

AFSCME, COUNCIL 93)	
)	
Appellant,)	
)	
and)	Appeal of Executive Director’s Decision to Conduct Election in Majority Sign-Up Petition
)	
TOWN OF ORONO)	
)	
Appellee.)	
)	

I. Statement of the Case

AFSCME, Council 93 (“Union”) appeals the decision of the Executive Director to conduct an election in response to a finding of a lack of majority support in a Majority Sign-up petition. The Executive Director’s decision was based on an analysis of majority support at the point that the makeup of the new bargaining unit had been determined, excluding employees that were either not in the final determined bargaining unit or no longer employed as of the date of the bargaining unit determination.

The Maine Labor Relations Board (“Board” or “MLRB”) finds that the proper date for evaluating majority support for a Majority Sign-up petition is the date that the petition has been filed and employee authorization forms have been physically received by the Board. The Board further finds that the signed employee authorization forms of those employees included in the agreed upon bargaining unit as February 13, 2023, the date when the Board received the employee authorization forms, represent a majority of bargaining unit employees. Accordingly, the appeal is granted and the Executive Director’s decision is reversed.

II. Procedural History and Findings of Fact

On February 3, 2023, the Union filed a MLRB Form 2-C, Majority Sign-up petition, with the Board via electronic filing. As part of the petition, the Union sent signed employee authorization forms from employees in the proposed new bargaining unit by U.S. mail. These forms were picked up from the U.S. Postal Service on February 13, 2023. The employee authorization forms were not reviewed until May 1, 2023, after the parties had submitted an Agreement on Appropriate Bargaining Unit, MLRB Form-1, on April 28, 2023. The Executive Director issued a determination in a letter to the parties dated May 5, 2023. In the letter he notes the date of receipt of the employee authorization forms as February 14, 2023. In reviewing the forms in light of the established bargaining unit, the Executive Director excluded four of the nine received forms. The Executive Director excluded three forms because the employees were no longer employed with the employer--two of whom ceased employment after February 13. The Executive Director excluded one additional form because it was signed by an employee whose position was not included in the final agreed-upon bargaining unit. As there no longer appeared to be majority support, and the valid employee authorization forms exceeded 30% of the bargaining unit, the Executive Director scheduled an election. See 26 M.R.S.A. § 967(1-A); MLRB Rules, Ch.11, § 12-A(4). The Executive Director based his decision not to count employees who were no longer employed on the date of his tally,

May 1, 2023, by reference to a section of the Board's rules concerning eligibility to vote in bargaining agent elections:

The statute does not expressly define whether a card signed by a former employee may be counted if the individual left employment prior to or after the filing of the majority sign-up petition. The MLRB rules also do not address this subject for majority sign-up petitions. However, for my tally, I took into consideration Chapter 11, Section 43 of the Rules which indicates, in part, an individual is eligible to vote only if they remain an employee on the date of a bargaining agent election.

On May 16, 2023, AFSCME filed an appeal of the Executive Director's decision to hold an election, and the election was suspended pending the outcome of the appeal.

III. Analysis

A. Jurisdiction

The Union is an aggrieved party pursuant to 26 M.R.S.A. § 968(4). The Town of Orono ("Town") is a public employer within the meaning of 26 M.R.S.A. § 962(7). AFSCME, Council 93 is a bargaining agent within the meaning of 26 M.R.S.A. § 962(2). The Board's jurisdiction to hear this appeal and to issue a decision and order derives from 26 M.R.S.A. § 968(4).

B. Majority Sign-up

The Municipal Public Employees Labor Relations Law ("Act"), 26 M.R.S.A. § 961, et seq., has historically provided for the certification of a union as a bargaining agent for a bargaining unit of employees through a secret ballot election, which is preceded by a petition process that requires the submission to the Board of signed showing of interest forms from at least 30% of the proposed or existing bargaining unit employees. 26 M.R.S.A. § 967(2). Once a petition and the accompanying showing of interest forms are received by the Board, the Executive Director reviews the filing for sufficiency and notifies the employer of the petition and its right to file a response. See MLRB Rules, Ch.11, §§ 9, 11, 13. If the employer files an objection, for example to the appropriateness of the bargaining unit, the matter may be settled by a hearing conducted by the Executive Director. See *Id.* at § 14. For purposes of an election tally, only those employees employed on the date of the election may cast a valid ballot. See MLRB Rules, Ch.11, §42.

