STATE OF MAINE

MAINE LABOR RELATIONS BOARD
Case No. 25-IR-02
Issued: August 13, 2025

Maine State Law Enforcement Association, Petitioner, *and* Maine Service Employees Association, SEIU Local 1989, Party in Interest, *and* State of Maine, Party in Interest.	INTERPRETIVE RULING

I. Introduction

On June 23, 2025, the Maine State Law Enforcement Association (MSLEA) filed a petition for an interpretive ruling. It asked whether the union owed a duty of fair representation to an employee with respect to an investigation into the employee's alleged misconduct when the employee belonged to a different bargaining unit with the same employer represented by a different union (here, the Maine Service Employees Association (MSEA)).

On June 24, 2025, the Board's Executive Director sent an email to the Board's listserv, providing a copy of the petition and inviting any interested party to provide a written memorandum to the Board addressing the subject of the petition. The Board also posted notice of the petition on its website. On July 14, 2025, MSEA submitted a written memorandum to the Board in response to the petition.

II. Facts

The facts are not in dispute. A certain employee has been employed by the State of Maine (State), Department of Corrections (DOC) at all times relevant. Prior to January 25, 2025, the employee worked in a position within a bargaining unit that was, and currently is, represented by MSEA and is covered by a collective bargaining agreement (CBA) between MSEA and the State. On January 25, 2025, the employee began work for the DOC in a new position. The employee's new position is located within a bargaining unit represented by the Petitioner, MSLEA, and is covered by a CBA between MSLEA and the State.

On April 7, 2025, the DOC served the employee with a notice of investigation for alleged

misconduct occurring between September and December 2024. The alleged misconduct occurred while the employee served in a prior job within the bargaining unit represented by MSEA and covered by a CBA between MSEA and the State.

III. Jurisdiction

The Board's authority to make an interpretive ruling is rooted in statute and is refined in the Board's procedural rules. 26 M.R.S. §§ 968(3), 979-G(1); MLRB Rules, Ch.12, § 41. An interpretive ruling is appropriate when there is a specific question as to the prospective rights, obligations or liabilities of a party when controversy or doubt has arisen regarding the applicability of a specific statute, Board order or rule. MLRB Rules, Ch.12, § 41. Questions concerning the propriety of a party's past actions are not appropriate for an interpretive ruling, where interpretive rulings are properly used as a vehicle to guide future action. *Id.*; See *In re: Lewiston School Committee Petition for Interpretive Ruling*, No. 06-IR-01, slip op. at 4 (April 20, 2006). The other prerequisites for an interpretive ruling are that the relevant facts must not be in dispute and the petition must not be used as a substitute for other remedies available under the collective bargaining laws. MLRB Rules, Ch.12, § 41. While interpretive rulings are not binding on the Board, the Board must consider any person's justifiable reliance on the ruling in any subsequent Board proceeding. *Id.* The petition in this instance seeks guidance from the Board to inform future action, the relevant facts are not in dispute and there is no other remedy available; accordingly, an interpretive ruling is appropriate.

IV. Discussion

A bargaining agent (union) owes a duty of fair representation to all bargaining unit employees, and a violation of this duty is a prohibited practice under Maine's collective bargaining laws.[1] 26 M.R.S. §§ 979-C(2)(A), 979-F(2)(E); *Knapp v. MSEA, SEIU LOCAL 1989,* No. 24-PPC-02, slip op. at 5 (July 2, 2024). The duty of fair representation, to fairly represent all bargaining unit members, arises due to the union's corresponding authority to serve as the exclusive bargaining agent for bargaining unit employees. *Trask v. Fraternal Order of Police*, 2018 ME 130, ¶ 2, 194 A.3d 46, 47, *as revised* (Oct. 23, 2018), citing *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 76 (1991); 26 M.R.S. § 967 ("The bargaining agent certified by the executive director of the board as the exclusive bargaining agent shall represent all the public employees within the unit…"). The duty applies when a union is acting in its capacity as the bargaining agent representing the employees in the bargaining unit, such as when negotiating a collective bargaining agreement, administering the bargaining agreement and processing employee grievances. See *Jordan v. AFSCME, Council 93, AFL-CIO*, No. 07-15, slip op. at 17 (June 13, 2008).

