

**State of Maryland**  
*State Labor Relations Board*

In the matter of:	)	
<i>Rodney Likin, et al,</i>	)	
	)	
Petitioner,	)	
	)	
v.	)	SLRB Case No 2020-U-03
	)	
<i>Department of Budget and</i>	)	
<i>Management,</i>	)	
	)	
Respondent.	)	
	)	

**DECISION AND ORDER DENYING REQUEST FOR RELIEF  
AND DISMISSING CHARGE**

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

On November 18, 2019, Petitioners Rodney Likin, Horace Pepper, Kevin Baylin, Ryan Shifflet, and Scott Peterson (“Complainants”), filed with the State Labor Relations Board (“SLRB”) an Unfair Labor Practice (ULP) Complaint (“Complaint”) against Heinrich Losemann, Jr., Director, Employee and Labor Relations Division, Department of Budget and Management (“DBM”), and Joseph Consoli, Fleet and Travel Administrator, DBM (“Respondents”).<sup>1</sup> This Complaint was filed pursuant to SLRB regulations at COMAR 14.32.05.

In their Complaint, Complainants assert that the State committed an unfair labor practice by informing them on February 6, 2019, that they would “no longer be permitted to use... [their] State vehicle to commute from... [their] residence to work, or any out of state function unless for official business or training” when “[t]he State has already established a pattern / precedent in this matter which has been in place and followed for nearly twenty years.”

On December 3, 2019, the State of Maryland filed a Motion to Dismiss the Complaint.

Pursuant to SLRB Regulations at COMAR §14.32.05.02G - H, the SLRB Executive Director investigated the allegations contained in the Complaint, and, on January 21, 2020, issued a recommendation to the SLRB that the matter be dismissed on the basis that it was “untimely filed” and “fails to state a claim upon which Board relief may be granted.”

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<sup>1</sup> Pursuant to State Personnel and Pensions Article, § 3-205(b)(3), the SLRB is authorized to “investigate and take appropriate action in response to complaints of unfair labor practices and lockouts.”

## II. FACTUAL BACKGROUND

This Complaint arises subsequent to a grievance filed by Complainants on February 11, 2019, arising out of the same undisputed facts, as summarized below.

Complainants are employees of the Department of Public Safety and Correctional Services (“DPSCS”). Each of the Complainants reside outside of Maryland. Due to the circumstances surrounding their employment, the DPSCS assigned each of the Complainants a State vehicle to use, including for their commute to and from home. On February 6, 2019, Complainants were directed that they could no longer use their vehicles to commute out of State, and, thereafter, filed a grievance on February 11, 2019, challenging this directive.

Complainants pursued their grievance through the State Employees’ statutorily prescribed grievance procedure, which ultimately resulted in a hearing before the Office of Administrative Hearings (“OAH”). On November 1, 2019, the OAH concluded that Complainants “failed to establish that the DPSCS improperly precluded them from using their assigned State vehicle to commute out of State,” and ordered that the “[g]rievance be denied.”

## III. ANALYSIS

### a. Timeliness

Regulations adopted by the SLRB establish the timeframe under which a complainant must file an unfair labor practice complaint. More specifically, COMAR 14.32.05.01 states:

A. Party. A party alleging an unfair labor practice, as defined in State Personnel and Pensions Article, §3-306, Annotated Code of Maryland, may request relief from the Board by filing a complaint with the Executive Director, within 90 days of knowledge of the occurrence...

C. Timeliness. The complaint shall be filed with the Board within 90 days from 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.

COMAR 14.32.05.01(A), (C).

As explained above, Complainants allege that Respondents informed them on February 6, 2019, that they would “no longer be permitted to use... [their] State vehicle to commute from... [their] residence to work, or any out of state function unless for official business or training,” and, as a result, Complainants subsequently filed a grievance on February 11, 2019. It is clear, therefore, that Complainants knew of the occurrence of the alleged violation as early as February 6, 2019 and no later than February 11, 2019. Since they did not file the instant Complaint until November 18, 2019, well beyond the 90-day time limit, we find that the Complaint is untimely, and hereby dismissed.<sup>2</sup>

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<sup>2</sup> As part of the Complaint, Complainants contend that the State did not strictly follow the statutorily prescribed grievance process, although it is undisputed that the grievance was referred to OAH following step 3 and that OAH

## **b. Statutory Grievance Procedure and Unfair Labor Practice Complaints**

Although we find the Complaint in this matter to be untimely, we offer additional guidance because this case involves the filing of a grievance and an unfair labor practice complaint based on essentially the same facts.

