

STATE OF MARYLAND  
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:

EARL G. GARNER,

Charging Party,

v.

FREDERICK COUNTY TEACHERS  
ASSOCIATION,

Charged Party.

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PSLRB Case No. SV 2020-02

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

**I. DECISION**

**a. INTRODUCTION AND PROCEDURAL BACKGROUND**

On March 10, 2020, Earl G. Garner 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 his Charge, Mr. Garner lists the Frederick County Teachers Association (“FCTA”) as the Charged Party. Under Section IV. of Form PSLRB-05 (“Statutory Violations(s) Alleged”), Mr. Garner checked off the following sections: “Section 6-407(b) or 6-509(b): Duty of fair representation” and “Section 6-409 or 6-512: Interference with right of public school employee to exercise certain statutory rights.”

On March 23, 2020, the FCTA filed a Motion to Dismiss and Memorandum in Support thereof (“Response”).

On March 31, 2020, Mr. Garner filed a Response to FCTA’s Motion to Dismiss.

**b. FACTUAL BACKGROUND**

Prior to August 2019, Mr. Garner was employed as a Student Support Teacher (“SST”) in the Frederick County Public School System (“FCPS”). Mr. Garner has a Maryland State Teaching Certificate valid from July 1, 2015 through June 30, 2020, and is certificated in one area: Driver Education. As a certificated employee, Mr. Garner was a bargaining unit member of the FCTA. During the 2018-2019 School Year, Mr. Garner served as an SST at Heather Ridge School.

On July 31, 2019, FCPS issued a reduction in force letter to Mr. Garner explaining that no Driver Education positions were available, and that, because he was only certified in Driver Education, his SST position was being eliminated.

On August 1, 2019, and in response to the July 31, 2019, letter from FCPS, a representative from the FCTA reviewed, with Mr. Garner, the options available to him, which included filing a grievance, retiring, accepting a position as an instructional assistant, or doing nothing.

On August 3, 2019, Mr. Garner indicated to the FCTA that he wished to retire. On August 6, 2019, the FCTA provided Mr. Garner with information regarding the retirement application process, and immediately thereafter (prior to August 13, 2019), Mr. Garner submitted his retirement paperwork.

### **c. POSITIONS OF THE PARTIES**

In his Charge, Mr. Garner alleges that the FCTA violated its duty of fair representation in violation of Section 6-407(b) of the Education Article by “offer[ing him]... poor and deplorable representation which played a key role...” in his termination from FCPS. Mr. Garner does not provide any specific allegations to support his Section 6-409 claims.

In its Response, the FCTA provides the following defenses: (1) the Charge should be dismissed as untimely pursuant to COMAR 14.34.04.03A, and (2) the Charge should be dismissed “as there is absolutely no support for his allegations....”

### **d. ANALYSIS**

COMAR 14.34.04.03(A)(2) states, “In 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.” Therefore, in order to be timely, the alleged incidents of statutory violation must have occurred in the 60 day period leading up to Mr. Garner’s Charge, i.e., between January 10, 2020, and March 10, 2020.

Looking to his Charge, Mr. Garner has failed to establish that the alleged statutory violations took place between these dates. The crux of Mr. Garner’s Charge stems from his

assertion that he was terminated from FCPS in August 2019, and the actions of the FCTA leading thereto. Therefore, Mr. Garner's Charge is dismissed as untimely.

**e. CONCLUSION**

For the foregoing reasons, Mr. Garner's Charge is hereby dismissed.

**II. ORDER**

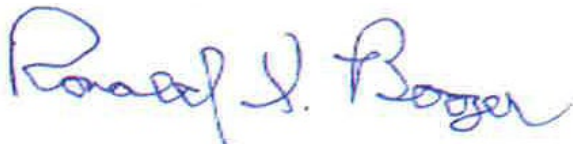
IT IS HEREBY ORDERED THAT THE CHARGE IN PSLRB Case No. SV 2020-02 IS DISMISSED.

BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD:



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Elizabeth Morgan, Chair



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Ronald S. Boozer, Member



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Robert H. Chanin, Member



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R. Allan Gorsuch, Member



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Philip S. Kauffman, Member

Annapolis, MD

April 6, 2020

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).