

**State of Maryland
State Labor Relations Boards**

Higher Education Labor Relations Board

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In the matter of:)	
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Maryland Classified Employees)	
Association, Inc.,)	
)	
)	
Petitioner,)	SHELRB CASE
)	No. ULP 2007-02
v.)	
)	
Morgan State University,)	
)	
Respondent.)	
)	

**DECISION ORDERING PARTIES TO SUBMIT TO
NEUTRAL FACT FINDER AND HOLDING ULP IN ABEYANCE**

On November 22, 2006, Maryland Classified Employees Association, Inc. ("MCEA") filed this unfair labor practice (ULP) petition before the State Higher Education Labor Relations Board (SHELRB) on behalf of the sworn police unit of employees at Morgan State University ("MSU"). MSU filed a response, denying that it had engaged in any behavior that would constitute a ULP, and asserting that the petition is untimely. On March 7, 2007, Executive Director Erica Snipes issued a probable cause report, finding that MCEA has stated a cause of action within the meaning of the COMAR § 3-306 et seq.

The Board has reviewed the filings and applicable statutory and regulatory language, and orders the parties to submit to a neutral fact finder, pursuant to SPP § 3-405(c)(3), within 10 days of issuance of this decision. The Board will defer processing the remaining unfair labor practice allegations, until resolution of that issue.

Procedural History and Unfair Labor Practice Allegations

It is undisputed that MCEA is the exclusive representative of all of the sworn members of the MSU Police Department, having been recognized as such by the Order of this Board dated February 25, 2005. The parties began negotiating for an initial Memorandum of Understanding ("MOU") in April 2005. As of July 2006, the parties had reached tentative agreement on the majority of the issues addressed in the MOU and scheduled a ratification meeting to be held by MCEA on July 6, 2006. However, ratification never occurred because the Attorney General's Office reviewed the agreement for legal sufficiency and suggested several changes to the MOU. On July 31, 2006, MSU modified the agreement, based on the AG's suggested changes and one additional change.

On September 18, 2006, MCEA sent its counter-proposal to MSU, including a new provision (Article 21.4) that concerned the promotional process. After attempting to bargain on this new provision, on October 16, 2006, MCEA notified MSU (via email) that "I fear we are now at an impasse." On October 24, 2006, MSU notified MCEA that the University intended to "forward its last, best and final offer to the Board of Regents for their consideration."

On October 24, 2006, MSU's chief negotiator notified MCEA that it was proceeding on "our last, best and final offer to the Board of Regents for their consideration," and that if approved, they would implement that offer. In response, on October 30, 2006, MCEA requested that a fact finder be appointed from a list provided by the Federal Mediation Conciliation Services (FMCS), pursuant to SPP § 3-501(c)(3) (newly enacted SB 348, effective July 1, 2006). MSU notified MCEA on November 3, 2006, that it did not believe these current negotiations were covered by the newly enacted law, as the collective bargaining had originally preceded its enactment.

As a result of these actions, MCEA filed the following unfair labor practices, alleging that MSU failed to bargain in good faith by unilaterally ending the negotiation process and by refusing to submit the dispute to a fact finder. Additionally, MCEA asserts that MSU has refused to give the members of the bargaining unit the cost of living increases ("COLAS") that was given to non-bargaining unit employees of the University in July 2006. MCEA asserts that these actions violated COMAR § 14.30.07.01A, D and I.

MSU's response

MSU denies that it committed any unfair labor practices as set forth in COMAR § 14.30.07.01A, D and I. As to the allegation regarding the failure to pay represented employees pay increases, MSU asserts that the petition is untimely. MCEA was aware, as of July 1, 2006, that COLA and pay increases had not been provided to the bargaining unit members, pending reaching a final agreement on negotiations. Since

the ULP petition was filed on November 27, 2006, it is untimely under COMAR § 14.30.07.04A (allowing 90 days to file ULPs from knowledge of occurrence) and therefore must be dismissed.

As for MCEA's assertion that MSU committed an unfair labor practice by refusing to participate in the fact finding proceeding (pursuant to SPP 3-501) is "at most a harmless error, and should not constitute a basis for an unfair labor charge."

