STATE OF MAINE MAINE LABOR RELATIONS BOARD

Case No. 23-PPC-02
Issued: June 1, 2022

ALLEN MERSEREAU, Complainant, v. TEAMSTERS LOCAL UNION NO. 340, Respondent.	DECISION AND ORDER

I. Statement of the Case

Allen Mersereau ("Claimant"), a former employee of the University of Maine System, filed this prohibited practice complaint against his former union, Teamsters Local Union No. 340 ("Union"), alleging that the Union had violated its duty of fair representation by, among other things, ignoring his communications requesting assistance with a personnel issue, failing to file grievances on his behalf and using physical force to prevent him from leaving a union-organized meeting with his employer. Ultimately, the Board finds that Mr. Mersereau' s contentions do not have sufficient support and the Union acted within the scope of its duty of fair representation.

II. Procedural History

Mr. Mersereau filed his initial prohibited practice complaint on July 22, 2022. The Executive Director of the Maine Labor Relations Board ("Board") reviewed the sufficiency of the complaint and tentatively dismissed it, absent the filing of an amended complaint with actionable claims. In response, Mr. Mersereau filed a 97-page amended complaint, with attached documents and video files, that contained additional claims against the Union. After a second sufficiency review, the Executive Director dismissed all but one claim--that the Union had ignored a March 30, 2022, email from Mr. Mersereau requesting follow-up action after a union-organized meeting between his bargaining unit and management representatives.

Mr. Mersereau filed a timely appeal of the Executive Director's decision, and the Board allowed oral argument on the appeal on October 18, 2022, via videoconference. The Board ruled in an Order issued on November 2, 2022, that three additional claims also met the Board's sufficiency standard and warranted inclusion in an evidentiary hearing. Those additional claims are 1) that a shop steward ignored Mr. Mersereau' s grievance requests, 2) that a Union business agent physically prevented Mersereau from leaving a March 24, 2022, meeting and 3) that the Union

did not contact Mersereau or appear on his behalf regarding a July 25, 2022, pre-disciplinary meeting of which the Union had notice.

Board Chair Shelia Mayberry, Esq., conducted a prehearing conference on November 28, 2022, and issued a Prehearing Conference Memorandum and Order that same day. An evidentiary hearing was held on April 20, 2023, via videoconference, presided over by Shari Broder, Esq., Alternate Chair, with Michael Miles, Employer Representative, and James Mackie, Alternate Employee Representative. Mr. Mersereau represented himself and the Union was represented by Ed Marzano. The parties were given a full opportunity to examine and cross-examine witnesses, introduce evidence and to make their arguments. The parties were also permitted to file post-hearing arguments, which were submitted on May 24, 2023.

III. Findings of Fact

The following facts are drawn from the record. In response to complaints from several custodial employees about a certain supervisor, the Union organized a meeting between the custodial staff, the Union and three management representatives on March 24, 2022. The management representatives appeared at the meeting by videoconference over a laptop that was arranged in the room in such a way that each participant was visible to the others. The ostensible purpose of the meeting was to allow management to hear the complaints about this supervisor from the employees directly. Mr. Mersereau claims he grew frustrated at a certain point in the meeting and exclaimed "F this," at which point he claims the Union business agent present at the meeting stood over him and put his hands on Mersereau's shoulders, preventing him from leaving the meeting, and whispered something in his ear. The Union business agent claims that at no time did he place hands on Mr. Mersereau or otherwise try to prevent him from leaving the meeting. The testimony of the two management representatives at the meeting confirmed that they never saw the business agent put hands on Mr. Mersereau.

On March 26, 2022, Mr. Mersereau emailed the Union business agent, apologizing for his "lack of patience" at the March 24 meeting and thanking the business agent for his help. Mr. Mersereau's tone changed in two March 30, 2022, emails to the Union business agent in which he voiced frustration at the lack of progress regarding the supervisor. The first email ends: "I'd like to file a complaint against the ones in the meeting. These are the people who need to be looked into." Later that day he continued: "As I said, it's not even him with me and a few others, it's 'why are these people (admins) doing this'?" … "[T]heir lack of action in [sic] a clear attempt to offset their terrible decisions making even to the point of them imposing this stress on us is borderline criminal." Mr. Mersereau testified that he never received a response from the Union.

