
YORK COUNTY PATROL ASSOCIATION,)
)
 Complainant,)
)
 v.)
)
 YORK COUNTY,)
)
 Respondent.)

DECISION AND ORDER

FRATERNAL ORDER OF POLICE,)
)
 Complainant,)
)
 v.)
)
 YORK COUNTY,)
)
 Respondent.)

I. Statement of the Cases

These consolidated cases present two prohibited practice complaints filed by the Fraternal Order of Police (Union) alleging that York County (County), and in particular the York County Sheriff’s Office, violated the Municipal Public Employees Labor Relations Law (Act) by retaliating against certain employees for their union-related activity. The Union also alleges the County’s actions interfered with the free exercise of activity protected under the Act.

Although these cases present evidence of some hostility between senior management and certain employees who are active within the union, the Board finds this evidence insufficient to establish a violation of the Act where the record, as a whole, failed to

establish that the employer's conduct was motivated by protected activity or could have reasonably interfered with such activity.

II. Procedural History

On December 1, 2017, the Union¹ filed a prohibited practice complaint (MLRB No. 18-10) against the County. The Union amended this complaint on March 3, 2018. On September 27, 2018, the Union filed a new prohibited practice complaint (MLRB No. 19-02) against the County. These two complaints were consolidated for hearing.

A prehearing conference for these cases was held on December 19, 2018, with Katharine I. Rand, Neutral Chair, presiding. On December 21, 2018, Chair Rand issued a Prehearing Conference Memorandum and Order. In part, the Order limited the scope of issues in the cases, under the stated assumption that the other issues were resolved by the parties unless raised at the hearing.²

The issues that remain pending in this consolidated case are whether the County violated 26 M.R.S.A. §964(1)(A), (B) and (D) by (1) inquiring into *Giglio* impairment³ status for Deputy Travis Jones and Sergeant Mathieu Nadeau, (2) requiring Sgt. Nadeau to write a "term paper" on a two-day training he received, (3) improperly subjecting Dep. Robert Carr, Jr. and Sgt. Steven Thistlewood to internal investigations and (4) denying Dep. Carr's request to participate in drug enforcement activities involving a confidential informant.⁴

¹The original complaint was filed by the York County Patrol Association. Following the initial filing, the York County Patrol Association affiliated with the Fraternal Order of Police, which assumed control of the complaint.

²The Prehearing Conference and Order also included a Protective Order regarding documents or testimony concerning 1) law enforcement intelligence or investigative techniques or procedures not known by the general public or 2) complaints, charges or accusations of misconduct against county officers.

³*Giglio* impairment refers to *Giglio v. United States*, 405 U.S. 150 (1972) and related issues involving the credibility of law enforcement officers. A fuller explanation of *Giglio* is provided in the Facts section of this Decision and Order.

⁴While this fourth allegation was not included within the scope of the case as

A hearing for this case was held on February 11, 2019, with Katharine I. Rand, Neutral Chair, presiding, and with Employer Representative Robert W. Bower, Jr. and Employee Representative Amie M. Parker. The Union was represented by John Chapman, Esq. and the County by Timothy O'Brien, Esq. The parties were given a full opportunity to examine and cross-examine witnesses, introduce evidence, and to make argument. Additionally, both parties filed post-hearing briefs, which have been duly considered by the Board.

III. Facts

A. Background

i. Sheriff's Office and Union Members at Issue in Complaint

The York County Sheriff's Office provides certain law enforcement operations for the County. Sheriff William L. King, Jr., is the elected head of the Sheriff's Office. The Sheriff's second-in-command is Chief Deputy Thomas Baran, followed by Major Paul Mitchell.

The Union represents a bargaining unit of law enforcement officers, including deputies and sergeants, within the Sheriff's Office. Deputy Robert Carr, Jr. is the current president of the union and was elected to that position June 9, 2017. Carr has worked for the Sheriff's Office since 2010. During the majority of his employment, Dep. Carr has held various union executive board positions. He has successfully advanced a number of contract grievances and has been active in collective bargaining agreement negotiations.

described in the Prehearing Conference Memorandum and Order, since it was included in the complaint for MLRB No. 19-02 and was addressed during the hearing it is in compliance with the Order and may be considered properly within the scope of the case.

Deputy Travis Jones is the vice president of the union and was elected to that position on June 9, 2017. Jones previously held office as union president from 2015 to 2016.

Sergeant Mathieu Nadeau is a York County Sheriff's Office employee and has served on the union's executive board in various capacities. In 2015, then-Deputy Nadeau received a Deputy of the Year award from the Sheriff's Office, and was soon thereafter promoted to Sergeant.

Sergeant Steven Thistlewood is a York County Sheriff's Office employee and a member of the union's bargaining unit.

ii. 2016 Prohibited Practice Complaint

In part, this case involves an allegation that the County retaliated against certain employees in connection to their participation in a 2016 prohibited practice complaint, MLRB No. 17-08. This complaint involved the County's response to a November 11, 2016, union meeting that Sheriff King attended in order to discuss a proposed work schedule change.

Following the meeting, the County issued "Notice of Counseling" memoranda to the sergeants in attendance, including Nadeau and Thistlewood. In part, the memoranda stated: "To make it very clear, sergeants are representatives of management, therefore it's imperative you set an environment that supports management positions and directions."⁵

On December 14, 2016, the Union filed a prohibited practice complaint (MLRB No. 17-08) against York County regarding the above matter. In the case's Prehearing Conference Memorandum and Order, Dep. Carr and Dep. Jones were listed as witnesses for the

⁵ This quote comes from the memo to Sgt. Nadeau; Sgt. Thistlewood's memo included almost identical language to this effect.

Complainant and Respondent, respectively. This prohibited practice complaint was ultimately settled by the parties and withdrawn on April 11, 2017.

iii. History of Alleged Anti-union Animus

Apart from the subject matter at issue in MLRB No. 17-08, the Union asserts certain evidence indicates a long-standing anti-union animus from Sheriff King and others in the Sheriff's Office.⁶

Most of this evidence involved multiple interactions between senior management and Sgt. Nadeau. One such incident occurred in January of 2017, when Maj. Mitchell told Sgt. Nadeau that there was no need for him to submit talking points memos after his meetings with management, but that he should keep them for his own records. In February of 2017, Chief Deputy Baran interpreted language from Nadeau in an email, "I'd request someone from administration relay that to him," as a showing of "discourtesy" to ranking officers. Sgt. Nadeau initially received a written reprimand for the incident, which was subsequently withdrawn as part of the settlement of the earlier discussed prohibited practice complaint, MLRB No. 17-08.

