

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2374

September Term, 2013

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JOSEPHAT M. MUA

v.

*AFSCME AFL-CIO et al.*

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Meredith,  
Nazarian,  
Thieme, Raymond G., Jr.  
(Retired, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: July 6, 2016

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Almost exactly a year ago, we affirmed the decision of the Circuit Court for Prince George’s County dismissing a series of claims Josephat Mua brought against the Board of Education of Prince George’s County (the “Board”), various school officials, and the Association of Classified Employees, American Federation of State, County, and Municipal Employees Local 2250 (the “Local”) and International (the “International”) (and collectively, the “Unions”), all of which arose out of the Board’s decision to terminate his employment as an IT technician.<sup>1</sup> We noted in that opinion that in addition to the claims we addressed there, Mr. Mua “appear[ed] also to have litigated claims contesting his termination and the quality of the Unions’ representation before the [Board] and the Public School Labor Relations Board.” As it turns out, Mr. Mua *had* filed a claim in the Public School Labor Relations Board (the “PSLRB”)—in PSLRB parlance, a Charge—and that proceeding is now before us.

By a 4-1 vote, the PSLRB concluded that Mr. Mua failed to file his Charge within sixty days after he knew or reasonably should have known of the alleged violation, and therefore dismissed the charge. The Circuit Court for Prince George’s County affirmed the PSLRB’s decision. Mr. Mua appeals, and we affirm as well.

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<sup>1</sup> *Mua v. Prince George’s Cty. Bd. of Educ., et al.*, No. 1043, Sept. Term 2013 (Md. App. July 9, 2015).

## I. BACKGROUND

We detailed the history of Mr. Mua’s employment disputes with the Board in our July 2015 opinion, and the PSLRB action grows out of that same termination:

Mr. Mua was employed as a full-time teacher in the Prince George’s County Public Schools system between 2002 and 2007. In 2007, he transitioned to an IT Technician position, where he was employed by the Board, and he joined the Unions, which collectively bargained on behalf of its members. Mr. Mua alleges that between 2007 until his termination in 2010, he became aware that several of his co-workers and supervisors had committed various personal and professional indiscretions, behavior he claims to have reported to the Unions, other supervisors, and in some instances, to law enforcement. The last of the alleged misconduct took place in November 2009, when he claims he observed “school employees receiv[ing] personal gratuities from business entities seeking contracts with PG Schools.”

Mr. Mua alleges that beginning September 2009, his allegations raised the ire of his immediate supervisor, Pierre Dickson. Mr. Mua claims also that these feelings were engendered in part because Mr. Mua had drawn attention to an alleged affair between Mr. Dickson and another supervisor, Shanita Anderson. Mr. Mua claims that Mr. Dickson retaliated by accusing him of theft in a series of email messages that were shared with other staff and by making disparaging comments about Mr. Mua’s alleged Nigerian heritage.<sup>[2]</sup> Finally, Mr. Mua claims that Mr. Dickson conspired with Ms. Anderson “to remove [Mr. Mua’s] work from the data banks to destroy evidence of [his productivity].”

Mr. Mua contends that he complained several times to the Officials (other than Mr. Dickson) about both the comments and the conspiracy, both in person and in writing. He claims that the Officials not only failed to rectify this

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<sup>2</sup> At this same place, we dropped a footnote noting that Mr. Mua is actually Kenyan-born according to the record in the earlier appeal.

situation, but then fired him on June 18, 2010, at Mr. Dickson’s request. The Officials told Mr. Mua that he was “terminated due to his general overall job performance,” but Mr. Mua claims that he was fired as a result of his complaints. As an ancillary issue, Mr. Mua claims as well that after he was fired, he was not allowed to collect personal belongings.

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Throughout [the parallel circuit and federal court litigation], Mr. Mua appears to have been in negotiations with the Unions to secure legal representation from them based on his membership. Mr. Mua alleges that at some point he had union-provided counsel, but the Unions dispute this.<sup>3</sup>

*Mua*, No. 1043, Sept. Term 2013, at 1-2, 4 (internal footnote omitted).

