

State of Maryland
State Labor Relations Board

In the matter of:)	
<i>American Federation of State,</i>)	
<i>County & Municipal Employees,</i>)	
<i>Council 3 (“AFSCME Council 3”),</i>)	
)	
Petitioner)	
)	SLRB Case No. 2018-U-08
v.)	
)	
<i>Department of Public Safety and</i>)	
<i>Correctional Services (“DPSCS”),</i>)	
<i>Stephen T. Moyer, Secretary</i>)	
&)	
<i>Department of Budget and</i>)	
<i>Management (“DBM”),</i>)	
<i>Cynthia A. Kollner, Executive</i>)	
<i>Director, Office of Personnel Services</i>)	
<i>and Benefits,</i>)	
)	
Respondents)	
)	

Executive Director’s Investigative Report & Recommended Determinations

On December 1, 2017, the American Federation of State, County & Municipal Employees Council 3 (AFSCME, Council 3) filed an Unfair Labor Practice (ULP) against the Department of Public Safety and Correctional Services (DPSCS) and the Department of Budget and Management (DBM). This ULP was filed pursuant to State Labor Relations Board (SLRB) regulations at COMAR 14.32.05, and after receipt of the ULP, the Executive Director notified the respondents of the complaint, and requested that responses from both DPSCS and DBM be filed with the SLRB. On December 22, 2017, DPSCS and DBM filed a joint response.

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 this matter is appropriately filed, and that probable cause exists for it to proceed for further

SLRB review and decision.

Undisputed Facts

The Maryland Department of Public Safety and Corrections (DPSCS) and the Maryland Department of Budget and Management (DBM) are both principal sections of the executive branch of Maryland State Government. DPSCS and DBM are participants in collective bargaining with executive branch employees. The employees about which this charge has been filed are correctional officers placed in state government unit H. The American Federation of State, County & Municipal Employees (AFSCME), which includes locally based bargaining components, has been certified as the exclusive representative of employees in state government unit H.

Regarding recruitment bonuses for newly hired correctional officers, both parties agree that there were scheduled bargaining dates, multiple correspondences and proposals between the parties, and that respondents advertised the bonuses publicly before full negotiations were concluded.

Disputed Items

Regarding the underlying facts of this matter, there is little disagreement between the parties. DBM and DPSCS argue that AFSCME also refuses to reach agreement on the issue of recruitment bonuses, and DBM and DPSCS offer multiple defenses to AFSCME's allegations.

Petitioner's Position/Information

Beginning in September 2017, AFSCME and the executive branch of Maryland state government, including DBM and DPSCS, began negotiations for new Memoranda of Understanding (MOU), discussing matters related to compensation, and terms and conditions of employment. Regarding Unit H employees, AFSCME put forth the issue of staffing shortages at correctional facilities, which brought about unsafe conditions, too much overtime, and officer fatigue from being understaffed. AFSCME alleges that on September 20, 2017, DPSCS announced that it was "unilaterally implementing recruitment bonuses for newly hired correctional officers." (charge at p. 2) AFSCME challenged this announcement, arguing that a bonus is a wage, and as such it is a term and condition of employment, about which the employer is required to bargain. AFSCME alleges that on October 3, 2017, the employer gave a proposal to AFSCME regarding the recruitment bonuses, which was identical to what had been announced on September 20, 2017—that newly hired correctional officers would receive a \$5000 hiring bonus to be paid in in two parts: \$2000 after training, and \$3000 after a year of employment. AFSCME argued against this proposal as included no benefit to the current correctional officers who had served during the staffing shortage.

AFSCME alleges that on October 11, 2017 the employer gave AFSCME a new proposal—that the \$5000 new hire bonus would be paid quarterly to the new employees. AFSCME rejected this proposal under the same grounds of its previous rejection—that

currently employed correctional officers would receive no benefit.

AFSCME alleges that on October 13, 2017, DBM, through the Office of Personnel Services and Benefits (OPSB), acknowledged the October 3, 2017 management proposal and “insisted that the parties ‘need to complete bargaining on this subject by November 2, 2017.’” AFSCME alleges that this date was arbitrarily chosen by management. Additionally, AFSCME states that it responded by letter on October 13, 2017, noting that the proposed signing bonuses were one of many topics for Unit H negotiations, and argued that the state of Maryland has agreed to bargain over all topics, and that as economic issues interrelate to each other, there was no basis to bargain these new hire bonuses separately.

AFSCME alleges that the parties continued to bargain through November 2017, but that despite the ongoing negotiations on this issue, DPSCS unilaterally imposed the new recruitment bonus program—including advertising it on the DPSCS website and Facebook page. AFSCME alleges that during November 2017, the employer ceased negotiations on the topic of new hiring bonuses.

AFSCME argues that DPSCS and DBM have the obligation to bargain in good faith with the employees’ exclusive representative based on State Personnel & Pensions Article (SPP), Section 3-608(a)(8). This obligation, AFSCME argues, prohibits an employer from making unilateral changes to the terms and conditions of employment. Further, AFSCME argues that SPP Section 3-501(b) states the negotiations are to be concluded with a written MOU which incorporates all matters of agreement between the parties. Finally, AFSCME argues that the state may not proceed piecemeal and require conclusion of bargaining on separate topics of bargaining in stages along the way.

As remedy, AFSCME requests Board investigation into this matter, that the Board would order DPSCS and DBM (through OPSB) to cease and desist from such unfair labor practices, and any further relief the Board may order, as the issues may require.

