

State of Maryland
State Higher Education Labor Relations Board

In the matter of:)	
)	
AMERICAN FEDERATION OF STATE, COUNTY)	
AND MUNICIPAL EMPLOYEES, COUNCIL 67,)	
LOCAL 1646,)	
)	
Petitioner,)	
)	
v.)	SHELRB ULP 2023-01
)	
PRINCE GEORGE’S COMMUNITY COLLEGE,)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. DECISION

a. Procedural Background

On September 14, 2022, the American Federation of State, County and Municipal Employees Council 67, Local 1646 (referred to as “AFSCME”), filed with the State Higher Education Labor Relations Board (“SHELRB”) an Unfair Labor Practice Complaint (“Complaint”) against Prince George’s Community College (“PGCC”).

In its Complaint, AFSCME asserts that PGCC violated Sections 3-306(a)(1) and 3-306(a)(8) of the State Personnel and Pensions (“SPP”) Article. More specifically, AFSCME claims that UMCP committed an unfair labor practice when it “restrained and interfered with employees’ rights to engage in collective bargaining and bargained in bad faith.” According to AFSCME’s Complaint, the factual allegations giving rise to its Complaint all took place on or before July 19, 2022.

On October 2, 2022, PGCC filed a response (“Response”) to AFSCME’s Complaint. In its response, PGCC asserts, among other defenses, that the statewide Community College Collective Bargaining Law (“CCCBL”) governing community colleges, which provides SHELRB with jurisdiction to resolve disputes concerning unfair labor practices, did not take effect over PGCC until September 1, 2022; and therefore, SHELRB does not have jurisdiction to resolve the instant Complaint.

On December 9, 2022, SHELRB Executive Director issued an Investigative Report & Recommended Determination in which she found that, “this matter should be addressed in a

hearing before the SHELRB or through a delegation to the Office of Administrative Hearings in a manner and scope that the SHELRB deems appropriate.”

On January 2, 2023, PGCC filed a Request for Reconsideration and Hearing, again asserting that SHELRB “does not have jurisdiction over this matter” because the CCCBL did not take effect until September 1, 2022, and, additionally, does not apply retroactively.

SHELRB has reviewed the parties’ respective filings and has concluded that a hearing is not needed to decide the preliminary and dispositive issue in this case, specifically, whether the CCCBL applies retroactively to provide SHELRB with jurisdiction over complaints of unfair labor practices that allegedly occurred prior to September 1, 2022.

b. Analysis

On December 7, 2021, the CCCBL became Maryland law when the State Legislature passed the bill over Governor Hogan’s veto. The CCCBL establishes collective bargaining rights for certain community college employees and grants SHELRB jurisdiction over the selection and certification of exclusive collective bargaining representatives and the resolution of disputes of unfair labor practice complaints between Maryland’s community colleges and the employees’ representatives. *See* Md. Code Ann., State Personnel and Pensions § 3-2A-05(b)(2).

At issue in this case is whether the CCCBL applies retroactively, thereby granting SHELRB jurisdiction to resolve the instant dispute, which arose prior to the law’s effective date. Both the CCCBL’s express language and caselaw establish that the CCCBL is to apply prospectively only.

In adopting the law, the Legislature expressly recognized a need to delay the law’s implementation, *See* Section 16-702(A)(2), and provided a staggered schedule for the applicability of the CCCBL to the respective community colleges. Section 16-702(B).¹ Thus, on

¹ The CCCBL states:

This subtitle shall apply:

- (1) Beginning on September 1, 2022, to:
 - (i) Anne Arundel Community College ;
 - (ii) Community College of Baltimore County;
 - (iii) Frederick Community College;
 - (iv) Harford Community College;
 - (v) Howard Community College;
 - (vi) Montgomery College;
 - (vii) Prince George’s Community College; and
 - (viii) College of Southern Maryland;
- (2) Beginning on September 1, 2023, to:
 - (i) Allegany College of Maryland;
 - (ii) Carroll Community College;
 - (iii) Cecil College;
 - (iv) Chesapeake College;
 - (v) Garrett College;
 - (vi) Hagerstown Community College; and
 - (vii) Wor-Wic Community College; and
- (3) Beginning October 1, 2024, to Baltimore City Community College.

September 1, 2022, the CCCBL initially became applicable to eight community colleges, including PGCC. Section 16-702(B)(1).

In *FOP Lodge 129 v. University of Maryland, Baltimore County*, SHELRB ULP 2019-01 (SHELRB 2019), SHELRB addressed the retroactive application of an amendment to the State Higher Education Labor Relations Act that prohibited a state college from unilaterally implementing its last best offer upon reaching an impasse in collective bargaining negotiations. In that case, we explained,

In determining the retroactive effect of a statute, the Maryland Court of Appeals has stated,

As a general rule, statutes are presumed to operate prospectively and are to be construed accordingly. The presumption against retrospectivity is rebutted only where there are clear expressions in the statute to the contrary. Moreover, even where permissible, retrospective application is not found except upon the plainest mandate in the legislation. The rationale underlying the general rule provides that retroactive application, which attempts to determine the legal significance of acts that occurred prior to the statute's effective date, increases the potential for interference with persons' substantive rights. (Citations omitted).² *Washington County Suburban Com'n v. Riverdale Heights Volunteer Fire Co. Inc. et al*, 308 Md. 556 (Md. 1987).

We find that the specific statutory language of the CCCBL, which recognizes both the need to delay implementation of the law and provides September 1, 2022, as the effective date for the CCCBL's applicability to PGCC, manifests a clear legislative expression and intent that the law is not to be given retroactive application, and is to be applied prospectively only.


For the foregoing reasons, we dismiss AFSCME's unfair labor practice complaint.

² An exception to this rule of general applicability applies to "a statute governing procedure or remedy...." *Id.* At 564.

II. ORDER

IT IS HEREBY ORDERED THAT the ULP Complaint in SHELRB ULP 2022-01 is hereby dismissed.

BY ORDER OF THE HIGHER EDUCATION LABOR RELATIONS BOARD:



Harriet E. Cooperman, Chair

Annapolis, MD

March 30, 2023

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.