Mr. Mua’s Charge in the PSLRB alleged that during the 2009-10 school year, he raised his concerns with the Local, which filed three grievances on his behalf. In the midst of these filings, but before he was terminated, Mr. Mua contended that the Local’s Executive Director told him to “get a private lawyer” to address his work-related disputes, and verbally agreed to reimburse him for the attorneys’ fees he incurred once the case was over. On March 24, 2010, after the third grievance was filed, the Board sent Mr. Mua a written notice that he was being recommended for termination. Then, on June 18, 2010, the Board notified him that he was being terminated, and his private attorney appealed that decision in writing to the Superintendent on June 30, 2010.

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<sup>3</sup> At this same point, we dropped the following footnote: “Mr. Mua secured his own counsel for a number of his proceedings, and that the Unions took the position that his decision to hire private counsel forfeited his right to Union representation. Mr. Mua alleges that the Unions are in league with the Board and the Officials to destroy his case.”

Shortly after he was terminated, counsel for the Maryland State Education Association (“MSEA”) notified Mr. Mua by email that the cost of his private attorney was his responsibility because the MSEA “provides legal representation free of charge in these types of matters.” Nevertheless, Mr. Mua and the Local entered into a Legal Expense Reimbursement Agreement on December 16, 2010 in which, among other things, the Local agreed to reimburse his attorneys’ fees for the then-pending arbitration and provide assistance to him as he challenged his termination.

Over the months that followed, Mr. Mua alleges that he attempted to communicate with the Local, that the Local promised to assign an attorney to represent him, that an attorney was assigned but withdrew, and that the Local failed to replace her. He eventually retained a private attorney and claims that the Local agreed to reimburse him for her fees, a promise the Local disputes making.

The Board heard the appeal from Mr. Mua’s termination on five days spread over July, August, and October 2011. The Hearing Officer ruled against him on January 25, 2012, and the Board affirmed the termination on July 11, 2012. He alleges that the Local again promised him representation for an appeal to the State Board of Education, and that he wrote on at least two occasions to the Local and the International asking their assistance, to no avail. By October 2012, he says, he realized that the Local “had no intention of providing him with legal representation or reimbursement of attorneys’ fees,” although he continued to meet with and write to both Unions over the course of October and November. Finally, “[o]n November 27, 2012, having still not been provided with legal representation,

and by that point having incurred some \$212,980 in attorney’s fees,” Mr. Mua filed a Charge against the Unions in the PSLRB. He lost his appeal to the State Board as well.

The entire proceeding in the PSLRB related to whether the Local<sup>4</sup> had violated its obligations to Mr. Mua under §§ 6-509(b) and 6-510(a) of the Education Article of the Maryland Code “by failing to assist him with several grievances filed on his behalf, requiring him to secure a private attorney for representation in connection with these grievances, and failing to honor its promise to provide him with legal representation and reimbursement of attorney’s fees.” The parties disagreed vigorously on the merits, but the Local argued first that the Charge was untimely under Code of Maryland Regulations (“COMAR”) 14.34.02.01B, because it arose from events occurring more than sixty days before Mr. Mua filed it. The PSLRB assumed, without deciding, that the Local’s failure to provide Mr. Mua with counsel or to pay his attorneys’ fees was actionable as a breach of its duty of fair representation under Title 6 of the Education Article. But by a 4-1 vote, the PSLRB agreed with the Local that Mr. Mua knew or should have known by May 2011, if not later that year, that the Local would not represent him or pay for his lawyer, and therefore that he had missed the deadline for filing his Charge. One member of the PSLRB dissented because, in his view, the Local’s interactions with Mr. Mua left uncertainty about its intentions and, correspondingly, the appropriate date for measuring the filing deadline.

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<sup>4</sup> The PSLRB dismissed the International on the ground that international unions cannot be liable for the wrongful actions of their locals without evidence that the international “instigated, supported, ratified, or encouraged” those actions, *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212 (1979), and that Mr. Mua had neither alleged nor offered no evidence to support such a finding.

Mr. Mua filed a Petition for Judicial Review in the circuit court, which, after a hearing, affirmed the PSLRB’s dismissal. A timely appeal followed.

