

employees were in the process of representing themselves, through private attorneys, in grievances they had filed against the employer. The prior union, the Teamsters, planned to also represent these employees in these grievances. Upon learning of the Teamsters' decertification, the County postponed previously scheduled hearings regarding those grievances and submitted this interpretive ruling request.

III. Jurisdiction

The Board's authority to make an interpretive ruling is established in statute and in the Board's procedural rules. 26 M.R.S. § 968(3); MLRB Rules, Ch.12, § 41. Interpretive rulings are appropriate when 1) 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, 2) the underlying facts are not in dispute and 3) the petition is not being used in place of existing remedies. MLRB Rules, Ch.12, § 41. The issues presented to the Board for an interpretive ruling fit within these guidelines.⁴

IV. Discussion

Before delving into the issue at hand, it would be helpful to review some foundational concepts underlying Maine's collective bargaining laws. The stated purpose of these laws is to "promote the improvement of the relationship between public employers and their employees by providing a uniform basis for recognizing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment." *E.g.*, 26 M.R.S. § 961 (emphasis added). Another concept undergirding these laws is that of exclusive representation, with the statutes providing for example that "[t]he bargaining agent certified as representing a bargaining unit must be recognized by the public employer as the sole and exclusive bargaining agent for all of the employees in the bargaining unit unless and until a decertification election by secret ballot is held and the bargaining agent declared by the executive director of the board as not representing a majority of the unit," and "[t]he bargaining agent certified by the executive director of the board as the exclusive bargaining agent shall represent all the public employees within the unit..." *E.g.*, 26 M.R.S. § 967 (emphasis added). A bargaining agent's right to exclusive representation of the bargaining unit imparts on the employer not only the positive duty to deal solely with the certified bargaining agent with respect to collective bargaining matters concerning unit employees, but also imposes "the negative duty to treat with no other." *Trask v. Town of Madison*, No. [16-06](#), slip op. at 5 (April 20, 2016), quoting *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 683-84 (1944). These principles will guide the Board's analysis.

The duty of fair representation is a bargaining agent's duty to represent all of the bargaining unit employees it has been certified to represent fairly, without acting in a way that could be considered arbitrary, discriminatory or in bad faith. *Knapp v. MSEA, SEIU LOCAL 1989*, No. [24-PPC-02](#), slip op. at 5 (July 2, 2024); *E.g.*, 26 M.R.S. § 967(2). A failure to meet this duty is a prohibited practice under Maine's collective bargaining laws. *Knapp*, No. [24-PPC-02](#), slip op. at 5; *E.g.*, 26 M.R.S. § 964(2)(A). It is by virtue of a bargaining representative's exclusive authority to represent the employees of a bargaining unit that the bargaining agent's corresponding duty of fair representation arises. *Maine State Law Enforcement Association, and Maine Service Employees Association, SEIU Local 1989, and State of Maine*, No. [25-IR-02](#), slip op. at 2 (August 13, 2025) (*MSLEA*); *Trask v. Fraternal Order of Police*, [2018 ME 130](#), ¶ 2, 194 A.3d 46, *as revised* (Oct. 23, 2018), citing *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 76 (1991); *Collier v. Penobscot Bay Teachers Ass'n*, No. [92-30](#), slip op. at 12 (Sept. 25, 1992), *aff'd*, No. [CV-92-478](#) (Me. Super. Ct., Ken. Cty., Apr. 10, 1993) ("The Municipal Public Employees Labor Relations Law (MPELRL) grants to a certified agent the exclusive right to bargain for unit employees. Because employees' individual negotiating rights are eclipsed by those of the majority representative, a correlative duty of fair representation applies."); *E.g.*, 26 M.R.S. § 967.

The duty applies when a bargaining agent is acting in its representational capacity on behalf of the employees in the bargaining unit, such as when negotiating a collective bargaining agreement, administering the bargaining agreement and processing employee grievances. *MSLEA*, No. [25-IR-02](#) at 2, citing *Jordan v. AFSCME, Council 93, AFL-CIO*, No. [07-15](#), slip op. at 17 (June 13, 2008). In the case at hand, then, it follows that determining which bargaining agent has the authority to represent the bargaining unit employees is also determinative of which bargaining agent is properly charged with the duty of fair representation with respect to the employees of that bargaining unit.

A. Pre-arbitral Grievance Procedure

Based on prior Board and Law Court precedent, it is clear that in the pre-arbitral stages of the grievance process a successor union has both the exclusive authority and representational duty to enforce the contract grievance provisions of an expired contract. In *National Correctional Employees Union v. York County*, the Board analyzed whether the grievance arbitration provision set forth in an expired contract between the employer and a decertified union survived that decertification and could be enforced by the successor union. No. [11-07](#) (May 17, 2011) (*NCEU*). The Board in its analysis split the mandatory subject of bargaining, contract grievance arbitration, into two distinct pieces: 1) the pre-arbitration grievance procedure generally, and 2) the agreement to submit grievances to arbitration. *Id.* at 10. This division was a recognition of the Law Court's previous holdings limiting application of the status quo doctrine with respect to the right to invoke arbitration. *Id.* at 10-12. The status quo doctrine is based on the statutory duty of parties to collectively bargain with respect to the mandatory subjects of bargaining--"wages, hours, working conditions and contract grievance arbitration"--and to avoid making unilateral changes with respect to these subjects. *E.g.*, 26 M.R.S. § 965(1)(C); *City of Augusta v. Maine Lab. Rels. Bd.*, [2013 ME 63](#), ¶ 16, 70 A.3d 268. In the case of an expired collective bargaining agreement, while the contract itself may cease to be in effect, the terms of that contract serve as evidence of the status quo that the employer must maintain until the parties either ratify a new collective bargaining agreement or their negotiations reach the point of bona fide impasse.⁵ *NCEU*, No. [11-07](#) at 9; *City of Augusta*, [2013 ME 63](#), ¶ 16, 70 A.3d 268. The status quo obligation continues regardless of whether the contract expires by its terms or due to the certification of a new bargaining agent. See *NCEU*, No. [11-07](#) at 10.