In an April of 2017 incident, after Sgt. Nadeau sent an email to a Maine State Police lieutenant, expressing appreciation for the use of a State Police canine, Chief Dep. Baran and Sheriff King told Nadeau that he should not be communicating directly with the State Police and that senior management should be the source of such communications. Chief Dep. Baran also criticized Sgt. Nadeau for another email he had sent to his subordinates regarding dispatcher appreciation week, accusing Nadeau of grandstanding and attempting

⁶ Although these events are outside of the 6-month statute of limitations for both prohibited practice complaints, the Board may consider them to the extent that they shed light on the actions at issue in these cases. *Teamsters Local 48 v. City of Waterville*, No. 80-14, slip op. at 2-3, (April 23, 1980), citing *Machinists Local Lodge No. 1424 (Bryan Mfg. Co.) v. NLRB*, 362 U.S. 411, 416 (1960).

to draw attention to himself. Around that same time, Maj. Mitchell called Nadeau in to a meeting to express the Sheriff's outrage that Nadeau had signed off in an email responding to a request for information about a certain deputy's job performance from the Sheriff with the term "Respectfully," which the Sheriff had taken to mean the opposite of respectfully.

On June 1, 2017, Sheriff King noted via email that Sgt. Nadeau's emails to management were frequently after 2:00 a.m., alluding to overtime being incurred by Nadeau and his team, and wondered with disapproval whether Nadeau had "abdicated" all of his supervisory responsibility by allowing Dep. Jones and Dep. Carr to perform duties that the Sheriff believed should be Nadeau's. Sgt. Nadeau submitted a memo to management responding to the overtime assumption and explaining how the apparent delegation had happened, and there was no resulting discipline. In another interaction, Maj. Mitchell told Sgt. Nadeau that he knew he was a driving force behind a recent prohibited practice complaint (MLRB No. 17-08). During the hearing for the current case, Nadeau stated that while the comment had seemed strange, it was not said in a threatening or harassing manner.

In October and November of 2017, Sgt. Nadeau was the subject of an internal investigation regarding his actions overseeing the investigation of a suicide by firearm. The Sheriff's Office initiated its investigation of Nadeau after related contact from the Medical Examiner's Office. The internal investigation sustained findings that Sgt. Nadeau had violated the Attorney General's Office protocols for investigation of deaths, probable deaths and missing persons and failed to maintain sufficient competence. Senior management initially determined a one-day suspension without pay as discipline, but, after a grievance to

the Sheriff and then to the County Manager, Nadeau ultimately received no discipline.

Another conflict between Sgt. Nadeau and senior management occurred in early 2018, regarding Sgt. Nadeau's insistence on his right under Article 34 of the parties' collective bargaining agreement to submit a written rebuttal in connection with his annual performance evaluation. After Maj. Mitchell twice returned Nadeau's rebuttal with notations for changes, Nadeau was eventually able to get his rebuttal included in his personnel file by contacting Human Resources. Maj. Mitchell stated that he was unaware of the contract provision or else he would not have objected.

The Union presented additional evidence of the County's alleged anti-union bias involving other employees. In particular, Dep. Carr was the subject of an internal investigation, in October of 2017,⁷ for his response to a possible Operating Under the Influence (OUI) traffic accident, including whether Dep. Carr was truthful regarding his asserted contact with his supervisor. Following the investigation, the truthfulness issue was resolved as unfounded and the Sheriff notified Carr that he would subsequently redact that portion of the investigation. The investigation sustained a violation of the Office's courtesy policy regarding Dep. Carr's email correspondence with an Assistant District Attorney. No discipline resulted from the incident, though senior management recommended that Carr attend a class in order to learn how to write more courteously and required Carr to attend an OUI refresher course.

⁷ Although this incident arguably falls within the limitations period for one of the prohibited practice complaints, it was not put forward in the complaint nor addressed in the Union's pre-hearing or post-hearing briefs. As such, we examine this evidence for background information purposes only. Even if this incident were to be incorporated as a claim, the evidence is insufficient to establish any violation of the Act.

As to another incident, Carr testified that Maj. Mitchell stated that he wanted to choke Carr every time he looked at a pile of documents compiled in response to the case at hand.

The Union also put forward a partially disputed claim that Dep. Jones was asked in 2015 whether he would be willing to step aside from his leadership role in the union (Jones was president at the time) during Jones's interview for a Sergeant promotion. Jones testified that he told the oral board that he would step down from the union if he received the promotion. Nadeau, also a union representative at the time, was eventually awarded the promotion. Nadeau testified that he did not receive any similar question about union participation.

Union representatives testified at the hearing regarding their perception of an anti-union atmosphere. They testified that employees in their bargaining unit were reluctant to serve on the union's executive board for fear of putting a "target on their back," so the same individuals keep serving on the board. There was testimony that employees in another bargaining unit in the Sheriff's Office had been unable to fill three of the four executive board vacancies because of this perception that the Sheriff would look more favorably on an employee that was not a "union person." There was also testimony about "a general fear of retaliation" in regard to defying the Sheriff.

There is evidence from both the Union and the County that a tense labor-management relationship exists at the Sheriff's Office. This tension can be illustrated by two quotes from the hearing testimony—one from Sgt. Nadeau: "The sheriff, right, wrong or indifferent, has a vision of where he wants the agency to go, and he's not willing to bend or change that vision or work with the union. He wants it to go the way he wants it to," and one from

Maj. Mitchell: "I've been told by a union leader that anything that we do, specifically the sheriff does, it's going to be met with resistance."

iv. *Giglio* Impairment

In *Giglio v. United States*, 405 U.S. 150 (1972) (*Giglio*), the U.S. Supreme Court held that the Due Process clause of the Fourteenth Amendment to the Constitution of the United States requires a prosecutor to disclose to the defense any exculpatory evidence in the form of potential impeachment information regarding a witness the prosecutor plans to use at trial. Any evidence going to the potential truthfulness of a law enforcement officer falls under this requirement, and a prosecutor has the affirmative duty to provide this information to the defense. Practically speaking, a prosecutor will not use a law enforcement officer that has a credibility issue, i.e. is *Giglio* impaired, as a witness. Such a designation severely handicaps the ability of a law enforcement officer to do an essential component of an officer's job, testifying as to potentially criminal behavior in court, and can be a career-ending situation for such an officer.

The York County Sheriff's Office has adopted the Maine Chiefs of Police Association Model Policy regarding *Giglio* determinations.⁸ Under the Office's policy, the agency must disclose all relevant information that may adversely affect the credibility of law enforcement officers to all relevant prosecutors. Prior to submitting any "potential *Giglio* information" to a prosecutor, the Chief Law Enforcement Officer is required under the policy to first notify the respective law enforcement officer and provide the officer with an opportunity to address the information. The term "*Giglio* information" is defined in the policy, and includes

⁸ The two policies do not match verbatim in all respects, but appear to be substantively equivalent.

