

State of Maryland
State Higher Education Labor Relations Board

In the matter of:)	
)	
Jose Miguel Navarrete,)	
)	SHELRB Case No.
)	ULP 2013-02
Complainant/Petitioner,)	
)	
v.)	
)	
)	
AFSCME MD, Local #1072)	
)	
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 AFSCME MD, Local #1072 (hereafter AFSCME, MD), alleging that AFSCME, MD committed an unfair labor practice in violation of State Personnel and Pensions Article , Title3, Collective Bargaining (“SHELRB Statute”), which, among other things, requires bargaining over hours, wages, and certain terms of employment, as well as requiring or prohibiting certain behaviors and actions relative to the collective bargaining relationship. Sec. 3-306(b) defines various unfair labor practices which may be alleged against an employee organization, and obligates an employee organization to fairly represent employees in collective bargaining.

Navarrete’s allegation is that AFSCME, MD had failed to represent him regarding a five day suspension (given to him, based on his own description, due to a “series of misunderstandings with a co-worker”—complaint, p.2) in early April of 2012. Navarrete alleges that during the time surrounding this suspension (during which he also suffered a personal injury at home resulting in some medical difficulty), AFSCME, MD had not returned his phone calls, or met with him until April 24, nearly three weeks after the main incidents had occurred. Navarrete further alleges that the meeting that occurred between himself and AFSCME, MD representatives was heated¹, and that the AFSCME, MD representatives told him that

¹ Navarrete alleges that the difficult meeting was due to the fact that the AFSCME, MD representatives he met with were the same people that “let [him] represent [him]self” at another grievance last year that he lost. In its

they would call him as soon as they heard from the university. Navarrete alleges that some time had passed and he hadn't heard from anyone regarding this situation, so he e-mailed the union on June 4, 2012 to find out what was happening. Navarrete alleges that he received a call from AFSCME, MD two days after he sent the e-mail, and was told by the union at that point, that AFSCME, MD was trying to get university authorities to agree to allow Navarrete to present his own version of the situation underlying the five day suspension, but that a date for when that would happen wouldn't be available until August. Following his receipt of this information, Navarrete filed two charges with the Higher Education Labor Relations Board—this current complaint against AFSCME, MD, and a complaint against his employer.

On August 6, 2012, AFSCME, MD filed a response to the ULP Complaint, with documentation in support of its response. In its response, AFSCME, MD denies that it has committed an unfair labor practice per Navarrete's allegations. Although Navarrete does not in his current complaint make allegations based on the circumstances of a grievance he had undertaken based on a May 18, 2001 charge from UMCP, AFSCME, MD states that it did in fact represent Navarrete in the earlier incident, despite AFSCME, MD's claim that Navarrete refused to cooperate with the union's staff. AFSCME, MD states that the matter was ultimately referred to the Office of Administrative Hearings (OAH), where the union continued representing Navarrete. Regarding the suspension in April of 2012, AFSCME, MD indicates that the grievance is still pending, and that the union continues to represent Navarrete, and is making its best efforts to secure a date for a hearing from the university. Regarding the May 2001 grievance, AFSCME MD argues that any allegation that Navarrete would have would be time barred before the Labor Board. As to the April 2012 matter, AFSCME, MD argues that it is currently representing Navarrete, that Navarrete fails to specify an unfair labor practice, and that his claim is premature since the grievance hearing is pending.

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 this Unfair Labor Practice Charge be held in abeyance for not to exceed forty-five days, pending grievance proceedings.

Support for Recommendation

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

- (1) interfering with, restraining, or coercing employees in the exercise of their rights under this title;
- (2) causing or attempting to cause an employer to discriminate in hiring, tenure, or any term or condition of employment to encourage or discourage membership in an employee organization;
- (3) engaging in, inducing, or encouraging any person to engage in a strike, as defined in 3-303(a) of this subtitle;

response to this complaint, AFSCME, MD discusses this previous grievance, although this earlier grievance is not brought up among Navarrete's allegations for which he wants relief in the instant complaint.

- (4) interfering with the statutory duties of the State or an employer;
- (5) refusing to bargain in good faith;
- (6) not fairly representing employees in collective bargaining or in any other matter in which the employee organization has the duty of fair representation.

In Navarretes' allegation, a violation of 3-306(b)(6) is at issue for the grievance and underlying circumstances for the April 2012 incident. Any allegations stated or implied by reference regarding the May 2011 grievance are untimely based on Labor Board regulations at COMAR 14.30.07.04A, and will not be considered. Further, as there is information provided by both sides which indicates the grievance regarding the April 2012 suspension is pending, it is my recommendation that the Higher Education Labor Relations Board hold this matter in abeyance for up to forty-five days, pending the conclusion of grievance procedures. This recommendation is supported by earlier Board cases including MCEA v. SU, ULP 2006-01 (issued July 2006) and MCEA v. MSU, ULP 2007-02 (issued March 2007). In both of these matters, the Board held the case in abeyance pending the outcome of grievance proceedings.

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 this matter be held in abeyance as discussed above.

Recommendation Submitted By,



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



Date