In the *Portland Water District and Bureau of Employee Relations* cases, the Law Court limited application of the status quo doctrine, holding that even though collective bargaining law may extend the status quo obligations to arbitration rights provided for in an expired contract, contract law, and specifically Maine's Uniform Arbitration Act, did not allow the extension of arbitration rights when those rights are based on an expired contract and do not involve conduct occurring, or rights vesting, prior to the contract's expiration date. *Teamsters Union Local No. 340 and Ralph Dobson v. Portland Water District*, [651 A.2d 339](#), 341-342 (Me. 1994) (*Portland Water District*);⁶ *MSEA v. Bureau of Employee Relations*, [652 A.2d 654](#), 655 (Me. 1995) (*Bureau of Employee Relations*). With this background, the Board in *NCEU* found that at least the pre-arbitration procedure laid out in the expired contract continued vis-a-vis the successor union as part of employer's obligation to maintain the status quo. *NCEU*, No. [11-07](#) at 14.

Applying this Board precedent to the issue at hand, the grievance procedure established in the expired contract continues as proof of the status quo that must be maintained, and OCSOA, as the successor union and exclusive representative of the employees' bargaining unit, bears the duty of fair representation with respect to all the employees in the bargaining unit it represents, at least at the pre-arbitral stages of the grievance process.⁷ *NCEU*, No. [11-07](#) at 13-14.

B. Grievance Arbitration

As to the application of the arbitration rights in the grievance arbitration provisions of the prior contract, the Board in *NCEU* was more circumspect regarding which union carried the authority and duty of representation. It found that the arbitration rights continued pursuant to the statutes enacted subsequent to the *Portland Water District and Bureau of Employee Relations* Law Court decisions discussed above (extending the grievance arbitration provisions of an expired collective bargaining agreement).⁸ *Id.* at 14, citing 26 M.R.S. § 964-A. The Board did not, however, decide which of the two unions, the prior union or the successor union, the employer was obligated to arbitrate with. *NCEU*, No. [11-07](#) at 14. The Board ended its decision by directing the parties to confer and attempt to resolve the issue on their own, holding the case in abeyance unless the parties failed to reach agreement and the union petitioned the Board to proceed with the case. *Id.* The parties presumably did come to an agreement, and this Interim Decision remained the Board's last word on the issue. While the circumstances surrounding the present request for an interpretive ruling involves the pre-arbitral phase of the parties' grievance process, providing a full answer to the question posed necessarily requires the Board to address the respective rights and obligations of the two unions at the arbitration level, as a matter of first impression.

As the agency charged with the enforcement of Maine's collective bargaining laws, the Board is empowered to construe their meaning. *State v. Maine Labor Relations Board*, [413 A.2d 510](#), 514 (Me. 1980). In matters of statutory interpretation, the Board and the Maine courts often look to guidance from decisions interpreting parallel federal laws, such as decisions by the National Labor Relations Board ("NLRB") and federal courts applying the National Labor Relations Act ("NLRA"). See *University of Maine Graduate Workers Union, UAW v. University of Maine System*, [No. 24-PPC-15](#), slip op. at 7 (February 26, 2025), quoting *Baker Bus Service v. Keith*, [428 A.2d 55](#), 56, n.3 (Me. 1981). Indeed, the Board has specifically noted that the duty of fair representation under Maine's collective bargaining laws is comparable to the duty of fair representation under the NLRA. *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).

The most recent and on-point ruling of the NLRB is found in the *Children's Hospital* case. *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 (2016) (*Children's Hospital*). The underlying facts in that case involved a decertified union, Union 1, that had requested grievance arbitration for three pending grievances with the employer for conduct that arose under the expired collective bargaining agreement between the employer and Union 1. The employer refused to arbitrate with the prior union, Union 1, because a new successor union, Union 2, was the current certified exclusive bargaining agent for the bargaining unit. Union 1 then filed an unfair labor practice complaint with the NLRB against the employer for a failure to bargain and unlawful interference. The NLRB ruled that the employer was obligated to arbitrate the grievances with the decertified union. *Children's Hosp. & Rsch. Ctr. of Oakland d/b/a Children's Hosp. of Oakland & Serv. Emps. Int'l Union, United Healthcare Workers-W.*, 360 NLRB 426 (2014). On appeal, the U.S. Court of Appeals for the D.C. Circuit remanded the case back to the NLRB to better explain its decision, particularly in light of the current union's right to exclusive representation under Section 9(a) of the NLRA. *Children's Hosp. & Rsch. Ctr. of Oakland, Inc. v. N.L.R.B.*, 793 F.3d 56 (D.C. Cir. 2015). Section 9(a) of the NLRA provides, similarly to Maine's collective bargaining laws, that "[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit . . . shall be the exclusive representatives of all employees in such unit." 29 U.S.C. § 159(a).

