

ANNUAL REPORT
MAINE LABOR RELATIONS BOARD, PANEL OF MEDIATORS, and
STATE BOARD OF ARBITRATION AND CONCILIATION
Fiscal Year 2021

I. Introduction

The purpose of this report is to review for Governor Janet T. Mills the operations of the Maine Labor Relations Board (Board or MLRB) and its affiliated organizations, the Panel of Mediators (Panel) and the State Board of Arbitration and Conciliation (BAC) in Fiscal Year 2021.¹ To that end, this report contains:

- background information including the statutory foundation for public-sector collective bargaining in Maine as well as the missions and composition of the Board, Panel, and BAC,
- a review of Board, Panel, and BAC operations for FY 2021,
- a summary of MLRB-related legislation enacted by the 130th Legislature, and
- a short discussion of operational achievements, goals, and related plans.

II. Background

a. Statutory Framework for Public-Sector Collective Bargaining in Maine

Public-sector employees in Maine have the right to engage in collective bargaining, as provided by four separate laws that govern labor relations in the State. Those laws are:

- The Municipal Public Employees Labor Relations Law (covering municipal and county employees including clerical, schools, fire, police, and public works employees), 26 M.R.S.A. §961, *et seq.*
- The State Employees Labor Relations Act (covering state employees, including the legislative and executive branches), 26 M.R.S.A. §979, *et seq.*
- The University Employees Labor Relations Act (covering employees of the University of Maine and Maine Community College systems, as well as Maine Maritime Academy), 26 M.R.S.A. §1021, *et seq.*
- The Judicial Employees Labor Relations Act (covering the State’s judicial branch employees), 26 M.R.S.A. §1281, *et seq.*

In all, approximately 61,000 individuals, employed by nearly 500 public-sector employers, fall within the jurisdiction of these laws.

¹ 26 M.R.S.A. §§931, 965(2)(C), 968(7) and 979-J(1) respectively require the submission of an annual report regarding Board, Panel, and BAC operations to the Governor.

The State's labor relations laws share a common foundation that establishes the framework for collective bargaining in Maine. The stated purpose of each law is to improve the relationship between public employers and their employees. Employees may choose to engage in collective bargaining by selecting a bargaining agent, i.e. union, to represent a group of the employees, called a bargaining unit, who share common working conditions.

Once a bargaining agent is certified, the employer and bargaining agent must bargain in good faith over wages, hours, and conditions of employment for the bargaining unit. If the parties are unable to reach agreement on their own, they may participate in mediation, fact-finding, and arbitration to resolve the bargaining impasse. Should one party fail to meet its statutory obligations, the other party may seek enforcement of the law by filing a complaint with the Board for which the Board will conduct a hearing and render a decision and order. The Board's decisions are subject to appeal to the Maine courts.

b. Mission

The Board's primary mission is to enforce the rights and obligations provided in the State's labor relations laws. To do so, the Board and its affiliated organizations perform four central functions: (1) the determination of bargaining units, (2) the certification of bargaining agents, (3) the resolution of collective bargaining impasses, and (4) the adjudication of complaints that allege violations of the labor relations laws.

The Board, Panel, and BAC have separate, but related, responsibilities and jurisdiction. The Board itself is responsible for resolving disputes over the composition of bargaining units, conducting elections to determine bargaining agents, conducting hearings for prohibited practice complaints, and, issuing decisions and orders for those complaints.

The Panel's central purpose is to facilitate resolutions to bargaining impasses involving public-sector employers and their counter-part bargaining agents. Specifically, if an employer and a union are unable to reach agreement in their negotiations, they can request that a mediator from the Panel be assigned to help them achieve a resolution to their bargaining dispute.

The BAC is available to resolve bargaining impasses if mediation and fact-finding are unsuccessful. Most frequently, the BAC provides arbitration services for contract grievances.

c. Composition

Board

The Board is composed of three members and six alternates appointed by the Governor to four-year terms, subject to legislative approval. Out of the three members, one is designated to represent the public (Public Representative), another to represent employees (Employee Representative), and the third to represent employers (Employer Representative). The Public Representative is also designated to serve as the Board's Chair. Each member has two alternates in the event the member is unavailable for a Board hearing.

