

# Maryland Public Employee Relations Board

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**In the Matter of:**

**Kirsten O'Neill,**

**Charging Party**

v.

**Teachers Association of Anne Arundel County,**

**Respondent**

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**PERB ULP 2026-07**

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## **DECISION AND ORDER**

### **Procedural Background**

On August 14, 2025, Kirsten O'Neill (Charging Party or O'Neill) filed an unfair labor practice charge with the Public Employee Relations Board (PERB or the Board) against the Teachers Association of Anne Arundel County (TAAAC or the Union). The Union submitted an initial Response and Motion to Dismiss the Charge on September 3, 2025. O'Neill submitted an Opposition to TAAAC's Motion on September 17, 2025, to which the Union submitted a final Reply on September 23, 2025.

### **Factual Background**

O'Neill is an employee of the Anne Arundel County Public School (AACPS) system and is a member of the certificated bargaining unit represented by TAAAC. O'Neill had been working as an art education teacher at Northeast High School as recently as the beginning of the 2024-25 school year; however, she was reassigned to teach art education at Manor View Elementary School for the 2025-26 school year after having been placed at Manor View as a special education teacher to end the 2024-25 school year following a leave of absence. TAAAC is a local affiliate of the

Maryland State Education Association (MSEA). TAAAC and AACPS are parties to a Negotiated Agreement, effective July 1, 2024 – June 30, 2027.

On February 9, 2022, O'Neill was injured by a student. Upon her return to work, O'Neill was reinjured on June 16, 2022. These injuries resulted in ongoing medical issues, which led to O'Neill exhausting her leave under the Family and Medical Leave Act (FMLA) prior to the 2024-25 school year. On August 8, 2024, AACPS denied O'Neill's request for leave due to an upcoming surgery. After learning of the denial, O'Neill contacted TAAAC UniServ Director, Jason Fahie, for guidance. Fahie advised that accommodations stemming from the Americans with Disabilities Act (ADA) are not covered by the Negotiated Agreement and are instead a determination made solely by AACPS. Fahie assured O'Neill that the Union would assist in ensuring her leave was appropriately handled and advised that unpaid leave could be considered a reasonable accommodation under applicable law. Additionally, Fahie stated that while taking an unpaid leave of absence was an option for O'Neill, he cautioned that AACPS might be entitled to release her position if leave without pay is taken for an extended period of time, per the Negotiated Agreement.

In response, O'Neill expressed her belief that, under the ADA, an employee's position and benefits are protected while on leave and requested that TAAAC assist her in having her leave accommodated by AACPS. TAAAC instead advised O'Neill to submit a request for leave of absence or use the sick leave bank and provided her the relevant paperwork.

On September 9, 2024, TAAAC advised O'Neill that AACPS was questioning her requested accommodations/restrictions and stated that if her restrictions were not accommodated by AACPS, she would be forced to take an unpaid leave of absence, leaving open the possibility of her position being released. O'Neill responded via email with her interpretation of applicable ADA law and regulation. On November 7, 2024, O'Neill informed Fahie that AACPS denied her request for leave for an additional planned surgery. At this time, as O'Neill continued to express her belief that AACPS was required to deem her time off as leave under the ADA, Fahie spoke with an AACPS representative, who reiterated that while AACPS did not view "work-leave" as an ADA accommodation, O'Neill was able to request authorized leave without pay or use the sick leave bank for her upcoming planned absence. Fahie relayed this information to O'Neill, while warning that, per the Negotiated Agreement, if O'Neill took an additional extended leave, her position as art teacher at Northeast High School could be in jeopardy. O'Neill rejected this explanation, again arguing that denial of her request by AACPS was violative of the ADA. On November 24, 2024, TAAAC informed O'Neill that its general counsel agreed that "work-leave" is not a reasonable accommodation under the ADA, and that it would not be providing assistance to have O'Neill's ADA request accommodated.

On December 9, 2024, O'Neill underwent an additional surgery and took time off from work utilizing the sick leave bank. Upon being granted an additional sick leave bank request by AACPS on February 4, 2025, AACPS released O'Neill's position. On February 5, 2025, TAAAC informed O'Neill that usage of the sick leave bank does not protect an employee's position when

that employee misses the requisite amount of time, per the Negotiated Agreement. On February 24, 2025, O'Neill requested TAAAC file a grievance on her behalf for what she referred to as a “soft termination” by AACPS. TAAAC refused to do so, stating that the ADA had not been violated.

Upon O'Neill's return to work in April of 2025, AACPS reassigned her as a special education teacher at Manor View Elementary School. On April 11, 2025, O'Neill requested TAAAC file a grievance on her behalf for “wrongful reassignment” as O'Neill alleged AACPS placed her in a position outside of her certification area and in a geographic location O'Neill had requested not to be placed. O'Neill alleged AACPS terminated the position of a long-term substitute teacher at Manor View so that O'Neill could fill his role in violation of the Negotiated Agreement.

