

State of Maryland
State Higher Education Labor Relations Board

In the matter of:)	
)	
)	
American Federation of State,)	
County and Municipal Employees,)	
)	
Complainant/Petitioner,)	
)	
v.)	SHELRB ULP Case No. 2004-01
)	(Originally Case No. 2003-13)
University of Maryland)	
College Park,)	
)	OPINION NO. 16
Respondent/Employer.)	
)	
)	
)	

DECISION AND
PRE-HEARING DELEGATION ORDER

Summary of Case

On July 23, 2003, the American Federation of State, County & Municipal Employees (AFSCME), filed with the Board an Unfair Labor Practice Petition (ULP) against the University of Maryland, College Park (UMCP). AFSCME alleges that UMCP failed to bargain in good faith over its decision to increase parking service fees on campus and the effects that such an increase would have on the terms and conditions of employment affecting bargaining unit employees. AFSCME alleges that UMCP's actions surrounding this decision constitute a violation of its collective bargain obligation as defined and prescribed under the Title 3 of the State Personnel and Pensions Article (Collective Bargaining Statute)§3-501(a), (b) and (c) and 3-502(a), and thereby has committed an unfair labor practice as defined under the Board's regulations at COMAR 14.30.07.01(A) and (I).

UMCP filed a response on September 2, 2003, contending that the determination and promulgation of university self-support charges such as parking fees is a matter covered under the State rights provision of the Collective Bargaining Statute. UMCP maintains that it therefore has no obligation to bargain over the fees charged to bargaining unit employees for university-provided parking and thus has neither violated

its statutory duty to bargain nor otherwise committed an unfair labor practice.

UMCP also raises an affirmative defense that, even though in its judgment it has no duty to bargain over parking permit fees, it has nevertheless bargained with the union over them in good faith and has done so to impasse.^{1/}

Probable Cause Investigation

In accordance with BR §14.30.07.04F, the Executive Director conducted an investigation of the Petitioner's allegations. At the conclusion of the investigation, pursuant to BR §14.30.07.04G, the Executive Director issued, on behalf of the Board, an Investigative Report and Recommended Probable Cause Determinations (Report). The Executive Director recommended a finding of probable cause with respect to the alleged refusal to bargain claim and, in accordance with Board Regulation 14.30.07.04H(2), advanced the ULP Petition to the Board for further action on the recommendations made in the Report.

Findings of the Board

Under the Collective Bargaining Statute at Section 3-502(a), "all matters relating to wages, hours, and other terms and conditions of employment" [Emphasis added] are subject to a duty to negotiate through collective bargaining. The Collective Bargaining Statute also provides for certain exceptions: specifically, §3-502(c) provides that covered State institutions are not required to negotiate over any matter that is "inconsistent with applicable law." Contained within the Collective Bargaining Statute itself is one of the most significant of such applicable exception laws, Section 3-302, entitled Rights of the State. This section (3-302) lists eight actions, or sets of actions, that are reserved solely to management and not subject to the full breadth of collective bargaining.^{2/}

UMCP contends that the State rights provision of the Collective Bargaining Statute is the "applicable law" that makes parking service fees a non-bargainable matter. Specifically, UMCP asserts that "[w]hether the University chooses to provide parking

^{1/} In its September 2, 2003 Response to the ULP Petition, UMCP asserted that the case was not ripe for determination since the November 1, 2003 implementation date for the parking fees had yet to occur. We cannot discern the basis for UMCP's contention that this cause of action was not ripe at the time UMCP manifested its undisputed and unqualified intent to implement. However, since the implementation date has now passed and the fee increases have gone into effect, this specific assertion/issue is now moot and we decline to address the merits of this contention at this time.

