

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

In the matter of:	)	
	)	
	)	
American Federation of State,	)	
County and Municipal Employees,	)	
	)	
Complainant/Petitioner,	)	
	)	
v.	)	HELRB ULP Case Nos. 2001-02,
	)	2001-03, 2002-01, 2002-03 and
Salisbury University,	)	REP Case No. 2002-04
	)	Opinion No. 1
Respondent/Employer,	)	
	)	
and	)	
	)	
Maryland Classified Employees	)	
Association,	)	
	)	
Intervenor.	)	
	)	

DECISION AND ORDER

On December 3, 2001; December 18, 2002; February 4, 2002; and March 22, 2002, the American Federation of State, County and Municipal Employees (AFSCME) filed with the State Higher Education Labor Relations Board (Board) four documents--ULP Case Nos. 2001-02, 2001-03, 2002-01 and 2002-03, respectively, charging that Salisbury University (SU) had committed certain unfair labor practices. Prior to and during this same period, AFSCME, SU and the Maryland Classified Employees Association (MCEA) had been engaged in an election campaign to determine the will of a potential bargaining unit of non-exempt employees at SU.

The election proceeding was triggered by AFSCME's Representation Petition filed with the Board on October 15, 2001 (Case No. 2002-04). MCEA intervened as a party and

**Decision and Order**  
**Case No. 2001-02, 2001-03,**  
**2002-01, 2002-03 and 2002-04**

candidate in the election. In the ensuing election, held on December 12, 2001, none of the three choices on the ballot--"AFSCME," "MCEA" and "No Exclusive Representative,"--received a majority of the valid votes cast. In accordance with the Order of Election, a run-off election was held on February 6, 2002, between MCEA and AFSCME<sup>1/</sup> in which MCEA received the most votes. On February 14, 2002, AFSCME filed objections to the election.

Because of the related and overlapping issues presented by these cases, at its February 28, 2002, meeting, the Board consolidated all five of the above-captioned cases. However, due to numerous readily apparent issues of fact, the Board referred ULP Case No. 2001-03 to the Office of Administrative Hearings (OAH) for a fact-finding hearing<sup>2/</sup> and retained jurisdiction over the remaining cases for a hearing before the Board. On April 15, 2002, the Board issued a Notice of Hearing for April 25, 2002. On that day, the Board would hear arguments on Case Nos. 2001-02, 2002-01, 2002-03 and 2002-04. Shortly after the Notice of Hearing was issued, MCEA filed a written request to intervene in the unfair labor practice proceedings.

On April 16, 2002, Chairman Raskin held a pre-hearing conference call with the parties. The Chairman made it clear that MCEA would be recognized as a full party participant in these consolidated proceedings and should be copied with all related filings and correspondence. The parties were instructed to attempt to stipulate to as many issues and facts as possible in the four cases and submit their stipulations and supporting evidence in advance of the hearing. There was little progress on this front, but the hearing was conducted on April 25, 2002, from 1 p.m. to 5:30 p.m. Notwithstanding the efforts of the parties to present their case in those several hours, it became apparent that the parties required far more time to present factual evidence and develop a complete record.

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<sup>1/</sup> See also, Title 3 of the State Personnel and Pension Article, Annotated Code of Maryland (SPP), §3-405(d).

<sup>2/</sup> Pursuant to Title 10 of the State Government Article, §10-205(a)(1)(ii), the Board referred ULP Case No. 2001-03 (Donald Pryor) to OAH, delegated OAH with the authority to make findings of fact and proposed conclusions of law. Upon so doing, the case will be referred back to the Board for final action. See also, Board Regulation 14.30.11.03. The case is currently pending before an OAH administrative law judge for a hearing scheduled to commence on May 9, 2002.

**Decision and Order**  
**Case No. 2001-02, 2001-03,**  
**2002-01, 2002-03 and 2002-04**

In view of the above, the Board advised the parties that it would issue a Decision and Order outlining the procedure that will, henceforth, govern the processing of these cases.