On April 14, 2025, Fahie responded to O'Neill's concern, stating that TAAAC would not be pursuing her grievance as it did not believe AACPS had violated the Negotiated Agreement. Specifically, Fahie stated the following: (1) usage of the sick leave bank protects an employee's employment with AACPS, not their specific position. The only leave that would have protected O'Neill's position at Northeast High School was FMLA leave; (2) AACPS is required to reassign O'Neill to a position within her certification areas only if one is vacant, but as no vacancies existed in her certification areas at the time of her reassignment, AACPS was within its legal right to reassign O'Neill to Manor View as a special education instructor; (3) O'Neill's situation does not fall under “excessed” teachers per the Negotiated Agreement, but rather her situation was classified as “reassignment;” (4) AACPS was not able to return O'Neill to her original position at Northeast because it was not currently vacant; and (5) O'Neill was free to apply for upcoming vacant positions within her areas of certification for the 2025-26 school year.

Following Fahie's response, O'Neill brought this matter to the attention of Fahie's supervisor within the Union, Josh Ardison. In a June 13 email following a discussion between the two, Ardison stated the following: (1) unpaid leave may be deemed a reasonable accommodation, but O'Neill's repeated use of the term “work leave” is unclear and the definition of same had not been discussed or agreed upon between the two; (2) MSEA agrees with TAAAC that while FMLA provides specific job protection for employees on leave, O'Neill was out on extended sick leave rather than FMLA leave, resulting in her original position not being protected by FMLA; (3) due to O'Neill having previously exhausted her FMLA leave, AACPS was within its right to release her position and reassign her; (4) the AACPS Superintendent had the statutory authority, per Md. Code, Education § 6-201, to assign teachers as the needs of the school system require, including assigning teachers outside of their certification area; and (5) as AACPS had not committed a violation of the Negotiated Agreement, TAAAC would not be pursuing a grievance on her behalf.

### **Positions of the Parties**

#### **Charging Party**

O'Neill primarily argues that TAAAC breached its duty of fair representation owed to her when the Union chose not to pursue grievances against AACPS on her behalf. O'Neill claims that TAAAC refused to enforce the Negotiated Agreement or otherwise represent her following AACPS' alleged violations of the Negotiated Agreement and ADA law when it reassigned her to work in a field in which she did not hold certification. Further, O'Neill contends that she was the target of persistent and continuous hostile actions by AACPS, and that TAAAC, when informed of these actions and the various laws/regulations by O'Neill, repeatedly refused to offer assistance, advocacy, representation, or otherwise acknowledge her alleged rights and protections under the laws provided – actions which O'Neill classifies as discriminatory and in bad faith.

Regarding the ADA, O'Neill asserts TAAAC incorrectly holds that the ADA is not specifically mentioned in the Negotiated Agreement, arguing that if it is not specifically mentioned, then TAAAC left out a protected class in the Negotiated Agreement, leading to discrimination against its members with disabilities. As the ADA includes language stating that labor organizations are included in the definition of a “covered entity” which are prohibited from discriminating against employees with disabilities, then the ADA must apply to TAAAC. Further, O'Neill contends that her rights under the ADA were violated as AACPS denied her requests for “work leave” and she was not returned to her original position upon return from leave.

O'Neill cites numerous cases in support of her claim that the ADA applies to her situation and that the Union breached its duty of fair representation in failing to grieve alleged violations of same. First, O'Neill references a 9<sup>th</sup> Circuit Court of Appeals matter which held that temporary impairments, including time off for surgery and post-op recovery are covered under the ADA. In support of her claim that the Union has to enforce the ADA, O'Neill argues that Congress has long held that labor unions are held to the same bar as employers for being subject to the ADA and its governance, specifically in terms of discrimination.

Regarding the Negotiated Agreement, O'Neill claims that AACPS and TAAAC violated the Agreement when it reassigned her as a special education teacher at Manor View Elementary school upon her return in April of 2025. O'Neill references Article 7(1) of the Negotiated Agreement, which she states places an obligation upon the Board to return an employee to the field of certification held prior to leave, or to another area of certification, if a position in the original field is not available. Additionally, O'Neill argues that Article 7C defines a Leave of Absence as an unpaid leave, which never applied to her situation.

#### **Respondent**

TAAAC principally argues that O'Neill has failed to establish the Union breached its duty of fair representation, as a majority of the referenced issues are statutory in nature and not governed by the Negotiated Agreement, thereby falling outside the scope of the Union's duty of fair representation. For any contractual matters, TAAAC argues it properly and adequately investigated O'Neill's concerns and appropriately advised her throughout the process. Given the facts however, the Union ultimately and reasonably determined that AACPS did not breach the Negotiated Agreement, precluding further action by TAAAC on O'Neill's behalf.

