

**State of Maryland**  
**State Higher Education Labor Relations Board**

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In the matter of:	)	
	)	
	)	
American Federation of State,	)	
County and Municipal Employees,	)	
	)	
Complainant/Petitioner,	)	
	)	
v.	)	SHELRB ULP Case No. 2002-08
	)	Opinion No. 5
Board of Regents of the	)	
University System of Maryland,	)	
	)	
Respondent.	)	
	)	
	)	

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DECISION AND ORDER

On June 17, 2002, the American Federation of State, County & Municipal Employees (AFSCME), filed an Unfair Labor Practice Petition (ULP) with the State Higher Education Labor Relations Board (Board) against the Board of Regents of the University System of Maryland (BOR). AFSCME alleges that the BOR Committee on Finance has recommended to the full BOR approval of certain "self support" charges and fees for Fiscal Year 2003. AFSCME further alleges that included in those charges and fees are proposals to increase parking fees at constituent institutions of the University System of Maryland.<sup>1/</sup> The Committee on Finance recommended BOR approval via a memo issued on March 14, 2002, and the full BOR officially approved the Committee on Finance recommendation on April 12, 2002. AFSCME alleges that, as a result of the BOR's

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<sup>1/</sup> Constituent institutions under the USM include the following: University of Maryland, Baltimore; University of Maryland Baltimore County; University of Maryland, College Park; University of Maryland Eastern Shore; University of Maryland University College; Bowie State University; Coppin State College; Frostburg State University; Salisbury University; Towson University; and University of Baltimore. See, Title 12 of the Education Article, §12-101(b)(4).

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actions, the increased fees were to take effect on the various campuses as of July 1, 2002.

AFSCME asserts that parking fee increases and the effect of such increases on affected bargaining unit employees are mandatory negotiable issues relating to terms and conditions of employment. AFSCME asserts that the Board of Regents' approval of the parking permit fee increase was a unilateral change in a term or condition of employment for bargaining unit employees at affected constituent universities. As such, AFSCME claims that the BOR has failed to bargain in good faith as defined and prescribed under Title 3 of the State Personnel and Pensions Article (Collective Bargaining Statute), §3-501(b) and 3-502. As a result, AFSCME charges that the BOR has committed an unfair labor practice as defined under the Board's regulations in COMAR 14.30.07.01(A) & (I)<sup>2/</sup>.

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<sup>2/</sup> Section 3-501(b) of Title 3 of the State Personnel and Pensions Article provides as follows:

(b) *Meeting times; good faith.*—The parties shall meet at reasonable times and engage in collective bargaining in good faith.

Section 3-502 of Title 3 of the State Personnel and Pensions Article provides as follows:

(a) *Permissible matters.*—Collective bargaining shall include all matters relating to wages, hours, and other terms and conditions of employment.

(b) *Impermissible matters.*—Collective bargaining may not include negotiations relating to the right of an employee organization to receive service fees from nonmembers.

(c) *Matters inconsistent with applicable law.*—Notwithstanding subsection (a) of this section, the representatives of the State, a system institution, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College:

- (1) shall not be required to negotiate over any matter that is inconsistent with applicable law; and
- (2) may negotiate and reach agreement with regard to any such matter only if it is understood that the agreement with respect to such matter cannot become effective unless the applicable law is amended by the General Assembly (1999, ch. 298, § 2; 2001, ch. 341.)

Section 14.30.07.01A of the Board Regulations provides as follows:

The following acts by an employer, or its agents or representatives, are unfair labor practices:  
...A. Interfering with, restraining, or coercing employees in the exercise of rights under the Collective Bargaining Law;

Section 14.30.07.01I of the Board's regulations provides as follows:

The following acts by an employer, or its agents or representatives, are unfair labor practices:  
....I. Refusing to bargain in good faith with the exclusive bargaining representative;

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The BOR filed a response on June 27, 2002, denying that by the acts and conduct alleged it has violated any duty to bargain under the Collective Bargaining Statute. The BOR also raised affirmative defenses including contentions that the ULP is untimely, the allegations are moot and the matter does not present an existing case or controversy. The BOR also defended on the grounds that it is not an employer within the meaning of Board regulations and thus has no collective bargaining relationship with AFSCME. The BOR has requested dismissal of the charges. AFSCME has opposed the requested dismissal.

Based on the pleadings of the parties, we find that the material issues of fact are not in dispute. The disposition of this case turns on issues of law. We find that the BOR has raised a threshold jurisdictional issue that is dispositive. Therefore, we treat this case as a matter for summary judgment by the Board and, for the reasons that follow, dismiss the ULP.

AFSCME notes that the Board's regulations define "employer" as "a University System institution as defined in § 3-101(g)" of the Collective Bargaining Statute (CBS, the statute), see COMAR 14.30.01.01(9). Section 3-101(g)(1) and (2) of the statute define a system institution to be a constituent institution as that term is defined under Title 12 of the Education Article, § 12-101. Section 12-101 of the Education Article prescribes that constituent universities of the USM are "under the jurisdiction of the Board of Regents." From this, AFSCME concludes that by extension the BOR is covered as an employer under the Collective Bargaining Statute. We disagree.