"any sustained finding that establishes a record of untruthfulness, bias, and/or commission of crimes." The definition specifically excludes "allegations, rumors or other inconclusive information."

v. The "three-day rule"

Under Article 36 ("Employee Rights"), Section A, of the parties' 2014-2017 collective bargaining agreement, an employee subject to an internal investigation must be notified of the existence of such investigation within three days of the start of the investigation. At the hearing, the parties referred to this as the "three-day rule." The Union successfully argued grievances when senior management failed to provide an employee with notice of a formal investigation within three days of the start of an investigation. Based on the outcome of these prior contract grievances, County management has taken the position that questioning an employee about a certain matter triggers a three-day period in which to initiate an internal investigation. In other words, failure to commence an investigation within the three-day period after questioning an employee waives management's right to conduct an investigation and to render any subsequent discipline to the employee on the matter.⁹ As a result, Maj. Mitchell testified that the County's default position is to conduct an internal investigation.

B. Sheriff King's *Giglio* Inquiries for Jones and Nadeau

On May 2, 2017, Dep. Jones, in the course of his duties, was involved in a traffic accident with a member of the public. Subsequently, Sgt. Nadeau submitted an accident report which

⁹ The record reflected some contention about this interpretation of the "three-day rule." Sgt. Nadeau and Dep. Carr testified that this was the County's interpretation. Dep. Carr testified that the County has three days in which it can have a preliminary discussion with an employee about an issue and then must decide, within the three days, to conduct a formal investigation.

concluded that Dep. Jones was not at fault. Due to a technical mishap by Sgt. Nadeau, the electronic report erroneously reflected that Dep. Jones had conducted the investigation of his own accident. After an insurance submission to the Maine County Commissioners Association Risk Pool, the risk pool manager contacted the Sheriff's Office questioning the findings of the report and noting his concern with what appeared to be Dep. Jones self-investigating. Based on the risk pool manager's suggestion, the Sheriff's Office requested that the Maine State Police do an independent investigation of the accident. The Sheriff's Office also initiated an internal investigation of the incident, to include review of the State Police findings.

The Maine State Police subsequently issued a report finding, in part, that Dep. Jones was at fault for the accident.

On June 2, 2017, Maj. Mitchell issued the internal investigation report regarding Jones's accident. Noting discrepancies in the findings of the original accident report by Sgt. Nadeau and the investigation by the State Police, most notably with respect to who was ultimately at fault for the accident, the report sustained a finding of three separate violations of the Office's policies and procedures. Initially, the Sheriff's Office determined that Dep. Jones should receive a six-day suspension for 1) violation of rules regarding professional responsibility, 2) violation of rules for operation of police vehicles, and 3) concerns with Jones's statement and written report in light of the Maine State Police report. Dep. Jones appealed the discipline through the contract grievance process and ultimately was issued a corrective memo, but was not suspended.

On Friday, June 9, 2017, Dep. Jones was elected as vice president of the union and the results of that election were provided to

senior management later that same day. On the morning of Monday, June 12, Sheriff King was in email contact with the chief of investigations for the Attorney General's Office, following up on an earlier communication that included transmittal of the internal investigation report concerning the Dep. Jones traffic accident.¹⁰ It is unclear from the record when Sheriff King first contacted the Attorney General's Office—it could have occurred anywhere from the issuance of the report on June 2 to that morning of June 12. The subject of this and following communications between the Sheriff and the Attorney General's Office was the Sheriff's seeking advice about whether the report presented issues that warranted a *Giglio* review of Dep. Jones and Sgt. Nadeau, based on the discrepancies between the Sheriff's Office accident report and the Maine State Police's report. In his inquiry, the Sheriff also alluded to some prior "bad" acts on the parts of Dep. Jones and Sgt. Nadeau, though the record does not provide clarity on what the Sheriff was referring to.

Based on the information presented by Sheriff King, the chief of investigations and the chief prosecutor in the Attorney General's Office both expressed concern with the possibility of untruthfulness for Dep. Jones and Sgt. Nadeau. They recommended that the York County Sheriff's Office conduct an internal investigation on the issue of the officers' truthfulness or, at the very least, follow up with the York County District Attorney's Office. The Sheriff subsequently contacted the District Attorney, Kathryn Slattery, who stated some concern regarding truthfulness on the part of Dep. Jones but who was uncertain about any truthfulness concerns with respect to Sgt. Nadeau. D.A. Slattery

¹⁰ Brian MacMaster, the chief of investigations for the Attorney General's Office, testified that he commonly receives inquiries from agency heads, police chiefs, sheriffs and District Attorneys throughout the State for advice regarding potential *Giglio* impairment for law enforcement officers.

ultimately decided that she did not have enough information to commence with a *Giglio* determination.

The Sheriff continued with his *Giglio* inquiries in a July 18, 2017, email to the County's attorney, the County Manager, the Attorney General's chief of investigations and District Attorney Slattery regarding his concerns with Sgt. Nadeau's handling of the Dep. Jones traffic accident. In that email, the Sheriff stated that the internal investigation had a sustained finding of a lack of candor concern for Dep. Jones. In actuality, there were no sustained findings to that effect, and lack of candor was not even identified as an issue under investigation in the report. The draft decision of discipline transmitted to the Attorney General's Office includes a "lack of candor" concern as one basis for imposing discipline on Dep. Jones, and the initial discipline decision Jones received included this as one basis for the discipline. However, the record indicates that the chief of investigations at the Attorney General's Office was aware of the lack of any sustained findings regarding truthfulness or lack of candor.¹¹ There is no evidence that the Sheriff moved forward with any further internal investigations on the matter.¹²

¹¹ E.g., Brian MacMaster wrote in a June 21, 2017 email to the Sheriff: "While I recognize that there has yet to be a sustained finding of untruthfulness or lack of candor, the information you have is indicative of such."

¹² Notably, on June 21, 2017, the County Manager emailed Sheriff King regarding Sgt. Nadeau stating: "[F]rom the perspective of the County as a whole, we do not think that the initiation of an IA [internal investigation] is the most appropriate way to proceed because of the possibility of further claims of retaliation, the possibility of a prohibited practices complaint, and because even the State Police Investigator's report acknowledged that the driver of the other vehicles acknowledged her fault at the time of the accident and in the follow up interview. Because of that observation, any personnel action that might be based on the preparation of the report by Nadeau will be subject to challenge through the grievance and arbitration process and the ability to prevail at arbitration is far from certain." In an email later that day the Sheriff expressed concern about a lack of support from County management regarding a follow-up internal investigation.

