

# Maryland Public Employee Relations Board

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Wes Moore,  
Governor

## Membership

Lafe E. Solomon, *Chair*  
Harriet E. Cooperman  
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<b>In the Matter of:</b>	*	
<b>Hagerstown Community College</b>	*	
<b>Charging Party,</b>	*	
<b>v.</b>	*	<b>PERB ULP 2025-45</b>
<b>AFT-Maryland,</b>	*	
<b>Respondent.</b>	*	

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## **DECISION AND ORDER**

### **Procedural Background**

On June 18, 2025, Hagerstown Community College (HCC, the College, or the Charging Party) filed an Unfair Labor Practice Charge with the Public Employee Relations Board against AFT-Maryland (AFT, the Union, or the Respondent). HCC alleges that AFT committed an unfair labor practice when it disclosed details about the College's recent bargaining proposal to individuals outside of its bargaining unit.

### **Factual Background**

HCC and AFT are presently engaged in collective bargaining negotiations over an initial contract for the Union's full-time faculty bargaining unit. During the course of negotiations, the parties discussed their mutual obligation to maintain confidentiality. Additionally, written proposals submitted by the parties have been labeled as "confidential," including the College's May 21, 2025, Counterproposal at issue in this Charge.

On May 28, 2025, an AFT bargaining unit member sent an email which contained both a disclosure regarding the College's recent confidential counterproposal and a document titled

“Bargaining Update United Academics of Maryland at Hagerstown Community College” with a table of updates from the recent May 21 and 23 bargaining sessions. This email was submitted to at least one individual outside of AFT’s bargaining unit. The only individual outside of the bargaining unit who has been identified as receiving this email is HCC’s Vice President of Academic Affairs and Student Services, Dawn Schoenenberger. However, HCC alleges that the email was also received by “temporary employees, all adjunct and HCC staff.”

Among other updates, the email stated “Union negotiators are still seeking a better response from [HCC] on wages. [HCC] proposed a 4% increase in wages for next fiscal year, then 2.5% and 2% for the next two...The promotional raises are a bit more fair, allowing not only the 15% raise but also including raises of up to 3%.” Also contained within the email was a link to a public-facing website where the Union maintains a chart tracking the progress of negotiations between the parties.

The email was sent only to AFT employees and an HCC Mailing list, titled “Faculty-FullTime@hagerstowncc.edu.” Unbeknownst to the Union member who sent this email, Schoenenberger receives emails submitted to the Full-Time Faculty email list, despite her not being a member of AFT’s full-time faculty bargaining unit. When notified that the email was received by an individual outside of the bargaining unit, the email was “unsent,” and AFT advised its members to not use the Full-Time Faculty email list moving forward, given that it included at least one non-bargaining unit member.

On June 10, 2025, a faculty member – who is not included within AFT’s negotiation team but is a bargaining unit member – made a public comment at a Board of Trustees’ meeting by reading from a statement delivered to the Board, which included the following: “despite good-faith efforts, we have yet to receive an acceptable proposal on workload and compensation;” and “we implore the Board to...direct bargaining representatives to expedite negotiations for a fair contract... and [ensure] workload and compensatory agreements reflect the reality of faculty labor.”

This prepared statement was submitted to HCC prior to it being read at the Board of Trustees’ meeting. On June 9, HCC shared concerns with the Union regarding its belief that the proposed statement misrepresented the status of negotiations between the parties. Accordingly, HCC requested certain aspects be modified to more accurately reflect the status of negotiations, while noting that part of the statement resulted from the aforementioned alleged breach of confidentiality. However, the statement was not modified prior to being read at the Board of Trustees’ meeting on June 10.

### **Positions of the Parties**

#### **Charging Party**

HCC principally argues that the Union breached the confidentiality obligations in place for negotiations, both statutorily and as agreed to by the parties, when it disclosed details about the parties’ proposals made during collective bargaining in, as referred to by the College, closed sessions. Specifically, the College makes reference to requirements put in place by COMAR,

which required that the parties shall both identify the participants for negotiations and “negotiate a written agreement by collective bargaining in good faith in closed sessions.”<sup>1</sup>

Additionally, the College points to a previous Maryland State Labor Relations Board (SLRB) case which held that “details of proposals, counterproposals and related discussions in closed sessions are private and confidential communications protected from unilateral public disclosure during collective bargaining negotiations under [Md. Code State Personnel and Pensions § 3-501(e)]. Such details are not ordinarily made public while collective bargaining negotiations are taking place.” *AFSCME v. State*, SLRB Case Nos. 2019-U-03, 06, 07 (June 11, 2020). Further, the SLRB held that “the confidential nature of closed session discussions is at its highest when collective bargaining negotiations are taking place, because public disclosure of the information and communications during negotiations may interfere with direct bilateral good faith negotiations and the give-and-take of bargaining.” *Id.*

Factually, the College argues that the May 28, 2025, email was a breach of confidentiality as it was submitted to parties outside of the bargaining unit and disclosed specific details about HCC’s most recent counterproposal. HCC states the parties discussed and agreed that all individuals would be required to enter into a confidentiality agreement in order to participate in negotiation sessions. HCC contends the May 28 email went far beyond a general status update as it revealed confidential bargaining proposals to individuals outside of the bargaining unit and was therefore a breach of the agreed-upon confidentiality requirement. The College further argues that the statement read by a bargaining unit member who is not part of the Union’s negotiating team at a June 10 Board of Trustees’ meeting was inappropriate due to it misrepresenting the College’s position throughout their collective bargaining sessions, and allegedly improperly stated that the College had failed to offer a competitive fair wage package.