Since a statutory amendment enacted in 2019, the Act also allows for a union to be certified as the bargaining agent for a bargaining unit of municipal employees without the need for an election, under certain circumstances, in a process known as Majority Sign-up. 26 M.R.S.A. § 967(1-A). In order for a union to avail itself of this process, the employees in the bargaining unit may not be currently represented by another bargaining agent and the union must have a request for voluntary recognition denied by the employer. *Id.* Additionally, the Executive Director must determine: "that a majority of the employees in a unit appropriate for bargaining have signed valid authorizations designating the employees' organization specified in the petition as their bargaining representative..." 26 M.R.S.A. § 967(1-A). The parties' disagreement in this matter centers on their respective interpretations of this last requirement.

C. Position of the Parties

The Union argues that the statute is ambiguous as to when the Executive Director must determine majority support. Neither the statute nor Board Rules, argues the Union, specify at what stage in the process

majority support, via the employee authorization forms, should be assessed. The Union proposes to resolve this ambiguity by looking to the legislative intent of the Majority Sign-up law. It points to legislative history that indicates that the sponsor of the legislation intended to create a more streamlined process to reduce delay and the intervening effects of employer anti-union animus on majority support for the union. Based on this evidence of legislative intent, the Union argues that the proper date to evaluate majority support is as of the time of filing, counting those employees in the finalized bargaining unit.

The Town argues that the plain language of the statute requires first, the assessment of the final bargaining unit, and second, a review of whether the submitted employee authorization forms are sufficient. In the Town's view, since the "unit appropriate for bargaining" cannot be known until any objections regarding the appropriateness of the unit have been resolved, the date that the unit has finally been determined is the date by which majority support must be measured. As such, the Town argues that the measure of majority support in this case should be assessed after the submission of the Agreement on Appropriate Bargaining Unit on April 28, 2023. Under this interpretation of the statute, the Town argues that the Executive Director's determination that the Union lacked majority support should be upheld and a bargaining agent election ordered.

D. Majority Support

The opposing positions of the parties as to when majority support should be assessed are both reasonable, so the statute is clearly ambiguous. See *Estate of Joyce v. Commercial Welding Co.*, 2012 ME 62, ¶ 12, 55 A.3d 411 ("A statute is ambiguous if it is reasonably susceptible to different interpretations."). When the Board is faced with interpreting an ambiguous statute, it follows the Law Court's guidelines for interpreting statutes, including looking to legislative history, canons of statutory construction and the context of the provision at issue within the general statutory scheme. *United Paperworkers International Union v. Austin J. Decoster d/b/a Decoster Egg Farms*, 98-07, slip op at 20 (June 12, 1998) (citing *State v. Spaulding*, 1998 ME 29, 707 A.2d 378, 380; *State v. Moulton*, 1997 ME 228, 704 A.2d 361, 365 (1997) (quotations omitted)).

Looking to the legislative history of 26 M.R.S.A. § 967(1-A), the law was enacted as Public Law 2019, Chapter 135 and originally introduced as L.D. 757. The sponsor for the bill testified at the bill's hearing in the Maine Legislature's Joint Standing Committee on Labor and Housing. Based on this testimony, it is clear that one of the purposes of the law was to avoid potential interference by the employer with the union's majority support through administrative challenges and other means. See *An Act To Improve Labor Laws for Maine Workers: Hearing on L.D. 757 Before J. Standing Comm. on Labor and Housing*, 129th Legislature (2019) (testimony of Rep. Michael Sylvester), available at: <https://legislature.maine.gov/bills/getTestimonyDoc.asp?id=113661>. The Board finds this history persuasive in construing the provision at issue. Given this legislative history, it makes the most sense to determine majority support as of the time of filing, rather than the potentially much later date that the bargaining unit is finally determined.

This interpretation of the statute also makes sense within the context of the general statutory scheme. The purpose of the Act is, in part, to provide "a uniform basis for recognizing the right of public employees to join labor organizations of their own choosing." 26 M.R.S.A. § 961. The Majority Sign-up process provides a means by which that choice of employees may be recognized more expeditiously, at the snapshot in time at which the filing of the petition is perfected. To read into the statute an exception that

allows for employees within the final bargaining unit to be discounted at a point in time beyond the point of filing would be to in effect swallow the rule.

