STATE OF MAINE

MAINE LABOR RELATIONS BOARD
Case No. 24-PPC-01
Issued: January 24, 2024

MAINE SERVICE EMPLOYEES ASSOCIATION, SEIU LOCAL 1989, Complainant, v. STATE OF MAINE EXECUTIVE BRANCH, Respondent.	DECISION AND ORDER

I. Statement of the Case

Maine Service Employees Association, SEIU Local 1989 ("Union" or "MSEA") filed this prohibited practice complaint against the State of Maine, Executive Branch ("State") alleging that the State violated the State Employees Labor Relations Act ("SELRA" or "Act") by refusing to produce, or negotiate over producing, otherwise confidential medical records requested by the Union in connection with its representation of a bargaining unit employee in a series of active grievances. The Union has also requested, and the Employer has denied producing, notes from an investigation that was undertaken regarding the same employee.

The Maine Labor Relations Board ("Board") finds that the State's obligations under the Act outweigh its confidentiality concerns for the requested material and that the State must produce these materials, after bargaining with the Union regarding reasonable accommodations to protect confidentiality.

II. Procedural History

The Union filed its complaint on July 20, 2023, and the State filed its answer on August 9, 2023. After review, the Executive Director issued a sufficiency letter on August 22, 2023. The parties subsequently agreed to forgo an evidentiary hearing and to submit the case to the Board based on stipulations and briefs, which occurred on November 27, 2023.

III. Stipulations

The parties have agreed to the following stipulations.

1. Complainant Maine Service Employees Association, SEIU Local 1989 ("MSEA") is a

bargaining agent within the meaning of 26 M.R.S.A. § 979-A(1) with its principal place of business at 5 Community Drive, Augusta, ME 04330. MSEA is the certified bargaining agent for employees of the State of Maine working in positions in the Administrative Services, Professional and Technical Services, Operations, Maintenance and Support Services, and Supervisory Services Bargaining Units.

2. As provided in 26 M.R.S.A. § 979-A(5), Respondent State of Maine ("State") is a public employer of employees in the four bargaining units specified in paragraph 1, represented by the Governor and her designee, the Bureau of Human Resources, with offices at 79 State House Station, Augusta, ME 04333.

3. MSEA and the State are parties to a collective bargaining agreement covering the four bargaining units in paragraph 1.

4. Margaret Todd-Brown is an employee of the Executive Branch of the State of Maine, Department of Health and Human Services ("DHHS" or "Department") at the Riverview Psychiatric Center ("RPC").

5. Ms. Todd-Brown was employed at RPC as a Hospital Nurse III until 2022, a position which falls within the Professional & Technical Services Bargaining Unit. In 2022, Ms. Todd-Brown promoted to A Hospital Nurse IV, a position which falls under the Supervisory Services Bargaining Unit.

6. On or around March 4, 2021, Ms. Todd-Brown reported to Nurse IV Jacquelin Owen that an RPC patient attempted to touch her inappropriately by reaching through the medication window toward Ms. Todd-Brown's crotch. Ms. Todd-Brown's supervisor, Nurse IV Kim Genest was unavailable at the time but spoke to her about the incident sometime in the afternoon. Ms. Genest reviewed video footage of the interaction prior to speaking with Ms. Todd-Brown and, as recalled by Ms. Todd-Brown, Ms. Genest allegedly claimed the patient's action happened very fast and was not out of the ordinary for patients in the psychiatric hospital.

7. On or around March 18, 2021, Ms. Genest informed Ms. Todd-Brown that during at least some portion of her upcoming evening shift there would be periods of time where no male staff would be on the Special Care Unit ("SCU") where she worked. Because of the patient's previous behavior, Ms. Todd-Brown had significant concerns regarding her safety and that of her female coworkers concerning this specific patient. Ms. Todd-Brown contacted RPC Safety Officer, Robby Vachon and a directive was made that SCU staffing would include a male employee to alleviate safety concerns. Ms. Genest contacted Ms. Todd-Brown shortly after the directive to inform her of the decision.