The NLRB on remand reaffirmed its prior decision that the employer had a continuing duty to arbitrate grievances that arose during its collective bargaining relationship with the now-decertified union, even in light of the NLRA's design providing for exclusive representation. *Children's Hospital*, 364 NLRB 1677 (2016). In

explaining its ruling, the NLRB started with the proposition that under federal law an employer's obligation to arbitrate may arise only by contract, so only the prior decertified union, Union 1, was able to enforce the arbitration agreement from the expired collective bargaining agreement, as it was the only union party to the contract. *Id.* at 1679; *Arizona Portland Cement Co.*, 302 NLRB 36, 37 (1991); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960); *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 201 (1991). To find that the employer was not obligated to arbitrate with the prior union in these situations, in the NLRB's reasoning, would leave the employees no other way to enforce their contractual rights to arbitrate issues arising under the old contract. *Children's Hospital*, 364 NLRB at 1679.

The NLRB cited several other policy reasons for requiring the employer to arbitrate with the decertified union, one being that allowing the prior union to arbitrate would advance the policy of favoring arbitration as a way to resolve differences and achieve industrial peace, an option that would otherwise not be available. *Id.* at 1680. The NLRB also found, somewhat counterintuitively, that such a rule does not undermine the right of employees under the NLRA to choose their representative or the principle that a union serves as the bargaining unit's exclusive representative. The right of employees to choose their bargaining agent was not implicated, according to the NLRB, because the employees *had* chosen the prior union to enforce their rights under the prior contract, and, if a decertified union were not able to invoke arbitration, employees may be deterred from ever choosing a new union. *Id.* at 1680 (citing Section 7 of the NLRA, 29 U.S.C. § 157, which grants employees the right to "bargain collectively through representatives of their own choosing"). The NLRB found that this rule also did not conflict with the NLRA's principle of a union's exclusive representation because 1) the prior union would just be enforcing its old contract, not negotiating for new terms, and 2) under federal precedent, the new union would have no authority to represent employees at all in arbitration regarding the old contract, much less exclusively. *Id.* at 1681.

While the NLRB's approach in applying federal law to a similar situation is worth noting, it is ultimately not helpful in resolving the present matter because of a significant difference in Maine law. *Maine Employees United v. City of Saco*, No. [11-02](#), slip op. at 10 (March 29, 2011) (Finding it would be "inappropriate" to be guided by the decisions of the NLRB and federal courts when interpreting Maine statutes that are not similar to those in the NLRA); *Town of Kittery and Teamsters Local Union No. 48*, No. [83-A-02](#), slip op. at 2 (Feb. 7, 1983) (*Town of Kittery*) (Finding the NLRB and federal court decisions to be "unhelpful" when faced with interpretation of a unique aspect of Maine law). This difference is found in Maine's grievance arbitration continuation statutes, found in each of its four collective bargaining acts governing the labor relations of State and local government and public higher educational institutions, with no parallel to be found in the NLRA. 26 M.R.S. §§ 964-A, 979-R, 1036, 1284-A. For example, the municipal act provides that:

"If a contract between a public employer and a bargaining agent ... 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. ..."

26 M.R.S. § 964-A(2) (emphasis added)

The application of Maine's grievance arbitration continuation statutes to the situation involving an expired collective bargaining agreement and a successor union is essentially one of first impression, requiring the Board to engage in statutory construction. This task involves the Board specifically interpreting the meaning of "parties" in the phrase "until the parties execute a new contract." See, e.g., 26 M.R.S. § 964-A(2). If the term is to be read narrowly, it could be seen as limiting the statute's application to only those instances where there is an expired contract with grievance arbitration provisions and the union that negotiated that contract is still

representing the bargaining unit. Read broadly, “parties” could mean the parties to the collective bargaining relationship, i.e., the employer and whichever bargaining agent currently represents the bargaining unit.

In determining the meaning of this statute, it makes sense to proceed by applying the canons of statutory construction deployed by the Law Court. This is particularly so given that, despite the great deference the courts afford the Board’s interpretations of the statutes it administers within its special zone of jurisdiction,⁹ any judicial review will inevitably apply some degree of similar analysis. The Maine courts in interpreting statutes first look to “the plain language of the statute to determine its meaning if [they] can do so while avoiding absurd, illogical, or inconsistent results.” *State v. Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96, quoting *State v. Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011 (*Marquis*). In looking to the plain meaning of a statute, courts will consider it in the context of “the entire statutory scheme.” *Conservation L. Found. v. Pub. Utilities Comm’n*, 2018 ME 120, ¶ 7, 192 A.3d 596, 599. If after applying such a reading the statute is still ambiguous, that is, “reasonably susceptible to different interpretations,” the courts look to other indications of the Legislature’s intent behind the statute, including legislative history. *Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96, quoting *State v. Legassie*, 2017 ME 202, ¶ 13, 171 A.3d 589.

Read strictly and literally, the plain language of the grievance arbitration continuation statutes would seem to extend the grievance arbitration provisions of an expired contract until the precise parties, the employer and the bargaining agent who signed the original contract, execute a new contract. Such a literal interpretation is not persuasive, however, given the absurd outcome that it would generate. *Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96; *Powers McGuire v. University of Maine System*, No. [93-37](#), slip op. at 16 (April 4, 1994), aff’d, No. [CV-94-153](#) (Me. Super. Ct., Ken. Cty., Oct. 11, 1994) (“[T]his provision cannot be taken literally, but rather should be interpreted so as not to produce an absurd result”); *MSAD 43 Board of Directors v. MSAD 43 Teachers Ass’n*, Nos. [79-36](#), 79-39, 79-45, 79-47, slip op. at 8 (August 24, 1979), modified on other grounds by *MSAD 43 Teachers Ass’n v. MSAD 43 Board of Directors and MLRB*, [CV-79-541](#), aff’d [432 A2d 395](#) (Me. 1981) (“The legislature would not require such a patently absurd result.”). Under such a reading, if a union were to be decertified, then the grievance arbitration provisions in that union’s expired contract¹⁰ with the employer would continue *ad infinitum*, unless and until the unlikely event that the decertified union was to be re-selected by the bargaining unit and enter into another contract with the employer--this despite the desire of both the employer and the bargaining unit, through its new representative, to make any changes to this aspect of the bargaining relationship. This absurd result should be avoided. *Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96; *Powers McGuire*, No. [93-37](#) at 16; *MSAD 43 Board of Directors*, Nos. [79-36](#), 79-39, 79-45, 79-47 at 8.

