

STATE OF MAINE

MAINE LABOR RELATIONS BOARD
Case No. 15-05
Issued: February 5, 2015

_____)
TEAMSTERS LOCAL UNION 340,)
)
Complainant,)
)
v.)
)
OXFORD COUNTY,)
)
Respondent.)
_____)

DECISION
AND
ORDER

Teamsters Local Union 340 filed a prohibited practice complaint with the Maine Labor Relations Board on July 15, 2014, alleging that the Oxford County Sheriff eliminated outside detail assignments effective July 1, 2014, as retaliation against bargaining unit members for exercising their rights, thereby violating §964(1)(A) of the Municipal Public Employees Labor Relations Law (the "Act"). Specifically, the complaint alleges that the Sheriff eliminated all outside details for the Oxford County Deputies for July and August of 2014 because the Teamsters prevailed in a grievance concerning the manner in which outside details were assigned.

An evidentiary hearing was held on November 13, 2014, with the Union represented by Teamsters Business Agent Ray Cote, and the County represented by Labor Consultant Annalee Rosenblatt. Chair Abigail C. Yacoben presided at the hearing, with Employer Representative Robert W. Bower, Jr., and Employee Representative Wayne W. Whitney serving as the other two Board members. Both

parties were able to examine and cross-examine witnesses, to offer documentary evidence at the evidentiary hearing, and to provide oral argument at the close of the hearing. The parties elected not to file post-hearing briefs, but did submit a joint exhibit after the close of the hearing that provided information on the outside details scheduled and those actually worked by each employee during July and August of 2014. The Board deliberated this matter on December 30, 2014.

JURISDICTION

Teamsters Local Union 340 is a bargaining agent within the meaning of 26 MRSA §962(2), and Oxford County is the public employer within the meaning of 26 MRSA §962(7). The jurisdiction of the Board to hear this case and to render a decision and order lies in 26 MRSA §968(5).

FACTS

1. Teamsters Union Local 340 is the certified bargaining agent for the bargaining unit of patrol deputies in the Oxford County Sheriff's Department. The Teamsters took over representing this unit in the fall of 2013.
2. Teamsters Union Local 340 and Oxford County are in the process of negotiating their first collective bargaining agreement for the patrol deputies unit. The parties are operating under the terms of a collective bargaining agreement that was negotiated by the predecessor union.
3. Outside details are not part of a regularly assigned work shift but occur when the department provides services to a contracting party needing security or other assistance.

4. The outside detail "Stonegarden" is a contract with the U.S. Department of Homeland Security to assist in matters related to border security. The "frag orders" issued by Homeland Security identify the specific border security operations that the Sheriff's office, the state police, or the game wardens will participate in, and specifies the number of hours and an allotted amount of money for the period covered. "Frag orders" specify the number of hours that can be worked, but the specific schedule for working those hours is left to the discretion of the Sheriff.
5. The Stonegarden "frag order" in effect during the summer of 2014 ran from the end of June until early September. This order included 91 hours, 20 of which were used by the Rumford Police Department, and the allotment was just over \$20,000.
6. The "White Mountain" outside detail was through a contract with the U.S. Fish and Wildlife Department, and ran from June through Labor Day. The allotment for this detail was \$8,500.
7. Outside Details are scheduled in addition to the deputy's regular shift, and are paid at time and one half of the deputy's regular hourly rate. The assignment of outside details is addressed in Article 10 of the collective bargaining agreement.

Article 10, paragraphs B and C state:

B. An outside detail announcement will be posted. Assignments to outside details shall be made by the Sheriff or designee, in the following order:

1. First preference to certified, off duty, full time deputies on a rotation basis from the seniority list.

2. If the detail is not filled in the manner described in ¶1 above, then a part-time deputy can be used to fill the detail.

3. If the detail is not filled in the manner described in either ¶1 or 2 above, then the regular full-time deputy on a rotation basis normally assigned to the zone where the detail is located can be assigned.

