
JENNIFER MULL-BROOKS)
)
 Complainant,)
)
 v.)
)
 WESTBROOK SCHOOL)
 COMMITTEE)
)
 and)
)
 WESTBROOK SCHOOL)
 ADMINISTRATORS')
 ASSOCIATION,)
)
 Respondents.)
)

DECISION AND ORDER

I. Statement of the Case

Jennifer Mull-Brooks (Complainant) filed this prohibited practice complaint with the Maine Labor Relations Board (Board) against the Westbrook School Committee (School Committee) and the Westbrook School Administrators' Association (WSAA or Union) (collectively, Respondents), alleging unlawful interference, restraint or coercion under the Municipal Public Employees Labor Relations Law (the Act) through the Respondents' failure to include her position in the WSAA bargaining unit.¹

II. Procedural History

Ms. Mull-Brooks filed her complaint on August 11, 2025, and filed an amended complaint on September 25, 2025. The Executive Director issued a final sufficiency letter on October 22, 2025, and the parties attended a prehearing conference on December 12, 2025, with Board Chair Sheila Mayberry, Esq., presiding in the role of prehearing officer. A hearing was held on February 12, 2026, at the offices of Drummond Woodsum in Portland, and was presided over by Chair Sheila Mayberry, Esq., with Michael Miles, Employer Representative, and Joan Morin, Employee Representative. At the hearing, Complainant was represented by Trevor R. Brice, Esq., the School Committee was represented by Tom Trenholm, Esq. and the WSAA was represented by Benjamin K. Grant, Esq. The Board gave the parties a full opportunity to examine

and cross-examine witnesses, introduce evidence and make their arguments. The parties filed post-hearing briefs on March 20, 2026.

III. Findings of Fact

Upon review of the entire record, the Board finds the following. Complainant has been employed by the School Committee as the Director of Adult Education since 2023. At the time of her hiring, she expressed interest in being included in the WSAA bargaining unit to a representative of the School Committee. In October of 2024, Complainant formally approached representatives of the negotiating team for WSAA to request inclusion in the WSAA bargaining unit. She also submitted a formal proposal to the School Committee in February of 2025, requesting that her position be added to the WSAA bargaining unit.

During negotiations for a successor collective bargaining agreement, the WSAA negotiating team proposed adding Complainant's position to the bargaining unit. The School Committee did not agree to add the position and the WSAA subsequently voted to ratify the parties' tentative agreement without adding Complainant's position. On May 23, 2025, Respondents entered into a collective bargaining agreement, effective from July 1, 2025, to June 30, 2028. Article I of the agreement, the recognition clause, lists the positions of all bargaining unit employees and does not include Complainant's position. The article also contains the following language:

The Association agrees to admit into its bargaining unit any new administrative position that is recognized by the Committee which requires the position to hold a recognized Maine Department of Education administrative certificate or a Master's Degree in applicable field, in addition to coursework relevant to Educational Leadership including, but not limited to: Supervision and Evaluation, Organizational Theory and Planning, Federal and Maine Civil Rights and Education Laws and Special Education Law. (Emphasis added).

On May 28, 2025, upon Complainant's request, an individual on the WSAA negotiating team filed a Unit Clarification Petition with the Board, seeking to add Complainant's position to WSAA's bargaining unit. On June 5, 2025, the individual who filed the Unit Clarification Petition contacted the Board and withdrew the petition. The individual testified to having received "pressure" to withdraw the petition from representatives of the two Respondents, as well as from a representative of another union representing a different bargaining unit of School Committee employees. Union representatives testified at the hearing that the Union was planning to attempt adding Complainant's position to the bargaining unit again in the near future, perhaps in conjunction with negotiations to add another anticipated new position to the unit.

The Director of Adult Education position has previously been included in the description of the WSAA bargaining unit in at least four prior collective bargaining agreements covering the years 2001-2013. The position had been vacated for approximately 10 years prior to Complainant's hiring and had been removed from the bargaining unit description in successive collective bargaining agreements at some point during that time.

