

**ANNUAL REPORT**  
**MAINE LABOR RELATIONS BOARD, PANEL OF MEDIATORS, and**  
**STATE BOARD OF ARBITRATION AND CONCILIATION**  
**Fiscal Year 2022**

**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 2022.<sup>1</sup> 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 2022,
- a summary of MLRB-related legislation enacted by the 130<sup>th</sup> 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.

---

<sup>1</sup> 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 working conditions 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**

#### Maine Labor Relations 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.

In December 2021, Governor Mills nominated an entirely new slate of Board members, all of whom were approved by the legislature and formally appointed in February 2022. As a result, the Board is currently composed as follows:

|                                     |                         | <u>Appointment Expires</u> |
|-------------------------------------|-------------------------|----------------------------|
| <b>Public Representative/Chairs</b> |                         |                            |
| Sheila Mayberry, Esq.               | Board Chair             | 9/30/23                    |
| Shari Broder, Esq.                  | Alternate Chair         | 9/30/23                    |
| Rebekah Smith, Esq.                 | Alternate Chair         | 9/30/23                    |
| <b>Employee Representatives</b>     |                         |                            |
| Roberta de Araujo, Esq.             | Employee Representative | 9/30/25                    |
| James Mackie                        | Alternate Employee Rep. | 9/30/25                    |
| Jessica Maher, Esq.                 | Alternate Employee Rep. | 9/30/25                    |
| <b>Employer Representatives</b>     |                         |                            |
| Michael Miles                       | Employer Representative | 9/30/22                    |
| Ann Freeman, Esq.                   | Alternate Employer Rep. | 9/30/22                    |
| Alyssa Tibbetts, Esq.               | Alternate Employer Rep. | 9/30/22                    |

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). In August 2021, Governor Mills appointed ten Panel members, five of whom were reappointments. As a result, the Panel is currently composed as follows:

|                     | <u>Appointment Expires</u> |
|---------------------|----------------------------|
| Maria Fox, Esq.     | 8/24/24                    |
| Jane Gilbert        | 8/24/24                    |
| Chester Hillier     | 8/24/24                    |
| Denis Jean          | 8/24/24                    |
| Arthur Kyricos      | 8/24/24                    |
| Robert Lyman        | 8/24/24                    |
| James Mackie        | 8/24/24                    |
| Erik Peters, Esq.   | 8/24/24                    |
| Melissa P. Shattuck | 8/24/24                    |
| Rebekah Smith       | 8/24/24                    |

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:

| <b>Neutral Chairs</b> |                 | <u>Appointment Expired</u> |
|-----------------------|-----------------|----------------------------|
| Shari Broder, Esq.    | Board Chair     | 08/25/14                   |
| Sheila Mayberry, Esq. | Alternate Chair | 12/26/20                   |
| John Sheldon, Esq.    | Alternate Chair | 12/26/20                   |

Employee Representatives

|                 |                    |          |
|-----------------|--------------------|----------|
| Chester Hillier | Employee Rep.      | 12/26/20 |
| James Mackie    | Alt. Employee Rep. | 12/26/20 |
| Vacant          | Alt. Employee Rep. |          |

Employer Representatives

|                         |                    |          |
|-------------------------|--------------------|----------|
| Robert Bower, Jr., Esq. | Employer Rep.      | 12/26/20 |
| Donald Gerrish          | Alt. Employer Rep. | 02/07/15 |
| Bryan Dench, Esq.       | Alt. Employer Rep. | 12/26/20 |

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/](http://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 2022**

**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 22, the Board addressed several bargaining unit representation matters, including:

- **Elections:** A total of 6 election petitions were filed. Of those 6 petitions:
  - 2 involved the decertification of the existing bargaining agent in favor of no union representation.
  - 4 involved one labor organization seeking to represent a bargaining unit represented by a different labor organization.

To process these petitions, the Board conducted 6 elections and issued related certifications.

- **Majority sign-up:** A total of two 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 nine 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:** While no unit clarification petitions were filed in FY 22, the Board's Executive Director conducted a hearing and issued a related decision for a petition carried over from FY 21.

#### **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 22, a total of 15 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, and the alleged violation of a labor organization's duty of fair representation. In addition to the 15 complaints filed in FY 22, a total of 4 complaints were held over from FY 21. In sum, a total of 19 complaints were pending with the Board at some point during FY 22.

During this fiscal year, 14 of the 19 pending complaints were closed, as summarized below:

- 13 complaints were settled by the parties without the need for a hearing,
- One complaint was dismissed by the MLRB's Executive Director for failing to allege an actionable claim.

While the Board was prepared to conduct hearings for a number of complaints pending in FY 22, all of those matters scheduled for hearing were resolved by the parties without further litigation. The five most recently filed complaints remain pending and are in various stages of the pre-hearing process. Given the lack of Board decisions, there were also no appeals of MLRB decisions to the Maine courts.