Regarding O'Neill's primary complaint that AACPS violated the ADA for denying her request for "work-leave" as an accommodation, TAAAC argues this falls outside the scope of its duty of fair representation as this issue is statutory in nature and does not fall under the Negotiated Agreement. While the Negotiated Agreement contains provisions related to sick leave, leaves of absence, and assignment/transfer, it contains no provisions regarding the ADA or the reasonable accommodation process, which is rather governed exclusively by AACPS policy and applicable federal law.

In support of this claim, TAAAC points to its statutory duty of fair representation, as outlined in the Public Employee Relations Act (PERA), which the Union argues extends only to its obligation to negotiate, enforce and administer a collective bargaining agreement with AACPS. While Union representatives consistently advised O'Neill of this fact and encouraged her to pursue appropriate remedies through AACPS' accommodation process, the Union did not have a legal obligation to represent her in a dispute arising solely under federal law which is unincorporated into the Negotiated Agreement. Accordingly, TAAAC argues that any allegation it breached its duty of fair representation for failing to pursue O'Neill's ADA claim is without merit and must be dismissed.

Concerning the alleged contractual violations by AACPS that TAAAC chose not to grieve, the Union argues its conduct was reasonable and responsive, not arbitrary, discriminatory, or in bad faith. The Union refers to the U.S. Supreme Court case of *Vaca v. Sipes* which held that a union breaches its duty of fair representation only when its conduct is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171 (1967). TAAAC continues by providing the following: "[a]s long as a union does not arbitrarily ignore a meritorious grievance or handle it in a perfunctory manner, the union has not violated its duty of fair representation." *See Thompson v. Aluminum Co. of Am.*, 276 F.3d 651, 658 (4<sup>th</sup> Cir. 2002). The Union also argues Maryland courts have recognized that unions have wide discretion in handling individual member matters, provided the union acts in good faith. *See Offutt v. Montgomery County Bd. of Ed.*, 285 Md. 557 (1979).

In effort to distinguish the cases cited by O'Neill and her related arguments, the Union agrees that while TAAAC is a covered employer under both the ADA and the Maryland Fair Employment Practices Act, those acts apply to TAAAC's own employees, not the members it represents, such as O'Neill, who are rather employees of AACPS. TAAAC claims the remaining cases cited by O'Neill are misplaced and not applicable to the present matter.

Here, the Union argues that O'Neill has presented insufficient evidence to establish TAAAC disregarded her concerns or gave them only cursory attention. Rather, the record establishes that TAAAC was prompt and responsive to O'Neill's inquiries, as Union representatives repeatedly sent detailed, thorough responses to O'Neill's questions and concerns about leave rights, reassignment procedures, certification requirements, and voluntary transfer options. Union representatives contacted AACPS on her behalf and researched applicable contractual provisions and statutory authority/COMAR regulations. When O'Neill remained unsatisfied with the Union's assessment, instead of dismissing the matter, an additional TAAAC representative independently reviewed the matter and consulted with MSEA general counsel, highlighting the level of concern the Union displayed in relation to O'Neill's requests. While O'Neill disagrees with the Union's interpretation of the Negotiated Agreement, that, in itself, does not establish that TAAAC acted discriminatorily, arbitrarily, or in bad faith, according to the Union.

Finally, the Union contends it properly declined to pursue O'Neill's grievance as it lacked merit under the Negotiated Agreement. The Union provides the following in support of its claim that it was not required to grieve O'Neill's claims: "[a]n employee has no absolute right to insist that [their] grievance be taken to a certain level; 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.'" *See Griffin v. Int'l Union, United Auto., Aerospace & AGRIC. Implement Workers of Am., UAW*, 469 F.2d 181, 183 (4<sup>th</sup> Cir. 1972). TAAAC further points to various provisions of the Negotiated Agreement, which state that AACPS has the authority to release a teacher's position if leave exceeds 12 weeks in a calendar year, which occurred in O'Neill's case. Additionally, the Negotiated Agreement requires AACPS to offer reassignment upon return from leave to a "position available in the field of certification in which the member was assigned prior to leave," but only when such a position is available. As was explained to O'Neill after the Union investigated, no vacancies existed in her certification areas at the time of her return to work in April of 2025.

### Analysis

TAAAC is a certified exclusive representative subject to PERA, pursuant to Md. Code, State Gov't § 22-101(e). O'Neill is a public employee subject to PERA, pursuant to Md. Code, State Gov't § 22-101(h) and Md. Code, Education § 6-401(e)(1). PERA requires claims of unfair labor practices be submitted within six (6) months after the unfair labor practice occurred. *See Md. Code, State Gov't § 22-307(b)*. O'Neill filed her charge on August 14, 2025; thus, any alleged unfair labor practices committed before February 14, 2025, are dismissed as untimely. While much of the factual background concerns conduct which occurred prior to that date, the crux of O'Neill's claim – TAAAC refusing to pursue grievances on her behalf – occurred after the subject date, as O'Neill made requests for a grievance on February 24 and April 15, 2025, both of which were ultimately denied by the Union.

