



The hearing in this matter was held via videoconference on September 3, 2020 and September 4, 2020. Chair Rand presided, joined by Amie M. Parker, Employee Representative, and Robert W. Bower, Jr., Esq., Employer Representative. William K. McKinley, Esq. represented the Complainant/Union and Alyssa C. Tibbetts, Esq. represented the Respondent/Town. The parties were given a full opportunity to examine and cross-examine witnesses, introduce evidence and to make their arguments. Additionally, both parties filed post-hearing briefs.

### **III. Findings of Fact**

#### **A. Union's Request for Information Concerning SRO Position**

The following facts are supported by the record. The Town hired the Police Chief ("Chief") in October of 2017. The parties agree that the relationship between the Chief and the Town's police officers took a precipitous dive, starting in the summer of 2018. The source of this conflict was the Chief's decision to hire a part-time reserve officer, not covered by the collective bargaining agreement between the Town and the Union, for a newly created School Resource Officer (SRO) position. The Union opposed this hiring decision because the position was not posted or offered to the full-time officers, as it believed was required by the collective bargaining agreement. On November 26, 2018, the Union filed a grievance challenging the Chief's hiring for the SRO position, which culminated in an arbitration hearing before the State Board of Arbitration and Conciliation (BAC) on May 22, 2019. On August 1, 2019, the BAC issued its decision, in favor of the Union. The BAC directed the Town to hire a certain full-time officer (Officer C) for the position and to post SRO positions in the future. Regarding monetary relief, the BAC ordered the following:

*The Town shall make [Officer C] whole by awarding him any additional pay at his regular rate, that he would have earned if he had been awarded the SRO position on January 1, 2019, excluding overtime. This calculation will be based upon the difference between the hours [the Incumbent] worked and the hours [Officer C] worked during that same period of time.*

By August 5, 2019 the Town Manager had documented the relevant data concerning hours worked and wages earned by the two officers ("accounting document"), which demonstrated that no amount was due under the BAC's award. That same day the Union sent an email to the Town's attorney asking to discuss the arbitration award and communicating the assumption that the Town would share this data. Although the Town Manager provided the Town's attorney with the accounting document, the attorney did not share this document with the Union, but rather provided a simple statement to the effect that no amount was due. The Union sent emails on October 25, 2019 and November 21, 2019 directly requesting the underlying data so that it could verify the Town's conclusion. The Town did not provide the Union with a copy of the August 5 accounting document until January 29, 2020.<sup>1</sup>

#### **B. Officers' Complaints Against the Chief and Resulting Investigation**

The Union and the Town met in the prior year, on January 24, 2019 ("January 24 meeting"), for the ostensible purpose of an appeal hearing in an earlier stage of the SRO grievance discussed above. Representing the Union at the meeting was the Union's attorney, Officer A, another police officer (Officer B) and the Union's executive director. The Town was represented at the meeting by the Town's former attorney, the Town Manager, and an administrative assistant who

worked simultaneously for the Chief and the Town Manager. After the appeal hearing, the Union disclosed several complaints and concerns regarding the Chief. The Town requested that the complaints be provided in writing, which the Union ultimately provided many months later, on August 5, 2019 (“August 5 complaint letter”).

The Chief was alerted to Officer B’s attendance at the January 24 meeting when he reviewed Officer B’s time sheet, which prompted him to confirm Officer B’s reported hours with the Town Manager. At that time, the Town Manager told the Chief that the meeting had included some complaints from the Union about the operations of the Police Department. According to the Town Manager, whose testimony we found more credible on this point, the Chief pressed for details, but the Town Manager did not disclose any, honoring the Union’s request for confidentiality. At some point thereafter, the Town Manager addressed some of the Union’s more minor complaints directly with the Chief in a manner designed to preserve confidentiality.

The Chief received a copy of the August 5 complaint letter in August 2019, at which time he undisputedly learned of the substance of the Union’s verbal complaints, as well as the identity of the individuals who presented them on the Union’s behalf. Among these complaints were two alleged prohibited practices, one involving the Chief’s attempt to discuss the SRO conflict with Union stewards while the matter was in the grievance process. The other alleged prohibited practice involved the Chief encouraging officers to switch to a rival union, including by inviting a Union steward, Officer B, to have a discussion with a representative of the other union on speakerphone while in the Chief’s office.

