

STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF: *

LASHELLE R. DEAL, *

Charging Party *

v. *

PSLRB Case No. SV 2014-16

ASSOCIATION OF SUPERVISORY *

AND ADMINISTRATIVE SCHOOL *

PERSONNEL, *

Charged Party *

* * * * *

DECISION AND ORDER DENYING REQUEST FOR RELIEF
AND DISMISSING CHARGE

I. INTRODUCTION

On June 13, 2014, Lashelle R. Deal (“Charging Party”), a non-certificated employee of the Prince George’s County Board of Education (“County Board”), 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”). Form PSLRB-05 reflects the authority granted to the PSLRB by § 2-205(e)(4)(i) of the Education Article to “decide any controversy or dispute arising under Title 6, Subtitle 4 or Subtitle 5 of this Article.”

In her Charge, Deal claims that her union, the Association of Supervisory and Administrative School Personnel (“ASASP”), violated § 6-509(b) of the Education

Article, which codifies ASASP's duty of fair representation. Deal alleges that ASASP breached its duty of fair representation in relation to her claim that her salary is inequitable as compared to the salaries of other similarly situated employees. ASASP has moved to dismiss Deal's Charge.

II. STATEMENT OF FACTS¹

Deal is currently employed as an Accountant II by the County Board. Her classification in this position is at grade 28. She was originally hired in 2004 by the County Board as an Accounts Payable Clerk.

In 2007, information was made public regarding the job descriptions, grade classifications and salaries of employees in comparable accounting positions. According to Deal, this information revealed that even though she was performing the same work, if not more, than certain other accountants who had been hired after her, she was receiving less pay.

In 2011, after the salaries of County Board employees were published, Deal sought the support of her supervisor in obtaining a "desk audit" to determine whether she was correctly classified. Her supervisor requested the desk audit, noting that Deal was then being paid \$7,699 to \$10,459 less than other Accountant II employees. The desk audit resulted in a determination that Deal was then appropriately classified as "Accountant II, ASASP, Unit III, Table 900, Grade 28, Step 04."

¹ In deciding whether to grant ASASP's motion to dismiss, the Board assumes the truth of all well-pleaded facts in Deal's Charge. Accordingly, this part of the Board's decision is styled a "Statement of Facts," as opposed to "Findings of Fact."

In December 2013, Deal learned that a new hire at Accountant I, grade 25, was earning more than she. Deal expressed her concerns to Doris Reed, ASASP representative, who, in turn, asked the County Board's Director of Human Resources to review Deal's complaint. In January and February 2014, Deal contacted Reed about the status of her complaint. Reed responded to Deal on three separate occasions regarding human resources' delay in scheduling a meeting with Deal about her complaint. In March 2014, Deal inquired again of Reed regarding her complaint but did not receive a response.

Deal contacted ASASP again regarding her complaint on May 29, 2014, the same date on which she attended a union meeting to "vote on the FY-15 contract for salaries."

In its response to Deal on May 30, 2014, ASASP stated:

According to ASASP's records, you have been receiving correspondence from ASASP and Human Resources. At your request, a desk audit was completed. Upon your employment you did accept the salary offered to you by PGCPS.

Everything has been done to address your inquiry. ASASP is not sure what you are asking at this time.

In her response, Deal requested "copies of the correspondence I was supposed to have received" and suggested that ASASP "consider changing the contract language as it pertains to promoting within and allow existing employees to negotiate their salary or at least ensure that new hires start their careers at the beginning of the step for that grade."

III. POSITIONS OF THE PARTIES

Deal maintains that "it is within ASASP Union's scope to ensure union members receive fair compensation for doing the same work as others." Deal maintains that she

has not “been fairly represented with [her] present complaint.” Deal cites to the following provision of the collective bargaining agreement between the County Board and ASASP in support of her claim:

6.03 Accelerated Advancement

The Superintendent may determine, following formal annual personnel evaluations, that evidence of outstanding and/or excellent performance in all categories may warrant advancing an individual on the appropriate scale to a level greater than the annual one-step advancement for effective performance. An individual may decline said advancement. The Board will notify ASASP when a unit member is offered an advancement greater than a one-step increase.

With respect to this provision, Deal asserts, “The Union could have exercised due diligence by reexamining Article 6 of their contract on accelerated advancement to determine if I was a candidate as a means of addressing the salary inequity.”²

Deal also contends that ASASP should negotiate for contract language that would address the salary inequity between new hires and tenured employees. In reply to ASASP’s representation that it attempted, unsuccessfully, in the most recent round of negotiations to include a provision for negotiating the salaries of tenured employees, Deal contends that ASASP has failed to provide documentation of such an attempt.

