

State of Maryland
State Higher Education Labor Relations Board

_____)	
In the matter of:)	
Fraternal Order of Police, Lodge 141,)	
)	
Certified Bargaining Representative,)	
)	SHELRB UC 2020-01
and)	
)	
University of Maryland, Baltimore)	
)	
State Employer.)	
_____)	

DECISION AND ORDER

I. Procedural History

On July 2, 2019, Petitioner, Fraternal Order of Police, Lodge 141 (“FOP, Lodge 141”) filed with the State Higher Education Labor Relations Board (“SHELRB” or “Board”) a Clarification/Contest of Unit Designation Petition (“Petition”). FOP, Lodge 141 is the exclusive bargaining representative of the Sworn Police Unit of the University of Maryland, Baltimore (“UMB”). In its Petition, FOP, Lodge 141 argues that UMB is wrongfully excluding eight Sergeants from the Sworn Police Unit by designating the Sergeants as supervisors pursuant to State Personnel and Pensions Article, Annotated Code of Maryland (“SPP”) § 3-201(b)(12). The union disputes that designation and seeks a determination by the SHELRB that the Sergeants are not supervisors and therefore should be included in the Sworn Police Unit.

On July 17, 2019, UMB filed a response to FOP, Lodge 141’s Petition.

On July 22, 2019, FOP, Lodge 141 filed a reply to UMB’s Response.

Pursuant to 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.” Upon receipt of a Clarification/Contest of Unit Designation Petition, COMAR 14.30.04.10 states that “[t]he Board shall grant or deny the petition following the appropriate investigation and recommendation to the Board by the Executive Director or hearing in accordance with COMAR 14.30.11.”

In accordance with SPP § 3-2A-07(a), the Executive Director conducted an investigation, and on August 8, 2019, issued her recommendation to the SHELRB for consideration. The SHELRB has

considered the Executive Director's recommendation, and, pursuant to COMAR 14.30.04.10(B), hereby denies FOP, Lodge 141's Petition for the reasons set forth below.

II. Factual Background

On November 26, 2012, following an election, the SHELRB certified FOP, Lodge 141 as the exclusive bargaining representative of:

All eligible Sworn Police Unit employees as described in the Federal Fair Labor Standards Act employed by the University of Maryland, Baltimore, excluding managerial employees, supervisors, confidential employees as defined in regulations adopted by the governing board of the University of Maryland, Baltimore, and all other statutory exclusions prescribed by Title 3 of the State Personnel and Pension Article (2001 Supplement), Section 3-102(b)(9) and (1).

Sergeants did not vote in the election certifying FOP, Lodge 141 as the exclusive bargaining representative, and, since the time of certification, Sergeants have been excluded from the Sworn Police Unit as supervisory employees.

There have been no recent changes to the job duties or responsibilities of the Sergeants at issue.

III. Analysis

SPP § 3-403 states, "Except as otherwise provided in this title, the Board shall determine the appropriateness of each bargaining unit." The SHELRB's express authority to issue certifications carries with it the authority to police such certifications and to clarify them as a means of effectuating Maryland's collective bargaining law for higher education. *See supra* COMAR 14.30.03.10.

In resolving disputes under this law, the SHELRB has, in the past, relied upon decisions of the National Labor Relations Board ("NLRB") in making its decisions. *See AFSCME v. University of Maryland, College Park*, HELRB ULP 2014-04 (2015).

The NLRB described the purpose of unit clarification proceedings in Union Electric Co., 217 NLRB 666, 667 (1975):

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category-excluded or included-that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by

acquiescence and not express consent.

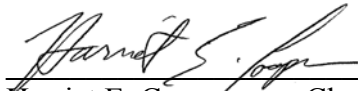
We adopt this reasoning here.

Because there have been no recent, substantial changes to the job duties or responsibilities of the Sergeants at issue as to create a real doubt as to whether the individuals in such classification continue to fall within the category-excluded or included-that they occupied in the past, we hereby deny FOP, Lodge 141's Petition.

IV. Order

IT IS HEREBY ORDERED THAT THE PETITION IN THE INSTANT MATTER, SHELRB Case No. UC 2020-01, IS DENIED.

BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS BOARD:



Harriet E. Cooperman, Chair

Annapolis, MD

January 10, 2020

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 and Procedure.