

STATE OF MAINE

MAINE LABOR RELATIONS BOARD
Case No. 15-09
Issued: July 29, 2015

MT. ABRAM TEACHERS ASSOCIATION,)
)
 Complainant,)
)
 v.)
)
 MSAD No. 58,)
)
 Respondent.)

DECISION AND ORDER

The Mt. Abram Teachers Association MEA/NEA (the "Union" or "Association") filed this prohibited practice complaint on August 25, 2014, against MSAD No. 58, alleging that the school district violated 26 MRSA §964(1)(E) of the Municipal Public Employees Labor Relations Law (the "Act"). The Union argues that the School District failed to meet and consult with the Union regarding a change in the teachers' instructional load and that it failed to impact bargain in good faith with respect to the both the instructional load and assigning study hall duties to the teachers.

An evidentiary hearing was held on March 26 and 27, 2015. Ms. Lee Libby represented the Association and Peter Felmly, Esq., represented the School District. Both parties were able to examine and cross-examine witnesses, to offer documentary evidence at the hearing, and to submit written argument after the hearing. Chair Katharine I. Rand presided at the hearing, with Employer Representative Christine Riendeau and Employee Representative Robert Piccone. All parties' post-hearing briefs and reply briefs were received by June 8, 2015. The Board

deliberated this matter on July 2, 2015.

JURISDICTION

The Mount Abram Teachers Association is a bargaining agent within the meaning of 26 MRSA §962(2) and the Board of Directors of MSAD No. 58 is the public employer within the meaning of 26 MRSA §962(7). The jurisdiction of the Board to hear this case and to render a decision and order lies in 26 MRSA §968(5).

FACTS

1. The Association and Board are parties to a collective bargaining agreement which expired on August 31, 2012. The parties met for negotiations for a successor agreement on eight occasions during 2012. Several tentative agreements were signed by the parties during these negotiations.
2. The parties participated in mediation and fact finding during 2013, but signed no tentative agreements. After receiving the fact finders' report, the parties negotiated further and signed several tentative agreements in early 2014. The remaining disputes were taken to interest arbitration. The interest arbitration panel issued a unanimous Opinion and Award in late 2014. After considering the arbitration decision and further information from the Union, the School Board modified its position on insurance and salary. The parties met in early March, 2015, to address the remaining issues. The Association presented a new demand for continued step increases after the contract's expiration, a proposal the School District could not accept.
3. Ms. Sally Bean, the President of the Mt. Abram Teachers Association, testified that historically, the Union and the School District relied on written memos or letters to make

formal communications with each other related to bargaining. More recently, emails had become accepted means of formal communication.

4. On December 21, 2012, the Maine Department of Education notified Maine school districts of an estimated curtailment of General Purpose Aid in order to balance the FY 2013 State budget. The curtailment for MSAD #58 was \$38,450, and the District was told that the amount could possibly double.
5. For many years, Mt. Abram High School operated with an 8-block schedule having four 75-minute blocks each day, with all classes meeting during one block every other day. There is a 34-minute lunch period and a 24-minute advisor period called "Mountain Time," also at the middle of the day, and a 10-minute morning snack break.
6. Most of the Mt. Abram High School teachers had been responsible for teaching during six out of the eight blocks, with 3 classes each day and one planning period each day. These preparation or planning periods were used for various tasks such as preparing for the upcoming classes or special needs of advanced students or struggling ones, grading papers or tests, photocopying or getting supplies, calling parents, writing recommendations, and consulting with other teachers or administrators.
7. In February 2013, the study hall monitor at Mt. Abram High School resigned. The teachers met with the Principal, Marco Aliberti, to discuss how the position could be covered with existing resources. The teachers agreed to a plan in which each of the eight study halls would be broken into smaller groups and students would be assigned to the rooms of those

teachers who had a planning period during that particular study hall. At the time, the teachers thought this was a temporary solution that would not extend into the next school year.

