

ANNUAL REPORT  
MAINE LABOR RELATIONS BOARD  
Fiscal Year 2017

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) (Supp. 2016) 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 harder to achieve this year. 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. Several prohibited practice complaints were filed charging violations of the duty to negotiate in good faith in both sectors.

Members of the Board are appointed by the Governor, confirmed by the Legislature, and serve four-year terms. Board Chair, Katharine I. Rand, Esq., of Scarborough, Employee Representative Amie M. Parker of Lewiston, Employer Representative Robert W. Bower, Jr., of Cumberland; Alternate Chairs Jeffrey J. Knuckles, Esq., of Phippsburg, and Michael C. Ryan, Esq., of Freeport; and Alternate Employer Representatives Christine Riendeau of Durham and

Richard L. Hornbeck, Esq., of Bowdoinham continued to serve in their respective capacities throughout the year. On June 28, 2016, Governor LePage nominated Dennis E. Welch of Windham and Carl A. Guignard of Lewiston for appointment as Alternate Employee Representatives. The 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 that 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

Ten bills impacting the Board's jurisdiction were introduced for consideration in this year's Legislative Session. While none of the bills has been adopted by the Legislature, the concept embodied in L.D. 864 reportedly is involved in the on-going negotiations over a State budget for the next biennium.

L.D. 65 concerned the policy question of whether employees, who are represented by a

bargaining agent but who choose not to become members of the union, may be required to pay a service fee for their share of the union's cost of representing the bargaining unit. The bill prohibited agreements that require the payment of union service fees by all private and public sector employees in Maine.

L.D. 66. Under current law, public employers are permitted to agree with the bargaining agents that represent their employees to collect union dues from union members and service fees from bargaining unit employees who choose not to join the union and to remit such funds to the bargaining agent. The bill would have prohibited public employers from performing that function.

L.D. 772. Current law provides that public sector collective bargaining may be open to the public, if both parties agree to conduct negotiations in open sessions. The bill would have required that “[a]ll collective bargaining meetings between a public employer and a collective bargaining unit ... are public proceedings,” within the meaning of the Freedom of Access Act.

L.D.'s 864 and 1555. Both of these bills concerned a single state-wide contract regarding salaries and benefits, negotiated by the State of Maine, represented by the Governor, and an employee organization that represents a majority of “Public education employees.” Since L.D. 864 was selected to go forward, L.D. 1555 was voted unanimously “ought not to pass” by the Joint Standing Committee on Education and Cultural Affairs. As amended, L.D. 864 authorized the State, upon request of a school administrative unit, to act as the employer of certain certificated or authorized employees of that school administrative unit for the purpose of negotiating over standard salary and standard benefits for those employees. Costs resulting from such agreements would have been the responsibility of the State. The school administrative unit remained the employer of covered employees for all other purposes and retained the current duty to bargain until a contract establishing the standard salary and standard benefits took effect. Any collective bargaining agreement in effect at the time such contract is concluded would remain in effect, unless the parties to the local agreement mutually agreed otherwise.

L.D. 1093. Under current law, a public school employer's decision to transfer a teacher involuntarily is not subject to collective bargaining, under the educational policy exception to the duty to bargain. In municipal employment, standard management rights provisions reserve the right to assign and re-assign work among the unit employees. While the decision to transfer employees may be made without bargaining, the employer may be required to bargain over the impact of the transfer on the individual's wages, hours, or working conditions. This bill would have made the transfer decision itself mandatorily negotiable.

L.D. 1215. Under current law, a public school employer is prohibited from negotiating over matters of educational policy. If they have negotiated over an educational policy matter and incorporated the resulting agreement in their collective bargaining agreement, that provision is voidable by the employer and is unenforceable. This bill would convert educational policy matters into permissive subjects of bargaining, meaning that school committees could refuse to negotiate over such matters; if they negotiated over educational policy, they would have no obligation to reach any agreement on such matters; and if they reached agreement on educational policy, the resulting language would become part of their collective bargaining agreement and would be enforceable only during the term of the agreement. The bill was voted unanimously "ought not to pass" by the Joint Standing Committee on Education and Cultural Affairs.

L.D. 1348. Under current law, public sector employees are prohibited from engaging in work stoppages, slowdowns or strikes. Bargaining disputes that parties are unable to resolve through direct negotiations are resolved through the statutory dispute resolution procedures: mediation, fact-finding, and interest arbitration; although the arbitration is not binding on remaining questions of salaries, pensions and insurance. Disputes that arise during the term of a collective bargaining agreement are resolved through the contractual grievance and arbitration procedure. These procedures remain in effect after expiration of the collective bargaining agreement by operation of Law, until a successor agreement is reached. This bill would have legalized strikes by all public employees.