The Board is currently composed as follows:

Public Representative/Chairs	(appointments expired 9/30/19)	
Katharine I. Rand, Esq., Scarborough		Board Chair
Jeffrey J. Knuckles, Esq., Phippsburg		Alternate Chair
Michael C. Ryan, Esq., Freeport		Alternate Chair
Employer Representatives	(appointments expired 9/30/18)	
Robert W. Bower, Jr., Esq., Cumberland		Employer Representative
Christine Riendeau, Durham		Alternate Employer Rep.
Richard L. Hornbeck, Esq., Bowdoinham		Alternate Employer Rep.
Employee Representatives	(appointments expire 9/30/21)	
Amie M. Parker, Lewiston		Employee Representative
Dennis E. Welch, Windham		Alternate Employee Rep.
Carl A. Guignard, Lewiston		Alternate Employee Rep.

Panel of Mediators

The Panel is composed of five to ten individuals appointed by the Governor to three-year terms. 26 M.R.S.A. §965(2)(C). The Panel is currently composed as follows:

	<u>Appointment Expired</u>
David W. Bustin, Hallowell	08/19/14
Maria Fox, Esq., Portland	11/10/14
Denis Jean, Lewiston	12/08/18
Arthur Kyricos, York Harbor	12/08/18
Robert Lyman, Freeport	11/10/14
Philip J. Moss, South Portland	12/08/18
Melissa P. Shattuck, Falmouth	02/02/15
Evan L. Weston, Harpswell	12/08/18
Kenneth T. Winters, Holden	07/18/17

In accordance with 26 M.R.S.A. §965(2)(C), the Board has submitted to the Governor ten nominees for Panel appointment. Five nominees are current members of the Panel, including:

Maria Fox, Esq., Portland
Denis Jean, Lewiston
Arthur Kyricos, York Harbor
Robert Lyman, Freeport
Melissa Shattuck, Falmouth

Five nominees are not current Panel members and include:

Jane Gilbert, Augusta
Chester G. Hillier, Monmouth
James H. Mackie, South Portland
Erik Peters, Esq., Freeport
Rebekah Smith, Esq., Union

As of the date of this report, the Panel nominations remain pending with the Governor’s Office Department of Boards and Commissions.

Board of Arbitration and Conciliation

The BAC is also composed of gubernatorial appointees, respectively designated as public chairs, employer representatives, and employee representatives. 26 M.R.S.A. §931. Their terms of appointment are three years. *Id.* The BAC is currently composed as follows:

Neutral Chairs		<u>Appointment Expired</u>
Shari B. Broder, Esq., Freeport	Board Chair	08/25/14
Sheila Mayberry, Esq., Falmouth	Alternate Chair	12/26/20
John C. Sheldon, Esq., Westbrook	Alternate Chair	12/26/20
Employer Representatives		
Robert W. Bower, Jr., Esq. Cumberland	Employer Rep.	12/26/20
Donald H. Gerrish, Brunswick	Alt. Employer Rep.	02/07/15
Bryan M. Dench, Esq., Portland	Alt. Employer Rep.	12/26/20
Employee Representatives		
Chester G. Hillier, Monmouth	Employee Rep.	12/26/20
James H. Mackie, South Portland	Alt. Employee Rep.	12/26/20
Vacant	Alt. Employee Rep.	

Neutral Staff

Apart from the Governor-appointed positions, the day-to-day operations of the Board, Panel, and BAC are handled by a neutral, non-appointed legal and administrative staff composed of the Executive Director, Board Counsel, and Office Manager. The Board’s Executive Director also serves in that same capacity for the Panel, in addition to serving as Clerk to the BAC.

On a regular basis, the Board’s staff members respond to 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. For inquiries that involve matters over which the Board has no jurisdiction, the staff suggests other agencies or organizations that may be of assistance.

The Board’s staff maintains a State of Maine website on behalf of the Board, Panel and BAC. See www.maine.gov/mlrb/ . The website provides a variety of Board-related information including links to MLRB-related statutes, administrative rules and forms. One of the site’s more important components is a search engine through which the public can research previous Board decisions as well as the Superior and Law Court opinions reviewing those decisions. Access to this case law permits public employers, employees, and bargaining agents to know the parameters of required or permitted conduct and to use that information to comply with the law.

