

**State of Maryland**  
*State Higher Education Labor Relations Board*

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In the matter of:	)	
<i>Maryland Classified Employees</i>	)	
<i>Association, Inc.,</i>	)	
	)	
	)	
Petitioner	)	
	)	SHELRB ULP 2019-02
v.	)	
	)	
<i>Salisbury University,</i>	)	
	)	
	)	
Respondent	)	
_____	)	

Executive Director’s Investigative Report & Recommended Determinations

On November 2, 2018, the Maryland Classified Employees Association, Inc. (MCEA) filed an Unfair Labor Practice (ULP) against Salisbury University (SU). This ULP was filed pursuant to State Higher Education Labor Relations Board (SHELRB) regulations at COMAR 14.30.07, and after receipt of the ULP, the Executive Director notified the respondent of the complaint and requested that a response be filed with the SHELRB. On November 27, 2018, SU filed a Response to this charge, requesting.

Pursuant to SHELRB Regulations at COMAR §14.30.07.04F - G, the Executive Director must investigate allegations contained in a properly filed ULP petition to determine whether probable cause exists for the SHELRB to proceed on the case. After having reviewed the pleadings, exhibits and documentary evidence from both parties, I hereby recommend to the full membership of the SHELRB that this matter should be dismissed per the analysis given herein.

Undisputed Facts

- MCEA is the exclusive bargaining representative for Nonexempt employees at Salisbury University.
- Certain communications regarding the allegations in this petition have been exchanged between the parties.

## Disputed Items

MCEA and SU have opposing positions concerning the lack of placement of Nonexempt bargaining unit representatives on a search committee convened for purposes of hiring certain high level personnel at SU, the appropriateness of filing a ULP regarding an employee pay issue contained in the parties' Memorandum of Understanding (MOU), and the providing of information requested by MCEA about employees not currently in the Nonexempt bargaining unit.

## Petitioner's Position/Information

In its petition, MCEA argues that SU has, and continues to discredit MCEA to individual employees at SU, and to the campus community as a whole, in such a way as to interfere with employees' access to and exercise of their collective bargaining rights. MCEA alleges that on September 5, 2018, SU announced that a search committee was being convened for the purpose of seeking a new Provost and a new Senior Vice President of Academic Affairs. Further, MCEA notes that SU's communication regarding this committee was that it would be comprised of representatives from the various campus governing bodies, administrative departments and academic schools, and would also specifically include representatives from the Graduate Student Counsel, the Student Government Association, the Staff Senate, and the Adjunct Faculty Caucus. MCEA notes that SU's communications did not state that a representative of the Nonexempt Employee bargaining unit would be included in this search committee. By letter to SU President, Charles Wight, dated September 7, 2018, MCEA specifically requested that a Nonexempt bargaining unit representative be placed on this search committee.

MCEA states that SU responded to its request in a letter from SU Human Resources Director, Kevin Vedder (Vedder), dated September 18, 2018. MCEA alleges that Vedder denied MCEA's request, but still stated that the search committee was convened to give "broad representation across the greater campus community and constituencies, recognizing that it is impractical to have every community member be represented on the search committee." (Claim, p. 3)

MCEA alleges that its Labor Relations Specialist, Michael Keeney met with SU President Wight, and further alleges that Wight advised Mr. Keeney that it was his decision to not include the bargaining unit in the search committee.

MCEA alleges that on November 1, 2018, the University sent an e-mail message campus wide, noting the ongoing work of the search committee, naming the fifteen individuals on the committee, made up of SU faculty, students, and staff, which did not include a representative of the 278 members of the Nonexempt bargaining unit.

MCEA argues that opportunities provided by SU for campus involvement have been denied to Nonexempt bargaining unit members. Further, MCEA alleges that SU has denied bargaining unit member rights due to them under the University System of Maryland Board of Regents' policies. Specifically, MCEA state that Section 41.1 of the parties' MOU

references a Board of Regents policy of granting a 2.5% salary increase to Nonexempt employees upon completions of certain probationary periods. MCEA alleges that SU has told bargaining unit employees that the sections of the Board of Regents policy granting this salary increase do not apply to them due to the MOU. MCEA argues that the MOU does not change the policy of granting this salary increase, and that employees should not be denied the increase based on the existence of the MOU.

MCEA argues that on August 27, 2017<sup>1</sup>, it requested the names of SU employees who have been excluded from the Nonexempt bargaining unit by virtue of them being determined by SU to be supervisory, managerial, or confidential under State Personnel & Pensions Article §3-101. MCEA states that a response came from SU dated September 21, 2018, and stated that MCEA did not have the right to this information under the terms of the MOU, so it would instead be provided, at a cost to MCEA, under the Maryland Public Information Act. MCEA argues that it has a right under COMAR 14.30.01.01(B)(2), to challenge employees being excluded from the bargaining unit, and that SU may not withhold information about excluded employees from MCEA.

