

**ANNUAL REPORT**  
**MAINE LABOR RELATIONS BOARD, PANEL OF MEDIATORS, and**  
**STATE BOARD OF ARBITRATION AND CONCILIATION**  
**Fiscal Year 2023**

**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), the State Board of Arbitration and Conciliation (BAC), and the Logging Dispute Resolution Board (Logging Board) in Fiscal Year 2023.<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 a review of the missions and composition of the Board, Panel, BAC, and Logging Board,
- a review of Board, Panel, BAC, and Logging Board operations for FY 2023,
- a summary of MLRB-related legislation enacted by or pending with the 131<sup>st</sup> Legislature,
- a brief 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.

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<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.

While not involved in Maine's public sector collective bargaining process, the recently created Logging Board has the authority to decide disputes between logging contractors and forest landowners over wage violations, payout amounts, contract violations, and disputes in hiring.

### **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.

The Board is currently composed as follows:

		<u>Appointment Expires</u>
Public Representative/Chairs		
Sheila Mayberry, Esq.	Board Chair	9/30/23
Shari Broder, Esq.	Alternate Chair	9/30/23
Rebekah Smith, Esq.	Alternate Chair	9/30/23
Employee Representatives		
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
Employer Representatives		
Michael Miles	Employer Representative	9/30/25
Ann Freeman, Esq.	Alternate Employer Rep.	9/30/25
Alyssa Tibbetts, Esq.	Alternate Employer Rep.	9/30/25

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 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
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:

		<u>Appointment Expires</u>
Neutral Chairs		
Shari Broder, Esq.	Board Chair	07/07/25
Sheila Mayberry, Esq.	Alternate Chair	07/07/25
Lynn Dondis, Esq.	Alternate Chair	07/07/25
Employee Representatives		
Chester Hillier	Employee Rep.	07/07/25
James Mackie	Alt. Employee Rep.	07/07/25
Joan Morin	Alt. Employee Rep.	07/07/25

#### Employer Representatives

Donald Gerrish	Employer Rep.	07/07/25
Patricia Dunn, Esq.	Alt. Employer Rep.	07/07/25
Linda McGill, Esq.	Alt. Employer Rep.	07/07/25

#### Logging Dispute Resolution Board

The Logging Board is composed of gubernatorial appointees, respectively designated Their terms of appointment are three years. *Id.* By law, the chair of the BAC serves as the Chair of the Logging Board. Additionally, in FY 23, the Governor appointed two representatives to the Logging Board such that the Board is composed as follows:

		<u>Appointment Expires</u>
Neutral Chairs		
Shari Broder, Esq.	Board Chair	07/07/25
Sheila Mayberry, Esq.	Alternate Chair	07/07/25
Lynn Dondis, Esq.	Alternate Chair	07/07/25
Forest Products Harvester Representatives		
Michael Carpenter, Esq.	Harvester Rep.	03/27/25
Vacant	Alt. Rep.	
Vacant	Alt. Rep.	
Forest Landowner Representatives		
Patrick Strauch	Landowner Rep.	03/27/25
Vacant	Alt. Rep.	
Vacant	Alt. 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/](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 2023**

#### **a. Bargaining Unit and Election Matters**

As noted above, the Maine Labor Relations 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. If the Executive Director determines that the Union lacks majority support, the Board will conduct an election.

During FY 23, the Board addressed several bargaining unit representation matters, including:

- **Elections:** A total of 9 election petitions were filed. Of those 9 petitions:
  - 2 involved a labor organization seeking to represent a group of employees who were not represented at the time of filing,
  - 3 involved the decertification of the existing bargaining agent in favor of no union representation,
  - 3 involved a labor organization seeking to represent a bargaining unit represented by a different labor organization,
  - 1 involved a labor organization seeking to sever a portion of a bargaining unit represented by a different labor organization.

To process these petitions, the Board conducted 6 elections and issued related certifications (noting one election is not scheduled to close until after the start of the next fiscal year). One petition was withdrawn shortly after filing.

Two petitions remain pending without an election, and both involve disputes between the

parties over the composition of the proposed bargaining unit. The Executive Director conducted a hearing for one with a related decision to be issued shortly. The other pending petition is set to be scheduled for hearing.

- **Majority sign-up:** A total of 12 Majority sign-up petitions were filed. The Board issued a certification of a new bargaining agent for 10 of those petitions. One recently filed petition remains pending while another petition is before the Board on an appeal of the Executive Director's decision to conduct an election.
- **Voluntary Recognitions:** A total of 2 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 unit clarification petitions were filed. Two were resolved without the need for hearing, and the third is on the verge of resolution with no expectation that a hearing will be necessary.

