STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
No. AUGSC-AP-2024-040

PENOBSCOT COUNTY,

Petitioner

v.

MAINE LABOR RELATIONS BOARD,

Respondent

and

AFSCME COUNCIL 93, LOCAL 1828-12,

Party-in-Interest

RULE 80C DECISION
AND ORDER

Petitioner Penobscot County ("the County") seeks judicial review, pursuant to the Maine Administrative Procedure Act, 5 M.R.S. §§ 11001-11008 (2025), Maine Rule of Civil Procedure 80C, and the Municipal Public Employees Labor Relations Law, 26 M.R.S. §§ 961-976 (2025), of a decision by the Maine Labor Relations Board ("the Board") finding that the County refused to engage in impact bargaining with Party-in-Interest AFSCME Council 93, Local 1828-12 ("the Union") over a change the County made to how it reviewed employee requests for medical accommodations. For the reasons discussed below, the court affirms the Board's decision.[1]

BACKGROUND

[1] The court apologizes to the parties for the length of time this appeal has been under advisement.

A. The Board's Factual Findings

The County is a public employer within the meaning of 26 M.R.S. § 962(7). R. 557. The Union is the bargaining agent for the Penobscot County Sheriff's Corrections Bargaining Unit within the meaning of 26 M.R.S. § 962(2). *Id.* At all relevant times, the parties were operating under a collective bargaining agreement ("CBA") that was effective from January 1, 2022, to December 31, 2024. R. 251-92.

On or around September 9, 2022, the County circulated a memo outlining a new policy for how employees should seek medical accommodations, which included a form entitled "Request for Accommodation." R. 299, 302. Prior to August 2022, employees sought such accommodations using a different form, entitled "Medical Information Form," or they simply submitted a doctor's note. R. 293, 493, 558. In its memo outlining the procedure for using the new form, the County stated: "If you believe you have a qualifying disability that restricts your ability to perform the essential functions of your position, you will be required to provide completed ADA Request for Accommodation Paperwork." R. 302. Employees who had been receiving accommodations as of that date were given two weeks to submit the required paperwork or lose the accommodation. *Id.* The memo also told employees that a doctor's note that only described the employee's limitation would no longer suffice and would not replace the required paperwork. *Id.* The prior Medical Information Form included a field entitled "Nature of Illness or Injury." R. 293. The new Request for Accommodation Form replaced that field with one entitled "Nature of Qualifying Disability." R. 299.

In response to the memo, the Union sent a letter to the County claiming the new policy was "a significant change to the past practice of how Penobscot County managed requests for

accommodations" and demanding "impact bargaining over these changes in working conditions." R. 303. In an email response, the County agreed to meet with the Union but made clear its view that impact bargaining was not required. R. 305. The parties met on September 23, 2022. R. 559. From the outset, the meeting was "informational," as the County's position was that there would be no bargaining or discussion of changes to the accommodations policy. R. 91, 93-94, 350, 559. At the end of the meeting, the County invited the Union to email any proposed changes to the policy and said that, if it did so, the County would review the proposals and consider next steps. R. 105, 559. The Union did not thereafter submit any proposals. R. 559.

The County's change in policy impacted bargaining unit employees. *Id.* At least one employee who had been receiving accommodation did not submit the newly required paperwork and was therefore required to return to regular duty, and at least one employee moved from full-time to part-time status because of the new policy. R. 88, 142.

B. The Board's Legal Conclusions

The Union filed a prohibited practices complaint with the Board claiming the County refused to engage in collective bargaining over the new accommodations policy.[2] The Board conducted a hearing over the course of two days on March 29 and May 1, 2024. On August 30, 2024, it issued an order finding the County had failed to collectively bargain as required by

[2] Public employers are required to engage in collective bargaining, which includes the obligation "to meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, as long as the parties have not otherwise agreed in a prior written contract." 26 M.R.S. § 965(1)(B) (2025). Pursuant to 26 M.R.S. § 964(1)(E), public employers are prohibited from "[r]efusing to bargain collectively with the bargaining agent of its employees as required by section 965."