8. On or around March 26, 2021, Ms. Todd-Brown was placed under investigation based on allegations that read: "you inappropriately touched a patient" and "you positioned yourself too close to a patient known to be dangerous." (Joint Exhibit ("JX") 4.) The Department asserts that these allegations were the result of a report of Ms. Todd-Brown's alleged behavior with a patient as observed and reported by contract Nurse Practitioner Sarah Street-Taylor.

9. On March 31, 2021, Ms. Todd-Brown was interviewed as part of the investigation. Present at that meeting were Ms. Todd-Brown, MSEA Steward Anthony Arbour, DHHS Human Resources ("HR") Manager Anne White, and then-DHHS HR Generalist Melinda Frappier. [1] Ms. White and Ms. Frappier were the investigators assigned to Ms. Todd-Brown's investigation.

10. On April 6, 2021, Ms. Todd-Brown was placed on administrative leave.

11. On May 13 and 17, 2021, during her administrative leave, Ms. Todd-Brown was reinterviewed as part of the investigation. Present at those interviews were Ms. Todd-Brown, then-MSEA Field Representative Joseph Gribbin, [2] Ms. White, and Ms. Frappier (Ms. Frappier may have missed a portion of the latter meeting).

12. On Monday May 31, 2021, Ms. Todd-Brown was taken off administrative leave and began physically working at RPC again.

13. On or around August 30, 2021, Ms. Todd-Brown was notified via emailed letter that the investigation had been completed and that the investigators found both allegations to be substantiated. (JX5 at 1.) The letter indicated that a written reprimand in lieu of a five-day suspension was proposed, pending a pre-disciplinary meeting. (JX5 at 1.) In the same email, Ms. Todd-Brown was provided with the Department's investigation report, as an attachment title "Todd-Brown Report with WBM edits". (JX5 at 2.) The State asserts that Ms. Todd-Brown was inadvertently sent a version of the investigation report that had minor edits made by DHHS HR Director Wendy Malinowski that were intended to be incorporated into a final version.

14. In relation to discipline, the Parties' collective bargaining agreement states "[d]isciplinary action shall be limited to the following: written warning, written reprimand, suspension, demotion, [and] dismissal." (JX1 at 25; ; JX2 at 26.) Written reprimands in lieu of suspension are typically considered to be a suspension-level discipline; however, they do not include a loss of pay.

15. The investigation report claims that the investigation involved interviewing multiple witnesses and reviewing certain video recordings from RPC. (JX6 at 1-2.)

16. Throughout the investigation and proposed discipline processes, Ms. Todd-Brown has asserted that she engaged in therapeutically-appropriate touch with the patient and that other staff have as well, including through thumb wrestling or other forms of close contact. (JX6 at 3-4, 8-10; JX 7.)

17. According to the investigation report, one witness, Dr. Ben Grasso, in his first investigation interview, "advised while it has not been made explicit not to touch [the patient], there have been several conversations about touching [the patient]." (JX6 at 5.) Dr. Grasso also allegedly claimed that while he "occasionally thumb wrestles with the patient," it would be "counter therapeutic for staff, especially female staff, to thumb wrestle with [the patient]." (JX6 at 5.)

18. According to the investigation report, in his second investigation interview, Dr. Grasso

allegedly stated that boundaries for the patient are "discussed in detail in daily morning meetings with all staff." (JX6 at 5.) Also, according to the investigation report, Dr. Grasso "advised that he has not seen any other staff get as physically close to [the patient] as Ms. Todd-Brown has other than himself as [the patient's] treating provider, and also . . . that it is counterproductive to [the patient's] treatment plan to get as close as Ms. Todd-Brown did." (JX6 at 5.)

19. The investigation report claims that Ms. Genest "stated she has never instructed Ms. Todd-Brown not to touch [the patient] because she was not aware that Ms. Todd-Brown was doing so" and that Ms. Genest "does not think any touch with patients is therapeutic." (JX6 at 6.) Ms. Genest also said that she was not aware that staff were engaging in thumb wars with the patient. (JX6 at 6.)

