
JAMES ELWELL, JR., FILING AS)
MERRYMEETING EMPLOYEES)
ASSOCIATION,)
)
Complainant,)
)
v.)
)
MSAD NO. 75,)
)
Respondent.)

DECISION AND ORDER
ON MOTION TO DISMISS

I. Introduction

On December 5, 2023, James Elwell, Jr. filed this prohibited practice complaint with the Maine Labor Relations Board (Board) in his own name, alleging that MSAD 75 (School District or Respondent) violated § 964(1)(E) of the Municipal Public Employees Labor Relations Law, 26 M.R.S.A. § 961, et seq., (Act) by not providing requested information pertinent to a pending grievance.

On January 9, 2024, the Board’s Executive Director notified the parties that the complaint was subject to dismissal unless it was amended to name the Merrymeeting Employees Association (Complainant) as the designated complainant, citing *Trask v. Town of Madison* for the proposition that an individual lacks the legal standing to enforce a violation of the statutory duty to collectively bargain because this duty runs exclusively between the public employer and the certified bargaining agent. No. [16-06](#), slip op. at 4-7 (April 20, 2016).

Mr. Elwell filed an amended complaint on January 11, 2024, which named the Merrymeeting Employees Association as the complaining party, with the allegations remaining the same as in the original complaint. On January 22, 2024, the School District provided its response to the amended complaint. In part, the School District asserted that the Complainant did not authorize Mr. Elwell to file a complaint on its behalf. In support of this assertion, the School District provided correspondence from union representatives indicating that the Complainant is not a party to the complaint and that Mr. Elwell is acting as an individual in this matter. In its response, the School District requested dismissal of the complaint based on Mr. Elwell’s alleged lack of authority to file on behalf of the Union.

In his January 26, 2024, sufficiency determination of the amended complaint, the Executive Director referred the School District’s request for dismissal to the Board. The Executive Director provided Mr. Elwell, the attorney for the Complainant, and the School District each an

opportunity to present Oral Argument to the Board and submit written briefs on the issue of whether Mr. Elwell had the legal standing to bring forward this complaint, either on behalf of the Complainant as an active representative, or individually, given his status as an elected union representative. The parties submitted their written briefs on February 27, 2024.

On February 29, 2024, a Board panel consisting of Sheila Mayberry, Esq., Chair, Roberta de Araujo, Esq., Employee Representative and Ann Freeman, Esq., Alternate Employer Representative, conducted an Oral Argument in this matter via videoconference. Mr. Elwell appeared for the Complainant, and Benjamin Grant, Esq., also appeared for the Complainant, Eamonn Hart, Esq., represented the Respondent.

After hearing argument from Mr. Hart, Mr. Elwell and Mr. Grant, the Board decided that it needed further information before making its decision on the motion to dismiss. To this end, it issued an Order requesting from Mr. Grant, the following:

- 1) The Constitution and Bylaws of the Merrymeeting Employees Association;
- 2) Documentation showing the responsibilities and authority of a Building Representative of the Merrymeeting Employees Association;
- 3) Documentation demonstrating the systems and protocols regarding who is authorized to make decisions on behalf of the Merrymeeting Employees Association.

The parties stipulated to admission of these documents into the record. The Board also considered the parties' collective bargaining agreement as part of the record.

Mr. Grant provided the requested material, in the form of the Complainant's Constitution and Bylaws, with additional written argument, on March 1, 2024. The parties each filed written argument with the Board following this submission.

On March 3, 2024, Mr. Grant, in the name of the Complainant, filed a new motion to dismiss. This new motion was based on an argument of mootness, given that the School District had recently agreed to hear the underlying contract grievance at Step 2 and was providing all requested information. On March 6, 2024, the Board issued an Order requesting any additional argument on the mootness issue. The School District affirmed it had made such an agreement and voiced its support for the motion to dismiss for mootness.

On March 11, 2024, Mr. Grant, in the name of the Complainant, filed supplemental information with the Board, notifying it that the Step 2 grievance had been settled and that the School District had rescinded all discipline issued to the employee involved. Mr. Elwell objected to both the motion to dismiss for standing and the motion to dismiss for mootness, maintaining his position that, despite the settlement of the grievance, he believed that the prohibitive practice allegations against the Respondent remained unresolved.

II. Decision

The Board will first consider the issue of standing.

