

Maryland Public Employee Relations Board

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Wes Moore,
Governor

Membership

Lafe E. Solomon, *Chair*
Harriet E. Cooperman
Judith E. Rivlin
Jennifer Epps

In the Matter of:	*	
Jacqueline Felton,	*	
Charging Party,	*	
v.	*	PERB ULP 2026-44
Maryland Professional Employees Council,	*	
Respondent.	*	

DECISION AND ORDER

Procedural Background

On April 6, 2026, Ms. Jacqueline Felton (Charging Party or Felton) filed an unfair labor practice charge with the Public Employee Relations Board (PERB or the Board) against the Maryland Professional Employees Council (MPEC, the Union, or the Respondent). MPEC filed its response to the charge on May 4, 2026. Felton submitted a rebuttal to MPEC's response on May 5, 2026.

Factual Background

Felton is employed by the Maryland Department of Health (MDH) and is a member of MPEC's bargaining unit. On December 19, 2025, Felton received a performance evaluation of "satisfactory" from her supervisor at MDH which she sought to grieve based on certain alleged procedural deficiencies Felton claims resulted in a lower rating than she was due. On December 29, 2025, Felton submitted a rebuttal to the performance evaluation to her supervisor.

On January 15, 2026, Felton initiated contact with an MPEC representative, Felicia Hawkins, to request consultation and information regarding the grievance filing process. At this time, Felton did not provide context as to what she sought to grieve or note that her performance

evaluation took place on December 19, 2025. Felton sent a follow up email on January 27, 2026, after having not received a response. That same day, an MPEC representative responded and connected Felton with an additional representative, Tiwanda Moore, to assist in this matter.

On January 28, 2026, Felton responded to request alternative Union representation. Moore responded the next day to provide the names of two shop stewards as potential contacts. Felton reached out to one of the contacts provided, Anthony Jackson, via email on February 2, 2026. Felton sent follow up messages on February 6 and 9, 2026. Jackson contacted Felton later on February 9, 2026, and the two began discussions by phone the following day.

On February 10, 2026, Felton sent an email to Jackson in which she informed him that her performance evaluation took place on December 19, 2025. Felton had not previously advised the Union as to the date during which the performance evaluation took place. Given that the relevant statutory deadline to submit a grievance of twenty (20) days,¹ Jackson informed Felton that the deadline for filing a grievance had passed as of this meeting.

On February 19 and 20, 2026, Felton sent Jackson two emails outlining specific questions regarding the review of her performance evaluation rebuttal, the labor-management committee meeting option Jackson had previously mentioned, and the process for requesting a waiver of the grievance filing deadline, which Felton had learned of independently. Felton sent an additional email on February 26, 2026, having not received a response. As of the date of Felton's charge, she had not received a response to her questions from Jackson.

On March 4, 2026, Felton sent an email to the general MPEC and AFT-Maryland email addresses regarding these questions, noting that her assigned representative had not taken the necessary steps to move the process forward. MPEC responded to Felton's various questions via email on May 29, 2026, stating generally that most of her options were exhausted or unavailable for her specific complaint regarding the performance evaluation, while noting that certain other complaints she raised, such as those regarding parking, are being addressed by MPEC.

Positions of the Parties

Charging Party

Principally, Felton argues that the time lost waiting for MPEC to provide her with responsive representation directly affected her ability to timely submit a grievance. This pattern of ineffective representation – including delayed responses, insufficient review of her documentation, and persistent unresponsiveness to time-sensitive procedural inquiries – resulted in the loss of her ability to file a grievance. Collectively, Felton argues these issues constitute a failure to provide timely and effective representation. Felton also objects to the delays in response to her other questions relating to an exemption to the grievance filing time limit and clarification on steps for initiation of a labor-management committee option referenced by Jackson. Felton further claims that she has a right to choose her own representation – thus her request for an alternative

¹ Pursuant to Md. Code, State Personnel and Pensions § 12-203(b).

representative after MPEC initially connected her with Moore is not relevant to the question of whether MPEC breached its duty.