The literal interpretation of these statutes should also be avoided because it is illogical and inconsistent when read in the context of the entire statutory scheme of Maine’s collective bargaining laws. *Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96; *Town of Kittery*, No. [83-A-02](#) at 5 (The Board rejecting a statutory interpretation that would be inconsistent with other statutory provisions and run contrary to “the plain meaning of the Act”). As discussed above, a fundamental element of Maine’s collective bargaining laws is the right of designated bargaining units of employees to choose a bargaining agent to represent them in collective bargaining with their employer. *E.g.*, 26 M.R.S. § 961. Another core component of these laws is that the bargaining agent so chosen by the bargaining unit will serve as its exclusive representative, and the employer may “treat with no other.” *Trask*, No. [16-06](#) at 5; *E.g.*, 26 M.R.S. § 967. Applying the statute literally would create a conflict with these provisions and undermine the plain meaning of the acts--an outcome not reasonably intended by the Legislature. *Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96; *Town of Kittery*, No. [83-A-02](#) at 5.

While looking to the plain meaning of the statute is sufficient grounds to support a broad interpretation of the term “parties” in the grievance arbitration continuation statutes, the legislative history also supports such a reading. These statutes were originally enacted in 1998, with the relevant statutory language essentially identical

to the modern version.¹¹ P.L. 1997, c. 773; L.D. 1225 (118th Legis. 1998). In remarks on the Senate floor, with respect to the ultimately adopted amendment limiting the early law's application to only grievances concerning disciplinary matters, the parties in the statutes are described as "a public entity on the one hand and a bargaining unit on the other."¹² 2 Legis. Rec. S-1903 (2nd Reg. Sess. 1998). The Summary for the Committee Amendment to the 2005 bill that was eventually passed into law, and which expanded the application of expired grievance arbitration provisions to all matters subject to the status quo obligation, demonstrates a focus on the continuation of arbitration rights until a new contract has been executed, without showing any regard for which particular union happens to currently represent the bargaining unit.¹³ Comm. Amend. A to L.D. 1123, No. H-776, Summary (122nd Legis. 2015). Remarks on the Senate floor regarding the bill similarly demonstrate the Legislature's focus on the right of employees to continue having access to grievance arbitration, with no indication that such a right was intended to be limited to the union that originally negotiated the expired contract or that it not be possible for a successor union to enforce this right.¹⁴ 2 Legis. Rec. S-973 (1st Spec. Sess. 2005).

As the successor union has the authority to invoke grievance arbitration under the collective bargaining laws, it must also have this right on a contractual basis. The Board is charged with applying the collective bargaining laws, but this authority can necessarily also include the duty to determine contractual rights. See *State v. Maine State Emps. Ass'n*, [499 A.2d 1228](#), 1230 (Me. 1985); *Biddeford Teachers Ass'n v. Mayor James Grattelo and Biddeford Bd. of Educ.* No. [96-01](#), slip op. at 20 (June 17, 1996) (While the courts give no deference to Board interpretations of law outside of its special jurisdiction, such interpretations are sometimes necessary in order for the Board to exercise its primary jurisdiction.), rev'd on other grounds, *Biddeford Bd. of Educ. v. Biddeford Teachers Ass'n*, [1997 ME 17](#), 688 A.2d 922 (Me. 1997). The grievance arbitration continuation statutes not only apply to the successor union as an extension of an expired contract's grievance arbitration provisions, but also to the question of substantive arbitrability, that is, the successor union's contractual right to invoke arbitration under Maine's Uniform Arbitration Act. The Law Court's previous distinction between a right to bring arbitration pursuant to the statutory duty to bargain under the collective bargaining laws on the one hand, and the right to bring arbitration pursuant to a contractual right under Maine's Uniform Arbitration Act on the other, is no longer relevant since the enactment of the grievance arbitration continuation statutes. See e.g., *Bureau of Employee Relations*, [652 A.2d](#) at 655 ("Even if the Bureau had a duty to arbitrate imposed by statute or by decision of the Maine Labor Relations Board, that duty would not be a substitute for a valid agreement to arbitrate. Absent such an agreement, the trial court lacked the authority to compel arbitration pursuant to the Uniform Arbitration Act."). By enacting these statutes, it is clear the Legislature intended to remove the limitations imposed by the Law Court's rulings to the enforcement of grievance arbitration provided for in an expired contract.¹⁵ If these provisions are to mean anything, they must also be read to clear any obstacle to enforcement posed by the contractual requirements of Maine's Uniform Arbitration Act. If it were otherwise, the Legislature would have addressed a right that presumably already existed under the collective bargaining laws under the status quo doctrine¹⁶ without also creating the contractual right necessary for its enforcement--in other words, it would have intended to accomplish nothing. In interpreting a statute, it is reasonable to assume that the Legislature enacting it was familiar with relevant judicial rulings. *Bowler v. State*, 2014 ME 157, ¶ 8, 108 A.3d 1257. Accordingly, given the at-the-time recent Law Court rulings in *Portland Water District* and *Bureau of Employee Relations*, the Legislature must have intended for the grievance arbitration continuation statutes to create an exception, for collective bargaining purposes, to allow for the contractual enforcement of arbitration rights originating in an expired contract.¹⁷ To find otherwise would again lead to an impermissibly absurd interpretation, because the statutes only have meaning if they are creating such an exception. See *Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96. It follows, then, that if the grievance arbitration continuation statutes necessarily create a contractual right to enforcement of arbitration rights originally created under an expired collective bargaining agreement, and these statutes must necessarily be read to allow enforcement of arbitration rights by a successor union, then the successor union as the exclusive bargaining agent for the bargaining unit to whose benefit such agreement was made has the right to invoke

