State of Maryland
Before the
State Labor Relations Board

In the matter of:	)	
	)	
	)	
	)	
Eddie Lee Clark,	)	
	)	
Complainant	)	
	)	
v.	)	**SLRB Case No. 05-U-02**
	)	
Maryland Classified Employees Association,	)	**Opinion No. 4**
	)	
	)	
Respondent.	)	
	)	
	)	

DECISION AND ORDER

The complaint in the instant matter is by former State employee, Mr. Eddie Clark, against the employee organization in which he is a member, Maryland Classified Employees (MCEA), for allegedly failing to properly represent him in his appeal of his termination from State employment. For the reasons below, we conclude that the complaint fails to state a cause of action within the jurisdiction of the State Labor Relations Board.

I. Statement of the Case

The above-captioned matter originated as a civil action in the Circuit Court for Baltimore County. The civil action was filed by Plaintiff (Complainant herein) Eddie Clark. Mr. Clark is a former State correctional officer and bargaining unit employee, who had been employed by the Maryland Department of Public Safety and Correctional Services (DPSCS). Mr. Clark had filed the complaint against Defendant (Respondent herein) MCEA, claiming that MCEA had failed to accord him a standard of representation to which he asserts he was entitled in

connection with a grievance concerning DPSCS' termination of his employment.

We note that MCEA is an employee organization within the meaning of State Personnel and Pensions Article (SPP), Title 3, the Collective Bargaining Statute (CBS) administered by the State Labor Relations Board (Board). Mr. Clark is a dues-paying member of MCEA. However, the parties acknowledge that MCEA is not the employee organization authorized as the exclusive representative[1]/ of employees in the collective bargaining unit that had included Mr. Clark.[2]/

On January 13, 2003, counsel for MCEA filed a copy of the Circuit Court's Order transferring the matter to the State Labor Relations Board (Board). The Circuit Court ordered that the Board "investigate the allegations raised by Plaintiff Clark that the Defendants failed to meet its duty to represent him fairly and competently in the appeal of his termination[.]" *Eddie Lee Clark v. Maryland Classified Employees Association, et al.*, Case No. 03-C-03-007250 (Order dated January 7, 2005). As a threshold matter, the Circuit Court Judge further ordered that if the Board determines "that it lacks jurisdiction to investigate unfair labor practices alleging that a labor organization has failed to properly represent a State employee's rights and interests in the appeal of his termination, then the Defendant's (sic) shall be permitted to bring this matter back to my attention and renew the pending request that summary judgment be entered in their favor as to all Counts of Plaintiff's Complaint[.]"

On January 21, 2005, counsel for MCEA filed with the Board a copy of the civil complaint and requested that the matter be scheduled for hearing. On January 27, 2005, Counsel for the Board issued a letter to the parties assessing the jurisdictional issue raised by the Circuit

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[1]/ Collective Bargaining Statute (CBS), Section 3-101(d) and (e), provides as follows:

(d) "Employee organization" means a labor or other organization in which State employees participate and that has as one of its primary purposes representing employees.
(e) "Exclusive representative" means an employee organization that has been certified by the Board as an exclusive representative under Subtitle 4 of this title.

[2]/ Maryland State correctional officers are part of bargaining Unit H. We take administrative notice of the fact that the International Brotherhood of Teamsters and the American Federation of State, County and Municipal Employees, AFL-CIO are, jointly, the employee organizations officially recognized as the exclusive representative, in collective bargaining, of employees in bargaining Unit H.

Court. In the main, Board Counsel advised the parties that since Mr. Clark was not an employee in a bargaining unit where MCEA is the exclusive representative of the employees, Mr. Clark lacked standing under the CBS to pursue the alleged cause of action against MCEA. The parties were further advised that the complaint did not state a cause of action under the CBS.

On February 24, 2005, MCEA requested that the Board review Counsel's jurisdictional and standing assessment and inform the parties if, pursuant to the State Government Article, Title 10, Subtitle 2 (Administrative Procedure Act), the Board will hold a hearing to decide the matter or delegate its hearing authority to the Office of Administrative Hearing.