C. A refusal will place the employee on the bottom of the rotation list.

8. The Sheriff tries not to schedule deputies to work outside details on their days off, so he will generally schedule the detail to back up with their assigned shift. Also, the Sheriff does not schedule details on vacation days, and Article 12, ¶K does not permit an employee who is out sick to work an outside detail.
9. The Sheriff posted the July and August 2014 outside detail schedules on June 19, 2014.
10. Michael Halacy, a road patrol deputy at the Oxford County Sheriff's Office, is the Teamsters' shop steward. Mr. Halacy filed a grievance on April 10, 2014, contesting the Sheriff's filling of an outside detail with a part-time employee. The grieved incident occurred when, on April 4, 2014, a deputy refused an outside detail that was assigned to him for April 9, 2014. This outside detail was then filled by a part-time deputy. The grievance contended that Article 10 B(1) required the Sheriff to use the seniority rotation list to try to fill this refusal before he could call a part-time employee to fill the refused shift.
11. The Sheriff met with the Union on April 24, 2014, and by memo dated May 1, 2014, denied the grievance.
12. The grievance was appealed to the County Administrator, who held a hearing on the matter with the Union on May 23, 2014.

On June 23, 2014, the grievance was granted in a memo written by Annalee Rosenblatt for the County Administrator. The memo granting the grievance stated, in part:

...

While the contract does not either permit or prohibit the filling of all known outside details at the same time, it does require that full time bargaining unit deputies be given the first opportunity to fill all of them before reserves are offered the detail. Both the intent and the accepted practice for administration of this type of seniority rotation are common in collective bargaining agreements. While all the outside details for the month could be filled on the same day, each deputy's name who was next on the list had to be offered the opportunity to be assigned to each detail.

...

The method used to assign the details in this situation did not allow the opportunity for deputies to decline a detail or when an outside detail was declined to have it offered to the next senior deputy on the list. When Deputy Wyman refused the April 9 outside detail his name should have gone on the bottom of the list and the next deputy on the list offered the assignment. Only when the list is exhausted and no full time bargaining unit deputy has accepted the outside detail, can the outside detail be offered to a part time deputy.

...

Therefore, the grievance is granted to the extent that all full time bargaining unit deputies will be given an opportunity to work outside details before any part time deputy is permitted to do so....

13. Shortly after noon on June 25, 2014, Mr. Halacy sent an email to the Sheriff stating:

Sheriff,

I wanted to touch base with you and speak about an issue that has been brought up on filling of overtime and details. I would prefer to sit and talk about this but this is a quicker way than trying to match our schedules on free time.

First I want to say that this concept of how we are now filling vacancies and details is following the contract more closely and I understand the enormity of the task that you, the Chief and Sgt. Baker is now taking on under your direction.

With anything new there will no doubt be a couple of unforeseen bumps in the road. We as a group are trying to figure out how our overtime hours are being tracked, how we are charged on a refusal, how or what hours are charged when a person works a refusal ... etc. Maybe an informational email or even better a Department meeting would be beneficial in explaining all this to the Road Patrol people.

Also, I see that non-Bargaining Unit Members (probationary employees) are being called and offered/accepting OT shifts and Details. . . .

After citing the relevant articles of the contract, Halacy continued with:

No one in the Union will have any complaint with the Probationary Employees being asked to fill a vacant shift or detail after ALL of the Bargaining Unit members have been asked and refused but they should not be on the overtime rotation list for the reasons listed in the above articles of the contract.

14. Mr. Halacy received a response from the Sheriff that the issue had been rectified the previous night.

15. At 3:39 p.m. on June 25, 2014, Sheriff Gallant posted the following notice:

From: Gallant, Wayne (0900) To: Agency - 0900
Subject: July and August Outside Details

Scheduled Outside Detail Cancellation

The scheduled details for July and August are temporarily

suspended. This includes the White Mountain and the Operation Rumford Vigilance details. To be clear there are no longer any outside details scheduled for July and August as of today's date. Any details that are scheduled in the month of June can still be worked. I will be working with the County, Border Patrol and U.S. Fish and Wildlife in hopes that these details aren't permently [sic] lost. Article 10 -E of the bargaining unit agreement that you have with the County states in the event of a cancellation of an outside detail for which an employee was assigned, if less than forty-eight (48) [sic] notice of such cancellation is given to the employee than [sic] the employee would be eligible for two (2) hours detail pay. This notice is given well beyond the 48 hours so this article does not apply. You can be assured that I will go through the overtime rotation list and cancel all the detail hours that were entered for every deputy for the July and August schedules.