C. Assignment of "Term Paper" to Nadeau

The above-referenced 2016 "Notice of Counseling" letters issued to Sgt. Nadeau and Sgt. Thistlewood included a suggestion that the sergeants take a leadership training class. In 2018, Sgt. Nadeau requested and was approved for a two-day leadership training course. After the course, Maj. Mitchell asked Nadeau to write a memo summarizing the training. Unhappy with the short synopsis provided by Nadeau, Mitchell asked for a more in-depth description, akin to what was described as a "term paper." In response, Sgt. Nadeau produced a 10-page memo summarizing what he had learned in the class and applying it to his work and his observations of management approaches at the York County Sheriff's Office. In a follow-up meeting, Mitchell expressed his displeasure at Nadeau's memo, and relayed that the Sheriff and Chief Dep. Baran were also displeased. No other employee of the Sheriff's Office had ever been required to write such a memo after receiving training.

D. Internal Investigations of Carr and Thistlewood

On April 4, 2018, Dep. Carr was involved in an undercover drug enforcement operation in New Hampshire.¹³ Carr was invited to participate by another York County Deputy who was involved in the operation as a sworn federal agent temporarily assigned to a Federal Bureau of Investigations (FBI) task force. Also participating in the operation from the Sheriff's Office was a sergeant and a County corrections officer. Evidence indicated that Carr had a legitimate purpose in being present at the operation.

¹³ New Hampshire is outside of the normal jurisdiction of the York County Sheriff's Office.

Several weeks before the operation, Dep. Carr informed his supervisor, Sgt. Thistlewood, and received tentative approval to participate. On April 3, 2018, Dep. Carr contacted Thistlewood for final approval to participate in the operation, which would involve overtime.¹⁴ Thistlewood was out of the office on vacation that day, and had questioned whether approval of the overtime was in line with Article 14 of the collective bargaining agreement.¹⁵ After consulting with other members of the union's executive board, including Sgt. Nadeau and Dep. Jones, Dep. Carr reassured Sgt. Thistlewood there was no compliance issue with the overtime provisions of the contract and Thistlewood subsequently approved his participation. There is no evidence that command staff was notified by Thistlewood or Carr of Carr's participation in the New Hampshire drug enforcement operation.¹⁶

A copy of the operations memorandum, which included specific reference to Dep. Carr's involvement in the operation, was provided to senior management prior to the operation.¹⁷ Maj. Mitchell testified to the effect that he did not read the memorandum until after the operation had already occurred. Senior management was aware of and had approved the participation of the other Sheriff's Office employees involved in the operation, but, according to Maj. Mitchell, was not aware of and had not approved Dep. Carr's participation in the operation.

¹⁴ Dep. Carr testified at the hearing that he had already notified Sgt. Thistlewood three weeks prior to the operation and that Sgt. Thistlewood had preliminarily approved his participation pending notice of the exact date of when it would occur.

¹⁵ Article 14 of the collective bargaining agreement provides that available overtime shifts must be directed to full-time, off-duty and available employees on a rotating list by seniority in rank.

¹⁶ The Union asserts that this notification was unnecessary because Dep. Carr's role was described in an operations memorandum submitted prior to his engagement in the operation and his participation should have been assumed pursuant to the confidential informant policy.

¹⁷ Maj. Mitchell testified that a hard copy of the operations memorandum was placed on his desk either the day before or the day of the operation.

On the day of the operation, the County sergeant involved in the operation questioned Dep. Carr about his presence at the operation and whether it complied with the collective bargaining agreement's overtime provisions. On April 6, 2018, management commenced an internal investigation into issues around Dep. Carr's participation in the operation, including investigation into whether Carr had made the appropriate notifications to management and into the issue of Carr's "truthfulness." Dep. Carr testified at the hearing that he had spoken with Maj. Mitchell about the truthfulness issue in the investigation. By Carr's account, Mitchell had told him that he didn't see any truthfulness issues, and he pointed across the office to the Sheriff, indicating that the Sheriff had requested it be added to the investigation. At the hearing though, Maj. Mitchell testified that he always adds "truthfulness" as a default element of an internal investigation to preserve the issue so that it will be possible to address any truthfulness issues that may come up during the course of the investigation.¹⁸ The internal investigation report recommended a finding that the concerns were unfounded and not sustained. Dep. Carr did not receive any discipline in connection with the investigation.

Sgt. Thistlewood was subject to an internal investigation for his approval of Dep. Carr's involvement in the undercover drug enforcement operation in New Hampshire. The investigation included a concern that Thistlewood had "allowed the union executive board to make the decision regarding the appropriateness of ignoring the call list." As with Carr, the investigation of Thistlewood also included the issue of "truthfulness." The final outcome of the investigation was a finding that the concerns were

¹⁸ Interestingly, Maj. Mitchell did not include truthfulness within the scope of the internal investigation of the Travis Jones traffic accident, which he completed almost a year before this investigation of Dep. Carr.

unfounded and not sustained, and Thistlewood received no discipline.

In contrast to the allegedly discriminatory investigations above, evidence at the hearing established that the Sheriff's Office employee who has been subject to the majority of internal investigations, and who has received the most discipline, is a deputy who is not a union representative and who was "not a big advocate for the union."

E. Denial of Carr's Request to Participate in Drug Enforcement Operations

On April 17, 2018, Dep. Carr requested permission from Maj. Mitchell to participate in another drug enforcement operation involving a confidential informant. Mitchell told Carr that he would not be permitted to participate, and he notified him that the confidential informant policy was being temporarily suspended while a new policy was drafted. Maj. Mitchell told Carr that his name "brings up a lot of things around here" and that the policy would be suspended "until the dust settled." Carr later confirmed with Chief Dep. Baran that the policy was being suspended. Despite this, Carr was aware of the subsequent use of a confidential informant in another drug enforcement operation by the Sheriff's Office deputy temporarily assigned to the FBI task force, as well as the signing up of a new confidential informant by that deputy.¹⁹

III. Analysis

A. Jurisdiction

The Fraternal Order of Police is a bargaining agent within the meaning of 26 M.R.S.A. §962(2), York County is a public employer within the meaning of 26 M.R.S.A. §962(7) and the employees

¹⁹ Dep. Carr was permitted to accompany the deputy in the deputy's FBI vehicle in this instance, in order to serve as a witness.

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. Discrimination and Retaliation

The Act protects certain union-related activity by employees. See 26 M.R.S.A. §963. In turn, it prohibits public employers from "[e]ncouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment." 26 M.R.S.A. §964(1)(B). Likewise, an employer may not discriminate or retaliate against an employee for participating in any stage of a Maine Labor Relations Board proceeding. 26 M.R.S.A. §964(1)(D); *Southern Aroostook Teachers Ass'n. v. Southern Aroostook Community School Committee*, No. 80-35 and 80-40 slip op. at 24 (April 14, 1982), citing *NLRB v. Scrivener*, 405 U.S. 117, 121-125 (1972).

