

City of Portland
Police Citizen Review Subcommittee

AGENDA
January 10, 2024
6:00 PM

1. Zoom information

- a. On Wednesday, January 10, 2024 at 6:00 p.m., the Police Citizen Review Subcommittee will conduct a virtual meeting. This meeting will take place remotely using Zoom.

This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Police Citizen Review Subcommittee and as authorized under 1 M.R.S. 403-B . Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available following the meeting.

For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

You are invited to a Zoom webinar.

When: January 10, 2024 06:00 PM Eastern Time (US and Canada)

January 10, 2024 06:00 PM

Topic: January 10, 2024 PCRS Meeting

Please click the link below to join the webinar:

<https://portlandmaine->

[gov.zoom.us/j/89129715334?pwd=a1BiN0ZlczRodi83VFpxVnVXSk1HQT09](https://portlandmaine-gov.zoom.us/j/89129715334?pwd=a1BiN0ZlczRodi83VFpxVnVXSk1HQT09)

Passcode: 798099

Or One tap mobile :

US: +13092053325,,89129715334# or +13126266799,,89129715334#

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Dial(for higher quality, dial a number based on your current location):

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2. Call to Order
3. Approval of December 13, 2023 minutes
 - a. Attachment-minutes
 - b. 12-14-2023 X. Botana's email to subcommittee
 - c. 6-27-2001 MLRB Decision
4. Public comment on agenda items
5. Executive session pursuant to 1 M.R.S. Sec. 405(6)(F) to discuss IA2023-006, AI2023-017, and IA2023-019.
6. Adjourn

MINUTES
POLICE CITIZEN REVIEW SUBCOMMITTEE

December 13, 2023
Meeting Held Remotely Via Zoom

Members present: Reggie Parson, Chair; Xavier Botana; Tim Smith; and Jean-Raymond Desruisseaux (Gino).

Members absent: Anne Hardcastle; Reverend Kenneth Lewis; and Kaylin Kerina

Staff present: Associate Corporation Counsel Rachel Millette; Interim Assistant Police Chief Robert Martin; Tracy Boyd

6:03 Call to order.

Motion was made by Tim and seconded by Gino to adopt minutes of the November 8, 2023 meeting. Passage 4-0.

Executive session pursuant to 1 M.R.S. Sec. 405(6)(F) to discuss IA2023-009, IA2023-014, IA2023-015, IA2023-016.

6:09 Motion was made to enter into Executive Session by Gino and seconded by Xavier. Passage 4-0.

7:03 Out of Executive Session.

Motion was made by Gino to find that IA 2023-009 was timely; seconded by Tim; roll call vote 4-0.

Motion was made by Gino to find that IA 2023-009 was fair; seconded by Tim; roll call vote 4-0.

Motion was made by Xavier to find that IA2023-009 was thorough; seconded by Tim; roll call vote 4-0.

Motion was made by Gino to find that IA 2023-009 was objective; seconded by Tim; roll call vote 4-0.

Motion was made by Xavier to find that IA 2023-014 was timely; seconded by Gino; roll call vote 4-0.

Motion was made by Gino to find that IA 2023-014 was fair; seconded by Tim; roll call vote 4-0.

Motion was made by Tim to find that IA2023-014 was thorough; seconded by Gino; roll call vote 4-0.

Motion was made by Gino to find that IA 2023-014 was objective; seconded by Tim; roll call vote 4-0.

Motion was made by Tim to find that IA 2023-015 was timely; seconded by Gino; roll call vote 4-0.

Motion was made by Tim to find that IA 2023-015 was fair; seconded by Gino; roll call vote 4-0.

Motion was made by Gino to find that IA2023-015 was thorough; seconded by Tim; roll call vote 4-0.

Motion was made by Gino to find that IA 2023-015 was objective; seconded by Tim; roll call vote 4-0.

Motion was made by Xavier to find that IA 2023-016 was timely; seconded by Gino; roll call vote 4-0.

Motion was made by Xavier to find that IA 2023-016 was fair; seconded by Tim; roll call vote 4-0.

Motion was made by Xavier to find that IA2023-016 was thorough; seconded by Tim; roll call vote 4-0.