20. According to the investigation report, another investigation witness, Ms. Owen, "advised [that] she observed that Ms. Todd-Brown's reports include lots of sexual stuff" and that "it seems to always be a problem with Ms. Todd-Brown with [the patient] being sexual when Ms. Todd-Brown is working." (JX6 at 7.)

21. Michael Couture stated that there had not been directives about touch (or lack thereof) with this patient. (JX6 at 8.)

22. On September 14, 2021, a pre-disciplinary meeting was held regarding the proposed discipline. Present at that meeting were then-Deputy Superintendent Stephanie George-Roy, [3] Ms. White, Ms. Todd-Brown, and Mr. Gribbin. At this meeting, Ms. Todd-Brown and Mr. Gribbin presented arguments as to why discipline was inappropriate. The following day, Mr. Gribbin forwarded a document drafted by Ms. Todd-Brown to Ms. White for Ms. George-Roy's consideration. (JX7.)

23. On October 28, 2021, Ms. George-Roy issued her decision following the September 14th meeting. (JX8.) Ms. George-Roy's decision "determined counseling with further training is appropriate." (JX8.) A "counseling" is a non-disciplinary document used by the State to redirect the behavior of an employee, most often in an attempt to avoid discipline for future instances of similar misconduct.

24. On or around November 17, 2021, [4] MSEA filed two (2) grievances on Ms. Todd-Brown's behalf. One grievance alleged the creation and failure to correct a hostile work environment (among other things) against Ms. Todd-Brown. (JX10 at 1-2.) The other grievance contested the counseling issued to her. (JX9 at 1-2.) As part of both grievance forms, MSEA requested "any and all notes, memos, emails, video and/or audio recordings, and/or other documents related to the decision to investigate and/or issue a counseling to [Ms. Todd-Brown]." (JX9 at 2; JX10 at 2.)

25. On or around January 26 or 27, 2022, Ms. Todd-Brown was issued her annual Performance Management Form ("PMF" or "evaluation") for the 2021-2022 period. The PMF discussed, in general terms, the allegations against Ms. Todd-Brown. (JX11 at 2, 5.) PMFs can include reference to incidents requiring counseling that occurred within the time period covered by the evaluation.

26. On or around February 12, 2022, [5] MSEA filed a grievance on behalf of Ms. Todd-Brown regarding the PMF issued to her. (JX12 at 1-2.)

27. On January 20, 2022, MSEA and the State settled a class-action grievance regarding hazard pay between December 31, 2020, and June 30, 2021. (JX14 at 1 (referencing JX13).) This agreement provided specified hazard pay payments to employees employed at the facility as of November 1, 2021. Ms. Todd-Brown was an employee on that date.

28. The State denied Ms. Todd-Brown hazard pay for a portion of the specified December 30, 2020-June 30, 2021, period because she was on administrative leave. The State's proffered reason for doing so is that hazard pay was only available to employees actively working in the hospital during that period.

29. On or around March 18, 2022, [6] MSEA filed a grievance on behalf of Ms. Todd-Brown regarding the State's failure to provide her with the appropriate retroactive hazard pay. (JX15 at 1-2.)

30. The Parties disagree regarding the basis of the allegations underlying the investigation and the subsequent events.

> a. MSEA asserts that the investigation, counseling, PMF, and hazard pay denial constitute ongoing retaliation, discrimination, and/or hostility toward Ms. Todd-Brown because she previously raised concerns about patient actions and safe unit staffing.
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> b. The State argues that the allegations and investigation began when a provider reported concerning behavior by Ms. Todd-Brown that was a potential safety risk to not only Ms. Todd-Brown, but any female working with the patient. The State believes that the Department's response was not discriminatory nor hostile, but an attempt to call attention and correct unsafe behavior.