^{2/} Notwithstanding the Collective Bargaining Statute's expressed reservation of these listed State rights, it is well established in labor law that a limited duty to negotiate, upon request, nevertheless exists with respect to matters addressing the impact and effect of the exercise of a management right on bargaining unit employees as well as procedures concerning how these rights are implemented. *Virginia Electric & Power Co. v. NLRB*, 319 U.S. 533 (1943). We find nothing under the Collective Bargaining Statute that would preclude the recognition of such a limited bargaining obligation with respect to these State management rights.

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facilities at all and to which elements of its community it provides them remains a fundamental decision at the heart of the University's right to control its mission, budget and the technology, methods and means of performing that work or mission." (UMCP Response, p. 3)

However, we find that UMCP's contention concerning the scope of these State rights is wholly unfounded. Section 3-302(1), (2) and (8) provides as follows, emphasis added:

"The State, through its appropriate officers and employees, has the right to:

(1) (i) Determine the mission, budget, organization, numbers, types and grades of employees assigned, the work projects, tours of duty, methods, means, and personnel by which its operations are to be conducted, technology needed, internal security practices, and relocation of its facilities; and

(ii) Maintain and improve the efficiency and effectiveness of governmental operations;

(2) Determine the:

(i) Services to be rendered, operations to be performed, and technology to be utilized; and

(ii) Overall methods, processes, means, and classes of work or personnel by which governmental operations are to be conducted;

* * * *

(8) Take actions, not otherwise specified in this section to carry out the mission of the employer."

The effective and controlling word in §3-302(1) is "determine," not "control," as UMCP would have it. There is plainly nothing extraordinary or aberrational in the nature of parking fee rates that renders them uniquely non-bargainable or a threat to UMCP's power to "determine" its mission as a State educational institution. Nor will bargaining over the fees that UMCP charges its employees for parking in any way implicate or transgress UMCP's right as an employer to "carry out" its mission.

The plain meaning of § 3-302 (2), as cited above, is to empower State employers to "determine. . . methods, processes, means, and classes of work or personnel by which governmental operations are to be conducted." The purpose of this clause is to guarantee that each educational institution will have the authority to order its internal operations to advance the educationally-related work and objectives of its mission. But the setting of parking rates does not go to the question of the university's ability to define and conduct

its educational mission.^{3/} If we read § 3-302 (2) to foreclose collective bargaining whenever traditional university prerogatives are affected, then the exception will obviously swallow the rule. To fail to observe the distinction between the institution's traditional power to determine its educational mission and its new obligation to bargain over the terms and conditions of employment could sweep all matters related to employees' terms and conditions of employment directly under the State rights provisions of Section 3-302, thus engendering an absurd result that would nullify the central collective bargaining mandate of the Collective Bargaining Statute.

The Board is wary in considering overly expansive interpretations of either Section 3-302 or 3-502(a) proffered by contending parties. Too broad an interpretation of § 3-302 would clearly nullify the collective bargaining mandate of the Collective Bargaining Statute; too broad an interpretation of § 3-502(a) would undermine the clear intent of the Statute to permit covered State employers to manage the educational missions of their respective institutions/agencies and their employees.^{4/} Here, parking is an employer-provided accommodation related to employees' employment and also an employee-generated source of revenue. Where, as here, an employer has made parking

^{3/} We find that UMCP improperly relies upon two cases it cites that were decided by the Federal Labor Relations Authority (FLRA) under the Federal Service Labor-Management Relations Statute (FSLMRS) which has a management rights provision similar to the Maryland Collective Bargaining Statute. In *American Federation of Government Employees, Local 3399 and Harry Truman Memorial Veteran Hospital* (citation omitted), UMCP asserts that the FLRA found that certain parking lots that the employer agency had designated for visitor and patient parking fell under the "methods and means" of doing work under the management rights provision of the FSLMRS. In *American Federation of Government Employees*, 21 FLRA 1046 (1986), the FLRA found similarly that the adequacy of parking for government vehicles concerned the methods and means of doing work under the statutory management rights provision and declined to find that the agency committed an unfair labor practice by not bargaining over the matter. In both of these cases, the attempt was made to negotiate over parking as a means of accommodating the agency's vehicles, patients and customers. In this context, the subject of parking was directly related to a method or means that the agency used to accomplish its actual work or accommodate the clientele its mission served. Unlike the examples UMCP cites, there is no evidence that AFSCME attempted to bargain over the parking fees UMCP would charge or the extent of parking facilities UMCP would provide for its students, visitors, or other individuals who had official business with the university or set aside for university-owned vehicles. Here, parking was being bargained in the context of accommodating an employee objective, personal vehicles used to get to work, not an employer/university mission-related objective.

