

ANNUAL REPORT
PANEL OF MEDIATORS
Fiscal Year 2014

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (Supp. 2013).

The primary function of the Panel of Mediators is to assist bargaining agents, who represent public employees at all levels of government and public education in Maine, and public employers to successfully negotiate initial or successor collective bargaining agreements. Although referred to as the Panel of Mediators, the State mediators do not sit as a panel but work independently from each other on each assigned case. Each mediator provides mediation services, state-wide. Effective mediators resolve disputes by persuading the parties to alter their positions sufficiently to permit agreement, but there are different styles of mediation and different skill sets that come into play in various situations. The acceptability of the mediator to both sides in a given case is essential as mediators have no authority to force parties to make any concession or to agree to any proposal. State mediators also provide in interest mediation pursuant to the Agricultural Marketing and Bargaining Law, 13 M.R.S.A. § 1953, et seq. (2005 and Supp. 2013), and may participate in helping resolve private sector collective bargaining disputes. 26 M.R.S.A. § 891 (2007).

The number of new interest mediation requests received this fiscal year increased from the total for the preceding year; there were 51 new requests compared with 46 in FY 2013. During the last fifteen years, the number of new interest mediation filings per year ranged from the low of 39 in FY 2009 to a high of 73 filings in FY 2000. The numerical average number of mediation requests received per year over the last 15 years (including this year) is 51 new filings per year. In addition to the new mediation requests received during the fiscal year just ended, there were 31 matters carried over from FY 2013 that required mediation activity during the year. Last year, 40 matters were carried over from FY 2012. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 87, essentially unchanged from 86 during the previous fiscal year.

The following table reflects the Panel's rate of success over the past several years:

| Fiscal Year | Settlement Rate |
|-------------|-----------------|
| 2000 | 80.7% |
| 2001 | 85.94% |
| 2002 | 76% |
| 2003 | 83.1% |
| 2004 | 86.8% |
| 2005 | 88.5% |
| 2006 | 77.8% |
| 2007 | 84.9% |
| 2008 | 87.5% |
| 2009 | 72.1% |
| 2010 | 82.0% |
| 2011 | 72.6% |
| 2012 | 63.8% |
| 2013 | 60.3% |
| 2014 | 46.2% |

Public sector negotiations were difficult this year due to the nature of public sector finance coupled with raised employee expectations. During the year, the perception widely-held is that the private sector is recovering from the recession. Even if this is true, there is always a lag between the availability of taxable resources and the collection of taxes. Public sector employees, who shared in the impact of the recession through successive concessionary contracts, are seeking to make up for their past "losses." This combination of factors has made reaching agreement more difficult and resulted in the lowest settlement rate in mediation in at least 30 years. Other major factors contributing to the historically low settlement rate in mediation this year were on-going questions regarding State-municipal revenue sharing and the very significant turn-over in personnel representing both labor and management. Successful collective bargaining is based on the relationships between labor and management representatives across the table as well as relationships between representatives and their own principal party. Such relationships take years to develop. This year, there was an unprecedented turn-over in representatives due to retirements and reassignments, particularly on the employee side. Representatives

who negotiate with each other for years learn each other's negotiating styles and habits and the resulting relationships facilitate bargaining. Furthermore, long-term representation by one advocate results in a relationship between that advocate and the principal party that facilitates agreement and ratification.

The Panel received a request for services this year pursuant to the Agricultural Marketing and Bargaining Law. These cases involve disputes between the Agricultural Bargaining Council and McCain Foods U.S.A., involving approximately one-half of the Maine potato crop. The parties were unable to reach agreement in mediation; however, they did so prior to the statutory arbitration process.

Several years ago, members of the Panel of Mediators received instruction by the U.S. Department of Labor in interest-based bargaining techniques. Starting in FY 1996, State mediators have offered non-confrontational bargaining services to the public sector labor-management community upon the joint request of the parties. In the 65 instances where this problem-solving "preventive mediation" approach has been used, 63 settlements resulted (96.9% settlement rate). Despite this tremendous track record, we received no requests for preventive mediation services this year.

Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the 12-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. In calculating the settlement rate, only those matters where the mediator was actively involved in the settlement are considered as having been successful. Although parties who reach agreement after concluding formal mediation often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Likewise, cases in which a request for mediation was filed but in which the parties settled their differences prior to participating in mediation are not included in the settlement rate.