In sum, HCC alleges that the Union breached its confidentiality obligations under both the alleged agreed-upon ground rules and COMAR by way of it publicly disclosing detailed bargaining proposals discussed in closed sessions through its May 28 email. As a result, the College contends that the Union committed an unfair labor practice.

### Respondent

Initially, AFT states that the portions of the previous SLRB case which HCC relied on in its charge do not apply in the instant case, as the referenced case involved State Personnel and Pensions § 3-501(e), which does not apply to Community Colleges, as the collective bargaining law relevant to Community Colleges stems from Title 16, Subtitle 7 of the Md. Education Article. In any event, AFT contends the crux of the SLRB decision relied upon by HCC was superseded by the 2023 passage of the Public Employee Relations Act (PERA), as PERA updated the relevant statute to state that “an exclusive representative may not be considered a public body” in the closed meetings mandated by State Personnel and Pensions § 3-501(e). Thus, the Union argues both that while the specific holdings of the decision relied upon by HCC have never been applied to

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<sup>1</sup> Importantly, HCC makes reference and cites to COMAR 14.30.13.01(A)(2) and (7). While these regulations were in place and effect at all times relevant to this matter, the specific provision cited by HCC has since been repealed, effective July 21, 2025.

community colleges in the first place, the holdings have also been abrogated by the General Assembly in its passage of PERA.

Furthermore, AFT states that a union is required to share information regarding collective bargaining negotiations, including the details of the employer's and union's proposals, with membership in order to comply with its duty of fair representation owed to those members. AFT points to the same SLRB case referenced by HCC, *AFSCME v. State*, which includes certain language it argues has not been superseded by statute. Specifically, the SLRB held that "[t]o fulfill its duty of fair representation, a labor organization must have the ability to communicate with bargaining unit members on matters of importance, and the negotiation of terms and conditions of employment is among the issues of paramount importance to members...[c]ommunication with bargaining unit members before, during and after collective bargaining serves to further the development and execution of a collective bargaining strategy and an informed decision on ratification...[a]ccordingly, a labor organization may communicate directly with bargaining unit members concerning the status of collective bargaining negotiations, in such detail as the labor organization may determine, by means of direct communication, including mail, email, and non-public social media and websites." *AFSCME v. State*, SLRB Case Nos. 2019-U-03, 06, 07 (June 11, 2020).

Here, the Union acknowledges that the May 28 email was inadvertently sent to at least one member outside of its bargaining unit. Once notified of this fact, the email was "unsent," and the mailing list used by the Union member in this correspondence has not been used by the Union moving forward. While this disclosure to non-bargaining unit members was inadvertent and unintended, the Union also claims that, nevertheless, it was entirely lawful.

The Union also claims that alleged breach of confidentiality is not a cognizable claim for an unfair labor practice under PERA. Assuming HCC's claim relates to an alleged breach of a confidentiality obligation, the only reference HCC has made in support of this claim is the May 28 email, which the Union contends was a minor and inadvertent disclosure made primarily due to the fact that the full-time faculty mailing list was an email list created by HCC that, unbeknownst to the Union, included an individual not within its full-time faculty bargaining unit. Additionally, the only alleged non-bargaining unit member who received this email was an HCC Vice President, who appears to have notified the appropriate parties and then deleted the message. Relatedly, the College has not asserted any prejudice resulted from this email being received by one of its Vice Presidents.

Finally, in relation to the bargaining unit member who spoke before the Board of Trustees, the Union argues that the fact this individual was made aware of the status of negotiations between the parties was not only a right guaranteed both by the US Constitution and applicable Maryland law, it was also a sign that the Union was appropriately keeping its members informed as to the status of negotiations. The Union contends the reading of this statement was protected concerted activity in the form of speaking to the Board of Trustees regarding matters of public concern and those which affect the bargaining unit as a whole.

In sum, the Union contends that HCC's charge is an attempt to control Union communications with its members regarding progress in collective bargaining. Additionally, AFT claims that HCC's charge attempts to attack employees for exercising their rights to engage in protected concerted activity and publicly petition their employer before the Board of Trustees. Accordingly, the Union seeks dismissal of this Charge.