Prior to the August 5 complaint letter, Officer A submitted his own letter to the Town Manager on July 18, 2019, detailing what he contended were “slanderous and unprofessional” comments the Police Chief allegedly made about Officer A to Town employees and others.

The Town hired an independent investigator to investigate the allegations set forth in the August 5 complaint letter. The investigator interviewed a significant number of people and submitted a report summarizing his finding on November 5, 2019 (“investigation report”). While the investigator substantiated a small number of the Union’s allegations, the investigation report can fairly be characterized as exonerating the Chief. It noted a “hostile atmosphere” at the police department and blamed the officers for a pattern of openly expressed disrespect for the Chief and disregard of the Chief’s orders. The investigator concluded that the majority of the Union’s allegations against the Chief were unsubstantiated. The Union replied on December 2, 2019 with a letter strongly disputing the investigator’s findings.

### **C. Chief’s Initiation of Investigations and Discipline Vis-à-vis the Sergeant and Officer A**

On July 2, 2019—after the January 24 meeting, but before the August 5 complaint letter—the Chief provided the Kennebec County Sheriff’s Office (KCSO) with information concerning the conduct or performance of two officers, the Sergeant and Officer A.<sup>2</sup> The Chief asked the KCSO to review the information and recommend a course of appropriate corrective action. On July 15, 2019, representatives of the KCSO met with the Chief to relay their recommendation. The KCSO viewed Officer A’s performance issues to be a matter best addressed directly by the Chief, but recommended that the Sergeant’s alleged misconduct, which it considered a more serious matter, be investigated further. Accordingly, the Chief asked the KCSO to conduct an internal affairs investigation of the Sergeant, which was formally approved on July 23, 2019.

The Union became aware of the Chief's requests to the KCSO after receiving notice and documents from KCSO regarding the internal affairs investigation of the Sergeant in late July 2019. On October 28, 2019, the KCSO issued its investigation report, in which the KCSO sustained three alleged policy violations: 1) failure to obey a lawful order, 2) failure to demonstrate competency in the performance of official duties and 3) engaging in conduct that could adversely affect or discredit the officer or the Pittsfield Police Department. The Sergeant was cleared of three other allegations under investigation, including any potential criminal conduct. Based on the findings of the KCSO's internal affairs investigation, the Chief issued the Sergeant a notice of possible disciplinary action on November 19, 2020. Soon thereafter, the Chief issued the Sergeant a three-day suspension.

The Union appealed the suspension to the Town Manager through the grievance process. The Town Manager reversed the Sergeant's suspension, directing that he should instead receive a strongly worded reprimand. Her decision was based in part on a lack of evidence supporting a finding that the Sergeant had disobeyed an order, which she found was due to use of email and cell phone communication rather than directing communication through the dispatch. Moreover, although she noted that the Sergeant's investigation and follow-up were lacking, she rejected the KCSO finding of incompetency. The Town Manager sustained the KCSO's finding of conduct that could adversely affect or discredit the officer or the Pittsfield Police Department, in the form of the Sergeant's complaining about internal police department politics to the victim of a crime he was investigating. Notably, in the course of the hearing of this matter, the Sergeant admitted to this conduct, and acknowledged that it was inappropriate. In accordance with the Town Manager's decision, the Chief issued the Sergeant the written reprimand on January 27, 2020.

#### **D. Union's Request for Information Provided to KCSO Regarding Officer A**

In the course of the KCSO's internal affairs investigation of the Sergeant, the Union became aware that the Chief had initially asked the KCSO for a recommendation concerning issues related to Officer A as well. The Union requested a copy of all documentation provided by the Chief to the KCSO relating to Officer A as early as August 5, 2019, and reiterated this request several times over the following four months.

The Town Manager sent a memo to the Chief requesting a copy of the documents at issue in response to the Union's request. When no documents were forthcoming, the Town Manager followed up with the Chief on two separate occasions, to no avail. The Town's attorney then followed up with the Chief to communicate the importance of providing the requested documents and to offer assistance, again to no avail. At hearing, the Chief testified that he still had in his possession folders of documents that were submitted to the KCSO, but that he did not believe the Union had a right to this information.