The distribution of the Panel's caseload, according to the statute pursuant to which referrals were made over the last 15 years, is as follows:

| Fiscal Year | New Cases Referred | Cases Referred Under State, University and Judicial Acts | Cases Referred Under Municipal Act, inc. County and Turnpike Authority Referrals | Agricultural Marketing Act |
|-------------|--------------------|--|--|----------------------------|
| 2000 | 73 | 6 | 67 | 0 |
| 2001 | 61 | 6 | 55 | 0 |
| 2002 | 54 | 3 | 50 | 1 |
| 2003 | 64 | 8 | 55 | 1 |
| 2004 | 65 | 2 | 63 | 0 |
| 2005 | 55 | 1 | 54 | 0 |
| 2006 | 58 | 4 | 53 | 1 |
| 2007 | 47 | 4 | 43 | 0 |
| 2008 | 40 | 2 | 38 | 0 |
| 2009 | 39 | 2 | 37 | 0 |
| 2010 | 64 | 3 | 60 | 1 |
| 2011 | 54 | 0 | 53 | 1 |
| 2012 | 69 | 7 | 62 | 0 |
| 2013 | 46 | 1 | 45 | 1 |
| 2014 | 51 | 1 | 50 | 1 |

The requests for services received in the last three years involved the following employee organizations:

| | <u>2014</u> | <u>2013</u> | <u>2012</u> |
|--|-------------|-------------|-------------|
| Maine Education Association/NEA ¹ | 18 | 16 | 24 |
| Teamsters Union Local 340 | 15 | 14 | 25 |
| Maine Association of Police | 8 | 7 | 7 |
| International Association of Machinists | 3 | 1 | - |
| AFSCME Council 93 | 2 | 7 | 6 |
| American Federation of School Administrators | 1 | - | - |
| Fraternal Order of Police | 1 | - | - |
| American Federation of Teachers | 1 | - | - |
| Fraternal Order of Police | 1 | 1 | 2 |
| International Association of Fire Fighters | 1 | 2 | 2 |
| National Correctional Employees Union | 1 | - | - |

Overall, the demand for public sector mediation services increased by 10.9% this year. Requests in the municipal sector were unchanged; those arising from K-12 education increased by 25%. The reduction in the number of bargaining units, due to the K-12

¹While reference is made to the Maine Education Association, the Maine Association of Police or International Association of Fire Fighters for the sake of simplicity, the various activities described were undertaken by local associations which are affiliated with each of the larger state-wide or national employee organizations.

reorganization initiatives, noted in previous years as perhaps having contributed to a greater decrease of mediation requests in that sector, has begun to reverse itself this year, as some local school units separate from the regional units.

The average number of mediation days per case increased from 2.81 in FY 2013 to 2.90 for the combined total of 52 matters, including carryovers, for which mediation was concluded. One case was concluded in 13 mediation days, two others required 10 days each, and three required 7 days each. Of the 52 cases in which mediation was concluded this year, 61.5% were resolved in 3 days or less (15 cases were resolved in one day, 10 were resolved in two days and 7 were resolved in three days).

The figures for the past fifteen-year period are summarized below:

| Fiscal Year | Mediation-Days Expenditure Per Case |
|-------------|-------------------------------------|
| 2000 | 4.19 |
| 2001 | 3.89 |
| 2002 | 3.86 |
| 2003 | 3.46 |
| 2004 | 4.16 |
| 2005 | 3.89 |
| 2006 | 3.01 |
| 2007 | 5.42 |
| 2008 | 2.65 |
| 2009 | 2.74 |
| 2010 | 4.07 |
| 2011 | 3.38 |
| 2012 | 2.38 |
| 2013 | 2.81 |
| 2014 | 2.90 |

Of the mediations, including carryovers, that were concluded in FY 2014, 19.2% proceeded to fact-finding. The percentage of cases proceeding to requests for fact-finding after mediation in each of the past several years is indicated in the following chart:

| Fiscal Year | Percentage of Cases Proceeding to Fact Finding* |
|-------------|---|
| 2000 | 14.04% |
| 2001 | 9.375% |
| 2002 | 20% |
| 2003 | 13.8% (38.5%) |
| 2004 | 8.8% (19.11%) |
| 2005 | 5.8 (25%) |
| 2006 | 13.9% (20.8%) |
| 2007 | 12% (26%) |
| 2008 | 7.5% (17.5%) |
| 2009 | 7.7% (16.3%) |
| 2010 | 9.75% (21.9%) |
| 2011 | 12.9% (19.4%) |
| 2012 | 17.2% (35.9%) |
| 2013 | 12.1% (34.5%) |
| 2014 | 19.2% (32.7%) |

