STATE OF MAINE

MAINE LABOR RELATIONS BOARD
Case No. 25-PPC-13
Issued: February 20, 2026

SACO EDUCATION ASSOCIATION, Complainant, v. SACO BOARD OF EDUCATION, Respondent.	DECISION AND ORDER

I. Statement of the Case

The Saco Education Association (Union) filed this prohibited practice complaint against the Saco Board of Education (School Board) alleging the School Board violated the Municipal Public Employees Labor Relations Law (Act) by failing to sufficiently bargain and meet and consult regarding the School Board's decision to subcontract bargaining unit work and the impact of that subcontracting. The Union also claims the School Board violated the Act by unlawfully interfering with, restraining or coercing employees in the exercise of collective bargaining rights.[1]

II. Procedural History

The Union filed its complaint on February 18, 2025, and the School Board filed its answer on March 11, 2025. The Executive Director issued a sufficiency determination on March 18, 2025. Chair Sheila Mayberry, Esq., conducted a prehearing conference on May 20, 2025, and issued a Prehearing Conference Memorandum and Order that same day. The hearing was held at the Board's office in Augusta on June 5, 2025, and October 6, 2025, and was heard by a Board panel made up of Rebekah Smith, Esq., Alternate Chair, Michael Miles, Employer Representative, and James Mackie, Alternate Employee Representative.[2] The Union was represented by Benjamin K. Grant, Esq., and the School Board represented by Tom Trenholm, Esq. The parties were given a full opportunity to examine and cross-examine witnesses, introduce evidence and make their arguments. The parties were also permitted to file post-hearing briefs, which they submitted on November 21, 2025.

III. Findings of Fact

Upon review of the entire record, the Board finds the following. The School Board subcontracted[3] speech therapy services and occupational therapy services for the 2024-2025 school year. A speech therapist who had been subcontracted to cover speech therapy services for an employee that had gone out on maternity leave as of February 2024, during the prior school year, continued covering those services in the new school year in addition to taking on duties to cover for an employee that had resigned. The record is a bit unclear, but an unnamed individual appears to have also been engaged to provide subcontracted speech therapy services on a half-time basis on behalf of the School Board at Thornton Academy[4] starting in the fall of 2024. In addition to the speech therapy services, the School Board also subcontracted that school year for occupational therapy services to cover for an employee who went out on maternity leave. The School Board did not formally give the Union prior notice before subcontracting this bargaining unit work. According to Union witnesses, the School Board's subcontracting had a negative impact on some bargaining unit employees, resulting in increased caseloads, scheduling changes, and the assignment of more difficult students to bargaining unit employees as opposed to subcontracted workers.

In a letter dated September 25, 2024, the Union demanded the School Board cease and desist from subcontracting bargaining unit member work and demanded to impact bargain regarding changes in working conditions for Speech and Language Pathologists.[5] Although the Union was aware of subcontracting for speech therapy services at the time of the letter, the Union was not aware of the subcontracting for occupational therapy services for the school year until the day after the letter, September 26, 2024. On September 30, 2024, the School Board responded to the Union's letter, denying it had made any change in past practice by subcontracting but agreeing to meet and discuss the issue with the Union. The Union met with the full School Board on November 13, 2024. At the meeting, the Union and bargaining unit employees presented their concerns regarding subcontracting, and the resulting impact on schedules and caseloads, and proposed that the School Board provide affected employees with additional evaluation or preparatory time in their schedules.

In a letter dated December 3, 2024, the School Board followed up with the Union regarding the November meeting. The letter noted at the outset that the School Board had been subcontracting,[6] and specifically doing so for speech therapy and other special education services, for many years. It explained its need to be able to continue subcontracting, including meeting legal obligations, students' best interests, the need to provide services and difficulty hiring employees. The letter also communicated that after reviewing the information provided at the meeting, reviewing employee schedules and caseloads, and discussing with administration staff, the School Board had found that employees' caseloads, planning time and scheduling were all consistent with the requirements outlined in the collective bargaining agreement and were consistent with the nature of the special education department's need to "balance workload, support specific student needs, and respond to the logistics of travel between buildings." In its letter the School Board rejected the Union's proposal to provide certain bargaining unit employees with additional evaluation and preparatory time within their schedules based on this finding and out of a concern of fairness to the other bargaining unit members. The letter also noted that the