#### **E. Chief's Request for Internal Affairs Investigation of Officer A**

In December 2019, the Police Chief asked the Skowhegan Police Department (SPD) to perform an internal affairs investigation of Officer A. The Union first received notice of the SPD's investigation on December 23, 2019. That same day, in an email to the Union's attorney, the Town's attorney acknowledged receipt of documents from the Chief, noting that the documents pertained to this new internal investigation but also covered generally the same incidents the Chief had previously asked the KCSO to review. The Town offered to provide this documentation to the Union on January 10, 2020, but at this point the Union had already

received the documents directly from the SPD. The documentation the Chief provided to the SPD, which the SPD in turn provided to the Union, included descriptions of events that occurred in the months following the Chief's provision of information to the KCSO. Thus, the documentation the Chief provided to the SPD was not identical to the information he provided to the KCSO.

The SPD investigation focused largely on Officer A's alleged failure to generate reports regarding four incidents, despite the Chief's repeated requests for the same. On February 2, 2020, the SPD issued an internal affairs investigation report concerning Officer A, which sustained all of the alleged violations of department policy. The Chief issued Officer A a notice of possible disciplinary action on March 3, 2020, citing the sustained findings in the SPD report. The Chief imposed a one-day suspension and a Letter of Discipline on March 31, 2020, which the Union appealed to the Town Manager through the grievance process.

On July 8, 2020, the Town Manager vacated the Chief's disciplinary action, directing that a Letter of Counseling be issued to Officer A instead. The Town Manager found the discipline to be excessive and inconsistent with the progressive discipline process outlined in the parties' collective bargaining agreement. She also noted that the reporting writing issues did not amount to serious misconduct and that Officer A had no prior discipline in his personnel file. The Town Manager further found the investigation and discipline to be untimely, as they concerned events occurring in February 2019 to May 2019, with one dating back to May 2018 – a delay of approximately one and two years, respectively.

#### **IV. Analysis**

##### **A. Jurisdiction**

The Union is a bargaining agent within the meaning of 26 M.R.S.A. § 962(2), the Town is a public employer within the meaning of 26 M.R.S.A. § 962(7) and the employees involved are public employees within the meaning of 26 M.R.S.A. § 962(6). The Board's jurisdiction to hear this case and to issue a decision and order derives from 26 M.R.S.A. §968(5).

##### **B. Refusal to Bargain / Interference: Failure to Provide Relevant Information in a Timely Manner**

The Municipal Public Employee Labor Relations Law (the Act) imposes an obligation on both the employer and the employees' bargaining agent to collectively bargain. 26 M.R.S.A. § 965. An employer's refusal to collectively bargain with the bargaining agent as required by § 965 of the Act is a prohibited practice under § 964(1)(E) of the Act.

This duty to bargain "includes the duty to provide relevant information needed by the union for the performance of its duties, including that pertinent to grievances," and to do so in a timely manner. *AFT Local 3711 v. Sanford School Committee*, No. 01-24, slip op. at 14 (Jan. 31, 2002); *Orono Firefighters Association v. Town of Orono*, No. 89-18, slip op. at 13 (Sept. 1, 1989) ("Unless the Union is provided with the information it requests in a timely manner, the right to information is a hollow one indeed."). The union is not required to inform the employer of the specific purpose for requested information, "as long as the request is reasonably related to the performance of its duties as a bargaining agent." *Orono Firefighters Association v. Town of Orono*, No. 89-18, slip op. at 12-13 (Sept. 1, 1989); see also *Sanford School Committee*, No. 01-24, slip op. at 14 (citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 436 (1967)).

Even when the requested information is reasonably related to the union's duties, "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 (quoting *Portland School Committee v. Portland Teachers Assoc.*, No. 93-27, slip op. at 16-17 (Feb. 17, 1994)). *Id.* at 16 ("Even if there is a legitimate and substantial confidentiality interest at stake, it is well established that the party refusing to supply information has a duty to seek an accommodation.") If it is not possible to accommodate both parties' interests, the Board must "weigh the competing interests of the parties and determine which interest should prevail." *Portland School Committee*, No. 93-27, slip op. at 18.

The Act prohibits public employers, their representatives and their agents from interfering with, restraining or coercing employees in the exercise of protected union activity. 26 M.R.S.A. § 964(1)(A). A violation of this prohibition occurs irrespective of the employer's motive or success, but is based on "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *Fraternal Order of Police v. York County*, Nos. 18-10 & 19-02, slip op. at 29-30 (July 24, 2019) (quoting *Duff v. Town of Houlton*, No. 97-20, slip op. at 21 (Oct. 19, 1999)).

