

State of Maryland
State Higher Education Labor Relations Board

In the matter of:)	
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)	
American Federation of State,)	
County and Municipal Employees,)	
)	
Complainant/Petitioner,)	
)	
v.)	SHELRB ULP Case No. 2004-04
)	(Originally Case No. 2003-16)
University of Maryland)	
Baltimore,)	Opinion No. 15
)	
Respondent/Employer.)	
)	
)	

DECISION AND ORDER

Summary of Case

On July 31, 2003, the American Federation of State, County & Municipal Employees (AFSCME), filed with the Board an Unfair Labor Practice Petition (ULP) directed against the University of Maryland, Baltimore (UMB). AFSCME alleges that UMB refused to bargain over its decision to increase parking permit fees on campus and the effects that such an increase would have on the terms and conditions of employment affecting bargaining unit employees. AFSCME thus alleges that UMB is refusing to bargain in good faith 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).

UMB filed a response on August 22, 2003, denying that it has violated its duty to bargain. However, as a threshold matter, UMB asserts that the ULP was untimely filed under the Board Regulations (BR) at §14.30.07.04A.

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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. However, the Executive Director also recommended that the Board first consider the threshold issue of timeliness. In accordance with BR §14.30.07.04H(2), the ULP Petition was therefore advanced to the Board for further proceedings and disposition.

Finding of the Board

The Board finds that the disposition of the ULP Petition turns on the threshold issue of timeliness. For that reason, the Board dismisses the Petition.

BR 14.30.07.04A provides as follows: "A party aggrieved by an unfair labor practice may request relief from the Board by filing a petition with the Executive Director, within 30 days of knowledge of the occurrence ..." ¹/_.

In its ULP Petition, AFSCME itself states the following:

"[i]n its letter to AFSCME, dated June 6, 2003, UMB declared it would implement a parking fee increase on July 1, 2003. *With that, it committed an unfair labor practice.* For months, AFSCME has tried to engage the University in negotiations over parking fees." (Pet. At p.5) [Emphasis added.]

Thus, if we assume all of AFSCME's assertions to be true, the alleged refusal to bargain violation, by AFSCME's own explicit and unambiguous statement, occurred on June 6 when UMB unqualifiedly declared its intent to implement a

¹/ The Board regulation establishes a 30-day time limit purposefully to support effective and timely intervention on its own part should a violation be found.

unilaterally determined schedule of parking fees. (Pet. at pp. 4-5.) Since thirty days thereafter fell on Sunday, July 6, a timely petition must have been filed by the close of business July 7. AFSCME filed its ULP Petition alleging a refusal to bargain on July 31, thirty days from the date the new parking fee schedule took effect (July 1). But, according to AFSCME itself, the alleged unfair labor practice violation occurred not on July 1 but on the earlier date when UMB unequivocally announced its intent to implement its unilaterally-determined parking fees.^{2/}

From the date it had knowledge of UMB's manifest intent to implement the parking fees without bargaining, AFSCME had 30 days to file a ULP Petition alleging such a violation. AFSCME submissions and evidence demonstrate that it received such knowledge when UMB replied by letter dated June 6, 2003 to AFSCME's May 7, 2003 request for parking fee information. AFSCME's July 31, 2003 filing of its ULP Petition clearly exceeds the limit of 30 days from AFSCME's knowledge of the occurrence of the unfair labor practice.^{3/}

DECISION

The Board finds that the ULP Petition was not timely filed. Consequently, the Board finds that it is foreclosed from considering the merits of the violations alleged therein. Therefore, the Board dismisses the Petition.

^{2/} Knowledge of UMB's intent to increase university parking fees on July 1, 2003 is documented as early as July 26, 2002, in a memorandum issued by UMB's president. This was months before AFSCME was certified as the exclusive bargaining representative of affected bargaining unit employees. An assertion by AFSCME that UMB informed AFSCME in early April 2003 that it had withdrawn its requests for approval of the parking fee increases from its Board of Regents is unsettled. However, in response to AFSCME's May 7, 2003 request for parking fee information, UMB provided the June 6, 2003 letter giving notice that the parking fee schedule set forth therein, established solely by UMB, would go into effect on July 1, 2003. There is no evidence that UMB subsequently acted differently than its June 6 notice indicated it would.

^{3/} See American Federation of State, County and Municipal Employees v. University of Maryland, Baltimore County, SHELRB ULP Case. No. 2002-09, Slip Op. No. 11 (2002); and see, e.g., Santa Monica Classroom Teachers Association v. Santa Monica-Malibu Unified School District, 6 PERC P 13124 (1982) and Bedford Park Fire Officers, IAFF Local 3571, 18 PERI P 2029 (2002).

ORDER

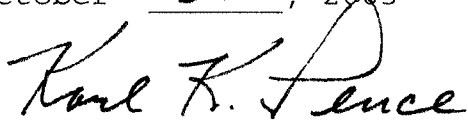
IT IS HEREBY ORDERED THAT:

The Unfair Labor Practice Petition in Board Case No. 2004-04 (Originally designated 2003-16) is dismissed.

BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS
BOARD

Annapolis, MD

October 31, 2003



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