MCEA alleges that the actions by SU described in its ULP are in violation of §3-306(a)(1) and (4) of the State Personnel & Pensions Article, and demands as remedy the following:

- 1) That the SHELRB determine that SU's actions are an unfair labor practice,
- 2) That the SHELRB order that SU include bargaining unit employees in the search committee referenced in its complaint, and in all future such committees,
- 3) That the SHELRB order SU to stop its practice of denying University System benefits to Nonexempt bargaining unit employees,
- 4) That the SHELRB order SU to advise MCEA in writing about SU's interpretation of the parties' MOU, including but not limited to copying MCEA on SU's communications with Nonexempt bargaining unit employees where SU references its interpretation or application of the MOU,
- 5) That the SHELRB order SU to announce to the campus community its appointment of a member of the bargaining unit to the search committee referenced in this complaint,
- 6) That the SHELRB order SU to "immediately provide" MCEA data regarding the nonexempt employees excluded from the bargaining unit under §3-101(b)(12) of the State Personnel & Pensions Article, and
- 7) That the SHELRB order such further relief as the nature of this cause may require.

### Respondents' Position/Information

In response to MCEA's petition, SU denies that it has engaged in any behavior that would constitute a ULP, and argues that MCEA has failed to state an actionable claim under

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<sup>1</sup> Note that in the University's response, this letter is acknowledged, but given a date of August 27, 2018. SU argues that the reference to 2017 was an error on the part of MCEA.

the State Personnel & Pensions Article. Therefore, SU requests that MCEA's petition be dismissed.

Regarding MCEA's allegation that SU wrongfully failed to place a bargaining unit employee or representative on the search committee for the hiring of a new Provost and a new Vice President for Academic Affairs, SU argues that both the parties' MOU and §3-302 of the State Personnel & Pensions Article permit it to determine how employees are assigned to committees, determine the overall methods, means and staff by which its operations are conducted, and give it authority to hire, direct, supervise, and assign employees. Further, SU argues that the parties' MOU requires that SU create particular committees and allow bargaining unit staff to be on those committees, but a search committee for an executive position in the University is not among those committees referenced in the MOU. Finally, SU argues that alleging exclusion of bargaining unit employees from the search committee referenced in the claim, does not state a claim for an unfair labor practice under §3-306(a)(1) or (4) of the State Personnel & Pensions Article. SU argues that participating in a committee is not a right of, nor does it impact, collective bargaining, or have any effect on employees exercising their collective bargaining rights. Regarding discrimination in hiring, tenure or any term or condition of employment, SU argues that including someone on a search committee is not a matter of hiring, tenure, or any other term or condition of employment.

Regarding MCEA's allegation that SU failed to authorize a 2.5% probationary salary increase, SU argues that failing to increase a salary in this manner is not a violation of any right under the Title 3 of the State Personnel & Pensions Article. Further, SU argues that MCEA has not alleged that there has been any discrimination against bargaining unit members. SU states that this allegation would be within the scope of the grievance procedure outlined in the parties' MOU, and notes that MCEA has filed such a grievance on behalf of one employee regarding the denial of the 2.5% salary increase. SU argues that by filing this grievance, MCEA has waived its right to proceed under a ULP, as the parties' MOU dictates that where actions providing the basis for a grievance are also the basis for a ULP filing before the SHELRB, the parties may proceed in either the grievance process or in a ULP filing, but not both. As MCEA had already elected to file a grievance, SU argued that MCEA waives its right to file the current ULP. Further, SU references a similar issue in a case decided by the Maryland State Labor Relations Board (SLRB), where the SLRB ruled that since the issue underlying the matter was the interpretation and application of a term of the MOU, the means of resolving the matter was limited to the Dispute Resolution process contained in the MOU. (Answer, p. 7, *AFT Healthcare-Maryland v. Lawrence J. Hogan, Governor, David Brinkley, Sec'y, Department of Budget and Mgmt, Cindy Kollner, Exec. Dir., Office of Personnel/Benefits & Svc.*)