As a remedy, Deal asks this Board to order the union “to do their due diligence and set up a meeting with Human Resources to review my case and to fairly represent me in negotiating an equitable salary.” Deal also seeks as a remedy that the union “re-visit the contract language as it relates to promotions.” Deal “is asking the Union to level the

² ASASP filed a response to the Charge on July 1, 2014 and an additional response, at the request of the Board, on October 3, 2014. The Board requested a reply from Deal to ASASP’s responses, which reply Deal filed on October 27, 2014. It is in her reply of October 27 that Deal cites to Article 6.

playing field by allowing tenured employees to negotiate salary adjustments for tenured employees to ensure that existing and dedicated employees are fairly compensated.”

ASASP asserts that at the time of Deal’s initial hire she was not represented by ASASP, but by ACE/AFSCME Local 2250. Accordingly, ASASP insists that it was not responsible for negotiating Deal’s salary. ASASP contends that its collective bargaining agreement with the County Board does not contractually obligate the County Board to negotiate salaries of employees and that ASASP attempted unsuccessfully in the most recent negotiations with the Board to include such a provision. In this regard, ASASP asserts, “During negotiations, ASASP attempted to have included in the agreement a provision in which salaries would be negotiated for internal hires/selectees as the practice by the administration applicable to external hires/selectees, but it was summarily rejected by management.” In sum, ASASP moves to dismiss the instant Charge because “the relief being sought in the Charge is impermissible under the collective bargaining unit and, more importantly, exceeds the scope of ASASPS’s duty of fair representation.”

IV. ANALYSIS

In deciding this matter, we “assume the truth of the factual allegations of the complaint and the reasonable inferences that may be drawn from those allegations in the light most favorable” to Deal. *Heavenly Days Crematorium, LLC v. Harris, Smariga & Assocs.*, 433 Md. 558, 568 (2013).

Section 6-509(b) of the Education Article 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.” The statute codifies the “duty of fair representation” owed by an exclusive bargaining representative to “serve the interests of all members without hostility or discrimination,” “to exercise its discretion with complete good faith and honesty,” and “to avoid arbitrary conduct.” *Stanley v. American Federation of State and Municipal Employees, Local No. 553*, 165 Md. App. 1, 15 (2005). The *Stanley* Court elaborated on the duty as follows:

[A] union is accorded considerable discretion in the handling and settling of grievances. A union does not necessarily breach its duty when it declines to take a member's grievance to arbitration. Indeed, an employee has no absolute right to insist that his grievance be pressed through 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. Mere negligence . . . would not state a claim for breach of the duty of fair representation[.]

[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.

Id. (citations and quotation marks omitted).

A union is also accorded considerable discretion in the context of negotiations:

Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953). *See also Washington State Ferries (International Organization of Masters, Mates & Pilots)*, Decision 11899 (MRNE, 2013), 2013 WA PERC LEXIS 169, 8-9 (2013) (“Individual dissatisfaction with

the outcome of bargaining is to some extent unavoidable and does not necessarily indicate any breach of the duty of fair representation by the union.”).

Deal does not specifically allege that ASASP acted in a discriminatory manner or with some kind of personal animus toward her in its response to her complaint about her salary. The thrust of her complaint against ASASP is that it should have done more to address the inequity in her salary. In this regard, Deal contends that ASASP “could have exercised due diligence by reexamining Article 6 of their contract on accelerated advancement” as a means of addressing the inequity in her salary.

The test is whether ASASP’s “behavior is so far outside a 'wide range of reasonableness' . . . as to be irrational.” *Stanley*, 165 Md. App. at 15. Under this test, ASASP’s alleged failure to respond to Deal’s salary complaint by filing a grievance under Article 6.3 cannot be deemed irrational. Article 6.3 vests the Superintendent with discretion to decide whether an employee is to be offered an accelerated advancement. Thus, the “Superintendent **may** determine” that “outstanding and/or excellent performance in all categories **may** warrant” advancing an individual more than one step. Article 6.3 (emphasis added). Moreover, Article 6.3 does not state that ASASP can request accelerated advancement for an employee or that it can provide input regarding same. Rather, further suggesting that the matter of accelerated advancement is solely within the discretion of the Superintendent, Article 6.3 provides, “The Board will notify ASASP when a unit member is offered an advancement greater than a one-step increase.”

