

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *
Shirley Kirkland, *
Charging Party, *
v. * PSLRB Case SV 2019-06
AFSCME, AFL-CIO, *
Charged Party. *

* * * * *

DECISION AND ORDER DENYING REQUEST FOR RELIEF AND DISMISSING CHARGE

I. DECISION

a. INTRODUCTION AND PROCEDURAL BACKGROUND

On April 29, 2019, Shirley Kirkland 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).

In her Charge, Ms. Kirkland alleges that the American Federation of State, County and Municipal Employees, AFL-CIO International (“AFSCME International”) violated Sections 6-503 and 6-504(a) of the Education Article.

The circumstances surrounding Ms. Kirkland’s allegations are related to AFSCME International’s decision to expel her from membership in ACE-AFSCME Local 2250, a decision that Ms. Kirkland previously challenged before the PSLRB, and which the PSLRB upheld. *See Campbell, et al v. AFSCME International*, PSLRB SV 2018-05. In her newest Charge, Ms. Kirkland asserts that AFSCME International has violated the aforementioned Sections of the Education Article by refusing to restore her membership in ACE-AFSCME, Local 2250.

On May 17, 2019, AFSCME International filed its Response to and Motion to Dismiss the Complaint (“Response”).

b. FACTUAL BACKGROUND

Article III, Section 7 of AFSCME International’s Constitution states:

No person who has been expelled from membership in accordance with the provisions of this Constitution may be admitted to membership in or employed by the Federation or any of its subordinate bodies for one year following such expulsion, and may thereafter be admitted to membership or offered such employment only with the prior approval of the International Executive Board.

By letter dated February 8, 2019, and on Ms. Kirkland's behalf, Denise Yorkshire, President of ACE-AFSCME, Local 2250, requested that AFSCME International restore Ms. Kirkland's membership following the issuance of its decision, dated April 23, 2018, to expel her. This matter was placed on the agenda of the March 7, 2019, meeting of AFSCME International's Executive Board. The AFSCME International Executive Board discussed and voted on this request at its March 7, 2019, meeting, but declined to restore Ms. Kirkland's membership. Ms. Kirkland was notified of the decision of AFSCME International's Executive Board not to restore her membership by letter dated March 15, 2019.

As of the date of the filing of AFSCME International's Response, Ms. Kirkland's membership has not been restored.

c. POSITIONS OF THE PARTIES

In her Charge, Ms. Kirkland asserts that, by refusing to restore her membership, she has been denied "participation in the employee organization" based on "unreasonable restrictions" in violation of Sections 6-503 and 6-504(a) of the Education Article.

In its Response, AFSCME International asserts that Ms. Kirkland has "not alleged any facts demonstrating a violation of Section 6-503...." AFSCME International further asserts that it "reasonably dismissed... [Ms. Kirkland] from membership..., " a decision which was upheld by AFSCME International's Executive Board, "...and then declined to reinstate her under its constitution, rules and procedures."

d. ANALYSIS

As indicated above, the circumstances surrounding Ms. Kirkland's Charge relate to AFSCME International's decision to expel her from membership in ACE-AFSCME, Local 2250. As previously explained, AFSCME International's decision to expel Ms. Kirkland has already been reviewed by the PSLRB, and a decision was rendered by the PSLRB upholding AFSCME International's decision. Therefore, to the extent that Ms. Kirkland's Charge involves or challenges her dismissal from membership, it is hereby dismissed.

That being said, as explained above, Ms. Kirkland asserts that AFSCME International's "restrictions" in refusing to restore her membership are "unreasonable," and that, as a result, she has been denied "participation in the employee organization" in violation of Sections 6-503 and 6-504(a) of the Education Article.

Section 6-503 of the Education Article states,

- (a) Public 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.
- (b) An employee organization may establish reasonable restrictions as to who may join and reasonable provisions for the dismissal of individuals from membership, except that these restrictions and provisions may not discriminate with regard to the terms or conditions of membership because of race, color, marital status, creed, sex, age, or national origin.

In interpreting these Sections, the PSLRB has held,

[w]ith two exceptions, the PSLRB lacks jurisdiction over the internal affairs of employee organizations. Those exceptions are found in Section 6-503(b)... Therefore, the only cases in which the PSLRB has jurisdiction over internal union affairs is where a question arises as to the reasonableness of the restrictions established by an employee organization **as to who may join**, and the reasonableness of the provisions established for dismissal of individuals from membership. (Emphasis added.)

Campbell, et al.

As previously explained, Ms. Kirkland has challenged the reasonableness of Article III, Section 7 of AFSCME International's Constitution, which addresses the circumstances under which an individual may be re-admitted or re-employed by AFSCME International following expulsion.

Under Section 6-503(b), there is no requirement that an employee organization establish any restriction, reasonable or not, for the re-admission of individuals post-expulsion. That being said, even if we were to extend the reasonableness requirement of Section 6-503(b) to such restrictions, Ms. Kirkland has provided no explanation or reasoning to support her claim that the restrictions established by AFSCME International in refusing to re-admit her are unreasonable. In fact, the record supports the opposite conclusion.

As explained above, Article III, Section 7 of AFSCME International's Constitution permits individuals who have been expelled from membership to be re-admitted, and establishes a process for doing so – mainly, that any member wishing to be reinstated must seek approval through AFSCME International's Executive Board after one year of being expelled. As previously explained, on Ms. Kirkland's behalf, ACE-AFSCME, Local 2250 President Yorkshire requested that AFSCME International reinstate Ms. Kirkland as a member within one year of Ms. Kirkland being expelled. Subsequently, this matter was placed on the agenda of the March 7, 2019, meeting of AFSCME International's Executive Board, which met on this date, discussed and voted on President Yorkshire's request, and declined to reinstate Ms. Kirkland.

Therefore, even assuming, *arguendo*, that the reasonableness requirement of Section 6-503(b) applies to the restrictions established by AFSCME International under Article III, Section

7 of its Constitution, we would otherwise find these restrictions to be reasonable, and that, as a result, AFSCME International's refusal to re-admit Ms. Kirkland within a year of its decision to expel her would not violate Section 6-503(b).

Finally, as explained above, Ms. Kirkland also asserts that AFSCME International violated Section 6-504(a) by refusing to restore her membership. Section 6-504(a) states that "[a] public school employee may refuse to join or participate in the activities of employee organizations." Because Ms. Kirkland is challenging AFSCME International's refusal to restore her membership, and not her right to refuse to join or participate in the activities thereof, Section 6-504(a) is inapplicable. Therefore, Ms. Kirkland's Charge with regard to this Section is also dismissed.

e. CONCLUSION

For the foregoing reasons, Ms. Kirkland's Charge with regard to Sections 6-503 and 6-504(a) of the Education Article are dismissed.

II. ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2019-06, 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

R. Allan Gorsuch, Member

Philip S Kauffman

Philip S. Kauffman, Member

Annapolis, MD

August 6, 2019

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).