26 M.R.S. § 965.[3] It observed that the County's duty to bargain applied both to the mandatory subjects of bargaining—wages, hours, working conditions, and contract grievance arbitration—and "to the *impact* of an employer's action on a mandatory subject of bargaining, which is considered a separate subject of bargaining from the employer's right to take the underlying action itself." R. 559 (emphasis added). The Board also noted the obligation to bargain carried with it the duty to "confer and negotiate in good faith." *Id.* (quoting 26 M.R.S. § 965(1)(C)). In measuring good faith, the Board looked to the totality of a party's conduct to see if its actions indicated a "present intention to find a basis for agreement" or "a sincere desire to reach an agreement." R. 559-60 (quoting *Town of Orono v. IAFF Loc. 3106 Orono Firefighters*, No. 11-11 at 7-8 (Me. Lab. Rels. Bd. Aug. 11, 2011)).

Turning to the County's new accommodations policy, the Board found it triggered a bargaining obligation because in at least two respects it "likely could impact, and indeed already has impacted, mandatory subjects of bargaining, namely working conditions and hours." R. 560. First, by moving from an "illness or injury" standard to a more restrictive "disability" standard aligned with the Americans with Disabilities Act, *see* R. 293, 299, the Board found the policy might cause some employees to become ineligible for accommodations for which they otherwise would qualify, R. 560. Second, it recognized the policy eliminated an employee's ability to use only a doctor's note to support a request. *Id.* The Board summed up the effects of the changes:

> The inability to obtain a medical accommodation, or the loss of a previously granted accommodation, would likely result in an employee either working despite the burden of the illness or injury, reducing their work hours or losing

[3] The Board rejected as untimely a separate claim by the Union that the County made an impermissible unilateral change to the CBA. R. 559. The Union did not appeal that aspect of the Board's order.

> employment altogether. The record reflects that the new policy has already in fact impacted at least two employees.

Id.

After deciding the County was obligated to engage in impact bargaining over the policy change, the Board examined whether it made a good faith effort to do so. Considering the totality of the County's conduct, the Board concluded that "at no time did the County evince 'a sincere desire to reach an agreement.'" *Id.* (quoting *Town of Orono*, No. 11-11 at 8). The Board noted that, while the County did agree to meet with the Union, it "made clear . . . that it did not view itself as obligated to impact bargain" and "stated an outright refusal to bargain regarding the new medical accommodation policy during the meeting." *Id.* As for the County's position that its actions were sufficient because it offered to review proposals after the parties' meeting, and the Union provided none, the Board did not "find these facts to be particularly mitigating" in light of the County's posture prior to and during the meeting. *Id.* at 560-61 ("The County stating its willingness to read a future email is not equivalent to bargaining in good faith or agreeing to continue bargaining."). Summarizing its conclusion, the Board stated:

> Regarding the issue of impact bargaining, the Board finds that while the County met with the Union and made a gesture to at least consider a future proposal, this was an insufficient response to a valid demand to bargain. Accordingly, the County has refused to collectively bargain in violation of 26 M.R.S. § 964(1)(E).

R. 561. The Board ordered the County to engage in impact bargaining with the Union and provide notice of its decision to Union employees. *Id.* This Rule 80C appeal followed.

STANDARD OF REVIEW

A court may vacate an order of the Board "only if the record demonstrates that the agency abused its discretion, committed an error law, or made findings not supported by substantial evidence." *City of Bangor v. Me. Lab. Rels. Bd.*, 658 A.2d 669, 671 (Me. 1995); *see also* 5 M.R.S. § 11007(4)(C)(5). Evidence is substantial "when a reasonable mind would rely on [it] as sufficient support for a conclusion . . . ." *Bodack v. Town of Ogunquit*, 2006 ME 127, ¶ 6, 909 A.2d 620 (quoting *Forbes v. Town of Sw. Harbor*, 2001 ME 9, ¶ 6, 763 A.2d 1183). "[T]he court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the [B]oard, except that the findings of the [B]oard on questions of fact are final unless shown to be clearly erroneous." 26 M.R.S. § 968(5)(F). Because the Board is charged with enforcing the Municipal Public Employee Labor Relations Law, the court will give "considerable deference" to its interpretation of that statute. *Mountain Valley Educ. Ass'n v. Me. Sch. Admin. Dist. No. 43*, 655 A.2d 348, 351 (Me. 1995).

