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MAINE SCHOOL ADMINISTRATIVE)	
DISTRICT #6 BOARD OF DIRECTORS,)	
)	
Complainant,)	
)	
v.)	INTERIM
)	ORDER
SACO VALLEY TEACHERS)	
ASSOCIATION/MEA/NEA,)	
)	
Respondent.)	
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The Maine School Administrative District #6 Board of Directors ("Employer") filed a prohibited practice complaint on April 10, 2012, in which it alleged that the Saco Valley Teachers Association/MEA/NEA ("Association") committed a per se violation of the Act by insisting on presenting to the fact-finding panel various proposals that the School Board alleges are non-negotiable matters of educational policy.

The undisputed facts present the following background: On December 12, 2011, the Association filed a unilateral request for fact finding with the Board's Executive Director which included the required list of unresolved "Issues in Controversy". On February 14, 2012, the School Board delivered a letter to the Association formally requesting that it remove from its submission various proposals that the School Board considered to be non-negotiable matters of educational policy. On April 10, the School Board filed its prohibited practice complaint alleging that the Association had refused to withdraw those items from fact finding in response to the School Board's demand. The complaint requested a stay of the fact finding hearing that was

scheduled for April 24, 2012. On April 19, 2012, the School Board presented this request to the Executive Director as a formal motion with supporting legal argument. On April 20, 2012, the Executive Director informed the parties that he did not have the authority to stay a fact finding proceeding, citing In re: Motion to Stay Fact-Finding Proceedings, MSEA and the State of Maine, No. 78-A-07, at 2 (Aug. 7, 1978). The fact finding hearing was held on April 24, and, according to the Complainant, was "largely consumed by attempts to mediate the contract." A second fact finding date is scheduled for June 11, 2012. The Board received the Association's Response to the Complaint on April 30, 2012, which included the modified list of "Issues in Controversy" that the Association had submitted as part of its pre-hearing submission to the fact finding panel. The Association asserts that the proposals as modified are working conditions, not educational policy. The Executive Director established a briefing schedule on the merits of the complaint which was due to be completed by June 1, 2012, with the goal of having the Board issue a decision before the June 11, 2012, fact finding hearing. Due to unforeseeable events, extensions were needed and the Board received the final brief only a few hours before its June 6, 2012, deliberation.

DISCUSSION

In the present case, the substantive question presented to the Board is whether the Association's specific proposals related to the topics of teaching hours and teaching load, involuntary transfers, and teacher evaluation are mandatory subjects of bargaining or non-negotiable matters of educational policy. The Association argues that it is entitled to an evidentiary hearing to present its case that the proposals are more accurately classified as working conditions than educational policy. The

School Board asserts that it is inappropriate to proceed to fact finding before this Board rules on the educational policy issues.

Maine's collective bargaining statutes are designed to foster improved relationship between public employers and their employees through two essentially independent courses: resolving allegations of conduct prohibited by the statute and enabling successful negotiation of collective bargaining agreements through the statutory dispute resolution processes of mediation, fact finding and interest arbitration. Absent compelling reasons that are not present in this case, we are reluctant to interfere with a fact finding proceeding scheduled to occur in less than a week in order to resolve this prohibited practice complaint.

We recognize that it is the MLRB's exclusive jurisdiction to determine what constitutes a mandatory subject of bargaining and the preferable route would be for the Board to make this determination before fact finding. See Kittery Educ. Assoc. v. Kittery School Committee, No. 00-22 at 2 (Aug. 24, 2000). By allowing the fact finding to proceed, we are not suggesting that the fact finding panel has the authority to rule on whether a particular proposal is or is not educational policy or that their recommendation will have any bearing on the ultimate outcome of this case. Fact finding is, however, an established dispute resolution mechanism that often helps the parties resolve some or all of their outstanding issues. It is for the parties to determine whether the potential benefits of fact finding outweigh the risks of a potential violation of the Act for refusing to bargain over a mandatory subject or insisting on a non-mandatory subject.

A cleaner way to address negotiability cases is to file the prohibited practice complaint earlier, rather than later. If the complaint is filed early in the process, that is, when it becomes

apparent that the opposing party is going to pursue what is allegedly a non-mandatory subject of bargaining at fact finding, then this Board would be in a better position to deal with the question of whether an issue on the table is a mandatory subject. Under the Board's Rules, a request for fact finding must include a list of unresolved issues in controversy. If that list contains issues that the opposing party considers to be educational policy, and a demand to remove those issues from the table is not promptly acceded to, filing a prohibited practice complaint would enable the Board to hear the matter before the fact finding proceeding. We see no legitimate reason to wait until the eve of fact finding for a party to file the prohibited practice complaint.

We conclude that given the circumstances of this case, an evidentiary hearing is appropriate. To that end, the Executive Director is ordered to schedule a prehearing conference expeditiously.

Dated at Augusta, Maine, this 6th day of June, 2012.

MAINE LABOR RELATIONS BOARD

Peter T. Dawson
Chair

Wayne W. Whitney
Employee Representative

Employer Representative Richard L. Hornbeck participated in the deliberation of this case and concurs with the decision, but was unavailable to sign this Interim Order.