Analysis

This case presents several issues of law, including allegations of bad faith bargaining, failure to grant pay increases and failure to submit to a neutral fact finding process, under the collective bargaining law. However, in this decision, for reasons of judicial economy, we will only address the last of these allegations, i.e. MSU's admitted refusal to submit the stalled negotiations to a neutral fact finder.¹

It is undisputed that the parties bargained for many months, and had reached agreement on nearly all the issues by July of 2006. Thereafter, through no fault of either of the parties, but as a result of MSU's integration of proposed changes to the MOU by the Attorney General's office, the parties were unable to ratify the agreement. Subsequently, MCEA declared an impasse on September 16, 2006.

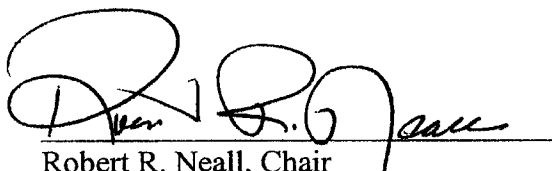
Following that declaration of impasse, MCEA made a clear request on October 30, 2006, for the appointment of a neutral fact finder. This request was timely, and subject to newly enacted Senate Bill 348 (revisions to the collective bargaining law, effective July 1, 2006, now codified as SPP § 3-101 et seq.). Those revisions to the collective bargaining law set forth new requirements for parties who are unable to reach agreement on an MOU by October 25. In the event of such disagreement, the parties must submit the dispute to a neutral fact finder, upon a party's request (before November 1).

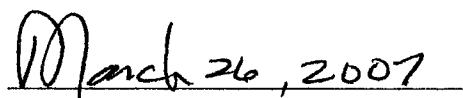
MSU appears to have abandoned its prior argument that their negotiations, which had commenced before the passage of the law, were not subject to the law. Indeed, although the inception of the negotiations preceded the enactment of the legislation requiring the appointment, it is undisputed that the date of impasse (September 16, 2006) occurred after the legislation's enactment. The date of impasse is the relevant time for purposes of the applicability of the statute, rather than the commencement of bargaining, as there was no cause of action (under that portion of the statute) until the negotiations broke down. Thus, MSU has committed a violation of SPP § 3-501(c)(3), by refusing to submit to a neutral fact finder.

¹ We are hopeful that the parties will voluntarily resolve the outstanding issues between them, including the pay increases, with the help of the fact finder and any possible subsequent negotiations. Therefore, we defer the processing of that complaint, at this time. In the event that the parties do not voluntarily resolve that complaint, however, we reserve the right to process that complaint.

ORDER

We find that MSU has violated this state's labor laws by refusing to submit to a neutral fact finder, as prescribed by SPP § 3-501 et seq. The SHELRB hereby orders the parties to, within 10 days of this order, to jointly select a third party fact finder, as set forth in SPP § 3-501(c)(3).² We will retain jurisdiction over the remaining unfair labor practice allegations and hold them in abeyance, pending the resolution of the fact finding process. After the fact finder makes his/her findings and negotiations continue, we will consider the remaining unfair labor practices at that time, if necessary, upon a renewed request by MCEA for the Board to do so.


Robert R. Neall, Chair
State Higher Education Labor Relations Board


Date

Appeal Rights

Any party aggrieved by this action of the Board may seek review in accordance with Title 10 of the State Government Article, Annotated Code of Maryland, Section 10-305 and MD R CIR CT Rule 7-201 et seq.

² While we would have preferred to give the parties a longer period of time to agree on a fact finder, the one week period is statutorily prescribed (SPP § 501(c)(3)(I) and (II)). We have simply added a three day mailing period. The parties should notify the Board when a fact finder has been appointed. Further, under the terms of the statute, the fact finder has a 20 day period to make his/her written recommendations to the Governor, the President of the Senate and the Speaker of the House. The parties must inform the SHELRB of those recommendations at the conclusion of the process, so that we can determine whether to proceed with the unfair labor practice complaints.