

# **MAINE LABOR RELATIONS BOARD**

STATE OF MAINE

MAINE LABOR RELATIONS BOARD

Case No. \_\_\_\_\_

MAINE STATE LAW ENFORCEMENT ASSOCIATION

PETITION FOR

INTERPRETIVE RULING

## **Petition to MLRB for Interpretive Ruling**

**Name of Petitioner:** Maine State Law Enforcement Association on behalf of itself and its unnamed JCCO Member

**Address of Petitioner:** MSLEA, PO Box 188, Eddington, Maine 04428

**Applicable Statutes:** Title 26 MRSA Sections 979(2)(A) and 979-F (2) and (3)

### **Facts:**

1. On April 7, 2025, the new JCCO (“JCCO”) was served a Notice of Investigation (NOI) by the Maine Department of Corrections (DOC). The NOI alleged that on March 24, 2025, the DOC became aware of alleged misconduct by JCCO that was claimed to have occurred between September and December 2024.
2. The JCCO is currently employed as a Juvenile Community Corrections Officer with the Maine DOC and was serving in that role at the time of service of the NOI.
3. JCCO has been employed as a JCCO with the DOC since January 25, 2025.
4. During the period of the alleged misconduct, being September to December of 2024, JCCO was employed by the DOC as the Director of Security at a Correctional Facility.

5. JCCOs are covered under the Maine State Law Enforcement Association Law Enforcement Bargaining Unit Collective Bargaining Agreement and have been so covered since 2005.
6. The job title of Director of Security previously held by JCCO, was, and is currently, covered by the Maine Service Employees Association, Supervisory Services Bargaining Unit (MSEA).
7. Shortly after the NOI was received by MSLEA, MSLEA Executive Director reached out to MSEA Union Field Representative Kystal Talbot and explained the situation.
8. On April 15, 2025, Ms. Talbot sent an email to DOC OPR Director Chris Berard and MSLEA Director Kevin Anderson stating the following,” After speaking with MSEA’s General Counsel, Tom Feeley, I have learned that [JCCO’s] representation should be provided by MSLEA. Please direct communications regarding this investigation accordingly.”
9. On April 15, 2025, Executive Director Anderson spoke with MSEA General Counsel Tom Feeley. Attorney Feeley explained that MSEA believed that MSEA no longer had a Duty of Fair Representation to JCCO in this matter since he was no longer employed in a position covered by the MSEA collective bargaining agreement and the investigation was not initiated while JCCO was covered by the MSEA agreement.

## ISSUE

The question, or questions, for which petitioner seeks and Interpretive Ruling relate to the Duty of Fair Representation owed by a Bargaining Agent to its Member, as follows:

Which bargaining agent, **if any**, has the Duty of Representation to JCCO as it relates to allegations of misconduct that, if sustained, would have occurred when JCCO was covered under the collective bargaining agreement with MSEA, in a position covered by MSEA where, as here, he is no longer in that MSEA position and is no longer covered by the MSEA collective bargaining agreement but now is a member of MSLEA?

Another way to phrase the issue is: Does MSLEA inherit the burden of representation for an employee who is alleged to have engaged in misconduct while employed in a position covered by the MSEA contract, and subject to different works rules and policies, and where he was **not** a part of the MSLEA Bargaining Unit or covered by the MSLEA Contract?

MSEA may assert that the duty of representation is owed by MSLEA. MSLEA questions this assertion in that the employee was not covered by the MSLEA collective bargaining agreement at the time the alleged misconduct is claimed to have occurred, and JCCO had no relationship at all to MSLEA at that time.

## MEMORANDUM OF LAW

### Chapter 12 - §41. Interpretive Rulings

“An interpretive ruling is a means for determining specific questions 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. A petition for an interpretive ruling may not be used to resolve financial disputes between adversaries and may not be used as a substitute for other remedies provided by the collective bargaining laws.

1. **Petition for Interpretive Ruling.** A petition for an interpretive ruling may be filed with the Board by any person, employee organization or public employer. A petition for an interpretive ruling must be filed in accordance with the filing requirements of Chapter 10, section 7. In order to show the existence of a controversy or doubt, the petitioning party must describe the potential effect upon that party's interests in its petition.”

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The alleged misconduct occurred prior to the employee joining MSLEA so MSLEA cannot now have the responsibility to represent him. This is especially true when we appreciate that there is no relationship between the employee's prior job at DOC and his position as a JCCO that is covered by MSLEA.

Several hypotheticals may illustrate the inherent problem with making MSLEA responsible for this representation.

For starters, perhaps there is some confusion as to this Issue arising from the simple fact that both JCCO's old job and new job are in law enforcement ... but such a disconnect leads one in the wrong direction. It may be helpful to look at the case this way. Imagine that MSLEA represents electricians, and this former corrections officer studied to be an electrician and joined MSLEA. No one would expect MSLEA to represent such an individual for conduct he committed while performing work completely unrelated to the work of an electrician.

Or we could reverse the facts and hypothesize that the employee was in an electrician's union when he allegedly engaged in misconduct, and he has now moved to the law enforcement field and joined MSLEA. Again, no fair-minded person would think that a duty of representation would be owed to the employee by MSLEA.

Here's another hypothetical. What if instead of changing jobs and joining the MSLEA the employee just resigned and did not go back to work at all? If in that case MSEA has an enduring duty of representation, then how can it be released from that duty simply because the employee moved into an MSLEA position? Or, what if the member did not move into a union position at all? Would MSEA be off the hook?

One can also imagine a case where the dispute is very expensive to adjudicate, and that burden is being thrust upon the new unit which had nothing to do with the matter -- and is now being passed the check for payment. Existing members of the new unit did not envision such a responsibility.

One last comparison. Being in a unit with a CBA is like being covered by insurance. If an accident occurred when a driver was covered by Car Insurance Company #1, and he change insurance companies, no one would expect Car Insurance Company #2 to cover the problem.

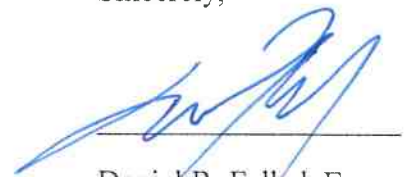
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An expanded view of the duty of representation where the new bargaining unit is deemed responsible for the actions of a non-member is not fair to the new agent and its members. MSEA may or may not have the Duty here, but one way or another that does not mean MSLEA has a duty.

MSLEA request an Interpretive Ruling defining its Duty of Fair Representation under these facts.

Dated June 23, 2025

Sincerely,



Daniel R. Felkel, Esq.  
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Attorney for MSLEA  
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