8. The study hall monitor was not a certified teacher and had an annual salary of \$16,600. Neither the Superintendent, Ms. Brenda Stevens, nor the Principal had any expectation or requirement that the teachers would include any academic component in their management of their study hall. The Principal did assign a student to a study hall with one of that student's classroom teachers if possible and if the teacher thought it would be helpful.
9. Some teachers took a more structured approach to study hall than others, by, for example, looking up the records of each student and encouraging the student to complete missing assignments or study for an upcoming quiz. Other teachers took a less active role.
10. To some extent, teachers were able to work on tasks normally completed during a preparation period during what was now a study hall in that teacher's room. The tasks that were most negatively affected were those that either required the teacher to leave the room (such as making copies, getting supplies, or conferring with other teachers), involved confidential matters (such as calling parents to discuss a child's issues), or required a constant level of concentration (as some teachers considered necessary for grading papers).
11. During the 2012-2013 school year, the School Board was concerned about a very tight budget. Not only was the

School District facing the curtailment of State funding, the Board was also worried about the withdrawal of Eustis from the District and the effect it would have on the tax rate of the remaining member towns. The Board stopped hiring substitute teachers for non-tested content areas such as art and physical education, administrative wages had been frozen, and the Board was looking closely at other areas for potential cuts or added revenue.

12. In March of 2013, the School Board came to Mt. Abram High School for its annual "Town Meeting"--an open forum to hear from students and teachers about how things are working in the school. The teachers described the impact the study hall duty was having on them and their students and expressed their hope that the Board would be able to restore funding for the monitor position.
13. On May 21, 2013, the Board voted to eliminate the study hall monitor position at Mt. Abram High School. As another cost-saving move, the Board voted to fund the supply lines of the budget at 80 percent of the funding then in place.
14. On June 5, 2013, the Association sent the Board a request to meet and consult regarding the impact of the study hall supervision duties and the parties met on June 11, 2013. Ms. Bean stated that the Association should have had an opportunity to meet and consult before the decision to eliminate the position was made. She and other teachers explained to the Board how having teachers continue to perform study hall duties during one of their preparation periods would affect students the following year.
15. It had been apparent to both the Association and the

administrators since at least 2012¹ that some of the school Board members felt that the teachers' planning periods were actually "down time" and that more of the teachers' time should be spent instructing students. One of the Board members in particular had a tendency to make "very barbed" comments in public meetings about this issue.

16. During the summer of 2013, Mr. Aliberti was directed by the School Board to present information for them on the high school schedule. His first presentation to the Board in the fall focused on his research on different types of high school schedules, comparing Mt. Abram's schedule to schools of similar size, what type of schedule other schools in the area were using, and what research has shown regarding the length of class periods. The Board listened to his presentation, then directed him to make a recommendation to the Board about what changes needed to occur in the schedule at Mt. Abram High School.

17. Mr. Aliberti had several meetings with the teaching staff to determine what they might be able to do to meet the Board's expectations. They came up with a couple of ideas for additional classes to offer and how to do so while still keeping the framework of their existing schedule.

18. Ms. Bean and Mr. Aliberti traded emails on October 18, 2013, concerning his efforts to enlist the help of the teaching staff in developing a schedule to recommend to the Board. Ms. Bean stressed the importance of the subject and wrote,

I also hope that we follow the proper process this

¹ Ms. Stevens testified that the instructional time/preparation time issue had been present since she came to the district in 2000.

time if the board is going to actually look at a change in the HS schedule, which means that they Meet and Consult with the association BEFORE considering any change. It would be nice to work on this together proactively rather than try to fix a problem later.

19. Throughout the 2013-2014 school year, the teachers continued to perform the study hall duties in their classrooms during one of their planning periods as they had since the study hall monitor's resignation the previous winter.
20. The District continued to face budget challenges during the 2013-2014 school year. The agenda for the January 23, 2014, Board meeting (which was distributed to all staff by email) included the 10 percent cut to the budget recommended by the Board's Finance Committee as a discussion item. Another item on the agenda was a presentation by the Principal on the high school class schedule.
21. On January 23, 2014, Ms. Bean sent an email to the Superintendent and the Chair of the School Board requesting a meeting "to discuss the study hall situation at the high school" and certain online trainings the teachers had been asked to complete. Ms. Bean indicated that the Association should have been notified of the elimination of the study hall monitor prior to any action and should have been given an opportunity to meet and consult on the change.
22. At the School Board meeting on January 23, 2014, Mr. Aliberti made his presentation. Some School Board members were dissatisfied with Mr. Aliberti's presentation and antagonistic toward him, stating that he had disregarded the Board's request for a completely new schedule. Present

at this meeting was Ms. Bean and at least a couple of other teachers.

