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Interpretive Ruling on Bargaining )	
During Transition from )	
School Administrative Unit )	MLRB-INITIATED
to Regional School Unit )	INTERPRETIVE RULING
)	
)	

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On October 27, 2008, the Maine Labor Relations Board voted to ask for input from any interested party and to issue an interpretive ruling on an expedited basis on the following question:

I just came from the monthly meeting of our school board on which I currently serve. Additionally, I'm running for the new RSU board. At tonight's meeting we were notified that the teacher's union has requested to begin negotiations on a new contract (current contract expires in 2009 after July 1st when our new RSU will officially be in place). My position is that the current SAU board has no authority to negotiate a new contract, but must defer to the new RSU board. What do you advise?<sup>1</sup>

This is essentially a redacted version of a question received by the Maine Department of Education which it intended to respond to on its School Reorganization "Questions and Answers" web page. The Department's request for assistance from the MLRB led to the Board's decision to issue an interpretive ruling on its own initiative, as permitted by 26 MRSA section 968(3).

The Board publicized a request for input on this question by sending an email to known labor practitioners involved in K-12

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<sup>1</sup>Throughout this ruling, RSU refers to "regional school unit" and SAU refers to "school administrative unit."

education and by posting a notice on the MLRB website stating that "The MLRB will accept written comment from any person, employee organization or public employer until 5:00 p.m. on Tuesday, November 4, 2008. The written comment may be in the form of a letter, an email or a written memorandum of law."

#### DISCUSSION

In the scenario presented, the SAU is currently the public employer and will remain the public employer until the RSU becomes operational on July 1, 2009. The current collective bargaining agreement will not expire until after July 1, 2009, at which time the SAU will cease to exist by operation of law.

The School Reorganization Law states that on the operational date the regional school unit is required to "assume all of the obligations, duties, liabilities and rights of the participating school administrative units for all purposes under Title 26, chapter 9-A." 20-A MRSA §1464(1). This includes the "assumption and continued observance of all collective bargaining agreements . . . , which agreements continue in effect for the remainder of their unexpired terms . . ." 20-A MRSA §1464(1)(B). The law also charges the RSU with bargaining for an initial or successor agreement in any bargaining unit in which there is not a collective bargaining agreement in effect on the operational date. 20-A M.R.S.A. §1464(1)(C). The plain meaning of these two paragraphs is simply that if an agreement is in effect on the operational date, the RSU must honor it; if none is in effect, the RSU must bargain for one. The statute addresses only those two situations. The requirement that the RSU honor agreements in effect on the operational date reflects the Legislature's determination that doing so would foster stable labor relations and a smooth transition to the new organizational structure. Requiring the RSU to bargain a new or successor agreement when

there is no collective bargaining agreement in effect on the operational date merely recognizes the fact that, as of that date, the RSU assumes all of the obligations of the public employer under Title 26, Chapter 9-A.

The statutory changes made in the School Reorganization Law do not specifically address whether the SAU or the RSU is responsible for negotiating a successor to a collective bargaining agreement due to expire after July 1, 2009. The collective bargaining statute, however, is unequivocal regarding the obligation to bargain. Section §965(1) says "It shall be the obligation of the public employer and the bargaining agent to bargain collectively." The SAU is the public employer up until the operational date of the RSU, at which time the RSU becomes the public employer. The School Reorganization Law does not alter this statutory duty to bargain. The inescapable conclusion under established law is that the SAU has a continuing obligation to bargain with the bargaining agent until the SAU is dissolved; however, this is not the end of our inquiry.

The SAU does not have the authority to execute a contract with an effective date that falls after the SAU ceases to exist. While requiring the RSU to honor contracts that are in effect, the School Reorganization Law does not require the RSU to also honor a collective bargaining agreement negotiated by the SAU that would not be in effect until after the SAU had been dissolved. If that had been the intent of the Legislature, the statute would have stated so explicitly. The notion of the SAU having authority to enter into a collective bargaining agreement that would not become effective until after the SAU ceases to exist is so contrary to the School Reorganization Act and general legal principles<sup>2</sup> that drawing such an inference without any

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<sup>2</sup>The general rule is that one entity can not bind a different body to a contract if the latter is not a party to the agreement.

supporting statutory language would be inappropriate.

It is a well-established principle of labor law that a party cannot be bargaining in good faith if that party does not have the authority to make an agreement. Consequently, in the unique circumstances presented by the implementation of the school reorganization law, we conclude that the SAU must be relieved of its duty to bargain the terms of a successor agreement to a collective bargaining agreement due to expire after the SAU is dissolved.<sup>3</sup>

Analytically, it seems appropriate that the duty to bargain a successor agreement must be required of some entity; if not the SAU, then logically it should fall on the RSU. We have been unable, however, to find any authority in the law for us to impose this duty on the RSU before it becomes operational, as it is not the public employer until that date. Thus, there is a hiatus in the statutory duty to bargain a successor agreement that occurs before the RSU becomes operational that only the Legislature can address.

Nonetheless, the School Reorganization Law contemplates that during the transition period, the initial RSU Board and RSU Superintendent will work closely with the SAU boards to prepare the RSU to become operational on July 1<sup>st</sup>. The transitional powers established in §1461-A require the RSU board to "complete the budget development process and recommend a budget for consideration by the legislative body responsible for final budget approval and the residents of the regional school unit." 20-A M RSA §1461-A(2). To accomplish this budget development task, "specific duties may be assigned to existing personnel with the approval of the employing school administrative unit." 20-A

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<sup>3</sup>All other statutory responsibilities related to collective bargaining, such as administering existing agreements, remain in force as long as the SAU remains the public employer.

MRSA §1461-A(2). In addition to the requirement of preparing a budget, the RSU board "is authorized to take all other actions provided under state law to prepare the regional school unit to become operational on July 1st for the first operational year". 20-A MRSA §1461-A(3). Given that personnel costs are a significant part of any school's operational budget, we conclude that these transition provisions authorize but do not require the RSU to negotiate collective bargaining agreements, even though the RSU cannot execute a collective bargaining agreement until it becomes operational.

Although the RSU is not statutorily required to bargain during the transition period, we anticipate that the RSU will be actively involved in the negotiation process in these situations and we encourage such involvement. In this period, we urge the RSU to, at a minimum, seek the assistance of the SAU in negotiating a successor agreement. The RSU may decide to authorize the SAU to negotiate with the bargaining agent on its behalf within the bargaining authority established by the RSU. Clearly, it is in the interests of the RSU to draw on the knowledge and experience of the existing SAU board regarding issues in the unit and to build on the existing relationship the SAU has with the bargaining agent.

Our conclusions in this matter can be summarized as follows:

1. If the existing collective bargaining agreement is due to expire before the operational date of the RSU, the SAU has a duty to bargain for a successor agreement. The SAU does not have the authority to execute an agreement with an effective date after the operational date of the RSU.

2. If the existing collective bargaining agreement is due to expire after the July 1<sup>st</sup> operational date of the RSU, the RSU is authorized to bargain for a successor to that agreement before

July 1<sup>st</sup>, but it is not statutorily required to do so.

3. Once the RSU becomes operational, the RSU has a duty to bargain for an initial or successor collective bargaining agreement in any bargaining unit in which there is no agreement in effect.

4. The RSU and the SAU are encouraged to work together to negotiate a successor to an agreement that is due to expire after the operational date of the RSU.

In accordance with 26 MRSA § 968(3), this ruling is advisory only and is not subject to judicial review.

Dated at Augusta, Maine, this 14th day of November, 2008.

MAINE LABOR RELATIONS BOARD

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