

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

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In the matter of:	)	
	)	
	)	
University of Maryland	)	
University College,	)	
	)	
Complainant/Petitioner,	)	
	)	
v.	)	SHELRB ULP Case No. 2002-13
	)	Opinion No. 10
American Federation of State,	)	
County, and Municipal Employees,	)	
	)	
Respondent.	)	
	)	
	)	

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**DECISION AND ORDER**

On July 5, 2002, the University of Maryland University College (UMUC) filed with the State Higher Education Labor Relations Board (Board) an Unfair Labor Practice Petition (ULP) against the American Federation of State, County, and Municipal Employees (AFSCME). UMUC asserts that by certain violative acts and conduct, bargaining unit employees represented by AFSCME were, "in a thinly veiled attempt," trying "to engage the employer (UMUC) in an Unfair Labor Practice."<sup>1</sup> Specifically, UMUC alleges that bargaining unit employees have confronted UMUC management in the Facilities Management office and employed various other tactics in an effort to obtain a response to certain asserted health risks on the campus.<sup>2</sup>/ UMUC acknowledges

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<sup>1</sup>/ See UMUC ULP Petition at p. 2.

<sup>2</sup>/ UMUC alleges that AFSCME presented information to UMUC management that purports to question the institution's notification to employees regarding health and safety concerns. UMUC states that a petition reflecting these concerns was signed by roughly 25 bargaining and non-bargaining unit employees and presented to Facilities Management officials. In essence, the petition questioned why employees were not advised within 5 days of its occurrence of the "health risk" posed by odors and fluids of questionable origin coming from certain drinking fountains. UMUC further alleges that flyers regarding the health concerns were posted on bulletin boards and in office suites in the Student Faculty Service

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that issues such as these are a proper subject of collective bargaining, but asserts that AFSCME's attempts to address bargainable subjects outside the collective bargaining process constitute 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 24, 2002, AFSCME filed a response styled, "Memorandum of Points and Authorities and Motion to Dismiss." In its Motion, AFSCME denies that it has committed a ULP. On August 5, 2002, UMUC 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 Regulation 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;

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Center in violation of university policy. UMUC alleges that the flyers contained assertions concerning this incident that are a total and intentional misrepresentation. UMUC states that the AFSCME representative responsible for the flyer distribution had been previously advised previously that there was no health risk. UMUC also takes issue with employees' unauthorized depiction on the flyers of the names and photographs of people insinuated to be responsible for the putative problem.

\* \* \* \*

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.

In all significant respects, the alleged acts and conduct of bargaining unit employees and the unfair labor practices they purport to constitute are identical to UMUC's ULP Petition in ULP Case No. 2002-04. For the reasons we articulated in UMUC v. AFSCME, ULP Case No. 2002-04, Opinion No. 6, we find that as an employer, UMUC lacks standing to bring an unfair labor practice petition as prescribed by Board Regulation §§ 14.30.07.02(A) and 14.30.07.02(E)(2). Furthermore, also for the reasons there stated, the Board further finds that the alleged acts and conduct of bargaining unit employees lack the required intent and objective of proscribed employee activities under Board Regulation 14.30.07.02C to support a *prima facie* case of this unfair labor practice. (Slip Op. No. 6 at p. 3.)

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 UMUC's non-exempt bargaining unit employees is not at the local level.<sup>3/</sup> UMUC fails to state that it or AFSCME had invoked or initiated this formal collective bargaining process. Moreover, UMUC does not allege that AFSCME designated any of the subject bargaining unit employees as its representative to participate in collective bargaining on its behalf. The Board cannot attribute to AFSCME the acts and conduct of bargaining unit employees making demands concerning bargainable matters when said employees have not been so authorized or "designate[d]" to do so as required under the Collective Bargaining Statute and Board Regulations. As such, a proper foundation does not exist to establish the necessary nexus tying the subject employees' actions to AFSCME. The Board further notes that, under such circumstances, UMUC's response to the acts and conduct of employees that contravene university policy or rules would not constitute an unfair labor practice on its part.<sup>4/</sup>

With respect to AFSCME's assertion that the bargaining unit employees' actions were not a request to bargain but rather an attempt to exercise an employee right pursuant to Section 3-301(b) of the Collective Bargaining Statute, for the reasons we stated in ULP Case No. 2002-04, Opinion No. 6 on this issue, we conclude that the alleged acts and

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<sup>3/</sup> See SHELRB Case EL 01-13 (referencing the valid University of Maryland University College election petition filed by AFSCME); see also SHELRB Case C 2001-10 (certifying AFSCME as the exclusive representative of the nonexempt employee unit at UMUC).

<sup>4/</sup> UMUC asserts that the employees' alleged acts and tactics violated UMUC policy. Allegations limited to such violations do not fall under the jurisdiction of the Collective Bargaining Statute and, thereby, the Board. (See n 1.)

conduct of employees in the instant case fall outside the purview of the Board.

In view of the above, 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.<sup>5/</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT:**

The American Federation of State, County and Municipal Employees' Motion to Dismiss the Unfair Labor Practice Petition in Board Case No. 2002-13 is granted; the ULP Petition 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

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<sup>5/</sup> In view of our disposition, we do not reach UMUC'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 concluded 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.