

State of Maryland
State Higher Education Labor Relations Board

In the matter of:)	
)	
)	
Morgan State University,)	
)	
Complainant/Petitioner,)	
)	
v.)	SHELRB ULP Case No. 2002-07
)	Opinion No. 9
American Federation of State,)	
County, and Municipal Employees,)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

On June 13, 2002, Morgan State University (MSU) filed with the State Higher Education Labor Relations Board (Board) an Unfair Labor Practice (ULP) petition against the American Federation of State, County, and Municipal Employees (AFSCME). MSU asserts that by certain violative acts and conduct, bargaining unit employees represented by AFSCME are, "in a thinly veiled attempt," trying "to engage the employer (MSU) in an Unfair Labor Practice."^{1/} Specifically, MSU states that in April 2002, it and AFSCME's chief negotiator scheduled a May 16, 2002, meeting to begin the bargaining process. Despite the agreed upon May 16 commencement of bargaining, MSU alleges that on April 26, 2002, bargaining unit employees approached a housekeeping supervisor and presented a petition requesting safety shoes for housekeeping employees at its Physical Plant. MSU alleges that the petition was followed up by increasing demands for a university response, including a May 3 letter from AFSCME's Local Union president demanding

^{1/} See MSU ULP Petition, at p. 2.

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a response by May 7, 2002, or "further action would be taken."

MSU acknowledges that employee requests for safety equipment are bargainable. However, MSU suggests that this subject was properly addressed through the bargaining process commencing May 16. MSU asserts that by these acts and conduct, AFSCME is attempting to bargain outside the collective bargaining process and thereby has committed unfair labor practices as prescribed by Board Regulations §14.30.07.02(A), 14.30.07.02C(6), 14.30.07.02(E), and 14.30.07.03D(4).

On July 1, 2002, AFSCME filed a response styled, "Memorandum of Points and Authorities and Motion to Dismiss." In its Motion, AFSCME denies that it has committed ULPs. On July 12, 2002, MSU filed a response to AFSCME's Motion.

Based on the pleadings of the parties, we find that the disposition of this case turns on issues of law. We have reviewed the pleadings and considered the arguments made by the parties; for the reasons that follow, we grant AFSCME's Motion to Dismiss.

To begin with, the Statute does not make it a ULP to "attempt to engage" a university in committing a ULP. Of course if this is something that is happening it is foolish and we would surely condemn it. Such conduct, however, would only constitute a ULP only if it independently violated another statutory or regulatory provision.

Board Regulations 14.30.07.02(A), (C)6, and (E) provide as follows:

The following acts by an employee, employee organization, or their agents or representatives, are unfair labor practices:

A. Interfering with, restraining, or coercing employees in the exercise of rights under the Collective Bargaining Law;

* * * *

C. Engaging in, inducing, or encouraging any person to engage in a strike, which includes the following types of activities by employees when intended to induce, influence, coerce, or enforce demands for a change in wages, hours, terms, or other conditions of employment:

... (6) Other Concerted Job Action

* * * *

E. If an exclusive representative:

- (1) Refusing to bargain collectively in good faith; or
- (2) Not fairly representing employees in collective bargaining or any other matter for which the employee organization has the duty of fair representation.

Board Regulation 14.30.07.02A prohibits unfair labor practices by employees and employee organizations that interfere with, restrain, or coerce such employees in exercising their rights under the Collective Bargaining Statute.^{2/} However, MSU is an employer and thereby lacks standing to bring such an action on behalf of employees. Moreover, ULP 02-07 contains no allegation of acts and conduct by AFSCME itself that interfere with, restrain, or coerce *employees* in exercising their rights under the Collective Bargaining Statute.

The "activities" listed under Board Regulation 14.30.07.02C are prohibited as unfair labor practices when combined with the intent or objective to induce or encourage any person "to engage in a strike." Whether or not the alleged employee conduct constituted "concerted job action," under the strike provisions of Board Regulation 14.30.07.02C, the ULP petition contains no allegation supporting this violation. On the contrary, MSU itself asserts that the intent of employees' alleged conduct was to bargain over a request for safety shoes, albeit improperly so.

^{2/} Title 3 of the State Personnel and Pensions Article

MSU also asserts that AFSCME has committed an unfair labor practice violation as based upon Board Regulation 14.30.07.02E. Subsection E(2) concerns prohibited conduct as between employees and their exclusive bargaining representative. The bargaining representative's duty to fairly represent employees in collective bargaining is owed to the employees it represents, not to the employer. Thus, MSU lacks standing to make such a claim with respect to its employees' bargaining representative, i.e., AFSCME.