In addition to constituting a failure to bargain, an employer's refusal to provide requested information in a timely manner may constitute an unlawful interference with employees' free exercise of their right to collectively bargain. *Town of Orono*, No. 89-18, slip op. at 13; *State Employees Association v. School Committee of the City of Lewiston*, No. 90-12, slip op. at 20, (Aug. 21, 1990).

### **1. Grievance arbitration award**

The Union requested information from the Town that would allow it to verify the Town's conclusion that no amount was due in connection with the BAC's order regarding the SRO position. This information would have allowed the Union to confirm the Town's compliance with a grievance arbitration award, and was therefore directly relevant to the Union's duties as bargaining agent. See *Sanford School Committee*, No. 01-24, slip op. at 14. Although the Town suggested that the Union already possessed or had access to the underlying payroll information needed to support the calculation, the weight of evidence does not support this contention. Moreover, even if the Union had access to the relevant payroll records, the Town had already created a responsive document, summarizing the relevant calculations and justifying its conclusion, as early as August 5, 2019.

The Town's delay in providing the August 5 accounting document appears to be at least in part attributable to the matter's transition from the Town's former attorney, who was retiring, to the Town's current counsel. There is no evidence that the Town acted in bad faith or intentionally withheld the accounting document from the Union. Nonetheless, the information was germane to the Union's duties, the Union repeatedly requested it and the Town did not provide it for many months. The Town failed to provide relevant requested information in a timely manner and accordingly breached its duty to collectively bargain with the Union in violation of 26 M.R.S.A. § 964(1)(E). The Board also finds this untimely response to be a violation of 26 M.R.S.A. § 964(1)(A). See *Town of Orono*, No. 89-18, slip op. at 13; *School Committee of the City of Lewiston*, No. 90-12, slip op. at 20.

## **2. Officer A documentation**

The Union has repeatedly requested copies of the documents the Chief sent to the KCSO regarding Officer A. The Town argues that this information was not relevant to the Union's duties as bargaining agent because the KCSO did not initiate an internal affairs investigation and because the information provided to the KCSO was embedded within the broader set of information subsequently provided to the SPD. The Chief maintains that he has the information provided to the KCSO, but does not believe he has any obligation to produce it.

Had no internal investigation or disciplinary matter concerning Officer A ensued, it is not clear that the Union would have a legitimate interest in obtaining this documentation in order to perform its duties. It is clear, however, that the Union had an interest in representing Officer A in connection with the SPD internal affairs investigation and the disciplinary matter, and the documentation provided to the KCSO was relevant to that interest.

Although there was testimony at the hearing indicating that the information provided to the KCSO was identical to that provided to the SPD, except for information concerning events that had occurred after the matter was referred to KCSO, that is, after July 2, 2019, the Union is not required to accept this representation at face value, particularly in light of the Chief's acknowledgement that he has retained a copy of the documentation provided to the KCSO. The Union was entitled to this documentation, and the Town's failure to provide it in a timely manner constitutes a failure to bargain in violation of 26 M.R.S.A. §964(1)(E). This untimely response also constitutes a violation of 26 M.R.S.A. § 964(1)(A). See *Town of Orono*, No. 89-18, slip op. at 13; *School Committee of the City of Lewiston*, No. 90-12, slip op. at 20.

## **C. Discrimination**

The Act provides that public employers, their representatives and their agents may not encourage or discourage union membership by engaging in discrimination in regard to hire or tenure of employment or any term or condition of employment. 26 MRSA § 964(1)(B). A complainant alleging unlawful discrimination has the burden of proving by a preponderance of the evidence that: (1) the employee engaged in protected activity; (2) the decision-makers knew of the employee's participation in protected activity; and (3) there is a relationship, or causal connection, between the protected activity and one or more adverse employment actions against the employee. *Fraternal Order of Police v. York County*, Nos. 18-10 & 19-02, slip op. at 18-19 (July 24, 2019); *Holmes v. Town of Old Orchard*, No. 82-14 (Sept. 27, 1982) (adopting the three-part test established in *Wright Line and Bernard R. Lamoureux*, 251 NLRB 1083 (1980), affirmed by 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).)

With respect to the third element, causation, the Board examines whether the complainant has provided evidence to support an inference that the protected activity was a "substantial or motivating factor in the employer's decision." *York County*, Nos. 18-10 & 19-02, slip op. at 19, quoting *Casey v. Mountain Valley Educ. Ass'n. and SAD 43*, No. 96-26 & 97-03, slip op. at 27-28.