23. One of the teachers present at the January 23, 2014, Board meeting was Ms. Jen Baker. She was very concerned that several of the Board members did not understand that preparation periods were not "down time" but something the teachers considered to be a very necessary element to effective teaching. She left the meeting worried that the three Board members who seemed intent on filling preparation periods with classroom instruction would try to convince the full Board to impose such a change. She composed a long letter describing all of the work that teachers are able to do during their preparation periods that directly benefited the students. All but one of the teachers signed the letter.
24. The minutes of the January 23, 2014, Board meeting listed as future action items the Mt. Abram Study Hall Monitor, the sale of the wind turbine at the high school as a source of revenue, and proficiency-based education.
25. As a result of Ms. Bean's January 23, 2014, request to meet, the parties met on February 6, 2014, to discuss the online training and the study hall issue. Ms. Bean and another teacher represented the Association, and Ms. Stevens and the Chair of the School Board, Ms. Diane Thomas, represented the School District. The teachers described the impact of imposition of the study hall responsibility on the teachers. Ms. Stevens indicated that the Board was very concerned with providing increased contact time with students to give greater support to both the advanced students and those who

were struggling. She noted that the Board wanted more face time with students and that a faction of the Board felt that preparation time was not productive time and it would be time better spent with students. After discussing various aspects of the problem, both sides tried to develop ways of presenting to the Board in concrete terms the value of preparation periods. Ms. Stevens thought it was important to somehow educate the School Board on a regular basis on what was actually being done in the preparation periods, because the periods would be needed for the teachers to assess and update the curriculum to meet the upcoming proficiency-based education standards. The teachers suggested using two of the five daily advisory periods ("Mountain Time") during which all teachers could be made available for such assistance. Ms. Stevens and Ms. Thomas testified that the discussions also included the challenge of instituting proficiency-based education and the fact that retaining preparation periods would be necessary for the teachers to be able to prepare for the new proficiency-based guidelines.

26. At the end of the meeting on February 6, 2014, Ms. Bean gave the letter written by Ms. Baker and signed by most of the teachers to the Chair of the School Board. As she left to go to another meeting, Ms. Thomas stuck the letter in her bag with other papers, intending to share it with the other Board members as Ms. Bean had requested. Ms. Thomas forgot about the letter and did not share it with the other Board members before the February 27, 2014, Board meeting.
27. The prepared agenda for the February 27, 2014, School Board meeting included as discussion items the Mt. Abram 2014-2015

Course of Studies (that is, the list of courses to be offered), the 2014-2015 budget, and the Mt. Abram Study Hall Monitor, among other items.

28. The Minutes of the Feb. 27 meeting under "Superintendent's Report" (a regular agenda item), included the following:

D. The Mt. Abram Teachers Association requested a meet and consult with the Superintendent and Board Chair to discuss ways to restructure the high school schedule and the study hall monitor position. This meeting took place February 6 in Phillips. Sally Bean and Mary Jane Martin represented the association. Restructuring the Mt. Time advisor advisee position were discussed as was maintaining the current planning time in order for teachers to implement LD 1422: Proficiency Based Diplomas.

29. Under the Discussion Items section of the Minutes of the February 27, 2014, Board meeting, the following descriptions were included: "A. The Mt Abram 2014-2015 Course of Studies generated conversation about how credit hours are being applied to graduation requirements. The Board would like more information on Proficiency Based Education. . . . F. Reinstating the Mt. Abram Study Hall Monitor position was discussed at length."

30. The next order of business in the minutes of the February 27, 2014, Board meeting was "Public Comment." It listed the names of the 6 individuals speaking and the subject of their comments. Three people spoke of Mountain Time, and two referred to curriculum related matters at the high school. There were no comments from anyone identified as a teacher or as representing the Teachers Association.

