

State of Maryland
State Higher Education Labor Relations Board

| | | |
|--------------------------------------|---|----------------------|
| In the matter of: |) | |
| <i>American Federation of</i> |) | |
| <i>State, County & Municipal</i> |) | |
| <i>Employees,</i> |) | |
| |) | SHELRB ULP |
| |) | Case No. ULP 2014-02 |
| Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| <i>Baltimore City Community</i> |) | |
| <i>College</i> |) | |
| |) | |
| |) | |
| Respondent |) | |

DECISION AND ORDER

On February 17, 2014, Petitioner, the American Federation of State, County & Municipal Employees (AFSCME) filed an unfair labor practice (ULP) petition before the State Higher Education Labor Relations Board (SHELRB or Board) against Baltimore City Community College (BCCC). AFSCME alleges that BCCC has failed to timely respond to information requests by AFSCME. On this basis, AFSCME maintains that BCCC has failed to bargain in good faith as prescribed under Title 3 of the State Personnel and Pensions Article, Annotated Code of Maryland (SPP), § 3-306(a)(8).

Pursuant to State Personnel and Pensions Article, Annotated Code of Maryland (SPP), § 3-2A-07(a), the SHELRB, through its Executive Director, may investigate “a possible violation of this title, or any regulation adopted under it; and (2) any other relevant matter.” In accordance with § 3-2A-07(a) and COMAR 14.30.07.04(F), the Executive Director conducted an investigation and reviewed written documents presented by the parties in this case. On June 26, 2014, the Executive Director issued her investigative report and recommendation for consideration by the SHELRB.

The SHELRB has considered the Executive Director’s report and recommendation and has decided to adopt her recommendation, as modified and set forth below, and as consistent with the Board’s Order.

Executive Director's Investigative Report & Recommended Determinations

On February 17, 2014, Petitioner, the American Federation of State, County & Municipal Employees (AFSCME) filed an unfair labor practice (ULP) petition before the State Higher Education Labor Relations Board (SHELRB) against Baltimore City Community College (BCCC). The Executive Director of the SHELRB sought a response to the petition from BCCC, which was filed in due course. Upon receipt of BCCC's response, the Executive Director has reviewed the pleadings and applicable statutory and regulatory language in preparation of issuing this report.

Pursuant to SHELRB Regulations (COMAR §14.30.07.04(F)), the Executive Director must investigate allegations contained in a properly filed ULP petition to determine whether probable cause exists for the SHELRB 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 State Higher Education Labor Relations Board that it find for AFSCME in this matter, with no need of a formal hearing or oral argument. The materials submitted in this matter inform the Board clearly enough for it to render a full decision. The results of my investigation, as described below, support this recommendation.

Undisputed Facts

The parties do not dispute that AFSCME is the current collective bargaining representative of the employees at BCCC. They agree that a letter from Petitioner AFSCME was sent to BCCC, dated November 22, 2013, requesting certain information about the employees in the Exempt, Non-exempt, and Sworn Police Units at BCCC.

Disputed Items

AFSCME states that the information it has requested, both through the letter dated November 22, 2013, and in a reminder e-mail dated January 23, 2014, was not provided in a timely manner. BCCC's response only indicates that the university has found no record of the reminder e-mail, it does not dispute that it received the November 22, 2013 letter, nor does it provide an explanation as to why it did not submit information to AFSCME until February 20, 2014.

Petitioner's Position/Information

AFSCME's position is that it requested information from BCCC in November 2013, and repeated its request in an electronic mail message in January 2014. AFSCME maintains that it has not received the information from BCCC in a timely manner. Since this ULP was filed, AFSCME notes that BCCC has provided the information the union had requested, however, AFSCME noted that the information it had requested in November 2013 was basic and easily ascertainable by the college, but nonetheless was provided to the union far from promptly. AFSCME argues that for these reasons, the Board should investigate this case, find for the union, and requests as remedy that the Board order BCCC to "promptly fulfill each and every request

for information”, and to “cease and desist from such unfair labor practices.” In addition, AFSCME requests any further additional relief as these circumstances may require.