901

Posted 06/25/2014 @ 1539 hours

16. On June 26, 2014, Mr. Halacy sent Sheriff Gallant the following email:

Subject: RE: Question about filling of vacancies

Sheriff the Union is requesting a [sic] explanation as to why all the outside details have been cancelled for the next two months. Was my alerting you to a violation in the contract the reason for a suspension of all outside details for the next two months? What are the "many conflicts" you allude to in your email to me?

17. On June 27, 2014, Sheriff Gallant sent Mr. Halacy and others the following email:

Subject: RE: Question about filling of vacancies
Mr. Halacy:

Your "alerting" me to a violation has nothing to do with outside details that are contracted with the County Commissioners and the Sheriff. I am confused by your message. Is it you or the union that is asking this? I find it insulting the union would even suggest I suspended the detail because of a grievance. I believe in the grievance process especially when in good faith I'm believing they are coming from a majority consensus or vote by your membership. By my count you currently have a membership of 17. So under

good faith I'm believing when these grievances are presented that the membership is aware and a majority are in agreement.

I have no problem with Annalee ruling that a part-timer should not have been scheduled a detail. In fact I have been saying to you and your membership for the last seven and a half years that I could never figure why you have reserves even mentioned in your contract.

What has caused the "many conflicts" that you say I "alluded" to is Annalee ruling beyond the unions position in grievance 2014-5 (I have not attached the grievance assuming you all have read it). Her ruling on how she thinks I should be filling the outside details is her biased opinion and is not written in your contract. Based on her opinion for me to schedule and call every individual for each detail before posting it would take up to 57 hours of calling time for the 71 details. She ruled that I should call first before scheduling to see if the available people on the rotation list want that individual detail.

Her opinion isn't written in your contract nor based on past practice scheduling has that [sic] ever been done as long as I have been Sheriff. In fact, prior to me being here you did not even go by a posted rotation list. You didn't have one! Recently we even created a new spread sheet that is current showing hours charged using the seniority rotation list. Prior to me being elected as Sheriff you let a part timer work the White Mountain Details most every detail. I guess you don't recall I stopped that practice to get you more in line with the contract so that details went to full time bargaining unit members. Stonegarden was not even part of your vocabulary then either.

The scheduling has been fair all these years but now Annalee goes beyond your grievance request and just arbitrarily makes scheduling rules up that are not written in the contract. A few examples to the "many conflicts" by Annalee. She says before putting anyone's name on the scheduled overtime detail list I have to call to give everyone an opportunity to accept or reject. I don't see where the contract spells it out like that. And a few other things not written. What number do I call, private number, home number or department number. How many times do I let it ring? If there is voice mail do I leave a message? If a message is left how long do I wait for a return call? When does one get charged for a refusal on a telephone call? I wonder how long that might take some day just to fill one detail let alone 71.

You are all going through contract negotiations with the

County. As much as I dislike side-bar agreements I recently suggested the county might work with the union in coming up with a temporary side-bar agreement with the union that would get us through outside detail scheduling until a contract can be ratified. I am not part of contract negotiations like you all are but my understanding is that you turned that offer down.

And finally I can't stress enough. The reason the details are temporality [sic] suspended is that I do not have a free 50 to 60 hours a week to be making calls for outside details based on what Annalee has ruled. It has nothing to do [sic] Mike Halacy's opinion: "Was my alerting you to a violation in the contract the reason for a suspension of all outside details for the next two months".

18. There were 91 details allotted under the Stonegarden contract for the period from June 30 to early September. Twenty of them went to the Rumford Police Department, leaving 71 for Oxford County for the months of July, August, and part of September. Sheriff Gallant initially assigned 32 details (of the 71) for the month of July and the other 32 for the month of August, with 10 Rumford details each month. None of the details were held in July, but 71 Stonegarden details were scheduled and worked in August. In addition, Rumford had 20 details in August.
19. Sheriff Gallant filled the August outside details in the same manner as he had prior to the June 23, 2014, grievance decision, except that he did not assign part-time deputies until the shift had been offered to all deputies on the rotation list.
20. The Union did not object to the manner in which the details were filled for August nor did it object when the September details were assigned.
21. Sheriff Gallant testified that when the grievance decision

issued, there was very little time to address it before the start of July. Compounding the problem was the need to fix his mistake of scheduling a probationary employee, the issue that Mr. Halacy raised in his email of June 25, 2014. The Sheriff testified that he decided he just did not have the time to redo the schedule in what was left of June, so he cancelled it. The Sheriff testified that after he had a chance to reflect, he realized he did not have to call each member individually for each outside detail.