31. The minutes of the February 27, 2014, meeting then described

various action items. After an initial procedural matter, Board member Dan Worcester made the following motion:

That all high school instructional staff be required to instruct 7 classes or blocks out of the High School 8 block schedule leaving one duty free 75 minute planning period every other day, that we direct the High School Principal to develop a schedule that takes into consideration the need for more advanced courses, supplemental math, supplemental reading courses, and other electives that would challenge our advanced students, aid our struggling students obtain a standards based diploma, and help graduating students find employment in the workforce.

32. Following some discussion, the Board Chair made a motion to table Mr. Worcester's motion until after the Board voted on reinstating the study hall monitor position. The motion passed, and the Board voted to reinstate the study hall monitor position for the following school year.
33. The Board voted down Mr. Worcester's motion, but passed a similar motion which increased the teaching load from 6 out of the 8 block schedule to 6.5 blocks (rather than 7 blocks proposed by Mr. Worcester).
34. As a result of the Board vote, several new course offerings were added for 2014-2015, including an Honors Chemistry class and an Honors English 11 class, extended class periods for some of the AP classes, a personal finance class and English and math fundamentals classes to help struggling students in those two subject areas.
35. On May 5, 2014, Ms. Bean sent the Superintendent a 10-day notice to bargain over the impact of study hall duties.
36. Ms. Stevens responded that she and the Board Chair would

meet to hear concerns and "to determine the existence, nature or extent of any impact. The District reserves the right to decide whether there exists any obligation to impact bargain."

37. The parties met on May 15, June 5, and June 13, 2014, to bargain the impact of study hall duties. The Association proposed compensation based on time involved and using the dollar value for extra duty pay established in the expired agreement. Ms. Stevens and the Board members asked many questions about the impact the Association was trying to address and the specifics of the Association's proposal.
38. After the first impact bargaining session, Ms. Stevens sent a memo to Ms. Bean asking for more detailed information on the scope of the impact. She wrote:

". . . we are still unclear precisely how many high school teachers have been impacted (during the 2013-2014 school year) by the above decision. You indicated the impact varied by individual; however, we are not clear the precise scope of the impact you described (who has been impacted and in what respect). Can you please provide this information to me in advance of our next session?"

39. Ms. Bean spoke to all the teachers and compiled the information for Ms. Stevens on each teacher's schedule and how much they were impacted. This information was presented and discussed at the second impact bargaining session. The Association also orally presented a specific proposal for payment of \$16 per hour for each hour the teachers spent in study hall for the 2013-2014 year, which had a total cost of about \$31,000. The Board asked several questions seeking

clarification on this impact. Ms. Stevens and the Board members were looking for information specifically on the impact outside of the school day, which the Association was not able to provide to the Board's satisfaction.

40. The Association understood that funds were limited and indicated that they were seeking a symbolic acknowledgement of their sacrifice to cover the study halls. The Association proposed some non-monetary alternatives, such as more flexibility on use of personal days and more flexibility in the required times of arrival.
41. Mr. Jason Plog, a Board member who attended the impact bargaining sessions, testified that many of the Board members were not interested in financial compensation for teachers for the study hall duties. Their position was that the teachers' salary already covered the duties at issue.
42. At the third meeting on June 13, 2014, Ms. Stevens said that the Board concluded that there was no impact outside of the school day that warranted additional compensation. She explained that the Board was not interested in expanding the use of personal days because that reduced the number and quality of teachers present, which was in direct opposition to its objective of getting more teacher face time with the students. The meeting ended and no further impact-bargaining sessions were planned.
43. According to an article published August 27, 2014, edition of the weekly newspaper "The Irregular," the School Board learned on August 21, 2014, that there was \$623,000 in "unassigned funds" from the previous budget. These funds were from various sources: unanticipated revenue, salary

savings from replacing retired staff with new hires, and maintenance projects costing less than anticipated.

