

ANNUAL REPORT
MAINE LABOR RELATIONS BOARD
Fiscal Year 2018

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) (Supp. 2017) 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 easier 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, 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 October 3, 2017, Governor LePage nominated Amie M. Parker of Lewiston for reappointment as the Employee Representative and Dennis E. Welch of Windham and Carl A. Guignard of Lewiston for reappointment as Alternate Employee Representatives. The reappointments 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

A significant Legislative development this year was the review of the Board's operations and administration by the Joint Standing Committee on Labor, Commerce,

Research and Economic Development pursuant to the provisions of the Government Evaluation Act. This program review was conducted in conjunction with that of the operations of the Board's affiliated organizations, the State Board of Arbitration and Conciliation and the Panel of Mediators. The Executive Director and the Board staff also provide professional and administrative support to these bodies and their annual budgets are included with that of the Board. As required by law, a detailed report discussing the Board's programs was reviewed by the LCRED Committee. Board Chair Katharine I. Rand, Esq., and the Executive Director attended the Committee's Public Hearing on January 25, 2018, briefed the Committee and responded to questions regarding the full range of our program. On February 1, 2018, the LCRED Committee issued a unanimous report to the President of the Senate and the Speaker of the House, indicating that the Board was "operating effectively and efficiently within its statutory authority" and thereby concluding the GEA process.

The Board also submitted the report required by Chapter 553, Sec. 2, P.L. 2014, regarding the impact of the increased per diem paid to the mediators, from \$100 to \$300 for each 4-hour segment of mediation services, on the public sector bargaining process and on the recruitment and retention of mediators. The annual report of the Panel of Mediators has a complete summary of the report.

A Citizens' Initiative and two other bills impacting the Board's jurisdiction were introduced for consideration in this year's Legislative Session. The initiated bill, L.D. 1864, creates a "Universal Home Care Program" to provide in-home and community support services for people with disabilities or seniors who require assistance with an activity of daily living, without regard to income. Section 3 of the bill provides that "Individual provider," as defined in the bill as being "any individual selected by and working under the direction of an eligible person in a covered program" is a state employee solely for the purpose of the State Employees Labor Relations Law. SELRA provides employees the right to engage in or to refrain from engaging in collective bargaining activity, free from employer interference, restraint, coercion, or discrimination and from restraint or coercion by employees and employee organizations. In addition, the law protects the right of employees to decide

whether to be represented for purposes of collective bargaining and, if so, the right to choose their bargaining representative. In return for these rights, SELRA prohibits employees from engaging in strikes, slowdowns, and work stoppages. If adopted, this measure would result in several legal and operational consequences as well as significant fiscal impact for the Board. Although the bill died in the Legislature, the initiative will be presented to the voters in the fall, without any reference at all to the providers becoming State employees for purposes of collective bargaining.

LD 1869 establishes the total State and local expenditures for public K-12 education in Fiscal Year 2018-19. Part VVVVV of the State's biennial budget for Fiscal Years 2018-19 authorized the creation of new regional entities, School Management Leadership Centers, and provided financial incentives to encourage school administrative units to participate in activities and services managed by and provided through the Centers. Among the types of shared services that may be offered through the Centers are: accounting, payroll, financial management and procurement; reporting functions; transportation; special education programs; gifted and talented programs; technology and support; food service; energy and facilities management; school leadership academies; staff training and professional development; educational programs or staff; support service programs; educational programs such as summer school, extended school year, tutoring, advanced placement and other programs to improve student achievement; extracurricular or co-curricular programs; and superintendent services. In the event that some or all of the employees of participating school administrative units become employed by the School Management Leadership Center, Section 4 of the bill would apply. That section was based on current law, 20-A M.R.S. § 1464-A, that controls the labor-relations considerations during the re-assignment of employees, from a member school administrative unit to an Alternative Organizational Structure. Section 4 allocated collective bargaining rights and responsibilities between the former and the new employer during a transition period, provided the structure for merging bargaining units, determined which collective bargaining agreement would control an employee's terms of employment until a center-wide agreement

was negotiated, and set out the process through which unit employees could select whether to be represented for purposes of collective bargaining and, if so, by which employee organization, in situations where the units being merged were represented by different employee organizations or where a majority of employees involved were not represented prior to the unit merger. The bill had been enacted by the Legislature; but was recalled from the Governor's desk and amended to delete the provision regarding collective bargaining. The amended bill was then enacted and sent to the Governor. Without the inclusion of the collective bargaining provision, the impact of the measure on the Board is unclear and will be dependent upon on the extent to which school administrative units choose to participate in School Management Leadership Centers.

