

# MAINE STATE LEGISLATURE

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February 6, 1976

Parker Denaco

Maine Labor Relations Board

Robert J. Stolt, Assistant

Attorney General

Replacements and New Appointees to the Maine Labor Relations Board

This will respond to your memorandum of January 6, 1976.

You ask:

1. Whether a former Board member may participate in the completion of a deliberation on a matter initiated prior to his successor's appointment and qualification by signing the Board's decision after his successor has been so appointed and qualified?

2. If a former Board member may not so participate, whether due process requires rehearing of the matter before the new Board?

To answer your first questions, the statute creating the Maine Labor Relations Board provides that the Board ". . . shall consist of 3 members and 6 alternates to be appointed by the Governor, with the advice and consent of the Council. . . . The term of each member and each alternate shall be for a period of 4 years. . . ." No further provision is made with respect to a member's term of office. In situations of this type, the law seems clear that the incumbent may hold over after the conclusion of his term until the appointment and qualification of his successor. See Atty. Gen. Report 1943-1944, p. 161. However, this generally accepted holding over rule and the grant of authority to the "Board," 26 M.R.S.A. § 968, prohibits the exercise of the Board's powers by a former member beyond the holding over period. A former Board member may not participate in the completion of deliberations on a matter initiated prior to his successor's appointment and qualification by signing the Board's decision after his successor has been so appointed and qualified.

It is my understanding that your second question is premised on a matter now before the Board styled a "prohibited practice complaint," and that this matter involves questions of fact. I also understand that the Board has had 3 days of evidentiary hearings thus far and has scheduled a 4th day, and that the record of 3 days already held is incomplete, so that a new Board member would be unable to obtain a complete picture of the factual matters in dispute upon which to base his decision.

Administrative due process requires that parties appearing before the Board in matters which involve adjudication of factual issues be afforded the opportunity to be heard. "The basic

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principle is that trial procedure is required for - and only for - issues of fact, not issues of law, policy, or discretion." Davis, Administrative Law Treatise, 1970 Supplement, § 7.01, at 301. The opportunity to be heard is not satisfied where a Board decision which determines issues of fact is signed by a member of the Board who did not participate in the Board's factfinding effort and who cannot determine the entire factual dispute from the record before the Board. However, this does not mean that the matter before the Board may not be decided by a quorum consisting of the Board's two incumbent members. Involvement of the new member would be required only where that quorum (the two incumbent members) is unable to reach a decision.

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