

ANNUAL REPORT
MAINE LABOR RELATIONS BOARD
Fiscal Year 2016

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) (Supp. 2015) and 979-J(1) (2007).

Introduction

The mission of the Maine Labor Relations Board and its affiliated organizations, the Panel of Mediators and the State Board of Arbitration and Conciliation, is to foster and improve the relationship between public employees and their employers. The Maine Labor Relations Board (“Board”) protects the rights and enforces the responsibilities established by the four separate labor relations statutes covering Maine’s public sector employees. The Board does this by creating bargaining units, conducting secret ballot elections to certify, change or decertify bargaining agents, and processing prohibited practice complaints. The Panel of Mediators and the State Board of Arbitration and Conciliation provide dispute resolution procedures to assist parties in negotiating initial or successor collective bargaining agreements and in resolving contract grievance issues. The focus of this report is the activity of the Labor Board during the fiscal year.

The Board had requests for services from most segments of the public sector labor-management community during the past year. Overall demand for the Board's services decreased compared with the previous year. For those parties who were engaged in mediation, settlements were more readily achieved this year, resulting in reduced demand for fact-finding. A moderate increase in resources to fund collective bargaining agreements has led to productive negotiations, particularly in the municipal sector. Bargaining continued to be difficult in the K-12 sector, and several prohibited practice complaints were filed charging violations of the duty to negotiate in good faith.

Members of the Board are appointed by the Governor, confirmed by the Legislature, and serve four-year terms. Employee Representative Amie M. Parker of Lewiston, Employer Representative Robert W. Bower, Jr., of Cumberland, Alternate Employer

Representative Christine Riendeau of Durham, and Alternate Employee Representatives Wayne W. Whitney of Brunswick and Robert L. Piccone of Portland continued to serve in their respective capacities throughout the year. In January, Governor LePage nominated Katharine I. Rand, Esq., of Scarborough for re-appointment as Primary Public Chair, and Jeffrey J. Knuckles, Esq., of Phippsburg, and Michael C. Ryan, Esq., of Freeport, for appointment as Alternate Chairs, and Richard L. Hornbeck, Esq., of Bowdoinham for re-appointment as Alternate Employer Representative. The re-appointments and appointments were confirmed by the Legislature.

As in past years, the staff of the Board handled many inquiries from public employers and employees or their representatives, and members of the public. The staff is the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be helpful.

The Board's web site is the prime source for research of Board precedent, as the scope of collective bargaining issues addressed by Maine courts is quite limited and difficult to research on-line. The search engine used by the Board's web site draws on an extensive database of the Board's prohibited practice and representation appeals decisions, as well as Superior and Supreme Judicial Court opinions reviewing the Board's decisions. Access to this case law helps public employers, employees and bargaining agents to know the parameters of required or permitted conduct and to use such information to avoid violating the law. The web site also includes links to the statutes administered by the Board, the complete text of the Board's Rules and Procedures, the Board's forms, a bulletin board of current activities, and links to other state and federal labor relations agency sites. Since its inception the web site has been maintained and updated by Board staff. Over the years, the web site has been highly praised by the labor-management community.

Legislative Matters

There were no initiatives regarding the Board’s jurisdiction this year.

Bargaining Unit and Election Matters

During fiscal year 2016, the Board received 22 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 39 of these filings in FY 15. Of the 22 FY 16 filings, 12 were for municipal or county government units, and 10 were for K-12 educational units. The unit agreements were filed by the following employee organizations:

<u>Maine Education Association</u>	6 agreements
(Career and Technical Education Region 2 Support Staff Unit)	
(RSU #71 Teachers Unit)	
(RSU #71 Support Staff Unit)	
(RSU #18 Administrative Assistants/Secretaries Unit)	
(RSU 11 Administrators Unit)	
(RSU 11 Custodians and Maintenance Unit)	
<u>AFSCME Council 93</u>	5
(Bangor International Airport Maintenance Unit)	
(Androscoggin County Law Enforcement and Corrections Supervisory Command Unit)	
(RSU #10 Nutrition Service Workers Unit)	
(Ellsworth School Department Bus Driver Unit)	
(Portland Housing Authority Maintenance Unit)	
<u>Teamsters Union Local 340</u>	4
(Paris Town Administrative Unit)	
(Paris Public Works/Highway Department Unit)	
(Paris Police Department Unit)	
(Old Orchard Beach General Government Unit)	
<u>MSEA/SEIU</u>	3
Maine Public Employees Retirement System:	
(Administrative Services Unit)	
(Supervisory Services Unit)	
(Professional and Technical Services Unit)	
<u>International Association of Fire Fighters</u>	1
(Bath Full-Time Fire Captains Unit)	
<u>Laborers’ Local 327</u>	1
(Searsport Patrol Officers Unit)	

<u>New Sweden Employees Group</u> (New Sweden School Support Staff Unit)	1
<u>RSU #63 Administration</u> (Administration Unit)	1

Of the 22 filings, 6 were for new units and 16 were for changes to existing units, 4 of which were due to school district reorganizations.