Although the discrimination described in paragraphs B and D are independent violations, the analysis applied to determine a violation of either is effectively the same. Specifically, the complainant 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 the adverse employment actions against the employee. *Litchfield Educational Support Ass'n. v. Litchfield School Committee*, No. 97-09, slip op. at 22 (July 13, 1998) citing *Casey v. Mountain Valley Educ. Ass'n and SAD 43*, Nos. 96-26 & 97-03, slip op. at 27-28 (Oct. 30, 1997) and *Teamsters Union Local #340 v. Rangeley Lakes School Region*, No. 91-22, at 18 (Jan. 29, 1992); *Holmes v. Town of Old Orchard*, No. 82-14 (Sept. 27, 1982) (Board adopted the three-part test

established in *Wright Line and Bernard R. Lamoureux*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), for issues that turn on employer motivation.)

When applying this test, the Board examines whether the complainant has first put forward a prima facie showing sufficient to support the inference that protected conduct was a "substantial or motivating factor in the employer's decision." *Ritchie v. Town of Hampden*, No. 83-15, slip op. at 4-5 (July 18, 1983); *Casey v. Mountain Valley Educ. Ass'n. and SAD 43*, No. 96-26 & 97-03, slip op. at 27-28. Proof of such unlawful motivation can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. See *Maine State Law Enforcement Association and Timothy McLaughlin v. State of Maine, Maine Department of Corrections*, No. 13-15, slip op. at 9-10 (October 31, 2013).

If the complainant succeeds in proving these three elements, the burden of proof shifts and the employer must prove 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. *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 can demonstrate that the alternate reasons offered by the employer for the adverse action are merely pretextual. See *Teamsters v. Town of Kennebunk and MLRB*, CV-80-413 (Me. Super. Ct., Kennebec Cty., October 18, 1985) (citing *NLRB v. Great Dane Trailers*, 333 U.S. 26 (1967)).

1. Analysis of discrimination claims

a. *Giglio* inquiry on Jones and Nadeau

The *Giglio* inquiries into Dep. Jones and Sgt. Nadeau by Sheriff King meet the first two elements of the applicable standard, as the Sheriff was clearly aware of Jones's and Nadeau's exercising of their rights under the Act. In particular, in addition to Jones's election as union vice president, it is undisputed that Jones filed a grievance in response to the proposed discipline related to his traffic accident. See *Teamsters Local Union Local 340 v. Oxford County*, No. 15-05, slip op. at 12 (February 5, 2015) ("There is no question that using the grievance procedure, a mechanism for resolving issues regarding the application of the collective bargaining agreement, is conduct protected by §963.").

As far as the protected activity of Sgt. Nadeau, senior management at the Sheriff's Office was aware of his participation in the prior prohibited practice complaint process (MLRB No. 17-08) which followed Nadeau's meeting with senior management regarding a perceived disrespectful tone towards the Sheriff at a union meeting in 2016. Additionally, Sgt. Nadeau has been involved on the executive board of the union in various capacities. The Union also points to Nadeau's insistence on submitting a written rebuttal in connection to his annual performance review, an attempt to enforce a right provided for in the collective bargaining agreement, as protected activity.²⁰

The next prong of the test is whether there is a causal connection between the protected activity and the adverse employment action

²⁰ Although, as cited above, the Board has recognized an employee's attempt to enforce the terms of a collective bargaining agreement through the formal grievance process as protected activity under the Act, it has not explicitly done so regarding an employee's attempts to enforce a term of the collective bargaining agreement outside of the grievance process. As this distinction does not make an ultimate difference in the case before us, our analysis presumes, without holding, that Nadeau's insistence on exercising this contractual right is protected activity under the Act.

against the employee or whether the adverse employment action was motivated by anti-union animus. The analysis on this point is complicated by a preliminary question—is a *Giglio* inquiry of a law enforcement officer an adverse employment action?

The County makes conclusory arguments that neither the *Giglio* inquiries nor the various internal investigations involved in this case in and of themselves qualify as adverse employment actions, but neither party has provided any analysis of the issue. The Board has previously noted that no violation of §964(1)(B) or (D) occurs absent an adverse employment action. See e.g., *AFSCME, AFL-CIO v. Penobscot County Sheriff's Office*, No. 14-27 & 15-08, slip op. at 21 (March 10, 2016).

In prior decisions, the Board has acknowledged the significant impact that internal investigations in themselves have on law enforcement officers. See *In Re: City Of Portland, Petition For Interpretive Ruling*, No. 01-IR-01, slip op. at 7 (June 27, 2001) (“[B]eing the target of an internal affairs investigation is a significant issue for a police officer.”); *Alfred Hendsbee and Maine State Troopers Ass’n. v. Dept. of Public Safety, Maine State Police*, No. 89-11, slip op. at 25 (January 16, 1990) (“Because the consequences of any ‘sustained’ finding regarding charges upon which an IA investigation is initiated potentially include dismissal, everyone, as the Chief himself testified, is ‘somewhat worried as a result of being involved in an internal [affairs] investigation.’”).

Ultimately, however, we do not reach this question because even assuming, without holding, that the *Giglio* inquiries did meet the Board’s standard for adverse employment action,²¹ the Union has not

²¹ The National Labor Relations Board has defined “adverse employment actions” as actions that “reduce a worker’s prospects for employment or continued employment, or worsen some

met its evidentiary burden to establish that these actions by the County were casually connected to protected activity or were otherwise motivated by anti-union animus. The evidence establishes that the initial impetus for the internal investigation of Dep. Jones was the risk pool manager's independent recommendation that the State Police conduct an investigation, and the State Police's subsequent determination that Jones was at fault for the accident, not the Sheriff. Given the inconsistent conclusions as to Jones's culpability reflected in Nadeau's report versus the State Police report, and given the vital importance of truthfulness to a law enforcement officer's job, it is reasonable that the Sheriff would seek advice about potential *Giglio* issues. The evidence indicates that the Sheriff's inquiries were at a preliminary stage—the seeking of advice about further action, and not the seeking of a *Giglio* determination itself – a characterization that was backed up by chief investigator MacMaster of the Attorney General's Office at the hearing. Providing independent validation of the Sheriff's concerns, both MacMaster and the chief prosecutor for the Attorney General's Office had their own concerns with potential truthfulness on the part of Dep. Jones and Sgt. Nadeau and recommended further investigation by the Sheriff's Office and contacting the District Attorney.