### Analysis

HCC is a public employer subject to PERA, pursuant to Md. Code, State Gov't § 22-101(i) and Md. Code, Education § 16-701(p)(1). AFT is the certified exclusive representative of full-time faculty bargaining unit members employed by HCC, as defined by Md. Code, State Gov't § 22-101(e).

PERA provides it is an unfair labor practice for an exclusive representative to refuse to bargain in good faith. See Md. Code, State Gov't § 22-206(b)(5). Additionally, PERA states that public employees have the right to “be fairly represented by their exclusive representative...in collective bargaining.” See Md. Code, State Gov't § 22-201(b)(3). Further, PERA provides that representatives of public employers and exclusive representatives shall “engage in collective bargaining in good faith...” as the parties work to conclude a written memorandum of understanding or other negotiated agreement in accordance with Title 16 of the Md. Education Article. See Md. Code, State Gov't § 22-501. This Title of the Education Article, applicable to community colleges, defines requirements for the parties throughout the collective bargaining process but does not explicitly require such bargaining to be conducted in closed sessions or otherwise mandate the negotiations be kept strictly confidential. See Md. Code, Education § 16-706, generally.

The Union has acknowledged the email, containing information from the College's counterproposal which it intended to be confidential, was inadvertently sent to at least one individual outside of AFT's bargaining unit. It appears this was a mistake, as the Union member sent the email only to AFT employees and an email list, prepared by HCC, titled “Faculty-FullTime@hagerstowncc.edu.” At the time of the email, the Union was not aware that the email list contained individuals who might not be members of its full-time faculty unit, but upon discovery of same, “unsent” the email and advised its members to not use the email list moving forward. Additionally, the only individual outside of the bargaining unit who has been specifically identified as having received the email is a Vice President of the College. Further, HCC has not alleged that any undue prejudice has resulted following this inadvertent disclosure.

The SLRB has previously made clear that unions, in furtherance of their duty to fairly represent and communicate with its members, may communicate with its bargaining unit members concerning the status of closed session collective bargaining negotiations, “in such detail as the labor organization may determine, by means of direct communication including...email.” AFSCME v. State, SLRB Case Nos. 2019-U-03, 06, 07 (June 11, 2020). Thus, the email itself, were it sent only to bargaining unit members, would certainly be protected activity. When considering the inadvertent outside disclosure and the totality of the circumstances surrounding same – including: (1) the lack of resulting prejudice; (2) the disclosure being made to a VP of the College rather than a public body; and (3) the fact that the Union has acknowledged it will not be using the email list moving forward – such conduct does not amount to bad-faith bargaining.

Similarly, while the parties dispute the existence of a confidentiality ground-rule for negotiations, a simple inadvertent violation of such a rule would not be a per se violation of the duty to bargain in good faith. Rather, a review of the totality of the circumstances suggests this was a minor, accidental disclosure that did not result in any harm or prejudice to the College.

Further, the Union has acknowledged its mistake and taken steps to ensure such a mistake will not occur again.

Finally, the statement read by a Union member at the Board of Trustees' meeting on June 10 contained no confidential information and was concerted protected activity engaged in by the Union member. The statement did not include any specific information regarding proposals shared in bargaining sessions, and while it suggested that the College's recent proposals were not "acceptable" relating to workload or compensation, such is a position of opinion. While the College may have disagreed with the opinion of this Union member, such a statement does not rise to the level of an unfair labor practice. Nor did this statement include any specific information that was shared in the May 28 email which was inadvertently sent to a non-bargaining unit member. In short, the reading of this statement was a simple exercise of the Union member's Constitutional and statutory rights that did not amount to a breach of confidentiality or otherwise constitute an unfair labor practice.

In sum, the College has not established "probable cause" that the Union failed to bargain in good faith or otherwise committed an unfair labor practice. The email at issue was inadvertently sent to a VP of the College who is not a bargaining unit member, and once discovered, the Union took steps to remedy its mistake and ensure it would not happen again. Probable cause does not exist to support a finding that this mistake negatively impacted HCC's bargaining position or otherwise resulted in prejudice to the College. Additionally, the statement read by a Union member at the Board of Trustees' June 10 meeting was not a breach of confidentiality or a disclosure of confidential bargaining proposals and does not amount to an unfair labor practice. Accordingly, HCC's Charge is dismissed.

**Order**

IT IS HEREBY ORDERED THAT THE CHARGE IN PERB ULP 2025-45 IS DISMISSED.

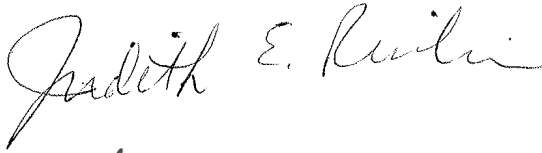
**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD,**



Lafe E. Solomon, Chair



Harriet E. Cooperman, Member



Judith E. Rivlin, Member



Jennifer Epps, Member

**Annapolis, MD**

**Issue Date: August 8, 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.