STATE OF MAINE

MAINE LABOR RELATIONS BOARD
Case No. 16-06
Issued: April 20, 2016

DAVID TRASK,

Complainant,

v.

TOWN OF MADISON,

Respondent.

DECISION ON APPEAL OF EXECUTIVE DIRECTOR'S DISMISSAL OF COMPLAINT

The question before this Board is whether to affirm, deny, or modify the Executive Director's dismissal of the prohibited practice complaint filed on December 28, 2015, by Mr. David Trask. The Complaint alleges that the Town of Madison violated several sections of Title 26 by essentially transforming the Madison Police Department into a division of the Somerset County Sheriff's Department effective on July 1, 2015. The Complainant, now represented by Robert E. Sandy, Jr., Esq., filed a timely appeal of the Executive Director's dismissal in accordance with §968(5)(B). The Complainant appeals the dismissal of the charges that the Town of Madison's conduct violated §964(1)(A), §964(1)(C), and §964(1)(E) of the Municipal Public Employees Labor Relations Law (the "Act"), 26 MRS §961 et seq.[1]

Pursuant to the Board's Rules and Procedures, once a motion for review of a dismissal is filed, "the Board shall examine the complaint as it existed when summarily dismissed in light of the

[1] The Executive Director dismissed the allegations charging violations of provisions not within this Board's jurisdiction; the dismissal of those charges has not been appealed.

assertions contained in the motion." MLRB Rule Ch. 12, §8(3). The Board makes its own determination on the sufficiency of the complaint, rather than simply reviewing the Executive Director's decision. In doing so, the Board must treat all facts alleged as true and must construe the complaint in the light most favorable to the complainant. Buzzell, Wasson, and MSEA v. State of Maine, No. 96-14 at 2 (Sept. 22, 1997). When, however, something that is presented as a factual allegation is actually a legal conclusion, the Board is not bound to accept that legal conclusion as true. MSAD #46 Educ. Assn./MEA v. MSAD #46 Board of Dir., No. 02-13 at 2 (Nov. 27, 2002), citing Bowen v. Eastman, 645 A.2d 5, 6 (Me. 1994). See also William D. Neily v. State of Maine, No. 06-13 at 6 (May 11, 2006), aff'd, William D. Neily v. MLRB, AP-06-35 (Oct. 23, 2006).

The first two charges addressed in the appeal allege an interference charge in violation of a §964(1)(A) and a violation of §964(1)(C) by interfering with the existence of the Complainant's bargaining unit. Neither of these two charges were specifically included in the Complaint, either by referring to the specific subsection (as required by MLRB Rule Ch. 12, §5(4)) or by a narrative describing conduct that could be read as stating a charge. The only reference to a §964 violation in the Complaint occurred in the context of charging a refusal to bargain, although the specific subsection (1)(E) was not mentioned. Given these omissions from the Complaint, there is some question whether the (1)(A) and (1)(C) issues should even be addressed on appeal to the Board. We need not answer this question as both of the charges are without merit.

The Appellant first asserts that the actions of the Town of

Madison as alleged in the Complaint violated §964(1)(A), which prohibits an employer from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963." Section 963, in turn, protects the right of public employees to:

> join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining, or in the free exercise of any other right under this chapter.

Appellant argues, "[t]he action of the Town of Madison compelled Sergeant Trask to participate in the activities of an organization not of his own choosing, specifically the bargaining unit of the Somerset County Sheriff's Department." Implicit in this argument is the legal conclusion that a bargaining unit is an 'organization' within the meaning of §963. This is incorrect: A bargaining unit is a group of job classifications or positions at a particular employer that defines the boundaries of the bargaining agent's representative authority under the Act. 26 MRS §966(2). Section 963 establishes the right of employees to participate in the activities of organizations of their own choosing "for the purposes of representation and collective bargaining" and §964(1)(A) protects that right.[2] Section 963 applies to "organizations" (often called unions or associations), not to the bargaining unit in which an employee's position is included.

Similarly, the Appellant argues that the Town of Madison violated §964(1)(C), which prohibits employers from "dominating or

[2]Furthermore, the procedures for establishing bargaining units as set forth in §966 demonstrate that individual employees do not choose which bargaining unit their job classification is placed in.

interfering with the formation, existence or administration of any employee organization," by effectively "dissolving" the Madison Police Department bargaining unit. The argument that the Town's conduct "interfered with the existence of" the bargaining unit must fail as well because, as noted above, a bargaining unit is not an "employee organization" within the meaning of this prohibition.

The Appellant's final argument is that the Executive Director made an error of law in dismissing that portion of the Complaint charging a violation of the duty to bargain. The Executive Director held "an individual bargaining unit employee does not have legal standing to charge a violation of the obligation to bargain," citing Neily v. State of Maine, No. 06-13 at 12. The Appellant argues that because §968(5)(B) permits an individual employee to file a prohibited practice complaint, that individual employee is authorized to file a complaint with respect to any of the violations specified in §964. Such an interpretation is inconsistent with the terms of both §964 and §965 and has the potential to continually undercut the very concept of collective bargaining.

There is no question that §968(5)(B) authorizes an individual employee to file a prohibited practice complaint. The Act would be of little value in protecting an individual's rights under the Act to join or not join a union if an individual were not able to file a charge alleging, for example, interference, restraint or coercion in violation of §964(1)(A) or alleging discrimination in violation of §964(1)(B). It would be equally destructive of the collective bargaining process enabled by the Act if an individual employee had standing to file a complaint charging a failure to

bargain collectively as required by §965.