The Board has not previously addressed the issue presented in this petition. When facing an issue of first impression, the MLRB will often "look for guidance to parallel federal law, found in the National Labor Relations Act [NLRA] and decisions thereunder." *Local 1373, AFSCME, Council 93 v. City of Portland*, No. 12-13, slip op. at 5 (November 13, 2012), citing *Teamsters Local Union No 48 v. Eastport School Department*, No. 85-18, slip op. at 5 (Oct. 10, 1985), quoting *Baker Bus Service v. Keith*, 428 A.2d 55, 56 n.3 (Me. 1981). The Board has also previously noted that the scope of the duty of fair representation under Maine's collective

bargaining laws is comparable to the duty of fair representation under the NLRA. *David Trask v. Fraternal Order of Police*, No. 16-07, slip op. at 14 (May 12, 2017), citing *Langley v. MSEA*, No. 00-14, slip op. at 25 (March 23, 2000), *aff'd*, 2002 ME 32, 791 A.2d 100 (Feb. 22, 2002). Accordingly, a review of federal law is instructive.

The Board's concept of a union's role as exclusive representative for a bargaining unit, and the union's corresponding duty of fair representation towards those bargaining unit employees, was formed in light of what is now well-settled federal precedent. See, e.g., *Whitzell v. Merrymeeting Educators' Association*, No. 80-15, slip op. at 8 (Nov. 6, 1980), *aff'd*, No. CV-80-124 (Me. Super. Ct., Sag. Cty., Dec. 28, 1982), citing, *inter alia*, *Vaca v. Sipes*, 386 U.S. 171 (1967). Subsequent decisions of the federal courts and the National Labor Relations Board (NLRB) have generally held the line that the designated union holding exclusive authority over a bargaining unit is the appropriate union charged with the duty of fair representation with respect to bargaining unit employees. See, e.g., *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364, 376 n. 22 (1984) ("A union's statutory duty of fair representation traditionally runs only to members of its collective-bargaining unit, and is coextensive with its statutory authority to act as the exclusive representative for all the employees within the unit."); *Kuhn v. National Association of Letter Carriers, Branch 5*, 528 F.2d 767, 770 (8th Cir. 1976)("[E]xclusive representation is a necessary prerequisite to a statutory duty to represent fairly."); *McNamara-Blad v. Ass'n of Pro. Flight Attendants*, 275 F.3d 1165, 1169-70 (9th Cir. 2002) ("The scope of the duty of fair representation is generally coextensive with the scope of the union's statutory authority as the exclusive bargaining agent.").

Just as a union owes a duty of fair representation to all employees within the bargaining unit it represents, it generally owes no duty to those who are not employees within the bargaining unit.[2] *Dycus v. NLRB*, 615 F.2d 820, 827 (9th Cir. 1980), *enforcing sub nom., Teamsters Local 42 (Grinnell Fire Protection)*, 235 NLRB 1168 (1978)("A labor organization that is not the exclusive representative of a bargaining unit ... owes no duty of fair representation to the members of the unit."); *Spenlau v. CSX Transp., Inc.*, 279 F.3d 1313 (11th Cir. 2002) (Union did not owe duty of fair representation to former trainmen promoted to position of engineers, despite the employees retaining seniority rights as trainmen, because they were employees outside the bargaining unit.); *McTighe v. Mechanics Educ. Soc'y Local 19,* 772 F.2d 210 (6th Cir.1985) (Union did not owe a duty of fair representation to a former member of the union looking for reinstatement after a promotion to supervisor); *Karo v. San Diego Symphony Orchestra Ass'n,* 762 F.2d 819 (9th Cir.1985) (Union did not owe union member a duty of fair representation because the individual was not a bargaining unit employee); *Cooper v. Gen. Motors Corp.,* 651 F.2d 249 (5th Cir.1981) (Union did not owe supervisors a duty of fair representation because they were outside of the bargaining unit.); *Merk v. Jewel Food Stores Div., Jewel Companies, Inc.,* 641 F.Supp. 1024, 1030 (N.D.Ill.1986), *aff'd*, 848 F.2d 761 (7th Cir.1988), *cert. denied,* 488 U.S. 956 (1988) (Union owed no duty of fair representation to former employees because they were no longer bargaining unit members).