L.D. 1880 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. The bill was not adopted by the Legislature.

Bargaining Unit and Election Matters

During fiscal year 2018, the Board received 11 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 18 of these filings in FY 17. Of the 11 FY 18 filings, 2 were for municipal or county government units, 2 were state units, and 7 were for K-12 educational units. The unit agreements were filed by the following employee organizations:

Maine Education Association

7 agreements

(Moosabec Community Schools/SU 103 Support Staff Unit)
(RSU 26 Support Staff Unit)
(RSU 23 Teachers Unit)
(Appleton Educational Support Professionals Unit)
(RSU 37 Support Staff Unit)
(MSAD 13 Support Staff Unit)
(MSAD 51 Social Workers Unit)

<u>MSEA/SEIU</u>	2
(State of Maine Pro-Tech Unit)	
(State of Maine Supervisor Services Unit)	
<u>Richmond Employees Association</u>	1
(Municipal Employees Unit)	
<u>Teamsters Union Local 340</u>	1
(Farmington Public Works Unit)	

Of the 11 filings, 5 were for new units and 6 were for changes to existing units.

Eight (8) unit determinations were filed in FY 18. Agreement was reached in 1 case, the bargaining unit was deemed appropriate in 4 cases, and 3 cases are pending. 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. The parties reached agreement in one case, resulting in the unit modification being deemed appropriate; and a unit clarification decision was issued in the other. Two (2) active unit clarifications were carried forward into this year; both were dismissed. 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 10 unit petitions filed in FY 17. Unit determinations were filed by the following parties this year:

<u>Maine Education Association</u>	4 requests
(SAD 31 Educational Support Professionals Unit)	
(MSAD 6 Licensed Practical Nurses Unit)	
(Winthrop School Administrators Unit)	
(RSU 87 Support Staff Unit)	
<u>Teamsters Union Local 340</u>	3
(RSU 16 Bus Drivers Unit)	
(Eliot Town Office Unit)	
(Farmington Public Works Unit)	
<u>Laborers' Local Union #327</u>	1
(Ellsworth Clerical Employees Unit)	

The unit clarifications were filed by the following parties:

<u>Teamsters Union Local 340</u>	2
(Oxford County Corrections CID/Supervisors Unit)	
(Lebanon Town Office Employees 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 18 there were 4 voluntary recognitions filed, involving the following employee organizations:

<u>Maine Education Association</u>	2 voluntary rec.
(Moosabec Community Schools/SU 103 Support Staff Unit)	
(Appleton Educational Support Professionals Unit)	
<u>Fraternal Order of Police</u>	1
(York County Patrol Unit)	
<u>Teamsters Local Union No. 340</u>	1
(Fryeburg Police Unit)	

Nine (9) bargaining agent election requests were filed in FY 18; 9 elections were held, including matters carried forward from FY 17. The employee organizations were certified as the bargaining agent in 7 cases, and the employees opted for no representative in 2 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 17, are as follows:

<u>Petitioner (Bargaining Unit)</u>	<u>Outcome</u>
<u>Maine Education Association</u>	
(Maine School of Science and Mathematics Faculty Unit)	No Representative
(RSU No. 10 Specialist Assistants Unit)	MEA certified
(Biddeford School Custodians Unit)	MEA certified
(SAD #31 Educational Support Professionals Unit)	MEA certified
(MSAD 6 Licensed Practical Nurses Unit)	MEA certified
(Winthrop School Administrators Unit)	MEA certified

(SAD 37 Support Staff Unit)	No Representative
<u>Teamsters Union Local 340</u>	
(RSU 16 Bus Drivers Unit)	Teamsters certified
(Farmington Public Works Unit)	Teamsters certified

In FY 17, there was 1 voluntary recognition filed, 14 bargaining agent election requests received, and 19 elections held.

