STATE OF MAINE

MAINE LABOR RELATIONS BOARD
Case No. 23-PPC-02
Issued: November 2, 2022

ALLEN MERSEREAU, Complainant, v. TEAMSTERS LOCAL UNION NO. 340, Respondent.	ORDER ON APPEAL OF EXECUTIVE DIRECTOR'S DISMISSAL OF COMPLAINT

I. Statement of the Case

Allen Mersereau ("Claimant"), a former custodial employee of the University of Maine System, filed this prohibited practice complaint ("Complaint") against his former union, Teamsters Local Union No. 340 ("Union") alleging, among other things, that the Union ignored his communications requesting assistance with a personnel issue. After reviewing the sufficiency of the complaint and an amended complaint, the Executive Director of the Maine Labor Relations Board ("Board") dismissed all but the above-mentioned claim, finding the claim sufficient to warrant a hearing for an alleged breach of the Union's duty of fair representation. Upon review, the Board finds that three other claims also meet the sufficiency standard and merit inclusion in the hearing.

II. Procedural History

Mr. Mersereau filed his initial complaint on July 22, 2022, to which the Union filed its answer on August 11. The Executive Director's initial sufficiency determination resulted in a tentative dismissal of the complaint absent the filing of an amended complaint with actionable claims. Mr. Mersereau filed a 97-page amended complaint with attached documents and video files that contained additional allegations against the Union and his former employer. After the Union filed its response, the Executive Director evaluated the amended complaint and issued a sufficiency letter on September 13, 2022, dismissing the complaint except for one instance of conduct where the Union failed to respond to Mr. Mersereau. The Complainant filed a motion [n.1] requesting the Board's review of the Executive Director's partial dismissal, and the Board heard oral argument on the appeal on October 18, 2022.

III. Analysis and Conclusions

A. Jurisdiction

At all times relevant, Mr. Mersereau was a university employee within the meaning of 26 M.R.S. § 1022(11) and the Union was a bargaining agent within the meaning of 26 M.R.S. § 1022(1-B). As such, the Board has jurisdiction over this matter pursuant to the University Employees Labor Relations Act, specifically 26 M.R.S.A. § 1029.

B. Standard of review

In reviewing the Executive Director's partial dismissal of this Complaint, the Board must determine whether the facts as alleged in the Complaint, and in light of Complainant's September 28, 2022 appeal motion, may constitute a prohibited act. 26 M.R.S. § 1029(2); MLRB Rules, Ch. 12 § 8(3). At this stage in the process, the Board must treat the material allegations of the Complaint as true, and must consider the Complaint in the light most favorable to the Complainant. See *Macomber v. MSEA, SEIU LOCAL 1989*, No. 18-20, slip op. at 6 (September 28, 2018). The Board is not obligated to accept as true the complaint's asserted legal conclusions. *MSAD No. 46 Education Ass'n v. MSAD No. 46*, No. 02-13, slip op. at 2 (Nov. 27, 2002), citing *Bowman v. Eastman*, 645A.2d 5, 6 (Me. 1994). The Board cannot consider any new factual assertions made in written argument or oral argument to the Board on appeal. See *MSLEA and McLaughlin v. State*, No. 13-15. Rather than simply reviewing the Executive Director's decision, the Board must make its own determination on the sufficiency of the Complaint. Id.

C. Grievance requests to shop steward

Mr. Mersereau alleges that he complained to a coworker acting as shop steward [n.2] for the Union about personnel matters or other workplace concerns and asked her to "start the process," i.e. file a grievance [n.3]. He claims these requests were ignored. The precise dates of these requests were not included in the Complaint, but based upon the time frame he alleges the coworker began serving as shop steward, they occurred within the six-month statute of limitations period required by 26 M.R.S.A. § 1029(2).