IV. Analysis

At all times relevant, Complainant was a public employee within the meaning of 26 M.R.S. § 962(6), the School Committee was a public employer within the meaning of 26 M.R.S. § 962(7) and the Union was a bargaining agent within the meaning of 26 M.R.S. § 962(2). The Board's jurisdiction to hear this case and to issue a decision and order derives from 26 M.R.S. § 968(5). Complainant alleges that Respondents have unlawfully interfered with her right to engage in union activity pursuant to 26 M.R.S. § 963, in violation of 26 M.R.S. § 964(1)(A) and (2)(A), by not including her position in the WSAA bargaining unit. She also alleges additional unlawful interference by the WSAA when it withdrew and did not refile a Unit Clarification Petition to the Board requesting that her position be added to the unit.

A complainant alleging a violation of the Act bears the burden of proving such violation by a preponderance of the evidence. 26 M.R.S. § 968(5)(C). Employers and bargaining agents are prohibited from “interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963.” 26 M.R.S. § 964(1)(A) and (2)(A). Section 963 protects public employees’ rights to “[j]oin, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining” and “the free exercise of any other right” granted under the Act. 26 M.R.S. § 963(1). Put another way, § 963 provides “broad protection of the right of public employees to join and participate in union activities or to refrain from doing so.” *Martin v. AFSCME Council 93*, No. [14-29](#), slip op. at 6 (March 20, 2015). An employer or bargaining agent commits unlawful interference, restraint or coercion with respect to an employee’s rights under the Act 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.” *Saco Education Association v. Saco Board of Education*, No. [25-PPC-13](#), slip op. at 9 (February 20, 2026) (*Saco*), 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 [or bargaining agent’s] motive or success.” *Id.*, quoting *Duff*, No. [97-20](#) at 21. The question can be framed as 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 or bargaining agent’s actions. *Id.*, citing *Fraternal Order of Police v. York County*, Nos. [18-10](#) & 19-02, slip op. at 34 (July 24, 2019). The standard for unlawful interference, restraint or coercion is the same for both employer violations, under § 964(1)(A), and for bargaining agent violations, under § 964(2)(A). See *Mersereau v. Teamsters Local Union No. 340*, No. [23-PPC-02](#), slip op. at 8, n.1 (June 1, 2023), citing *AFSCME Council 93 v. Maynard*, Nos. [86-22](#), 86-25 and 86-A-03, slip op. at 15 (Mar. 10, 1987).

It is worth taking a moment to clarify the issues before the Board. Complainant seems to argue, in part, that her position should already be included in the WSAA bargaining unit based on the description of the unit in Respondents’ most recent collective bargaining agreement. Complainant’s job title is clearly not listed with the other specific positions in the unit described in Article I.A of the contract, but she argues that her position does fit within the parameters of Article I.B, which provides that the WSAA “agrees to admit into its bargaining unit any new

administrative position that is recognized by the Committee which requires the position” meet certain qualifications. Even assuming Complainant is correct and her position does meet these qualifications, and this language would act to automatically add her position to the bargaining unit without requiring any additional agreement by the parties, the operative word in this paragraph is “new,” and Complainant’s position is unarguably not a new one.² She was in her position prior to and during contract negotiations, and execution of the final agreement. In fact, both Respondents clearly intended that Complainant’s position not be included within the bargaining unit. Although withholding recognition of an employee’s rightful inclusion in a bargaining unit could constitute unlawful interference,³ this does not fit with the circumstances of the present case. Complainant is clearly not currently in the WSAA bargaining unit.

Further, Complainant’s brief alleges that Respondents have unlawfully interfered with “her right to voluntarily join the WSAA bargaining unit” pursuant to § 963. However, the scope of § 963 does not include a right for an employee to unilaterally include her position in a bargaining unit; rather, it protects the right of an employee to “[j]oin, form and participate in the activities of *organizations* of their own choosing for the purposes of representation and collective bargaining.” 26 M.R.S. § 963(1) (emphasis added.). The Board has held that the “organizations” described in this statute are bargaining agents, i.e., unions, and not bargaining units. *Trask v. Town of Madison*, No. [16-06](#), slip op. at 3 (April 20, 2016). Employees may exercise a collective right, through the Board’s petition and election processes, to create and alter bargaining units, but an individual employee does not have the stand-alone right to be included in a bargaining unit. *Id.* (“[T]he procedures for establishing bargaining units as set forth in § 966 demonstrate that individual employees do not choose which bargaining unit their job classification is placed in.”); 26 M.R.S. § 966.