School Board would take action to address employees' concerns by directing building administrators to find ways to support special education employees with shifting caseloads and supporting their unique needs regarding student evaluations. The letter ended with the sentence: "By engaging in this process, the Board has complied with its statutory obligation to meet and consult with the Association, and to engage in impact bargaining regarding changes to mandatory subjects of bargaining."[7]

The School Board has a documented history of regularly subcontracting bargaining unit work, including speech therapy services and occupational therapy services, since at least 2009. Bargaining unit employees were well-aware of the practice; for example, an employee testified to having worked with a particular subcontracted worker for approximately five years. The Union itself had also been aware of the School Board's subcontracting of bargaining unit work prior to the fall of 2024. During the 2021-2022 school year, a Union official requested, and received, information from the Superintendent regarding the School Board's subcontracting of bargaining unit work, which included information about subcontracted speech therapy services. Based on its concerns with the School Board's subcontracting of psychology services, the Union negotiated to have psychologists removed from the description of the bargaining unit in the parties' subsequent collective bargaining agreement. The parties' most recent collective bargaining agreement was effective as of September 1, 2023, and continues until August 31, 2026. It makes no mention of subcontracting.

IV. Analysis

At all times relevant, the Union was a bargaining agent within the meaning of 26 M.R.S. § 962(2) for employees providing speech therapy and occupational therapy services[8] and the School Board was a public employer within the meaning of 26 M.R.S. § 962(7). The Board's jurisdiction to hear this case and to issue a decision and order derives from 26 M.R.S. § 968(5).

The School Board, its representatives and agents are prohibited from "[r]efusing to bargain collectively with the bargaining agent of its employees as required by section 965." 26 M.R.S. § 964(1)(E). Section 965 of the Act requires employers and unions[9] to collectively bargain over mandatory subjects of bargaining, that is, wages, hours, working conditions and contract grievance arbitration. 26 M.R.S. § 965(1)(C). For public employers of teachers, like the School Board, the obligation to bargain does not include subjects that are considered "educational policies."[10] *Id.*

Regarding the Act's distinction between matters of educational policy and matters that are working conditions subject to mandatory bargaining, the Maine Law Court has found "the legislature deemed 'educational policies' to involve value choices so fundamental that binding decisions concerning them should be made essentially unilaterally and by persons directly responsible to the people." *SAD No. 58 v. Mount Abram Teachers Ass'n*, 1997 ME 219 ¶5, 704 A.2d 349, 352, quoting *City of Biddeford Bd. of Educ. v. Biddeford Teachers Ass'n*, 304 A.2d 387, 414 (Me.1973) (Wernick, J., concurring in part and dissenting in part) (*Biddeford)*. The Board and the Maine Courts have defined the scope of educational policies over many years of decisions, and found it to include such subjects as teaching loads and caseloads, *Westbrook School Department*, No. 18-18, slip op. at 10-11 (May 30, 2018), citing *Biddeford*, 304 A.2d 387 at 420

(Me. 1973); *Mt. Abram Teachers Ass'n v. MSAD No. 58*, No. 15-09, slip op. at 17 (July 29, 2015); scheduling and assignment of duties during the school day while students are present, see *Westbrook School Department*, No. 18-18 at 12, citing *MSAD No. 43 Teachers Ass'n. v. MSAD No. 43 Board of Dir.*, No. 76-36, 39, 45, 47, slip op. at 14 (August 24, 1979), modified on other grounds, *sub nom*, by CV-79-541 (Me. Super. Ct., Ken. Cty., July 8, 1980), aff'd 432 A.2d 395 (Me. 1981); *Oxford Hills Teachers Association v. MSAD No. 17*, No. 88-13, slip op. at 29 (June 16, 1989); and preparation and planning time, *Westbrook School Department*, 18-18, slip op. at 9, citing *Sanford Fed. of Teachers v. Sanford School Comm.*, No. 84-13, slip op. at 5 (March 20, 1984) and *Caribou School Dept. v. Caribou Teachers Ass'n*, No. 76-15, slip op. at 3-4 (Jan. 19, 1977).

