

State of Maryland
State Labor Relations Board

In the matter of:)	
<i>American Federation of State,</i>)	
<i>County & Municipal Employees,</i>)	
<i>Council 3 ("AFSCME Council 3"),</i>)	
)	
)	
Petitioner)	
)	SLRB Case No. 2018-U-25
v.)	
)	
<i>Colonel William M. Pallozzi,</i>)	
<i>Superintendent,</i>)	
<i>Maryland Dept. of State Police</i>)	
)	
Respondent)	
)	

Executive Director's Investigative Report & Recommended Determinations

On April 10, 2018, the American Federation of State, County & Municipal Employees Council 3 (AFSCME, Council 3) filed an Unfair Labor Practice (ULP) against Colonel William M. Pallozzi, Superintendent of the Maryland Department of State Police. This ULP was filed pursuant to State Labor Relations Board (SLRB) regulations at COMAR 14.32.05, and after receipt of the ULP, the Executive Director notified the respondent of the complaint, and requested that a response be filed with the SLRB. On April 20, 2018, the Maryland State Police (MSP) filed a response.

Pursuant to SLRB Regulations at COMAR §14.32.05.02G - H, the Executive Director must investigate allegations contained in a properly filed ULP petition to determine whether probable cause exists for the SLRB to proceed on the case. After having reviewed the pleadings, exhibits and documentary evidence from both parties, in addition to conducting my own investigation, I hereby find and recommend to the full membership of the SLRB that this matter continue for full Board processing.

Undisputed Facts

The Maryland State Police (MSP) is a law enforcement agency employing both sworn and civilian personnel. Rick Bartlett (Bartlett) is employed as a medevac pilot with the MSP. He is stationed at Trooper 5, Cumberland, and currently serves as president of AFSCME Local 3675.

In his capacity as a local president, Bartlett has used the back office of the hanger at Trooper 5 for union business, storing union related paperwork, documents, and files within that space. As local unit president, Bartlett has been requested to represent other unit employees in performance reviews. Bartlett undertook this representation for pilot Smith in 2016 and 2017. Based on MSP review of Smith, for periods during 2017, Smith was removed from Trooper 5 and required to go through training and evaluations periods to address performance issues.

On February 20, 2018, Bartlett attended an MSP meeting where Smith's performance review was addressed, and the MSP assessment was that Smith was not meeting standards as a pilot. As a result, the MSP returned her to Trooper 5 as a second in command pilot.

On February 21, Bartlett was sent a text message that the union related materials had been removed from the back office at the hanger of Trooper 5, and when Bartlett arrived for his work shift that evening, he discovered that the materials had in fact been removed. Bartlett was told that Master Trooper Levasseur (Levasseur) had removed the union-related materials from the back office.

Disputed Items

The following items/issues appear to be in dispute:

- motivation of Levasseur in removing the union-related materials from the back office of the Trooper 5 hanger.
- actions and words of Levasseur and other employees towards Bartlett regarding Bartlett's representation of pilot Smith
- viewpoint of Bartlett regarding the removal of the materials

Petitioner's Position/Information

AFSCME alleges that the actions undertaken by Levasseur and the failure of MSP to discipline him for those actions, is a violation of State Personnel & Pensions (SPP) Article 3-306(a)(1), directing that the State and its officers and employees shall not interfere with, restrain, or coerce employees in the exercise of their representational rights. AFSCME argues that during 2016-17, while Smith was going through performance review, she had a right to the representation provided by Bartlett and that Bartlett was undertaking permitted duties as the local unit president to both represent her in the performance evaluation, as well as mitigate against the hostile work environment that AFSCME alleges was present throughout. AFSCME alleges that the removal of Bartlett's union-related files and paperwork in the back office of the hanger at Trooper 5 was to intimidate and retaliate against Bartlett for having represented Smith. Further, AFSCME alleges that Levasseur's treatment of Bartlett (confronting him with complaints about Bartlett representing Smith, stating that Bartlett shouldn't have represented her, that Bartlett's representation of Smith was objectionable to all other employees at Trooper 5, and had caused discontent) was also retaliatory and intimidation. AFSCME states that the union made Levasseur's words and

actions toward Bartlett known to the MSP, and alleges that in failing to discipline Levasseur, MSP is in violation of SPP Article 3-306(a)(1).