While a former employee is technically outside of the bargaining unit, courts have recognized a continuation of the union's duty of fair representation with respect to such former employees when the separation from the employer has been involuntary. See *D'Amato v. Wisconsin Gas Co.*, 760 F.2d 1474, 1489 (7th Cir.1985) (Union owed duty of fair representation to employee

alleged to have been terminated wrongfully); *Caputo v. Branch 99, Nat'l Ass'n of Letter Carriers,* 730 F.Supp. 1221 (E.D.N.Y.1990) (Union owed duty of fair representation to individual who became a former employee as result of labor dispute). The Board itself has recently examined the duty of fair representation in the context of a union's representation of a terminated employee. *James Escoto v. AFSCME Council 93, Local 431*, No. 23-PPC-10 (August 31, 2023). In cases where the separation is voluntary, however, such separation serves to sever the bond between the union and the former employee.[3] See *Meza v. Gen. Battery Corp.*, 908 F.2d 1262, 1270 (5th Cir. 1990) ("When an individual terminates his relationship with both employer and union, the union ceases to be his exclusive representative in disputes with the former employer."); *Merk*, 641 F.Supp. at 1030-1031 (Union continues as the exclusive representative of individuals who are former employees as a result of the employer's breach of the collective bargaining agreement, as opposed to those who become former employees of their own volition.)

Under certain circumstances, the federal courts and the NLRB have broken with a rigid application of the concept of exclusive representation and applied the duty of fair representation to a union with respect to employees in a bargaining unit it had previously represented. This occurs when a decertified union has pending grievances regarding issues arising under the previous CBA between the union and the employer. See *Children's Hosp. & Rsch. Ctr. of Oakland d/b/a Children's Hosp. of Oakland & Serv. Emps. Int'l Union, United Healthcare Workers-W.*, 364 NLRB 1677, 1680 (2016). The primary justification for this deviation is that an employer's obligations regarding grievance arbitration arise only by contract, so only the former union that had contracted for the grievance arbitration could enforce these bargaining unit member rights under the prior CBA. See *Id.* at 1679. Otherwise, the employees in these situations would have no other way to enforce their contractual rights. *Id.*

Regardless of whether a decertified union may have a continuing duty of fair representation to its former bargaining unit members for "unfinished business"[4] under Maine's collective bargaining laws,[5] such an exception would not apply to the circumstances presented by the petition before the Board. MSEA remains the certified exclusive representative of the employee's former bargaining unit. The separation of the employee from MSEA in this instance has occurred because the employee in question voluntarily left the bargaining unit altogether. This is not a situation involving the potential for an employee to unjustly lose the protection of contractual rights. If the results of the employee's impending workplace investigation should lead to the imposition of discipline, it is the union representing the employee's current bargaining unit, MSLEA, that would have the contractual right to grieve[6] under its contract with the employer, and, if necessary, arbitrate regarding that discipline. As the employee voluntarily left the bargaining unit represented by MSEA, neither MSEA nor the employer would presumably be contractually obligated to process any grievance filed by MSEA on behalf of that employee, or to arbitrate that grievance. In this case then, for the Board to apply the duty of fair representation to MSEA would deprive that employee of the benefit of contractual rights. The exception for cases of involuntary separation does not apply in this case because the employee left the bargaining unit voluntarily.[7]

The Petitioner, MSLEA, argues that it should not be responsible for representing an employee when the alleged misconduct at issue occurred while the employee was in another bargaining

unit, represented by another union, MSEA, and while covered by a CBA between that union and the employer. This argument, unsupported by any cited legal precedent, is fundamentally one grounded in fairness. It is unfair, from this perspective, for MSLEA and its membership to have to bear the burden and expense of defending the actions of an individual who had no relationship to the bargaining unit at the time of the alleged misconduct. While the Board is sympathetic to the appeal for fairness under these rather unique circumstances, from a different perspective fairness would dictate a different result: the employee is now in a unit represented by MSLEA, subject to a contract between MSLEA and the DOC, and it is the employee's employment within that bargaining unit that may be affected by the employer's investigation. Regardless of fairness, however, the Board must interpret and apply the law in answering the question presented. Contrary to MSLEA's contention that applying the duty of fair representation to it, the exclusive representative of the employee's bargaining unit, is an "expanded view" of the duty, to apply the law as urged by MSLEA would be an unprecedented departure from the fundamental principle of exclusive representation—a departure the Board is not willing to make. As such, the duty of fair representation with respect to the DOC employee at issue in this petition applies to the union representing the employee's current bargaining unit, MSLEA.

V. Conclusion

In summary, the Board finds that MSLEA owes a duty of fair representation to the bargaining unit member at issue, even with respect to alleged misconduct committed by the employee prior to employment within the bargaining unit.

Dated this 13th day of August, 2025.

MAINE LABOR RELATIONS BOARD

/s/
Sheila Mayberry, Esq.
Board Chair

/s/
Michael Miles
Employer Representative

/s/
Roberta de Araujo, Esq.
Employee Representative

[1] Although the conduct of the parties here is specifically governed by the State Employees Labor Relations Act, 26 M.R.S. § 979, et seq., the Board applies the duty of fair representation uniformly with all of the collective bargaining laws it enforces.