A. Failure to Bargain – Unilateral Change

The Union first argues that the School Board failed to collectively bargain by making an unlawful unilateral change when it subcontracted speech therapy and occupational therapy services in the 2024-2025 school year without prior notice to the Union. The elements of an unlawful unilateral change are that an employer's action (1) be unilateral, that is, taken without prior notice to the bargaining agent of the employees involved in order to afford a reasonable opportunity to demand negotiations on the contemplated change, (2) be a change from a well-established practice and (3) involve one or more of the mandatory subjects of bargaining. *Maine State Law Enforcement Ass'n v. Maine Office of State Fire Marshal*, No. 23-PPC-07, slip op. at 4 (December 18, 2023). Without addressing whether the School Board's decision to subcontract is a mandatory subject of bargaining or whether it provided adequate prior notice to the Union, it is clear that the Union's unilateral change claim must fail because the Union has not met its burden to establish the second element of a unilateral change, that the School Board's subcontracting was a change from a well-established practice.

A well-established practice goes beyond just the terms of the collective bargaining agreement and encompasses circumstances which "vary a significant element of the employment relationship for bargaining unit employees from that described in the provisions of the collective bargaining agreement and where the parties, aware of those circumstances, have chosen to ignore them when negotiating and entering into a series of successor agreements." *Coulombe and South Portland Professional Firefighters v. City of South Portland*, No. 86-11, slip op. at 18-19 (Dec. 29, 1986). The Board has subsequently expanded on the concept of a well-established practice for purposes of unilateral change cases:

> The existence of an enforceable past practice may be proven by evidence of the conduct of the parties in dealing with a mandatory subject, which reveals a practice that is long-standing, frequently observed and consistently applied. An enforceable practice may also be proven by evidence of less frequent dealings of the parties respecting a mandatory subject, where the evidence reveals a clear and unmistakable shared expectation of resolving similar cases in the same manner.

Teamsters Union Local 340 v. Town of Camden, No. 94-33, slip op. at 20 (Sept. 7, 1994).

The record clearly supports the School Board's contention that subcontracting bargaining unit work, including speech therapy and occupational therapy services, has been a widespread and continuously implemented practice dating back to at least 2009. Bargaining unit members had been well-aware of the practice for many years, with one witness testifying to having worked with a subcontracted worker for five years. The record suggests that it is highly unlikely that Union representatives over the years had been completely unaware of such a common practice.[11] At the very latest, Union representatives were aware of the School Board's subcontracting as of the 2021-2022 school year. The parties subsequently entered into a collective bargaining agreement, in effect as of September 1, 2023, and throughout the events at issue here. While the Union's knowledge of the School Board's subcontracting of bargaining unit work motivated it to negotiate for the removal of psychologists from the bargaining unit, the collective bargaining agreement simply does not address subcontracting. Given all these circumstances, the Union has not sufficiently supported a claim that the School Board's subcontracting was a change from a well-established practice. To the contrary, the record supports an inference that the parties had a shared expectation that the School Board's subcontracting would continue, which was ignored when entering into a successor agreement. See *Town of Camden*, No. 94-33, slip op. at 20; *City of South Portland*, No. 86-11, slip op. at 18-19. Accordingly, as there was no actionable change, the School Board did not violate its duty to collectively bargain by committing an unlawful unilateral change when it subcontracted bargaining unit member work.

B. Failure to Bargain – Midterm Bargaining

The Union's next argument is that the School Board failed to meet its obligation to collectively bargain in good faith regarding the impact of subcontracting on the working conditions of bargaining unit employees after the Union requested to do so.

A party is obligated under the Act to meet and collectively bargain within 10 days of a request by the other party, and a failure to do so is a per se violation of the duty to collectively bargain. 26 M.R.S. § 965(B); *Augusta Fire Fighters, Local 1650, IAFF v. City of Augusta*, No. 01-09, slip op. at 6 (August 10, 2001), aff'd *City of Augusta v. MLRB*, AP-01-63 (Ken. Cty. Sup. Ct., May 3, 2002). Merely agreeing to meet and discuss in response to a union's request to bargain is not sufficient--the employer must in fact bargain. *AFSCME Council 93, Local 1828-12 v. Penobscot County*, No. 23-PPC-17, slip op. at 4 (August 29, 2024), citing *Saco-Valley Teachers Association v. MSAD #6 Board of Directors*, No. 79-56, slip op. at 3 (August 9, 1979). In order to sufficiently dispatch its duty to collectively bargain, a party must bargain in "good faith." 26 M.R.S. § 965(1)(C). When the Board examines whether a party has bargained in good faith, the Board looks to the totality of the party's conduct and will decide whether the party's actions indicate a "present intention to find a basis for agreement," or put another way, "a sincere desire to reach an agreement." *Penobscot County*, No. 23-PPC-17, slip op. at 3-4, quoting *Town of Orono v. IAFF Local 3106 Orono Firefighters*, No. 11-11, slip op. at 7-8 (August 11, 2011).