L.D. 1358. Under current law, if public sector employers and bargaining agents are

unable to settle initial or successor collective bargaining agreements through face-to-face negotiations, remaining issues are submitted for resolution through the successive statutory dispute resolution procedures: mediation, fact-finding, and interest arbitration. The arbitrators' decision is binding on all issues except for salaries, pensions, and insurance. After the parties have negotiated for a reasonable time on the issues not resolved by interest arbitration, the public employer is permitted to implement its "last-best offer" on any open salary, pensions, or insurance issues, provided they have negotiated in good faith throughout the process. For State Legislative, Executive, and Judicial Branch employees, the bill made interest arbitrations binding on any open salary issues; for all other public employees, the interest arbitration award would have been binding on all issues.

L.D. 1553. Under the current law, employee organizations become bargaining agents either through voluntary recognition by the public employer or through a certification election conducted by the Maine Labor Relations Board. An employee organization must receive more than 50% of the votes cast in the election to be certified as the bargaining agent. Once certified or recognized, an employee organization continues in that capacity unless a petition for decertification or change of bargaining agent is filed, supported by at least 30% of the employees in the bargaining unit. Also, in certain circumstances, the employer may request an election. This bill required biennial recertification of all public employee bargaining agents, except those involved in post-secondary education. A majority vote of all of the employees in the bargaining unit would be required for recertification.

#### Bargaining Unit and Election Matters

During fiscal year 2017, the Board received 18 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 22 of these filings in FY 16. Of the 18 FY 17 filings, 10 were for municipal or county government units, and 8 were for K-12 educational units. The unit agreements were filed by the following employee organizations:

Maine Education Association  
(RSU 11 Ed. Techs & Administrative Assistants Unit)

7 agreements

(MSAD #55 Educational Technicians I, II, & III Unit)	
(RSU 23 Non-Instructional Support Staff Unit)	
(RSU #11 Food Service Unit)	
(Waldo County Technical Center Faculty, Ed Techs, Custodian Staff, & Front Office/Secretarial Unit)	
(Hermon School District Ed. Techs I, II, and III Unit)	
(RSU 10 Special Assistants Unit)	
<u>Teamsters Union Local 340</u>	7
(Oxford Police Sergeants Unit)	
(Oxford Police Patrol Officers Unit)	
(Kittery Administrative/Clerical Employees Unit)	
(MSAD #27 Food Service Unit)	
(Lebanon Transfer Station Unit)	
(Oxford County Supervisors Unit)	
(Oxford Fire Department Unit)	
<u>MSEA/SEIU</u>	2
Maine Public Employees Retirement System (Administrative Services Unit - 2)	
<u>Laborers' Local 327</u>	1
(Skowhegan General Government Unit)	
<u>Maine Association of Police</u>	1
(Oakland Police Unit)	

Of the 18 filings, 13 were for new units and 5 were for changes to existing units.

Nine (9) unit determinations were filed in FY 17. Agreements were reached in 6 cases, 2 unit determination decisions were issued and the bargaining unit was deemed appropriate in one case. Four (4) unit determination cases were carried forward from last year; one went to hearing and decision and the others were settled by the parties. Two (2) unit clarification petitions were filed this year. These petitions seek changes in existing units, usually during the term of a collective bargaining agreement. No response to the petition was received in one case, resulting in the unit modification being deemed appropriate; the second case is currently pending. No active unit clarification was carried forward into this year. Once a unit petition and a 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 13 unit petitions filed in FY 16. Unit determinations were filed by the following parties this year:

<u>Teamsters Union Local 340</u>	6 requests
(MSAD 27 Administrative Unit)	
(MSAD 27 Food Service Unit)	
(Lebanon Transfer Station Unit)	
(Oxford Fire Department Unit)	
(Lincoln Transfer Station Employees Unit)	
(Oxford County Sheriff's Dept. Unit)	
<u>Maine Education Association</u>	3
(RSU 11 Ed Techs & Admin. Assistants Unit)	
(RSU 11 Food Service Unit)	
(Maine School of Science & Mathematics Faculty Unit)	

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 17 there was a single voluntary recognition filed, involving the following employee organization:

<u>Maine Education Association</u>	1 voluntary rec.
(Waldo County Technical Center Faculty, Educational Technicians, Custodial Staff, and Front Office/Secretarial)	