Thirteen (13) unit determinations were filed in FY 16. Agreements were reached in 7 cases, and 3 cases are pending. Two (2) unit determination cases were carried forward from last year; one went to hearing and decision and the other was dismissed. No unit clarification petitions were filed this year. These petitions seek changes in existing units, usually during the term of a collective bargaining agreement. No active unit clarification was carried forward into this year. Once a unit petition and response are filed, a member of the Board's staff contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement saves substantial time and litigation costs for public employers and bargaining agents. There were 10 unit petitions filed in FY 15. The unit determinations were filed by the following parties:

<u>Teamsters Union Local 340</u> (Paris Town Administrative Unit) (Paris Firefighters Unit) (Paris Public Works/Highway Department Unit) (Old Orchard Beach General Government Unit) (Oxford Police Unit)	5 requests
<u>National Correctional Employees Union</u> (Maine Department of Corrections Unit) (Lincoln & Sagadahoc Multicounty Jail Authority Correctional Unit) (Lincoln & Sagadahoc Multicounty Jail Authority Sergeants & Corporals Unit)	3
<u>Laborers' International Union of North America</u> (Searsport Waste Water Treatment, Public Works, Transfer Station, and Police Unit) (Skowhegan General Government Unit)	2
<u>Maine Education Association</u> (RSU 18 Administrative Assistants Unit)	2

(RSU 11 Custodians/Maintenance Unit)
Fraternal Order of Police 1
 (Sagadahoc County Sheriff's Department
 Transportation Division)

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a secret ballot bargaining agent election is conducted by the Board. An election is held to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 16 there were 6 voluntary recognitions filed, involving the following employee organizations:

<u>Maine Education Association</u>	3 voluntary recs.
(RSU #71 Teachers Unit)	
(RSU #71 Support Staff Unit)	
(RSU #73 Managers/Directors Unit)	
<u>International Association of Fire Fighters</u>	1
(Bath Full-Time Fire Captains Unit)	
<u>Mass. & Northern New England Laborers' District Council</u>	1
(Ellsworth Waste Water Treatment Plant Unit)	
<u>New Sweden Employees Group</u>	1
(New Sweden School Support Staff Unit)	

Thirteen (13) bargaining agent election requests were filed in FY 16; 10 elections were held, including matters carried forward from FY 15. The employee organizations were certified as the bargaining agent in 8 cases, and the employees opted for no representative in 2 cases. There were no voluntary recognitions as a result of the petitions, and 6 election matters are pending. The results of the bargaining agent election petitions, including carry-overs from FY 15, are as follows:

<u>Petitioner (Bargaining Unit)</u>	<u>Outcome</u>
<u>Teamsters Union Local 340</u>	
(M.S.A.D. #27 Fort Kent District-Wide Technology Aides Unit)	Teamsters certified
(Lincoln County 9-1-1 Dispatchers Shift Supervisors Unit)	Teamsters certified

(Paris Administrative Unit)	Teamsters certified
(Paris Highway Department Unit)	Teamsters certified
<u>Maine Education Association</u>	
(Maine Applied Technology Region 2 Support Staff Unit)	MEA certified
(Regional School Unit 18 Administrative Assistants/Secretaries Unit)	MEA certified
<u>National Correctional Employees Union</u>	
(Lincoln & Sagadahoc Multicounty Jail Authority Correctional Unit)	No Representative
(Lincoln & Sagadahoc Multicounty Jail Authority Sergeants & Corporals Unit)	No Representative
<u>International Association of Fire Fighters</u>	
(Gray Firefighter Unit)	IAFF certified
<u>Fraternal Order of Police</u>	
(Sagadahoc County Sheriff's Department Transportation Division Unit)	FOP certified

In FY 15, there were 15 voluntary recognitions filed, 8 bargaining agent election requests received, and 9 elections held. The statistically significant drop in voluntary recognitions this year is a result of a decrease in the number of K-12 enterprise reorganizations.

