

STATE BOARD OF ARBITRATION AND CONCILIATION
ANNUAL REPORT
FISCAL YEAR 2017

This report is made pursuant to 26 M.R.S. § 931 (2007 and Supp. 2016).

The primary members of the Board are Chair Shari B. Broder, an attorney from Freeport whose practice is concentrated in the area of alternative dispute resolution; Employee Representative Robert F. Bourgault, a Labor Consultant from Biddeford; and Employer Representative Harry R. Courtois of Biddeford, Labor Relations Officer (retired) for the City of Bangor and a former Chief of Police in Biddeford. The alternate members are Alternate Chair Sheila Mayberry, Esq., of Cape Elizabeth, who practices as a private arbitrator and is a member of the National Academy of Arbitrators; and Rebekah J. Smith, Esq., of Union, who practices as a neutral decision maker; Alternate Employee Representatives Chester G. ("Chuck") Hillier of Monmouth, Assistant Negotiator (retired) with the Maine State Employees Association; and Alternate Employer Representatives Donald H. Gerrish, of Brunswick, who retired after almost 20 years of service as Town Manager in Brunswick and is currently serving as Interim Town Manager in Ogunquit; and Robert W. Bower, Jr., Esq., of Cumberland, an attorney with the firm of Norman, Hanson and DeTroy, who represents management. There was a single change in the complement of the Board this year. Alternate Employee Representative Shawn C. Keenan, Esq., tendered his resignation on August 22, 2016. Shawn was first appointed to the Board in 1988 and was most recently re-appointed by Governor LePage in 2011. The members of the Board with whom he worked miss Shawn's wisdom, wit and his ability to conciliate often contentious disputes. The vacancy created by Shawn Keenan's resignation remains open at this time.

The competence of the Board's membership remains high, consisting of able neutrals and partisan members known throughout the Maine labor relations community. Roger Putnam of the Maine Labor Relations Board (MLRB) staff coordinated the Board's activities and served as the primary liaison with the client community. MLRB Executive Director Marc P. Ayotte served as the Board's general administrator and legal advisor.

Activities of the Board. The 22 total cases filed this year compares with 31 total filings in the previous fiscal year. During the last twenty years, the years with the greatest number of filings (31) were last year and FY 2001, and the fewest cases (11) were filed in FY 2008. During that period an average of 23 cases were filed each year.

Grievance arbitration is almost universally accepted as a means for resolving disputes arising under a bargaining agreement. Despite the best of good faith and honesty of purpose, reasonable people can and often do disagree about the meaning and application of the terms of the collective bargaining agreements they have negotiated. A grievance procedure is the usual mechanism for resolving such disputes. Typically, the objecting party lodges its complaint at the lowest level possible in the employer's organizational structure. If the grievance is denied or the solution offered is unacceptable, the process becomes more formal and it works its way up the management chain of command to the highest level. If the grievance remains unresolved, the negotiated grievance procedure usually provides that the dispute will be resolved in final and binding arbitration by a neutral selected by the parties, often this Board.

In the past several years, the bulk of the Board's case load has involved hearing and resolving grievance disputes. Of the 22 requests for services received this year, 20 involved grievance arbitration matters. One request for fact finding was filed as well as a joint request for interest arbitration. Of the 40 cases filed or carried over into this year, 6 decisions were issued, 21 cases were withdrawn by the parties prior to hearing, and 13 cases are pending. The grievance arbitration cases filed this year were as follows:

<u>Bargaining Agent</u>	<u>Employer</u>	<u>Issue</u>
Bath Professional Firefighters	Bath	Mandatory Haz/Mat Refresher Training
BPE 4273 AFT-Maine	Bridgton	Filling Shifts
Maine Association of Police	Freeport	Firearms Instructor Stipend

Maine Association of Police	Waterville	Termination
National Correctional Employees Union	Cumberland Cty.	Rate of Pay after Demotion
National Correctional Employees Union	Cumberland Cty.	Termination
Teamsters Union Local 340	Berwick	Termination
Teamsters Union Local 340	Caribou	Termination
Teamsters Union Local 340	Caribou	Wages & Benefits while on Workers Comp.
Teamsters Union Local 340	Cumberland Cty.	Transfers
Teamsters Union Local 340	Ken. Water Dist.	Overtime
Teamsters Union Local 340	Livermore Falls	Demotion
Teamsters Union Local 340	Rockland	Termination
Teamsters Union Local 340	RSU 67	Health Ins. Contributions
Teamsters Union Local 340	Thomaston	Termination
Teamsters Union Local 340	Van Buren	Suspension
Teamsters Union Local 340	Westbrook	Firefighter Safety
Teamsters Union Local 340	Westbrook	Timely Remitting of Dues
Teamsters Union Local 340	Westbrook	Timely Remitting of Dues
Teamsters Union Local 340	Windham	Termination

Conciliation is a process during which the partisan members of the assigned Board panel, the Employee and Employer Representatives, meet with "their" respective party, assess that party's real needs and concerns in the matter at issue, and help the party to determine the relative strengths and weaknesses of their position. The partisan members

then caucus to ascertain whether an agreed-to resolution is possible and, if so, work with the parties in achieving settlement. The Board believes that having parties resolve their dispute through mutual understanding and accord is far preferable to having a solution be imposed by fiat of a third party; accordingly, we attempt to conciliate every case presented to us. Two (2) cases were successfully conciliated this year.

Fact finding is the second of the three statutory dispute resolution procedures in public sector collective bargaining. If the parties are unable to reach accord on their collective bargaining agreement through direct negotiations and mediation, either of them can request fact finding. In that process, the parties present evidence and arguments in support of their respective positions on the unresolved issues. The fact finding panel may consider a variety of factors such as wages, hours and working conditions for comparable parties in the labor market, the financial ability of the employer, changes in the consumer price index since the last round of negotiations, and the labor market conditions in general. After the close of the record, fact finders issue their recommendations for resolution of the controversy. The report is confidential for 30 days and it remains confidential if the parties are able to resolve the dispute within that time. If not, the report becomes a public document and may be used by either party to attempt to sway public opinion to mount political pressure for resolution. There was one fact-finding request filed in FY 2017, which was subsequently withdrawn. The following employee organization requested fact-finding services:

IAFF Local 3107 and City of Biddeford

Interest arbitration is procedurally similar to fact finding, except that the arbitrators' award is binding on all issues except for those concerning wages, pensions and insurance. There are few interest arbitration proceedings in Maine in any given year and in some years there are none at all. The Board received one joint request for interest arbitration this fiscal year from the Eliot Police Association/MAP and the Town of Eliot. A hearing was held and a report was issued.

Legislative Developments. The Legislature did not consider any bills affecting the Board this year.

The Board of Arbitration and Conciliation is pleased with its achievements, particularly with its reputation for fairness in the labor relations community. The Board's mission is to improve the labor management climate in the public sector by providing high quality, professional services to our client community, helping in the resolution of their disputes.

Dated at Augusta, Maine, this 30th day of June 2017

Respectfully submitted,

Marc P. Ayotte, Executive Director,
Maine Labor Relations Board & Clerk,
State Board of Arbitration and Conciliation