Fourteen (14) bargaining agent election requests were filed in FY 17; 19 elections were held, including matters carried forward from FY 16. The employee organizations were certified as the bargaining agent in 15 cases, and the employees opted for no representative in 4 cases. There were no voluntary recognitions as a result of the petitions, and 4 election matters are pending. The results of the bargaining agent election petitions, including carry-overs from FY 16, are as follows:

<u>Petitioner (Bargaining Unit)</u>	<u>Outcome</u>
<u>Teamsters Union Local 340</u>	
(Paris Firefighters Unit)	Teamsters certified
(Old Orchard Beach General Government Unit)	Teamsters certified
(Oxford Police Patrol Unit)	Teamsters certified
(Oxford Police Sergeant Unit)	Teamsters certified
(MSAD 27 Administrative Unit)	Teamsters certified

(MSAD 27 Food Services Unit)	Teamsters certified
(Lebanon Transfer Station Unit)	No Representative
(Oxford Fire Department Unit)	No Representative
(Lincoln Transfer Station Employees Unit)	Teamsters certified
(Oxford County Sheriff's Dept. Supervisors Unit)	Teamsters certified
<u>Laborers' Local 327</u>	
(Searsport Police Unit)	No Representative
(Searsport Operations Unit)	No Representative
(Searsport Supervisors Unit)	Laborers' certified
(Skowhegan General Government Unit)	Laborers' certified
<u>Maine Education Association</u>	
(RSU #11 Custodians/Maintenance Unit)	MEA certified
(MSAD #55 Ed Techs Unit)	MEA certified
(RSU #11 Food Service Unit)	MEA certified
(Hermon School Department Educational Technicians I, II and III Unit)	MEA certified
<u>Maine Association of Police</u>	
(Oakland Police Department Unit)	MAP certified

In FY 16, there were 6 voluntary recognitions filed, 13 bargaining agent election requests received, and 10 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, a bargaining unit employee, is simply attempting to remove the incumbent agent. The Board received 6 decertification/bargaining agent election requests this year, compared with 5 last year and 4 in FY 15. In addition, the Board received 1 straight decertification election request this year, compared with 4 last year and 3 in FY 15. 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 and one petition was withdrawn. The results of the



decertification/ certification petitions were as follows:

<u>Petitioner (Bargaining Unit)</u>	<u>Incumbent Agent</u>	<u>Outcome</u>
New England Police Benevolent Assn. (Sabattus Police Dept. Patrol Unit)	Teamsters Union Local 340	NEPBA certified
New England Police Benevolent Assn. (Sabattus Police Dept. Supervisors)	Teamsters Union Local 340	NEPBA certified
RSU 11 Ed. Techs./Admin. Assistants Education Assn./MEA/NEA (RSU 11 Ed Techs/Admin. Assistants Unit)	Educational Technicians/ Admin. Assistants Assn.	RSU 11 ET/AA/EA/ MEA/NEA certified
National Fraternal Order of Police (Augusta Police Supvrs. Unit)	Teamsters Union Local 340	FOP certified
National Fraternal Order of Police (Augusta Police Patrol Officers)	Teamsters Union Local 340	FOP certified

As noted above, the Board received 1 straight decertification petition in FY 17 and none were carried forward from FY 16. The petition, seeking decertification of AFSCME Council 93 as the bargaining agent for the Ellsworth Highway employees bargaining unit, is pending.

There were 6 election matters carried over from FY 16; consequently, there were 27 such matters requiring attention during the fiscal year, compared with 28 in FY 16. The bargaining agents filed disclaimers of interest in 2 matters. These are situations where the employee organization no longer wishes to continue as the bargaining agent due to changes in circumstances. In one case, the public employer, A.O.S. #81, de-organized; therefore, so did the bargaining unit. The second case involved a one-person bargaining unit, where the incumbent terminated employment and the new employee informed the bargaining agent that he did not wish to be represented. Since there was no collective bargaining agreement in effect, the requested disclaimer was granted.

### 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 significantly. There were 39 new requests filed this year compared with 65 last year. In addition to the new mediation requests received during FY 17, there were 34 matters carried over from FY 16 that required mediation activity during the year. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year was 73, down from 113 cases in FY 16.

The most notable development in bargaining this year was the continued improvement in the settlement climate, 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. On the other hand, the significant reduction in the settlement rate for the mediation process is indicative that those matters that went to mediation were more difficult to settle. The reduction in the settlement rate also reflects the impact of the resignation of our most experienced mediator, John Alfano, who resigned to move out of state with his family.