[2] The Supreme Court has held that retired former employees are not covered by the National Labor Relations Act. *Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co., Chem. Div.*, 404 U.S. 157 (1971). The Court further elaborated that retired employees cannot be members of a bargaining unit and that therefore the union is not bound by the duty of fair representation to such individuals. *Id.* at 181 n.20 ("[S]ince retirees are not members of the bargaining unit, the bargaining agent is under no statutory duty to represent them in negotiations with the employer."). Some federal courts have likewise held retired employees to be beyond a union's duty of fair representation. See *Anderson v. Alpha Portland Indus. Inc.*, 727 F.2d 177 (8th Cir.1984). The National Labor Relations Board itself has not definitively addressed the issue, noting the "ambiguous nature of the legal landscape on the issue of whether unions owe any duty of fair representation to retirees." *Nat'l Ass'n of Letter Carriers, AFL-CIO, Branch 1227 (United State Postal Serv.) & Terry Erwin & Terry Pennington*, 347 NLRB 289, 289 (2006). Maine courts and the Board have addressed various aspects of the collective bargaining rights and obligations pertaining to retired employees, though never directly the extent of the duty of fair representation. See e.g., *City of Augusta v. Teamsters Union Local #340*, No. CV-15-31, (Me. Super. Ct., Ken. Cty., July 21, 2015), discussing *IAFF Local 1650 v. City of Augusta, Status Quo Determination*, No. 11-03SQ (Dec. 15, 2011); *Interpretive Ruling, Millinocket Sch. Comm.*, No. 92-IR-01 (July 13, 1992). Given this nuance and that the issue of what, to any, degree the duty of fair representation applies to retired employees under Maine's collective bargaining laws is not the question before the Board, further analysis on this point is not warranted.

[3] The Board has applied a duty of fair representation analysis to a union's representation of a former employee that voluntarily resigned her position. In *Wood v. Maine Education Assn and Maine Technical College System*, a probationary employee who had voluntarily resigned in exchange for having a negative evaluation destroyed claimed the union had violated its duty of fair representation with respect to her request for assistance in getting reinstated. No. 03-06 (April 21, 2005). The significance of this seeming departure from the federal approach is minimal, however, as the former employee's claim involved an allegation that her resignation was coerced, and, as noted by the Board, the union did not raise the issue of whether it owed the former employee a duty of fair representation but rather argued only that its conduct was consistent with the duty. See *Id.* at 28, n.11.

[4] *Children's Hosp. of Oakland*, 364 NLRB at 1678, quoting *Children's Hosp. & Rsch. Ctr. of Oakland, Inc. v. N.L.R.B.*, 793 F.3d 56, 58–59 (D.C. Cir. 2015); See also, *Loc. 888, Am. Fed'n of Gov't Emps.*, 323 NLRB 717, 721 (1997), quoting *Arizona Portland Cement Co., A Div. of California Portland Cement Co., A Div. of Calmag & Loc. 296, Indep. Workers of N. Am.*, 302 NLRB 36, 36 (1991).

[5] In Maine, by statute, if a CBA expires prior to the parties' agreement on a new contract, the grievance arbitration provisions of the expired contract remain in effect until the parties execute a new contract. See e.g., 26 M.R.S. § 979-R(2). In *National Correctional Employees Union (NCEU) v. York County*, the Board held that, despite a change in bargaining representatives and until a new agreement becomes effective, an employer is obligated to process grievances with the new union pursuant to the grievance procedure contained in the expired CBA it had with the decertified union. No. 11-07 (May 17, 2011), slip op. at 13-14. Although the statutes and Board precedent are clear that grievance arbitration rights survive the expiration of a contract, neither authority directly addresses the question of how those rights survive when a decertification precedes expiration of the contract or, more saliently for present purposes, whether or to what degree the prior union retains any rights or obligations to enforce the grievance arbitration provisions. It is beyond the scope of the instant case to attempt to resolve any lingering ambiguity on these points, or to address any potential divergence with federal law, as the case can be decided without doing so.

[6] It should be noted that bargaining unit employees do have the right to present grievances to the employer directly, provided the grievance is not resolved in a way inconsistent with the terms of the collective bargaining agreement and the union has been given a reasonable opportunity to be present at any meeting of the parties called for the resolution of such grievances. 26 M.R.S. § 979-F(2)(E)

[7] Again, the Board does not address application of the duty of fair representation in cases of employee retirement. See note 2, supra.