

State of Maryland
State Labor Relations Board

_____)	
In the matter of:)	
<i>Doyle R. Ham, Jr.,</i>)	
)	SLRB ULP
)	Case No. 2014-U-05
Petitioner)	
)	
v.)	
)	
<i>Maryland Association of</i>)	
<i>Correctional and Security</i>)	
<i>Employees,</i>)	
)	
Respondent.)	
_____)	

Decision and Order

I. Background and Procedural Matters

On November 6, 2013, Petitioner Doyle R. Ham, Jr. (Petitioner) filed an unfair labor practice (ULP) petition with the State Labor Relations Board (SLRB, the Board) against the Maryland Association of Correctional and Security Employees (MACSE). The Executive Director of the SLRB sought a response to the petition from MACSE, which was filed in due course. Upon receipt of MACSE's response, the SLRB Executive Director began a preliminary investigation as to the timeliness and, if needed, the merits of Petitioner's claims. The SLRB Executive Director reviewed the pleadings and applicable statutory and regulatory language in preparation of issuing an Investigative Report and Recommended Determinations.

The Executive Director's Report was issued on August 14, 2014, and recommended dismissal on jurisdictional grounds related to the determination that MACSE was not Petitioner's exclusive representative and did not owe him a duty of fair representation. Parties were given fifteen days, per Board regulations, to file a request for reconsideration of the Executive Director's Recommendation. The SLRB, having received no request for reconsideration regarding the Executive Director's Recommendations, is now prepared to issue a decision in this matter. COMAR 14.32.05.02.I(3) (authorizing final Board action upon receipt of the Executive Director's

report and opportunity to request reconsideration).

II. Board Review of Undisputed Facts and Positions of the Parties

The parties do not dispute that Petitioner is an employee within the Department of Public Safety and Correctional Services (DPSCS). DPSCS filed disciplinary charges against Petitioner in May of 2012. Petitioner was represented by the American Federation of State, County, & Municipal Employees (AFSCME), his exclusive collective bargaining representative, in grievance proceedings regarding the aforementioned charges. These proceedings concluded with a settlement agreement under which Petitioner was required to serve a five-day suspension without pay, effective February 20, 2013.

Petitioner appealed his five-day suspension on April 8, 2013. Petitioner was represented in his appeal by MACSE. The appeal was dismissed by the Office of Administrative Hearings (OAH) on September 4, 2013. By letter dated September 17, 2013, MACSE informed Petitioner that “after careful review of your recent OAH decision, MACSE will not be able to go forward in a judicial review.”

Petitioner claims that MACSE failed to represent him properly by failing to seek judicial review of the OAH decision issued on September 4, 2013, regarding his appeal from the five-day suspension. MACSE issued a statement in response to Petitioner’s claims, stating that based on its study and analysis of the OAH decision, the likelihood of a successful appeal was minimal, and it would not be in the best interest of MACSE and its members to seek judicial review in Petitioner’s case.

III. Analysis & Conclusion

The substance of Petitioner’s complaint is that he did not receive fair representation from MACSE. Section 3-306(b)(6) of the State Personnel and Pensions Article provides,

Employee organizations and their agents or representatives are prohibited from engaging in any unfair labor practice, including:

...

(6) not fairly representing employees in collective bargaining or in any other matter in which the employee organization has the duty of fair representation.

The threshold question is whether MACSE “has the duty of fair representation” in this case.

We begin with the statutory definitions of “employee organization” and “exclusive representative”:

(d) “Employee organization” means a labor or other organization in which State employees participate and that has as one of its primary purposes representing employees.

(e) “Exclusive representative” means an employee organization that has been certified by the Board as an exclusive representative under Subtitle 4 of this title.

SPP § 3-101(d) and (e). MACSE might meet the definition of “employee organization,” but MACSE has not been certified by the SLRB as the exclusive representative under Subtitle 4 of the bargaining unit in which Petitioner is a member. Accordingly, MACSE is not the “exclusive representative” for purposes of this case.

The duty of fair representation arises from an employee organization’s status as exclusive representative. See *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364, 376 n. 22 (1984) (“A union's statutory duty of fair representation traditionally runs only to members of its collective-bargaining unit, and is coextensive with its statutory authority to act as the exclusive representative for all the employees within the unit.”). If a union does not serve as the exclusive agent for the members of the bargaining unit, there is no corresponding duty of fair representation. *Dycus v. N.L.R.B.*, 615 F.2d 820, 827 (9th Cir.1980) (“A labor organization that is not the exclusive representative of a bargaining unit, however, owes no duty of fair representation to the members of the unit.”); *Kuhn v. National Association of Letter Carriers, Branch 5*, 528 F.2d 767, 770 (8th Cir. 1976) (“Such exclusive representation is a necessary prerequisite to a statutory duty to represent fairly.”).

Because MACSE is not the exclusive representative of the bargaining unit in which Petitioner is a member, it owes no corresponding duty of fair representation to Petitioner. Because MACSE does not have the duty of fair representation in this case, there is no basis for finding that it committed an unfair labor practice by failing to fairly represent Petitioner in his appeal. SPP § 3-306(b)(6). The conclusion follows that Petitioner has failed to state a claim for which relief can be granted. COMAR 14.32.05.02.G(2)(a) (dismissal for failure to “state an actionable claim under the Maryland Collective Bargaining Law, State Personnel and Pensions Article §§ 3-101 – 3-602,...”). As Petitioner raises no other cognizable claims, there is no other basis on which the SLRB is authorized to exercise jurisdiction in this case.

IV. Order

For the reasons set forth above, the unfair labor practice complaint in SLRB ULP,

Case No. 2014-U-05, is hereby dismissed.

Issue Date: March 7, 2016

Annapolis, Maryland

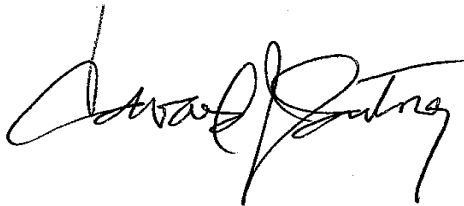
For The State Labor Relations Board:



June M. Marshall, Chair



Sherry L. Mason, Member



Edward J. Gutman, Member



Susie C. Jablinske, Member



LeRoy A. Wilkison, Member

APPEAL RIGHTS

Any party aggrieved by this action of the SLRB 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).