One issue for the Board’s consideration in this case is whether the School Committee and the Union interfered with Complainant’s right to engage in, or refrain from, union-related activity protected under the Act by not agreeing to include her position in their collective bargaining agreement’s description of the WSAA bargaining unit. Complainant had advocated for her inclusion in the unit to both parties independently prior to execution of their most recent contract. During subsequent negotiations for a successor collective bargaining agreement, the Union proposed adding Complainant’s position to the bargaining unit but could not secure the School Committee’s agreement to do so. The School Committee was not obligated to agree to accept the Union’s proposal to modify the bargaining unit. The Act requires parties to collectively bargain in good faith, but “neither party may be compelled to agree to a proposal or be required to make a concession”. 26 M.R.S. § 965(1)(C). The Union was similarly operating in accordance with the Act when it agreed to the collective bargaining agreement without securing its proposed change to the bargaining unit. Bargaining unit composition is not a mandatory subject of bargaining, so the Union could not force the issue if it was not able to secure agreement from the School Committee. *AFSCME Council 93 and Penobscot County*, No. [14-UCA-01](#) at 4, n.2 (December 17, 2013) (*Penobscot County*); *Town of Thomaston and Teamsters Local Union No. 340*, [90-UC-03](#) at 12, n.6 (February 22, 1990).⁴

Complainant’s other allegation of unlawful interference is based on the Union’s refusal to

use the Board's petition process to attempt to add her position to the WSAA bargaining unit. Not only did the Union decide to withdraw what it characterized as an unauthorized Unit Clarification Petition filed by one of the WSAA negotiating team members, it has not filed any subsequent petition. Nevertheless, filing a petition or withdrawing a previously filed petition with the Board are discretionary actions that do not inherently violate the Act.^{5 6}

Even if the School Committee's and the Union's actions may not have been inherently improper, the test for unlawful interference, restraint or coercion is an objective one; that is, the question is whether these actions had the effect of interfering with Complainant's rights under the Act. *Saco*, No. [25-PPC-13](#) at 9. Complainant's argument that Respondents' actions leave her no practicable option to currently exercise her collective bargaining rights has merit. However, to find unlawful interference under these circumstances would stretch the scope of employee rights to union activity under the Act to the breaking point. The Board is aware of no legal authority for the proposition that a union can be obligated to accede to an employee's request to be added to a bargaining unit, even when that employee's position may share a community of interest with or otherwise be a sensible fit with the other positions included in the unit. Neither is the Board aware of any legal authority for the proposition that an employer can be obligated to add a job classification to a bargaining unit, either by request of the employee or union, or as part of collective bargaining negotiations. The Board does not find support in the Act for such a radical rearrangement of labor relations obligations. In fact, to allow an employee through the prohibited practice complaint process to interfere with the ability of employers and unions to negotiate about bargaining unit composition would actively undermine the harmony of labor relations envisioned by the Act.

No party can unilaterally mandate the bargaining unit status of an employee. *Council 74, AFSCME v. City of Bath*, No. [81-09](#), slip op. at 3-4 (Mar. 4, 1981). The Act "not only permits, but encourages, parties to negotiate and attempt to reach consensus on the composition of a bargaining unit, including changes to existing bargaining units..." *County of Cumberland and National Correctional Employees Union*, No. [21-UC-01](#) at 10 (November 22, 2021); *RSU 57, Brd. of Directors and Massabesic Education Ass'n*, Nos. [20-UC-01](#) and [20-UD-01](#) at 4-5 (January 3, 2020); *Penobscot County*, No. [14-UCA-01](#) at 3-4; 26 M.R.S. § 966(3). The Act contemplates potential disagreements about the composition of a bargaining unit, and the Board's petition process provides the means for final determination of bargaining unit composition issues through rulings of a Board hearing examiner, subject to appeal to the Board and ultimately the Maine Courts. 26 M.R.S. §§ 966, 968(4); MLRB Rules, Ch. 11. In sum, the ability to negotiate about, and the freedom to disagree about, the composition of a bargaining unit is incorporated within the design of the Act and the Board's rules.