School employers and their employees' unions have a continuing obligation to bargain regarding mandatory subjects of bargaining during the term of a collective bargaining agreement unless the

subject at issue is already "covered by" the contract. 26 M.R.S. § 965(B-1); See *Falmouth Bus Drivers, Custodians and Maintenance Workers Ass'n v. Falmouth School Bd.*, 20-PPC-06, slip op. at 7 (January 26, 2021) (discussing the "covered by" standard).[12] As the parties' collective bargaining agreement does not address either the decision to subcontract or the impact of subcontracting, the Union's demand to bargain regarding the impact of the School Board's subcontracting was not precluded by the parties' collective bargaining agreement.

By statute, the obligation to bargain applies to the mandatory subjects of bargaining--wages, hours, working conditions and contract grievance arbitration. 26 M.R.S. § 965(1)(C). The Board and the Maine courts have long found that employers and unions must also negotiate with respect to the impact of an employer's action on these mandatory subjects of bargaining--this is known as impact bargaining. See *Penobscot County*, No. 23-PPC-17, slip op. at 3, citing *SAD 3 Education Association v. RSU 3 Board of Directors et al.*, 2018 ME 29, ¶¶ 17-18, 180 A.3d 125, and *City of Bangor v. Maine Labor Relations Board*, 658 A.2d 669, 671 (Me. 1995). And more specifically, this impact bargaining obligation applies to the impact of an employer's decision to subcontract on bargaining unit employees' wages, hours, working conditions and contract grievance arbitration, including with school employers. See *Teamsters Local Union No. 48 v. Boothbay/Boothbay Harbor Community School District*, No. 86-02, slip op. at 9-10 (March 18, 1986), citing *Bangor School Comm. v. Bangor Education Ass'n.*, 443 A.2d 383, 385 (Me. 1981).

At first blush it would appear that the School Board was obligated to bargain with the Union, upon the Union's request, regarding the impact of the School Board's decision to subcontract on the working conditions of bargaining unit employees. However, the Union in its demand to bargain was not actually seeking to bargain regarding working conditions. Instead, the Union was seeking to bargain regarding subcontracting's impact on employee caseloads, schedules, preparation and planning time and assignment of students, and by doing so was seeking to make changes in these areas, as evidenced by the Union's demand at the November 13, 2024, meeting with the School Board where it specifically proposed that the School Board provide certain bargaining unit employees with additional evaluation and preparatory time within their schedules. As discussed above, these matters are not working conditions, subject to mandatory bargaining obligations, but are instead matters of educational policy. *Westbrook School Department*, No. 18-18, at 9-12; *Mt. Abram Teachers Ass'n,* No. 15-09, at 17; *MSAD No. 17*, No. 88-13, at 29; *Sanford School Comm.*, No. 84-13, at 5; *MSAD No. 43 Teachers Ass'n.*, No. 76-36, 39, 45, 47, at 14; *Caribou School Dept.*, No. 76-15 at 3-4; *Biddeford*, 304 A.2d 387 at 420. To require mandatory bargaining over these matters of educational policy, under the guise of impact bargaining regarding working conditions, would go against the Act's clear design to exempt employers such as the School Board from having to collectively bargain over these subjects. In contrast, an example of the type of impact bargaining regarding working conditions that a union of school employees could demand within the purview of the Act is found in a relatively recent Board case in which a union negotiated potential hiring considerations for employees affected by subcontracting as well as the union's right to bid on the contract. *Falmouth School Bd.*, No. 20-PPC-06.