grievance arbitration based on the expired arbitration agreement between the employer and the prior union, without any hinderance by Maine’s Uniform Arbitration Act.

This broad application of § 964-A and its ilk also dovetails with a recent ruling of a sister New England state regarding similar circumstances. In *City of Chelsea v. New England Police Benevolent Ass’n, Inc.*, *Loc. 192*, the Massachusetts Supreme Court evaluated whether a successor union could compel an employer to arbitrate based on the grievance arbitration provisions of a collective bargaining agreement entered into by a prior, now decertified union. 491 Mass. 426, 203 N.E.3d 1142 (2023) (*Chelsea*). The Court found that the employer was obligated to arbitrate the grievance with the successor union, holding that despite the prior union having originally entered into the contract, once a successor union is selected it “steps into the shoes of its predecessor” and assumes the right to compel arbitration under the collective bargaining agreement. *Id.* at 1149, quoting *Town of Watertown v. Watertown Mun. Emps. Ass’n*, 63 Mass. App. Ct. 285, 291, 825 N.E.2d 572, 577 (2005), citing *Cincinnati Newspaper Guild, Local 9 v. Cincinnati Enquirer, Inc.*, 863 F.2d 439, 445–446 (6th Cir.1988) (*Cincinnati Newspaper*). One basis for the decision was the Court’s recognition that, while arbitration generally may not be imposed unless agreed to by contract, a collective bargaining agreement “is not an ordinary contract,” as it governs the parties’ labor-management relationship in a highly regulated environment and is intended to promote the peaceful resolution of workplace disputes. *Id.* at 1145-1146, quoting *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 550 (1964). Of additional importance to the Court was that the state’s collective bargaining laws carried a presumption in favor of arbitrability. *Id.* at 1149. The Court was also concerned that to find that the new union did not have the right to compel arbitration would interfere with the right of employees to choose their union under that state’s collective bargaining laws, creating a situation where employees were forced to choose between giving up their grievance arbitration rights or continuing to be represented by a union they did not want. *Id.* at 1149-1150. The Court reasoned that employees should not lose their right to arbitrate grievances just because they exercise their right to choose a new union. *Id.* at 1150. It also found that the right of the new union to compel arbitration was supported by the status quo doctrine, where the employer was bound to continue with grievance arbitration as established in the most recent contract until the parties bargained the issue to the point of impasse. *Id.* at 1150. The Massachusetts Supreme Court explicitly rejected the approach of the NLRB in *Children’s Hospital*, citing to contradictory law in the federal courts, including the U.S. Court of Appeals for the Sixth Circuit, which has held that employees’ right to arbitrate “may not be abrogated by the employer merely because the employees subsequently see fit to change their agent.” *Id.* at 1149 n.4, quoting *Cincinnati Newspaper*, 863 F.2d at 446 (6th Cir. 1988). The Court found that “[t]he NLRB rule would create the awkward situation where the employees vote out a union but must still rely on it for arbitrations,” and that for grievances that arose after the change in representation, “employees would appear to lack any right to arbitrate grievances.” *Id.*

Although *Chelsea* did not rely on a special statutory extension of grievance arbitration rights like Maine’s, the Massachusetts Supreme Court’s reasoning gives further support for the Board’s divergence from the NLRB approach. This is particularly so with respect to the Court’s view of the bargaining agent serving as merely the agent for the employees of the bargaining unit when it negotiates a collective bargaining agreement, and where, when the bargaining unit employees exercise their right to choose a new agent, that new agent should be able to “step into the shoes” of the prior agent, at least for purposes of enforcing a valid arbitration agreement. *Chelsea*, 203 N.E.3d at 1149. That this view has also been supported by several federal courts gives it further credence. *Cincinnati Newspaper*, 863 F.2d at 445 (When a prior union negotiated and signed a collective bargaining agreement, it was acting not as a principal but as the agent of the employees in the bargaining unit.); *Loc. No. 503 of Graphic Commc’ns Conf. of Int’l Bhd. of Teamsters v. Cascades Containerboard Packaging-Lancaster, a division of Cascades, New York, Inc.*, No. 17-CV-6605 (MAT), 2017 WL 6497624, at *3 (W.D.N.Y. Dec. 19, 2017); *Gen. Teamsters Union Loc. No. 439 v. Sunrise Sanitation Servs., Inc.*, No. CIV.S051208WBSJFM, 2006 WL 1153577, at *5 (E.D. Cal. Apr. 28, 2006). Maine’s

collective bargaining laws implicitly recognize this relationship of the union to the bargaining unit, with the statutory phrase “bargaining agent” used throughout. See, e.g., 26 M.R.S. § 962(2).