Motion was made by Xavier to find that IA 2023-016 was objective; seconded by Tim; roll call vote 4-0.

Gino began a discussion of missed opportunities to evangelize the work and transparency of the subcommittee through existing Portland Police Department media platforms, which already receive a lot of public engagement, and City media platforms. He will reach out to see who should be contacted to explore this idea. Xavier commented that the real opportunity to increase public engagement lies ahead with the implementation of the Charter changes. Tim commented that the group may want to temper expectations around public engagement. Reggie agrees the new board can start fresh to bring more voices and perspective with the increase in the number of board members. Xavier suggested adding language to the complainant letter to inform people of the board's review of their IA case. Rachel commented that the present subcommittee can send the recommendation to the City Manager. Reggie added that they could also include the recommendation in the Annual Report. Reggie raised concerns around the opportunity to work on the annual report and asked Rachel how much notice the subcommittee might have before they are disbanded. Rachel is unsure as to how much notice the subcommittee will have.

Rachel prepared a memo to the board regarding the second draft of the ordinance. The draft ordinance is still being discussed with the police unions. Xavier asked questions regarding the auditing function of the Civil Police Review Board (CPRB), the City Council's appeal process, and staffing. Reggie raised a concern regarding the 24 hour deadline for the CPRB to forward the complaint to the Internal Affairs. Xavier raised concerns about the true effectiveness of the CPRB if it cannot change the outcome of an investigation. Xavier asked if the draft ordinance may change before the City Council reviews it, and Rachel answered that it may change before it is sent back to the City Council. Rachel believes that the earliest the proposed draft will reach the City Council would be January 17, 2024, or it could be later. The subcommittee can prepare a letter to the City Council with their comments and concerns about the draft and/or each member, in their own individual capacity, can contact the councilors.

Public comment from Joey Brunelle and Marcella Makinen was offered. Gino, Tim, Xavier, and Reggie all responded to the public comment, which centered largely around public engagement.

Discussion around whether the subcommittee will meet if there are no cases to review and the potential of whether Rachel will have any draft ordinance updates.

7:40 Motion was made by Gino to adjourn, seconded by Tim. Passage 4-0.

Re: Draft Civilian Police Review Board Ordinance

Xavier Botana <xebotana@yahoo.com>

Thu, Dec 14, 2023 at 1:36 PM

To: Reggie Parson <reginald.parson@maine.edu>, "Anne E. Hardcastle" <aehardcast@aol.com>, Jean-Raymond Desruisseaux <jean.r.desruisseaux@gmail.com>, Tim Smith <timsmith@maine.rr.com>, Kaylin Kerina <kaylinnkerina@gmail.com>, Kenneth Lewis <revkilewis@gmail.com>, Rachel Millette <rmillette@portlandmaine.gov>
Cc: Tracy Boyd <tboyd@portlandmaine.gov>

Dear All,

I am sharing below the questions I raised yesterday about the proposed ordinance. I wanted all members to have this since several were not able to attend the meeting.

Rachel, you cited a Maine Labor Relations Board opinion that limits the scope of authority of the Civilian Board and the Council. Would you kindly share that opinion or give me a citation?

Comments on draft ordinance

Scope of Authority Concern:

Language proposed: **The board shall make no recommendations or offer any findings or comments relative to any disciplinary action, or lack of action, against any officer**

This is not in the charter language. Why is this here? What is the purpose of reviewing these investigations when you disagree with the outcome if not making a recommendation or commenting?

Resources Concern:

Language proposed re: Technical Advisor: **shall be retained by the city manager after consultation with the chief of police, representatives of the police unions and the chair of the board**[XB1]

Why not the Board in consultation with all of those parties?

Also as to community liaison, proposed language: **The City Manager shall designate a staff member [XB1] to serve as the civilian police review board's Community Liaison. The Community Liaison shall ensure that the public is aware of the methods for filing complaints, and shall assist the board with carrying out its duties, conducting outreach, and other duties as assigned by action of the board. [XB2]**

[XB1]Unclear whether this is a dedicated staff person, an existing staff person? The charter said that the council would determine if FT/PT

[XB2]This would suggest that the Board could modify the person's duties. If so, who does this person report to if they are assigned by the city manager?