31. The Parties disagree regarding the potential relevance, or lack thereof, of the requested documentation.

> a. MSEA asserts that all four grievances, to varying extents, are tied to the substantive facts of the allegations against Ms. Todd-Brown and whether those allegations were proven. MSEA also believes that there exist genuine issues of fact regarding what types of touch or other physical contact had been identified in the patient's record and which employees knew, or should or could have known, about those types of contact prior to and at the time of the investigation.
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> b. The State denies that all four grievances are related to the facts of the allegations against Ms. Todd-Brown or that there are any genuine issues of fact present. The State claims that the patient at issue had a well-documented history of hyper-sexualized and highly-dangerous behavior, which they assert Ms. Todd-Brown herself had reported instances of. The State argues that Ms. Todd-Brown was not disciplined and the Parties' agreement does

not have an avenue for grieving "counselings."

32. On or around May 27, 2022, Senior Labor Relations Specialist Kathy Weymouth, from the State's Office of Employee Relations, reached out to Mr. Gribbin and Ms. White to schedule the grievances for a Step 3 meeting pursuant to the applicable collective bargaining agreement(s). The parties selected June 21, 2022, for that meeting. (JX17 at 11.)

33. On or around June 15, 2022, Mr. Gribbin emailed Ms. Weymouth in relation to the pending grievances and requested "any and all nursing notes or assessment that [Ms. Todd-Brown] completed for the patient involved in the investigation's allegation," while acknowledging that MSEA understood that the patient's name may need to be redacted. (JX17 at 10.)

34. On June 16, 2022, Ms. White provided Mr. Gribbin and Ms. Weymouth with a patient note, which appears to be dated March 23, 2021, written by Ms. Todd-Brown regarding the relevant patient. (JX17 at 10; JX16 at 4.)

35. Between June 15, 2022, and July 7, 2022, Ms. Weymouth, Ms. White, and Mr. Gribbin exchanged approximately seventeen (17) emails regarding the precise document(s) MSEA was requesting at that time. (JX17 at 6-11.). Because the requested documents were not provided to MSEA, the grievance meeting scheduled for June 21, 2022, was postponed.

36. On July 28, 2022, Ms. Weymouth stated, via email, "in checking with the AG's office, the Department is not allowed to release the patient information/notes that you have requested, even if the patient's name is redacted." (JX17 at 6.)

37. Between July 28, 2022, and January 20, 2023, the parties, which at points included Assistant Attorney General Kelly Morrell and/or Bureau of Human Resources ("BHR") Compliance Director Kelsie Lee, engaged in continued conversations about whether the State could and would provide the requested information. (JX17 at 1-6; JX18 at 1-4.) The parties exchanged around a dozen emails regarding the requested patient-related documents. At least some of those emails involved each party providing the other with the legal bases for their argument(s) or position(s). (JX17 at 2-4; JX18 at 1-3.)

38. On August 8, 2022 and November 28, 2022, Mr. Gribbin stated that MSEA was and is willing to negotiate with the State to reach agreement that ensures that the requested documentation is kept confidential while allowing it to be used for grievance purposes. (JX17 at 4; JX18 at 1-2.). For example, Mr. Gribbin's November 28th email to Ms. Morrell, Ms. Lee, and Ms. Weymouth stated "we are willing to enter into a protective agreement to limit retention timelines and access concerns, and are glad to discuss and negotiate about any other specific concerns the Department might have." (JX18 at 1.)

39. On January 20, 2023, Ms. Weymouth emailed Mr. Gribbin the State's final decision that, based on advice from the Office of the Attorney General, the State is "not able to release the patient records you have requested in this case." (JX19 at 1-2.)

40. As of the date of these stipulated facts, the patient-related documents requested as part of MSEA's information request have not been provided by the State, based in part on advice the State received from the Maine Office of the Attorney General.

41. On or around January 20, 2023, Mr. Gribbin also requested "the investigator's notes from [Ms. Todd-Brown's] investigation interviews." (JX19 at 1.). Those notes have not been provided to MSEA. The State asserts that the investigation and corresponding notes are not relevant to the issues of hazard pay or alleged reports of unsafe working conditions.

