing, subject to the review and approval of WCEA, that employees have a statutory right to participate in union activity without interference.

The Board of Education contends that, on the day in question, Mr. Hairr left the Wicomico County facility at the same time as Mr. van Kuilenburg, and they went in the same direction. The Board of Education admits that, when Mr. van Kuilenburg pulled into WCEA's parking lot, Mr. Hairr observed Mr. Black at WCEA's office but continued to his destination. The Board of Education asserts that Mr. Hairr "did not make the alleged statement that Mr. Black 'wasn't on the team anymore,'" and, even if he had, that such a statement "does not rise to the level of interfering with Mr. Black's union activities." As a result, the Board of Education requests that the Charge be dismissed.

II. ANALYSIS

A. THE CHARGE AGAINST RICK HAIRR

The PSLRB finds it unnecessary to reach the merits of the allegations made by WCEA against Mr. Hairr on procedural grounds. Specifically, a Form PSLRB-05 alleging a violation of Section 6-503(a) or Section 6-512 can be filed against an employee organization or a public school employer, but not – as WCEA has done here – against an individual representative of an employee organization (*e.g.*, its president) or a public school employer (*e.g.*, its superintendent). *See Education Association of St. Mary's County v. Dr. Michael Martirano*, PSLRB Case No. SV-12-05 (alleging a violation of the right of a certificated employee under Title 6, Subtitle 4, a counterpart to Title 6, Subtitle 5 of the Education Article, dismissed on procedural grounds). An employee organization and a public school employer are responsible for the actions of their representatives, and if those actions violate Section 6-503(a) or Section 6-512, the employee organization and the public school employer are in turn liable.² *Id.* Suffice it to say, Mr. Hairr, even in his capacity as Mr. Black's supervisor, may not be named as a Charged Party for actions that he has taken in his capacity as a representative of the Board of Education.

² Section III of Form PSLRB-05 – "CHARGED PARTY" – offers a filing party three categories from which it can select: "A. Employee Organization," which was not selected by WCEA, "B. Public School Employer," which was also not selected by WCEA, and "C. Other (Identify Party)," which was selected by WCEA. As indicated above, the PSLRB has held that Category "C. Other (Identify Party)" does not include a person who is an agent of a public school employer or an employee organization.

For this reason alone, the Charge against Mr. Hairr must be dismissed.

B. THE CHARGE AGAINST THE WICOMICO COUNTY BOARD OF EDUCATION

Section 6-512 of the Education Article states that “[a] public school employer and employee organization may not interfere with, intimidate, restrain, coerce, or discriminate against any public school employee because of the exercise of his rights under §§6-503 and 6-504 of this subtitle.”³ Section 6-503(a) provides that “[p]ublic school employees may 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.” Taken together, these provisions prohibit a public school employer from taking adverse action against employees based on their participation in the activities of employee organizations.

WCEA bases its charge against the Board of Education on a statement that Mr. Hairr allegedly made to other employees of the Board of Education after he saw Mr. Black standing in the parking lot of the WCEA office. That statement, according to WCEA, was that Mr. Black “wasn’t on the team anymore.” However, WCEA provides no further specification in this regard, and relies solely on that statement without citing any other action taken in pursuance or follow up.

The Board of Education offers both a factual and legal defense. The factual allegations presented by WCEA are ambiguous, at best, and fail to support a charge under either Section 6-503(a) or 6-512. The Board of Education asserts first that Mr. Hairr did not make the alleged statement, but argues that, even if he did, such a statement “does not rise to the level of interfering with Mr. Black’s union activities.” We need not for present purposes resolve this factual dispute between the parties. Even if we assume, arguendo, that Mr. Hairr did in fact state that Mr. Black “wasn’t on the team anymore,” this vague statement -- standing alone -- does not in any way indicate how Mr. Black’s rights under either Section 6-503(a) or 6-512 were violated, and we are not prepared to speculate in this regard.

For this reason, the Charge against the Board of Education must be dismissed.

III. CONCLUSIONS OF LAW

For the reasons stated herein, the PSLRB holds that the Charge filed by WCEA fails to allege a statutory violation against either Mr. Hairr or the Board of Education. The Charge is dismissed.

IV. ORDER

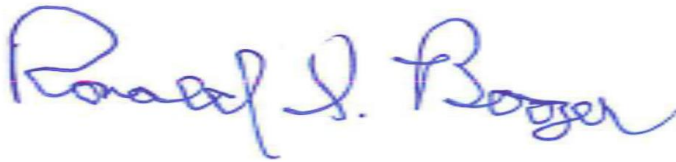
IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2016-04, IS DISMISSED.

³ Because WCEA’s Charge alleges only a violation of Sections 6-512 and 6-503(a), analysis of a violation under Section 6-504 is unnecessary in this case.

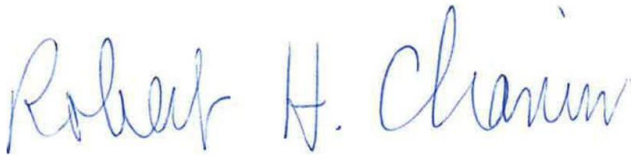
BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



Seymour Strongin, Chairman



Ronald S. Boozer, Member



Robert H. Chanin, Member



Donald W. Harmon, Member



John A. Hayden, III, Member

Annapolis, MD

March 7, 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).