III. Board Operations for FY 2021

a. Bargaining Unit and Election Matters

As noted above, the Board is responsible for certifying a labor organization as the designated bargaining agent of a bargaining unit, i.e. a group of employees who share common working conditions. A labor organization has three potential options to obtain certification: (1) voluntary recognition from the employer, (2) filing an election petition, supported by a 30% showing of interest, or (3) filing a majority sign-up petition for a bargaining unit that is currently unrepresented by another labor organization.

Absent voluntary recognition, a labor organization may pursue an election or majority sign-up petitions. For both petitions, an employer may object to the scope of the proposed bargaining unit. Upon such an objection, the Board's Executive Director conducts a hearing and issues a determination, subject to appeal to the Board, of the bargaining unit membership.

For an election petition, once the bargaining unit is finalized, the Board conducts an election, typically by mail ballot. Through the election, each bargaining unit employee is permitted to vote by secret ballot as to whether they wish to be represented by a particular labor organization for the purposes of collective bargaining. On average, a mail ballot election is completed in about six weeks from the time that the petition is filed until the certification of results.

For a majority sign-up petition, once the bargaining unit is finalized, the Executive Director reviews the written authorizations submitted for the employees from the proposed bargaining unit to determine if a majority of the group designated a particular labor organization as their bargaining agent. If a majority have signed such an authorization, the MLRB certifies the labor organization as the employees' bargaining agent without the need for a traditional election.

During FY 21, the Board addressed numerous bargaining unit representation matters, including:

- **Elections:** A total of 15 election petitions were filed. Of those 15 petitions:
 - 2 involved the decertification of the existing bargaining agent in favor of no union representation.
 - 13 involved one labor organization seeking to represent a bargaining unit represented by a different labor organization.

To process these petitions, the Board conducted 8 elections and issued related certifications. As to the 7 other petitions, 2 were dismissed because they were untimely filed and 5 recently filed petitions remain open pending the completion of ongoing mail-ballot elections.

- **Majority sign-up:** A total of 11 Majority sign-up petitions were filed. The Board issued a certification of a new bargaining agent for each of those petitions.
- **Voluntary Recognitions:** A total of 13 voluntary recognitions were filed through which an employer and labor organization reached agreement as to the composition of the bargaining unit of employees and/or a labor organization's status as the bargaining agent.

- **Unit Clarifications:** A total of 3 petitions seeking clarification of existing bargaining units were filed. Out of those 3, one petition was resolved shortly after filing and the remaining two are scheduled for hearing.

b. Prohibited Practice Complaints

The Board is responsible for adjudicating prohibited practice complaints alleging a violation of the state's public sector labor relations laws. Once a complaint is filed, the Executive Director conducts an initial review of the complaint to determine if it alleges a violation of the law. If the original complaint fails to allege a violation of the law, the charging party is permitted the opportunity to amend the complaint once. Ultimately, if a complaint's alleged facts do not state an actionable claim, the complaint is dismissed subject to appeal to the Board.

If a complaint does allege a violation of the law, the Executive Director engages the parties in settlement discussions. Should the settlement discussions be unsuccessful, a hearing is conducted by the full, tri-partite Board. Thereafter, the Board issues a written decision and order which is subject to appeal to the courts.

In FY 21, a total of 14 prohibited practice complaints were filed with the Board. Subject matter at issue included alleged failures to negotiate in good faith, alleged interference with protected activity, as well as an alleged violation of a labor organization's duty of fair representation. In addition to the 14 complaints filed in FY 21, a total of 10 complaints were held over from FY 20. In sum, a total of 24 complaints were pending with the Board at some point during FY 21.

During this fiscal year, 20 of the 24 pending complaints were closed, as summarized below:

- 11 complaints were settled by the parties without the need for a hearing,
- 5 complaints were unilaterally withdrawn by the complainant,
- 3 complaints were adjudicated by the Board following an evidentiary hearing (see summaries below), and
- 1 complaint was dismissed by the MLRB's Executive Director for failing to allege an actionable claim.