Regarding MCEA's allegation that it is entitled to information about employees outside of the bargaining unit, SU argues that MCEA has failed to state a claim of an unfair labor practice violation, as there is no right for MCEA to receive information about personnel outside of the bargaining unit it represents. SU argues that the parties' MOU as well as §3-2A-08 of the State Personnel & Pensions Article give MCEA the right, twice a year, to receive a complete list of names, titles, position classifications, units, work site addresses, and pay rates of employees in the bargaining unit, but those rights do not apply regarding

employees outside of the bargaining unit. SU argues that COMAR 14.30.01.01B(2) provides for a “bargaining unit determination petition” where a party may seek resolution of a disagreement regarding “assignment of classification titles or positions in a bargaining unit,” and states that MCEA has the right to file such a petition, but that no such petition is pending. SU argues that MCEA does not have a right to receive a list of employees outside of the bargaining unit. Further, SU argues that MCEA has improperly described its request for information about these employees. SU indicates that MCEA requested more than just names of employees outside of the bargaining unit, as stated in MCEA’s petition, but also requested classifications, departments, e-mail addresses, current salaries, and work numbers for employees excluded from the bargaining unit due their being found to be supervisory, confidential, or managerial employees. (Answer, p. 9) SU notes that MCEA has not been denied the ability to obtain the information it seeks, as it is obtainable through the public information act process.

### Analysis

COMAR §14.30.07.04F – G authorizes various actions undertaken by the Executive Director regarding unfair labor practices filed before the SHELRB. Under these sections, the Executive Director shall, subject to SHELRB review, consider properly filed complaints, and investigate the facts. Further, the Executive Director should recommend SHELRB dismissal of the matter if a petitioner fails to state an actionable claim under State Personnel & Pensions Article §§3-101 through 3—602, or appropriate COMAR regulations; or determines that the SHELRB has no jurisdiction over the claims presented. This matter was filed as an allegation of violations of §3-306(a)(1) and (4) of the State Personnel & Pensions Article, with appropriate service to the respondent, and MCEA has alleged that these violations of statutory provisions have been committed by a public higher education employer over which the SHELRB has jurisdiction. As to an investigation of the facts, it seems MCEA and SU allege opposing positions concerning the lack of placement of Nonexempt bargaining unit representatives on a search committee convened for purposes of hiring certain high level personnel at SU, the appropriateness of filing a ULP regarding an employee pay issue contained in the parties’ MOU, and on the providing of information requested by MCEA about employees not currently in the Nonexempt bargaining unit. COMAR 14.30.07.04G 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, based on the facts and statutory/regulatory violations alleged.

MCEA alleges that SU is improperly and in violation the State Personnel & Pensions Article §3-306, denying the placement of a bargaining unit employee or representative on the search committee to hire a new Provost and new Vice President of Academic Affairs. §3-306(a)(1) prohibits SU from interfering with, restraining, or coercing employees in the exercise of their rights under the Collective Bargaining Law. Those rights are defined in §3-301 of the State Personnel & Pensions Article, and include taking part (or refraining therefrom) in forming, joining, supporting, or participating in any employee organization or its lawful activities. MCEA’s petition does not allege that employee rights to form, join, support, or participate in MCEA itself, have been violated, and the right to sit on search and hiring committees has not been designated under the State Personnel & Pensions Article, as a

lawful activity of an employee organization, whereas hiring activities have been designated as State rights under §3-302 of the State Personnel & Pensions Article. Further, based on State Personnel & Pensions Article §3-301(a)(3), MCEA does not allege that participation on the search committee would be a “concerted activity” “for the purpose of collective bargaining or other mutual aid or protection.”


Regarding MCEA’s allegation that bargaining unit employees being told by SU that pay raises noted in the parties’ MOU are not applicable to them, is a violation of §3-306 of the State Personnel & Pensions Article, the right to receive particular pay or raises upon certain qualifications or time employed, is not identified as an employee right under §3-301 of the State Personnel & Pensions Article. Additionally, the parties’ MOU contains grievance procedures that are available for alleging violations of its provisions.


Finally, MCEA alleges that SU has violated §3-306 of the State Personnel & Pensions Article by not providing information about employees outside of the nonexempt bargaining unit. §3-2A-08 of the State Personnel & Pensions Article gives an exclusive representative the right, twice a year, to receive a complete list of names, titles, position classifications, units, work site addresses, and pay rates of employees in the bargaining unit represented, but provides no such rights to receive the same information about employees not included in the bargaining unit. Should MCEA wish to challenge an employee or employees not being included in a unit they represent, MCEA may file a bargaining unit determination petition under COMAR 14.30.01.01B(2).

### 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 probable cause does not exist such that the alleged violations of the State Personnel & Pensions Article should move forward for review, and thus the matter should be dismissed.

Pursuant to SLRB Regulations at COMAR §14.30.05.02G - 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 Higher Education Labor Relations Board

  
Date