The number of requests for decertification/certification and straight decertification elections remained low again this year. The former type of petition involves a challenge by the petitioning organization to unseat and replace an incumbent as bargaining agent for bargaining unit members. In decertification petitions, no new union is involved; the petitioner is simply attempting to remove the incumbent agent. The Board received 5 decertification/bargaining agent election requests this year, compared with 4 last year and 3 in FY 14. In addition, the Board received 4 straight decertification election requests this year, compared with 3 last year and 1 in FY 14. While the rationale for these filing varied, the overriding reason appeared to be unit employee dissatisfaction with the modest wage and benefit changes negotiated by the incumbent bargaining agents during the severe economic downturn and the belief that a new bargaining agent, or the employees on their

own, could do better. Five (5) elections were held. The results of the decertification/certification petitions were as follows:

<u>Petitioner (Bargaining Unit)</u>	<u>Incumbent Agent</u>	<u>Outcome</u>
National Correctional Employees Union (Somerset County Corrections Unit)	Teamsters Union Local 340	Teamsters re-certified
National Correctional Employees Union (Somerset County Corrections Supervisory Unit)	Teamsters Union Local 340	Teamsters re-certified
Somerset RCC Association, Maine Employees United (Somerset County Communications Unit)	Teamsters Union Local 340	Somerset RCC Assn. certified
Teamsters Union Local 340 (Saco Public Works Dept. Unit)	Saco Workers Alliance	Teamsters certified

As noted above, the Board received 4 straight decertification petitions in FY 16 and 2 were carried forward from FY 15. One petition was withdrawn, one was dismissed, and a disclaimer of interest was granted in response to another. Three (3) elections were held. The results of the decertification petitions were as follows:

<u>Incumbent Agent</u>	<u>Bargaining Unit</u>	<u>Outcome</u>
AFSCME Council 93	Lewiston Housing Authority Employees Unit	AFSCME re-certified
Fraternal Order of Police	Newport Police Dept. Unit	No Representative
Teamsters Union Local 340	Van Buren Public Works Unit	Teamsters re-certified

There were 6 election matters carried over from FY 15; consequently, there were 28 such matters requiring attention during the fiscal year, compared with 23 in FY 15.

Dispute Resolution

The Panel of Mediators is the cornerstone of the dispute resolution process for public sector negotiations. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the State mediators are

summarized in this report and are more fully discussed in the Annual Report of the Panel of Mediators.

Interest mediation is the process through which individual State mediators assist parties in negotiating initial or successor collective bargaining agreements. The number of new interest mediation requests received during the fiscal year decreased. There were 65 new requests filed this year compared with 68 last year. In addition to the new mediation requests received during FY 16, there were 48 matters carried over from FY 15 that required mediation activity during the year. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year was 113, up from 95 cases in FY 15.

The most notable development in bargaining this year was the continued improvement in the settlement rate in mediation, particularly in the municipal sector. With a moderate improvement in the resources available to settle contracts, municipalities were more inclined to increase employee compensation, particularly in public safety and in the skill trades, to recruit and retain quality employees. The significant increase in the mediators' compensated implemented two years ago has resulted in parties being better prepared for mediation, better utilizing the time with the mediator. A development this year was that, after making substantial progress in mediation, parties met without the mediator and reached tentative agreement. This practice saved the parties the mediator's fee; however, subsequent misunderstandings led to the mediator's return to resolve the dispute in a number of cases.

Fact-finding is the second step in the three step statutory dispute resolution process. In Fiscal Year 2016, 13 fact finding requests were filed. There were 18 requests received in FY 15. Of the 13 cases, plus 6 carried forward from FY 15, 7 cases went to hearing, 2 were conciliated at hearing, 2 decisions were issued, and 3 decisions are pending. Four (4) petitions were withdrawn or otherwise settled, and 8 are pending. In FY 15, 14 fact-finding hearings were held. The following employee organizations were involved in requests for fact finding services this year:

<u>Maine Education Association</u>	9 requests
(Brewer Teachers Unit)	
(RSU 23 Educational Support Staff Unit)	
(Auburn Teachers Unit)	
(RSU 34 Teachers Unit)	
(SAD 3 Teachers/Certified Professional Employees Unit)	
(RSU 22 Teachers Unit)	
(MSAD 52 Support Staff Unit)	
(Robbinston Professional)	
(Robbinston Support Staff Unit)	
<u>Teamsters Union Local 340</u>	3
(Kennebunk Public Works Unit)	
(Biddeford School Bus Drivers Unit)	
(Fairfield Fire Department Unit)	
<u>AFSCME Council 93</u>	1
(Lewiston Professional Technical Unit)	