II. Discussion and Conclusions

The Board's authority to investigate and conduct hearings to determine possible violations of the CBS is discretionary and is exercised when necessary to fairly decide an issue or complaint arising under the CBS or a regulation adopted under it. SPP, §3-208(b).[3]/ When there is no dispute over material issues of fact, an evidentiary hearing is typically not necessary to decide issues threshold to a complaint such as standing and jurisdiction. To assist the Board in determining if there is a need for any hearing in this matter, by letter dated March 9, 2005, we directed the parties to file responses to questions critical to deciding these issues. The parties' responses were filed on March 23 and 24, 2005. Upon review of the parties' responses, pleadings and other submissions, we find that material issues of fact with respect to our jurisdiction over this matter do not exist. We further conclude that the disposition of these threshold issues do not turn on arguments that are either novel or unique. Therefore, we conclude that an evidentiary hearing or oral argument is not warranted and shall decide these issues on the parties' filings, submissions and the existing record.

The threshold issue, as referred to the Board by the Circuit Court, is whether or not we "lack[] jurisdiction to investigate unfair labor practices alleging a labor

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[3]/ SPP, §3-208(b) provides: "The Board may hold a hearing in accordance with Title 10, Subtitle 2 of the state Government Article [i.e., Administrative Procedure Act] whenever necessary for a fair determination of any issue or complaint arising under this title or a regulation adopted under it."

organization has failed to properly represent a State employee's rights and interests in the appeal of his termination." For the reasons discussed below, we find no basis or grounds for rejecting Board Counsel's January 27, 2005 assessment with respect to the Board's jurisdiction under the CBS over the alleged cause of action.

We note as a preliminary matter that the Circuit Court characterizes Mr. Clark's claim against MCEA an "unfair labor practice[]." Under the CBS, unfair labor practices are not statutorily prescribed but rather are defined by regulations the Secretary of the Department of Budget and Management may adopt. SPP, §3-207. Currently, no unfair labor practices regulations have been so defined or adopted.[4]/ To the extent that Mr. Clark has a cause of action under our jurisdiction, it must arise from a violation of rights and obligations secured by statute under the CBS.[5]/

By way of background, Mr. Clark had filed grievances, vis-à-vis, the statutory grievance procedure accorded Executive Branch employees, challenging DPSCS' disciplinary actions against him that resulted in the termination of his employment.[6]/ Mr. Clark was entitled to and engaged the services of an MCEA representative to represent him in the

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[4]/ See, *Robert L. Ehrlich, Jr., State of Maryland, et al. v. MD State Employees Union, AFSCME Council 92,* 382 Md. 597, 856 A.2d 669 (2004)(The Court of appeals upheld the Circuit Court's conclusion that the Secretary of Department of Budget and Management's (DBM) authority under the CBS to promulgate and adopt regulations defining unfair labor practices is discretionary).

[5]/ Cf, *AFSCME & Donald Pryor v. Salisbury University*, SHELRB ULP Case No. 2001-03 and 2002-01, Slip Op. No. 7 (September 26, 2002)(the State Higher Education Labor Board similarly recognizing rights secured by the CBS giving rise to a cause of action notwithstanding the absence of regulations defining unfair labor practices or other causes of action). In its response, MCEA correctly observes that pursuant to Section 3-306(b) of the CBS, the prohibition against engaging in unfair labor practices is not limited to employee organizations acting in their capacity as employees' exclusive representatives. However, Section 3-306(b) expressly limits such proscribed actions by employee organization to "unfair labor practices, as defined by the Secretary [of DBM]." As noted in the text, what constitutes such unfair labor practices has not been so defined.

[6]/ DPSCS is a department in the State Executive Branch. Except as otherwise provided by law, employees in the Executive Branch are under the State Personnel Management System. Titles 5 and 12 of the State Personnel and Pensions Article provide such employees with a statutory procedure for filing a complaint or grieving disputes between an employee and the employee's employer over an allegation of discrimination or violation of management policy or regulation. SPP, §§5-209 and 12-101(c). Under the State's statutory grievance procedures, employees may be represented by any person. SPP, §5-210. Mr. Clark's dispute with DPSCS is based on alleged violations of State policy and procedures prescribed by statute and/or regulation. Accordingly, Mr. Clark filed his grievances/complaint pursuant to the State procedures and chose to have MCEA represent him throughout the process. SPP, Titles 5 and 12 accord the Board no role or authority, expressed or implied, to administer or enforce this dispute resolution process.

grievance.[7]/ MCEA, unsuccessfully, pursued the grievance on behalf of Mr. Clark. Based on his experience with MCEA's representation during this process, Mr. Clark filed the afore-mention complainant against MCEA in Circuit Court.