In light of the legislative history and the general statutory scheme of the Act, the Board reads the Majority Sign-up statute as requiring an assessment of the showing of majority support as of the time the petition and accompanying employee authorization forms have been filed. [2] However, to ensure the statutory requirement that the majority be measured from “a unit appropriate for bargaining,” the majority status must be assessed based on the final determined bargaining unit. As such, employee authorization forms may only be counted for employees whose positions are within the final determined bargaining unit.

E. Date of Filing

Having determined that the measure of majority support in a Majority Sign-up petition is taken at the time the petition is filed, the Board must determine when exactly the petition in this case was filed. While Board Rules allow for the electronic filing of a Majority Sign-up petition, the filing is not considered complete until the Board has “received” a physical copy of the original signed employee authorization forms. MLRB Rules, Ch.10, § 7(5).

At the hearing, the Union produced sufficient proof that its mailed package, including employee authorization forms, was delivered to the State by the U.S. Postal Service on February 13, 2023. [3] The Executive Director’s May 5, 2023 letter to the parties notes that the Board received the forms on February 14, 2023. However, the Executive Director did not testify during the hearing, and no physical evidence was submitted, such as a Board date stamp, to contradict the Union’s proof that the package was delivered on February 13, 2023. The Board considers a physical filing of employee authorization forms to be received on the date that it is physically received by Board staff. However, in the absence of more definitive proof to the contrary, the Board finds that February 13, 2023, is the date that the employee authorization forms, and thus the petition, was “received” by the Board. Given this filing date, the Union has adequately demonstrated majority support. [4]

IV. Conclusion

The Union’s interpretation of the Majority Sign-up law is correct--majority status is determined from the point at which a Majority Sign-up filing has been perfected. The received employee authorization forms for employees whose positions are within the final determined bargaining unit represent a majority of the bargaining unit employees. Accordingly, the Union has demonstrated adequate support for certification by Majority Sign-up and should be so certified.

V. 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(4), it is ORDERED:

1. The Union's appeal is granted.
2. This proceeding is remanded to the Executive Director with instructions that the Union be certified by Majority Sign-up as the bargaining agent for the newly created bargaining unit as detailed in the Agreement on Appropriate Bargaining Unit, MLRB Form-1 filed by both parties on April 28, 2023.

Dated this day, August 17, 2023.

MAINE LABOR RELATIONS BOARD



Sheila Mayberry, Esq.
Chair



Michael Miles
Employer Representative



Roberta de Araujo, Esq.
Employee Representative

The parties are advised of their right pursuant to 26 MR.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.

[1] The Board Rules largely mirror the Majority Sign-up statute:

3. Majority Support. *If the executive director determines that the petition is sufficient, the executive director will examine the demonstration of support. If the executive director finds that a majority of the employees in a unit appropriate for bargaining have signed employee authorization forms designating the employees' organization specified in the petition as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the Board or the executive director shall certify the employees' organization as the bargaining agent.*

MLRB Rules, Ch.11, § 12-A(3).

The Rules also provide that the Executive Director “shall make the determination administratively on whether the ... employee authorization evidence is satisfactory in form or quantity.” MLRB Rules, Ch.11, § 8(2).

[2] Although not necessarily persuasive in its own right, it is worth noting that Massachusetts and California, two large jurisdictions with similar majority sign-up provisions, explicitly provide for a similar fixed date for ascertaining majority support. For Massachusetts, see 456 C.M.R. § 14.19(8) (employees employed on the date of filing are counted towards majority support); for California, see 8 CCR §§ 32784(a) and 61215(b) (employees employed during the payroll period immediately prior to filing are counted towards majority support).

[3] The Board takes administrative notice that mail sent to the Board is first delivered to a general State of Maine mail processing center before it is delivered to the Board's offices.

[4] The Board does not need to decide whether the signed authorization forms of employees whose positions are in the final bargaining unit and who have left employment prior to the date that the Majority Sign-up petition filing has been perfected are counted towards the determination of majority support, because majority support for the union is apparent either way in this case.