Fact-finding is the second step in the three step statutory dispute resolution process. In Fiscal Year 2017, 8 fact finding requests were filed. There were 13 requests received in FY 16. Of the 8 cases, plus 11 carried forward from FY 16, 5 cases went to hearing, 2 were conciliated at hearing, and 3 decisions were issued. Eight (8) petitions were withdrawn or otherwise settled, one case is in litigation before the Law Court, the parties requested to waive fact finding in another, and 4 are pending. In FY 16, 7 fact-finding hearings were held. The following employee organizations were involved in requests for fact finding services this year:

<u>Teamsters Union Local 340</u>	3 requests
(Saco Public Works/Parks Unit)	
(MSAD #46 Custodians Unit)	
(RSU 67 Custodians Unit)	
<u>Maine Education Association</u>	2
(Portland Teachers Unit)	
(RSU 38 Professional Staff Unit)	
<u>AFSCME Council 93</u>	1
(Penobscot County Communications Unit)	
<u>Fraternal Order of Police</u>	1
(Lincoln County Sheriff's Department 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 2017, at least 2 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. Nineteen (19) complaints were filed in FY 17. This represents a decrease from the FY 16 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 19 complaints filed in FY 17, there were 13 carry-overs from FY 16, compared with 22 complaints and 18 carry-overs last year. Board panels conducted 3 evidentiary hearings on 2 cases during the year. 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 3 formal decisions and orders. Board chairs, sitting as prehearing officers, held conferences in 6 cases, compared with 10 in FY 16. Two (2) cases are being held in abeyance at the request of the parties to allow them to try to resolve their differences. Fifteen (15) complaints were dismissed or withdrawn at the request of the parties, and 7 complaints were dismissed by the executive director (one partial dismissal appealed). Ten (10) cases are being processed.

The formal decisions and orders issued by the Board in prohibited practice cases and determinations under § 964(A(2) this year were as follows:

*David Trask v. Fraternal Order of Police*, Case No. 16-07, May 12, 2017. The Board concluded that the Fraternal Order of Police did not breach its duty of fair representation by failing to pursue impact bargaining regarding the Town of Madison's decision to dissolve the Town's police department and have the Sheriff's department assume the policing responsibilities. The Board concluded that given the factual and legal landscape at the time, the FOP's conduct was neither irrational nor unreasonable. This decision has been appealed to the Superior Court.

*RSU 67 v. Teamsters Local Union 340*, Case No. 17-01SQ, February 27, 2017. Pursuant to section 964-A(2), the Board reviewed the provision in the parties' expired collective bargaining agreement on employees' health insurance premiums, in which the employees paid \$100 and the employer paid the rest. In the second and third years of the 3-year contract, the employer's payments remained the same as in the first year and the employee had to pay any increase in rates in the second and third year. The Board concluded that for the year following the expiration of the CBA, the employer's payment would remain at the same dollar amount and the employee would pay the amount he or she was paying at the expiration of the agreement, plus 100% of any increase in rates for the next year.

*Eliot Police Assoc. v. Town of Eliot*, Case No. 16-14, February 3, 2017. The Board concluded that the parties' negotiating ground rule that prohibited raising new issues after the

third bargaining session could not remain effective after the Town, in good faith, rejected the tentative agreement. The Board rejected the Association’s argument that violation of such a ground rule was, by itself, enough to constitute failure to negotiate in good faith. This decision has been appealed to the Superior Court.

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>	12 complaints
(Biddeford)	
(Lincoln)	
(Oxford County – 4)	
(Paris)	
(RSU #73)	
(Wells)	
(Westbrook – 3)	
<u>AFSCME Council 93</u>	1
(Ellsworth)	
<u>Androscoggin County Employees Assn.</u>	1
(Androscoggin County)	
<u>Individuals</u>	1
(Oxford)	
<u>Maine Education Association</u>	1
(Perry)	
<u>Maine Maritime Academy</u>	1
(MSEA)	
<u>National Correctional Employees Union</u>	1
(Knox County)	
<u>RSU 67</u>	1
(Teamsters)	

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 two (2) unit appeals were filed:

*Town of Searsport and Laborer's Local 327*, Case No. 17-UDA-01, October 20, 2016. The Board reviewed the Hearing Examiner's decision and agreed that the two positions at issue, the Waste Water Treatment Plant Chief Operator/Superintendent and the Public Works Director, were not excluded from coverage of the Act because their appointments did not meet the requirements specified in paragraphs (B) or (D) of section 962(6). The Board disagreed with the Hearing Examiner that these two positions should be included with the operations unit and ordered that they be placed in a separate supervisory unit. In support of that order, the Board relied on the Hearing Examiner's specific findings to conclude that the two positions shared the requisite community of interest. This decision was appealed to the Superior Court.