Because the School Board was not required to engage in the impact bargaining regarding educational policy demanded by the Union, no further inquiry regarding whether the School Board

sufficiently bargained in good faith is necessary. The Union has not met its burden to establish that the School Board violated the Act by refusing to bargain in good faith over mandatory subjects of bargaining, and as such this claim is dismissed. As an aside, it is worth noting that this Board has long encouraged parties to meet after such a 10-day notice to impact bargain, even if the impact at issue may not be immediately clear or the employer has doubts about its duty to meet, in order to further the Act's purpose to "foster harmonious relations between public employers and their employees." *City of Augusta*, No. 01-09, slip op. at 10, quoting *East Millinocket Teachers Ass'n v. East Millinocket School Comm.*, No. 79-24, slip op. at 5 (April 9, 1979). It is also a "safer and wiser" course of action given that a refusal to meet when required, even if based on a good faith mistake, is a prohibited practice. *Id.*

The Union makes a passing argument, for the first time in its brief, that the School Board also failed to bargain because it did not meet with the Union in a timely manner. It is clear from the record that the Union's request to bargain was tendered on September 25, 2024, and the parties did not meet until November 13, 2024--a span well beyond the 10-day requirement. See 26 M.R.S. § 965(B). What is not sufficiently supported by the record is that this delay was due to a unilateral decision of the School Board as opposed to by agreement of the parties. As such, to the extent the issue of the timeliness of the November 13, 2024, meeting is properly before the Board for decision, this claim is dismissed. See *Granite City Employees Ass'n v. City of Hallowell*, No. 05-02, slip op. at 6 (Feb. 16, 2005) (Assuming a delay between a request to bargain and the actual bargaining session that exceeded 10 days was by consent of the parties, absent pleading and evidence to the contrary.).

C. Failure to Meet and Consult

Although employers of teachers are exempted from mandatory bargaining obligations with respect to educational policies, such employers are obligated to "meet and consult" with respect to changes to educational policies. 26 M.R.S. § 965(1)(C). The Board has explained that the purpose of the meet and consult process "is to ensure that the School Board, representing the interests of the citizens, has the authority to make educational policy, with an opportunity for input from the teachers prior to its implementation." *Westbrook School Department*, No. 18-18, slip op. at 8, quoting *Mt. Abram Teachers Ass'n*, No. 15-09, slip op. at 22. Based primarily on a prior Board case, as of 2021 the Maine Legislature codified the specific meet and consult requirements into the Act. 26 M.R.S. § 965(1-A); L.D. 52, Summary (130th Legis. 2021); see *Southern Aroostook Teachers Ass'n v. Southern Aroostook Community School Comm.*, Nos. 80-35 and 80-40 (April 14, 1982).

When a school employer proposes making a change to educational policy, the employer must give written notice of the proposed change to the employees' bargaining agent in order to allow it to initiate the meet and consult process, if the employer does not initiate the process itself. 26 M.R.S. § 965(1-A)(A). The employer must also provide information necessary for the bargaining agent and the employees to understand the planned change and make suggestions or express concerns about the planned change. *Id.* at § 965(1-A)(B). Once the process has been initiated, the employer and the bargaining agent must meet and consult at reasonable times and places about the planned change and must do so openly, honestly and in good faith. *Id.* at § 965(1-A)(C). The

employer must give full and fair consideration to the employees' suggestions and concerns before the change in educational policy is implemented, and the employer must decide in good faith whether the employees' suggestions or concerns can be accommodated. *Id.* at § 965(1-A)(D). In addition to codifying the meet and consult elements outlined in the prior Board case, the Act also provides that the "bargaining agent may initiate the meet and consult process by notifying the public employer of teachers when an existing educational policy of the public employer is changed by practice or if the written notice required under paragraph A is inadvertently omitted." *Id.* at § 965(1-A)(E). A failure to meet and consult pursuant to the statutory requirements can be considered a failure to collectively bargain prohibited practice. See *Mt. Abrams Teachers Ass'n*, No. 15-09, slip op. at 18.

Although the Union's complaint included a claim that the School Board violated the meet and consult requirements, its post-hearing brief only addresses the School Board's alleged failure to bargain regarding the decision to subcontract and its impact, and it does not put forward any argument regarding the alleged failure of the School Board to comply with its meet and consult obligations. Under similar circumstances, the Board has held such claims to be waived. See *MSEA v. York County*, No. 04-04, slip op. at 31 (Oct. 8, 2004). Putting aside the issue of waiver, it is clear from the record that the School Board substantially complied with the meet and consult obligations.