Under appeals, proposed language states:

An individual aggrieved by the report on a complaint issued by the civilian police review board [XB1] may submit a notice of appeal of the board's due process determinations to the city council.

[XB1]The appeal is based on a report made by the Board rather than a finding of the police department upheld by the Board?

Also: Any such appeal must be in writing addressed to the mayor, must state the **basis** [XB1] for the appeal,

[XB1]What are the valid reasons for an appeal? What constitutes a “basis?”

Under appeals (b): The city council **will have no power or authority to subpoena or call witnesses nor to impose or modify any disciplinary action, or lack of action, against any police officer. The city council’s hearing will not address, and its advisory opinion will make no recommendations nor offer any findings or comments relative to any disciplinary action, or lack of action, against any officer or any other personnel matter.** [XB1]

[XB1]How is it an investigation without the power to investigate? How is it an appeal if there is no course to change the outcome?

Best,
Xavier

On Tuesday, December 12, 2023 at 12:32:18 PM EST, Rachel Millette <rmillette@portlandmaine.gov> wrote:

Good Afternoon Everyone,

My sincere apologies for my delay in getting this to you. In preparation for tomorrow's meeting, I have prepared a memorandum which outlines the changes in the draft ordinance since the initial draft that you originally reviewed. I hope this is helpful, but please feel free to reach out if you have any questions or would like any clarification before the meeting. I should also be able to answer questions during the meeting tomorrow evening. A copy of this memo will also be uploaded into the meeting materials for the public to access.

Thank you, and I look forward to seeing you all tomorrow evening!

Best,

Rachel L. Millette
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[389 Congress Street](#)
Portland, Maine 04101
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rmillette@portlandmaine.gov
pronouns: she/her



Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

On Wed, Nov 22, 2023 at 7:38 AM Rachel Millette <rmillette@portlandmaine.gov> wrote:

Good Morning Everyone,

Attached please find the most recent draft of the Civilian Police Review Board ordinance. At this time, I do not have a date by which this will be heard by the Council. I hope to put together a memo for you outlining the changes before the next meeting, but I wanted to at least get the draft ordinance over to you for your review. Please do not hesitate to contact me if you have any questions or concerns.

Happy Thanksgiving to you all!

Best,

Rachel L. Millette
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ANGUS S. KING, JR.
GOVERNOR

STATE OF MAINE
LABOR RELATIONS BOARD
90 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0090
OFFICES LOCATED AT:
242 STATE STREET

June 27, 2001

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Dear Elizabeth and John:

Re: City of Portland, Petition for Interpretive Ruling, No. 01-IR-01
(Me.L.R.B. filed April 13, 2001)

Enclosed please find a copy of the Interpretive Ruling in the above-referenced matter.

Very truly yours,

Marc P. Ayotte

MPA/rap
Enclosure

2000121

STATE OF MAINE

MAINE LABOR RELATIONS BOARD
Case No. 01-IR-01
Issued: June 27, 2001

In Re: CITY OF PORTLAND, PETITION FOR
INTERPRETIVE RULING

INTERPRETIVE RULING

On April 13, 2001, the City of Portland filed a Petition for Interpretive Ruling with the Maine Labor Relations Board on the question of whether the establishment of a Police Civilian Review Subcommittee is, in whole or in part, a mandatory subject of bargaining under 26 M.R.S.A. §965(1)(C) and §969 and, if not, whether there are any impacts on working conditions over which the parties must negotiate. In accordance with Chapter 12, §41 of the Board's Rules and Procedures, a copy of the petition was served on the Portland Police Benevolent Association and a copy was posted on the bulletin board at the Board's offices and on the Board's internet website. The Board received briefs from the City of Portland and the Portland Police Benevolent Association. The Board concludes that the establishment of the Police Civilian Review Subcommittee is not, in itself, a mandatory subject of bargaining. To the extent that the operation of the Subcommittee affects working conditions and contract grievance arbitration, however, those effects are a mandatory subject of bargaining under §965(1)(C) of the Municipal Public Employees Labor Relations Law, 26 M.R.S.A. §961 et. seq.

