

State of Maryland
State Labor Relations Board

In the matter of:)	
<i>Matthew Daniel, et al.,</i>)	
)	
)	
Petitioners)	
)	SLRB Case No. 2018-U-07
v.)	SLRB Case Nos. 2018-U-11 through -23
)	
<i>Maryland Lottery and Gaming</i>)	
<i>Control,</i>)	
<i>Maryland Professional Employees</i>)	
<i>Council, AFT, AFL-CIO Local 6197</i>)	
)	
Respondents)	
)	

Executive Director’s Investigative Report & Recommended Determinations

On November 15, 2017, Matthew Daniel filed an unfair labor practice petition before the State Labor Relations Board (SLRB) pursuant to SLRB Regulations at COMAR 14.32.05. On December 11, 2017, the Maryland Professional Employees Council (MPEC) filed a response to Mr. Daniel’s petition. Mr. Daniel sought to file an amendment to his petition, and requested that the SLRB allow him the opportunity to do so. After reviewing his original petition, and his request to amend, the SLRB allowed Mr. Daniel the opportunity to file an amendment to his petition. Mr. Daniel filed the amendment on February 14, 2018. MPEC filed a response to that amendment on March 8, 2018. On February 26, 2018, thirteen other petitioners filed, upon review, identical complaints against the respondents. MPEC responded to each of these complaints, per SLRB regulations.

Pursuant to SLRB Regulations at COMAR §14.32.05.02G - H, the Executive Director must investigate allegations contained in a properly filed ULP petition to determine whether probable cause exists for the SLRB 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 SLRB that:

1. Per the allowances of SLRB Regulations at COMAR 14.32.02.13, these matters be consolidated
2. Petitioners have not filed claims upon which relief may be granted, and these consolidated matters should be dismissed.

Petitioner's Position/Information

The fourteen complaints that the Executive Director recommends be consolidated here allege identical allegations and provide identical information. The petitioners allege that a job classification change had occurred in 2016, and in March 2017, a grievance was filed seeking a 6% pay increase for the position that has been changed. The petitioners allege that they were made aware that MPEC submitted a settlement proposal regarding this grievance that did not include the petitioners, who were hired after the date of the classification change. The petitioners state that they made attempts to request MPEC for fair representation and transparency of process, to prevent disparity between employees, but they allege that MPEC was unresponsive to their concerns, and further, that it failed to investigate any of the non-transparency claims made by the petitioners.

Petitioners state that the actions allegedly committed by MPEC are in violation of the Collective Bargaining Law at State Personnel & Pensions Article Section 3-306(b)(6) which consists of "not fairly representing employees in collective bargaining or in any other matter in which the employee organization has the duty of fair representation." As remedy, the petitioners are requesting that MPEC cease representation activities that allegedly seek financial gain for only certain employees, that MPEC revise any proposed settlements so they include the petitioners, and that MPEC waive union dues for the petitioners for two years.

Amendment

In his Amendment, filed February 14, 2018, petitioner Daniel provided a timeline of events that he alleges will release the state (per an agreement with MPEC from which Daniel states he was excluded) from "any additional claims set forth regarding reclassification to a new classification series." (Amendment, page 1). Mr. Daniel also notes that the settlement agreement between the employer and MPEC had an effective date of November 29, 2017, which was after he filed his unfair labor practice petition with the SLRB. Mr. Daniel provides indications of additional communications from MPEC about the settlement, which were not sent to him. He states that "on approximately December 19, 2017, the settlement agreement was provided to the members hired before May 2016 with an effective date of 11/29/17." (Amendment p. 2). Mr. Daniel's amendment further argues that MPEC acted in bad faith when it accepted a definition that was not unambiguous, of those affected by the settlement agreement and only communicated with those people.

Additional Complaints

On February 26, 2018, thirteen additional petitioners filed complaints identical to Mr. Daniel's. Those petitioners submitted substantially identical claims to Mr. Daniel's original complaint, adding an allegation of generally inadequate representation by MPEC. These petitioners allege that although they have met with union representatives, paperwork allowing them to become full members of the union has lingered for months. The additional petitioners did not request an opportunity amend their petitions.