22. The Sheriff currently maintains a spread sheet to track the hours each deputy works, the outside details they worked, as well as the instances where a deputy refused an outside detail. The method of recording outside details offered and refused was not in a very accessible format prior to the spring of 2014.
23. There were a total of 176 hours of outside detail work that had been scheduled for July that were suspended. Nearly all of the 176 hours were later scheduled for August.
24. The number of outside detail hours actually worked by each bargaining unit member during August was generally not the same as the number of hours that had been initially assigned over both July and August. Some individuals actually worked more hours, some worked less, and a few worked the same number of hours.

DISCUSSION

The question presented in this case is whether the Sheriff's cancellation or suspension of the outside details for July and August interfered with, restrained or coerced the unit employees

in the exercise of their rights under the Act where the cancellation occurred shortly after the Union prevailed on a grievance.

Section 964(1)(A) of the Act prohibits an employer from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963." Section 963, in turn, protects the right of public employees to:

. . . join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining, or in the free exercise of any other right under this chapter.

The legal analysis of whether a public employer's conduct violates section 964(1)(A) by "interfering with, restraining or coercing employees in the exercise of the rights guaranteed by section 963" is well established:

Section 964(1)(A) prohibits an employer from engaging in conduct which interferes with, coerces or restrains union activity. A violation of section 964(1)(A) does not turn on the employer's motive, or whether the coercion succeeded or failed, but on "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." Jefferson Teachers Association v. Jefferson School Committee, No. 96-24, slip op. at 25 (Me.L.R.B. August 25, 1997); MSEA v. Department of Human Services, No. 81-35, slip op. at 4-5, 4 NPER 20-12026, (Me.L.R.B. June 26, 1981) (quoting NLRB v. Ford, 170 F.2d 735, 738 (6th Cir. 1948)).

Sanford Police Assoc. v. Town of Sanford, No. 09-04, Interim Order at 5 (Jan. 29, 2009), quoting Duff v. Town of Houlton, No. 97-20 at 21 (Oct. 19, 1999), and citing MSEA v. State Development Office, 499 A.2d 165, 169 (Me. 1985) (Law Court citing this standard with approval).

Violations of §964(1)(A) include conduct such as attempting to interfere with the employee's right to serve on the union's bargaining team, MSEA v. Dept. of Human Services, No. 81-35, at 5 (June 26, 1981), a supervisor's warning to an employee not to go to the "wrong people" and get "bad advice," Ouellette v. City of Caribou, No. 99-17, at 10 (Nov. 22, 1999), and a supervisor's threatening conduct toward employees interfering with their right to file and process grievances, William Single and Sanford Police Assoc. v. Town of Sanford, No. 85-04, at 4 (Oct. 18, 1984).

There is no question that using the grievance procedure, a mechanism for resolving issues regarding the application of the collective bargaining agreement, is conduct protected by §963. Here, the Sheriff cancelled the July and August outside details shortly after receiving the decision granting the grievance the Union had filed in April. That grievance concerned an incident where the Sheriff used a part-time deputy to fill an outside detail that opened up when a full-time deputy could not work an assigned detail. The Union won the grievance. The question is whether the Sheriff's conduct was perceived as retaliation against the unit members for having exercised their rights to demand adherence to the terms of the collective bargaining agreement through a grievance.

The Sheriff claims that he was overwhelmed by the amount of time it would take to schedule the outside details in accordance with what he thought was required by the grievance decision. The Sheriff anticipated that it would take him over 50 hours to redo the schedule by offering each specific detail to the top person on the seniority list. As noted above, the Board's long-standing analysis of whether particular conduct violates 1(A) does not rest on the motivation of the actor, but on whether the conduct

can reasonably be said to restrain or interfere. To determine this, we must look at what the employees saw, rather than what was inside the Sheriff's head.

The Sheriff informed the department of the cancellation of the outside details through a posted announcement. The wording and tone of the posting is important in determining how the employees viewed his conduct. The headline of the announcement, in bold print, stated "Scheduled Outside Detail Cancellation". While the first sentence of the announcement says the details are "temporarily suspended", and there is another reference to the Sheriff's hope that the details will not be permanently lost, the unequivocal effect of the memo was cancellation of the details. The Sheriff even explains that the employees are not entitled to any pay under Article 10E of the agreement which entitles an employee to two hours of detail pay if an outside detail is cancelled without a 48-hour notice. The final sentence of the announcement reinforces the harsh tenor of the Sheriff's message: "You can be assured that I will go through the overtime rotation list and cancel all the detail hours that were entered for every deputy for the July and August schedules."