#### **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 23, a total of 19 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 19 complaints filed in FY 23, a total of 5 complaints were held over from FY 22. In sum, 24 complaints were pending with the Board at some point during FY 23.

During this fiscal year, 16 of the 24 pending complaints were closed, as summarized below:

- 14 complaints were either withdrawn or settled by the parties without a hearing,
- 1 complaint was decided by the Board after hearing. See [\*Mersereau v. Teamsters Local Union No. 340, No. 23-PPC-02 \(June 1, 2023\)\*](#),
- 1 complaint was dismissed by the MLRB's Executive Director for failing to allege an actionable claim.

Of the eight complaints that remain pending, the Board has conducted hearings for two and is awaiting the filing of post-hearing briefs for each. For another, the Board is scheduled to conduct a hearing shortly before the end of the fiscal year. Two complaints are being held in abeyance at

the request of the parties and three recently filed complaints are actively moving through the prehearing process and will be scheduled for hearing absent resolution. In FY 23, there were no appeals of MLRB decisions to the Maine courts.

#### **IV. Panel and Impasse Resolution Operations for FY 2023**

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 2023**

In FY 23, parties filed a total of 27 requests for Panel mediation. These requests typically involved parties at the municipal or county level. Additionally, 13 mediations were held over from pre-FY 23. Of the 40 matters pending in FY 23, a total of 32 were closed during the year. Of the 32 cases closed, the Panel's mediators facilitated a resolution in 18 cases during mediation itself, while 15 cases were resolved either shortly after mediation or without the direct involvement of the mediator. As referenced below, a total of 5 mediations resulted in a request for fact-finding, with 3 of those matters resolving without the need for a factfinding hearing.

**b. Fact-Finding in FY 2023**

In FY 23, parties filed a total of 5 requests for a private fact-finding panel. Of those, the parties reached settlement in 3 cases without the need for a hearing. In the other 2 cases, fact-finding panels conducted hearings and in one case have issued an advisory decision, and, in the other, will issue the decision shortly.

**V. BAC Operations for FY 2023**

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 23, the BAC received a total of 11 requests for BAC services, 10 of which involved requests for contract grievance arbitration services with one request for fact-finding. In addition, 9 requests for BAC services were carried over from pre-FY 23. In sum, 20 cases were pending before the BAC this year.

Throughout this year, a total of 12 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 3 grievance arbitration decisions. Five cases remain pending, including 3 cases where the parties have requested to hold the cases in abeyance.

**VI. Logging Board Operations for FY 2023**

In FY 23, no complaints were filed with the Logging Dispute Resolution Board and the Board did not convene during the year.

**VII. Legislative Matters**

**a. Enacted Bills**

During its first session, the 131<sup>st</sup> Legislature enacted three MLRB-related bills including:

- L.D. 511: "An Act to Clarify That Haulers Are Under the Jurisdiction of the Logging Dispute Resolution Board", enacted as Chapter 102 of P.L. 2023.

The 130<sup>th</sup> Legislature enacted a law that created the Logging Dispute Resolution Board (Logging Board). At that time, the Logging Board's jurisdiction extended to disputes between logging contractors and forest landowners over wage violations, payout amounts, contract violations, disputes in hiring. Through L.D. 511, the Legislature extended the Logging Board's jurisdiction to also include haulers, defined as independent contractors engaged in hauling trees from forest land for a forest landowner.



- L.D. 1095: “An Act to Amend the Laws Regarding Public Sector Bargaining in Public Schools”, signed by the Governor on May 17, 2023, enacted as Chapter 95 of P.L. 2023.

Historically, the Municipal Public Employees Labor Relations Law provided parties must bargain over these mandatory subjects of bargaining “as long as the parties have not otherwise agreed in a prior written contract.” In turn, a public-sector employer owed a duty to engage in negotiations during the life of a contract, known as mid-term bargaining, over mandatory subjects of bargaining unless (1) the union waived its right to mid-term bargaining, typically through what is known as a zipper clause, or (2) the subject of the proposed negotiations was already “covered by” the existing collective bargaining agreement.

The 130<sup>th</sup> Legislature enacted a bill, originally presented as L.D. 449 during that legislature, to address the impact of zipper clauses on bargaining during the life of a collective bargaining agreement. As passed, L.D. 449 removed the term “as long as the parties have not otherwise agreed in a prior written contract” from the statutory duty to bargain for school districts and teacher unions. While this change prevented a party from relying upon a zipper clause to refuse to bargain mid-term, it also unintentionally raised the question of whether the law still prohibits the renegotiation of subjects covered by the existing contract.