Respondents have not foreclosed all opportunity for Complainant to seek to exercise her rights to participate in collective bargaining representation under the Act, even if those options may pose practical difficulties and uncertain success. One option available to Complainant is to file a Unit Determination Petition with the Board, requesting that her job classification be added to the WSAA bargaining unit.⁷ MLRB Rules, Ch.11, § 1(1); § 5(1). However, given that the bargaining unit she wishes to be added to is covered by a collective bargaining agreement that

does not expire until June 30, 2028, under the “contract bar” provision, which requires the petition be filed in the window between 90-60 days prior to expiration of the collective bargaining agreement, the earliest she could file the petition with the Board is April 1, 2028. 26 M.R.S. § 967 (“Where there is a valid collective bargaining agreement in effect, a question concerning unit or representation may not be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement.”); MLRB Rules, Ch.11, § 6(1).

Complainant may also continue to advocate to the Union that it add her position to the unit, or wait for it to do so on its own. Union representatives testified at the hearing that the Union was planning to continue trying to add Complainant’s position to the bargaining unit. In the near-term, if planned negotiations with the School Committee to add Complainant to the unit did not bear fruit, the Union could proceed with the Board’s petition process. Although the Union would also face the “contract bar” delay period for the filing of a Unit Determination Petition, it is uniquely able to file a Unit Clarification Petition regarding Complainant’s position at any time.⁸ 26 M.R.S. § 967 (“The not more than 90-day nor less than 60-day period prior to the expiration date of an agreement regarding unit determination and representation does not apply to matters of unit clarification.”); MLRB Rules, Ch. 11, §§ 1(3), 5(4). In the longer term, the Union could file a Unit Determination Petition or attempt to add Complainant’s position during negotiations for a successor contract.

There is another potential option available to Complainant, though it comes with a large caveat and murky chances for success. Complainant could seek to establish her own bargaining unit, and either court the WSAA or another existing union to act as her bargaining agent or establish an independent organization on her own to act in the capacity of bargaining agent. The first step under this course of action would be to seek voluntary recognition by the School Committee. If successful, the parties would file signed agreements with the Board to establish formal recognition of the new unit and its bargaining agent. If the School Committee did not agree, then Complainant would be able to file for such recognition with the Board through a Unit Determination Petition without being subject to the waiting period that would apply to her seeking to join the existing WSAA bargaining unit. There are significant headwinds to this approach, however, given the Act’s presumption against the fragmentation of bargaining units and the Board’s resulting anti-proliferation policy. *MSAD No. 43 Board of Directors and School Administrative District No. 43 Teachers Association*, No. [84-UC-05](#), slip op. at 13 (April 23, 1984), aff’d, [84-A-05](#) (“The creation of a single-employee bargaining unit would be contrary to the Labor Relations Board's policy ‘of discouraging the proliferation of small bargaining units in a single department.’), quoting *Town of Yarmouth and Teamsters Local Union No. 48*, No. [80-A-04](#), slip op. at 4 (June 16, 1980). As the Board has explained in prior rulings, the purpose of this anti-proliferation policy is to protect the employer, unions and the State from an inefficient use of money, time and energy in dealing with small bargaining units,⁹ and also to protect employees by not depriving them of the “fullest freedom”¹⁰ in exercising rights under the Act through the dilution of the bargaining power of the larger group by “creating excessively small units.” *MSAD No. 29 Board of Directors v. MSAD No. 29 Education Association/MEA/NEA*, No. [06-UCA-01](#), slip op. at 4 (May 11, 2006). With that challenge in mind, the Board, by pointing out this possible procedural course of action available to Complainant, makes no representation or

prediction about the ultimate success of such approach.