The record sufficiently supports that the parties met and consulted openly, honestly and in good faith, and that the School Board sufficiently considered employees' suggestions and concerns and decided in good faith whether those suggestions and concerns could be accommodated. The School Board issued a timely and comprehensive letter after the parties' November 13, 2024, meeting, as described more fully above, explaining its position in detail and why it could not accommodate the Union's specific request that certain bargaining unit employees be provided with additional evaluation and preparatory time within their schedules. The School Board's letter also described an alternative action that it would take to address employees' concerns.

The meet and consult statutory scheme generally requires that the employer first give notice of a proposed change in educational policy and must satisfy the meet and consult process, if invoked, prior to implementation. 26 M.R.S. § 965(1-A)(A) and (D). The School Board never gave the Union this notice, likely due to its view, as described in its post-meeting December 3, 2024, letter, that it had not actually made any changes in educational policy.[13] The statute seems to contemplate such a situation by providing an alternate route to initiating the meet and consult process at the initiative of the union "when an existing educational policy of the public employer is changed by practice or if the written notice … is inadvertently omitted." 26 M.R.S. § 965(1-A)(E). The record does not establish that the Union demanded to meet and consult with the School Board, only that it demanded to impact bargain. The School Board seems to have treated the Union's request as one to both bargain and meet and consult, but there is no documentary evidence or testimony in the record establishing that the Union requested to meet and consult regarding changes to educational policy. There is Board precedent allowing a demand to impact bargain to also serve as a notice to meet and consult, though this was issued prior to the meet and consult requirements being specifically codified in statute. See *Saco Valley Teachers Association v. M.S.A.D. No. 6 Board of Directors*, Nos. 85-07 and 85-09, slip op. at 15 (Mar. 14, 1985).

Given the other issues with the Union's meet and consult claim--waiver and that the School Board substantially complied with the meet and consult obligations--it is not necessary to address whether a specific notice to meet and consult is necessarily required to trigger the process. Suffice to say that it is, at the very least, highly advisable for a party requesting to meet and consult to do so clearly in its written notice. To the extent that the School Board's alleged meet and consult violation is a live issue, the Union has not carried its burden to establish a violation and the claim is dismissed.

D. Unlawful Interference

The Act prohibits an employer from "interfering with, restraining or coercing employees" in the exercise of protected activity. 26 M.R.S. § 964(1)(A). A bargaining agent violates this prohibition 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." *MSAD 51 Education Association v. MSAD 51 Board of Directors*, No. 24-PPC-06, slip op. at 12 (December 2, 2024), quoting *Duff v. Town of Houlton*, No. 97-20, slip op. at 21 (Oct. 19, 1999). This is an objective standard and "does not depend upon the employer's motive or success." *Id.*, quoting *Duff*, No. 97-20 at 21. Another way of stating the standard is whether a reasonable employee would be deterred from participating in union activities, or otherwise asserting that employee's rights under the Act, based on the employer's actions. *Id.*, citing *Fraternal Order of Police v. York County*, Nos. 18-10 & 19-02, slip op. at 34 (July 24, 2019). A claim of unlawful interference, restraint or coercion can be either derivative, that is, based on conduct that violates another collective bargaining law, or independent. *Id.*

The Union has not argued, nor adduced compelling evidence, that the School Board's conduct was such that it could have reasonably chilled bargaining unit employees' exercise of protected activity. Thus, there is no independent violation of the prohibition on interference, restraint or coercion. Likewise, as the Board finds the Union's underlying claims to be without merit, there is no viable claim for a dependent violation. *Id.* As such, the Union's claim of unlawful interference, restraint or coercion in violation of 26 M.R.S. § 964(1)(A) is dismissed.

V. Conclusion

The Union has not sufficiently established that the School Board's subcontracting was a departure from the parties' well-established past practice such as to constitute an unlawful unilateral change. As the Union sought to negotiate regarding the subcontracting's impact on educational policies, as opposed to impact on working conditions or another mandatory subject of bargaining, the School Board was not obligated to engage in impact bargaining. The Union has also not carried its burden to prove that the School Board failed to comply with the meet and consult process. Accordingly, the Union's claims that the School Board refused to collectively bargain in violation of 26 M.R.S. § 964(1)(E) are dismissed. The Union's claim that the School Board's conduct was unlawful interference, restraint or coercion in violation of 26 M.R.S. § 964(1)(A) is also dismissed, because of the dismissal of the underlying failure to bargain claims and that the School Board's conduct could not have reasonably chilled bargaining unit employees' protected activity.