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 2 decertification/bargaining agent election requests this year, compared with 6 last year and 5 in FY 16. In addition, the Board received 1 straight decertification election request this year, compared with 1 last year and 4 in FY 16. 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. Four (4) 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 Fraternal Order of Police	Maine Association of Police	NFOP certified
National Correctional Employees Union	Teamsters Local Union 340	NCEU certified

As noted above, the Board received 1 straight decertification petition in FY 18 and one was carried forward from FY 17. The results of the decertification elections were as follows:

<u>Incumbent Agent</u>	<u>Bargaining Unit</u>	<u>Outcome</u>
AFSCME Council 93	Ellsworth Highway Unit	No Representative

There were 5 election matters carried over from FY 17; consequently, there were 17 such matters requiring attention during the fiscal year, compared with 27 in FY 17. The bargaining agent filed a disclaimer of interest in 1 matter. This was a situation where the employee organization no longer wished to continue as the bargaining agent due to changes in circumstances and the employees wanted to change bargaining agents. The current agent agreed to disclaim interest and the employer, the Town of Fryeburg, voluntarily recognized the new agent.

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 increased significantly. There were 55 new requests filed this year compared with 39 last year. In addition to the new mediation requests received during FY 18, there were 33 matters carried over from FY 17 that required mediation activity during the year. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year was 88, up from 73 cases in FY 17.

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. The best indicator of this, the settlement rate for mediation cases closed this year, rose from 60.5% to 66%.

Fact-finding is the second step in the three step statutory dispute resolution process. In Fiscal Year 2018, 13 fact-finding requests were filed. There were 8 requests received in FY 17. Of the 13 cases, plus 5 carried forward from FY 17, 4 cases went to hearing, 2 were conciliated at hearing, and 2 decisions were issued. Five (5) petitions were withdrawn or otherwise settled, and 9 are pending. In FY 17, 5 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>	7 requests
(Boothbay Harbor Administrative Unit)	
(Cumberland County Corrections Supervisors Unit)	
(Old Orchard Beach Clerical/General Government Unit)	
(Paris Police Department Unit)	
(RSU 73 Bus Drivers and Custodians Unit)	
(Paris Administrative/Clerical Unit)	
(Eliot Public Works Unit)	
<u>Maine Education Association</u>	4
(RSU 20 Support Staff Unit)	
(Westbrook Teachers Unit)	
(RSU 18 Administrative Assistants Unit)	
(MSAD 46 Educational Support Staff 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. The Board is not aware of any matters having gone to interest arbitration in 2018.

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 (20) complaints were filed in FY 18. This represents a slight increase from the FY 17 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 20 complaints filed in FY 18, there were 10 carry-overs from FY 17, compared with 19 complaints and 13 carry-overs last year. Board panels conducted one (1) evidentiary hearing on 4 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 4 formal decisions and orders. Board chairs, sitting as prehearing officers, held conferences in 11 cases, compared with 6 in FY 17. One (1) case is being held in abeyance at the request of the parties to allow them to try to resolve their differences. Eight (8) complaints were dismissed or withdrawn at the request of the parties, and 4 complaints were dismissed by the executive director (one partial dismissal appealed and one full dismissal appealed). Fourteen (14) 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:

New England Police Benevolent Association, Local 605 v. City of Caribou, Case No. 16-22, Decision and Order, November 22, 2017. The Board concluded that the City did not fail to bargain in good faith by inserting language into the proposed agreement during negotiations without specifically notifying the Association because the union negotiators saw the language

before ratification, but thought it meant something else.

Wiscasset Educational Support Prof'l Assoc. v. Wiscasset School Department, Case No. 18-09, Decision and Order, May 14, 2018. The Board concluded that the School Department had not made a unilateral change by ending a practice of allowing employees to accrue compensatory time off in lieu of overtime pay because the terms of the expired agreement clearly and unequivocally required the payment of overtime and did not allow for compensatory time. The Board held that the clear and unambiguous terms of the agreement must control in the absence of evidence of a meeting of minds to amend that contract language. The Board also noted that, in any event, the Employer gave the Association the opportunity to bargain and did, in fact, bargain over the matter.

Maine State Employees Association v. State of Maine, Case No. 18-11, Order on Appeal of Executive Director's Partial Dismissal of Complaint, May 25, 2018. The Board affirmed the Executive Director's dismissal of that portion of the complaint that charged the State with making unilateral changes to the reclassification procedure. The Board agreed that the Law Court's decision in *State v. MSEA*, 499 A.2d 1228, controlled, as the zipper clause central to that case was identical to the current one. Through the zipper clause, the parties had waived the right to demand bargaining on matters that were raised or could have been raised during negotiations. The only recourse left was through the Maintenance of Benefits clause, which was enforceable through the grievance procedure, not at the Board.