IV. Analysis

At all times relevant, the Union was a bargaining agent within the meaning of 26 M.R.S.A. § 979-A(1) and the State a public employer within the meaning of 26 M.R.S.A. § 979-A(5). The Board's jurisdiction to hear this case and to issue a decision and order derives from 26 M.R.S.A. § 979-H.

The Act requires employers and unions to collectively bargain over mandatory subjects of bargaining, that is, wages, hours, working conditions and contract grievance arbitration. 26 M.R.S.A. § 979-D. An employer's refusal to collectively bargain with the bargaining agent as required by § 979-D of the Act is a prohibited practice under § 979-C(1)(E) of the Act. The duty to collectively bargain includes the employer's duty to provide relevant information needed by the bargaining agent for the performance of its duties, including its duties related to grievances. *AFT Local 3711 v. Sanford School Committee*, No. 01-24, slip op. at 14 (Jan. 31, 2002). The standard of relevance used to evaluate a request is a "broad discovery-type standard." *AFT Local 3711 v. Sanford School Committee*, No. 01-24 at 13 (Jan. 31, 2002) (citing *NLRB v. Acme Indust. Co.*, 385 U.S. 432, 437 (1967)). Even when the requested information is relevant, where there are competing interests, the interests of both parties should be accommodated if possible. *Sanford School Committee*, No. 01-24, slip op. at 14.

It is well established under Board and National Labor Relations Board precedent that when there is a "legitimate and substantial confidentiality interest at stake" the party refusing to supply the information on the basis of confidentiality has a duty to seek an accommodation. *Sanford Sch. Comm.*, No. 01-24 at 16 (quoting *King Broad. Co.*, 324 NLRB 332, 338 (1997)). Such an accommodation can often take the form of an "offer to release information conditionally or by placing restrictions on the use of that information." *Id.* (*citing Metropolitan Edison Co.*, 330 NLRB No. 21, 1 (Nov. 25, 1999), quoting *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 20-21 (D.C. Cir. 1998)). If it is not possible to accommodate both parties' interests, the Board will weigh the competing interests of the parties and determine which interest should prevail. *Portland School Committee v. Portland Teachers Association*, No. 93-27, slip op. at 18 (Feb. 17, 1994).

A threshold question is whether the requested medical records in this case are relevant to the Union's duty in representing the bargaining unit employee in the grievance process. The Union argues that the four grievances it filed on behalf of the employee all have at their root alleged retaliation by the State in connection with the bargaining unit employee's reporting her concerns about a certain patient and unsafe staffing conditions at her workplace. The Union claims that the requested medical records are relevant because they may be the only reliable means by which to

prove that the employee was treated differently than coworkers after she reported her concerns.

In turn, the State argues that the records are not relevant, because there is no relevant otherwise confidential information that has not already been conceded, i.e., that there are no directives regarding touch in the patient's treatment plan, or that is not already available in the investigation report. It seems the State misapprehends the scope of the Union's grievances. [7] We think that the Union has the better of the argument and find that the requested medical records are relevant to the Union's duty in representing a bargaining unit employee in a grievance process.

The Union argues that the requested investigation notes can bring to light additional information from investigation witnesses not contained in the final investigative report itself. As stated in the parties' stipulations above, the State asserts that the investigation notes are not relevant to the issues of hazard pay or alleged reports of unsafe working conditions. The Board finds these notes are relevant to the Union's grievances, as they could provide supporting information regarding the alleged retaliation against the employee, which is the common thread of all the grievances.

Having determined that the requested records are relevant to the Union's representational duties, we move on to the issue of confidentiality. The State argues that it is prohibited from providing the requested medical records because they are confidential under federal law, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and related regulations, and State law, a confidentiality provision in the Maine statutes found at 34-B M.R.S.A. § 1207(C)(1).

