

State of Maryland
State Labor Relations Board

_____)	
In the matter of:)	
<i>Doyle R. Ham, Jr.,</i>)	
)	SLRB ULP
)	Case No. 2014-U-09
Petitioner)	
)	
v.)	
)	
<i>Department of Public</i>)	
<i>Safety and Correctional</i>)	
<i>Services,</i>)	
)	
Respondent.)	
_____)	

Decision and Order

I. Background and Procedural Matters

On February 24, 2014, Petitioner Doyle R. Ham, Jr. (Petitioner) filed an unfair labor practice (ULP) petition with the State Labor Relations Board (SLRB, the Board) against the Department of Public Safety and Correctional Services (DPSCS). The Executive Director of the SLRB sought a response to the petition from DPSCS, which was filed in due course. Upon receipt of DPSCS'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 August 14, 2014, and recommended dismissal on timeliness grounds and on grounds that Petitioner failed to state a claim that DPSCS had committed an unfair labor practice. Parties were given fifteen days, per Board regulations, to file a request for reconsideration of the Executive Director's Recommendation. The SLRB, having received no request for reconsideration regarding the Executive Director's Recommendations, is now prepared to issue a decision in this matter. COMAR 14.32.05.02.I(3) (authorizing final Board action upon receipt of

the Executive Director's report and opportunity to request reconsideration).

II. Board Review of Undisputed Facts and Positions of the Parties

The parties do not dispute that Petitioner is an employee within DPSCS. Petitioner has raised numerous allegations regarding the circumstances of his employment with DPSCS.

In response to the instant complaint, DPSCS filed a motion to dismiss on March 18, 2014, arguing for dismissal on two grounds: that Petitioner has failed to state a claim for which relief can be granted by the SLRB, and that Petitioner's complaint was untimely filed with the SLRB.

III. Analysis & Conclusion

Pursuant to COMAR 14.32.05.01(C), a "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."

Petitioner's numerous allegations are set forth in his complaint at numbers 3a-3k. Reviewing these allegations and Petitioner's supporting documents, assuming the truth of well-pleaded facts and drawing reasonable inferences therefrom, the conclusion we reach is that the alleged violations in numbers 3a-3h occurred, or their occurrence should have been discovered, more than 90 days before Petitioner filed the instant complaint on February 24, 2014.

This conclusion is supported by the fact that all of the documents offered in support of the allegations in numbers 3a-3h are marked with dates from October 2013 or earlier. This conclusion, also, is confirmed by Petitioner in his e-mail of March 27, 2014 to the Executive Director, in which he contends that the allegations in numbers 3i-3k are timely and explains that information related to the other allegations was provided as background. In sum, Petitioner's unfair labor practice complaint, as based on the allegations in numbers 3a-3h of the complaint, is untimely and is dismissed for that reason.

Assuming *arguendo* that the allegations in numbers 3i-3k are timely, we conclude that dismissal of Petitioner's unfair labor practice complaint, as based on these remaining allegations, is warranted on grounds that he has failed to state a claim on which relief can be granted.¹ COMAR 14.32.05.02.G(2)(a) (dismissal for failure to "state an actionable

¹ As part of the allegation in number 3j, Petitioner refers to "1-10-13" as the date on which he was absent from work, which absence was occasioned by some discussion and, apparently, lead to Petitioner being

claim under the Maryland Collective Bargaining Law, State Personnel and Pensions Article §§ 3-101 – 3-602,...;).

An employer is prohibited from engaging in any unfair labor practice, including:

- (1) interfering with, restraining, or coercing employees in the exercise of their rights under this title;
- (2) dominating, interfering with, contributing financial or other support to, or assisting in the formation, existence, or administration of any labor organization;
- (3) granting administrative leave to employees to attend employer sponsored or supported meetings or events relating to an election under § 3-405 of this title, unless the employer grants employees at least the same amount of administrative leave to attend labor organization sponsored or supported meetings or employee meetings;
- (4) discriminating in hiring, tenure, or any term or condition of employment to encourage or discourage membership in an employee organization;
- (5) discharging or discriminating against an employee because of the signing or filing of an affidavit, petition, or complaint, or giving information or testimony in connection with matters under this subtitle;
- (6) failing to provide all employee organizations involved in an election the same rights of access as prescribed by the Board through regulation;
- (7) engaging in surveillance of union activities;
- (8) refusing to bargain in good faith; or
- (9) engaging in a lockout.

State Personnel & Pensions Article (“SPP”) § 3-306(a)(1)-(9).

Petitioner appears to allege in number 3i that a certain Mr. Kaufmann is interfering with his work by not procuring items ordered by Petitioner. In number 3j, Petitioner appears to allege that he has been asked, improperly, to present a “leave slip” when taking time off from work. Finally, in number 3k, Petitioner alleges some kind of impropriety with respect to his being called into work during a snowstorm. Assuming the truth of well-pleaded facts in numbers 3i-3k, and drawing reasonable inferences therefrom, we cannot identify any allegation that states a violation of SPP § 3-306(a)(1)-(9) or any other recognized unfair labor practice. Accordingly, Petitioner’s complaint, with respect to these remaining allegations, must be dismissed for failure to state a claim for which relief can be granted.

required to fill out a “leave slip.” We have not located in the record any documentation supporting the allegation in number 3j; however, based on the materials provided with the Complaint, we will take the reference to “1-10-13” as a reference to January 10, 2014 and treat the allegation as timely.

IV. Order

For the reasons set forth above, the unfair labor practice complaint in SLRB ULP, Case No. 2014-U-09, is hereby dismissed.

Issue Date: March 7, 2016

Annapolis, Maryland

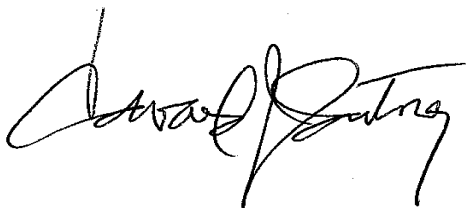
For The State Labor Relations Board:



June M. Marshall, Chair




Sherry L. Mason, Member



Edward J. Gutman, Member



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).