Respondents' Position/Information

In its response to the initial complaint filed by Mr. Daniel, MPEC argues that it has not committed an unfair labor practice. MPEC states that it was obligated to notify its members of a settlement of a pending dispute resolution procedure, and it did so, but MPEC argues that Daniel was not a party to the dispute resolution procedure, so he didn't need to be included in the communications sent to address any possible settlement. MPEC lists the employee classifications who were affected by the new classification series and the initial lack of compliance over which MPEC filed a grievance against the state agency. MPEC argues that since Mr. Daniel wasn't hired until after the classification change happened and was not reclassified as a result of the new classification series, that MPEC was not obligated to communicate with him. Thus, argues MPEC, Petitioner Daniel has not stated a claim upon which relief may be granted.

Mr. Daniel's amendment to his complaint alleges that despite his being excluded from the dispute resolution procedure, the agreement releases the state from any additional claims regarding reclassification. MPEC responds to this point by arguing that the release is specific to the named employees signing the agreement, which did not include Daniel. MPEC further argues that those hired into the new classification were not reclassified into to the position, therefore the provision of an MOU which references the dispute resolution procedure does not apply to Daniel. Daniel also complains that he wasn't permitted to participate in a poll of those included in the dispute resolution procedure. MPEC again argues that Daniel was not affected by the MOU provision that referenced the dispute resolution procedure, so he was not included in the poll. Finally, MPEC notes that employees are permitted under Article 14 of the MOU, to request a job study if they believe their position is incorrectly classified. However, MPEC notes, in this matter, Mr. Daniel was not reclassified as a result of the implementation of new classification, so he was not a party to the dispute resolution procedure at issue in this case.

Regarding the thirteen additional petitioners, MPEC responds in similar manner to its response in Mr. Daniel's case. MPEC contends that the additional petitioners were hired after the reclassification happened, i.e., they weren't reclassified into their positions, and therefore neither the settlement agreement nor the MOU provisions referencing the reclassification apply to them, and the petitioners weren't due any communication about those things. Regarding the allegation of generally inadequate representation, MPEC notes that these additional petitioners have acknowledged meeting in person with the Union representative, but further states that it cannot respond with any specificity to the petitioners' allegations, as the petitioners have merely referenced "paperwork" lingering in general without any specifics as to the dates in which it was left on desks, etc.

Analysis


The petitioners in this matter have requested relief based upon Section 3-306(b)(5) and (6)—which prohibit the unfair labor practices of not fairly representing employees in collective bargaining or in any other matter in which the employee organization has the duty of fair representation, and refusing to bargain in good faith, respectfully. In order to state a claim based on these two provisions, a petitioner needs to show the presence of a duty to represent employees, as well as a matter about which representational bargaining is either permitted or required. In this matter, the petitioners were not employees during the reclassification process. Therefore there was no duty of representation owed to them by MPEC. There may be issues surrounding a

reclassification that linger beyond the time when the reclassification happened—as is the case here-- but employees who are hired after the reclassification are not owed the duty of representation that the previous and still current employees are owed, and thus the newer employees need not be included in the continued communications and actions that result from the initial reclassification. As there is no duty to represent the newer employees on any lingering issues stemming from the reclassification, there is no valid unfair labor practice claim that can be remedied based on an allegation of failing to represent employees to which a duty is owed. Based on this analysis, there is also no failure to bargain claim which can be validly raised and remedied by the SLRB.

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 these matters should be consolidated and dismissed for failure of the petitioners to state a claim upon which this Board may grant relief.

Pursuant to SLRB Regulations at COMAR §14.32.05.02G - H, this report will be sent to the full membership of the SLRB as well as to the parties. Any party aggrieved by the Executive Director's Report and Recommended Determinations is permitted to request reconsideration by the full board **no later than fifteen days** after the issuance of this report.



Erica L. Snipes, Executive Director
State Labor Relations Board



Date