44. On August 25, 2014, the Association filed a request for mediation regarding the study hall impact bargaining. Ms. Bean testified that she thought it was a good time to seek compensation because some of the surplus may have been from funds in the budget set aside for salary increases but not yet paid because the successor collective bargaining agreement was still unresolved.
45. In a memo to the new Superintendent, Ms. Erica Brouillet, dated August 26, 2014, Ms. Bean requested to meet and consult over the change in instructional load. The memo was delivered with an email dated August 28, 2014, in which Ms. Bean stated that the teachers were very busy with another project and that they would not have time to meet within the 10 days, but suggested that it could be scheduled later in September.
46. The increase in the teachers' instructional load went into effect on the first day of the 2014-2015 school year, September 3, 2014. The teachers received their class schedule reflecting this increase on the first or second workshop day, either August 27 or 28, 2014. Ms. Bean testified that the Association did not send the meet-and-consult request until late August because it was not until then that they saw how it was actually going to work.
47. There were multiple impact-bargaining sessions in the fall of 2014 to address the increased instructional load. Ms. Bean testified that the first meeting started out as a meet-and-consult session, but quickly evolved into impact

bargaining. Ms. Bean thought the schedule could be easily changed and was under the impression that not very many students would be affected by changing it in the middle of the year. The guidance counselor's numbers showed that there were more students affected than she thought. The District was unwilling to change the schedule mid-year.

48. During one of the impact bargaining sessions on the teaching load, the Superintendent, Ms. Brouillet, presented information she had gathered on the amount of instructional time, planning time, and student contact time the teachers had in all of the schools in the district. This data showed that the average daily instructional time at Mt. Abram High School was much less than at the elementary schools. In addition, the amount of unstructured time at Mt. Abram was significantly greater than at the other schools. With this data in mind and the Board's objective of providing more options and more teacher contact time for the students, Ms. Brouillet did not feel a need to step back from the added $\frac{1}{2}$ block of instruction time.
49. During one of the impact bargaining meetings, the Superintendent brought a School Board member who was experienced with scheduling in another school district. By this point, both sides recognized that there was an opportunity to create extra time for the students to have with teachers by using some of the underutilized time in Mountain Time and other non-instructional periods of the day. The Superintendent instructed Mr. Aliberti to work with the teachers to try to find creative ways to use that time to better meet the Board's objectives.

50. With respect to the study hall impact bargaining, a mediation session occurred on October 17, 2014. The Association made some of the same proposals that it had previously made for more flexible use of the personal days and more flexible starting times. At some point during or before this mediation, the Association's position on compensation expanded to include all teachers, not just those in the high school. The Board made its first counterproposal during this mediation session, which was an offer to free the affected teachers of the obligation to attend one of the scheduled workshop days. The Association rejected that proposal as offering no value to them.
51. The next mediation session occurred on March 24, 2015. The parties agreed to consider this a combined mediation session to address both the impact of the increased instructional load starting in the 2014-2015 school year and the impact of the study hall duties during the 2013-2014 school year. The Association presented a proposal of compensation for the study hall duties that was based on a higher wage rate than the previous proposal and had a projected cost of \$50,000. The proposal was rejected by the Board. The School Board presented a proposal to address the increased instructional time that did not involve any financial compensation. That proposal was rejected by the Association.

DISCUSSION

The concept of bargaining in good faith is central to the collective bargaining laws of Maine. Section 965(1)(C) establishes the mutual obligation of the public employer and the bargaining agent:

C. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party may be compelled to agree to a proposal or be required to make a concession and except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies; for the purpose of this paragraph, educational policies may not include wages, hours, working conditions or contract grievance arbitration;

This case involves the MSAD #58 School Board's decision to have the Mt. Abram high school teachers supervise study halls during the 2013-2014 school year as well as the School Board's decision to increase the high school teachers' teaching load from 6 to 6.5 blocks out of 8 blocks starting in the 2014-2015 school year. Count I of the Complaint alleges that the School Board failed to meet and consult with the teachers over the change in the instructional load and failed to bargain in good faith over the impact of the change in the instructional load. Count II of the Complaint alleges that the School Board failed to bargain in good faith over the impact of assigning study hall duties to the high school teachers.