A bargaining agent (union) owes a duty of fair representation to all bargaining unit employees. *Moses v. AFSCME*, Council 93, No. 20-PPC-09 (September 8, 2020). The duty of fair representation does not permit a union representative to completely ignore a grievance request from a bargaining unit member without a good faith justification. See e.g., *Lundrigan v. MSEA*, No. 83-03, slip op. at 6-7 (February 4, 1983). Accordingly, the Board finds that the allegation that the Union ignored his requests to file a grievance is a sufficient claim of the breach of the duty of fair representation to go to hearing.

D. Physical restraint

Mr. Mersereau alleges that at a March 24, 2022 meeting with his employer, with Union representation, the Union's business agent physically prevented him from leaving the meeting

when he attempted to get up from his seat. He claims the business agent held him down "with some force" and whispered in his ear. Claimant categorizes this conduct as assault.

As was determined by the Executive Director, this allegation does not appear to be sufficient grounds for a violation of the Union's duty of fair representation, as generally a union that actively represents a bargaining unit employee, even if not entirely to that employee's satisfaction, does not violate its duty of fair representation. See Moses, No. 20-PPC-09, slip op. at 5-6. However, this conduct is not beyond the reach of Maine's labor relations laws. This alleged use of physical force may constitute unlawful interference with respect to Mr. Mersereau's protected activity--the protected activity here being the right to not participate in union activity, i.e., a union-represented meeting with the employer. See 26 M.R.S.A. § 1023(2).

Bargaining agents are prohibited from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1023." 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. 26 M.R.S. § 1023. The standard for unlawful interference by an employer and by a bargaining agent are identical. See *AFSCME Council 93 v. Maynard*, Nos. 86-22, 86-25 and 86-A-03, slip op. at 15 (Mar. 10, 1987). 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." See *Maine Association of Police v. Town of Pittsfield*, No. 20-PPC-07, slip op. at 6. This is an objective standard, and "does not depend upon the employer's [or bargaining agent's] motive or success." *Id.*

Although it does not appear the Board has previously analyzed physical force in the context of interference, restraint or coercion in its caselaw history, the Board does often look to the decisions of the National Labor Relations Board and the federal courts for guidance in interpreting Maine law that is analogous to relevant provisions of the National Labor Relations Act. *AFT Local 3711 v. Sanford School Committee*, No. 01-24, slip op. at 8 (Jan. 31, 2002); *State v. M.L.R.B.*, Me., 413 A.2d 510, 514 (1980). Section 8(b)(1)(A) of the federal Act (29 U.S.C. § 158(b)(1)(A)) contains an analogous prohibited labor practice to Maine's 26 M.R.S. § 1027(2)(A). Under the federal system, the National Labor Relations Board has found a union representative's use of physical force to constitute unlawful interference or coercion under certain conditions. See *Pipeline Local Union No. 38*, 247 NLRB 1250, 1256 (1980) (Where union business agent pistol-whipped dissident bargaining unit member over internal union matter); *Laborers Local 806*, 295 NLRB 941, 958 (1989) (Where union business agent pushed, cursed and challenged a dissident bargaining unit employee to a fight); *Teamsters Local 729 (Penntruck Co.)*, 189 NLRB 696 (1971) (Where union agent assaulted several employees and threatened to kill an employee in response to a work stoppage not authorized by the union). In light of this federal precedent, we find that pursuant to the Board's review standards Mr. Mersereau's claim regarding the use of physical force by the Union's business agent to prevent him from leaving a meeting with his employer is conduct that could reasonably tend to interfere with his protected activity and is sufficient to proceed to hearing.

E. Pre-disciplinary Meeting

Mr. Mersereau alleges that on July 25, 2022 he remotely attended a pre-disciplinary meeting by videoconference, which was called by his employer, but that no one else attended. From an email included with the Complaint it is clear that the Union had prior notice of this meeting. [n.4] In the context of alleged multiple recent communications from a bargaining unit member to the union asking for the union's assistance in resolving personnel matters and other workplace concerns, if the union did not either contact the bargaining unit member about attending the pre-disciplinary meeting or attend the meeting of which it received prior notice, assuming the facts in the Complaint are true and construing the Compliant in a light most favorable to the Complainant, this conduct could be a violation of the Union's duty of fair representation. Therefore, this allegation meets the Board's sufficiency standard.