The Union business agent testified that he never considered Mr. Mersereau's March 30, 2022, emails as a request for him to file a grievance, but rather thought it was Mersereau merely venting his frustration. He testified further to the effect that he found Mersereau's request to file a complaint to be vague and frivolous. Instead, the Union business agent testified that he attempted to address the issue of the problematic supervisor through other means from March through June of 2022.

On April 1, 2022, the Union's shop steward was certified. Mr. Mersereau claims he made several requests to the shop steward to "start the process" regarding his complaints, which he claims were ignored.

Mr. Mersereau testified that an employment issue, in which he claims he experienced harassment from his supervisors, came to a head on June 16, 2022. He testified that the next day at 6:00 a.m. he called the Union business agent and left a voicemail message, but never received any kind of response. The Union business agent testified that he had received a few very lengthy voicemails from Mr. Mersereau on his cell phone, and had spoken to him by phone, but he characterized his impression of these communications as just Mersereau venting regarding personal issues, not as requests to file a grievance or to help represent Mersereau with his employment issues.

On June 27, 2022, the shop steward told Mersereau that there would likely be a hearing of some sort and offered to represent him in her capacity as shop steward. Mr. Mersereau did not accept her offer of assistance and asked her why she had become shop steward when she knew that he wanted to be shop steward. The next day Mr. Mersereau was put on paid administrative leave. The Union business agent testified that he did not contact Mr. Mersereau after he was put on administrative leave because he was told that it was a personal matter and Mersereau never contacted the Union for assistance.

A Human Resources employee at the University of Maine System reached out to the Union business agent on July 13, 2022, to update him regarding Mr. Mersereau. It appears that the University had trouble contacting Mr. Mersereau. There was testimony that there were several emails and letters setting meetings that Mr. Mersereau declined to attend and instead responded with a cease-and-desist letter. On July 22, 2022, the University emailed Mr. Mersereau with notice of pre-disciplinary meeting, copying the Union business agent to the message. The Union business agent testified that Mr. Mersereau never contacted the Union for assistance with this meeting. Mr. Mersereau claims he attended the pre-disciplinary meeting by videoconference on July 25, 2022, but no one else attended, including the Union. His employment was terminated after the meeting.

IV. Analysis

A. Jurisdiction

At all times relevant, the Union was a bargaining agent within the meaning of 26 M.R.S.A. § 1022(1-B) and Mr. Mersereau was a university employee within the meaning of 26 M.R.S.A. § 1022(11). 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. Duty of Fair Representation

A bargaining agent (union) owes a duty of fair representation to all bargaining unit employees. See 26 M.R.S. §§ 1025(2)(E), 1027(2)(A); *Moses v. AFSCME*, Council 93, No. 20-PPC-09.

This duty is breached when the union's conduct towards a bargaining unit member is arbitrary, discriminatory or in bad faith. *Lundrigan v. MLRB*, 482 A.2d 834 (1984).

A union's conduct is considered arbitrary "only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational." *Moses*, No. 20-PPC-09, slip op. at 4-5. Irrational conduct is that "without a rational basis or explanation." *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 46 (1998). "Mere negligence, poor judgment or ineptitude" are not sufficient to establish arbitrary conduct and thus do not constitute a breach of the duty of fair representation. *Macomber v. Maine State Employees Ass'n*, No. 18-20, slip op. at 7. A union may refuse to process a grievance, but it may not do so without a good faith reason. *Lundrigan v. MSEA*, No. 83-03, slip op. at 6-7; aff'd sub nom. *Lundrigan v. Maine Labor Relations Board*, No. CV-83-81 (Me. Super. Ct., Ken. Cty., July 25, 1983); aff'd, 482 A.2d 834 (Me. 1984). Similarly, a union may not ignore a meritorious grievance or process it in a perfunctory manner. *Brown v MSEA*, 1997 ME 24, ¶ 7.