PERA provides that employee organizations and their 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. *See Md. Code, State Gov't § 22-206(b)(6)*. PERB has recently reiterated that "the duty of fair representation stems from the union's grant of exclusive authority to negotiate and administer collective bargaining agreements covering bargaining unit employees...[and] attaches only in matters over which the union exercises this exclusive grant of authority." *See Hinton v. Frederick County Teachers' Assoc.*, PERB ULP 2025-20 (2025) (quoting *McConnell v. AFSCME, Local 1693*, PSLRB Case No. DV 2013-07 (2013)).

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 only 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. *See Hinton, supra*. (citing *Offut 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..." See Humphrey, supra at 349.

PERB has also recently adopted and reiterated a consistent holding from the Public School Labor Relations Board (PSLRB), one of three boards preceding PERB, that the duty of fair representation does not attach to instances where the complaint falls outside the scope of a negotiated agreement over which the union has exclusive authority. *See Crawford v. Prince George's County Educ. Assoc.*, PERB ULP 2025-12 (2025). *Crawford* considered whether the duty of fair representation was implicated regarding the appeal of a teacher's termination, given that the relevant provisions governing termination stemmed from state law rather than a negotiated agreement between the union and employer. *See id.* Ultimately, PERB adopted previous holdings from the PSLRB which stated the duty of fair representation does not extend to statutory appeals because the union does not act as an employee's exclusive representative for such an appeal. *See id.* The Board concluded that because the union "[had] not negotiated any contractual provision granting it exclusive authority over termination appeals...the duty of fair representation does not apply." *See id.*

The Americans with Disabilities Act is not governed by, or mentioned within, the Negotiated Agreement but rather is governed exclusively by applicable federal law and AACPS policy. Further, Md. Code, Education § 6-201(b) provides that a county superintendent has the authority to nominate teachers for appointment and "transfer [teachers] as the needs of the schools require," without reference to the specific certification(s) held by those teachers.

Here, O'Neill has not produced sufficient evidence that the Union breached its duty of fair representation owed to her by acting arbitrarily, discriminatorily, or in bad faith. Much of O'Neill's argument relates to alleged violations of the ADA and the Union's alleged failure to represent her in relation to those violations. However, the Union's duty of representation does not attach for statutory concerns governed outside of the Negotiated Agreement, as is the case for the ADA. Accordingly, these claims brought by O'Neill are dismissed.

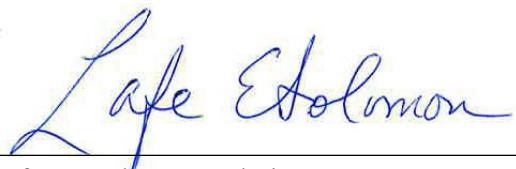
Regarding alleged violations of the Negotiated Agreement, insufficient evidence exists to support a finding that the Union acted arbitrarily, unreasonably or in bad faith. While the parties disagree over the merits of O'Neill's potential grievances, the Union fulfilled its duty of fair representation throughout the process and in its ultimate decision not to pursue said grievances. Specifically, the Union advised O'Neill prior to her leave of its view of the potential consequences of same, including loss of her position. After O'Neill utilized additional sick leave and her position was released by AACPS, the Union sent O'Neill contractual language it believed applied to the situation, contacted AACPS representatives to clarify the situation on O'Neill's behalf, and escalated the matter to additional individuals within TAAAC and MSEA to independently review the matter and provide additional assessments.

In sum, O'Neill has produced insufficient evidence to establish TAAAC breached its duty of fair representation owed to her, given the Union's consistent and thorough analysis, escalation through multiple channels, and communication with AACPS. Under these circumstances, we find that O'Neill has failed to establish probable cause that TAAAC breached its duty of fair representation, in accordance with Md. Code, State Gov't § 22-206(b)(6). Accordingly, the charge is dismissed.

***Order***

IT IS HEREBY ORDERED THAT THE CHARGE IN PERB ULP 2026-07 IS DISMISSED.

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



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Lafe E. Solomon, Chair



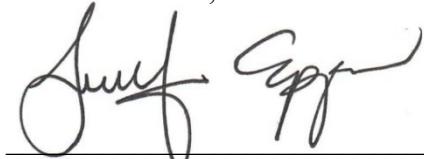
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Harriet E. Cooperman, Member



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Judith E. Rivlin, Member



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Jennifer Epps, Member

**ISSUE DATE:** November 17, 2025

***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.