In support of its claim, the Union emphasizes the close timing of the inquiries to protected union activity. Dep. Jones's election as vice president occurred on June 9, 2017, the Friday before the Monday morning correspondence between Sheriff King and the

legally cognizable term or condition of employment." *Bellagio, LLC v. Nat'l Labor Relations Bd.*, 854 F.3d 703, 709–10 (D.C. Cir. 2017) (citing *Ne. Iowa Tel. Co.*, 346 NLRB 465, 476 (2006)). Based on the evidence in the record, the Board can dispose of the discrimination claims in these cases without the need to specifically adopt this or any other definition of "adverse employment action."

Attorney General's Office. However, "timing is generally insufficient on its own to support a finding of discriminatory motivation." *Teamsters Union Local #340 v. Rangeley Lakes School Region*, No. 91-22, slip op. at 20 (Jan. 29, 1992); *Maine State Employees Association v. State Development Office*, No. 84-21, slip op. at 11, (July 6, 1984), aff'd, 499 A.2d 165 (Me. 1985). It is notable that the internal investigation report regarding the May 7, 2017, accident was issued on June 2, 2017, a week before the election. The record shows that Sheriff King had contacted the Attorney General's Office at some point prior to the Monday morning email, though it is unclear exactly when this happened. In light of the relatively short amount of time between the issuance of the June 2 report and the Sheriff's initial contact with the Attorney General's Office, the Board is unable to conclude that the timing of the Sheriff's contact is indicative of a retaliatory motive.

With respect to the Jones grievance regarding discipline for the traffic accident, this occurred on June 26, 2017, at least two weeks after the Sheriff had contacted the Attorney General's Office. As such, it could not have been the impetus for the initial inquiry. Although the grievance could have arguably been motivation for the Sheriff's continuing to raise the potential *Giglio* issue with the Attorney General's Office, District Attorney's Office and County management, all of which were copied on an email from the Sheriff regarding the matter on July 18, 2017, the Board does not find the evidence persuasive on that point given the undisputed evidence of a non-discriminatory basis for the original *Giglio* inquiries and the validation of the Sheriff's concerns by the Attorney General's Office.

The Union points to deviations from policy as evidence of anti-union animus motivating the Sheriff's *Giglio* inquiries.

Specifically, the information submitted by the Sheriff to the Attorney General's Office and the District Attorney regarding Dep. Jones and Sgt. Nadeau did not include any "sustained finding" establishing untruthfulness. As such, under the policy it appears to be excluded from the "*Giglio* information" that must be first submitted to the respective officer under the adopted policy. Accordingly, the evidence fails to establish that the Sheriff violated the Office's policy when he inquired with the Attorney General's Office and the District Attorney's Office requesting advice about how to proceed with respect to the contradicting reports of the Jones traffic accident. Importantly, Brian MacMaster, one of the drafters of the Maine Chiefs of Police Association Model Policy that the York County Sheriff's Office's *Giglio* policy is based on, verified during the hearing that under the model policy there was no need for notification of Dep. Jones and Sgt. Nadeau because a preliminary decision to make a *Giglio* determination had not yet been made.

The Union also argued that the Sheriff provided the Attorney General's Office and the District Attorney with misleading information in order to improperly facilitate a *Giglio* determination. The only notable inconsistency is found in the July 18, 2017, email from the Sheriff to the County attorney, County Manager, Attorney General's Office and York County District Attorney Kathryn Slattery in which the Sheriff states that the internal investigation of Dep. Jones had a sustained finding of a lack of candor concern, despite the fact that the lack of candor concern was not, in fact, even mentioned in the internal investigation report. The lack of candor concern was, however, included in the draft decision of discipline transmitted to the Attorney General's Office, and was a partial basis in the discipline decision the Sheriff made with respect to Jones. Despite this discrepancy, it is clear from the record that the

Attorney General's Office, County Manager and County attorney all had access to the internal investigation report, which reflected a lack of any sustained findings regarding a lack of candor. The record is unclear exactly what information the Sheriff had provided to the District Attorney at this point, though it is clear in the July 18 email that the District Attorney had already evaluated the matter, at least preliminarily. Given this knowledge by the parties, this inaccurate statement by the Sheriff is not such a significant discrepancy that it would support an inference that the overt justification for the Sheriff's inquiries into potential *Giglio* issues was mere pretext.

Given all of the above, the Union has not met its evidentiary burden in establishing a link between the *Giglio* inquiries and an unlawful motive on behalf of the Sheriff.

b. Internal investigations of Dep. Carr and Sgt. Thistlewood

Turning to the discrimination claims with respect to the County's internal investigations of Dep. Carr and Sgt. Thistlewood regarding the drug enforcement operation in New Hampshire, it is clear that the first two prongs of the test are satisfied, as Dep. Carr and Sgt. Thistlewood have each participated in protected activity that management was aware of, including Carr's status as union president and Sgt. Thistlewood's involvement in the 2016 prohibited practice complaint.

Again, the threshold issue of whether or not these actions by the County constitute "adverse employment action" arises. The Board has examined a claim in a prior case that an internal investigation by a Sheriff's Office was unlawful discrimination in violation of the Act; however, the Board in that case never reached the issue of whether the investigation was an adverse

employment action, determining instead that the requisite protected union activity was lacking. *Teamsters Local 340 v. Aroostook County*, No. 03-09, slip op. at 26-27 (February 2, 2004) (Examining a challenge to a Sheriff's Office internal investigation of the circulation of a "no confidence" petition by county jail employees regarding a supervisor). As stated above in the context of the *Giglio* claim, determination of this issue is not essential for the Board to conclude its analysis of this claim.

Even assuming that the internal investigations of Carr and Thistlewood constitute adverse employment action, the Union has not met its evidentiary burden to demonstrate a connection between this action and the officers' protected activity. The initiation of these investigations was reasonable given the unusual circumstances of Thistlewood's approval of Carr's overtime for an out-of-state operation while Thistlewood was out on vacation and the lack of specific notice being given to on-duty command staff. The investigations were launched because of a neutral, blanket policy to conduct an internal investigation after questioning an officer because of the "three-day rule," which the internal investigation report more or less explicitly states.²² Given these circumstances and management's application of the "three-day rule," there is a lack of connectivity between the employees' protected activity here and the employer's actions.

The most compelling evidence suggesting an improper motive for the investigations is that the other officers involved in the

²² "This section has been interpreted in the past by county administration to mean that any questioning regarding a suspected violation of any rule or policy that could result in discipline is the commencement of an internal investigation. ... Since Sergeant Hayes did question Carr about his involvement in the April 4 drug operation, Command notified Deputy Bob Carr that an IA [i.e., internal investigation] would be conducted on April 6. This notification was only made to satisfy the procedural guidelines that have been interpreted of late and the subject of previous successful grievances."

operation were not investigated.²³ The significance of this disparity dissipates in light of the fact that command staff was aware of and had already approved their participation in the operation.