Generally, under the Act, legal “standing” is the right of an individual or entity to file a prohibited practice complaint. See *MSEA and Elizabeth McKenney v. Maine State Library*, No. [01-21](#), slip op. at 3 (August 16, 2001). Specifically, any “public employer, any public employee, any public employee organization or any bargaining agent” may file a complaint. 26 M.R.S.A. § 968(5). However, a complaint that a public employer has violated § 964(1)(E) of the Act by refusing to collectively bargain may only be filed by a bargaining agent. See *Trask v. Town of Madison*, No. [16-06](#), slip op. at 4-7 (April 20, 2016); *Neily v. State of Maine and Maine State Employees Association*, No. [06-13](#), slip op. at 6 (May 11, 2006); aff’d sub nom., *William D. Neily v. MLRB*, [AP-06-35](#), slip op. at 4.; aff’d., No. Mem 07-89 (Me.S.J.Ct. May 15, 2007).

The rationale for this limitation is that § 967(2) of the Act makes clear that the certified bargaining agent is the “sole and exclusive bargaining agent for all employees in the bargaining unit.” 26 M.R.S.A. § 967(2). Accordingly, the duty to collectively bargain runs between the bargaining agent and the public employer, and may not be enforced by an individual employee. *Trask*, No. [16-06](#), slip op. at 5. To allow an individual employee to enforce the bargaining agent’s right to bargain could result in a chaotic situation in which “an individual employee may have different objectives than the bargaining agent’s view of the interests of the collective whole,” resulting in the employer dealing with conflicting positions instead of the sole representation envisioned by the Act. *Id.*

Such is the situation we find here. Mr. Elwell, citing his status as an elected official of the Complainant, claims to have the authority to enforce an alleged violation of the duty to bargain, while Complainant’s local union president and the Complaint’s attorney directly oppose the filing of this prohibited practice complaint.

It is clear from the Board’s caselaw, described above, that Mr. Elwell does not have legal standing to file this complaint in his capacity as an individual public employee. What is less clear is whether he may file a prohibitive practice charge against the Respondent as a “bargaining agent.” The definition of a bargaining agent in the Act includes: “any lawful organization, association or individual representative of such organization or association which has as its primary purpose the representation of employees in their employment relations with employers...” 26 M.R.S.A. § 962(2). As an elected Building Representative with the Complainant, Mr. Elwell arguably fits within this definition as “an individual representative.”

There is no factual dispute that Mr. Elwell is acting on his own in this matter, in contravention of the wishes of Complainant’s leadership, including its local president. This is underscored by the Complainant’s Constitution and Bylaws, as well as the parties’ collective bargaining agreement, which limits the Building Representative’s authority to the filing of Step 1 contract grievances on behalf of the employees whom they represent. Mr. Elwell argues that because the authority to file a prohibited practice complaint with the Board is not specifically mentioned in the collective bargaining agreement or internal union documents that it should be implied that he has this authority if he encounters an alleged prohibited practice during the course of his Step 1 grievance

representation. The Complainant, as represented by its attorney, disagrees with this assessment, maintaining that the internal union documents demonstrate that the authority to file a prohibited practice complaint lies within the general authority of the Complainant's Executive Committee. Regardless, it is undisputed that the Complainant's leadership has not authorized Mr. Elwell to file this complaint, and indeed it is directly opposed to it. In other words, Mr. Elwell is not acting as an "individual representative" on behalf of the Complainant. Instead, he is acting as an individual.

The Act's emphasis on the bargaining agent being the sole representative of the bargaining unit members for collective bargaining purposes and the Board's caselaw all counsel against allowing an unauthorized union representative to file a failure to bargain claim with the Board against the express desires of the leadership of the association or organization that has been elected to serve as the exclusive bargaining agent with the employer. To hold otherwise would be to significantly disrupt the Act's design and would open the door to future chaos in both the Board's proceedings and in the State's public sector labor-management relations.

Accordingly, the Board finds that Mr. Elwell lacks legal standing to pursue this Complaint and must therefore dismiss the complaint. On the issue of mootness, it is unnecessary for the Board to reach and decide the question of mootness. [1]

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 M.R.S.A. § 968(5), it is ORDERED that the complaint in Case No. 24-PPC-07 be, and hereby is, DISMISSED.

Dated this 20th day of March, 2024

MAINE LABOR RELATIONS
BOARD

/s/ _____

Sheila Mayberry
Board Chair

/s/ _____
Ann Freeman
Employer Representative

/s/ _____
Roberta de Araujo
Employee Representative

The parties are advised of their right pursuant to 26 MR.S.A. § 979-H(7) 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.

[1] Although there is no need to analyze the issue of mootness, the Board is pleased that the underlying dispute at the heart of this complaint has been resolved by mutual agreement of the Complainant and the School District.