As noted, during FY 21, the Board issued three decisions, a synopsis of each follows:

- *Moses v. AFSCME Council 93*, Case No. 20-PPC-09 (September 8, 2020). This case involved an allegation the union violated its duty of fair representation to a bargaining unit employee. The Board concluded the union did not violate its duty of fair representation because the union represented the employee for a disciplinary matter in a rational manner and there was insufficient evidence to demonstrate any discrimination or bad faith by the union towards the employee.
- *Maine Association of Police v. Town of Pittsfield*, Case No. 20-PPC-07 (December 31, 2020). In this case, the union alleged the town committed prohibited practices by (1) failing to provide requested information, and (2) retaliating against two employees for union-related activity. The Board concluded the town violated the Act by failing to provide the requested information in a timely manner, and, this conduct unlawfully interfered with the right to engage in union activity. As to the alleged retaliation, the

Board found the town's disciplinary action against the two employees was not retaliatory because the union failed to prove the town's stated justifications for the discipline, which were based on conduct unrelated to union activity, were merely a pretext for a retaliatory motive.

- *Falmouth Bus Drivers, Custodians and Maintenance Workers Ass'n v. Falmouth School Board*, Case No. 20-PPC-06 (January 26, 2021). Here, the union alleged the school board unlawfully refused to participate in mediation for certain mid-term negotiations. The MLRB concluded the school board was not bound to engage in negotiations, including mediation, because the subject matter at issue was covered by the parties' existing collective bargaining agreement.

As previously indicated, Board decisions and orders are subject to appeal in the courts. In FY 21, there were no appeals of Board decisions to the Maine courts.

IV. Panel and Impasse Resolution Operations for FY 2021

A critical aspect of MLRB operations is to provide negotiation impasse resolution services to Maine's public-sector employers and labor organizations. Often, for a variety of reasons, parties are unable to reach agreement when negotiating either an initial or successor collective bargaining agreement. When such a bargaining impasse occurs, Maine's labor relations laws provide a three-step process to resolve the impasse.

First, parties may request the assignment of a neutral Panel mediator. The Board's Executive Director is responsible for assigning a Panel mediator. After assignment, the mediator meets with the parties and facilitates the discussion and resolution of subjects in dispute. Given the overall frequency of Panel mediation requests, this service represents an area where the MLRB and Panel have the regular opportunity to provide direct assistance to numerous public-sector parties, with the goal of improving those labor-management relationships at the local level as well as promoting stability in labor relations state-wide.

If the parties are unable to reach ultimate agreement through mediation, either party may request a fact-finding panel, composed of a neutral chair, employer representative, and employee representative. Parties can either request a private fact-finding panel or a BAC fact-finding panel. Upon receipt of a request, the Board's staff assigns the fact-finding panel and coordinates the logistics for the fact-finding hearing. At hearing, each party presents evidence in support of its respective proposals, after which the fact finders issue a decision which provides the panel's advisory determination for all subjects in dispute. Additionally, at times, the assigned fact-finding panel conciliates a resolution during the hearing process.

Finally, if the parties remain in dispute following fact-finding, they may submit the outstanding issues to interest arbitration. Parties may obtain interest arbitration from either private arbitrators or members of the BAC. By law, the resulting arbitration decision is binding on the parties except any decision that addresses wages, retirement, or insurance, in which case the decision is advisory only. The Act does not require parties to notify the Board if they invoke interest arbitration.

a. Mediations in FY 2021

In FY 21, parties filed a total of 37 requests for Panel mediation. These requests typically involved parties at the municipal or county level. Additionally, 11 mediations were held over from FY 20. Throughout the year, Panel mediators worked on a total of 25 of the separate, pending contract disputes that comprised each mediation request. Of the 48 matters pending in FY 21, a total of 30 were closed during the year. Of the 30 cases closed, the Panel's mediators facilitated a resolution in 21 cases either through the parties reaching agreement during mediation itself, or, shortly thereafter.

b. Fact-Finding in FY 2021

In FY 21, parties filed a total of 7 requests for a private fact-finding panel. Of those, the parties reached settlement in 2 cases without the need for a hearing. For 3 cases, a fact-finding panel conducted a hearing (the panel issued a decision for one case, the other two post-hearing decisions are pending). The final 2 cases remain pending, one of which was recently filed, and, in the other, the parties are attempting to resolve their impasse without the need for a hearing.