Respondents' Position/Information

The MSP response to AFSCME's petition indicates surprise and disappointment with AFSCME's petition. The MSP indicates that it (through Captain Keith McMinn, Assistant Commander of the Aviation Division) was aware that Bartlett's items had been removed from the back office space he had been using, and that certain employees had approached Bartlett about his representation of pilot Smith. The MSP stated that three days after Captain McMinn became aware of Bartlett concerns, he directed that an inquiry be conducted. Per Captain McMinn's directive, on the same day that the inquiry was directed, First Sergeant Leppert from Aviation Division Flight Operations, spoke with Bartlett. MSP alleges that in that conversation, Bartlett admitted that he should have been "more cognizant of the contested office space." (response, p. 1) Further, MSP alleges that in the conversation between Leppert and Bartlett, Bartlett stated that Lavasseur was not overly rude, and that Bartlett did not receive any threats from Lavasseur. (response, p. 1). Finally, MSP's response alleges that Bartlett "made it clear to management's representative" that he didn't wish to pursue these matters further (response, p. 1), and indicates that MSP didn't receive information about the currently filed matter until four weeks later.

Beyond discussing these conversations with Bartlett, the MSP response alleges that two days after hearing about the problems Bartlett had, that Leppert and another officer held a "mandatory section meeting to discuss the expectations for professional behavior and to identify and resolve any personal lingering disputes." (response, p. 1) At that meeting, MSP states that Bartlett was advised that he could continue to use the back office for union business, so long as so doing did not interfere with operations. MSP alleges that at this time, Bartlett responded that he was not going to move the materials back to the space. The MSP further indicates that the subject of the office space came up nearly a month after this meeting, and again, alleges that Bartlett again stated that he wouldn't be moving the union materials back into the office.

MSP specifically denies AFSCME's allegation that MSP is failing to discipline Levasseur. MSP notes that per the Law Enforcement Officer's Bill of Rights (LEOBR), the MSP has a year to investigate and file charges, and that currently a full internal investigation is underway.

Analysis

COMAR §14.32.05.02G – H authorizes various actions undertaken by the Executive Director regarding unfair labor practices filed before the SLRB. Under these sections, the Executive Director shall, subject to SLRB review, consider properly filed complaints, and investigate the facts. Further, the Executive Director should recommend SLRB dismissal of the matter if a petitioner fails to state an actionable claim under SPP Sections 3-101 through 3—602, or appropriate COMAR regulations; or determines that the SLRB has no jurisdiction over the claims presented. Regarding these COMAR provisions, this matter was properly

filed as a violation of SPP Section 3-306(a)(8), with appropriate service to the respondents, and AFSCME has alleged violations of statutory provisions committed by a state employer over which the SLRB has jurisdiction. As to an investigation of the facts, it seems AFSCME and MSP allege opposing viewpoints and motivations regarding the removal of the items from the back hanger office, and the treatment of Bartlett regarding his representation of pilot Smith.

COMAR 14.32.05.02H authorizes the Executive Director to set forth a written report as to whether probable cause exists to believe that the unfair labor practice has occurred. In this matter, AFSCME alleges that, based on the treatment of Bartlett, an unfair labor practice has occurred.

AFSCME has sufficient probable cause to allege an unfair labor practice—the fact that the MSP has raised defenses or disputed AFSCME’s claims, does not in and of itself indicate a lack of probable cause. The response that MSP gives, particularly the opposing information regarding Levasseur’s treatment of Bartlett and Bartlett’s own description of his treatment surrounding representing pilot Smith, and his description of the circumstances surrounding the removal of the items from the back hanger office, would be appropriate for the full Board to consider in a further proceeding.

Recommendation

Based on the evaluation of the evidence gathered during the course of this investigation, and discussed in the above analysis, the Executive Director finds and recommends that the SLRB either hold a hearing in this matter, or delegate this matter to the Office of Administrative Hearings for findings of fact, proposed conclusions of law, and a proposed order.

Pursuant to SLRB Regulations at COMAR §14.32.05.02G - H, this report will be sent to the full membership of the SLRB as well as to the parties. Any party aggrieved by the Executive Director’s Report and Recommended Determinations is permitted to request reconsideration by the full board **no later than fifteen days** after the issuance of this report.


Erica L. Snipes, Executive Director
State Labor Relations Board


Date