Title 12 of the Education Article makes several express references to the USM BOR's role under the Collective Bargaining Statute.<sup>3/</sup> Under the

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<sup>3/</sup> The Education Article references the BOR's role under Title 3 of the State Personnel and Pensions Article (Collective Bargaining Statute) as follows:

§12-109(e)(18)

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statutory scheme, the Board of Regents is nowhere accorded the role of principal decision maker or initiator with respect to establishing the actual terms and conditions that govern employees of constituent universities. The BOR's role is to promulgate broad USM-wide standards, policies and guidelines, but the specific terms and conditions of the employment relationship are left by statutory design to the individual universities and colleges.

Terms and conditions of employment specific to a particular university are controlled and implemented by the president or the president in conjunction with the Chancellor of the University System. The Board of Regents' role is that of a structural oversight body, providing required approval of the terms and conditions of employment developed by the Chancellor and/or the presidents of constituent universities. This relationship

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Subject to the authority and applicable regulations and policies of the Board of Regents, each president shall:... Designate one or more representatives to participate as a party in collective bargaining on behalf of the institution in accordance with the State Personnel and Pensions Article

§12-110(a)(1), (b) and (c)

(a)(1) Upon the recommendation of the Chancellor who shall consult with the presidents, and in accordance with the requirements of Title 3 of the State Personnel and Pension Article, the Board of Regents shall establish general standards and guidelines governing the appointment, compensation, advancement, tenure, and termination of all faculty and administrative personnel in the University System of Maryland.

(b) The Board of Regents may establish different standards of compensation based on the size and missions of the constituent university.

(c) Subject to such standards and guidelines, and in accordance with the requirements of Title 3 of the State Personnel and Pensions Article, a president may: (1) Prescribe additional personnel policies; and (2) Approve individual personnel action affecting the terms and conditions of academic and administrative appointments.

§12-111(b)

In accordance with the requirements of Title 3 of the State Personnel and Pensions Article, the Board of Regents shall establish general policies and guidelines governing the appointment, compensation, advancement, tenure, and termination of all classified personnel.

Titles 14 and 16 of the Education Article provide parallel provisions for the Board of Regents of Morgan State University, St. Mary's College and community colleges.

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was clearly the case with respect to the promulgation of the instant parking permit fee increases.

Sections 3-501(a)(1)(ii) and (2) of the Collective Bargaining Statute establish the collective bargaining relationship between employer and exclusive representative as follows:

"(a)(1) The following individuals or entities shall designate one or more representatives to participate as a party in collective bargaining on behalf of...the following institutions:

ii) on behalf of the system institutions,  
the president of the system institution;  
[emphasis added] ...

(2) The exclusive representative shall designate one or more representative to participate as a party in collective bargaining on behalf of the exclusive representative."

The Board of Regents is conspicuously absent as a party, or agent of a party, in the bargaining relationship between system institutions and exclusive representatives.

The legislative history of Title 3 of the State Personnel and Pensions Article supports the conclusion that the General Assembly's exclusion of the Regents was intentional. Before it was amended as enacted above, Section 3-501(a)(1) originally read as follows:

"(a)(1) The Governor or the governing board of a State institution of higher education shall designate one or more representatives to participate as a party in collective bargaining on behalf of the State institutions of higher education."

Subsection (ii) was added later as part of an amendment that deleted "governing board of a State institution of higher education."

Notwithstanding AFSCME's assertions to the contrary, under the Collective Bargaining Statute the autonomy of

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each of the USM constituent universities to engage in collective bargaining (with the respective exclusive representative) remains intact under this statutory framework. Nor do we find merit to AFSCME's contention that the Board's regulations or the statutory relationship between the BOR and its constituent institutions extends to the BOR a bargaining relationship that constituent universities may develop with the exclusive representative of their employees under the Collective Bargaining Statute.

The Board of Regents' approval authority may afford it some characteristics of an employer. However, the Collective Bargaining Statute and its legislative history establish that the BOR is not a covered party for purposes of bargaining obligations imposed on system institutions. If a system institution has breached the duty to bargain under the Collective Bargaining Statute, such breach would stem from the acts or conduct of that institution.

We conclude that the University System of Maryland Board of Regents is not a proper party to a cause of action under the Collective Bargaining Statute alleging a failure to bargain in good faith. Therefore, the ULP is dismissed for failure to state a cause of action against the Board of Regents.

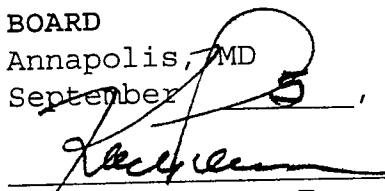
ORDER

**IT IS HEREBY ORDERED THAT:**

The Unfair Labor Practice Petition in Board Case No. 2002-08 is dismissed.

**BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS  
BOARD**

Annapolis, MD  
September 5, 2002

  
Karl K. Pence, Executive Director,  
for Jamin B. Raskin, Esq., Board Chairman

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**Appeal Rights**

Any party aggrieved by this action of the Board may seek review in accordance with Board Regulation 14.30.11.24C and as prescribed under Title 10 of the State Government Article, Annotated Code of Maryland, Section 10-222.