The Union points to the inclusion of truthfulness in the investigation as being a naked attempt to generate potential *Giglio* issues for the officers. However, Maj. Mitchell testified that he always adds the issue of "truthfulness" to an internal investigation in order to preserve the issue so that it will be possible to address any truthfulness issues that may come up during the course of the investigation. This practice comports with the County's interpretation of the "three-day rule," preserving issues for potential discipline with the launching of an internal investigation, which is based on the undisputed fact that the Union successfully grieved previous failures of the County to properly notify employees of internal investigations. As discussed above, the inclusion of truthfulness in the scope of an internal investigation of a law enforcement officer can be a significant cause for worry for that officer. However, in light of the "three-day rule," Maj. Mitchell's testimony and senior management's concerns with the notice and approval regarding Dep. Carr's participation in a relatively novel out-of-jurisdiction operation for the Sheriff's Office, the Union has not put forward sufficient evidence to support an inference that these investigations were motivated by the protected activities of Dep. Carr and Sgt. Thistlewood.²⁴

²³ There was testimony that the sergeant involved was not a union member at the time of the incident, though Maj. Marshall testified that he was not aware of this.

²⁴ It is notable that the employee who has been subject to the most internal investigations and disciplinary action at the Sheriff's Office is not a union representative or otherwise engaged in union-related activity.

c. Suspension of the confidential informant policy for Dep. Carr

The Board does not find sufficient evidence to demonstrate that the suspension of the confidential informant policy was motivated by anything other than the County's desire to revise the policy in light of Dep. Carr's participation in what was the first use of the policy in the Sheriff's Office. The Union claims that the County discriminated against Dep. Carr by suspending the confidential informant policy only with respect to Carr.²⁵ Maj. Mitchell testified that the difference between allowing the other deputy to continue with confidential informant operations while suspending Dep. Carr from such operations was that the other deputy was involved as a member of an FBI task force and as a federal agent. There was no evidence of any other Sheriff's Office employees being permitted to participate in a confidential informant operation. As such, there is an insufficient basis by which to conclude this decision was motivated by Dep. Carr's protected activity.

d. Term paper for Nadeau

Even if one were to assume that Maj. Mitchell's requiring Sgt. Nadeau to write a memo, described as a "term paper," summarizing a two-day leadership training could be categorized as adverse employment action,²⁶ the Union has failed to carry its burden with respect to establishing a causal link between Nadeau's protected activity and this action.

The Union claims that this writing assignment was retaliation for Nadeau's protected activity. The Union asserts, and the record

²⁵ In its complaint, the Union also claimed that Dep. Carr lost wages because of the suspension of the policy. No evidence was presented as to this point, and financial relief was explicitly waived in the Union's post-hearing brief. Regardless, the underlying claim is without merit.

²⁶ As with the analysis of the *Giglio* inquiries and internal investigations, the Board need not address this point as it is not determinative to the issue in the case at hand.

supports, that no other employee of the Sheriff's Office had been required to write such a paper. That said, there is also no evidence that other employees were similarly situated to Nadeau, insofar as they also attended a two-day leadership training. Put another way, since the record shows that only Sgt. Nadeau attended such a training, the fact that others were not required to write term papers is irrelevant. Indeed, the purpose of the training, as suggested by senior management and embraced by Nadeau, was to develop his leadership skills in what was a relatively new role as a supervisor.²⁷ The Board cannot conclude that there was an improper motive on behalf of the employer based on the record before us.

C. Interference, restraint or coercion

Public employers and their representative are prohibited from "[i]nterfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963."²⁸ 26 M.R.S.A. §964(1)(A). The analysis of an alleged violation of §964(1)(A) "does not turn on the employer's motive, or whether the coercion succeeded or failed, but 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." *Duff v. Town of Houlton*, No. 97-20, slip op. at 21 (Oct. 19, 1999) (internal quotation marks omitted); see also *MSEA v. State Development Office*, 499 A.2d 165, 169 (Me. 1985) (Law Court approving of this standard).

²⁷ Rather than being manifest anti-union animus, senior management's frustration after receiving Sgt. Nadeau's "term paper" is most likely a result of Nadeau's direct criticism of them throughout.

²⁸ 26 M.R.S.A. §963 provides, in part, the right to voluntarily "[j]oin, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining or in the free exercise of any other right under this chapter..."

A claim of unlawful interference, restraint or coercion can be either a derivative violation or an independent violation. A derivative violation occurs when an employer's conduct violates another provision of the Act and that conduct also has the effect of interfering with, restraining or coercing employees with respect to the exercise of their rights under §963. See *International Brotherhood of Teamsters Local No. 340 v. Aroostook County*, No. 03-09, slip op. at 19 (February 2, 2004). An independent violation occurs when an employer's conduct directly interferes with employees' exercise of rights under the Act. *Id.* As discussed above, the Board has found no violation of the Act with respect to the discrimination claims, which were the only other potential violations of the Act at issue in these cases. Accordingly, we must examine whether an independent violation of §964(1)(A) has occurred.

While independent violations "most often occur during a union organizing campaign," the Board has found violations of §964(1)(A) in established union settings. *Teamsters Local 340 v. Aroostook County*, No. 03-09, slip op. at 19-20 (February 2, 2004); See e.g., *Ouellette v. City of Caribou*, No. 99-17, slip op. at 10 (Nov. 22, 1999) (Chief's admonition that employee should not go to the "wrong people" and get "bad advice" was an independent violation of 964(1)(A)); *Alfred Hendsbee and Maine State Troopers Ass'n. v. Dept. of Public Safety, Maine State Police*, No. 89-11 (January 16, 1990) (Maine State Police policy of starting an Internal Affairs investigation every time an employee filed a contract grievance was unlawful interference with protected activity); *Gordon Littlefield and Sanford Police Ass'n. v. Town of Sanford*, No. 91-02 (March 12, 1991) (Internal investigation of law enforcement officers that included questions into protected union activity was unlawful interference).

The Board has previously examined claims of unlawful interference by an employer's use of internal investigations. In *Gordon Littlefield and Sanford Police Ass'n. v. Town of Sanford*, during the course of an internal investigation, the employer questioned law enforcement employees who were union officials about meetings they had discussing possible criminal charges for the Police Chief, who they felt had improperly intervened into a criminal matter involving the Chief's son. No. 91-02 (March 12, 1991). The Board found the investigation to constitute illegal interference because it had clearly gone "beyond the right of the Town to make legitimate factual inquiries into possible employee misconduct" by questioning union officials about union business. *Id.*, slip op. at 26.