The City's Petition includes a general description of its proposed Police Civilian Review Subcommittee, which would be a subcommittee of the City's Civil Service Commission.¹ The City

¹The Civil Service Commission oversees the employment of Police and Fire Department employees. Its primary concern is hiring employees, as the provisions of the collective bargaining agreement providing binding arbitration for certain disciplinary actions control those issues for covered employees. See 26 M.R.S.A. §969. Under the

describes the purpose of the Subcommittee as "to have a body outside the Police Department review the Internal Affairs investigative process, primarily to ensure public credibility of the results reached as to whether any formal citizen complaint against an officer should or should not be sustained." (City's brief, p. 2). This review would occur prior to any review of the Internal Affairs investigation by the Chief of Police and prior to any disciplinary action.

The Civilian Review Subcommittee would review both the sufficiency of the investigation and the corresponding recommendation by Internal Affairs. Specifically, the Subcommittee is authorized to recommend (or require)² that additional investigation be completed by Internal Affairs, stating what witnesses or matters require further investigation. The Subcommittee must state in its report whether it agrees or disagrees with the disposition of the citizen complaint by Internal Affairs (that is, whether the complaint is "sustained" or "not sustained"), and specify the basis for its agreement or disagreement. The Subcommittee is not authorized to question witnesses or conduct any investigation itself nor is it authorized to impose discipline.

Once the Subcommittee completes its review (potentially after receiving an amended report from Internal Affairs if the Subcommittee requires additional investigation), its report would be submitted along with the report of the Internal Affairs

collective bargaining agreement, an employee may opt to have a Civil Service Commission hearing on serious disciplinary actions, rather than electing to use the grievance arbitration procedures.

²The papers are inconsistent on whether the Subcommittee just "recommends" additional investigation or can order it. In the section #1 under "Authority of Subcommittee" (City's Brief, p. 3), the City uses the word "recommend." The next paragraph, however, states that if the Subcommittee recommends additional investigation, Internal Affairs would "do" the additional investigation and send its amended report to the Subcommittee for final review.

Investigation to the Police Administration for the decision on whether to impose discipline. The City notes that all information in the Internal Affairs report and in the Subcommittee's report would remain confidential and the employee would have the right to a copy of all the information. If disciplinary action is taken, the Subcommittee report could be used by either party in any Civil Service Commission hearing or in the grievance procedure.

The City also presented an alternative proposal for the Subcommittee which differs from the above in that the Subcommittee's review would occur after Police Administration has decided whether to impose discipline. Thus, the Subcommittee's review and report would cover not only whether the Subcommittee recommended additional investigation and whether it agreed with the disposition of the citizen's complaint, but also whether the Subcommittee agreed or disagreed with the decision regarding disciplinary action.

In response to the City's petition, the Portland Police Benevolent Association filed a brief arguing that the subject of the Citizen Review Subcommittee is a mandatory subject of bargaining. The Association argues that the Subcommittee's involvement introduces politics into an otherwise neutral area of review by trained professionals and that it materially affects a mandatory subject of bargaining. The Association also contends that requiring the Subcommittee to review the investigative process and authorizing it to order additional investigation will delay the process and materially affect working conditions. The Association argues that allowing either party to use the Subcommittee report in the grievance procedure or Civil Service Commission appeal process is a material change that is a mandatory subject of bargaining.³

³The Association also claims that providing information on criminal investigations to the Subcommittee violates state law. We have no jurisdiction to address this issue.

DISCUSSION

It is well settled that an issue is a mandatory subject of bargaining if it "is significantly and materially related to 'wages, hours, working conditions and contract grievance arbitration.'" Portland Firefighters Assoc., I.A.F.F. v. City of Portland, No. 83-01 at 3 (Me.L.R.B. June 24, 1983), aff'd 478 A.2d 297 (Me. 1984). There is no management prerogative exception to the duty to bargain and the Board and the Law Court have expressly rejected the argument that a management prerogative exception is implied. See, Portland Firefighters, 83-01 at 5, n.3, citing Board of Directors of M.S.A.D. No. 36 v. M.S.A.D. No. 36 Teachers Assoc., 428 A.2d 419, 423 n.6 (Me. 1981) and State v. Maine Labor Relations Board, 413 A.2d 510, 514 (Me. 1980). Section 969 of the MPRL prohibits collective bargaining over merit examinations and rating of candidates for hire and promotion but does not otherwise limit mandatory subjects of bargaining.