V. BAC Operations for FY 2021

The BAC is available to provide the labor relations community with three services: (1) fact-finding for unresolved bargaining disputes, (2) interest arbitration if that mediation and fact-finding are unsuccessful to resolve a bargaining impasse, and (3) arbitration for grievances alleging a breach of a collective bargaining agreement. In practice, most of the BAC's activity is related to providing arbitration services for contract grievances. For parties to obtain BAC arbitration services, the parties must jointly request the service and/or the parties' collective bargaining agreement permits a contract grievance to be submitted to the BAC for arbitration.

In FY 21, the BAC received a total of 22 requests for BAC services, all of which involved requests for contract grievance arbitration services. In addition, 20 requests for BAC services were carried over from pre-FY 21. In sum, 42 cases were pending before the BAC this year.

Throughout this year, a total of 26 BAC cases were settled or withdrawn without the need for a hearing. For those cases that went to hearing, the BAC issued a total of 8 grievance arbitration decisions. Eight cases remain pending, including 3 cases where the parties are finalizing the terms of settlement.

VI. Legislative Matters

a. Enacted Bills

During its first session, the 130th Legislature enacted three MLRB-related bills. A summary of each follows:

- L.D. 52: "An Act Regarding Collective Bargaining Negotiations by Public Employers of Teachers", signed by the Governor on June 8, 2021, enacted as Chapter 96 of P.L. 2021.

Historically, the Municipal Public Employees Labor Relations Law prohibited a public employer from negotiating educational policies with unions that represent teachers. Instead, employers were expected to meet and consult with unions over educational policy decisions. L.D. 52 permits, but does not require, an employer to negotiate over two educational policies: teacher preparation/planning time, and, the involuntary transfer of teachers. Additionally, L.D. 52 sets forth a specific framework for the meet and consult process for the remainder of educational policies that are not subject to bargaining.

- L.D. 816: “An Act to Improve Communication Between School Boards and Educators by Requiring Notice of Discussion of Labor Matters”, enacted as Chapter 281 of P.L. 2021.

As enacted, L.D. 816 requires a school board to regularly communicate with school employees and members of the public who reside in the boundaries of the school administrative unit.

- L.D. 824: “An Act Regarding Collective Bargaining Negotiations by Public Employers of Teachers”, enacted as Chapter 282 of P.L. 2021.

Under L.D. 824, the Municipal Public Employees Labor Relations Law, the University of Maine System Labor Relations Act, and the Judicial Employees Labor Relations Act will now require a public employer to pay merit salary increases, in accordance with the terms of an expired contract, prior to the implementation of a successor contract. See also Chapter 393 of P.L. 2019 which similarly adjusted the State Employees Labor Relations Act.

b. Pending Bills

Several MLRB-related bills remain pending as of the date of this report, summarized as follows:

- L.D. 151: “An Act to Protect Farm Workers by Allowing Them To Organize for the Purpose of Collective Bargaining”

L.D. 151, as currently amended, would provide agricultural employees working on farms with more than 5 employees the right to organize and engage in collective bargaining. Under the proposed bill, the MLRB would be responsible for (1) conducting elections and/or reviewing majority sign-up petitions, (2) deciding related disputes over the composition of bargaining units, and (3) adjudicating complaints of alleged prohibited practices. Additionally, the bill provides parties the ability to use the Panel of Mediators and the BAC to resolve bargaining disputes.

- L.D. 449: “An Act To Strengthen the Ability of Public Employers and Unions to Negotiate”

Currently, the Municipal Public Employees Labor Relations Act provides a public employer or labor organization that represents public employees the right to request to negotiate within 10 days so long as the parties have not otherwise agreed in their existing collective bargaining agreement. Under L.D. 449, as currently amended, a school district and union would have the right to demand a negotiation meeting within 10 days, regardless of any existing collective bargaining agreement.

- L.D. 494: “An Act To Change the Compensation Structure of the Maine Labor Relations Board and the State Board of Arbitration and Conciliation”

Through L.D. 494, the statutory per-diem compensation for BAC members would increase from \$150 to \$300 for each day they are conducting a hearing or drafting a decision. For meetings that involve the deliberation of matters, the compensation would remain at \$150. L.D. 494 also permits the MLRB, at the discretion of the Board, to absorb the per-diem costs for MLRB hearings to the extent permitted by the MLRB budget.