It is the words of this announcement that the employees in the bargaining unit saw, not an explanation of how complicated it would be for the Sheriff to re-schedule the details. We think that the answer to the question of whether such a memo could "reasonably be said to interfere" with the free exercise of employee rights is "yes."

The magnitude of the Sheriff's cancellation is also relevant, particularly in light of the alternatives that were available to him. Clearly, time was of the essence, because had

he waited a few days he would have incurred the cost of two hours of pay for each detail cancelled without 48 hours prior notice. Rather than cancel two full months of scheduled details, the Sheriff could have picked up the phone and called Mr. Halacy to discuss how he could approach the problem, or he could have called the County's labor consultant or someone else for advice. Alternatively, he could have cancelled the first week or two of the schedule to take the pressure off for issuing a revised schedule. The cancellation of two full months of scheduled details seems to be a response made in anger and frustration.

We conclude that the Sheriff's cancellation of the outside details for July and August can reasonably be said to be conduct that "tends to interfere with the free exercise of employee rights under the Act," and is therefore a violation of §964(1)(A). We will order the County to cease and desist from engaging in such conduct.

When the Board concludes that a party has engaged in a prohibited practice, §968(5)(C) requires the Board to order the party

. . .to cease and desist from such prohibited practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

As we have stated frequently, a remedial order must be fashioned to seek "a restoration of the situation, as nearly as possible, to that which would have obtained" but for the prohibited practice. Caribou School Department v. Caribou Teachers Association, 402 A.2d 1279, 1284 (Me. 1979). Here, the Union argues that the Board's remedial order should require the payment of all 176 detail hours that had been scheduled for the

month of July. The County argues that no payment is required because the employees suffered no harm -- the outside details that were initially scheduled for July were all eventually worked during the month of August.

The Joint Exhibit submitted by the parties after the evidentiary hearing shows the outside detail hours for which each deputy was initially scheduled and the hours actually worked in August. This exhibit provides convincing evidence that some of the employees were harmed by the rescheduling of all of the outside details into one month. Of the 18 bargaining unit employees listed, 9 of them worked fewer hours than they had previously been scheduled, while 9 of them worked either the same or more than the numbers of hours they had been initially scheduled. The individuals who had a loss of outside detail hours must be made whole for those lost hours. To provide the remedy the Union seeks of payment for all 176 hours lost in July would not restore the status quo ante, but would result in an inappropriate windfall for the employees. Accordingly, we will order the County to restore the status quo ante by paying those individuals who lost outside detail hours for the specific number of hours they lost, as indicated in the Joint Exhibit.

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 MRSA §968(5), we hereby ORDER the County to cease and desist from engaging in conduct that interferes with the employees' rights to use the grievance procedure. We further ORDER the County to remedy its violation of the Act by paying to those individuals who had fewer outside details in August than

they had been initially scheduled for July and August the outside detail pay for those lost hours. The County shall confer with the Union to ensure the County's prompt payment of those lost hours as indicated by the figures in the Joint Exhibit. If the parties are unable to agree on the number of hours for which compensation is due, they may request Board assistance within 20 days of the date of issuance of this decision and order.

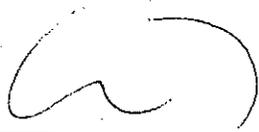
Dated at Augusta, Maine, this 5th day of February, 2015.

MAINE LABOR RELATIONS BOARD

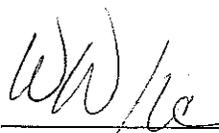
The parties are advised of their right to seek review of this decision and order by the Superior Court by filing a complaint pursuant 26 M.R.S.A. § 968(4) and in accordance with Rule 80C of the Rules of Civil Procedure within 15 days of the date of this decision.



Abigail C. Yacoben
Chair



Robert W. Bower, Jr.
Employer Representative



Wayne W. Whitney
Employee Representative

Chair Abigail C. Yacoben and Employee Representative Wayne W. Whitney participated in the deliberation of this case and concur with the decision above, but were unavailable to sign this Decision and Order.