State of Maryland
State Higher Education Labor Relations Board

In the matter of:	)	
	)	
Maryland Classified Employees Association,	)	
	)	SHELRB CASE
Petitioner,	)	No. ULP 2006-01
v.	)	Opinion No.21
	)	
Salisbury University,	)	
	)	
Respondent	)	
	)	

DECISION AND ORDER DISMISSING CASE
AND DEFERRING TO GRIEVANCE PROCEDURES

Procedural History and Summary of Case

On February 9, 2006, the Maryland Classified Employees Association ("MCEA") filed an unfair labor practice petition on behalf of the non-exempt unit of employees at Salisbury University. In that petition, MCEA alleged that Salisbury University ("SU") deprived employees of their negotiated right to take classes at the University and receive tuition remission for those classes, as set forth in the Memorandum of Understanding ("MOU") between the parties.[1] SU responded that its enforcement of the tuition reimbursement program was consistent with the terms negotiated in the MOU.[2] This case comes before the State Higher Education Labor Relations Board ("SHELRB"), after Acting Executive Director Erica Snipes issued an

[1]More specifically, MCEA alleged that SU employees were told that they were only eligible for tuition remission for one course per semester (meeting no more than one hour three times per week) during work hours and could not use their own leave to take additional classes. MCEA alleges that this instruction was contrary to the MOU, which entitled employees to take up to eight credit hours and does not restrict an employee's right to take more than one class using leave time.

The complaint also stated five other violations, but those allegations have been settled, and will not be discussed in this decision.

[2]SU alleges that the policy, both as written and as implemented, is that employees are entitled to take up to eight credit hours per semester, but no more than one class during work hours, subject to supervisory approval. SU further asserts that MCEA waived its right to pursue this unfair labor practice before this Board because it previously opted to pursue two related tuition remission complaints through its grievance procedures provided for in the MOU.

Investigative Report and Recommended Probable Cause Determination, finding that sufficient evidence to support the prima facie elements of the alleged violations and recommending that probable cause exists on MCEA's allegations.[3]

For the reasons stated below, we find that this is a classic contract interpretation issue that would be best resolved through the parties' grievance procedures, as set forth in the MOU. Accordingly, we dismiss the complaint allegations, but retain jurisdiction over the complaint for certain limited circumstances, outlined below.

Analysis

In considering this case, we look to the law of the National Labor Relations Board (NLRB) for guidance.[4] The NLRB has frequently exercised its considerable discretion to defer consideration of unfair labor practices to the grievance/arbitration provisions provided for in negotiated collective bargaining agreements, when doing so will serve the fundamental aims of the Act. *See Dubo Mfg. Corp.*, 142 NLRB 431 (1963); *Collyer Insulated Wire*, 192 NLRB 837 (1971); and *United Technologies Corp.*, 268 NLRB 557 (1984). As reflected in Congressional policy in Section 203(d) of the Labor Management Relations Act:

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.

Moreover, as the Board has noted in its case law, employers and unions that enter into collective-bargaining agreements with provisions for binding arbitration (or other binding dispute resolution) thus are entitled to expect that disputes within the coverage of those provisions will be adjudicated by the method they voluntarily selected.[5] Denying the parties their agreed-upon procedure by imposing an altogether different process for handling contractual disputes, deprives the parties of both the benefit of their bargain and control over the administration of their

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[3]Specifically, Acting Executive Director Snipes found probable cause, pursuant to SHELRB regulations at COMAR § 14.30.07.01I (refusing to bargain in good faith with the exclusive bargaining representative) and § 14.30.07.01.A (interfering with, restraining, or coercing employees in the exercise of rights under the Collective Bargaining Law).

[4]The National Labor Relations Board is the federal agency responsible for interpreting the National Labor Relations Act (NLRA), the premier federal labor law statute governing collective bargaining in the private sector. See 29 U.S.C. § 151 et seq. Although this state's collective bargaining statute was modeled on the NLRA, there are significant differences between SPP Title 3 and the NLRA. Thus, the SHELRB is not bound by the precedent of the NLRB, but merely cites that law as an instructive analytical framework in this case.

[5]See, e.g., *Wonder Bread*, 343 NLRB No. 14 (2004); *Caritas Good Samaritan*, 340 NLRB 61 (2003).

agreement.[6]

Thus, in keeping with its Congressional mandate and the policies noted above, in the seminal Board decision of *Collyer Insulated Wire*, 192 NLRB 837 (1971), the Board established the general rule that it would refrain from adjudicating an unfair labor practice issue that arises from the parties' collective-bargaining agreement if the agreement provides for binding dispute resolution as the method of resolving disputes over the meaning of its provisions. The *Collyer* decision identified the factors it would consider in determining whether a dispute is appropriate for deferral to arbitration: (1) the dispute arises within the confines of a long and productive collective-bargaining relationship; (2) no claim is made of employer animosity to the employees' exercise of protected rights; (3) the employer has asserted its willingness to arbitrate the dispute; (4) the parties' contract provides for arbitration in a very broad range of disputes; and (5) the dispute is well suited to resolution by arbitration. Id. at 841-842. See also *United Technologies*, 268 NLRB 557 (1984).[7]