IV. Miscellaneous insufficient claims

The remainder of Mr. Mersereau's allegations are insufficient to warrant an evidentiary hearing for various reasons. For example, his claims regarding COVID-19 protocols are outside the six-month statute of limitations, as are claims regarding Mr. Mersereau's issues around a shift change. Mr. Mersereau also made conclusory claims regarding the unfairness of a "cartel" system made up of the University of Maine System, Union and the State that serves to frustrate employee rights and facilitate termination of troublesome employees. These claims are insufficient as they are vague and devoid of material supporting allegations of fact, as well as largely falling outside the scope of the Board's authority.

Mr. Mersereau alludes to two prohibited practices by citation [n.5] in the Complaint, 26 M.R.S.A. § 1027(1)(B) (unlawful discrimination due to protected activity) and 26 M.R.S.A. § 1027(1)(D) (unlawful discrimination due to participation in Board processes). However, he does not plead any facts showing a violation of the provisions which, regardless, apply only to an employer and not to a bargaining agent, the named party to this Complaint. Additional claims regarding on-the-job injuries and claims regarding harassment from his employer are outside the statute of limitations period and are outside the scope of the Board's authority.

V. Decision

For the foregoing reasons, the Board finds the Complaint to be sufficient with respect to the three allegations described above in section III, subsections C, D and E, and the Complaint is reinstated accordingly.

ORDER

We grant Mr. Mersereau's appeal, in part, and instruct the Executive Director to reinstate the

Complaint in accordance with the Board's decision and to schedule, in the normal course of business, a prehearing conference and evidentiary hearing on the merits of Mr. Mersereau's Complaint in accordance with this decision and the Board's Rules.

Dated this 2nd day of November, 2022

MAINE LABOR RELATIONS BOARD

/s/ Sheila Mayberry
Sheila Mayberry, Esq.
Chair

/s/ Michael Miles
Michael Miles
Employer Representative

/s/ Roberta de Araujo
Roberta de Araujo, Esq.
Employee Representative

The parties are advised of their right pursuant to 26 M.R.S.A. § 1029(7) 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.

[n.1] In his appeal motion, Mr. Mersereau requested the remedy of being reinstated to his job with

the University of Maine System. It should be noted that the Board would not have the authority to grant such a remedy because Mr. Mersereau's former employer is not a party to the complaint. 26 M.R.S.A. § 1029(2); *Ridge v. Cape Elizabeth Education Ass'n*, No. 98-02, slip op. at 4 (Sept. 8, 1998); See also *Trepanier v. Perry*, No. 93-38 (Mar. 24, 1994)(The Board determined that it lacked authority to grant a remedy against the claimant's employer when the complaint was filed against the union for a violation of the duty of fair representation.)

[n.2] Although the Claimant expresses some confusion regarding the timing of the coworker's status as shop steward, reading the Complaint in a light most favorable to the Complainant yields an assumption for purposes of this appeal that the coworker was indeed acting in this capacity when Mr. Mersereau requested the grievances be filed.

[n.3] The Board finds this meaning clear enough from the phrase's context in the Complaint.

[n.4] Under Board Rules, an attachment to a complaint will generally be considered if it aids in understanding the allegations in the complaint, but may not be used as a substitute for the specific allegations of fact required in the complaint. See MLRB Rules, Ch.12, § 5. Here the Board refers to the attachment merely to clarify that the assertion in the Complaint that "I do attend this meeting but no one else does" includes the Union.

[n.5] Although the statutory citations in the Complaint are incorrect and are to the inapplicable Municipal Public Employees Labor Relations Law, the intended provisions are clear and are mirrored in the University Employees Labor Relations Act.