Discriminatory conduct by the union violates the duty of fair representation if it is "invidious" discrimination, for example, racially motivated conduct, conduct motivated by intraunion politics or conduct motivated by the fact that the employee is not a union member. *Moses*, No. 20-PPC-09, slip op. at 4**.** Union conduct that is in bad faith involves "fraud, or deceitful or dishonest action." *Id*.

A violation of the duty of fair representation is a violation of § 1027(2)(A) of the University of Maine System Labor Relations Act ("Act"). See *Moses*, No. 20-PPC-09, slip op. at 4 (Applying the duty in the context of the Municipal Public Employees Labor Relations Law). Review of the union's conduct is "highly deferential," in order to allow the union the latitude necessary to manage its collective bargaining responsibilities. *Langley v. Maine State Employees Association*, Local 1989, SEIU, No. 00-14, slip op. at 28 (December 26, 2000) (quoting Airline Pilots v. O'Neill, 499 U.S. 65, 78 (1991), aff'd *Langley v. Maine State Employees Association, Local 1989, SEIU*, No. AP-01-05 (Me. Super. Ct., Ken. Cty., July 12, 2001), aff'd 2002 ME 32, 791 A.2d 100 (Feb. 22, 2002). As the Complainant, Mr. Mersereau bears the burden of proving his claims by a preponderance of the evidence. See *Moses*, No. 20-PPC-09, slip op. at 5.

1. Grievances requested of shop steward

In pleadings, Mr. Mersereau claims he made several requests of the Union's shop steward to file grievances that were ignored. No evidence concerning this alleged failure was put forward, and the allegations in the pleadings are not specific as to date or particulars of the alleged grievance requests. Accordingly, Mr. Mersereau has not met his burden to establish a violation of the Union's duty of fair representation with respect to his claimed requests to the shop steward.

2. March 30, 2022 email request to Union business agent

Mr. Mersereau's March 30, 2022, emails to the Union business agent were so vague that the Union's interpretation of these communications as mere venting was reasonable. Even interpreting the emails as a request for action, the Board finds that the Union's inaction does not

rise to the level of arbitrary conduct that would violate its duty of fair representation. The Union ignored what it saw as a frivolous course of action, vaguely suggested by Mr. Mersereau's emails, and instead pursued a solution to the bargaining unit members' shared issue with the supervisor through other means. This is exactly the kind of latitude the Union is permitted in order to fulfill its collective bargaining responsibilities. See *Langley*, No. 00-14, slip op. at 28. There was no evidence that this conduct was otherwise discriminatory or based in bad faith. As such, the Claimant has not met his burden to establish the Union failed in its duty of fair representation with respect to his March 30, 2022, emails.

3. Pre-disciplinary meeting

Mr. Mersereau claims the Union neither contacted him about attending the July 25, 2022, pre-disciplinary meeting nor attended the meeting, even though it had received prior notice from the employer by email on July 22, 2022. At the hearing, Mr. Mersereau alleged that he had left a voicemail on the Union business agent's cell phone on June 17, 2022, the day after his employment issues began coming to a head, and never received a response--there is no evidence of what the substance of this particular voicemail was, but based on the Union's testimony, Meresereau's voicemails were characterized as mere venting and not as requests for concrete assistance with his employment issue. Mr. Mersereau was put on administrative leave on June 28, 2022. The day before, the Union's shop steward alluded to an upcoming meeting regarding Mr. Mersereau's employment situation and offered to represent him, an offer he refused. There is no evidence that Mr. Mersereau ever contacted the Union for assistance with the pre-disciplinary meeting.