The City's two proposals for its Police Civilian Review Subcommittee fall somewhere in the middle of the spectrum for such bodies as far as the impact on mandatory subjects is concerned. At one end of the spectrum would be a review committee that not only reviews the work of the Internal Affairs investigation, but also conducts its own investigation, examines witnesses, compels testimony and has the authority to impose discipline on the police officer being investigated. There is no question that such model would significantly and materially affect the working conditions of an employee being investigated and would therefore be a mandatory subject of bargaining.

[At the other end of the spectrum is a review committee that looks over the work of the internal affairs investigation after everything has run its course: after discipline has been imposed or the decision not to impose discipline has passed, and after any grievance filed has completely run its course. Such a review would not be to pass judgment on Internal Affairs' handling of a

particular case, but to perform a general audit of their investigative methods and the integrity of the disciplinary process. The target of that review would be Internal Affairs and Police Administration, rather than the officer who was investigated. In such a model, the relation of the process to working conditions or contract grievance arbitration procedures would be remote.

The Board has only issued one decision discussing the impact upon a law enforcement officer of being investigated by internal affairs. In Hendsbee and Maine State Troopers Assoc. v. Dept. of Public Safety, the Board recognized that being the subject of an Internal Affairs investigation is a very serious affair that understandably causes worry for any officer being investigated because it is "shrouded in secrecy" and it could ultimately lead to discipline or discharge. No. 89-11, p. 25 (Me.L.R.B. Jan. 16, 1990). In Hendsbee, the Board concluded that "any role by [Internal Affairs] in the investigation of grievances will have a chilling effect on employee access to the parties' grievance resolution procedure." Id.⁴

We have no reason to believe that being a target of an internal affairs investigation at the Portland Police Department is any less worrisome or serious for the employee that it was recognized to be for State Troopers in Hendsbee. Furthermore, the Portland Police Department's Standard Operating Procedure on Internal Affairs Investigations permits the Chief to put an officer on paid leave for the duration of the investigation (SOP #52, VII). The SOP uses language identical to the collective bargaining agreement (the investigation "shall be conducted without unreasonable delay") reflecting the employer's recognition that the length of the investigation is a working condition. For

⁴In Hendsbee, the discussion of the impact of Internal Affairs investigations of employees did not arise in the context of analyzing a subject as mandatory or permissive. The question was whether having Internal Affairs investigating grievances interfered with the employees' free exercise of their collective bargaining rights.

these reasons, we conclude that the condition of being the subject of an internal investigation is a working condition that is a mandatory subject of bargaining. We must also note the obvious, that issues concerning employee discipline and the grievance procedure are also mandatory subjects of bargaining. See, e.g., AFSCME v. Ellsworth School Committee, No. 81-41 (Me.L.R.B. July 23, 1981).

For ease of discussion, we will first address the City's alternate proposal for the Subcommittee which requires the Subcommittee to conduct its review after the Police Chief decides the question of imposing discipline. This alternate proposal does not specify what is to occur if the Civilian Review Subcommittee disagrees with the Police Administration's decision on discipline. Can the report of the Subcommittee be the basis for the Administration to increase the discipline imposed? In what circumstances? How would a change in the discipline imposed affect the nature of and time restrictions on grieving that discipline? What if a discipline grievance has already proceeded through a number of steps before the Subcommittee's report is issued? What happens to the grievance? These questions demonstrate that the City's alternate proposal could significantly and materially affect the working conditions and contract grievance arbitration procedures of the members of the bargaining unit. Thus, we conclude that the impact of the work of the Civilian Review Subcommittee upon the discipline procedure and grievance procedure is a mandatory subject of bargaining.