*Town of Paris and Teamsters Union Local 340*, Case No. 16-UDA-01, October 17, 2016. The Board reviewed the Hearing Examiner's decision and concluded that the reasonable expectation of continued employment test was not appropriate in determining on-call status. The Board applied the plain meaning of the term and concluded that the per diem Firefighters are regularly-scheduled part-time employees of the Town of Paris and are public employees within the definition of 26 M.R.S. § 962 (6). The Board also affirmed the Hearing Examiner's conclusion that there was the requisite community of interest in the proposed unit.

### 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.

### Superior Court Appeals

The Town of Searsport appealed the Board's decision in *Town of Searsport and Laborer's Local 327*, Case No. 17-UDA-01, to the Superior Court, contesting the Board's conclusion that the two positions at issue were not excluded from coverage of the Act. The

Court affirmed the Board's decision and analysis in its entirety on June 21, 2017. *Town of Searsport v. State of Maine and LIUINA Laborers' Local 327*, No. AP-16-66.

The Eliot Police Association appealed the Board's decision in *Eliot Police Assoc. v. Town of Eliot*, Case No. 16-14, to the Superior Court, contesting the Board's legal conclusion that the Town's violation of a ground rule after the Town's good-faith rejection of tentative agreement did not constitute bad faith bargaining. The parties have filed briefs and await scheduling of oral argument.

Mr. David Trask appealed the Board's decision in *David Trask v. Fraternal Order of Police*, Case No. 16-07, to the Superior Court, contesting the Board's conclusion that the Fraternal Order of Police had not breached its duty of fair representation in handling of the transition of Madison police officers to employment with the Sheriff's Department. The Board has filed the administrative record with the Court and the parties will be filing briefs as required.

### Law Court Appeals

Board Counsel successfully defended a Board decision from February 2016 in Superior Court this year, which was then appealed to the Law Court. In *SAD 3 Education Association/MEA v. RSU 3*, Case No. 15-19, the Board concluded RSU 3 violated the Act by refusing to participate in fact finding on the impact of a change to an educational policy, but the violation was limited to the school's refusal with respect to matters not subject to the 120-day notice requirement in §965(1) for bargaining over matters requiring the appropriation of money. The Board rejected all of the other defenses asserted by the RSU. The Association appealed the Board's decision to Superior Court and the RSU cross appealed. The Superior Court affirmed the Board's decision and analysis in its entirety. *SAD 3 Education Association/MEA/NEA v. Maine Labor Relations Board and RSU 3 Board of Directors* (Me. Super. Ct. Ken. Cty., Jan. 1, 2017) (Murphy, J.). The Association appealed to the Law Court, contesting the Board's conclusion that the 120-day notice requirement applies to impact bargaining. All briefs have been filed and oral argument is expected to be scheduled for this fall.

## 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 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Unit Determination/ Clarification Requests Number filed--	10	-20% 8	+50% 12	-17% 10	+30% 13	-15% 11
Agreements on Bargaining Unit (MLRB Form #1) Number filed--	21	+33% 28	-32% 19	+105% 39	-44% 22	-18% 18
Voluntary Recognitions (MLRB Form #3) Number filed--	7	-28.6% 5	+14% 12	+25% 15	-60% 6	-67% 1
Bargaining Agent Election Requests Number filed--	8	+125% 18	-38.9% 11	-27% 8	+62/5% 13	+7.7% 14
Decertification Election Requests Number filed--	6	-83.3% 1	+400% 5	-40% 3	+66% 5	-80% 1
Decert./Certification Election Requests Number filed--	14	-78.6% 3	-- 3	+33% 4	-- 4	+50% 6
Mediation Requests Number filed--	69	-33.3% 46	+10.9% 51	+33% 68	-4.4% 65	-40% 39
Fact-Finding Requests Number filed--	23	-13% 20	-16% 17	+6% 18	-28% 13	-46% 7
Prohibited Practice Complaints Number filed--	24	-37.5% 15	+106% 31	-9/3% 29	-20.7% 22	-13.6% 19

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 17, 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 30<sup>th</sup> day of June, 2017

Respectfully submitted,

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Marc P. Ayotte  
Executive Director  
Maine Labor Relations Board