Under the CBS, there are two provisions that secure the rights of State employees to be represented or not when dealing with his employer in connection with collective bargaining and all other matters. These employee rights are prescribed under Section 3-301 and, in pertinent part, provides as follows:

> § 3-301. Rights of employees
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> (a) Employees subject to this title have the right to:
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> * * *
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> (2) Be fairly represented by their exclusive representative, if any, in collective bargaining; and
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> * * *
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> (b) An employee who is a member of a bargaining unit with an exclusive representative may, without the intervention of an employee organization, discuss any matter with the employer.

Section 3-301(a)(2) of the CBS protects employees' right to be fairly represented in collective bargaining by an employee organization that is the employee's exclusive representative. The parties' filings and related pleadings establish that Mr. Clark's grievance concerned a dispute over DPSCS' compliance with a statutorily prescribed disciplinary policy and that Mr. Clark pursued his grievance through the statutory grievance procedure established by the State for Executive branch employees. No aspect of Mr. Clark's grievance related to a matter or procedure established or pursued by collective bargaining.

Equally essential to a cause of action under this provision is the employee organization's status as the employee's exclusive representative. The parties acknowledge that MCEA, Mr. Clark's representative in the grievance proceeding, was not Mr. Clark's exclusive representative. As a member of the employee organization MCEA, Mr. Clark was entitled to (and engaged) MCEA's

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[7]/ According to the parties, as a dues-paying member of MCEA, employees are entitled to be represented by MCEA is such matters.

representation when pursuing his grievance. Conversely, as a bargaining unit employee under the CBS, Mr. Clark was entitled to fair and non-discriminatory representation from his exclusive representative, i.e., AFSCME/Teamsters. See, SPP, §§3-301(a)(2) & 407(2). Unlike MCEA's representation, Mr. Clark's entitlement to his exclusive representative's fair representation is statutory; it is not based on rights accorded employees as a member of an employee organization, e.g., MCEA. Therefore, any cause of action for or relief from any alleged malfeasance by MCEA with respect to Mr. Clark's rights and entitlements as an MCEA member, e.g., representing Mr. Clark in a non-exclusive and non-collective bargaining capacity, lies outside the purview of the CBS. See, *AFSCME v. Salisbury University and MCEA*, SHELRB ULP Case Nos. 2001-02, 2001-03, 2002-01, 2002-03 and Rep Case No. 2002-04, Opinion No. 1 (2002)(the State Higher Education Labor Relations Board made a similar observation with respect to its prescribed jurisdictional authority under the CBS when it observed that its "substantive jurisdiction is not subject to consolidation with other legal claims outside of the Board's jurisdiction.")

The other employee right provision, Section 3-301(b), allows bargaining unit employees, such as Mr. Clark, to press matters, e.g., grievances, with his employer without the involvement of any employee organization, including the employee's exclusive representative, if any. However, the facts of this case do not evoke the employee right secured by this provision. Here, Mr. Clark chose to be represented in the processing of his grievance, albeit by an employee organization that is not his exclusive representative.

MCEA argues that notwithstanding the fact that the CBS accords bargaining unit employees' exclusive representative the sole right to represent their bargaining unit employees in collective bargaining, nothing in the law accords exclusive representatives the sole authority to represent such employees for purposes of processing grievances. MCEA asserts that "[f]or the employee organization that is not the exclusive representative, such as MCEA, there is still an obligation to fairly represent the employee in the handling of a grievance. Failure to meet this obligation constitutes an unfair labor practice. Enforcement of the law requires that the SLRB address the duties of the employee organization in both contexts."