Unlike the improper investigation in *Gordon Littlefield*, the internal investigations in this case all involve pure performance issues, not questions into union activities. Based on the internal investigation reports, it seems there may have been questions about Carr's checking with the union for the contract interpretation question regarding overtime as well as Thistlewood's reliance on this interpretation when he approved Carr's participation. Although these circumstances approach the line, this situation differs from that in *Gordon Littlefield* because even assuming there were questions about union discussions, these were squarely within the County's prerogative in investigating potential misconduct—here, examining Thistlewood's basis for what was potentially improper approval of overtime for a subordinate. This is also a different situation to that in *Ouellette v. City of Caribou* where a Police Chief's statement that an employee should not go to the "wrong people" and get "bad advice" was determined to be unlawful interference. No. 99-17, slip op. at 10. Although the fact that the union was consulted is mentioned in the internal investigation, there is

nothing in the report that discourages such consultation, and the focus of this aspect of the investigation is on Thistlewood's failure to communicate with command staff.

In another case involving the use of internal investigations in law enforcement operations, *Alfred Hendsbee and Maine State Troopers Ass'n v. Dept. of Public Safety, Maine State Police*, the Board examined a claim of interference, restraint or coercion over a policy of the employer to initiate an internal investigation with the Internal Affairs division of the Maine State Police whenever a contract grievance was filed. No. 89-11 (January 16, 1990). The Board found this policy to constitute unlawful interference, citing to the secrecy of Internal Affairs investigations as well as the troublesome implications that Internal Affairs investigations carried for law enforcement officers. In *Hendsbee*, the link between the protected activity, filing a grievance, and the employer's conduct, initiating an Internal Affairs investigation, was direct and automatic. Here there is no such link. Under the County's "three-day rule" interpretation, the threshold for pulling the trigger, so to speak, on an internal investigation is arguably thin. However, the investigations in the current case have been aimed directly at alleged misconduct by the respective employees, and not at the exercise of any protected right. As such, we do not find that the County's initiation of internal investigations here would reasonably chill employee's assertion of rights under the Act.

Including the issue of truthfulness in the Carr and Thistlewood investigations may have heightened the subjective apprehension experienced by the officers during the process of the investigation, but the evidence is insufficient to establish this reasonably interfered with employees' rights under the Act. There was testimony from Dep. Carr that the Sheriff himself had added

truthfulness to the scope of the investigation, but this alone is not enough to establish interference, especially in light of the contradictory testimony from Maj. Mitchell, who stated that his practice is to add the issue of truthfulness as an element to all of his investigations in order to preserve the issue should it arise during the course of an investigation. This preservation of the issue for potential discipline dovetails with the County's "three-day rule" policy for conducting internal investigations to preserve issues for potential discipline whenever potential misconduct has occurred. It is, arguably, a heavy-handed approach to include the issue of truthfulness as a default issue for internal investigations, given the potential implications for a law enforcement officer. However, the evidence in this case is insufficient to demonstrate any direct unlawful interference with protected union activity from the initiation of these internal investigations, or the inclusion of truthfulness therein, when applied as they are here in a blanket, non-discriminatory manner that is not directed at protected activity.

With respect to the claim of unlawful interference regarding the *Giglio* inquiries into Dep. Jones and Sgt. Nadeau, the Board is similarly unconvinced. Even after the Sheriff's inquiries would have been widely known, the Board finds the unique circumstances, i.e., the contradictory traffic accident reports of Sgt. Nadeau and the State Police, to be a reasonable basis for this isolated response by the Sheriff, and accordingly finds the effort could not have reasonably chilled employees' union activities.

The Board finds the suspension of the confidential informant policy with respect to Dep. Carr to also not constitute unlawful interference. Dep. Carr was the only non-federal agent to be denied participation in confidential informant operations, and the suspension of the policy was reasonable given senior management's

stated intent to modify the policy given the issues raised by Carr's initial operation, which was also the first such use of the policy.

The "term paper" that Sgt. Nadeau was required to write similarly does not cause a reasonable inference of interference. The record only shows that Nadeau received such an extensive leadership training, and the requirement to summarize the training was framed by management as a mutually sought skills-building exercise to improve Nadeau's performance as a supervisor. This cannot be reasonably said to have interfered with employee's rights under the Act.

The standard for assessing an independent interference claim is an objective one. Based on the evidence proffered in this case, both direct and circumstantial, the Board cannot conclude that a reasonable employee would be deterred from participating in union activities or otherwise asserting that employee's rights under the Act.

IV. Conclusion

The Board has fully considered all the evidence in these cases, including the numerous interactions that fall outside the six-month statute of limitations, and has given this evidence its due weight in considering the employer's conduct at issue in this case. While it is clear that there is an acrimonious labor-management atmosphere between the union employees here and senior management at the Sheriff's Office, the Board is unable to conclude that the employees' protected activity was a motivating factor for the County's actions in this case given the bulk of undisputed evidence. Additionally, given the reasonable, non-discriminatory bases for the County's actions, and the lack of a nexus between those actions and any protected activity, the Board

does not find sufficient evidence that the County's conduct at issue in this case could be seen as reasonably tending to interfere with the Sheriff's Office employees' rights under the Act. Though the Board does not endorse the management approach of the Sheriff's Office, the apparent hostility in labor-management relations does not at this point rise to the level of illegal conduct subject to remedial action by the Board. See *Teamsters v. Town of Kennebunk and Lt. Michael LeBlanc*, No. 80-30, slip op. at 7-8 (July 3, 1980), aff'd., *Teamsters v. Town of Kennebunk and MLRB*, CV-80-413 (Me. Super. Ct., Kennebec Cty., October 18, 1985) (Concluding that even given "substantial evidence of an anti-union atmosphere . . . such considerations did not infect" the adverse employment action at issue in that case, when the decision appeared to have been "well within the range of reasonableness" and raised no question about the employer's motive). Despite this, the events described here build upon a narrative of hostility and distrust in the labor relations of this county office which, if continued, may do harm to the effectiveness of the vital public service the office provides. We strongly encourage both sides to make a more strenuous effort at compromise in order to avoid this potentiality.

V. Decision

For all of the foregoing reasons, this case is 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 M.R.S.A. §968(5), it is ORDERED that the complaints in Case Nos. 18-10 and 19-02 be, and hereby are, DISMISSED.

Dated at Augusta, Maine, this 24th day of July, 2019

MAINE LABOR RELATIONS BOARD

Katharine I. Rand
Chair

Robert W. Bower, Jr.
Employer Representative

Amie M. Parker
Employee Representative

The parties are advised of their right pursuant to 26 M.R.S.A. § 968(4) 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.