Fortunately, based on the lack of precedent addressing such circumstances in the Board's prior decisions and a similar infrequency of such circumstances appearing in the published decisions of other states and the federal government made under analogous labor relations laws, this situation is presumably far from common. Hopefully this decision will at least provide Complainant some clarity regarding options still available to her.

V. Conclusion

Although Respondents' actions may have left Complainant with no immediate practicable options to exercise her collective bargaining rights, these actions do not constitute unlawful interference under 26 M.R.S. § 964(1)(A) and (2)(A) where Respondents have merely exercised their rights under the Act and these actions have not completely foreclosed Complainant from seeking to exercise her rights. Complainant has not met her burden to establish that Respondents' actions were a violation of the Act, and accordingly the complaint is dismissed.

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. 26-PPC-03 be, and hereby is, DISMISSED.

Dated this day, May 14, 2026.

MAINE LABOR RELATIONS BOARD

/s/ _____
Sheila Mayberry, Esq.
Board Chair

/s/ _____
Michael Miles
Employer Representative

/s/

Joan Morin
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 complaint, and amended complaint, also named Dr. Peter Lancia and the Westbrook Education Association as Respondents, but the Executive Director dismissed these parties through the sufficiency determination process.

² An argument could be made that Complainant's position should have been automatically added to the bargaining unit, if there were similar language under a prior collective bargaining agreement in effect at the time of her hire; however, there is no sufficient evidence in the record to support such proposition and, regardless, the bargaining unit agreed to by the Respondents in their most recent collective bargaining agreement clearly omits the position.

³ See, e.g., *Bos. Police Patrolmen's Ass'n, Inc. v. Lab. Rels. Comm'n*, 16 Mass. App. Ct. 953, 954, 451 N.E.2d 731, 734 (1983) (Appellate review denied, 390 Mass. 1101, 453 N.E.2d 1231 (1983)) (Union committed unlawful interference by essentially failing to recognize the inclusion of two employees within its bargaining unit despite a prior ruling from the Massachusetts Labor Relations Commission that the employees were included in the unit.)

⁴ Although the Complainant does not specifically allege that the Union violated its duty of fair representation, it is worth noting that the Union did not violate its duty in this regard. A bargaining agent owes a duty of fair representation to all bargaining unit employees, and a violation of this duty is a prohibited practice under the Act. 26 M.R.S. §§ 967(2), 964(2)(A); See *Knapp v. MSEA, SEIU LOCAL 1989*, No. [24-PPC-02](#), slip op. at 5 (July 2, 2024). Since Complainant was an employee outside of the WSAA bargaining unit, the Union was under no obligation to represent her interests. See *Maine State Law Enforcement Association, and Maine Service Employees Association, SEIU Local 1989, and State of Maine*, No. [25-IR-02](#), slip op. at 3 (August 13, 2025) (*MSLEA*) ("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.").

⁵ The imperative in the Board Rules that "[p]etitions are necessary when the parties are unable to agree on the composition of the bargaining unit or on the designation of the bargaining agent," presupposes a party's intent to affect such action and merely serves to highlight that petitions are unnecessary when the parties agree. MLRB Rules, Ch.11, § 2; See MLRB Rules, Ch.11, § 3.

⁶ As noted above, the Union owes no duty of fair representation to Complainant. See *MSLEA*, No. [25-IR-02](#) at 3.

⁷ A Unit Determination Petition is appropriate "when there is a disagreement on the categories of jobs to be included in a bargaining unit." MLRB Rules, Ch. 11, § 1(1). The Board makes no representation about the appropriateness or outcome of any future petition that may be filed by or on behalf of Complainant.

⁸ A Unit Clarification Petition is appropriate "when circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of the bargaining unit." MLRB Rules, Ch. 11, § 6(3). The Board makes no representation about the appropriateness or outcome of any future petition that may be filed on behalf of Complainant.

⁹ *Town of Yarmouth and Teamsters Local Union No. 48*, No. [80-A-04](#), slip op. at 13 (June 16, 1980).

¹⁰ 26 M.R.S. § 966(2) ("The executive director of the board . . . shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter and in order to insure a clear and identifiable community of interest among employees concerned...")