The City's primary proposal affects working conditions to a lesser extent in one respect because the Subcommittee conducts its review before Police Administration has made any decision on discipline. Thus, there is no Subcommittee assessment of the Administration's decision on discipline that could result in a change to the discipline imposed or affect grievances underway. On the other hand, the period of not knowing if any discipline will be imposed is increased as Police Administration would not

have the results of the Internal Affairs investigation until the Subcommittee review process is completed.

As noted above, being the target of an internal affairs investigation is a significant issue for a police officer, particularly in light of the fact that the officer can be relieved of his or her duties by the Chief of Police for the duration of the investigation. There is a very real stigma associated with being placed on administrative leave pending an internal affairs investigation in any law enforcement agency. The most notable impact of the Civilian Review Subcommittee on this working condition is the fact that the Subcommittee's review will extend the investigation process by adding one more step, at a minimum, before Police Administration makes a decision on whether to impose discipline. The investigation process could be prolonged even further if the Subcommittee decides that further investigation needs to be completed and sends it back to Internal Affairs for additional work. (This issue also applies to the City's alternate proposal.)

The City recognizes that the investigation process could be prolonged and notes that the most recent collective bargaining agreement addresses timing in general terms in the section on member rights during internal investigations.⁵ The City suggests that any potential delay problem could be "easily" resolved by "requiring the Subcommittee to act within a reasonable time or lose the right to review." (City's brief, p. 9). Perhaps such a move would alleviate the Association's concerns about the impact of the process on working conditions, but it does not remove the

*investigation
admin leave
a length
of investigation*

⁵The fact that the existing contract language may, in the end, be viewed by both parties as a satisfactory way to address new concerns raised by the operation of the Review Subcommittee does not have any bearing on whether the issue itself is a mandatory subject of bargaining.

issue from the realm of mandatory subjects of bargaining.⁶

The Association points out that the City's proposal (and the alternate proposal) includes a provision allowing either party to use the Subcommittee reports in either the grievance procedure or a Civil Service Commission appeal.⁷ Contract grievance arbitration is specifically mentioned in the statute as a mandatory subject of bargaining. The evidence the parties are allowed to use in the grievance procedure does significantly and materially affect the grievance process. The City argues the use of the Subcommittee's report "is no different than any other evidence which might be presented by a party, and the hearing officer could accept, reject or limit the relevancy of the report." (City's brief, p. 9). This may be an accurate description of the norm for handling evidence in grievance proceedings and arbitration. Again, the fact that the existing norms may be sufficiently flexible to accommodate the introduction of a new report does not mean that the issue is not a mandatory subject of bargaining. Current practice may or may not be sufficient; that is simply not our call to make.

*Subject to
grievance
procedure*

The Police Benevolent Association argues that even though the Subcommittee would have no authority to recommend or impose any particular discipline, it would bring so much politics into the equation that Police Administration would be forced to respond to the political winds. We find this argument to be without merit. Politics is always present in the operation of any form of government based on democratic principles. Whether a government chooses to respond to the political winds embodied in

⁶It is important to remember that identifying an issue as a mandatory subject of bargaining does not mean that a party is required to reach any particular agreement or even to make a concession. See 26 M.R.S.A. §965(1)(C).

⁷Under the most recent collective bargaining agreement, an officer may opt to use the Civil Service Commission appeal process rather than the grievance procedure. This does not transform the civil service procedures into a mandatory subject of bargaining.

a Citizen Review board assessment or to respond to citizens' telephone calls to city hall, or to citizens protesting on the steps of city hall is entirely irrelevant to the question of whether a topic is a mandatory subject of bargaining.

To summarize, an issue is a mandatory subject of bargaining if it significantly and materially relates to wages, hours, working conditions and contract grievance arbitration. If requested, a party is required to bargain over a mandatory subject but is not required to reach any particular agreement or even to make a concession. The operation of the Civilian Review Subcommittee proposed by the City is materially and significantly related to both the working condition of being the subject of an internal affairs investigation and the contract grievance arbitration procedures. The alternative proposal has an additional impact on disciplinary action and the timing of grievances, both mandatory subjects of bargaining.

Date in Augusta, Maine, this 27th day of June, 2001.

MAINE LABOR RELATIONS BOARD



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Employer Representative



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