Given the complicated and demanding factual issues presented in these Unfair Labor Practice cases and Objections, the Board is now delegating Case Nos. 2001-02, 2002-01 and 2002-04 to OAH to be consolidated with Case No. 2001-03, already pending there. In view of the Board's previous consolidation of all related ULP and Representation Cases arising from SU, the Board shall further instruct in its delegation to OAH that Case Nos. 2001-02, 2002-01 and 2002-04 be consolidated with Case No. 2001-03. Similarly, as with Case No. 2001-03, OAH will be delegated the limited authority to make findings of fact and proposed conclusions of law. Upon completion of its report, the case will be referred back to the Board. The Board, pursuant to Board Regulations 14.30.11.23 and .24, will consider the record and any exceptions by the parties and will issue the final decision, including final determinations on all issues of law, on the matters presented by all five cases. The Board's decision to use the resources of OAH to conduct the evidentiary hearing will better afford all parties a full opportunity to present their evidence, including the presentation and cross-examination of witnesses, in order to insure a complete and adequate record upon which the Board will base its final decision.

We now turn to certain issues raised by the parties regarding the scope of these proceedings. During the hearing, SU took issue with AFSCME's submission of additional documents, affidavits and related evidence, which it contends raised additional allegations that, heretofore, were not made in its Complaints. The Board disagrees. During the pre-hearing conference call, Chairman Raskin instructed the parties to stipulate to as many issues as possible and submit their stipulations and supporting evidence in advance of the hearing. In the event this could not be achieved in advance of the hearing, the Board would accept such submissions from the parties at the hearing itself. The documents and affidavits submitted by AFSCME at the hearing essentially articulate in greater detail the acts and conduct in support of the allegations

**Decision and Order**  
**Case No. 2001-02, 2001-03,**  
**2002-01, 2002-03 and 2002-04**

contained in its Complaints. Any contention by SU that any particular unfair labor practice allegation is untimely can be raised in the hearing before OAH.

Also at the hearing, SU and MCEA contended that AFSCME waived its right to file objections to the first election and essentially should be estopped from alleging acts and conduct that pre-date the first election as objection to the run-off election. SU and MCEA correctly state that among the choices in the first election, "AFSCME," "MCEA" and "No Exclusive Representative," no single choice received a majority. In accordance with the Order of Election, this result required that a run-off election be held between the ballot "choices receiving the two largest numbers of votes in the initial election," --AFSCME and MCEA. No party filed objections to the first election following the tally of the first election. AFSCME, on the other hand, correctly notes that the Board accorded all parties with the rights to file objections to the election. Under the Election Order, objections to the conduct of a party are to be filed within 7 days after the Executive Director has certified election results. AFSCME argues, however, that the impact of certain alleged acts and conduct by SU was realized only after the passage of time and that such acts and conduct did not have the asserted affect on employees until after the first election but before the run-off election.

No official certification of election results was issued in this election proceeding until after the run-off election. Notwithstanding the significance of this fact, the Board will not now bar claims by any of the allegedly aggrieved parties based on how they should have proceeded after the tally in the first election, given the absence of clear direction.<sup>3/</sup> Clearly, objections filed to acts and conduct occurring after the first election are timely. However, AFSCME's objections to acts and conduct that commenced prior to the first election shall be deemed viable only to the extent that it can establish a continuing and mounting effect that did not rise to the level of objectionable conduct until after the first

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<sup>3/</sup> Now that the Board's regulations are effectively in place, future elections requiring a subsequent run-off election will be governed by §14.30.05.17. Board Regulation 14.30.05.17 calls for a Report of Election Results following every election and for any objections to be filed before the eighth day following the issuance of the Report of Election Results.

**Decision and Order**  
**Case No. 2001-02, 2001-03,**  
**2002-01, 2002-03 and 2002-04**

election and, thereby, materially affected the outcome of the run-off election.