#### **IV. Panel and Impasse Resolution Operations for FY 2022**

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. Parties are not required to notify the Board if they invoke interest arbitration.

**a. Mediations in FY 2022**

In FY 22, parties filed a total of 36 requests for Panel mediation. These requests typically involved parties at the municipal or county level. Additionally, 18 mediations were held over from pre-FY 22. Of the 54 matters pending in FY 22, a total of 40 were closed during the year. Of the 40 cases closed, the Panel’s mediators facilitated a resolution in 19 cases during mediation itself, while 15 cases were resolved either shortly after mediation or without the direct involvement of the mediator. As referenced below, six mediations resulted in a request for fact-finding.

**b. Fact-Finding in FY 2022**

In FY 22, parties filed a total of six requests for a private fact-finding panel. Of those, the parties reached settlement in two cases without the need for a hearing. In two cases, a fact-finding panel conducted a hearing and issued advisory decisions. The final two cases remain pending, both of which were recently filed and are in the scheduling phase.

**V. BAC Operations for FY 2022**

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 22, the BAC received a total of 19 requests for BAC services, 18 of which involved requests for contract grievance arbitration services with one request for fact-finding. In addition, 13 requests for BAC services were carried over from pre-FY 22. In sum, 32 cases were pending before the BAC this year.

Throughout this year, a total of 20 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 three grievance arbitration decisions. Nine cases remain pending, including two cases where the parties have requested to hold the cases in abeyance.

**VI. Legislative Matters**

During its second session, the 130<sup>th</sup> Legislature enacted four MLRB-related bills. A summary of each follows:

- L.D. 449: “An Act To Strengthen the Ability of Public Employers and Unions to Negotiate”, enacted as Chapter 761 of P.L. 2021.

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, a school district and union 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”, signed by the Governor on July 8, 2021, enacted as Chapter 421 of P.L. 2021.

Through L.D. 494, the statutory per-diem compensation for BAC members increased from \$150 to \$300 for each day they are conducting a hearing or drafting a decision. 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. 775: “An Act To Include within the Definition of ‘Public Employee’ and ‘Judicial Employee’ Those Who Have Been Employed Less than 6 Months”, signed by the Governor on April 14, 2022, enacted as Chapter 601 of P.L. 2021.

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

- L.D. 1724: “An Act To Create a Logging Dispute Resolution Board and To Require Proof of Ownership Documents To Be Available within 14 Days of Request”, enacted as Chapter 665 of P.L. 2021.

L.D. 1724 created a gubernatorially appointed tri-partite panel composed of one member representing logging contractors, one member representing forest landowners, and the chair of the State Board of Arbitration and Conciliation (BAC) who will also serve as chair of the newly created board. The panel holds the authority to decide disputes between logging contractors and forest landowners over “wage violations, payout amounts, contract violations, [and] disputes in hiring.” The law applies to forest landowners who own more than 50,000 acres of land. In terms of process, the new panel will follow most of the existing, applicable BAC procedures.

## **VII. Achievements, Goals and Plans**

The Board continues to focus on increasing access for Maine’s public sector labor-management parties to the Board’s services and related information. In light of the Board’s experience conducting remote hearings and meetings through the Covid-19 pandemic, and pursuant to Chapter 290 of P.L. 2021, the Board implemented a policy to permit remote participation in Board proceedings under certain circumstances. The Board also obtained the necessary electronic hardware to permit the Board to conduct hybrid in-person/remote hearings on an as



needed basis. As a result, the Board is well positioned to conduct hearings that provide parties the flexibility for remote participation while also preserving the Board's ability to meet in-person as appropriate.

The Board is also in the final stages of updating its website. The new website is intended to provide a more user-friendly format so that parties can more easily access Board services. The Board also continues to develop a case law outline that will be published to the new website. The outline will provide a brief explanation of both the applicable statutory law as well as the MLRB cases that have interpreted the statute with a goal of providing parties easily accessible guidance as to their rights and obligations under Maine's labor relations laws. When possible, the Board will seek to provide training to Maine's labor-management community regarding Board procedures and the fundamental aspects of our labor relations laws.

During FY 23, the Board anticipates adjusting its procedural rules for several purposes. First, the Board will implement procedures and rules for the newly created Logging Dispute Resolution Board, enacted through Ch. 665 of P.L. 2021. Second, the Board will further revise its existing rules to ensure they are as consistent and accessible as possible, with a focus on further refining the electronic filing process implemented in April 2020.

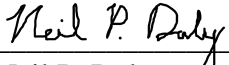
### **VIII. Conclusion**

The Board, Panel, and BAC continue to play a critical role in facilitating stability in Maine's public-sector labor relations. In FY 2022, 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, 2022

Respectfully submitted,

  
\_\_\_\_\_  
Neil P. Daly  
Executive Director  
Maine Labor Relations Board