The *Chelsea* court’s decision was made under a similar legal background to that of Maine’s with respect to the law governing arbitration. While Massachusetts has a separate law governing arbitration in collective bargaining agreements, the requirement of a written agreement appears no different than that required by Maine’s Uniform Arbitration Act, which explicitly includes collective bargaining agreements in the generally applicable law. Compare Mass. Gen. Laws ch. 150C, § 1, with 14 M.R.S. § 5927. As the *Chelsea* court recognized under Massachusetts law, in Maine there is also a presumption in favor of arbitrability, where “a court will find a dispute arbitrable unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute,” and “[d]oubts should be resolved in favor of coverage.” *Cape Elizabeth Sch. Bd. v. Cape Elizabeth Tchrs. Ass’n*, 459 A.2d 166, 168–69 (Me. 1983), quoting *Westbrook Sch. Comm. v. Westbrook Tchrs. Ass’n*, 404 A.2d 204, 207-208 (Me. 1979) (internal quotations omitted). Given this, the *Chelsea* decision provides additional support for a broad interpretation of the grievance arbitration continuation statutes, whereby a successor union may step into the shoes of a decertified union and enforce an arbitration agreement covering the bargaining unit, as a party to the collective bargaining relationship though not a signatory to the agreement.

It is by no means determinative, but worth noting, that there are logistical reasons why the successor union is better situated to handle a grievance arbitration. If the successor union is charged with processing grievances during the pre-arbitral stage of the process, regardless of whether the grievance involves conduct occurring prior to or after expiration, then practically speaking that union is best situated to make the decision of whether to proceed to arbitration and to represent the bargaining unit if the grievance does proceed to arbitration. As noted in *Chelsea*, this also avoids an awkward situation where bargaining unit employees would otherwise be reliant on a union they had just decertified to represent them. *Chelsea*, 203 N.E.3d at 1149.

In sum, § 964-A and related statutes are properly read to permit a successor union to enforce the grievance arbitration rights provided by an expired collective bargaining agreement entered into by the prior, now decertified, union and the employer. If not for these unique statutes, and their necessarily broad application, the Board may be forced to consider adopting a policy like that laid out by the NLRB. That not being the case, there is no need to contort the principles of exclusive representation and employee choice of bargaining agent under Maine’s collective bargaining laws as the NLRB does in *Children’s Hospital*.¹⁸ If a successor union has the right to enforce grievance arbitration with an employer based on provisions in an expired contract between the employer and a prior union, the need to apply a special rule requiring the employer to treat with that decertified union disappears, and the default rules of exclusive representation and employee choice should rightly be applied. Accordingly, the successor union in this case, OCSOA, has the right to exclusive representation of the bargaining unit and the corresponding duty to represent the bargaining unit under Maine’s collective bargaining laws for all stages of the grievance process, as well as a contractual right to invoke arbitration pursuant to the grievance arbitration provisions of the expired contract.

C. Employee Right to Present Own Grievance

While the preceding sections of this ruling establish that the successor union, OCSOA, generally has the authority and duty to represent bargaining unit employees throughout the grievance process, including at the arbitration level, the interpretive ruling petition posed a question about the rights and duties of the respective unions in a situation where employees are representing themselves in the grievance process, as appears to be the case under the circumstances presented. Maine’s collective bargaining laws include an explicit exception to the rule of exclusive representation, with the relevant statute in this matter providing that an employee “may present

that public employee's grievance to the public employer and have such grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of such grievance.” 26 M.R.S. § 967.

Unlike the provision regarding grievance arbitration, discussed above, Maine’s provision providing employees the right to present their own grievances is parallel to one found in the NLRA, and its application by the NLRB and the federal courts can accordingly provide helpful guidance in applying Maine law. *AFT Local 3711 v. Sanford School Committee*, No. [01-24](#), slip op. at 7-8 (Jan. 31, 2002). Looking to the federal application of this provision, the Board has previously found that it does not create a right for an employee to prosecute their grievance directly with their employer, but rather creates an exception to the employer’s duty to deal exclusively with the union in cases where such employees choose to deal directly with the employer. *Id.* at 8-9. Once an employee has chosen to represent themselves in the grievance process, the statute is clear that the union’s role is limited to the right of being given an opportunity to be present, which implicitly requires that reasonable notice of the meeting be given. *E.g.*, 26 M.R.S. § 967. As this provision curtails the right to exclusive representation ordinarily afforded a union, in like manner should the union’s corresponding duty of fair representation be relieved when employees choose to represent themselves in the grievance process. It is by virtue of a bargaining agent’s exclusive authority to represent the employees of a bargaining unit that the bargaining agent’s corresponding duty of fair representation arises, and the duty only applies when the union is acting in its representational capacity, such as when processing employee grievances. *MSLEA*, No. [25-IR-02](#) at 2; *Trask*, [2018 ME 130](#), ¶ 2, 194 A.3d 46; *Jordan*, No. [07-15](#) at 17; *Penobscot Bay Teachers Ass’n*, No. [92-30](#) at 12. However, once the grievance process has been exhausted at the pre-arbitral level, the union’s authority and duty with respect to a self-represented employee changes. Presuming the union is the party with the right to invoke arbitration under the grievance arbitration provision of the parties’ collective bargaining agreement, when it comes to decisions involving the invocation of arbitration and the manner of proceeding with the arbitration, the statutory exception to the union’s role as exclusive representative no longer applies and the union once again is clothed with both the authority of exclusive representation and the corresponding duty of fair representation with respect to an employee’s grievance.

