

**State of Maryland
Public Employee Relations Board**

In the matter of:)	
)	
<i>Matthew Branham</i>)	
)	
Charging Party,)	PERB Case No. ULP 2024-20
)	
and)	
)	
<i>Maryland Department of Health,</i>)	
)	
Respondent/Employer)	
)	
)	

DECISION AND ORDER

I. Procedural and Factual Background

Complainant Matthew Branham is a supervisor within the Maryland Department of Health Police Department (“Department of Health”). On January 31, 2024, Branham filed this Unfair Labor Practice charge (“Charge”) with the Public Employee Relations Board (“PERB”) alleging that the Department of Health unilaterally changed its on-call policy without bargaining in good faith in violation of §22-206(a)(8) of the Public Employee Relations Act (“PERA”). Service in this matter was first attempted on February 1, 2024, but was not effectuated until March 6, 2024. The Department of Health submitted a timely response.

II. Analysis

State Government Article § 22-201(b) establishes the rights of “public employees” to “form, join and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing,” to “be represented by employee organizations, to negotiate collectively with their public employers in the determination of their terms and conditions of employment, and the administration of grievances arising thereunder,” and finally, to “be fairly represented by their exclusive representative, if any, in collective bargaining.” MD Code, State Govt. § 22-201(b)(1)-(3). State Government Article § 22-101(g) defines "public employee" as "an individual who holds a position by appointment or employment in the service of a public employer

with collective bargaining rights under Title 3 of the State Personnel and Pensions Article....” Title 3 of the State Personnel and Pensions Article (“SPP”) outlines those agencies and employees over which PERB has authority to resolve disputes, including unfair labor practice charges, relating to collective bargaining. SPP § 3-102(b)(11) specifically excludes “any supervisory, managerial, or confidential employee of a unit of State government listed in subsection (a)(1)(i) through (iv) and (vi) through (xi) of this section, as defined in regulations adopted by the Secretary,” which includes the Maryland Department of Health. MD Code, Health § 2-101.¹

Based on the plain language of the statute, "supervisory" employees of defined State government units are excluded from coverage under Title 3 of SPP, are excluded from the definition of "public employee" under § 22-101(g) of PERA, and do not possess the rights of "public employees" as set forth in State Government § 22-201(b). Therefore, as a result of his role as a supervisor, Branham does not have standing to file the instant charge.

Furthermore, we note that past Maryland labor relations board decisions, to which PERB is bound, see State Government § 22-309(b), have dismissed complaints alleging unfair labor practice claims for lack of standing where the claimant was not covered by the statutory provision they claimed was violated. E.g., Coleman v. Walters, PSLRB Case No. SV 2022-01; Blake v. Baltimore County Public School System, PSLRB Case No. SV 2018-04; and AFSCME v. Salisbury University and MCEA, SHELRB ULP Case Nos. 2001-02 and 2002-03. These decisions operate as “statutory criteria” and further support our holding that supervisory employees, including Branham, do not currently have standing to bring the instant unfair labor practice charge. See Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC, 439 Md. 588, 599, 97 A.3d 135 (2014).

III. Conclusions of Law

Because Complainant Branham is a supervisor pursuant to SPP § 3-102(b)(11), he does not fall within the definition of “public employee” under PERA, and is therefore excluded from coverage under Title 3 of SPP. As a result, the charging party Branham lacks standing to file the instant unfair labor practice charge.

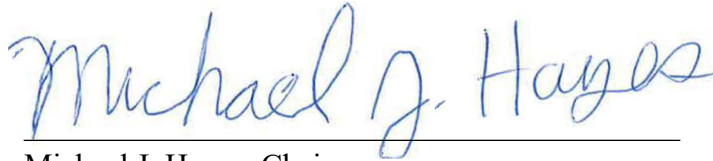
IV. Order

It is hereby ordered that the charge in PERB ULP 2024-20 is dismissed.

¹ We note that recent legislation, which goes into effect October 1, 2024, amends SPP § 3-102(b)(11) to remove the exclusion of many state government “supervisory” employees from coverage under the Public Employee Relations Act. See Maryland H.B. 260 (2024). This amendment does not take effect until October 1, 2024, nor does it apply retroactively. As a result, it does not impact our ruling in this case.

Annapolis, MD
June 17, 2024

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD:



Michael J. Hayes, Chair

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.