

ANNUAL REPORT
PANEL OF MEDIATORS
Fiscal Year 2017

The following report is submitted pursuant to 26 M.R.S. § 965(2)(E) (Supp. 2016).

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. § 1953, et seq. (2005 and Supp. 2016), and may participate in helping resolve private sector collective bargaining disputes. 26 M.R.S. § 891 (2007).

The number of new interest mediation requests received this fiscal year decreased significantly from the total for the preceding year; there were 39 new requests compared with 65 in FY 2016. During the last fifteen years, the number of new interest mediation filings per year ranged from the low of 39 this year and 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 54.9 new filings per year. In addition to the new mediation requests received during the fiscal year just ended, there were 34 matters carried over from FY 2016 that required mediation activity during the year. Last year, 48 matters were carried over from FY 2015. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 73, down from 113 during the previous fiscal year.

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

Fiscal Year	Settlement Rate
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%
2016	75%
2017	60.5%

The public sector bargaining climate continued to improve this year, resulting in substantially fewer requests for mediation. 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 to Pennsylvania. Through relationships and skills developed through mediating settlements for over 32 years, John's ability to get parties to agree will be difficult to replace.

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.

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 69 instances where this problem-solving "preventive mediation" approach has been used, 67 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>2017</u>	<u>2016</u>	<u>2015</u>
Teamsters Union Local 340	15	23	29
Maine Education Association/NEA	15	11	29
Fraternal Order of Police	3	4	2
International Union of Operating Engineers	2	--	--
AFSCME Council 93	1	7	6
American Federation of Teachers	1	1	--
International Association of Fire Fighters	1	5	1
National Correctional Employees Union	1	--	--

Overall, the demand for public sector mediation services decreased by 40% this year. Requests in the municipal sector decreased by 51%; those arising from K-12 education increased by 6.25%. The increased demand in the K-12 sector is consistent with the continued difficulty settling disputes through mediation in that sector. Of the cases in which mediation was completed this year, mediation was successful in only 50% of the K-12 cases, compared with a 59.25% success rate in the municipal sector cases closed this year. School sector cases continued to be more difficult to resolve in FY 17.

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 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 uncertain resources. In the municipal sector, the nature of the work being performed has not changed dramatically. Much of the work performed by municipal employees has direct comparability with that in the private sector. As labor market conditions improve and additional resources become available, communities are more willing to adjust employee compensation to recruit and retain quality employees. The issues at the table in municipal bargaining are those that have historically been resolved through bargaining. Personnel costs represent a smaller percentage of municipal budgets, so moderate wage adjustments have less impact on the property tax rate.

Second is the very significant turn over in personnel representing both labor and management in the last few years, 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 and the resulting trust and understanding take years to develop.

The average number of mediation days per case increased from 2.04 in FY 2016 to 2.49 for the combined total of 39 matters, including carryovers, for which mediation was concluded.

One case was concluded in 9 mediation days, one required 7 days, three cases were concluded in 6 mediation days, and two required 4 days each. Of the 39 cases in which mediation was concluded this year, 82% were resolved in 3 days or less (13 cases were resolved in one day, 10 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 72% of cases completed within 3 days last year.

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

Fiscal Year	Mediation-Days Expenditure Per Case
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
2016	2.04
2017	2.49

Of the mediations, including carryovers, that were concluded in FY 2017, 7.9% proceeded to fact-finding. The percentage of cases proceeding to 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
2003	13.8%
2004	8.8%
2005	5.8
2006	13.9%
2007	12%
2008	7.5%
2009	7.7%
2010	9.75%
2011	12.9%
2012	17.2%
2013	12.1%
2014	19.2%
2015	28%
2016	9.7%
2017	7.9%

Assuming the average of 2.49 mediation days per case, the 32 matters still pending will consume an additional 80 mediation days, for a total expenditure of approximately 177 mediation days devoted to matters docketed in or carried over to FY 2017.

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. 2016) 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

The executive director presented testimony neither for nor against a bill before the Legislature that would potentially have had an impact on the mediation process -- An Act To Ensure Transparency in Public Union Negotiations, L.D. 772. In testimony before the Joint Standing Committee on Labor, Commerce, Research and Economic Development, the executive director pointed out that it was unclear whether the bill was intended to require that mediation be held in public; however, if it was, the value of mediation in resolving negotiating disputes would be significantly reduced. A majority of the Committee voted “ought not to pass” and the bill was not enacted into law.

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

John Alfano ¹	Biddeford
David Bustin	Hallowell
Maria Fox	Portland
Denis Jean	Lewiston
Arthur Kyricos	York Harbor
Robert L. Lyman	Freeport
Philip J. Moss	South Portland
Melissa Shattuck	Falmouth
Evan Weston	Harpswell
Kenneth T. Winters	Holden

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 30th day of June 2017

Respectfully submitted,

Marc P. Ayotte, Executive Director

Panel of Mediators and
Maine Labor Relations Board

¹ Mr. Alfano resigned December 12, 2016.