Interest arbitration is the third and final step in the statutory dispute resolution process. Under various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non-monetary issues. Unresolved questions concerning salaries, pensions, and insurance are subject to interest arbitration, but an award on these matters is only advisory. The Municipal Public Employees Labor Relations Law, which applies to the overwhelming majority of bargaining situations, does not require parties to notify the Board when they are invoking mandatory interest arbitration. The law does require that arbitration awards be filed with the Board; however, they usually are not. In FY 2016, at least 4 matters went to interest arbitration.

Prohibited Practice Complaints

One of the Board's main responsibilities in administering the public sector collective bargaining process is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board in such matters. Twenty-two (22) complaints were filed in FY 16. This represents a decrease from the FY 15 level. For the last 15 years, including the current year, the number of complaints filed each year has fluctuated

from a low of 5 to a high of 31, with the mean being 19. Many of the complaints received during the past year charged violations of the duty to negotiate in good faith.

In addition to the 22 complaints filed in FY 16, there were 18 carry-overs from FY 15, compared with 29 complaints and 25 carry-overs last year. Board panels conducted 5 evidentiary hearings on 5 cases during the year, the same number of hearings as in FY 15. In cases where there are no material facts in dispute, the parties submit their controversy to the Board through a stipulated record and written arguments. The Board issued 5 formal decisions and orders. Board chairs, sitting as prehearing officers, held conferences in 10 cases, compared with 13 in FY 15. Three (3) cases are being held in abeyance at the request of the parties to allow them to try to resolve their differences. Twelve (12) complaints were dismissed or withdrawn at the request of the parties, including one after hearing, and 12 complaints were dismissed by the executive director (one dismissal appealed and one partial dismissal appealed). Four (4) complaints await prehearing and/or hearing. Ten (10) cases are being processed.

The formal decisions and orders issued by the Board in prohibited practice cases this year were as follows:

David Trask v. Town of Madison, Case No. 16-06, April 20, 2016. The Board affirmed the Executive Director's dismissal of the complaint filed against the Town of Madison. The Board held that the section 964(1)(A) prohibition against interfering with the employees' right to participate in "organizations of their choosing" refers to associations and unions, not to bargaining units. The Board also held that an individual employee does not have the right to enforce the bargaining agent's right to demand bargaining as established by section 965.

AFSCME Council 93, AFL-CIO v. Penobscot County Sheriff's Office; AFSCME Council 93 v. Sheriff Ross and Penobscot County Commissioners, Case Nos. 14-27 and 15-08, March 10, 2016. The Board concluded that polling of employees on mandatory

subjects of bargaining during a staff meeting in an attempt to create divisions within the bargaining unit violated section 964(1)(A) of the Act by interfering with employees' rights. The Board dismissed various other alleged violations of the Act.

SAD 3 Education Association/MEA/NEA v. RSU 3, Case No. 15-19, February 18, 2016. The Board concluded RSU 3 violated the Act by refusing to participate in fact finding on matters not subject to the notice requirement of section 965(1)(E) regarding the impact of a change to an educational policy. Because the Association had not submitted a notice of its bargaining request at least 120 days prior to the end of the budget year, the Board's order to the RSU to participate in fact finding only extended to non-monetary issues.

AFSCME Council 93 v. Penobscot County Commissioners, Case No. 15-14, January 5, 2016. The Board concluded that Penobscot County did not fail to bargain in good faith when it invited the Union to impact bargaining sessions along with representatives of the other bargaining units of County employees. The Board found that the County did not require the Union to participate in joint impact bargaining, and the Union never demanded to bargain individually.

Mt. Abram Teachers Association v. MSAD #58, Case No. 15-09, July 29, 2015. The Board concluded that the School District did not fail to meet and consult with the Association regarding a change in the teachers' instructional load nor did the District fail to bargain in good faith over the impact of that change or the impact of assigning study hall duties to teachers. The Board reasoned that by waiting six months and then submitting its meet-and-consult request on the eve of the implementation of the change, the Union's request was untimely.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties' representatives on the day of the hearing. If the effort is unsuccessful, the Board members

are present, ready to convene a formal evidentiary hearing.

