

In re: Lewiston School Committee, Petition for Interpretive Ruling	) ) ) ) ) )	DECISION DENYING PETITION FOR INTERPRETIVE RULING
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On February 10, 2006, the Lewiston School Committee filed a petition for an interpretive ruling with the Maine Labor Relations Board (Board or MLRB) regarding the application of the Board's fact-finding rules. The questions presented by the petition are (1) whether communications between an employee-party and the employee representative on the panel during deliberations of the fact-finding panel are contrary to MLRB Rule Chapter 13, sections 32 or 33, when a similar opportunity is not provided for the employer-party to communicate with the management representative during those deliberations; and (2) whether an attorney who is a paid representative of a public employee association is disqualified under MLRB Rule Chapter 13, sections 25 or 26, from serving as a fact finder in a fact-finding proceeding in which that public employee association is a party.

At the time that the petition was submitted, the fact-finding hearing was completed and the fact-finding panel had deliberated but not yet issued its report. The Board's rules require the fact-finding panel to issue its report within 30 days of the close of the hearing or receipt of post-hearing briefs. MLRB Rule Ch. 13, §35(1). Shortly after the School Committee filed the petition, the MLRB Executive Director denied the School's request that he instruct the chair of the fact-finding panel not to issue a report until the Board ruled on the petition. The Executive Director concluded that he had no statutory authority to stay a fact-finding proceeding, based on this Board's decision in Kittery Education Association v. Kittery

School Committee, No. 00-22 (August 24, 2000), holding that the Board had no authority to stay an arbitration proceeding. Following the Executive Director's decision, the Lewiston Education Association/MEA/NEA filed a response to the School's petition for an interpretive ruling which was considered by this Board.

Interpretive rulings are a mechanism that enable a party to receive an indication from the Board on whether a contemplated course of action would violate the law. Not all questions can be resolved through an interpretive ruling. Section 41 of the MLRB rules on prohibited practices deals specifically with requests for an interpretive ruling. See MLRB Rule Ch. 12, §41. The initial portion of that section states the appropriate circumstances for an interpretive ruling:

**§ 41. Interpretive Rulings.** An interpretive ruling is a means for determining specific questions as to the prospective rights, obligations, or liabilities of a party when controversy or doubt has arisen regarding the applicability of a specific statute, Board order or rule. A petition for an interpretive ruling may not be used to resolve factual disputes between adversaries and may not be used as a substitute for other remedies provided by the collective bargaining laws.

The first sub-section in section 41 describes the specific requirements for filing a petition, such as the number of copies to be filed and the information that must be included.<sup>1</sup> Of

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<sup>1</sup>**Sub-§ 1. Petition for Interpretive Ruling.** A petition for an interpretive ruling may be filed with the Board by any person, employee organization, or public employer. A petition for an interpretive ruling must be filed in the original and four copies. In order to show the existence of a controversy or doubt, the petitioning party must describe the potential effect upon that party's interests in its petition. The petition must contain the name and address of the petitioner; the statute, Board order, or Board rule on which the interpretive ruling is sought; a clear and concise statement of the facts and circumstances and the contemplated action of the petitioner which arguably might elicit the filing of a prohibited act complaint or to which the specified statute, Board order, or Board rules and procedures might be applicable; and a supporting memorandum

particular importance to the present petition are the requirements that,

. . . In order to show the existence of a controversy or doubt, the petitioning party must describe the potential effect upon that party's interests in its petition. The petition must contain . . . a clear and concise statement of the facts and circumstances and the contemplated action of the petitioner which arguably might elicit the filing of a prohibited act complaint or to which the specified statute, Board order, or Board rules and procedures might be applicable . . . .

The School Committee's petition seeks a ruling on whether conduct that has already transpired violated the Board's fact-finding rules. The School Committee did not describe "the potential effect upon [its] interests" in its petition nor did the School Committee raise any "questions as to the prospective rights, obligations, or liabilities" regarding the applicability of the rules at issue. Everything contained in the petition concerns past conduct, not prospective rights or liabilities.

The classic example of a situation in which a petition for interpretive ruling is appropriate is when the parties are engaged in bargaining and there is a question as to whether a particular subject is a mandatory subject of bargaining. See, e.g., City of Portland, Petition for Interpretive Ruling, No. 01-IR-01 (June 27, 2001) (Petition inquiring whether the establishment of a Police Civilian Review Subcommittee would be a mandatory subject of bargaining was appropriate); Petition for Interpretive Ruling of Millinocket School Committee, No. 92-IR-01, (July 13, 2001) (Petition appropriate because School Committee was contemplating refusing to bargain over the issue of

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of law. If negotiations are in progress and a controversy has arisen concerning the required scope of bargaining, the petition must include a brief description of the positions taken by the parties and copies of all proposals and counterproposals submitted by the parties relating to the dispute.

health insurance premiums for retirees during negotiations for a successor contract). In these kinds of cases, the only alternative for the petitioner would be to take the action being contemplated and risk being the subject of a prohibited practice complaint.

As is clear from the wording of the Board's rule on this matter, interpretive rulings focus on prospective rights, obligations and liabilities. The *ex parte* communication issue raised in the School Committee's petition is simply a matter of whether a past action violated a Board rule. It is therefore not an appropriate issue for an interpretive ruling because it is not prospective in nature. The School Committee seeks a ruling on a past action, not guidance for future action. In effect, the School Committee is seeking to transform the interpretive ruling mechanism into a vehicle for determining wrongdoing when the complained-of act does not constitute a prohibited practice.

The question of the eligibility of the employee-representative to serve on the panel suffers the same fate because there is no issue about prospective rights, obligations or liabilities. This is because the findings and recommendations of a fact-finding panel are just that--recommendations. Either party may reject a fact-finding panel's recommendations without violating the law and without affecting the party's rights, obligations or liabilities. If a case proceeds to arbitration, a party may present its objection to the fact-finding report to the arbitrators, whether the objection is based on the substance of the report or the fact-finding procedure (as in this case). If the statutory framework were different, however, and the rejection of a fact-finding panel's report carried with it some legal consequences, an interpretive ruling might be appropriate to address the question of whether the procedural concerns justified the rejection of the report.

For the forgoing reasons, we conclude that the School

Committee's petition for an interpretive ruling should be dismissed as neither of the questions raised concern any prospective rights, obligations, or liabilities of the parties as required by MLRB Rule Chapter 12, §41.

Issued this 20th day of April, 2006.

MAINE LABOR RELATIONS BOARD

/s/ \_\_\_\_\_  
Peter T. Dawson  
Chair

/s/ \_\_\_\_\_  
Karl Dornish, Jr.  
Employer Representative

/s/ \_\_\_\_\_  
Wayne W. Whitney  
Employee Representative