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. § 968(5), it is ORDERED that the complaint in Case No. 25-PPC-13 be, and hereby is, DISMISSED.

Dated this day, February 20, 2026.

MAINE LABOR RELATIONS BOARD

/s/
Rebekah Smith, Esq.
Alternate Chair

/s/
Michael Miles
Employer Representative

/s/
James Mackie
Alternate Employee Representative

The parties are advised of their right pursuant to 26 M.R.S. § 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 80C of the Maine Rules of Civil Procedure.

[1] The Union's complaint also included allegations regarding the School Board making changes to compensation for certain bargaining unit positions and reducing the number of certain bargaining unit positions, but these claims were not addressed in the Union's post-hearing brief or sufficiently developed at hearing and the Board accordingly deems them waived. See *MSEA v. York County*, No. 04-04, slip op. at 31 (Oct. 8, 2004).

[2] The Board's Employee Representative member, Roberta de Araujo, Esq., attended the first day of the hearing but was subsequently replaced on the panel by Alternate Employee Representative James Mackie, who participated in the second day of hearing and in the issuance of this decision. Mr. Mackie was provided, and thoroughly reviewed, the transcript of the first day of hearing, which he was not present for, as well as the rest of the record, before rendering his decision.

[3] The School Board takes issue with the characterization of its hiring of outside individuals, or outside agencies to provide individuals, to perform bargaining unit work on a contract basis as "subcontracting." Instead, it claims that its practice is "temporary subcontracting." It draws the distinction in service of an argument that while subcontracting may sometimes be a mandatory subject of bargaining, the "temporary subcontracting" engaged in by the School Board is not subject to mandatory bargaining. As it is not necessary to this decision to determine whether an employer's decision to subcontract is always a mandatory subject of bargaining, the distinction loses any utility and the Board will instead use the term "subcontracting" in this decision as it is commonly known and used.

[4] The School Board has an agreement with Thornton Academy, an independent private school, to provide high school education to its students.

[5] While the actual letter is not in evidence, the parties agree to this framing.

[6] Again, the School Board mostly avoids use of the term "subcontracting," referring to the practice in its letter as "utilizing contracted providers."

[7] On January 16, 2025, the Union again demanded to bargain regarding the impact of subcontracting on working conditions for Speech and Language Pathologists. The parties met again on February 12, 2025, but the meeting resulted in no agreement.

[8] In prehearing filings, the School Board had initially challenged whether employees providing speech therapy and occupational therapy services were included in the bargaining unit represented by the Union. Although the Union puts forward an argument rebutting this assertion in its post-hearing brief, the School Board does not raise it again in its brief. The Board finds that these employees are included within the relevant bargaining unit.

[9] The terms "bargaining agent" and "union" are used interchangeably in this decision.

[10] While these parties are in fact generally forbidden from negotiating with respect to educational policy matters, educational policies related to preparation and planning time and transfer of teachers are permissive subjects of negotiation. 26 M.R.S. § 965(1)(C).

[11] A former local Union president provided hearsay testimony at the hearing that her predecessor, who had served from approximately 2015-2021, told her that she hadn't been aware of the practice. The Board does not give this testimony much weight and does not find it particularly compelling.

[12] For most employers and unions under Maine's collective bargaining laws, the obligation to meet and bargain within 10 days of a request to do so only applies "as long as the parties have not otherwise agreed in a prior written contract." See e.g., 26 M.R.S. § 965(1)(B). This agreement can come in the form of an explicit waiver of midterm bargaining rights, commonly found in a

"zipper clause" in the parties' collective bargaining agreement, or when the subject at issue is sufficiently "covered by" the contract. The Board in *Falmouth Bus Drivers, Custodians and Maintenance Workers Ass'n v. Falmouth School Bd.* discusses these different ways of precluding midterm bargaining. 20-PPC-06, slip op. at 6-7 (January 26, 2021). Subsequent to that case, the Maine Legislature amended the Act to specify that, for employers that are school administrative units, "explicit waivers of collective bargaining over wages, hours, working conditions and contract grievance arbitration in a prior written contract may not be enforced for purposes of this paragraph." 26 M.R.S. § 965(1)(B-1). In other words, explicit zipper clause type waivers of bargaining rights with such employers are no longer effective to prevent midterm bargaining obligations.

[13] The Board need not opine on whether there was in fact a sufficient change in educational policy to trigger the meet and consult requirements.