*Prior to FY 2003, all post-mediation fact-finding requests were included, whether later dismissed, withdrawn or settled prior to hearing. This was somewhat inaccurate because the mediator continues to work with the parties after the fact-finding request has been filed and, in many instances, settlement is achieved in mediation before the fact-finding proceeding is ever held. We have included the former calculation in parentheses in the chart for comparison purposes with prior years.

Assuming the average of 2.9 mediation days per case, the 27 matters still pending will consume an additional 79 mediation days, for a total expenditure of approximately 230 mediation days devoted to matters docketed in or carried over to FY 2014.

Despite their good faith, parties can, and often do, disagree over the meaning and intent of collective bargaining agreement provisions they have negotiated. The resulting disputes are resolved through the contractual grievance procedure, which usually culminates in final, binding arbitration. In 2001, the Legislature amended 26 M.R.S.A. § 965(2)(F) (2007 & Supp. 2012) to permit members of the Panel to assist parties in resolving grievance disputes, if the parties had so agreed. Parties are invariably more satisfied with results they have negotiated than with those imposed by a third party.

One request for grievance mediation services was received this year. The case was pending at the time this report was prepared; therefore, the case is being carried over into the next year. The use of grievance mediation is a positive development in public sector collective bargaining, helping parties to resolve grievances expeditiously and avoiding the expense and delay inherent in arbitration.

Legislative Developments

In 2013, the Legislature adopted a measure that required the Maine Labor Relations Board to convene a task force to study the question of mediator compensation and its impact on the recruitment and retention of able labor mediators and on the public sector bargaining process. Mediators were being compensated \$100 for up to 4 hours of mediation services provided and \$100 for each consecutive period of up to 4 hours thereafter. The task force found that increasing mediator compensation would result in parties being better prepared for mediation, taking the process more seriously, and would result in improved productivity of each mediation session, fewer sessions, and lower over-all cost of the process. Increased pay would also assist in recruitment and retention of good mediators. The task force concluded that the sum of \$750 was a reasonable *per diem*, but the Labor Board recommended a *per diem* in the amount of \$600 as striking a reasonable balance of party resources, mediator needs, and the public service component of the work. The Legislature enacted a bill, implementing the task force findings with the Board's recommended *per diem* and required the Board to report back after 3 years.

Although supporting an increase in the *per diem*, the Governor did not support the proposed system of payment which would have paid the mediators \$600 per day, whether their work took a full day or one hour. In response to the veto message, the Legislature enacted a bill that retained the existing method of compensation for 4-hour blocks, but increased the amount to \$300. The Labor Board supported this measure and it was signed into law by the Governor.

Members of the Panel of Mediators during the past fiscal year were:

John Alfano
J. Donald Belleville
David Bustin
Maria Fox

Biddeford
Lewiston
Hallowell
Portland

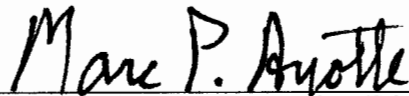
Jane Gilbert¹
Denis Jean
Robert L. Lyman
Charles A. Morrison
Melissa Shattuck
Don Ziegenbein

Augusta
Lewiston
Freeport
Auburn
Falmouth
Bangor

Mediation continues to be the cornerstone of public sector collective bargaining in Maine. Practitioners in the labor relations community have come to accept and value the process and the expertise and competence of members of the Panel. The members of the Panel have gained practical experience and insights that are invaluable in the effective use of this tool. The Panel's reputation and expertise, coupled with a growing awareness of alternative dispute resolution in our society, are likely to result in continued demand for the Panel's services in the future.

Dated at Augusta, Maine, this 1st day of July 2014.

Respectfully submitted,



Marc P. Ayotte, Executive Director
Panel of Mediators and
Maine Labor Relations Board

¹Ms. Gilbert was a very effective mediator; however, she did not seek re-appointment when her term expired and her position remains vacant as this report is being prepared.