Respondents’ Position/Information

DPSCS and DBM agree as to AFSCME’s representation of correctional employees in Unit H. Further, DPSCS and DBM agree that in September 2017, DPSCS announced a recruitment bonus for newly hired correctional officers. DPSCS and DBM acknowledge receiving a letter dated September 29, 2017 from AFSCME stated that the signing bonuses should be considered as wages and thus a subject of bargaining. At that time, DPSCS and DBM note that the state agreed to bargain with AFSCME about the hiring bonuses.

DPSCS and DBM agree that at the first negotiations session, the state provided a proposal to AFSCME about newly hired employees receiving a \$5000 bonus--\$2000 to be paid after training, and \$3000 to be paid after the first year of employment. DPSCS and DBM agree that AFSCME was not in favor of this proposal because it did not address a benefit to existing correctional officer employees. DPSCS and DBM state, however, that the state did offer a proposal for bonuses for existing correctional officers, but argued that AFSCME did not provide counter offers to that bonus program or “otherwise engage in

meaningful discussions about that bonus program.” (Response, p. 3)

DPSCS and DBM agree that on October 11, 2017, the state provided AFSCME with a modified new hire bonus, but allege that AFSCME did not provide any counter proposal or engage in discussions.

DPSCS and DBM agree that the state sent a letter on October 13, 2017, addressing that the State had offered a proposal about the recruitment bonus, and giving reasons for needing the bargaining to be complete on this issue by November 2, 2017, but denied that the choice of this date was arbitrary. DPSCS and DBM acknowledge that AFSCME had responded with a letter also dated October 13, 2017, in which DPSCS and DBM argued that AFSCME refused to try to reach agreement on the recruitment bonus by November 2, 2017. DPSCS and DBM state further that DBM responded with a letter to AFSCME dated October 16, 2017, expressing concern that AFSCME was refusing to reach agreement on this recruitment bonus issue by November 2, 2017, given AFSCME’s argument that there is a staffing crisis within correctional facilities. DPSCS and DBM state that the employer offered to continue bargaining in good faith of the recruitment bonuses in order to reach agreement.

DPSCS and DBM argue that in November 2017, AFSCME “made clear that it was unwilling to engage in good faith collective bargaining” (Response, page 4) over the state’s proposal for a recruitment bonus for newly hired correctional officers, and agree that at this time, DPSCS advertised the recruitment bonus to the public.

DPSCS and DBM acknowledge their statutory obligation to engage in good faith bargaining, but deny that the state has committed any breach of that obligation, and request that AFSCME be denied the relief it requests from the SLRB.

As defenses to this charge, DPSCS and DBM provide the following: (1) AFSCME fails to state a claim upon which relief may be granted, (2) DPSCS and DBM reserve the rights to file additional defenses and appropriate motions, (3) the recruitment bonuses were a mid-contract change, which was not subject to bargaining for a new MOU, (4) “exigent circumstances” required the bonus for newly hired correctional officers to be bargained to conclusion before the remainder of bargaining was complete, and (5) the recruitment bonus was not a mandatory subject of bargaining.

Analysis

In this matter, AFSCME has appropriately brought allegations that DPSCS and DBM have violated SPP Sections 3-608(a)(8) and 3-501(b). AFSCME has provided specific bargaining dates and proposals, and has noted specific communications between the parties to support its claims. DPSCS and DBM have acknowledged those communications, bargaining dates, and proposals, and has alleged that AFSCME has also refused to come to an agreement on the issue of recruitment bonuses. Further, DPSCS and DBM have offered various defenses to AFSCME’s allegations.

COMAR §14.32.05.02G – H authorizes various actions undertaken by the Executive

Director regarding unfair labor practices filed before the SLRB. Under these sections, the Executive Director shall, subject to SLRB review, consider properly filed complaints, and investigate the facts. Further, the Executive Director should recommend SLRB dismissal of the matter if a petitioner fails to state an actionable claim under SPP Sections 3-101 through 3—602, or appropriate COMAR regulations; or determines that the SLRB has no jurisdiction over the claims presented. Regarding these COMAR provisions, this matter was properly filed with appropriate service to the respondents, and AFSCME has alleged violations of statutory provisions committed by a state employer over which the SLRB has jurisdiction. As to an investigation of the facts, based on the presentations of DBM and DPSCS, much of what AFSCME alleges has happened (letters, proposals, advertisements of the recruitment bonuses), DBM and DPSCS agrees with, and further factual investigation is not warranted.

COMAR 14.32.05.02H authorizes the Executive Director to set forth a written report as to whether probable cause exists to believe that the unfair labor practice has occurred. In this matter, AFSCME alleges that based on the current negotiations status and the actions of the respondents, an unfair labor practice has occurred. DBM and DPSCS agree that the correspondence and bargaining sessions have occurred per AFSCME’s presentation, and agree that certain actions regarding the recruitment bonuses have occurred. AFSCME has sufficient probable cause to allege an unfair labor practice—the fact that the respondents have raised defenses to the allegations do not in and of themselves indicate a lack of probable cause. The defenses that DBM and DPSCS raise are legal defenses and are appropriate for the full Board to consider in a further proceeding.

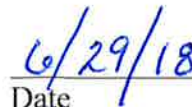
Recommendation

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 AFSCME has appropriately filed an unfair labor practice violation before the SLRB, and that probable cause exists such that the alleged violation should move forward for further SLRB review. Further, the Executive Director recommends that this matter should be addressed in a hearing before the SLRB.

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