With the *Collyer* factors in mind, we find that deferral to the binding grievance resolution procedures detailed in the MOU is appropriate. Here, SU and MCEA have enjoyed a bargaining relationship for at least two years. There is no claim of animosity on the part of SU toward the employees' exercise of their protected rights. While SU has not specifically expressed its willingness to submit this dispute to the grievance process, it has agreed to the resolution of two related grievances through that process. This unfair labor practice charge, while stated in broader terms than those grievances, concerns the same underlying issue as those two grievances, which are currently being consider by an ALJ at the Office of Administrative Hearing ("OAH")–i.e. how to interpret the tuition remission policy. Thus, it makes sense to have an ALJ consider all of these complaints at the same time, if possible.

Moreover, the MOU provides for the grievance procedures to apply in a broad range of disputes, including the instant dispute which involves a classic issue of contract interpretation concerning SU's tuition reimbursement policies.[8] Finally, the instant dispute is well suited to

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[6]The Board is aware that the MOU provides the parties the choice between pursuing a grievance internally (culminating in the ALJ decision) or pursuing other legal recourse, such as this Board. However, we do not find that this choice limits this Board's right to refuse to assert jurisdiction, particularly where, as here, the parties are currently litigating related grievances before an ALJ.

[7]While the *Collyer* factors have typically applied to collective bargaining agreements containing provisions for arbitration, we find that the same principals apply here, where the parties have opted to make an administrative law judge at the Office of Administrative Hearings ("OAH") the final arbiter of grievances. In both cases, the decision maker is endowed with final, binding authority to interpret the contract for purposes of deciding the grievance.

[8] The MOU defines a grievance as follows:

Section 25.1 - Definition

> "Grievance" means any cause of complaint arising between an employee who is subject to this MOU and the University on a matter concerning discipline, alleged discrimination, promotion, assignment, interpretation or application of University rules or departmental procedures, or interpretation or

resolution by the grievance process because the meaning of the contract is at the heart of the dispute. An administrative law judge is as qualified as this Board to resolve the conflicting interpretations of the MOU.

Further, the SHELRB finds that deferral of this case, and possibly other cases involving contract interpretation, will improve the ability of this agency to fulfill its stated mission. The SHELRB was created by the state legislature to help facilitate harmonious labor relations between those who manage the state's universities and the Unions who represent the employees at those universities. The duties of the SHELRB include such varied responsibilities as: overseeing representation elections, trying cases and issuing decisions interpreting the collective bargaining statute, and promulgating regulations to enforce the collective bargaining statute. Given the scope of the SHELRB's duties, and the fact that its members serve voluntarily, the time and resources of its members are best reserved for issues that do not concern routine contract interpretation. Thus, although the SHELRB has authority to assert its jurisdiction over the alleged unfair labor practice as issue, we find that deferring to the parties' already established grievance process better suits the needs both of the parties and this Board.

Conclusion

While the SHELRB will dismiss this case from its docket, jurisdiction of this proceeding is retained for the limited purpose of entertaining an appropriate and timely motion for further consideration on a proper showing that either (a) the dispute has not, with reasonable promptness after the issuance of this Decision and Order, either been resolved by amicable settlement in the grievance procedure; or (b) the grievance procedures have not been fair and regular or have reached a result that is repugnant to the Act.

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application of the terms of this MOU, over which the University management has control. However, if the complaint pertains to the general level of wages, wage patterns, fringe benefits, or to other broad areas of financial management and staffing, it is not a grievable issue.

ORDER

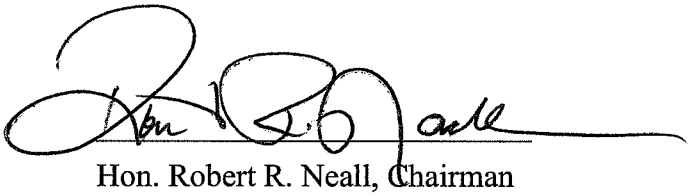
IT IS HEREBY ORDERED THAT:

The unfair labor practice complaint in case 2006-01 is hereby dismissed.

BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS BOARD

Annapolis, MD

July 20, 2006



Hon. Robert R. Neall, Chairman

Appeal Rights

Any party aggrieved by this action of the Board may seek judicial review in accordance with Title 10 of the State Government Article, Annotated Code of Maryland, § 10-222 and MD R CIR CT Rule 7-201 et seq.

Certificate of Service

It is hereby certified that the attached Decision in SHELRB Case No. ULP 2006-01 was sent (via electronic mail and U.S. Mail) to the following parties on this 20th day of July, 2006.

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