The State Personnel and Pensions (“SPP”) Article establishes a dual system for resolving employment and labor disputes – one system for resolving employee grievances and another for resolving unfair labor practice complaints.

The SPP defines “grievance” as “a dispute between an employee and the employee's employer about the interpretation of and application to the employee of: (i) a personnel policy or regulation adopted by the Secretary; (ii) any other policy or regulation over which management has control; or (iii) any term or condition of a memorandum of understanding between the State and the exclusive representative,” SPP 12-101(d)(1), and provides that the statutory grievance procedure is the “exclusive remedy” for seeking administrative relief for violations of the SPP *unless* another procedure is provided for therein. Md. State Pers. & Pens. Art. §§ 12-101(d), 12-103(b) (West 2020). Subsection (iii) was added to SPP 12-101(d)(1) effective February 29, 2020, and “expands application of State employee grievance proceedings to include a dispute between an employee and the employee’s employer about the interpretation and application of any term or condition of a memorandum of understanding (MOU) between the State and the exclusive representative.” H.B. 891, Fiscal and Policy Note, Reg. Sess. 2019 (Md. 2019).

While these Sections provide for the administrative relief of grievances, as indicated above, they are not the only means the legislature has established for resolving disputes between employers and employees under the SPP. More specifically, Section 3-205(b)(3) of the SPP provides, “[i]n addition to any other powers or duties provided for elsewhere in this title, the [State Labor Relations] Board may... investigate and take appropriate action in response to complaints of unfair labor practices and lockouts.” Md. State Pers. and Pens. Art. § 3-205(b)(3).

In the dual system provided under the SPP, cases may arise when an accommodation must be made between the SLRB’s jurisdiction to prevent unfair labor practices and the statutory policy favoring collective bargaining and the resolution of grievances through contractual or statutory procedures. The SLRB’s mandate to “investigate and take appropriate action in response to complaints of unfair labor practices”, therefore, must include the authority to decide unfair labor practice complaints that also involve the interpretation and/or application of a term or condition of an MOU or policy implemented by the State, and the discretion to defer alleged unfair labor practices to applicable grievance procedures, when such deferral furthers the purposes and policies of the SPP. See AFT-Healthcare v. Hogan, 2015-U-06, (dismissing unfair labor practice complaint alleging improper unilateral actions on the part of the State, and deferring the matter to the dispute resolution procedure under the parties MOU, on the basis it involved the interpretation and/or application of a term or condition of the MOU and the means of resolving the issue was limited to the dispute resolution procedure).

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rendered a final decision denying the grievance. Whether or not the grievance procedure was strictly followed, Complainants had knowledge of the policy change as early as February 6, 2019. Therefore, in order to be timely under COMAR 14.32.05.01(A) and (C), Complainants would have had to have filed within 90 days of that date.

In a similar setting, courts have long held that the National Labor Relations Board<sup>3</sup> has the discretion to defer unfair labor practice proceedings to the grievance and arbitration procedures under collective bargaining agreements, but it is not obligated to do so. Roadway Express, Inc. v. NLRB, 647 F.2d 415 (4<sup>th</sup> Cir. 1981); NLRB v. Am Nat'l Can Co., 924 F.2d 518, 522 (4<sup>th</sup> Cir. 1991) (explaining that “Board’s decision concerning deferral to arbitration is to be affirmed unless found to be an abuse of discretion”).

**IV. CONCLUSION**

Because Complainants failed to file their Complaint within 90 days of the alleged violation pursuant to COMAR 14.32.05.01, the Complaint is hereby dismissed.

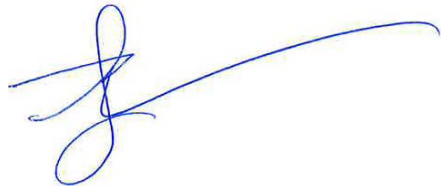
**V. ORDER**

IT IS HEREBY ORDERED THAT THE CHARGE IN SLRB Case No. 2020-U-01 IS DISMISSED.

**BY ORDER OF THE STATE LABOR RELATIONS BOARD:**



Richard A. Steyer, Chair



LeRoy A. Wilkison, Member



Nancy J. Courson Cooke, Member



Olivia D. Vaughns, Member

Annapolis, MD

November 10, 2020

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<sup>3</sup> Decisions of the NLRB are not binding on the SLRB.

## **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).