In the matter at hand then, OCSOA is the exclusive representative of the relevant employees’ bargaining unit and has the right to attend the grievance meetings with the County that the employees have presumably chosen to represent themselves at, though the duty of fair representation does not apply with respect to these employees during this process. Having found that OCSOA has the right to invoke the grievance arbitration provisions of the expired contract, assuming the employees insist on representing themselves during the preliminary levels of the grievance process, the union’s right to exclusive representation and its duty of fair representation with respect to these employees is only triggered once the pre-arbitral stage of the grievance process ends and the opportunity to invoke arbitration begins. As the decertified union, the Teamsters do not have the right to be present at the employer-level grievance proceedings because they are no longer the exclusive representative of the bargaining unit, and neither do they have the duty of fair representation. And, as we have already determined, the Teamsters do not have a right under Maine’s collective bargaining laws to compel arbitration with the employer, even as to conduct occurring during the term of the expired contract, and therefore have no duty of fair representation.¹⁹

V. Conclusion

Given the foregoing analysis, OCSOA as the current designated bargaining agent of the employees’ bargaining unit has the exclusive authority under Maine’s collective bargaining laws to enforce the grievance

process of the expired contract, even though that contract was originally entered into between the County and the Teamsters and even with regard to conduct occurring or rights vesting during the term of that contract. If the grieving employees choose to represent themselves, OCSOA only has the right to observe any grievance-related meetings held at the pre-arbitral stage of the process, but has the exclusive right and duty to represent such employees when it comes to the arbitration stage of the grievance process established in the expired contract. After decertification of the Teamsters and the certification of OCSOA as the new bargaining agent, the Teamsters have lost any right to observe the pre-arbitral grievance meetings and are not duty-bound regarding any potential subsequent arbitration.

Dated this day, April 10, 2026.

MAINE LABOR RELATIONS BOARD

/s/ _____
Sheila Mayberry, Esq.
Board Chair

/s/ _____
Michael Miles
Employer Representative

/s/ _____
Joan Morin
Employee Representative

¹ This interpretive ruling will use the terms “bargaining agent” and “union” interchangeably.

² This interpretive ruling will use the terms “collective bargaining agreement” and “contract” interchangeably.

³ This is a slight reframing of the County’s request, for the purpose of hewing to the Board’s role to provide an interpretation regarding the prospective rights, obligations or liabilities of a party regarding an active controversy or doubt with respect to the circumstances giving rise to the question.

⁴ As noted above, the County’s framing of the issues has been slightly modified in light of the controversy or doubt described in the petition.

⁵ The Board assumes the required impasse is a “bona fide impasse,” which requires the parties first fully exhaust the duty to collectively bargain, including participating in good faith in the mediation,

fact-finding and arbitration dispute resolution procedures provided under the collective bargaining laws. See *Auburn Firefighters Assoc. v. Valente*, No. [87-19](#), slip op. at 9-12 (Sept. 11, 1987) (“In order for a bona fide impasse to develop, the parties must first satisfy the obligation created by 965(1)(C) of the Act that they negotiate in good faith with respect to the mandatory subjects of bargaining.”) (internal quotations omitted).

⁶ The Law Court in *Portland Water District* also posited that even though the obligation to arbitrate an alleged breach of the contract may have expired, a bargaining agent could still file a prohibited practice complaint with the Board, framed as the employer failing to collectively bargain by not maintaining the status quo after contract expiration. *Portland Water District*, [651 A.2d](#) at 342.

⁷ It should be noted that the Board in its prior decision in *NCEU* did not fully address the applicability of Maine’s grievance arbitration continuation statutes, found for example at § 964-A. No. [11-07](#) at 14. Given that the Board does now find, as described more fully in the decision above, that these statutes provide a successor union with the authority to compel arbitration pursuant to the grievance arbitration provisions in an expired contract between the employer and the prior union, this provides an opening to reexamine whether these statutes also address the question of whether the successor union is the proper party for pre-arbitral grievance procedure. The grievance arbitration continuation statutes apply to the “grievance arbitration provisions” of an expired contract, which could conceivably include the pre-arbitral grievance procedure. See *infra*, note 14; 2 Legis. Rec. S-973 (1st Spec. Sess. 2005) (Legislative remarks implying an intent for continuation of the “grievance procedure” writ large). The significance of whether the pre-arbitral grievance procedure continues pursuant to the status quo doctrine, as found in *NCEU*, or whether it continues because of the grievance arbitration continuation statutes, e.g. § 964-A, is a difference in duration. If the grievance arbitration continuation statutes apply to the pre-arbitration grievance procedure, then the process would continue in force until the parties execute a new contract. E.g., 26 M.R.S. § 964-A(2). Under the status quo doctrine, however, the pre-arbitral grievance procedure continues until there is a new contract *or* until the parties reach a bona fide impasse--allowing for a potentially longer span of time. *City of Augusta*, [2013 ME 63](#), ¶ 16, 70 A.3d 268. Regardless of which authority is the proper basis for the continuation of the pre-arbitral procedure in an expired contract makes no practical difference for the outcome in this case, so the Board will leave clarity on this potential issue to another time, if there should ever be need.

⁸ As the contract at issue in that case was signed before October 1, 2005, subsection 1 of the statute applied, which limited the effect of the continuation of the grievance arbitration provisions to only disciplinary matters. *NCEU*, No. [11-07](#) at 13-14; 26 M.R.S. § 964-A(1). In contrast, subsection 2 of the statute applies to the contract involved in this case, which extends the grievance arbitration provisions of an expired contract to all provisions of the expired contract that remain in effect by virtue of the static status quo doctrine. 26 M.R.S. § 964-A(2). However, this distinction makes no practical difference to the analysis for purposes of this decision.