The Association does not dispute that the changes to study hall and teachers' instructional load are matters of educational policy.² Although matters of educational policy are not negotiable under the express terms of §965(1)(C), an employer must meet and consult with the bargaining agent over educational policy subjects within 10 days of receiving such a request from the bargaining agent. MSAD #43 Teachers Assoc. v. MSAD #43

² Up until the start of the hearing, it seemed that the Association was taking the position the complaint did not involve matters of educational policy.

Board of Dir., No. 79-42 at 2 (May 1, 1979). The meet-and-consult process is a "a mechanism for insuring employee input in non-negotiable policy areas, . . . to further the Act's purpose of improving the relationship between school committees and their employees." Southern Aroostook Teachers Association v. Southern Aroostook Community School Committee, No. 80-35 and 80-40 at 16. (April 14, 1989). The Board described the different elements necessary to carry out this purpose with:

1. Notice that a change in educational policy is planned must be given to the bargaining agent, so that it can timely invoke the meet and consult process if employees wish to comment on the changes;
2. Pertinent information about the planned change must be provided so that the bargaining agent and employees can understand the change and make constructive comments about it.
3. Actual meeting and consulting at reasonable times and places about the planned change must occur upon receipt of a ten day notice or other request to meet and consult by the bargaining agent. A school committee is obligated to come to meet and consult sessions with an open mind, to discuss the planned change openly and honestly, and to listen to the employees' suggestions and concerns.
4. Mature consideration must be given to the employees' input before the change is implemented, and if any of the employees' comments or concerns are meritorious, the school committee must decide in good faith whether they can be accommodated.

Southern Aroostook, No. 80-35 at 15-16. Failure to satisfy the elements of the duty to meet and consult or evidence of an attempt to delay or frustrate the process is evidence that the party has violated its obligation to meet and consult. Id. at 16.

The Association argues that the School District failed to satisfy the first element of the meet-and-consult process because it did not provide notice to the Association that the School Board would be voting on increasing the instructional load for high school teachers at the Board's February 27, 2014, meeting. The Association asserts that the established practice had been for the Superintendent to communicate with the Association President by email or in writing and suggests that the failure to follow this practice proves that there was no notice.

It is true that there was no formal notice given to the Union of the School Board's vote to increase the instructional load. The purpose of the notice is to enable the bargaining agent to demand bargaining or formally request a meet-and-consult session. For this reason, we have held that actual notice to the bargaining agent is enough, even if that notice is not formal or in writing. Southern Aroostook, No. 80-35 at 16. Like the notice requirement for an employer's contemplated change to a mandatory subject of bargaining, notice that does not "provide a reasonable opportunity to demand bargaining" is insufficient. Teamsters Local Union No. 48 v. Eastport School Dept., No. 85-18, at 4 (Oct. 10, 1985). See also City of Bangor v. AFSCME, Council 74, 449 A.2d 1129, 1135 (Me. 1982). For example, the notice to the Union of a "rally" for which bus driver attendance was mandatory was insufficient when it was provided only three days before the rally. Monmouth School Bus Drivers & Custodians/Maintenance Assoc./MEA v. Monmouth School Committee, No. 91-09 at 56 (Feb. 27, 1992).

In the present case, notice sufficient to allow a 'reasonable opportunity' to request a meet-and-consult session must be measured from the date of the implementation of the

change to educational policy, not the date of the School Board's vote on February 27, 2014. MSAD #43 Teachers Assoc. v. MSAD #43 Board of Directors, No. 79-42 at 4 (May 1, 1979) (The school was obligated to meet and consult prior to the implementation the change in educational policy); Southern Aroostook, No. 80-35 at 18 (" . . . [O]nce the duty to meet and consult has been satisfied, the change can be implemented.") Here, the vote itself was not the implementation of the change in policy, it merely set the planning in motion. The Association had several months of opportunity between the Board vote on February 27, 2014, (clearly actual notice of the impending change) and the implementation of the change in policy at the start of the new school year in which to submit a request to meet and consult. For the foregoing reasons, we reject the Association's claim that it did not receive notice of the contemplated change sufficient to provide an opportunity to demand a meet-and-consult session.³