Because accelerated advancement under Article 6.3 is a matter within the sole discretion of the Superintendent, a Superintendent’s failure to offer accelerated

advancement in his or her discretion would not constitute a violation of Article 6.3. *See United Steel Workers*, 281 N.L.R.B. 1275, 1283 (1986) (“the recall aspirations of any probationary employee, such as Shanks, who had not attained seniority status were completely within the Employer's discretion and Doxsee's failure to recall Shanks did not constitute a violation of the collective bargaining agreement”). Accordingly, ASASP's failure to file a grievance based on Article 6.3 was not irrational and was not a breach of its duty of fair representation.

Furthermore, it is not the case that ASASP failed to take any action or conduct any investigation regarding Deal's complaint: ASASP referred Deal's complaint to the County Board's Director of Human Resources and then attempted to coordinate a meeting between Deal and human resources personnel; citing the previous desk audit and Deal's acceptance of the salary offered upon her hire, ASASP eventually informed Deal on May 30, 2014 that there was nothing more that could be done. Deal requests that this Board order ASASP to “set up a meeting with Human Resources,” but to do so we first would have to find that ASASP breached its duty of fair representation by not redoubling its efforts to secure such a meeting. In the absence of any provision in the collective bargaining agreement that could be used to compel such a meeting (Deal has not cited to any), coupled with ASASP's initial efforts to this end, we do not find that ASASP's alleged failure to redouble its efforts was irrational and thus a breach of its duty of fair representation.³

³ Deal alleges that ASASP failed to respond to her inquiries regarding the status of her complaint after ASASP referred it to human resources. As Deal recounts, however, ASASP did respond to her inquiries

Finally, Deal “would also like the Union to re-visit the contract language as it relates to promotions.” In its response, ASASP asserts that in the most recent round of contract negotiations it attempted to have included a provision for salary negotiation for “internal hires/selectees” but that the provision was “summarily rejected.” While Deal demands documentation that such an attempt was made, she has not specifically alleged that such an attempt was not made. It is not enough to assume that because the collective bargaining agreement does not contain a provision that would directly address Deal’s complaint, ASASP has not attempted to bargain for one. That is, Deal has not provided facts from which this Board could reasonably conclude that the absence of the contractual language she desires is the result of some discriminatory or arbitrary act on the part of ASASP. The mere fact that Deal is dissatisfied with the outcome of negotiations between the County Board and ASASP does not establish that ASASP has breached its duty of fair representation. *Ford Motor Co*, 345 U.S. at 338; *Washington State Ferries*, 2013 WA PERC LEXIS 169, 8-9.

in several instances, including on May 30, 2014. In its May 30 communication, ASASP referred to “correspondence from ASASP and Human Resources.” Deal alleges that she has still not received a copy of the aforementioned correspondence. It is not clear what is meant by this reference to “correspondence”; it might well be a reference to ASASP’s prior communications to Deal on the matter, one of which included e-mail communications between ASASP and human resources personnel. (E-mail of 12/13/13 from ASASP to Deal). In any event, having determined that ASASP did not breach its duty of fair representation by failing to file a grievance regarding Deal’s salary complaint or by failing to make further attempts to facilitate a meeting between Deal and human resources about her complaint, ASASP’s failure to provide copies of correspondence on the same subject (assuming it had not already done so), cannot establish a breach of the duty of fair representation.

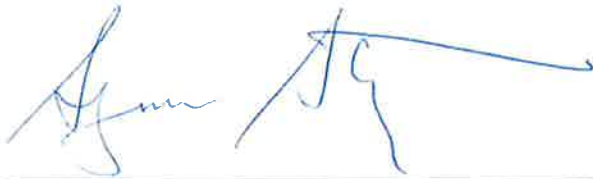
V. CONCLUSIONS OF LAW

For the reasons stated herein, we conclude that the Charge filed in the instant matter fails to state a claim for which relief can be granted, and therefore DISMISS the Charge.

ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2014-16, IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD



Seymour Strongin, Chairman



Ronald S. Boozer, Member



Robert H. Chanin, Member



Charles I. Ecker, Member

Donald W. Harmon

Donald W. Harmon, Member

Annapolis, MD
December 1, 2014

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 7-201 *et seq.* (Judicial Review of Administrative Agency Decisions).