⁹ *Mountain Valley Educ. Ass’n v. Maine Sch. Admin. Dist. No. 43*, [655 A.2d 348](#), 351 (Me. 1995) (*Mountain Valley*).

¹⁰ The grievance arbitration continuation statutes do not differentiate between a contract that has expired by its own terms and one that has expired due to the certification of a successor union. The Board and the Law Court apply the same post-expiration status quo obligations regardless of the manner of contract expiration. See *NCEU*, No. [11-07](#) at 10; See also, *Mountain Valley*, [655 A.2d](#) at 352 (“The parties are required to maintain the status quo while bargaining, and this principle applies both to negotiations before an initial contract and to post-expiration negotiations for a new contract.”). As such, there is no apparent reason to exclude the statutes from applying to a contract that has expired because of the certification of a successor union. Regardless, in the matter at hand

the relevant contract has expired both by certification of the successor union and also by its own terms.

¹¹ However, the earlier version of the law did not apply to the University Employees Labor Relations Act, 26 M.R.S. § 1021, et seq. P.L. 1997, c. 773

¹² “... The bill in its original form was designed to deal with those rare situations when, in public labor negotiations between a public entity on the one hand and a bargaining unit on the other, where there is a breakdown in talks and where the contract expires, there is a question as to whether it is appropriate for certain segments of the contract to continue beyond the expiration in order that the two parties be able to conduct their affairs. The element that we believe ought to be continued is the element of a contract that provides mechanisms for dispute resolution on disciplinary actions. This is a little bit of a void in our current law. It is in the interest of both sides that those dispute resolution provisions on grievances and disciplinary actions be perpetuated. ...” 2 Legis. Rec. S-1903 (2nd Reg. Sess. 1998).

¹³ “This amendment replaces the bill. The amendment provides that, for an expired collective bargaining agreement signed after October 1, 2005, the grievance arbitration provisions of the collective bargaining agreement that concern what is commonly known as the ‘static status quo’ remain in effect until a new contract is executed. ...” Comm. Amend. A to L.D. 1123, No. H-776, Summary (122nd Legis. 2015)

¹⁴ “... If you have a contract and you have a certain grievance procedure in place and that contract runs out, you shouldn't just lose your rights to be able to complain about your employer violating some term of your employment. You should have a right to still be able to go forward and say you've been wronged, that your rights have been wronged. You know what the procedure is, because you have used it for all these years, and corrective action could be taken. That is common sense, it seems to me. It's basic fairness. ...” 2 Legis. Rec. S-973 (1st Spec. Sess. 2005).

¹⁵ Again, as noted above, the grievance arbitration continuation statutes do not differentiate between a contract that has expired by its own terms and one that has expired due to the certification of a successor union and, regardless, both circumstances are present in the current matter. See *NCEU*, No. [11-07](#) at 10; See also, *Mountain Valley*, [655 A.2d](#) at 352.

¹⁶ The Board has never recognized an exception for grievance arbitration from the status quo doctrine, except during, or when discussing, the time period between the Law Court's 1994 and 1995 rulings in *Portland Water District* and *Bureau of Employee Relations* and the enactment of the grievance arbitration continuation statutes. See *Associated Faculties of the Univ. of Maine v. Bd. of Trs. of Univ. of Maine Sys.*, No. [97-12](#), slip op. at 3-4 (December 1, 1997); *NCEU*, No. [11-07](#). The Law Court itself has implicitly acknowledged that the status quo doctrine would apply to grievance arbitration but for the Court's determination that the expired collective bargaining agreements failed to provide the necessary contractual rights required to compel arbitration. *Bureau of Employee Relations*, [652 A.2d](#) at 655 (“Even if the Bureau had a duty to arbitrate imposed by statute or by decision of the Maine Labor Relations Board, that duty would not be a substitute for a valid agreement to arbitrate.”); *Portland Water District*, [651 A.2d](#) at 341-342 (“While an agreement is in effect, the terms and conditions therein are enforceable as a matter of contract and may be subject to arbitration. Once the agreement expires, however, the parties lose their contractual rights and are left with only the statutory duty to bargain in good faith.”).

¹⁷ The Board has in previous review of the legislative history of this provision also found the legislation to be a direct reaction to the Law Court's rulings in *Portland Water District* and *Bureau of Employee Relations*. *NCEU*, No. [11-07](#) at 12; *Sanford Professional Firefighters, Local 1624 v. Town of Sanford*, No. [11-04](#), slip op. at 7 (Jan. 28, 2011) (“Our analysis of the intent and effect of 964-A presented above reflects our expertise in the subject area and our understanding of the

legislative intent.”).

¹⁸ We find the NLRB attempts to reconcile its holding in *Children’s Hospital* with the principles of exclusive representation and employee choice of bargaining agent to be unconvincing, and regardless, unnecessary given Maine’s unique statutory scheme. See *Children’s Hospital*, 364 NLRB at 1680-1681.

¹⁹ This is not to say that the Teamsters may not be permitted to attend the pre-arbitral grievance meetings at the discretion of OCSOA and the County, or that OCSOA would necessarily violate its duty of fair representation by coming to an arrangement for the Teamsters to participate in any arbitration on its behalf as a way of OCSOA exercising its sole authority as exclusive representative of the bargaining unit. This decision does not address any potential contractual right to invoke arbitration with the employer that a prior union as signatory to the expired collective bargaining agreement may retain, concerning activities occurring or rights vesting during the term of that contract, should the union wish to attempt to invoke arbitration despite not having any obligation under the collective bargaining laws to do so.