Regarding Subsection E(1), the duty to bargain in good faith exists between the employer and the exclusive representative of the employer's bargaining unit employees. Section 3-101(c) of the Collective Bargaining Statute defines collective bargaining as "good faith negotiations by authorized representatives of employees and their employer with the intention of (a) reaching an agreement about wages, hours, and other terms and conditions of employment; and (b) incorporating the terms of the agreement in a written memorandum of understanding." The Statute and Board Regulations prescribe prerequisites for initiating the collective bargaining process with respect to negotiable matters. Section 3-501(a) requires that both employers and exclusive representatives "designate one or more representatives to participate in collective bargaining on behalf of a system institution" or "on behalf of the exclusive representative." These statutory provisions are implemented under Section 14.30.09.01 of the Board's regulations.

The Board notes that recognition of AFSCME as the certified exclusive representative of MSU's nonexempt bargaining unit employees is not at the local level.^{3/} MSU acknowledges that the above-prescribed negotiation process was evoked and initiated between it and AFSCME's designated bargaining representative, i.e., "chief negotiator, Ronald Barillas." (ULP at p. 2) MSU refrained from responding to demands, outside the formally initiated collective bargaining process, and tactics of bargaining unit employees whom AFSCME had not designated to participate as its representative in the collective bargaining process. The Board cannot hold AFSCME responsible for the acts and

^{3/} See SHEL RB Case EL 01-09 (referencing the valid Morgan State University election petition filed by AFSCME); see also SHEL RB Case C 2001-07 (certifying AFSCME as the exclusive representative of the nonexempt employee unit at Morgan State University).

conduct of bargaining unit employees making demands within the collective bargaining process who have not been so authorized or "designate[d]" to do so as required under the Collective Bargaining Statute and/or Board Regulations. As such, a proper foundation does not exist to establish the necessary nexus tying the subject employees' actions to AFSCME.

If, as AFSCME asserts, this was not a request to bargain but rather an attempt to exercise an employee right to discuss a matter directly with MSU, the allegations fall outside the purview of the Board. Section 3-301(b) of the Collective Bargaining statute accords bargaining unit employees the right to discuss any matter with their employer without the intervention of their employee organization representative. AFSCME argues, among other things, that the employee conduct, as alleged, does not form the basis of an unfair labor practice; rather, such employee conduct is the exercise of this statutory right.

Within the confines of the petition allegations, we are constrained to agree. This does not mean that we sanction or condone the alleged acts and conduct of the employees who are the subject of MSU's ULP petition. We merely conclude that such employee actions, as alleged in the MSU petition, do not constitute unfair labor practices or otherwise violate the Collective Bargaining Statute.

The Collective Bargaining Statute and the Board's Regulations are silent regarding the administration of an employee's right to discuss any matter with his or her employer. This reserved employee right is an exception to the rights the Collective Bargaining Statute grants to certified bargaining representatives as exclusive representatives of the employees' interests. To the extent that employees exercise this right to discuss a grievable matter with the employer, it follows that allegations that employees failed to properly do so would fall under the purview of statutory provisions and related rules and regulations governing the grievance process. In fact, MSU asserts in its petition that the methods employed by employees when engaged in the alleged conduct violated MSU policy. Clearly, allegations limited to such conduct, as in the instant case, do not fall under the jurisdiction of the Collective Bargaining Statute and, thereby, the Board.

AFSCME's Motion to Dismiss is granted. The ULP is dismissed for failure to state a cause of action under the Collective Bargaining Statute or the Board's Regulations.^{4/}

ORDER

IT IS HEREBY ORDERED THAT:

The Unfair Labor Practice Petition in Board Case No. 2002-07 is dismissed.

BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS BOARD

Annapolis, MD
September 30, 2002



Erica M. Lell, Assistant Executive Director,
on behalf of Jamin B. Raskin, Esq., Board Chairman

^{4/} In view of our disposition, we do not reach MSU's claim that the alleged employee conduct constitutes a violation of Board Regulation 14.30.07.03D(4). Facts or conduct that conform with the listed "Permissible Labor Practices," as defined, ensure that such conduct will not constitute an unfair labor practice. While the failure to conform to such conduct as defined will not necessarily establish an unfair labor practice, such nonconformity can serve to support an unfair labor practice if the other elements of the alleged unfair labor practice are present. The Board concludes that the other elements of the alleged unfair labor practices were not present in this case.

Appeal Rights

| Any party aggrieved by this action of the State Higher Education Labor Relations Board may seek review in accordance with Board Regulation 14.30.11.24(C) and as prescribed under Title 10 of the State Government Article, Annotated Code of Maryland, §10-222.