The Board will not permit a party to an initial election to abstain from asserting any right of relief it may claim with respect to the outcome of the initial election until after a run-off election in order to contend that it should have prevailed, outright, in the initial election. The Board finds that AFSCME's failure to object to the holding of a run-off election renders any objections it now has to the outcome of the first election moot. The Board leaves for AFSCME in the hearing before OAH to establish its claim that alleged objectionable acts and conduct by SU met the Board's standard for objectionable conduct (as set forth in the Board's Election Order) and affected the outcome of the run-off election between the two union candidates.<sup>4/</sup>

Finally, in delegating these cases to OAH, the Board notes that it is accorded exclusive jurisdiction over resolving disputes over unfair labor practices and other matters relating to employees covered by collective bargaining under Title 3 of the State Personnel and Pension Article, Annotated Code of Maryland (2001 Supp.), §§ 3-2A-05(a). The Board's substantive jurisdiction is not subject to consolidation with other legal claims outside of the Board's jurisdiction. The Board observed during the hearing that some of the objections and unfair labor practice charges include allegations that SU violated certain personnel, access and/or other rules, regulations or policies. This is not for the Board to decide. The Board recognizes that a determination of whether or not there has been compliance with such rules or regulations might be probative to establishing an unfair labor practice or objectionable conduct. However, the elements of an Unfair Labor Practice or Objectionable Conduct within the meaning of the Board's statutory and regulatory regime present legal issues that are wholly independent and

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<sup>4/</sup> The standard for objectionable conduct of a party, as prescribed in the Board's Election Order, is as follows: "Activity of a party to an election which materially compromise the secret ballot process, effectively disenfranchises eligible voters, or otherwise substantially interfere with laboratory conditions of a free and fair election are grounds for such an objection." In so delegating this issue to OAH, the Board notes that it embraces the principles and rationale espoused by National Labor Relations Board with respect to determining objectionable conduct. *Cf., Midland National Life Insurance Co.*, 263 NLRB 127 (1982) and its progeny.

**Decision and Order**  
**Case No. 2001-02, 2001-03,**  
**2002-01, 2002-03 and 2002-04**

separate from other disciplinary rules and regulations that may exist.

ORDER

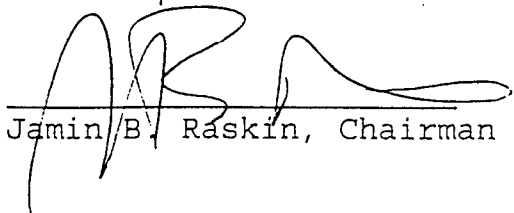
**IT IS HEREBY ORDERED THAT:**

1. Pursuant to Board Regulation 14.30.11.03B, the Board delegates to the Office of Administrative Hearings (OAH) the authority to make findings of fact and proposed conclusions of law in Case Nos. 2001-02, 2002-01, and 2002-04 in conjunction with Case No. 2001-03 already pending before OAH Judge Koteen.
2. In addition to making findings of fact and proposed conclusions of law in Case Nos. 2001-02, 2002-01 and 2002-04, OAH is delegated the authority to make proposed rulings on all preliminary and procedural issues, including but not limited to the timeliness of unfair labor practice allegations filed after March 31, 2002.
3. OAH shall go forward with making findings and proposed conclusions on the merits of each case notwithstanding any preliminary determinations it makes with respect to the Board's jurisdiction.
4. If the parties file any exceptions to the decision issued by OAH, they shall also at that time supplement their prior arguments in Case No. 2002-03 with any final written submission. The evidence already presented by the parties up to and including the Board's April 25, 2002, hearing shall constitute the full record with respect to Case No. 2002-03 unless further proceedings are ordered by the Board.

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

Annapolis, MD

May 9, 2002

  
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Jamin B. Raskin, Chairman