Regarding the concerns with federal law, the Union has amply demonstrated in its arguments to the Board, and its prior communications with the State, that HIPAA is not a barrier to the State's disclosure of otherwise confidential medical records to the Union for grievance purposes. The HIPAA regulations allow a covered entity to disclose otherwise confidential health information "to the extent that such … disclosure is required by law." 45 C.F.R. §164.512(a)(1). The regulations also explicitly allow for disclosure of otherwise confidential health information for "the resolution of internal grievances." 45 C.F.R. §§ 164.501 (defining "health care operations"), 164.502(a)(1)(ii) (providing that protected health care information may be disclosed for purposes of "health care operations"). The federal Department of Health and Human Services has confirmed, in a rulemaking publication responding to a comment from the public, that a covered entity may disclose protected information to a collective bargaining agent. 65 Federal Register 82598 (December 28, 2000). [8]

The National Labor Relations Board ("NLRB") in applying the National Labor Relations Act ("NLRA") requires the disclosure of records otherwise covered by HIPAA to a union as necessary for the union to fulfill its duties. See *Salem Hosp. Corp.*, 359 NLRB 695, 698 (2013), aff'd, 361 NLRB 962, 962 (2014) (original order reissued by new Board panel following decision in *NLRB v. Noel Canning*, 573 U.S. 513, 557 (2014)); *Alaris Health at Boulevard East*, 367 NLRB No.53, slip op. at 18-19 (2018); *St. Francis Reg'l Med. Ctr.*, 363 NLRB 608, 614-615(2015). The NLRB has given the example of a nurse who is disciplined for her treatment of a particular patient, not unlike the circumstances in the present case, as such a situation that would justify disclosure of otherwise protected information. *Salem Hosp. Corp.*, 359 NLRB at 698.

The State, in its communications with the Union, also pointed to a Maine statute that it claimed prevented disclosure of the requested information, 34-B M.R.S.A. § 1207. Presumably this is the State confidentiality law that the State is referring to in its arguments before the Board. This statute requires that "[a]ll orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client shall be kept confidential and may not be disclosed by any person" except under certain listed exceptions. 34-B M.R.S.A. § 1207.

The only exception in the statute that is arguably applicable to the Union's request is found at 34-B M.R.S.A. § 1207(1)(B), which provides that "information may be disclosed to carry out the statutory functions of the department." [9] The Union argues that this exception applies because of the State agency's obligation under SELRA to provide the Union relevant requested information. The Board agrees--the State's "statutory functions" exception here is functionally equivalent to the federal exception in HIPAA for disclosures "required by law."

Even if this statutory exception did not apply, the Board has broad authority under 26 M.R.S.A. § 979-H(1) to prevent the State from committing a prohibited act, regardless of any contravening statute. [10] The Board has established that under the Act an employer has a duty to provide a union with relevant requested information despite the employer's confidentiality concerns, provided accommodation is made to address those concerns. See *Sanford School Committee*, No. 01-24, slip op. at 16. There is no indication in the text of the statute or in the legislative history [11] that the confidentiality provision at issue is intended to significantly alter the collective bargaining relationship between the parties by denying the Union information necessary for processing grievances. See *Sanford School Committee*, No. 01-24, slip op. at 21. The confidentiality here is designed to prevent the public disclosure of such information, such as pursuant to a Freedom of Access Act request; however, the disclosure to the Union in this context is not a public disclosure, especially if accompanied by accommodations to protect that confidentiality. See *Id.* at 19-21; See also *Sheriff of Bristol County v. Labor Relations Commission*, 62 Mass. App. Ct. 665, 670 (2004) (statutory designation of information as not a public record does not determine a union's right of access to that information.) This is not a situation where the Board must weigh competing interests, because the State is able to provide accommodations, as has been done with similar otherwise confidential information provided to unions in the private sector under the NLRA.