^{4/} UMCP asserts that "[t]he parking service fee [was] imposed by the University in its governmental capacity, not its employer capacity." (Resp. at p. 3) The basis of this claim is wholly uncertain. The Board has previously found that with respect to the rights and obligations accorded covered parties under the Collective Bargaining Statute, "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." See, *AFSCME v. Board of Regents*, Slip Op. No. 5, SHELRB ULP Case No. 2002-08 (2002). The Board's Decision extends to all the rights and obligations of the instant parties under the Collective Bargaining Statute. What other or additional rights or obligations UMCP may have in its "governmental capacity" outside Collective Bargaining Statute, if any, is beyond the scope of our jurisdictional authority to determine. UMCP has presented no specific law or other applicable authority exempting it of its status or obligation as an employer under the Collective Bargaining statute with respect to the determination of covered employees' terms and conditions of employment, including the ones at issue in this case.

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facilities available to its employees, there is no question that both as a cost related to employees' employment and as an employee-generated revenue source for the employer, employer provided-parking and its attendant fees fall under the rubric of matters related to employees' terms and conditions of employment. See, e.g. National Treasury Employees Union v. Federal Labor Relations Authority, 856 F.2d 293 (D.C. Cir. 1988) and Commonwealth of Pennsylvania v. Pennsylvania Labor Relations Board, 467 A.2d 1187 (1983). Therefore, with respect to all bargaining unit employees, we find UMCP's employer-provided parking and the attending parking permit fees to be a mandatory subject of bargaining.

Delegation

Despite contending that it had no obligation to negotiate over parking fees, UMCP avers that it nevertheless bargained in good faith with AFSCME over them. Moreover, UMCP asserts that the parties bargained to impasse over the matter. The questions of whether UMCP did in fact bargain in good faith and did in fact bargain to impasse over parking fees are critical issues that require further findings and conclusions in order to determine whether, by the acts and conduct alleged, UMCP has in fact engaged in an alleged unfair labor practice. The pleadings and investigative evidence and findings reveal that material issues of fact remain in dispute. Therefore, further proceedings are required and we direct that a hearing be held to make findings and conclusions, consistent with our Opinion, on the following: (1) did UMCP bargain in good faith over parking fees? and, (2) if so, did the parties reach impasse over the matter?

ORDER

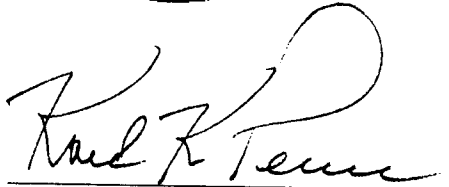
IT IS HEREBY ORDERED THAT:

Pursuant to Title 10 of the State Government Article, §§10-205(a)(1)(ii)(1); Title 3 of the State Personnel and Pensions Article, §3-2A-07(b); and Board Regulation, COMAR 14.30.11.03B, the Board delegates to the Office of Administrative Hearings (OAH) the authority to make findings of fact, proposed conclusions of law and a proposed disposition in SHELRB ULP Case No. 2004-01 consistent with our Opinion in this Decision and Order.

BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS BOARD

Annapolis, MD

December 2, 2003

A handwritten signature in black ink, appearing to read "Karl K. Pence". The signature is written in a cursive style with a large, looping initial "K".

Karl K. Pence, Executive Director
State Higher Education Labor Relations Board
On behalf of Jamin B. Raskin, Chair