

COUNTY COMMISSIONERS LEGAL RESPONSIBILITY

Overview of Employment and
Labor Laws and Issues

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Variety of Personnel Issues

- **Union and Non-Union Context**
- **Different Rules , Procedures and Issues in Each**
- **Union Context:**
 - **Governed by the Maine Public Employee Labor Relations Act**
 - **Maine Labor Relations Board**
 - **Bargaining Unit**
 - **Represented by exclusive collective bargaining agent (a union)**
 - **Likely different bargaining units (corrections, clerical, deputies, etc.) and different unions**
 - **Each with a Collective Bargaining Agreement**
 - **Generally 3 year terms for CBA's**
 - **Duty to bargain with Union in good faith with respect to wages, hours, working conditions and contract grievance arbitration**
 - **Commissioners' role – use County Manager or other designee as Chief Negotiator**
 - **Review and set parameters for negotiations**
 - **Receive updates and provide feedback and guidance to the Chief Negotiator**
 - **Approve proposals**
 - **Approve any tentative agreement with the Union**
 - **Review and Approve Collective Bargaining Agreement after ratification**

Specialized Union Issues

- **Collective Bargaining**
 - If a CBA expires, the existing contract effectively remains in place in order to maintain the “status quo”
 - The parties continue to negotiate
 - If an agreement cannot be reached, the law requires a multi-step process
 - Mediation; Fact-Finding; Arbitration
- **Composition of Bargaining Units**
 - Voluntary Recognition
 - Election
 - Petitions to decertify bargaining agent or modify bargaining unit
 - Hearing Process

Prohibited Practices

- **Prohibited Acts**
 - Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963;
 - Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment;
 - Dominating or interfering with the formation, existence or administration of any employee organization;
 - Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter;
 - Refusing to bargain collectively with the bargaining agent of its employees as required by section 965;
 - Blacklisting of any employee organization or its members for the purpose of denying them employment;
 - Requiring an employee to join a union, employee association or bargaining agent as a member; and
 - Terminating or disciplining an employee for not paying union dues or fees of any type

Potential Problem Areas

- Line between responding to constituents and “Direct Dealing”
- Circumventing Collective Bargaining Agent
- Board Acts as One Entity
- Unintentionally undermining Board of Commissioners
- Direct communications with employees can lead to recusal as a witness if become a witness and have direct knowledge of underlying facts

MLRB Case Processing

- **Administrative Process**
 - **Complaint and Answer**
 - **Prehearing filings and proceedings**
 - **Administrative Hearing**
 - **Appeal to MLRB**
 - **Appeal to Superior Court**
 - **Note: Opportunities for resolution throughout**

Union Grievance Process

- Each Collective Bargaining Agreement has a grievance process
- Any alleged violation of the CBA can be grieved
- Discipline or any other area of alleged noncompliance with the CBA
- Multi-step process
- Supervisor, Department Head, County Manager/Administrator, County Commissioners
- Grievance Hearing Before the Commissioners:
 - Will require a review of the grievance file
 - May involve testimony and exhibits; or
 - The Union arguing a particular position
- Options for a decision
 - Grant or sustain the grievance
 - Deny the grievance
 - Deny the grievance in part and grant it in part
- Arbitration
 - Union has the right to advance to arbitration
 - Cost associated with arbitration hearings
 - Difficult to overturn arbitration decision

Non-Union Employee Issues

- Guided by County Human Resources Policies
- Performance evaluations
- Discipline
- Uniformity and Consistency
- Fairness
- Monetary Issues
 - Starting wage levels
 - Wage increases
 - Promotions
 - Benefits

Termination of Employment Hearings

- The Commissioners have final authority on the dismissal of a County employee
- Department Head recommends, but Commissioners decide
- Role is a quasi judicial one
- Must be impartial
 - Violation of due process if not
- Must consider recusal from decision making when:
 - Impartiality might reasonably be questioned
 - Has a personal bias or prejudice concerning a party
 - Personal knowledge of disputed evidentiary facts concerning the proceeding.
- This critical role suggests that avoidance of involvement in and discussions on personnel matters with employees is important
- Decision must be reduced to writing

Standard for Dismissal, Suspension or Disciplinary Action

- Under Section 501:
 - a county officer or department head may dismiss, suspend or otherwise discipline a department employee only for cause, except as provided in paragraph A [regarding budgetary reasons]. Cause for dismissal, suspension or disciplinary action must be a just, reasonable, appropriate and substantial reason for the action taken that relates to or affects the ability, performance of duties, authority or actions of the employee or the public's rights or interests.

Cause Under the Statute

- Cause for dismissal, suspension or disciplinary action must be
 - a just, reasonable, appropriate and substantial reason for the action taken
- that relates to or affects
 - the ability, performance of duties, authority or actions of the employee or
 - the public's rights or interests.

Just Cause

In a Collective Bargaining Agreement

- Arbitrators tend to apply a slightly heightened standard of “just cause”
- Historically there are 7 tests for just cause:
 - Did the Employer forewarn the Employee of the possible consequences of the Employee’s conduct (the Notice Test)?
 - Was the rule or order involved reasonably related to the orderly, efficient and safe operation of the business (the Reasonableness Test)?
 - Before administering discipline, did the Employer make an effort to discover whether the Employee did, in fact, violate or disobey the rule or order (the Factual Basis Test)?
 - Was the Employer’s investigation conducted fairly and objectively (the Fairness Test)?
 - In the investigation, did the Employer obtain sufficient evidence or proof that the Employee was guilty as charged (the Proof Test)?
 - Has the Employer applied its rules, orders, and penalties evenhandedly and without discrimination (the Non-Discrimination Test)?
 - Was the degree of discipline reasonably related to the seriousness of the offense and the Employee’s record (the Appropriate Penalty Test)?

Important Considerations

- Reasonableness
- Fairness
- Consistency and Uniformity
- Quality and Quantity of the Evidence
 - Documentation
 - Corroboration
- Appropriateness of the Discipline to the misconduct
- Absence of discriminatory/retaliatory motive

Procedure and Fairness in Hearings

- Effectively required by Statute
- Intertwined with Due Process
 - “[P]ublic employees who have a property right in continued employment are entitled to notice and an opportunity to be heard before they can be deprived of that property right. *Moen v. Town of Fairfield*, 1998 ME 135, ¶ 9, 713 A.2d 321, 324–25 (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 545–46, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)).
 - “A meaningful opportunity to be heard need not entail a full, formal evidentiary hearing “as long as the employee has the opportunity to tell his or her side of the story and explain why termination should not occur.” *Id.*

Discrimination Cases

- Maine Human Rights Commission
- Complaint
- Response
- Reply
- Quicker processing for existing employee
- Opportunity for Mediation
- Passage of time
- Investigation
- Fact Finding
- Investigator's Report and Recommendation
- Objection and Oral Presentation to MHRC
- Complaint Filed in Court
- Alternative – Request for Right to Sue Letter after 6 months

Topical Employment Issues

- Whistleblower claims
- Disability Discrimination
- Sexual Harassment/Discrimination
- Family and Medical Leave
retaliation/Interference Claims