Had the Association submitted a request to meet and consult at any time after the February vote, the School District would have been obligated to comply with that request. The Association could have made its case against the added teaching block or could have assisted the District in implementing the new schedule in a manner that reduced the negative impact on the teachers. Had the Association been successful in convincing the Board that its vote was in error, the Board could have

³ Even if the law required notice of the vote to change the school board policy on teaching load, rather than its implementation, we would hold that the union was on notice, as the facts of this case are nearly identical to those constituting notice in Southern Aroostook, No. 80-35 at 16 (Union's attendance at School Committee meetings and receipt of minutes and agenda constituted notice).

reconsidered its vote at a subsequent meeting.⁴ By waiting until the eve of implementation to present the Superintendent with the Association's 10-day request to meet and consult the Association lost the opportunity to influence the implementation of the policy.

We conclude that there is no basis for holding that the Employer failed to meet and consult over the change to the instructional load because the Association simply waited too long before submitting its request. This case is quite similar to Saco Valley Teachers Association v. MSAD #6, in which the Board rejected the Union's assertion that the School failed to meet and consult where the Union's 10-day request to meet and consult was submitted several months after the Union was on notice that an after-school tutorial program would be implemented the following school year. No. 85-07 at 15-16. In light of the union's "substantial delay" in requesting a meeting with the employer until after the start of the new school year, the Saco Board concluded that the employer had not failed to fulfill its meet-and-consult obligation under the Act. In the present case, the delay in making a meet-and-consult request was six months from the Board's vote, even longer than the delay in Saco.

The Association's argument that it did not know how the increased instruction load would be implemented until the high school schedule was distributed in late August is not a valid reason for the six-month delay in submitting its demand to meet

⁴ The Association claimed in its reply brief (at 3-4) that based on the "demeanor" of the School Board member testifying, it was clear "that there was no turning back." There was no evidence suggesting the vote could not be reconsidered or suggesting a procedural barrier that would make reconsideration impossible.

and consult. If the Union needed to wait to see how an educational policy matter was going to be implemented before it could request a meet-and-consult session, it could only result in two outcomes: either the meet-and-consult session occurs too late to be of any use or the implementation of the change is delayed in order to schedule a meet and consult. Neither of those options is consistent with the purpose of the meet-and-consult requirement: to ensure that the School Board, representing the interests of the citizens, has the authority to make educational policy, with an opportunity for input from the teachers prior to its implementation. Southern Aroostook, No. 80-35 at 15.

For the forgoing reasons, we conclude that the School District has not violated §965(1)(C) by failing to meet and consult over the implementation of the increased teaching load at the high school. Given the specific circumstances of this case, the Association's 10-day demand to meet and consult was untimely.

The Association also alleges in Count I of the Complaint that the School District failed to bargain in good faith over the impact of the change in the teachers' instructional load. The question of whether a party has failed to bargain in good faith involves the assessment of many factors simultaneously. We must examine the totality of the charged party's conduct to decide whether that party's actions during negotiations indicate "a present intention to find a basis for agreement." Waterville Teachers Association v. Waterville Board of Education, No. 82-11 (Feb. 4, 1982). The analysis for determining whether a party has been bargaining in good faith involves the following:

Among the factors which we typically look to in making our determination are whether the charged party met and negotiated with the other party at reasonable times, observed the groundrules, offered counter-proposals, made compromises, accepted the other party's positions, put tentative agreements in writing, and participated in the dispute resolution procedures. See, e.g., Fox Island Teachers Association v. MSAD #8 Board of Directors, MLRB No. 81-28 (April 22, 1981); Sanford Highway Unit v. Town of Sanford, MLRB No. 79-50 (April 5, 1979). When a party's conduct evinces a sincere desire to reach an agreement, the party has not bargained in bad faith in violation of 26 M.R.S.A. § 964(1)(E) unless its conduct fails to meet the minimum statutory obligations or constitutes an outright refusal to bargain.