As determined above, the medical records at issue are relevant to the Union's representational duties and their disclosure in this context is not prohibited by federal or State law. As such, the State's failure to provide the medical records is a prohibited practice in violation of § 979-C(1)(E). As also determined above, the investigation notes at issue are relevant to the Union's grievances. The record does not reflect the State's confidentiality concern regarding the requested investigation notes, but even assuming there is one, the Board likewise finds the State's refusal to provide these documents a prohibited practice in violation of § 979-C(1)(E).

V. Conclusion

The State has refused to provide the Union with relevant requested information, or to even make

reasonable negotiations regarding their release, and has such violated § 979-C(1)(E). As detailed below, we order the release of these documents to the Union, subject to reasonable negotiated accommodations to help safeguard the confidentiality of the documents.

VI. Order

On the basis of the foregoing findings of fact and by virtue of and pursuant to the powers granted to the Maine Labor Relations Board by 26 M.R.S.A. § 979-H, it is ORDERED:

1. That the State of Maine, Executive Branch, and its representatives and agents, cease and desist in any like or related manner from refusing to collectively bargain in violation of 26 M.R.S.A. § 979-C(1)(E).

2. That the State of Maine, Executive Branch, shall timely provide the requested information to the Union, provided that the State of Maine, Executive Branch, may negotiate with the Union to accommodate confidentiality concerns through a protective agreement to limit retention of and access to the information.

Dated this day, January, 24, 2024.

MAINE LABOR RELATIONS BOARD

/s/
Shari Broder, Esq.
Board Chair

/s/
Michael Miles
Employer Representative

/s/
Roberta de Araujo, Esq.
Employee Representative

The parties are advised of their right pursuant to 26 MR.S.A. § 968(5) to seek a review of this decision and order by the Superior Court. To initiate such a review, an appealing party must file a complaint with the Superior Court within fifteen (15) days of the date of issuance of this decision and order, and otherwise comply with the requirements of Rule 80(C) of the Rules of Civil Procedure.

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[1] Since that time, Ms. Frappier has moved into an HR Manager position.
[2] Since that time, Mr. Gribbin has moved into a Staff Attorney position.
[3] Since that time, Ms. George-Roy has become the Superintendent at RPC.
[4] The grievance forms list the date of the grievances as October 28, 2021, because that was the date of the event giving rise to the grievance. November 17, 2021, is the date on which the grievances were sent via email to the Department.
[5] The grievance form lists the date of the grievance as January 27, 2021, because that was the date of the event giving rise to the grievance. February 12, 2022, is the date on which the grievance was sent via email to the Department.
[6] The grievance form lists the date of the grievance as March 7, 2022, because that was the date of the event giving rise to the grievance. March 18, 2022, is the date on which the grievance was sent via email to the Department.
[7] The State also argues that the information is not relevant because the request is primarily related to a grievance challenging a "counseling," which does not rise to the level of discipline that is subject to the parties' grievance process. However, it is the alleged retaliation underlying the counseling and other actions of the State that the Union is really challenging.
[8] "The final rule does not prohibit disclosures that covered entities must make pursuant to other laws. To the extent a covered entity is required by law to disclose protected health information to collective bargaining representatives under the NLRA, it may to so without an authorization. Also, the definition of 'health care operations' at § 164.501 permits disclosures to employee representatives for purposes of grievance resolution." 65 Federal Register 82598 (December 28, 2000).
[9] The State suggested in its communications with the Union that the Union seek the requested records under one of the other exceptions in the statute, through either a personal release or a court order. Neither of these are practical (e.g., the Union does not know the name of the patient involved) nor are they necessary.
[10] "The board is empowered, as provided, to prevent any person, the public employer, any state employee, any legislative employee, any employee organization or any bargaining agent from engaging in any of the prohibited acts enumerated in section 979-C. This power may not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise." 26 M.R.S.A. § 979-H(1)
[11] SELRA was originally enacted in 1973, by Public Law 1973, chapter 774. The confidentiality provision currently found at 34-B M.R.S.A. § 1207(C)(1) was originally enacted in 1975, by P.L. 1975, ch. 718, and later recodified in 1983, by P.L. 1983, ch. 459, § 7.