## I. DISCUSSION

The PSLRB is a relatively new agency, created by the General Assembly in 2010 for the purpose of deciding “any controversy or dispute arising under Title 6, Subtitle 4 or 5” of the Education Article of the Maryland Code. Md. Code (1978, 2014 Repl. Vol., 2015 Supp.), § 2-205(e)(4) of the Education Article (“ED”). Matters before the PSLRB are considered contested cases subject to the provisions of the Maryland Administrative Procedure Act, *see* ED § 6-807(c), and its decisions may be reversed or modified by a reviewing court if any substantial right of the petitioner “is affected by any other error of law” or “is unsupported by competent, material, and substantial evidence in light of the entire record as submitted” or “is arbitrary or capricious.” Md. Code (1984, 2014 Repl. Vol.), § 10-222(h)(3)(iv)-(vi) of the State Gov’t Art. We look through the circuit court’s decision, *W.R. Grace & Co. v. Swedo*, 439 Md. 441, 452-53 (2014), and review directly the PSLRB’s decision granting the Unions’ motion to dismiss.

Mr. Mua devotes a lot of space in his brief to the merits of his claims, both against the Prince George’s County Schools and the PSLRB, so it’s worth clarifying up front what the PSLRB decided, and thus what we’re reviewing. In fact, the PSLRB didn’t decide any of Mr. Mua’s substantive claims. It assumed, without deciding, that the Local’s<sup>5</sup> statutory duty of fair representation to Mr. Mua encompassed an obligation to provide him with

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<sup>5</sup> Mr. Mua does not appear to challenge the PSLRB’s dismissal of the International.

representation or to reimburse his attorneys’ fees. But after deciding that his Charge was untimely, the PSLRB offered no views as to whether the Unions breached these duties or committed any other violations. Nor did the PSLRB’s decision involve the resolution of disputed facts—although it described the facts under a heading entitled “Findings of Fact,” the PSLRB expressly construed the facts in the light most favorable to Mr. Mua, and the PSLRB’s timeline tracks the copious documentation he submitted (and on which he relies in his brief in this Court) of the timing and progression of his communications with the Unions about representation and reimbursement.

The only decision the PSLRB ultimately made—admittedly, the dispositive one—is that based on the progression of events, Mr. Mua knew or should have known of the Unions’ alleged violations by well before late September 2012. He filed the Charge at issue here on November 27, 2012, but the PSLRB’s regulations require a Charging Party such as Mr. Mua to file a Charge “within 60 days after the party knew, or reasonably should have known, of the statutory violation alleged.” COMAR 14.34.02.01B. And there is no doubt that Mr. Mua knew that the Unions were resisting his demands for representation or reimbursement long before the fall of 2012. He details, over the course of seven pages in his brief, disputes with the Unions starting in “March and April 2011” through the filing of the Charge. There is more than substantial evidence in the record to support the PSLRB’s conclusion that Mr. Mua’s Charge was late by any rational measurement:

[Mr. Mua] eventually filed his Charge on November 27, 2012. This came more than 18 months after Local 2250’s failure to provide legal representation after the withdrawal of his union-appointed attorney, 17 months after [he] received the June 16, 2011 letter, 15 months after [he] incurred \$18,000 in attorney’s



fees for which he requested reimbursement from Local 2250, 10 months after Local 2250's failed promise of legal representation in January 2012, five months after the County Board oral argument in June 2012, and more than three months after [Mr. Mua] appealed the County Board decision to the State Board.

Mr. Mua argues as well that he couldn't have known of the Union's violations because they (mis)led him to believe that the Local would eventually provide him a lawyer or pay for his private counsel. But although we agree that the Local could have stated its position more clearly at times, the record supports PSLRB's decision to reject this contention. Any uncertainty about the Local's intentions had, the PSLRB found, long since given way to refusal, and Mr. Mua had not taken those refusals quietly. It does seem a little ironic that, amidst the maelstrom of litigation Mr. Mua has unleashed in response to his termination, he lost this case for waiting too long to file it. This particular administrative remedy required Mr. Mua to move quickly once he learned of the alleged violations, though, and we see no error in the PSLRB's judgment that he knew about them more than sixty days before filing.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE'S COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**