We do not take issue with MCEA's observation that under the CBS, employees are not required to use their exclusive representative to grieve a matter. Employees may be represented by any person, are free to seek representation from any employee organization or, as provided under Section 3-301(b), may choose not to be represented. MCEA's alleged actions and conduct may constitute a cause of action (or unfair labor practice) under other labor statutes;[8]/ however, as discussed above, the CBS does not secure an employee right to a certain quality or standard of representation from an employee organization that is not the exclusive representative of the employee in any context. Notwithstanding its assertions to the contrary, MCEA cites no basis under the "law" we enforce, i.e., the CBS, to recognize such a cause of action.[9]/

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[8]/ MCEA argued extensively why the Board should recognize that Mr. Clark has standing and his claims against MCEA are preempted by SPP, Title 3, i.e., the CBS. MCEA's arguments are drawn from rationale in case law interpreting rights and obligations under labor law statutes from other jurisdictions, i.e., the National Labor Relations Act (NLRA), the Railway Labor Act, etc. We have previously stated that "SPP, Title 3, differs in many significant ways from other public and private sector collective bargaining statutes, including NLRA." *Maryland State Employees Union, AFSCME, Council 92 v. State of Maryland; Robert L. Ehrlich, Jr., Governor; et al*, SLRB Case No. 05-U-01, Slip Op. No. 3 (March 11, 2005). In *Maryland State Employees Union* we stressed that it is for guidance only that we may look to the case law of other jurisdictions. We are not bound by such precedent. To the extent that the facts of a case presents issues not within purview of the CBS, arbitrary reliance upon labor law precedent decided under labor statutes that secure different or broader employee and labor organization rights and obligations, respectively, is not appropriate. We find MCEA's references to the existence of the instant cause of action under other labor law statutes to be misplaced to finding such a cause of action under the CBS. Since Mr. Clarks' claims against MCEA fails to articulate a basis of liability under the CBS related to his employee rights or the duties owed him by his exclusive representative, the CBS does not serve to preempt Mr. Clark's cause of action (in state court) based on any other duty that MCEA may owe him as a member of MCEA. See, e.g., *Gillette v. Continental Can Co.,* No. 1:91CV1765 (N.D. Ohio. 1991) and *Nellis v. Airline Pilots,* 805 F. Supp. 355, *aff'd*, 15 F.3d 50 (4th Cir.), *cert. denied,* 513 U.S. 808 (1994)(In dicta, the court noted that while no court has ever found a union has contractually obligated itself to duties above and beyond the duty of fair representation, a union through promises to its members, could make obligations for itself that might be enforceable through the courts under state laws).

[9]/ We acknowledge that some notable state and federal labor laws (e.g., Federal Service Labor Management Relations Statute (5 U.S.C. Chapter 71, §7120) and the Comprehensive Merit Personnel Act (D.C. Code §1-618.3)) encompass such causes of action though provisions known as standards of conduct for labor organizations. Statutes providing such standards require any employee/labor organization that is or seeks to become the exclusive representative of employees covered by the statute to subscribe and adhere to certain standards of conduct. Typically included among such standards is a provision requiring the labor organization to accord its members fair and equal treatment under the governing rules of the organization. The CBS does not provide such standards for labor organizations. However, if MCEA were subject to a statute providing such standards, a cause of action alleging a failure to fairly represent the member during a grievance proceeding may lie within the purview of the administering labor board. The labor organization, e.g., MCEA, need not be the member's exclusive collective bargaining representative to be subject to the requirements of the standards of conduct. All that is required to be subject to the standard is that the labor organization sought to become or is the exclusive representative of any employees covered under such a statute. MCEA meets this criterion under the CBS; however, the CBS does not provide for standards of conduct for labor organizations.

For the reasons discussed, Complainant Eddie Clark's claim against the Respondent MCEA fails to state a cause of action under the CBS and thereby is not within the jurisdictional purview of the Board. Therefore, the Complaint is hereby dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed.

BY ORDER OF THE STATE LABOR RELATIONS BOARD

Cecilia Januszkiewicz, Member
Sherry Lynn Mason, Member
Laird Patterson, Member
Allen G. Siegel, Member

Annapolis, MD
May 5, 2005, 2005

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 MD R CIR CT Rule 7-201 et seq.