Section 965 establishes in great detail the mutual obligation of the public employer and the bargaining agent to bargain collectively. Section 967(2) of the Act is clear that "the bargaining agent certified as representing the bargaining unit shall be recognized by the public employer as the sole and exclusive bargaining agent for all employees in the bargaining unit[.]" The words "sole and exclusive bargaining agent" leave no option for the employer to bargain directly with an individual employee. As this Board stated in Maine State Employees Assn. v. Maine Maritime Academy, "[t]his principle of exclusivity, found in all of Maine's collective bargaining statutes as well as the National Labor Relations Act, 'exacts the negative duty to treat with no other.'" No. 05-04 (Jan. 31, 2006) at 15, citing Medo Photo Supply Corp. v. NLRB, 321 U.S. 678, 684 (1944), quoted in MSEA v. Bangor Mental Health Inst. (BMHI) and State of Maine, No. 84-01, at 7 (Dec. 5, 1983). The obligation to bargain is imposed on the employer and the bargaining agent, and the individual employee has no statutory right to enforce the bargaining agent's right. Granting an individual employee the right to enforce the bargaining agent's right would tend to de-stabilize labor relations, as an individual employee may have different objectives than the bargaining agent's view of the interests of the collective whole, and the Employer would be forced to contend with prohibited practice complaints from employees attempting to second guess their bargaining agent. Only the union certified or recognized as the bargaining agent has the right to bargain with the employer, and only the bargaining agent can seek to enforce that statutory right by filing a complaint alleging a refusal to

bargain collectively under 964(1)(E).[3] Neily v. State of Maine, No. 06-13 at 6, aff'd, William D. Neily v. MLRB, AP-06-35 at 4.

The Appellant contends that the Complaint should not be dismissed because in Powers McGuire v. University of Maine System, No. 93-37 (April 4, 1994), the Board held that a (1)(E) charge could be brought by the individual employee in that case, Mr. McGuire. As this Board noted in Neily v. State of Maine, the McGuire case presented some "very unique circumstances" that justified allowing Mr. McGuire to proceed with his complaint alleging a failure to bargain:

> . . . In McGuire, the University System and the union had negotiated an "overload" compensation schedule that applied to all system campuses and determined the minimum compensation for teaching summer courses. Individual campuses were free to pay higher overload rates and individual faculty members were free to negotiate higher rates as well. The Augusta campus had an established practice of paying twice the overload rate for summer ITV courses, plus a $500 preparation fee. The unilateral change at the heart of the complaint was a reduction to the single overload rate for ITV courses offered at the Augusta campus that were under-enrolled. The Board considered it permissible to allow an individual to bring a unilateral change charge in that case because the union was not involved in negotiating or enforcing the higher-than-minimum overload rates that had been established at the various campuses.
> (emphasis added)
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> No. 06-13 at 13, citing McGuire, No. 93-37 at 15.

McGuire was a unique situation where individual faculty members could negotiate rates above the minimum set in the system-wide

[3] Similarly, an individual employee would not have standing to file a discrimination charge alleging a violation of §964(1)(B) if the conduct complained of was that another employee was discriminated against.

agreement for summer teaching. Similar circumstances are not present in the Complaint before us. McGuire was based on such unusual circumstances, the Board has not had occasion to apply it in any manner in the 22 years since it was issued. The circumstances present in McGuire are not present here, and we therefore find it has no precedential value to this case.

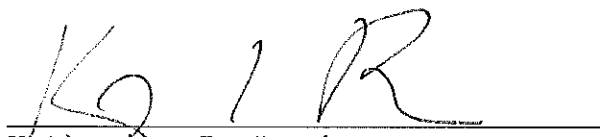
ORDER

On the basis of the foregoing discussion, and by virtue of and pursuant to the powers granted to the Maine Labor Relations Board by 26 MRS §968(5), it is ORDERED:

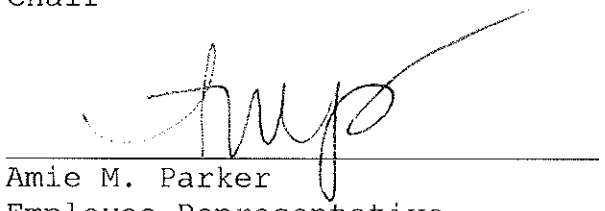
> The Executive Director's decision dated January 25, 2016, DISMISSING the prohibited practice complaint filed by Complainant David Trask on December 28, 2015, against the Town of Madison in Case No. 16-06, is AFFIRMED.

Dated at Augusta, Maine, this 20th day of April 2016

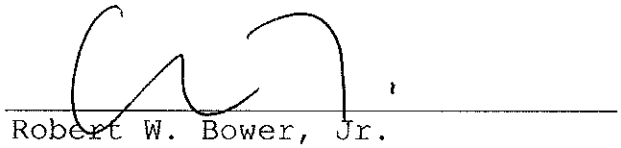
MAINE LABOR RELATIONS BOARD



Katharine I. Rand
Chair



Amie M. Parker
Employee Representative



Robert W. Bower, Jr.
Employer Representative

The parties are advised of their right to seek review of this decision and order by the Superior Court by filing a complaint pursuant to 26 MRSA § 968(4) and in accordance with Rule 80C of the Rules of Civil Procedure within 15 days of the date of this decision.