Under these circumstances, the Union's conduct was not arbitrary--it was under the reasonable impression that Mr. Mersereau did not want Union assistance and so it did not provide that assistance. Neither was this conduct discriminatory or based in bad faith. Therefore, Complainant has not met his burden to establish that the Union violated its duty of fair representation by not appearing at his pre-disciplinary meeting.

C. Unlawful interference, restraint or coercion - physical restraint

Bargaining agents are also prohibited from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1023" of the Act. 26 M.R.S. § 1027(2)(A). The rights guaranteed by section 1023 are the rights to participate, or not participate, in union-related activity. See 26 M.R.S. § 1023. A bargaining agent unlawfully interferes with the rights of a bargaining unit employee when they have "engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *Maine Association of Police v. Town of Pittsfield*, No. 20-PPC-07, slip op. at 6. [1] This is an objective standard, and does not depend upon motive or success. *Id.*

The use of physical force may constitute unlawful interference with protected activity in violation of section 1027(2)(A). Although the Board has never previously ruled on this issue, circumstances involving the use of physical force by a union official have been found to constitute unlawful interference by the National Labor Relations Board under a parallel provision [2] of the National Labor Relations Act. [3] See *Pipeline Local Union No*. 38, 247 NLRB 1250,

1256 (1980) (Union business agent pistol-whipped dissident bargaining unit member over internal union matter); Laborers Local 806, 295 NLRB 941, 958 (1989) (Union business agent pushed, cursed, and challenged a dissident employee to a fight, where the employee had been picketing against the business agent); Teamsters Local 729 (Penntruck Co.), 189 NLRB 696 (1971) (Union agent assaulted employees and threatened to kill an employee in response to a work stoppage not authorized by the union).

Mr. Mersereau's claim that the Union business agent put hands on him and prevented him from leaving the March 24, 2022, meeting is not credible in light of the testimony of the Union business agent and the two management representatives also in the meeting. The evidence does not support a finding that there was any kind of restraint applied to Mr. Mersereau, physical or otherwise. Accordingly, the Complainant has not met his burden to establish that the Union unlawfully interfered with his protected activity.

V. Conclusion

Complainant has not met his burden with sufficient evidence to establish that the Union violated its duty of fair representation or that it unlawfully interfered with his protected rights. The Union's prior non-responsiveness to Mr. Mersereau's request to file vague and arguably frivolous complaints may have created an expectation that the Union would not assist him with his employment issues once they arose. However, this expectation does not negate the fact that Mr. Mersereau never requested Union representation. The Union's failure to affirmatively reach out to Mr. Mersereau or attend the pre-disciplinary meeting under these circumstances does not constitute a failure of fair representation. The claims of physical interference with Mr. Mersereau's right to leave the meeting with his employer may be theoretically actionable, but, given credible testimony to the contrary, are insufficiently supported.

VI. 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 complaint in Case No. 23-PPC-02 be, and hereby is, DISMISSED.

Dated this day 1st of June, 2023.

MAINE LABOR RELATIONS BOARD

/s/ Shari Broder
Shari Broder, Esq.
Alternate Chair

/s/ Michael Miles
Michael Miles
Employer Representative

/s/ James Mackie
James Mackie
Alternate Employee Representative

The parties are advised of their right pursuant to 26 M.R.S.A. § 968(5) 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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[1] The standard for unlawful interference by an employer and by a bargaining agent are identical. See MLRB case nos. 86-22, 86-25 and 86-A-03, slip op. at 15.

[2] 29 U.S.C. §158(b)(1)(A) (National Labor Relations Act, Section 8(b)(1)(A))

[3] The Board often looks to interpretations of the National Labor Relations Act when novel issues arise. See State v. M.L.R.B., Me., 413 A.2d 510, 514 (1980); Churchill v. S.A.D. No. 49

Teacher's Ass'n., Me., 380 A.2d 186, 192 (1977); Caribou School Dept. v. Caribou Teacher's Ass'n., Me., 402 A.2d 1279, 1283 (1979).