If the complainant satisfies its burden of proof in establishing these three elements, the employer may, nevertheless, successfully defend against the claim if the employer proves by a preponderance of the evidence that the adverse employment action was based on unprotected activity as well, and that the complainant would have suffered the adverse employment action

regardless of the protected conduct. *York County*, Nos. 18-10 & 19-02, slip op. at 19; *Litchfield Educational Support Personnel Assoc. v. Litchfield School Committee*, No. 97-09 slip op. at 22 (July 13, 1998) (citing *Maine State Employees Ass'n v. State Dev. Office*, 499 A.2d 165, 167 (Me. 1985)). If the employer meets this burden then the claim fails, unless the complainant demonstrates that the legitimate bases offered by the employer are a mere pretext. *York County*, Nos. 18-10 & 19-02, slip op. at 19 (citing *Teamsters v. Town of Kennebunk and MLRB*, CV-80-413 (Me. Super. Ct., Kennebec Cty., October 18, 1985)).

The Union alleges that the Chief had a retaliatory motive in pursuing outside agency investigations and then discipline against the Sergeant and Officer A, which ultimately culminated in adverse employment action being taken against the two officers.<sup>3</sup>

### **1. The Sergeant**

The Sergeant's involvement in the SRO grievance was protected activity, known to the Town and the Chief. The Sergeant also played a prominent role in compiling some of the complaints that the Union presented to the Town orally at the January 24, 2019 meeting, and later in writing on August 5.<sup>4</sup> The Town does not argue that these complaints were not also protected union activity, but disputes that the Chief had any particular knowledge of the complaints made at the January 24 meeting or the sources of the complaints.

While the Chief claims to have been ignorant about the January 24 complaints before receipt of the August 5 complaint letter, we are not persuaded. The Chief was aware that the Union had raised concerns about him to the Town, and the Town Manager testified to the Chief's eagerness to learn the details. Given this eagerness, the Chief's access to his administrative assistant who was in attendance on January 24 and the Chief's testimony concerning this administrative assistant's involvement in police department personnel matters, we find that the Chief was likely aware of the nature of the Union's complaints and the identity of the attendees at the January 24 meeting prior to him contacting the KCSO on June 25, 2019. Moreover, the Chief's contact with the KCSO occurred very shortly after the grievance arbitration hearing at the BAC on May 22, 2019.

The temporal proximity between the January 24 meeting and grievance arbitration proceeding, on the one hand, and the process that culminated in the Sergeant's disciplinary action on the other hand, suggests a causal relationship. Moreover, the Union has also presented some evidence suggesting that the Chief had a retaliatory motive in his initial discipline of the Sergeant.<sup>5</sup> There was testimony that the initial three-day suspension from the Chief was unusually harsh in the context of a police officer's job. Given the lack of prior discipline in the Sergeant's personnel file, this level of discipline runs counter to the idea of progressive discipline and just cause outlined in the parties' collective bargaining agreement. Collectively, this evidence is sufficient to give rise to an inference of causation. With the Union having established a prima facie case, the burden shifts to the Town to articulate a legitimate, non-retaliatory, reason for the adverse action that was set in motion by the Chief's referral of the matter to KCSO.

The Town asserts that the Sergeant had mishandled the criminal investigation on May 28, 2019, when he denigrated the Chief and aired police department politics to the victim of a crime he was investigating. The Sergeant's conduct was not only verified by the findings of an outside law enforcement agency and the Town Manager, but by the Sergeant himself, who acknowledged

that he had made inappropriate comments to the victim during his investigation. The actual discipline he received, after grieving the Chief's initial determination, was a strongly worded reprimand. We cannot conclude that the Sergeant would have suffered no consequences for his behavior absent his engagement in protected activity.

Indeed, despite the circuitous route of inquiry to investigation to report to discipline to appeal to strongly worded reprimand, in the final calculus we find that the Sergeant made an error in judgment and received reasonable, proportionate discipline in response. While the evidence supports skepticism about the Chief's motives, the Town Manager ultimately made the ruling on the Sergeant's discipline, and there is no evidence whatsoever to impugn her motives.<sup>6</sup> As the Union has not met its burden to establish that the Town's justification for disciplining the Sergeant was mere pretext, the discrimination claim fails.