Respondent’s Position/Information

BCCC states that it has provided the materials requested in the November 22, 2013 letter by electronic mail on February 20, 2014. BCCC claims to not be able to find the reminder e-mail dated January 23, 2014. BCCC indicates that it intends to comply with all applicable rules of the Public Information Act, as well as agreements made between itself and AFSCME. Further, BCCC points out that AFSCME had not sent information to the SHELRB indicating that BCCC had provided the information that AFSCME had requested, so BCCC sent information to the SHELRB stating that it had fulfilled AFSCME’s request.

Analysis

After reviewing AFSCME’s position, and ultimately the lack of explanatory response from BCCC, it seems that the facts speak for themselves. AFSCME wrote to BCCC in November 2013 requesting information, and BCCC didn’t provide the materials until February 2014. BCCC’s response indicates that it intends to comply with the Public Information Act, and agreements made between itself and the union. I see no explanation in BCCC’s response, as to why it didn’t provide the information that AFSCME requested until three days after AFSCME’s ULP was filed with the SHELRB. In addition to complying with the Public Information Act and agreements between itself and the Union, BCCC is also required to comply with the Collective Bargaining Law administered by the SHELRB, and it does not appear to have done so in this instance.

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 SHELRB find in favor of Petitioner AFSCME and issue a Cease and Desist Order in the Union’s favor. Regarding AFSCME’s request that the Board order BCCC to “promptly fulfill each and every request for information,” the Board should modify this requested relief, and order that BCCC should fulfill requests for information as may be required by the Public Information Act and the Collective Bargaining Law. There may be information that BCCC is not obligated to produce for the Union, so ordering BCCC to fulfill “each and every request for information” goes beyond what is appropriate.

ORDER

IT IS HEREBY ORDERED THAT:

1. BCCC and its agents shall bargain in good faith with AFSCME as the exclusive bargaining representative of certain of its non-exempt employees;

2. BCCC and its agents shall respond in a timely manner to AFSCME's written requests for information relevant and necessary to AFSCME's performance of its functions as the collective bargaining representative of the bargaining unit employees, consistent with the Collective Bargaining Law administered by the SHERLB and any other applicable law; and
3. BCCC shall post the Notice to Employees appended to this Decision and Order. BCCC shall post the Notice to Employees appended to this Decision and Order and provide certification of compliance with the aforementioned posting requirement to the Executive Director within fourteen (14) days of the date of this Order.

Annapolis MD

October 31, 2014



Karl K. Pence, Chair
State Higher Education Labor Relations Board

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, Section 10-222, and Maryland Rule 7-201, *et seq.*, Maryland Rules of Practice of Procedure.

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF THE STATE HIGHER EDUCATION LABOR
RELATIONS BOARD (SHELRB)**
An Agency of the State of Maryland

1. MARYLAND LAW GIVES EMPLOYEES THE RIGHT TO:

- (a) take part or refrain from taking part in forming, joining, supporting, or participating in any employee organization or its lawful activities;
- (b) be fairly represented by their exclusive representative, if any, in collective bargaining; and
- (c) except as provided in §§ 3-303 and 3-305 of this subtitle, engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(Md. Code Annotated, State Personnel & Pensions Article § 3-301(a)(1)-(3)).

- 2. Baltimore City Community College (BCCC) and its agents shall bargain in good faith with the American Federation of State, County & Municipal Employees (AFSCME) as the exclusive bargaining representative of certain of its non-exempt employees.
- 3. BCCC and its agents shall respond in a timely manner to AFSCME's written requests for information addressed to BCCC's Director of Human Resources and provide AFSCME with the requested information necessary and relevant to AFSCME's performance of its functions as the collective bargaining representative of the bargaining unit employees, consistent with the Collective Bargaining Law administered by the SHERLB and any other applicable law.

_____, 2014
Director of Human Resources

BALTIMORE CITY COMMUNITY COLLEGE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED IN CONSPICUOUS PLACES, INCLUDING ALL PLACES WHERE NOTICES TO EMPLOYEES ARE CUSTOMARILY POSTED, FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE LABOR RELATIONS BOARD'S EXECUTIVE DIRECTOR, (410) 260-7291.