

State of Maryland
State Labor Relations Board

In the matter of:)	
<i>AFT Healthcare-Maryland,</i>)	
)	
Complainant)	SLRB ULP
)	Case No. 2015-U-06
v.)	
)	
<i>Lawrence J. Hogan, Jr., Governor</i>)	
<i>David Brinkley, Secretary,</i>)	
<i>Department of Budget and Management,</i>)	
<i>Cindy Kollner, Executive Director,</i>)	
<i>Office of Personnel/Benefits & Svc.,</i>)	
Respondents)	
)	

I. Background and Procedural Matters

On March 24, 2015, AFT Healthcare-Maryland (“Complainant”) filed an unfair labor practice (“ULP”) Complaint before the State Labor Relations Board (“SLRB”) against the Honorable Lawrence J. Hogan, Governor of Maryland, David Brinkley, Secretary of the Department of Budget & Management, and Cindy (Cynthia) Kollner, Executive Director of the Office of Personnel/Benefits & Services (“Respondents”). The Executive Director of the SLRB sought a response to the Complaint from Respondents, which was filed in due course.

Pursuant to SLRB Regulations (COMAR §14.32.05.02(G)-(H)), the Executive Director must investigate allegations contained in a properly filed ULP Complaint to determine whether probable cause exists for the SLRB to proceed on the case.

After reviewing the pleadings, exhibits and documentary evidence from both parties, in addition to conducting an investigation, the Executive Director issued an Investigative Report and Recommended Determinations finding that the ULP Complaint lacked probable cause pursuant to COMAR § 14.32.05.02(H)(1), and recommending that the ULP Complaint be dismissed in accordance with COMAR § 14.32.05.02(G)(2)(a).

Under 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 action, as appropriate.” Complainant filed a Request for Reconsideration on June 10, 2016.

II. Positions of the Parties

Complainant contends that Timberlie Adams, Deborah Chesser, Carolyn Davis, Gail Gaughan, Richard Greenwald, and Kevin Long are all Registered Nurses employed in Bargaining Unit E. Complainant further asserts that these nurses currently work various shifts in 24/7 facilities throughout the State and have each worked in their positions for at least one year prior to January 1, 2015.

Complainant notes that Bargaining Unit E is covered by a MOU with the State of Maryland, effective from March 28, 2014 through June 30, 2015. According to the information provided in the ULP Complaint, included in the MOU is a provision for reinstatement of a hiring and retention bonus, allowing payment of \$3000 as a nurse hiring bonus and \$3000 as a nurse retention bonus for eligible registered nurses who perform shift work in a 24/7 facility. Complainant states there were no other terms or conditions negotiated relative to the hiring and/or retention bonus.

Complainant states that the FY2015 Executive Budget and the FY2015 operating budget for the Department of Health and Mental Hygiene both included an allowance for the negotiated bonuses. Complainant alleges that none of the registered nurses performing shift work in 24/7 facilities as of January 1, 2015 have received the bonuses as negotiated. Complainant notes that there have been no negotiations requested by the State or entered into by the parties, and further, that Complainant was not notified of any changes to the negotiated bonuses.

Complainant argues that the “unilateral actions on the part of the State reflect a past and ongoing interference with the right of effected employees of Bargaining Unit E to exercise their rights under Maryland’s collective bargaining law, specifically, the right to enjoy the benefits bargaining [*sic*] for by their exclusive bargaining representative, in violation of State Personnel and Pensions Article Section 3-306(a)(1).” Further, Complainant alleges that “these unilateral actions on the part of the State further reflect a past and ongoing refusal to bargain in good faith, in violation of State Personnel and Pensions Article Section 3-306(a)(8).”

Respondents agree that Complainant is the exclusive representative of Bargaining Unit E and that Deborah Perry serves as the President of Complainant. Regarding the individuals named in the Complaint, Respondents agree that Timberlie Adams, Deborah Chesser, and Gail Gaughan are registered nurses employed in Bargaining Unit E, and that those particular individuals have been State employees for at least one year prior to January 1, 2015. Respondents claim they are without knowledge and information as to whether Adams, Chesser, and Gaughan are currently performing shift work in 24/7 facilities in Maryland, and therefore deny the same.

As to the other individuals named by Complainant, Carolyn Davis, Richard Greenwald, and Kevin Long, Respondents are unable to confirm that these individuals are registered nurses employed in Bargaining Unit E, or if they are performing shift work in 24/7 facilities, and therefore, deny the same.

Respondents agree that there was an existing MOU covering Bargaining Unit E, effective March 28, 2014 through June 30, 2015; however, Respondents note that the parties subsequently

entered into another MOU, effective January 1, 2015 through December 31, 2017, that superseded the prior MOU.

Respondents agree that the MOU includes a provision entitled Hiring and Retention Bonus which states that a \$3000 hiring bonus and \$3000 retention bonus will be reinstated for eligible registered nurses who perform shift work in a 24/7 facility. Respondents agree that an allowance for the negotiated bonuses was included in the Department of Budget and Management FY2015 Executive Budget and in the FY2015 operating budget analysis for the Department of Health and Mental Hygiene.

Respondents admit that none of the individuals named in the Complainant, nor any of the new hires, have received their bonuses, but state that the reason payment has not occurred is that they have not yet “fulfilled the eligibility requirements to receive said bonus.”

Respondents admit that there have been no further negotiations concerning the retention and hiring bonuses. However, Respondents deny taking unilateral action regarding the hiring and retention bonuses, and further deny that they have not bargained in good faith, per AFT-Healthcare’s Complaint.

III. Analysis & Conclusion

The SLRB has reviewed the pleadings, exhibits, documentary evidence from both parties, and the Executive Director’s Investigative Report and Recommended Determinations. Based on its review of these materials, the SLRB has determined that the issue underlying this matter, i.e., payment of the hiring and retention bonuses, is the interpretation and application of a term found in the parties’ MOU, and that the means of resolving this issue is limited to the Dispute Resolution Procedure found therein. Therefore, the SLRB defers this matter to the Dispute Resolution Procedure found in the parties’ MOU.

Issue Date: November 29, 2016
Annapolis, MD

For The State Labor Relations Board:



Edward J. Gutman, Chair



Sherry L. Mason, Member



Doris S. Mason, Member



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).