## **2. Officer A**

Like the Sergeant, Officer A engaged in protected activity in supporting the Union's efforts in the SRO grievance. Regarding the Union complaints at the January 24, 2019 meeting, not only was Officer A involved in compiling the complaints, he was actually in attendance.<sup>7</sup> As discussed above, the weight of evidence indicates that the Chief had knowledge of this protected activity.

Officer A experienced an adverse employment action with the Letter of Counseling he received from the Town Manager on July 8, 2020, which was the result of a grievance appeal of the initial one-day suspension and Letter of Reprimand from the Chief on March 31, 2020. The timing of the Chief's inquiry to the KCSO, occurring after the SRO grievance arbitration hearing at the BAC and the January 24, 2019 meeting, suggests a causal connection. Moreover, the Chief's request for the SPD to conduct an internal affairs investigation on Officer A was in late December 2019, not long after the August 5, 2019 complaint letter and the Union's release to the press of information about the investigation of the Chief. In addition to the timing of the Chief's actions, the unduly harsh and untimely discipline the Chief attempted to mete out to Officer A is sufficient to support a causal connection.

The Town maintains that Officer A's discipline was justified by legitimate, non-retaliatory, reasons—namely, his failure to complete certain reports and disregard of the Chief's instructions regarding the same. The evidence showed that the Chief assumed reporting writing responsibility in or about March 2019, and that it was at this time that he became aware of Officer A's deficiencies. The Chief referred the issues to the KCSO in June-July 2019, in response to Officer A's refusal to complete the reports. After the KCSO review, the agency determined that a formal investigation was not warranted and recommended that the Chief handle the issues himself administratively.

The evidence reflects that, over the next five months, the Chief repeatedly asked Officer A to complete the reports, but faced continuing resistance. The Chief issued Officer A memos on August 30, 2019, and November 17, 2019, where he advised Officer A that he would face discipline if he did not complete these outstanding reports. The Chief also sent multiple emails and had multiple verbal conversations with Officer A about these reports. In short, there is ample evidence in the record that Officer A was repeatedly asked to perform certain work and effectively ignored the Chief.

The Union points to several points of circumstantial evidence to argue that the reasons offered by the Town to justify its actions are merely pretextual, including that the Chief went to the SPD and requested an internal affairs investigation after being told by the KCSO that the matters involving Officer A did not warrant such treatment. The Union also relies on the Town Manager's reversal of the Chief's initial disciplinary determination based on deviations from the disciplinary procedures laid out in the collective bargaining agreement. One such deviation was that the discipline was excessive, based on the lack of serious misconduct and the officer's lack of any prior discipline. The Town Manager also found the investigation and discipline to be untimely. We do not find this evidence to be indicative of pretext. Given the hostility the Chief was experiencing from the police officers generally, and Officer A, in particular, it is understandable that the Chief would seek the opinion of an outside agency, in order to insulate himself from precisely the kinds of allegations the Union is making in this matter. We also reject the suggestion that the Chief engaged in forum shopping. The evidence reflects that the Chief attempted to handle Officer A's issues directly following the KCSO's recommendation to this effect, but his efforts did not effectuate any change or improvement on the part of Officer A. He then sought a fresh opinion about the entire course of events from another outside agency.

No evidence was presented at hearing to the effect that there were other officers with similarly deficient reports who were similarly nonresponsive to the Chief's directions. To the contrary, Officer B—the one officer the Chief acknowledges he was aware attended the January 24 meeting and who one might expect the Chief to target if he had a retaliatory motive—testified that he experienced no adverse actions and, further, that he had been asked by the Chief to revise reports but had just handled it differently, in a more laid back fashion. This fact seriously undermines the Union's claim of a causal connection between the January 24 meeting and Officer A's discipline.

We find that the Chief issued Officer A discipline because he deliberately ignored and openly defied the Chief's orders to complete reports over the course of a nine-month period. Besides the Chief's word on the issue are multiple memos and emails, and, according to the SPD internal investigation report, audio recordings of the Chief's verbal instructions in which Officer A acknowledges having received such communications. The resulting discipline, a Letter of Counseling intended to help the officer better understand the importance of complete, timely reports in order to improve the officer's job performance moving forward, seems reasonable and proportionate under the circumstances.

