

ANNUAL REPORT
PANEL OF MEDIATORS
Fiscal Year 2015

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (Supp. 2014).

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. 2014), 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 68 new requests compared with 51 in FY 2014. 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 69 filings in FY 2012. The numerical average number of mediation requests received per year over the last 15 years (including this year) is 55.7 new filings per year. In addition to the new mediation requests received during the fiscal year just ended, there were 27 matters carried over from FY 2014 that required mediation activity during the year. Last year, 31 matters were carried over from FY 2013. Thus, the total number of mediation matters requiring

the Panel's attention in this fiscal year totaled 95, up from 87 during the previous fiscal year.

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

Fiscal Year	Settlement Rate
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%
2015	63%

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 was that the private sector continued to recover from the recession. Even if

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, continue trying to make up for their past "losses." While resources continue to be scarce and repeal of State-municipal revenue sharing was once again before the Legislature, the mediators report that negotiating parties were more optimistic this year regarding the availability of resources in coming years. In addition, the significant increase in the mediators' compensation implemented last year has resulted in parties being better prepared for mediation and better utilizing mediation sessions. These factors combined to reverse a five-year trend of progressively less success in resolving disputes through mediation.

The Panel did not receive a formal 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 notified the executive director that mediation would likely be required. Due to the short time frames in the law, a mediator was provisionally appointed; however, the parties were able to reach agreement prior to mediation.

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 66 instances where this problem-solving "preventive mediation" approach has been used, 64 settlements resulted (97% settlement rate). Despite this tremendous track record, we received only one request for preventive mediation services this year and the process was successful.

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

	<u>2015</u>	<u>2014</u>	<u>2013</u>
Maine Education Association/NEA ¹	29	18	16
Teamsters Union Local 340	29	15	14
AFSCME Council 93	6	2	7
Fraternal Order of Police	2	1	-
International Association of Fire Fighters	1	1	2
National Correctional Employees Union	1	1	-

Overall, the demand for public sector mediation services increased by 33.3% this year. Requests in the municipal sector increased by 27.6%; those arising from K-12 education increased by 55%. The greater increase in the number of requests in the K-12 sector may have been due to an increase in the number of school bargaining units, as some local school units separated from the regional units. Although the increased demand for mediation in the K-12 sector was twice that in municipal cases, nearly three-quarters (72.4%) of the cases settled this year were municipal cases, compared with 27.6% of the settled matters arising from K-12 bargaining. School sector cases were plainly more difficult to resolve in FY 15. While several factors have contributed to school sector negotiations being more difficult than others, the two which stand out are the rapid changes in education and the significant turn-over in union and management representatives. Instructional and instructional support personnel are facing significant changes in teaching, learning standards, enterprise

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.

performance evaluation and redefinition of teacher responsibilities all of which place greater demands on staff time. While many of these issues are matters of educational policy and are not subject to collective bargaining, their impact on the employees' working conditions are negotiable and finding effective mutually agreeable solutions is difficult at best, especially given scarce resources. In the municipal sector, scarce resources in the past few years have increased employee workloads; however, the nature of the work being performed has not changed dramatically. The issues at the table in municipal bargaining are those that have historically been resolved through bargaining.

Second is the very significant turn over in personnel representing both labor and management, especially in the K-12 sector. 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. In the past two years, there has been an unprecedented turn-over in representatives due to retirements and reassignments. 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 average number of mediation days per case decreased from 2.90 in FY 2014 to 2.76 for the combined total of 46 matters, including carryovers, for which mediation was concluded. One case was concluded in 9 mediation days, another required 8 days, and two required 7 days each. Of the 46 cases in which mediation was concluded this year, 76% were resolved in 3 days or less (14 cases were resolved in one day, 12 were resolved in two days and 9 were resolved in three days). The percentage of cases concluded in 3 days or less this year compares with 61.5% of cases completed within 3 days last year. While the performance in a single year may not indicate a trend, it is likely that the increased compensation paid to the State mediators contributed to this development.

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

Fiscal Year	Mediation-Days Expenditure Per Case
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
2015	2.76

Of the mediations, including carryovers, that were concluded in FY 2015, 28% 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*
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%)
2015	28% (39%)

*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 2.76 mediation days per case, the 48 matters still pending will consume an additional 133 mediation days, for a total expenditure of approximately 260 mediation days devoted to matters docketed in or carried over to FY 2015.

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. No requests for grievance mediation services were received this year.

Legislative Developments

There were no initiatives regarding the State mediators this year.

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

John Alfano	Biddeford
J. Donald Belleville	Lewiston
David Bustin	Hallowell
Maria Fox	Portland
Denis Jean	Lewiston
Robert L. Lyman	Freeport
Charles A. Morrison	Auburn
Melissa Shattuck	Falmouth
Kenneth T. Winters	Holden
Don R. Ziegenbein	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 2015

Respectfully submitted,

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