An administrative decision will be affirmed if, "on the basis of the entire record before it, the agency could have fairly and reasonably found the facts as it did." *Seider v. Bd. of Exam'rs of Psychs.*, 2000 ME 206, ¶ 9, 762 A.2d 551. A reviewing court "may not substitute its judgment for that of the agency on questions of fact," 5 M.R.S. § 11007(3), even when the evidence could give rise to more than one result, *Dodd v. Sec'y of State*, 526 A.2d 583, 584 (Me. 1987). The mere existence of inconsistent evidence is not grounds for a court to overturn an agency's decision. *Seider*, 2000 ME 206, ¶ 9, 762 A.2d 551. Rather, an appellant must show "the record compels contrary findings." *Kroeger v. Dep't of Env't Prot.*, 2005 ME 50, ¶ 8, 870 A.2d 566. Thus, a court may overturn an agency's findings "only if there is no competent evidence in the record" to support them. *Friends of Lincoln Lakes v. Bd. of Env't Prot.*, 2010 ME 18, ¶ 14,

989 A.2d 1128. The burden of proof is on the party seeking to overturn the agency's decision. *Seven Islands Land Co. v. Me. Land Use Regul. Comm'n*, 450 A.2d 475, 479 (Me. 1982).

DISCUSSION

The County claims the Board erred in concluding (1) that the County's new policy for screening medical accommodation requests triggered its duty to impact bargain with the Union, and (2) that it did not meet its obligation to negotiate in good faith. Deferring to the Board's role in both deciding the facts and applying the Municipal Public Employee Labor Relations Law, the court affirms the Board's order.

A. The Board's finding that the new policy was a change in practice

The County first argues it was under no obligation to bargain over the accommodations policy because it simply was an exercise of "managerial discretion" that did not amount to a change in its past practice for reviewing accommodation requests. Pet'r's Br. 7-9. The court disagrees. The Board found the new policy "likely could impact, and indeed already has impacted, mandatory subjects of bargaining, namely working conditions and hours." R. 560. This was a reasonable conclusion, both factually and legally. The Board's finding that the change represented a more restrictive approach to screening requests, which potentially caused some employees to lose accommodations they had been granted under the prior policy and made others ineligible for accommodations for which they previously may have qualified, was supported by substantial evidence. For years leading up to the change, the County used a different standard to weigh accommodation requests, focusing on the presence of an "illness or injury" rather than a "disability." Furthermore, the new policy discontinued the practice of allowing employees to apply simply by submitting a doctor's note. It was reasonable for the

Board to conclude these new requirements could substantially impact working conditions by causing an employee to either work despite the burden of an illness or injury, reduce his work hours, or lose his employment altogether. Indeed, the Board found there were at least two instances in which employees were so impacted by the changes. The record supports the Board's conclusion that the new policy was a change in practice that triggered the County's obligation to bargain under 26 M.R.S. § 965.[4]

B. <u>The Board's finding that the County did not negotiate in good faith</u>

Second, the County contends that even if it did have an obligation to impact bargain over the new policy, the Board erred by refusing to find the parties' meeting fulfilled that obligation. Pet'r's Br. 13-15. The court rejects this argument. The Board viewed the totality of the evidence and found the County's actions failed to show a "sincere desire to reach an agreement." R. 560. The County made clear it did not view itself as having any obligation to impact bargain, and it took the position it would not change its policy. *Id.* While the County tries to paint the Board's finding on this point as legal in character, the determination as to whether the County sought to reach an agreement is necessarily factual, and the court finds substantial evidence to support the Board's conclusion. *See* 26 M.R.S. § 968(5)(F) ("[T]he findings of the [B]oard on questions of fact are final unless shown to be clearly erroneous."). The Board also considered and rejected the County's argument that it satisfied its obligation

[4] The County also argues the Union's impact bargaining claim is time-barred because it was not brought within six months of when the Union first became aware of the policy change. Pet'r's Br. 12-13. The court agrees with the Board, however, that the County's obligation to bargain over the impact of the policy change was separate from any duty it had to bargain over the change itself. R. 559. The Union was not aware of the County's refusal to impact bargain until the parties' meeting on September 23, 2022. Therefore, the Union timely brought its impact bargaining claim.

to negotiate simply by offering to review post-meeting proposals from the Union. R. 560-61. Given the Board's expertise in enforcing Maine labor law, the court declines to substitute its own judgment on this question. *See Mountain Valley Educ. Ass'n*, 655 A.2d at 351 ("As the agency charged with enforcement, we accord the Board considerable deference in construing the Act.").

CONCLUSION

For the foregoing reasons, the court finds no error in the Board's conclusions. The entry is:

> The Maine Labor Relations Board's decision dated August 30, 2024, is AFFIRMED.

The Clerk is directed to incorporate this Decision into the docket by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated: 2/18/2026

Daniel J. Mitchell
Justice, Maine Superior Court

Entered on the docket: 02/19/2026