The environment in the Pittsfield Police Department is clearly dysfunctional. Communication is poor and emotions are running high. In our assessment, responsibility for this environment is shared by the parties. However, the Union has not produced credible evidence sufficient to meet its burden of demonstrating that the discipline issued to the Sergeant and Officer A would not have been issued but for their protected activities. Accordingly, the discrimination claims must fail.

## **V. Conclusion**

By failing to provide requested information relevant to the Union's duties as a bargaining agent in a timely manner, the Town has breached its statutory duty to collectively bargain with the Union in violation of 26 M.R.S.A. § 964(1)(E). Additionally, this failure to bargain has also had the effect of interfering with, restraining or coercing employees in violation of 26 M.R.S.A. § 964(1)(A).

Despite some circumstantial evidence of pretext, given the Chief's imposition of unreasonably harsh discipline initially, the Union has failed to establish that the final discipline of these officers was pretextual and that the discipline would not have otherwise happened absent the officers' protected activity, thereby failing to establish a violation of 26 M.R.S.A. § 964(1)(B).

### **ORDER**

On the basis of the foregoing findings of fact and discussion, and by virtue of and pursuant to the powers granted to the Maine Labor Relations Board by the provisions of 26 M.R.S.A. § 968(5), it is hereby ORDERED:

1. That the Respondent, the Town of Pittsfield, and its representatives and agents, shall:
  - A. Cease and desist from failing and refusing to provide information to an employee bargaining agent relevant to the performance of its duties as a bargaining agent, upon request and in a timely manner; and
  - B. Within 2 weeks of the date of this decision, provide to the Maine Association of Police all relevant information provided to the Kennebec County Sheriff's Office that has not already been provided to the union. If no additional information exists, the Town shall notify the union of this fact in writing within 2 weeks of the date of this decision, with a copy provided to the Maine Labor Relations Board.

Dated this 31st day of December, 2020

MAINE LABOR RELATIONS BOARD

/s/ Katharine I. Rand

Katharine I. Rand  
Chair

/s/ Robert W. Bower, Jr.

Robert W. Bower, Jr.  
Employer Representative

/s/ Amie M. Parker

Amie M. Parker

Employee Representative

The parties are advised of their right pursuant to 26 M.R.S.A. § 968(5)(F) 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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<sup>1</sup> The document created on August 5, 2019 was originally handwritten and a typed copy was created at some indeterminate point after that date. The typed version was what the Town provided to the Union.

<sup>2</sup> The Chief had referred the Sergeant in connection with his conduct in a criminal investigation on May 28, 2019, which included his allegedly making disparaging comments about the Chief and the department to the victim, directing the victim not to contact the Chief, and failing to coordinate his investigation with another law enforcement official as directed by the Chief. Although it is not entirely clear what documents were provided to the Sheriff's Office, based on the Chief's testimony, Officer A was referred for performance issues in connection with 4 cases, including a traffic fatality and a burglary, primarily involving Officer A's alleged failure to produce or complete reports, despite repeated direction from the Chief to do so.

<sup>3</sup> Although the Complainant did not include the Town's actual imposition of discipline in its complaint or move to amend its complaint to conform to the evidence at the conclusion of the hearing pursuant to Chapter 12, §20 of the Board's Rules, both parties have argued and presented evidence regarding these events as if they had been. Given the lack of objection and a lack of due process concerns, the Board will treat the disciplinary actions as if they had been plead in order to avoid what would seem an overly technical application of law under the circumstances.

<sup>4</sup> The Sergeant also testified that he had directly made some complaints to the Chief, but this non-union action is not protected activity. See *Teamsters Local 340 v. Aroostook County*, No. 03-09, slip op. at 20-24 (February 2, 2004) (A concerted effort by employees to distribute a petition of no confidence was not protected activity where the union itself was not involved).

<sup>5</sup> The Union also presented circumstantial evidence of several instances of conduct, allegedly manifesting anti-union animus, that the Board did not find sufficient to establish the required causal link between protected activity and adverse employment action for either officer.

<sup>6</sup> In fact, there was evidence to the contrary, that the Town Manager had made her ruling despite pressure not to reverse the Chief's discipline.

<sup>7</sup> Officer A sent a letter to the Town on July 18, 2019 in his own capacity, complaining about "slanderous comments" he claims the Chief had made about him to Town employees and others. As with the Sergeant's individual complaints made to the Chief, discussed above, this non-union action is not protected activity. See *Teamsters Local 340 v. Aroostook County*, No 03-09, slip op. at 20-24 (February 2, 2004).