Regarding the performance evaluation specifically, Felton claims lower ratings were entered based on untrue statements which had not been relayed to Felton prior to the meeting, which she alleges is a violation of relevant policy. Felton continues to state that her supervisor did not read her rebuttal until January 16, 2026, and that both she and her supervisor were out of the office for roughly two weeks following the performance evaluation, which complicated the timely filing process. Felton requested an initial meeting with her supervisor on February 23, 2026, and while she has received responses from her supervisor, there has not been a “substantive commitment to a meeting to resolve the issues.”

Respondent

MPEC argues it has not breached any duty owed to Felton in this matter, specifically stating that while Felton initially advised Jackson that her performance evaluation took place on December 19, 2025, and then later made reference to the performance evaluation potentially having taken place on January 15, 2026, the 20-day statutory deadline to file a grievance would have already passed for either date at the time Felton and Jackson discussed the matter on February 10, 2026. MPEC also denies that employees may request an exemption to the grievance filing time limit, noting that the applicable statute provides that parties may agree to waive any time limitations and that such agreements generally occur prior to the expiration of the initial filing deadline. Combined with the fact that the right to grieve a “satisfactory” performance evaluation is already limited to pursuit through step two of the grievance process (appeal to the head of the principal unit),² MPEC argues such an agreement to extend the deadline would be extremely unlikely.

MPEC further denies that any of its actions resulted in the effective loss of time Felton needed to submit a grievance, as Felton was beyond the applicable limitations period at the time she met with Jackson. Additionally, any delay in communication between Felton and the Union was at least in part occasioned by Felton requesting alternative representation after MPEC initially assigned Moore to assist Felton. The Union also notes that Felton was not subjected to any adverse personnel action, as a satisfactory performance evaluation is not a disciplinary action under the appropriate statutory authority, while stating it remains open to assist Felton in addressing any ongoing issues with her employer. Finally, MPEC argues Felton is estopped from any claims of inadequate representation, in that she brought her concerns to MPEC beyond the statutory deadline and declined representation from the initial Union representative assigned.

Analysis

MPEC is a certified exclusive representative subject to the Public Employee Relations Act (PERA), pursuant to Md. Code, State Gov’t § 22-101(e). Felton is a public employee subject to PERA, pursuant to Md. Code, State Gov’t § 22-101(h).

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

² Pursuant to Md. Code, State Personnel and Pensions § 12-201(a)(2).

representation. Md. Code, State Gov't § 22-206(b)(6). PERB has held 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.” Hinton v. Frederick County Teachers’ Assoc., PERB ULP 2025-20 (2025) (quoting McCConnell v. AFSCME, Local 1693, PSLRB Case No. DV 2013-07 (2013)).

Regarding the duty of fair representation, 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. 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...” Humphrey, supra at 349.

In considering the “arbitrary” prong of the duty of fair representation analysis, the U.S. Supreme Court has held that the duty is not breached even if the Union’s decision is “ultimately wrong.” Marquez v. Screen Actors, 525 U.S. 33, 46 (1998). Specifically, the Court stated that under the arbitrary prong, “a union’s actions breach the duty of fair representation ‘only if [the union’s conduct] can be fairly characterized as so far outside a ‘wide range of reasonableness’ that it is wholly ‘irrational’ or ‘arbitrary.’ This ‘wide range of reasonableness’ gives the union room to make discretionary decisions and choices, even if those judgments are ultimately wrong.’” *Id.* (quoting Ford Motor Co. v. Huffman, 345 U.S. 330 (1953) (internal citations omitted)). Continuing, the Court stated that a union’s conduct can be classified as arbitrary “only when it is irrational, when it is without a rational basis or explanation.” *Id.* (citing Air Line Pilots v. O’Neill, 499 U.S. 65 (1991) (internal citations omitted)). Additionally, Maryland Courts have held that although a union may refuse to process a grievance or handle the grievance in a particular manner, “it may not do so without reason, merely at the whim of someone exercising union authority.” Neal v. Potomac Edison Co., 48 Md. App. 353, 358 (1981).

