**State of Maryland**

*State Labor Relations Board*

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In the matter of: )

 *Doyle R. Ham, Jr.*, )

) SLRB ULP

) Case No. 2014-U-04

Petitioner )

)

v. )

)

 *American Federation of* ) *State*, *County & Municipal* ) *Employees*  )

)

Respondent )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

 Board Dismissal for Untimely Filing Based on Board Regulations

*I. Background and Procedural Matters*

 On November 6, 2013, Petitioner Doyle R. Ham, Jr. filed an unfair labor practice (ULP) petition before the State Labor Relations Board (SLRB, the Board) against the American Federation of State, County, & Municipal Employees (AFSCME). The Executive Director of the SLRB sought a response to the petition from AFSCME, which was filed in due course. Upon receipt of AFSCME’s response, the SLRB Executive Director began a preliminary investigation as to the timeliness and, if needed, the merits of Mr. Ham’s claims. The SLRB Executive Director reviewed the pleadings and applicable statutory and regulatory language in preparation of issuing an Investigative Report and Recommended Determinations. The Executive Director’s Report was issued on February 28, 2014, and recommended dismissal of this matter due to untimely filing. Parties were given fifteen days, per Board regulations, to file a Request for Reconsideration in dispute of the Executive Director’s Recommendations. The SLRB, having received no dispute regarding the Executive Director’s Recommendations, is now prepared to issue a decision in this matter.

*II. Board Review of Undisputed Facts and Potions of Parties*

 The Board agrees that Mr. Ham is an employee within the Department of Public Safety and Correctional Services (DPSCS). Further, the Board recognizes that DPSCS filed disciplinary charges against Mr. Ham in May of 2012. Mr. Ham elected to challenge the disciplinary action under Md. Correctional Services Code Ann. (“CS”) § 10-909. A trial board hearing was conducted. Following the hearing, the parties entered into settlement negotiations. What transpired after those negotiations is at issue. The Board acknowledges Mr. Ham’s presentation of various allegations in his petition; namely that AFSCME failed to represent him properly regarding a five day suspension concluding in February of 2013. Mr. Ham presented information regarding lack of communication from AFSCME, as well as his alleged need, as a result of AFSCME’s lack of communication, to contact another union to assist him—the Maryland Association of Correctional and Security Employees (MACSE). The Board notes that ultimately the Office of Administrative Hearings held proceedings regarding Mr. Ham’s representation and his various concerns regarding union action on his behalf.

 The SLRB notes that it has received a Motion to Dismiss from AFSCME regarding this case. The Board acknowledges that AFSCME’s position is that Mr. Ham’s filing is untimely, having, in AFSCME’s viewpoint, been filed more than ninety days after two relevant dates: April 8, 2013 (when Mr. Ham first filed his administrative appeal), and July 29, 2013 (the date on which a letter was sent, on Mr. Ham’s behalf to OAH, by a representative of the second union Mr. Ham worked with in this matter).

*III. Analysis & Conclusion*
 COMAR 14.32.05.01(C) provides that an Unfair Labor Practice Complaint must be filed “within 90 days of the later of the alleged violation or following the time that a reasonable person would, upon exercising due diligence, have discovered the occurrence of the alleged violation.” Having reviewed the information presented by both Mr. Ham and AFSCME, it is clear that Mr. Ham had sufficient knowledge to allege a violation at the time he filed his administrative appeal in April 2013 and certainly no later than the July 29, 2013 date on which MACSE wrote to OAH on his behalf. Both dates occurred more than ninety days before Mr. Ham filed his petition with the SLRB.
  *IV. Order* Based on the authority regarding timely filing of a case before the SLRB found in COMAR 14.32.05.01(C), the SLRB finds that Mr. Ham’s petition was untimely filed and grants AFSCME’s Motion to Dismiss.

Issue Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Annapolis, Maryland

**For The State Labor Relations Board**:

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| signature e lell2 | June M. Marshall, Chair |
| SM signature | Sherry L. Mason, Member |
|  | Edward J. Gutman, Member |
| scan0001 | Susie C. Jablinske, Member |
|   | LeRoy A. Wilkison, Member |

APPEAL RIGHTS

 Any party aggrieved by this action of the SLRB may seek judicial review in accordance with Title 10, Subtitle 2 of the State Government Article, Annotated Code of Maryland, Sec. 10-222 (Administrative Procedure Act—Contested Cases), and Maryland Rules CIR CT Rule 7-201 *et seq.* (Judicial Review of Administrative Agency Decisions).