Prohibited practice complaints, with the respondent noted in parenthesis, were filed by the following this year:

<u>Teamsters Union Local 340</u>	9 complaints
(Fryeburg – 4)	
(Mt. Desert)	
(Oxford County)	
(Paris)	
(Saco)	
(Southwest Harbor)	
<u>Maine Education Association</u>	4
(Auburn)	
(Moosabec)	
(RSU 4)	
(TRI-22)	
<u>Individuals</u>	3
(Fraternal Order of Police)	
(Madison)	
(Teamsters Union Local 340)	
<u>National Correctional Employees Union</u>	2
(Cumberland County)	
(Lincoln & Sagadahoc Multicounty Jail Auth.)	
<u>AFSCME Council 93</u>	1
(State of Maine)	
<u>Maine Association of Police</u>	1
(Eliot)	
<u>Maine State Employees Assn.</u>	1
(Maine Maritime Academy)	
<u>New England Police Benevolent Assn.</u>	1
(Caribou)	

Unit Appeals

The Board is authorized by statute to decide appeals of unit-related decisions issued by the executive director regarding unit composition and election issues. This year one unit appeal was filed: *Teamsters Union Local 340 and Town of Paris*, Case No. 16-UDA-01, June 17, 2016. The case is pending.

Interpretive Rulings

The labor relations statutes authorize the Board to issue non-binding interpretive rulings to assist parties in understanding the provisions of the law and, thereby, avoiding violating the statutes. No requests for interpretive rulings were received this year and the Board did not issue any on its own initiative.

Court Appeals

The Board's decision in *SAD #3 Education Association v. RSU #3 Board of Directors*, issued on February 18, 2016, was appealed to the Superior Court by both the Association and the School Board. The Labor Board concluded that the School Board violated the Act by refusing to participate in fact finding with respect to bargaining over the impact of a change to a matter of educational policy. The Board rejected the School Board's various arguments that the Association had waived its right to bargain. The Labor Board agreed that the Association's failure to provide the 120-day notice of the intent to bargain over matters requiring the appropriation of money relieved the employer of the obligation to bargain over such matters. The central questions before the Court are whether this 120-day notice requirement found in section 985(1) applies to impact bargaining and whether the Board made an error of law or fact in concluding that there was no waiver of the right to impact bargain. The matter is pending before the Superior Court.

Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years, and percent change from year to year:

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Unit Determination/ Clarification Requests Number filed--	16	-37.5% 10	-20% 8	+50% 12	-17% 10	+30% 13
Agreements on Bargaining Unit (MLRB Form #1) Number filed--	36	-41.7% 21	+33% 28	-32% 19	+105% 39	-44% 22
Voluntary Recognitions (MLRB Form #3) Number filed--	13	-46% 7	-28.6% 5	+14% 12	+25% 15	-60% 6
Bargaining Agent Election Requests Number filed--	11	-37.5% 8	+125% 18	-38.9% 11	-27% 8	+62.5% 13
Decertification Election Requests Number filed--	4	+50% 6	-83.3% 1	+400% 5	-40% 3	+66% 5
Decert./Certification Election Requests Number filed--	19	-26% 14	-78.6% 3	-- 3	+33% 4	-- 4
Mediation Requests Number filed--	54	+27.8% 69	-33.3% 46	+10.9% 51	+33% 68	-4.4% 65
Fact-Finding Requests Number filed--	12	+91.7% 23	-13% 20	-16% 17	+6% 18	-28% 13
Prohibited Practice Complaints Number filed--	18	+33.3% 24	-37.5% 15	+106% 31	-9/3% 29	-20.7% 22

The above table indicates that the demand for the Board's different services generally decreased during the fiscal year. The agency's leading business indicator, the level of demand for interest mediation, together with the lower number of fact-findings, reflect the

improvement in the bargaining climate this year. For the past several years we have been predicting that public sector organizational activity may be nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and firefighter units, predated the establishment of the agency. There was actually a slight increase in organizational activity for new bargaining units this year.

During FY 16, public sector labor-management relations in Maine continued to mature, with parties relying on the statutory dispute processes to settle their differences. The development of more mature labor relations is evidenced by the strong demand for mediation services and the continued willingness by the parties to settle prohibited practice complaint cases. In sum, the Board's dispute resolution services fostered public sector labor peace during this very difficult and challenging year.

Dated at Augusta, Maine, this 1st day of July, 2016

Respectfully submitted,

Marc P. Ayotte
Executive Director
Maine Labor Relations Board