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**EHRlich v. MARYLAND STATE EMPLOYEES UNIONS:**

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*The Governor must Take Affirmative Steps to Ratify and Make Effective Memoranda of Understanding Following a Collective Bargaining Agreement*

**By: Mark Patrick Johnson**

The Court of Appeals of Maryland held that the Governor must take affirmative steps to ratify and make effective memoranda of understanding ("MOU") following a collective bargaining agreement. *Ehrlich v. Md. St. Employees Unions*, 382 Md. 597, 856 A.2d 669 (2004). In so holding, the court concluded that the trial court incorrectly ruled that the MOUs were ratified by Governor Glendening. *Id.* at 610, 856 A.2d at 677.

In 2002, the American Federation of State, County, and Municipal Employees ("AFSCME") contacted the Secretary of the Department of Budget and Management ("DBM"). AFSCME questioned the designation of new regulations for the State Labor Relations Board ("SLRB") regarding unfair labor practices and the procedures required to implement the regulations. DBM did not answer the letter.

Governor Glendening agreed to negotiate with AFSCME regarding economic and non-economic issues surrounding compensation and work agreements. Governor Glendening and AFSCME agreed to bifurcate the negotiations, dealing with non-economic issues before the November 2002 election and economic issues after the election. The collective bargaining committee and AFSCME reached an agreement as to the non-economic issues in July, and reached a tentative agreement regarding economic issues, including a two percent wage increase for all state employees, in November.

Problems with the agreement's language halted the process, and the drafts of the MOUs were not completed until December 13, 2002. The MOUs were submitted to the employees on December 18, 2002, and were declared ratified on January 13, 2003. The next day,

the MOUs were signed by the collective bargaining committee and approved by Governor Glendening's chief-of-staff, Gene Lynch. The MOUs did not contain a signature line for the Governor, and neither Governor Glendening, nor his successor, Governor Ehrlich, signed the MOUs. Governor Ehrlich, who had to submit a balanced budget four days later, refused to fund the salary increases in his budget.

AFSCME filed suit in the Circuit Court for Anne Arundel County against Governor Ehrlich, the State, DBM, and SLRB, seeking declaratory and mandatory injunctive relief. The court held a summary judgment hearing and entered a memorandum opinion stating that Lynch effectively ratified the MOUs. The court concluded that the parties did not end negotiations on the economic terms requiring budget allocation prior to January 1, thus the economic terms were not binding. The circuit court ordered that Governor Ehrlich was bound only by the non-economic provisions of the MOUs.

The defendants appealed the circuit court order, complaining that Governor Glendening did not ratify the MOUs, and therefore, the MOUs were ineffective. AFSCME cross-appealed, asking that SLRB be required to adopt regulations concerning unfair labor practices. The Court of Appeals of Maryland granted *certiorari* on its own initiative.

The court began by referring to the relevant statutory authority regarding the collective bargaining process. *Id.* at 601-02, 856 A.2d at 672. The court referred to the Maryland Code, which states that the parties involved in negotiations are to "make every reasonable effort to conclude negotiations in a timely manner 'for inclusion by the principal unit in its budget request to the Governor,'" and requires that the parties finish negotiations before January 1 for any item requiring a funding appropriation in the fiscal year that begins on the following July 1. *Id.* at 602, 856 A.2d at 672 (quoting MD. CODE ANN., STATE PERS. & PENS. § 3-501(c) (2001)). The court then directed its attention to the execution of MOUs, finding that MOUs are not effective until they have been ratified by the Governor and pass with a majority vote of the employees in the collective bargaining unit. *Ehrlich*, 382 Md. at 602, 856 A.2d at 672.

The court then discussed the significance of the ratification clause, stating that the circuit court believed that the Governor could

effectively ratify the MOUs by charging his chief-of-staff to do so. *Id.* at 607, 856 A.2d at 675. The court of appeals rejected this reasoning because the statute expressly states that the MOUs must be ratified by the Governor, and no other signature would suffice. *Id.* at 608, 856 A.2d at 675-76. The court concluded that, even though section 3-501(c)(2)(ii) requires the Governor to include any amounts in the budget to accommodate the additional costs resulting from the collective bargaining negotiations, the legislature still wanted the Governor to personally understand and approve what was in any signed MOUs. *Id.* at 608, 856 A.2d at 676.

In the case at bar, the Governor did not sign the MOUs; as such, the court next pondered the requirements of ratification. *Id.* Examining Black's Law Dictionary, the Restatement Second of Agency, and common law, the court concluded that ratification requires a positive act or declaration, while general statements or simple consent will not suffice. *Id.* at 609, 856 A.2d at 676. Although the Governor discussed main issues with AFSCME, Lynch summarized the MOUs for the Governor, and the Governor conferred discretion to his staff, the court stated that there was no evidence to show that Governor Glendening took affirmative action to read the final MOUs or sign them. *Id.* at 610, 856 A.2d at 677. Accordingly, the MOUs were ineffective. *Id.*

Next, the court examined DBM's role in adopting proposed regulations. *Id.* at 610-11, 856 A.2d at 677-78. The court referred to statutory law, specifying that the Secretary of DBM has power to create and impose regulations to define unfair labor practices and institute legitimate labor activities on the work site. *Id.* at 610, 856 A.2d at 677. The court also examined the statute permitting persons to ask SLRB to adopt regulations. *Id.* at 611, 856 A.2d at 677. The statute requires an interested person to present a petition for adoption of a regulation, and, within 60 days of submission, SLRB must either reject the petition and state the reasons for disapproval, or begin the adoption process. *Id.*

The court of appeals also addressed the issue of mandatory adoption of regulations, stating that the statutes do not require the agency to adopt the regulation, but make it voluntary. *Id.* at 612-13, 856 A.2d at 678-79. The court also addressed the petition process for promulgating new regulations, determining that the letter sent from

AFSCME to the Secretary of DBM did not comply with the requirement to start the petition process. *Id.* at 613, 856 A.2d at 679. The court considered the petition requirement, codified in C.O.M.A.R. 17.01.01.01-.02, requiring that the petition contain a brief statement of the regulation or proposed amendment. *Id.* The court ultimately denied AFSCME any relief, stating that the letter only expressed interest and inquired into the procedure to follow, but did not start the procedure. *Id.*

In *Ehrlich v. Md. State Employees Union*, the Court of Appeals of Maryland affirmed the role of the Governor in executing policy concerning collective bargaining agreements. The court directed the Governor to take an active role in the collective bargaining process, requiring the Governor to take affirmative steps to understand and sign any final agreement. This decision limits the Governor's ability to assign responsibilities to members of his staff who may be more familiar with the subject, consequently, demanding the Governor to be more involved in State issues. This demand presents a higher degree of responsibility on the State's leader, requiring a higher degree of dependability when it comes to making decisions that effect its constituents.