- L.D. 677: “An Act To Improve Public Sector Labor Relations by Amending the Laws Governing Arbitration under Certain Public Employee Labor Relations Laws”

Under L.D. 677, the State’s public-sector labor relations laws would be amended to provide binding interest arbitration on all negotiable subject matter including salaries, pensions, and insurance (which are currently excluded from the scope of binding arbitration). This bill would also establish a panel of 5-10 neutral arbitrators, appointed by the Governor, who would serve as the chairs of the tri-partite panels providing binding interest arbitration decisions.

- L.D. 775: “An Act To Include within the Definition of “Public Employee” and “Judicial Employee” Those Who Have Been Employed Less than 6 Months”

At this time, the State’s public-sector labor relations laws (except for the University of Maine System Labor Relations Act) exclude individuals employed less than six months, i.e. new employees, from the coverage of their laws. Under L.D. 775, those would be amended to permit new employees the ability to be members of bargaining units represented by labor organizations for the purposes of collective bargaining. New employees would still be subject to removal without cause during their probationary periods, and, such removals, or other disciplinary action against new employees, would be exempt from the negotiated grievance procedure.

VII. Achievements, Goals and Plans

FY 21 marked a year of accomplishment in the face of certain challenges. Foremost, the Board and its affiliates continued to fulfill their respective missions despite the ongoing difficulties presented by the Covid-19 pandemic. To do so, the Board, Panel of Mediators, and the BAC conducted hearings and meetings, in large part, via videoconference. While not ideal at times, meeting remotely ensured the Board, Panel and BAC continued to provide the State’s labor relations community with decisions or impasse resolution services in as timely manner as possible. Looking ahead, pursuant to Chapter 290 of P.L. 2021, the Board will implement a policy to permit remote participation in Board proceedings under certain circumstances.

The Board continues to focus on increasing access to labor relations information for the State’s labor-management parties. During FY 21, the Board implemented an online database, accessible via the MLRB website, of the existing public-sector collective bargaining agreements in Maine. The goal of this database is to provide parties in negotiations with ready access to contract terms employed in other labor-management relationships such that the negotiating parties can use this information to draft mutually agreeable contract proposals. The Board continues to request parties submit their active contracts to ensure the database is as complete as possible.

In addition to the contract database, the Board is finalizing a case law outline that will be published to the MLRB website. The case law outline organizes the Board's decisions by subject matter and provide a brief explanation of both the applicable statutory law as well as the MLRB cases that have interpreted the statute. The goal of the case law outline is to provide parties with a single resource that can provide quick guidance for employers and labor organizations as to their respective rights and obligations under Maine's labor relations laws. If possible, the Board will also create an accompanying index of the Board's decisions, organized by subject matter at issue in the decision.

In the coming year, the Board also anticipates reorganizing the MLRB website to provide easier access to available information as well as providing more direct instructions for parties to request the services of the Board, Panel of Mediators, or the BAC.

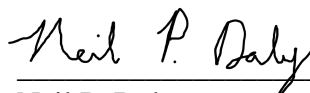
VIII. Conclusion

The Board, Panel, and BAC continue to play a critical role in facilitating stability in Maine's public-sector labor relations. In FY 2021, the MLRB's components successfully addressed numerous representation matters, bargaining impasses, grievance arbitrations and prohibited practice complaints. Many of the disputes submitted to the Board and its affiliates were resolved, thus helping all involved avoid the financial and administrative costs associated with further protracted argument and litigation. Additionally, the Board timely processed elections and majority sign-up petitions ensuring that questions of a labor organization's status as bargaining agent were quickly addressed. By doing so, employers and labor organizations could promptly move forward in meeting their respective obligations under the State's labor relations laws. The Board, Panel, and BAC look forward to continuing to provide the State's labor-management parties effective service in the coming year.

Please let me know if there is any additional information regarding Board, Panel, or BAC operations that I can provide.

Dated: June 30, 2021

Respectfully submitted,



Neil P. Daly
Executive Director
Maine Labor Relations Board