Through L.D. 1095, the law is clarified to prohibit reliance on a zipper clause to refuse to bargain, but, at the same time, ensuring a party is not obligated to once again negotiate subjects covered by the existing collective bargaining agreement.

- L.D. 1922 “An Act to Allow Bargaining Agents for Public Sector Unions to Merge” signed by the Governor on June 20, 2023, enacted as Chapter 240 of P.L. 2023.

Historically, if two or more local affiliates of the same labor organization want to merge into a single local, and each of the local affiliates is the certified bargaining agent for their respective bargaining unit, the Board would need to conduct separate decertification/new bargaining agent elections for each of the bargaining units in question. In contrast, under L.D. 1922, the Board will conduct a single election for all of the bargaining units at issue to determine if they want to merge into a single local affiliate.

#### **b. Pending Bills**

In addition to the bills that were enacted, the following bills involving the MLRB remain pending with the Legislature:

- L.D. 398: “An Act to Make Agricultural Workers and Other Related Workers Employees Under the Minimum Wage Law and to Allow Such Workers To Engage in Certain Concerted Activities”

In part, L.D. 398 would permit agricultural workers in Maine to engage in concerted activity for the purpose of mutual aid and protection. It would also prohibit agricultural employers or

employees from interfering with an employee's concerted activity. Similarly, an agricultural employer could not retaliate against an employee for their concerted activity. L.D. 398 provides certain enforcement authority to the Maine Labor Relations Board. Specifically, the Board would adjudicate complaints involving alleged interference with or retaliation for concerted activity. The framework for the proposed complaint process is comparable to the existing Board procedures governing prohibited practice complaints for Maine's public sector collective bargaining laws.

- L.D. 525 "An Act to Protect Farm Workers by Allowing Them to Organize for the Purposes of Collective Bargaining"

L.D. 525 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. 1588 "An Act to Provide Public Sector Labor Unions Reasonable Access to Information Regarding Employees"

The 129<sup>th</sup> Legislature enacted a bill which, in part, requires public-sector employers to provide the bargaining agents that represent their employees with certain information about newly hired employees including name, job title, workplace location, home address, work and home/cell phone numbers, work and personal email addresses, and date of hire. L.D. 1588 would require the employer to provide the above referenced information to the relevant union within 30 days of the employee's hire. Additionally, the union would have the right, on no more than a quarterly basis, to request the same information for all of the employer's employees. Finally, the proposed law would require any related disputes to be decided through the parties' negotiated grievance process.

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

In addition to fulfilling its statutory mission of enforcing Maine's public sector collective bargaining laws this past year, the Board continued its focus on increasing access for Maine's labor-management parties to the Board's services. For example, the Board substantively updated and reorganized its website to provide a more user-friendly experience. This includes the creation of precise how-to-file instructions that parties can reference for a more efficient filing process. Additionally, the Board and the BAC conducted rulemaking which, in part, will now permit parties to BAC proceedings to use an electronic filing process (as currently exists for Board and panel proceedings). The rulemaking also addressed the implementation of procedural rules for the Logging Board which will provide a more-defined filing and litigation process for any complaints filed with the Logging Board.

In conjunction with the rulemaking, the Board held a town hall for all interested parties to discuss several reoccurring issues with the Board's factfinding process. The town hall was well attended and generated lively discussion of the issues with the potential for future adjustments to the Board's procedural rules that govern factfinding.

Looking ahead, the Board seeks to expand its training for Maine’s labor-management community regarding Board procedures and the fundamental aspects of Maine’s labor relations laws. The goal is to provide training on an annual basis, or more frequently as requested, either through Board staff or in collaboration with an association of labor relations practitioners.

## **IX. Conclusion**

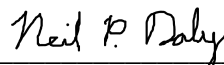
The Board, Panel, and BAC continue to play a critical role in facilitating stability in Maine’s public-sector labor relations. In FY 2023, the MLRB’s components successfully addressed numerous representation matters, bargaining impasses, grievance arbitrations and prohibited practice complaints. Many 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. When needed, the Board conducted hearings and issued decisions to ensure compliance with the State’s collective bargaining laws.

The Board also 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 labor relations laws.

In sum, the Board, Panel, and BAC look forward to continuing to provide Maine’s labor-management parties effective service in the coming year. Please let us know if there is any additional information regarding Board, Panel, or BAC operations that we can provide.

Dated: June 30, 2023

Respectfully submitted,



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Neil P. Daly  
Executive Director  
Maine Labor Relations Board