As it relates to the grievance process, specifically, the U.S. Supreme Court has held that while it “accept[s] the proposition that a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion, we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration regardless of the provisions of the applicable collective bargaining agreement.” Vaca v. Sipes, supra. The Court has since reaffirmed this principle, stating that “union discretion is essential to the proper functioning of the collective bargaining system.” Electrical Workers v. Foust, 442 U.S. 42 (1979). This Board has positively reaffirmed these principles as it relates to contract administration as well, making reference to a Fourth Circuit Court of Appeals case which stated that “[t]he duty to avoid arbitrary conduct does not require a union to take every employee grievance to arbitration, and it has considerable discretion in sifting out grievances which it regards as lacking merit.” Fox, et al. v. Montgomery County Education Association, et al., PERB ULP 2025-04 thru -17 (2025) (citing Buchanan v. NLRB, 597 F.2d 388 (4th Cir. 1979)). The Fourth Circuit went on to say “[t]hat a grievance was

meritorious or the union was negligent in not taking the grievance to arbitration does not, Per se, constitute a showing that the union engaged in arbitrary conduct.” Buchanan v. NLRB, *supra*.

Pursuant to the Maryland State Personnel and Pensions article, the grievance procedure must be initiated by an employee within 20 days after the occurrence of the alleged act that is the basis of the grievance. Md. Code, State Personnel and Pensions § 12-203(b). The statute further provides that the parties “may agree to waive any time limitations specified in this title.” Md. Code, State Personnel and Pensions § 12-107(a). If a grievance is based on a performance rating of satisfactory or better, the grievant may appeal the grievance only at steps one and two of the grievance procedure and the decision at step two of the grievance procedure shall be final. Md. Code, State Personnel and Pensions § 12-201(a)(2).

Here, insufficient evidence exists to support a probable cause finding that MPEC breached its duty of fair representation owed to Felton related to her requested grievance. Felton advances two related claims in her charge: (1) that the Union’s delay in response caused her to be prevented from filing a grievance due to the statutory 20-day timeline; and (2) that the Union poorly communicated with her throughout the process, causing delays and refusing to answer certain questions about her potential remedies. However, the record establishes that at the time Felton first contacted her Union – on January 15, 2026 – the statutory time limit for submitting her grievance had already run as her performance evaluation took place on December 19, 2026, thus necessitating a grievance be filed by January 8, 2026. Therefore, any issue Felton took with alleged delays in MPEC’s response was immaterial to the grievance filing deadline, as it had already passed. While Felton continues by suggesting the Union should have requested a time extension to file the grievance, the Union’s refusal to do so does not rise to a breach of the duty of fair representation as it was not made in an arbitrary, discriminatory, or bad faith manner. Instead, the Union argued that such extension requests are typically made prior to the deadline having run and given the fact that Felton’s grievance would be limited to step two of the grievance procedure, such an extension request would most likely be denied.

Additionally, while Felton takes issue with the frequency at which the Union provided responses to her messages, such delays do not establish a breach of the Union’s duty of fair representation. As stated above, courts have consistently held that mere negligence on behalf of union representatives does not rise to the level of a breach of the duty of fair representation, so long as no evidence of discrimination, arbitrariness, or bad faith exists. The record establishes that the Union typically responded to Felton’s requests within two weeks. Although Felton’s email sent to Jackson in mid-February went unanswered for over three months, Felton’s concerns were no longer time sensitive and her potential remedies were already exhausted.

Given the above, we find that Felton’s charge must be dismissed as insufficient evidence exists to establish that that MPEC breached its duty of fair representation, pursuant to Md. Code, State Gov’t § 22-206(b)(6), through its handling of Felton’s requested grievance, or that the Union otherwise violated a separate provision of PERA. Rather, the record provides that the statutory grievance filing deadline had already run by the time Felton raised the issue with her Union and any claims of delay on behalf of the Union do not amount to arbitrary, discriminatory, or bad faith conduct. Accordingly, Felton’s charge is dismissed.

Order

IT IS HEREBY ORDERED THAT THE CHARGE IN PERB ULP 2026-44 IS DISMISSED.

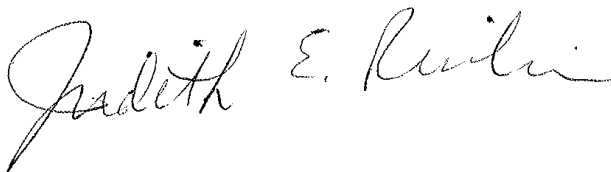
BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD:



Lafe E. Solomon, Chair



Harriet E. Cooperman, Member



Judith E. Rivlin, Member



Jennifer Epps, Member

Annapolis, MD

Issue Date: July 1, 2026

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.