Town of Orono v. IAFF Local 3105, No. 11-11 at 8 (Aug. 11, 2011) quoting Waterville Teachers Assoc. v. Waterville Board of Education, No. 82-11 at 4 (Feb. 4, 1982). The same analysis applies to impact bargaining as well as bargaining for an initial or a successor collective bargaining agreement. Southern Aroostook, No. 80-35 at 19.

Much of the Association's arguments that the School Board failed to bargain in good faith over the impact of the increased instructional load are focussed on the merits of the Association's position that the loss of preparation periods had a negative impact on the quality of the education provided. The School Board's position is that the added instructional period reflects the Board's policy choice of additional student contact time for the teachers and additional course offerings for the students. It is not this Board's role to pass judgment on either side's position, only to enforce the statute that requires the parties to bargain in good faith.

There is no merit to the Association's allegation that the School Board failed to bargain in good faith over the impact of the added teaching load. The evidence is clear that the parties met multiple times in the fall and winter months to negotiate; the School Board listened to the teachers' concerns about the loss of preparation time; the School Board brought a Board member who was experienced in scheduling at another school to the meetings to try to work on the schedule; the School Board supported its position that changing the schedule in the middle of the year was problematic by showing that more students were affected than the Association had thought; the Superintendent gathered and shared with the teachers extensive information about the amount of daily instructional time at other schools in the district compared to Mt. Abram High School and the amount of "unstructured" time available to the high school teachers relative to other teachers in the district. Eventually, the Principal and others were tasked with trying to find some solution to put into effect the following school year. During the mediation session held shortly before the evidentiary hearing in this case, the School Board presented a counter-proposal to address the Association's concerns, which the Association rejected as unsatisfactory.

The totality of the party's conduct analysis is not a test in which all of the items must be satisfied in order to conclude a party has bargained in good faith; rather, it is a list of factors which together can give an indication of whether the party has a present intent to reach an agreement. Here, the School District's position on whether to agree to any of the Association's proposals on this issue or to alter its own stance on the teachers' responsibilities during the school day was not

a refusal to bargain in good faith. To conclude otherwise would be inconsistent with the express language in §965(1)(E) that "neither party may be compelled to agree to a proposal or be required to make a concession." The Union's complaint in Count I must therefore be dismissed.

Count II of the complaint alleges that the School District failed to bargain in good faith over the impact of the study hall supervision duties assigned to the high school teachers during the 2013-2014 school year. Again, it is the totality of the parties' conduct that must be assessed. Here, the parties met three times during May and June to bargain the impact of the study hall supervision duties. The Association proposed monetary compensation, based on its conviction that the teachers should be compensated for the added study hall duties and reduced preparation periods. The School Board asked for additional information to clarify how the change had impacted the teachers outside of the school day, but remained unconvinced that there was any impact outside of the school day. The Board rejected the Association's proposal based on its conviction that the teachers' salaries already compensated them for their work during the school day. The Board rejected the Association's other proposals for more flexibility in use of personal days as contrary to the Board's goal of increasing student-teacher contact time. The Employer made counterproposals of release from a workshop day instead. The Association's changes to its proposals to include teachers in other schools and significantly increasing the cost of the compensation formula made the School Board's acceptance even less likely. The School Board explained its reasoning for rejecting the Association's proposals, which were consistent with its prior positions on student contact time

and financial concerns.

Given the totality of the School Board's conduct, we can find no basis for concluding that the School Board has not bargained in good faith. Count II of the Complaint must therefore be dismissed.

ORDER

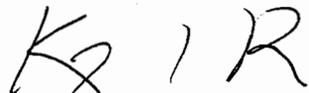
On the basis of the foregoing discussion, and by virtue of and pursuant to the powers granted to the Maine Labor Relations Board by 26 MRSA §968(5), it is ORDERED:

That the prohibited practice complaint, filed on August 25, 2014, in Case No. 15-09, be and hereby is dismissed.

Dated at Augusta, Maine, this 29th day of July 2015.

MAINE LABOR RELATIONS BOARD

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(5)(F) and in accordance with Rule 80C of the rules of Civil Procedure within 15 days of the date of this decision.



Katharine I. Rand
Chair



Christine Riendeau
Employer Representative



Robert L. Piccone
Employee Representative