

State of Maryland
State Labor Relations Board

In the matter of:)	
)	
<i>Michael Anthony Fountain,</i>)	
)	SLRB ULP
)	Case No. 2014-U-12
Petitioner,)	
)	
v.)	
)	
<i>Department of Health and</i>)	
<i>Mental Hygiene through</i>)	
<i>Shelly Amick, CEO,</i>)	
<i>Holly Center,</i>)	
)	
Respondent.)	
)	

DECISION

I. Background and Procedural Matters

On May 27, 2014, the State Labor Relations Board (“SLRB” or “Board”) received an Unfair Labor Practice Complaint (“Complaint”) filed by Michael Anthony Fountain against Shelly Amick, CEO of the Holly Center, which operates under the Maryland Department of Health and Mental Hygiene (“DHMH”) (Mr. Fountain and DHMH are collectively referred to as the “Parties” throughout this decision). The Executive Director sought a response to the Complaint from DHMH, and, on June 26, 2014, the SLRB received DHMH’s Answer to Complaint (“Answer”). Upon receipt of DHMH’s Answer, the Executive Director began a preliminary investigation of Mr. Fountain’s claims. The Executive Director reviewed the pleadings and applicable statutory and regulatory language in preparation of issuing an Investigative Report and Recommended Determination (“Report”). The Executive Director’s Report was issued on January 22, 2015 and recommended dismissal of this matter on the basis that the Complaint was not timely filed. The Parties were given 15 days, per Board regulations, to file a Request for Reconsideration of the Executive Director’s Report. On January 29, 2015, the SLRB received a Request for Reconsideration from Mr. Fountain.¹ The SLRB did not

¹ In his response, Mr. Fountain requests “the complaint goes to the board for further investigation . . .” In accordance with COMAR 14.32.05.02(I)(1), “[f]or a written report containing a finding of no probable cause, the complainant shall be given 15 days from service of the report to request that the Board reconsider the finding and recommended disposition. The Board shall take final action as appropriate.” In issuing this decision, the Board considered Mr. Fountain’s request, but nonetheless, dismisses the complaint for lack of timeliness in accordance with the Executive

receive any further filings from DHMH.

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

Mr. Fountain is an employee of the Holly Center, functioning under DHMH. At some point in June 2013, the CEO of the Holly Center, Ms. Shelly Amick, announced a trial period schedule change for the Coordinators/Teachers and Associates, requiring those employees to work every other weekend. Mr. Fountain's position as a "Work Adjustment Coordinator" subjects him to working "call ins", weekends, holidays, and overtime. At a meeting in late January 2014, after the trial period ended, Ms. Amick stated that the changed schedule would be continued.² The Parties agree that Mr. Fountain made complaints about the schedule change and that a grievance was filed but not pursued past the first step in the grievance process.

Mr. Fountain challenges the schedule change on the basis that it conflicts with the past practices of DHMH, and states that his unit has always worked a Monday through Friday schedule. Mr. Fountain alleges that Ms. Amick did not bargain with his unit representative regarding the change.

DHMH has responded on behalf of Ms. Amick and the Holly Center. It states that, beginning in 2012, the Holly Center started a work group to discuss scheduling issues and the possibility of creating a schedule where employees in Mr. Fountain's unit would work every other weekend. After meeting for more than a year, management proposed a three month trial period in which Mr. Fountain and his unit participated. The trial period was ultimately deemed successful by the Holly Center and, in late January 2014, the Holly Center announced the decision to continue the scheduling. DHMH acknowledges Mr. Fountain's objection to the scheduling, and further, that Mr. Fountain filed a grievance which he pursued through the first step in the grievance process. DHMH states that, to its knowledge, no one requested bargaining on the schedule change.

It is the position of DHMH that Mr. Fountain's Complaint does not allege an unfair labor practice in violation of §3-306 of the collective bargaining law. DHMH also argues that Mr. Fountain's complaint is untimely.

III. Analysis and Conclusion

COMAR 14.32.05.01(C) requires that unfair labor practice allegations be filed within 90 days of when the person knew or should have known about the alleged violation. In the instant matter, there was a lengthy planning and study process regarding the change to the schedule. Mr. Fountain was involved in this process and aware of the possibility of the schedule change. Moreover, while Mr. Fountain was not present at the meeting in late January 2014 at which the decision to continue the scheduling change was announced, a union representative attended that meeting at his request. Having directed the union representative to attend the meeting, it is reasonable to infer that Mr. Fountain was aware of the outcome of the meeting at least before

Director's Report.

² Mr. Fountain did not attend this meeting; however, Mr. Fountain's union representative attended this meeting at his request.

February 26, 2014, i.e., more than ninety days before he filed his ULP; if not, he should have been. A timely filing did not happen in this matter.

In addition to the findings and recommendations set forth in the Executive Director's Report, the SLRB finds that Petitioner's complaint does not allege that DHMH violated any of the enumerated unfair labor practices as set forth in Section 3-306 of the State Personnel and Pensions Article. Mr. Fountain's complaint is merely a grievance of DHMH's decision with regard to scheduling changes.

IV. Order

Based on the authority regarding timely filing of a case before the SLRB found in COMAR 14.32.05.01(C), the SLRB finds that Petitioner's Complaint was untimely filed. Additionally, the SLRB finds that Petitioner has failed to allege an unfair labor practice violation under Section 3-306 of the State Personnel and Pensions Article. Therefore, the Complaint is hereby dismissed.

Issue Date: March 7, 2016

Annapolis, Maryland

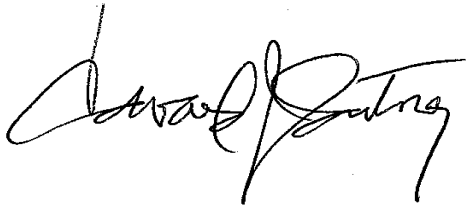
For The State Labor Relations Board:



June M. Marshall, Chair



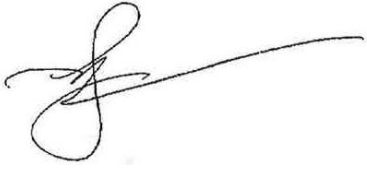
Sherry L. Mason, Member



Edward J. Gutman, Member



Susie C. Jablinske, Member

A handwritten signature in black ink, consisting of a large, stylized initial 'L' followed by a long horizontal stroke that tapers to the right.

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).