

State of Maryland

State Higher Education Labor Relations Board

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|---------------------------------------|---|-----------------|
| In the matter of: |) | |
| |) | |
| Jose Miguel Navarrete, |) | |
| |) | SHELRB Case No. |
| |) | ULP 2013-01 |
| Complainant/Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| |) | |
| University of Maryland, College Park, |) | |
| |) | |
| Respondent. |) | |

INVESTIGATIVE REPORT AND RECOMMENDED DETERMINATIONS

Procedural History and Summary of Case

On July 12, 2012, Complainant/Petitioner, Jose Miguel Navarrete (hereafter “Navarrete”) filed an unfair labor practice complaint (“ULP Complaint”) pursuant to COMAR 14.30.07.01 and 14.30.07.02 against Respondent University of Maryland, College Park (hereafter “UMCP”) alleging that UMCP committed an unfair labor practice in violation of State Personnel and Pensions Article , Title3, Collective Bargaining, Sec. 3-101(c) (“SHELRB Statute”), which, among other things, requires bargaining over “wages, hours, and other terms and conditions of employment.” Sec. 3-501(b) obligates the state and the collective bargaining representative for its employees to “meet at reasonable times and engage in collective bargaining in good faith...” Sec. 3-502, states, that “collective bargaining shall include all matters relating to wages, hours, and other terms and conditions of employment.” Finally, section 3-306(8) makes it an unfair labor practice to “refuse(ing) to bargain in good faith.”

Among Navarrete’s allegations are that he had received a five day unpaid suspension, which supporting documentation states was for “wantonly offensive behavior/conduct towards a fellow employee, threatening of a co-worker, and ineffective performance of job duties” (See ULP Complaint, attachment one). Mr. Navarrete subsequently retained the services of his union to represent him in a grievance of the suspension. Further, Mr. Navarrete alleges that he had been injured at home, and used sick leave, however was told by UMCP Human Resources representatives that he couldn’t use sick leave to cover the time during the unpaid suspension. Mr. Navarrete alleges that he is still waiting, more than 90 days later, for the grievance procedure to conclude regarding the suspension. Mr. Navarrete alleges that UMCP is not following its grievance procedures.

On August 6, 2012, UMCP filed a response to the ULP Complaint, with documentation in support of its response. In its response, UMCP sets forth its position regarding Navarrete's charges and requested that the SHELRB ("SHELRB" or "Board") hold the matter in abeyance until the SHELRB makes a decision in ULP 2013-02, in which Mr. Navarrete makes certain allegations against his union relative to the union's activity regarding the same underlying facts.

Upon receipt of Respondent's Answer, the Executive Director, pursuant to SHELRB Regulations COMAR 14.30.07.04F *et seq.* (Investigations) is authorized by the Board to investigate and determine whether probable cause exists to believe that the alleged unfair labor practice has occurred, and to present such findings and recommendations to the Board for final decision by the Board.

Recommendation

After having reviewed the pleadings and supporting documents, relevant case law presented by either or both parties, previous and precedential decisions made by this Board, and conducting my own investigation as warranted and appropriate, I recommend that there is no probable cause for this Unfair Labor Practice Charge and that it be dismissed.

Support for Recommendation

Section 3-306(a), State Personnel & Pensions, Title 3, Collective Bargaining, lists the following unfair labor practices, in terms of allegations that an employee may make against a university employer:

- (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 an labor organization;
- (3) granting administrative leave to employees 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 to the Board through regulation;
- (7) engaging in surveillance of union behavior;
- (8) refusing to bargain in good faith;
- (9) engaging in a lockout.

In this matter, contrary to the statutory provisions regarding the filing of an unfair labor practice complaint, nearly all of which require a connection to union activity or involvement with a union, there is no claim, or supporting evidence or documentation, indicating that anything has been or is being done to Mr. Navarrete based on his union activity.

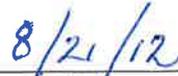
Recommendation on Probable Cause

At this stage of ULP proceedings, my findings are limited to a probable cause determination. The SHELRB itself has the authority to issue ultimate findings of fact and conclusions of law on the full

merits of ULP cases. Based on the pleadings, the documents submitted, and my investigation, I recommend that probable cause in this matter does not exist.

Recommendation Submitted By,


Erica L. Snipes,
Executive Director, MD State Labor Relations Boards
State Higher Education Labor Relations Board


Date

Subsequent Filing Rights

As per SHELRB Regulations at COMAR 14.30.07.04H(1), a Petitioner disputing a recommendation of no probable cause, has fifteen (15) days to file a Request for Reconsideration with the State Higher Education Labor Relations Board.