Westbrook School Department v. Westbrook Education Association/MEA, Case No. 18-18, Decision and Order, May 30, 2018. The Board concluded that the Association violated the Act by insisting on including certain issues at fact finding that were matters of educational policy. The Board held that all but two of the nine issues presented contained matters of educational policy which are subject to the meet-and-consult requirement of the Act, but may not be negotiated.

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 Local Union No. 340</u>	9 complaints
(Jay)	
(Kennebunk)	
(Oxford County - 2)	
(Paris - 2)	
(Portland Water District)	
(Somerset County)	
(Waterville)	
<u>Maine Education Association</u>	3
(Maine School of Science and Math)	
(RSU 22)	
(Wiscasset School Department)	
<u>Maine State Employees Association</u>	2
(Maine Community College System)	
(State of Maine)	
<u>Town of Paris</u>	2
(Teamsters Local Union No. 340 – 2)	
<u>York County Patrol Association</u>	2
(York County – 2)	
<u>Westbrook School Committee</u>	1
(Westbrook Education Association)	
<u>Individuals</u>	1
(Maine State Employees Association)	

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. There were no unit appeals filed this year.

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. One request for interpretive ruling was received this year and that is pending at this time.

Superior Court Appeals

David Trask v. FOP and MLRB, Kennebec County Superior Court Decision No. AP-2017-29 (Stokes, J.), issued January 30, 2018. The Superior Court affirmed the Board's decision (No. 16-07) 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 Court concluded that the Board's decision was supported by competent and substantial evidence and applied the correct legal principles.

Law Court Appeals

SAD 3 Education Association v. RSU Board of Directors and MLRB, Law Court Decision No. 2018 ME 29, March 1, 2018. The Law Court affirmed the Board's decision that the 120-day notice requirement in the final paragraph of section 965(1) also applies to impact bargaining when impact bargaining may involve the appropriation of money. The Court also ruled that the Board's conclusion that the Association did not properly provide the School Board in writing was supported by the record.

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 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Unit Determination/ Clarification Requests Number filed--	8	+50% 12	-17% 10	+30% 13	-15% 11	-9% 10
Agreements on Bargaining Unit (MLRB Form #1) Number filed--	28	-32% 19	+105% 39	-44% 22	-18% 18	-39% 11
Voluntary Recognitions (MLRB Form #3) Number filed--	5	+14% 12	+25% 15	-60% 6	-67% 1	+300% 4
Bargaining Agent Election Requests Number filed--	18	-38.9% 11	-27% 8	+62/5% 13	+7.7% 14	-36% 9
Decertification Election Requests Number filed--	1	+400% 5	-40% 3	+66% 5	-80% 1	-- 1
Decert./Certification Election Requests Number filed--	3	-- 3	+33% 4	-- 4	+50% 6	-67% 2
Mediation Requests Number filed--	46	+10.9% 51	+33% 68	-4.4% 65	-40% 39	+41% 55
Fact-Finding Requests Number filed--	20	-16% 17	+6% 18	-28% 13	46% 7	+86% 13
Prohibited Practice Complaints Number filed--	15	+106% 31	-9/3% 29	-20.7% 22	-13.6% 19	+5.3% 20

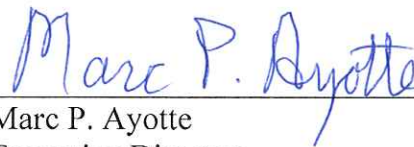
The above table indicates that the demand for the Board's different services generally decreased during the fiscal year. For the past several years we have been predicting that public sector organizational activity may be nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and firefighter units, predated the establishment of the agency. Not surprisingly, there was decrease in

organizational activity for new bargaining units this year. If referenda results this spring are any indication, it appears that many, if not most, school administrative units will choose to participate in School Management Leadership Centers. Consequently, the Board can anticipate a significant increase in bargaining unit and representation activity over the next few years.

During FY 18, 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 year, which saw public teacher unrest in several states.

Dated at Augusta, Maine, this 29th day of June, 2018

Respectfully submitted,



Marc P. Ayotte
Executive Director
Maine Labor Relations Board