

7-1-1985

Maine Labor Relations Board Annual Report, Fiscal Year 1985

Maine Labor Relations Board

Follow this and additional works at: http://digitalmaine.com/mlrb_docs

Recommended Citation

Maine Labor Relations Board, "Maine Labor Relations Board Annual Report, Fiscal Year 1985" (1985). *Labor Relations Board Documents*. Paper 9.
http://digitalmaine.com/mlrb_docs/9

This Text is brought to you for free and open access by the Labor at Maine State Documents. It has been accepted for inclusion in Labor Relations Board Documents by an authorized administrator of Maine State Documents. For more information, please contact statedocs@maine.gov.

L 15.1:985

C. 3

MAINE STATE LIBRARY

ANNUAL REPORT

MAINE LABOR RELATIONS BOARD

Fiscal Year 1985

Submitted by

Parker A. Denaco, Executive Director - July 1, 1985

The following report is submitted herewith pursuant to Section 968, paragraph 7, and Section 979-J. of Title 26, Maine Revised Statutes.

During this past year, the Maine Labor Relations Board had requests for its services from all segments of the public sector which have statutorily conferred rights for collective bargaining. This report marks the end of a fiscal year in which there were no public sector strikes and in which the number of prohibited practice complaint cases filed with the Board was markedly decreased. Conversely, such statistics should not be read to indicate a decrease in involvement in public sector labor relations activities. By way of example, voluntary agreements on the establishment of or accretion to collective bargaining units were up almost 300 percent over the prior fiscal year. Similarly, the past year marked the first occasion where the composition of a statutorily established bargaining units established by statute, was finalized at the Maine Maritime Academy. A bargaining election is scheduled for next September.

Statistics appearing later in this report will show that there has been a continued decline in the use of the impasse resolution technique of fact-finding; however, this decrease can be attributed, in meaningful part, to the increasing settlement rate in the mediation process. The members of the Panel of Mediators reached settlement on 82% of the cases referred to them during the past year. This is a record shattering settlement rate, some nine percentage points higher than the prior record. This is a truly meaningful statistic for which both the State and members of the Panel of Mediators should be extremely proud.

The 1986 fiscal year will bring with it on-going negotiations between the State and the State Troopers bargaining unit. Other negotiations between the State and the Maine State Employees Association or the American Federation of

State, County and Municipal Employees are not due to start until later in FY 86. Two on-going projects will spread from Fiscal Year 1985 to Fiscal Year 1986. They involve the revision, publication, review and adoption of a new version of the Rules and Procedures of the Maine Labor Relations Board. The current Rules and Procedures have been undergoing scrutiny and revision internally for several months. They will be published for review, comment and hearing during the summer of 1985 with an anticipated adoption date before the commencement of the second quarter of Fiscal Year 1986.

The second major project involves the role of the Maine Labor Relations Board and the State of Maine in hosting the 34th Annual Meeting of the Association of Labor Relations Agencies in Portland during July 21-26, 1985. This is the first occasion when such a meeting has been held in Maine and presents an unusual opportunity for agency practitioners and advocates alike to partake of an intellectually stimulating program involving labor relations in both the United States and Canada inasmuch as the composition of the Association of Labor Relations Agencies consists of members from the national, state/provincial, county, city and local government levels in both countries. A highlight of the conference will be an address by the Honorable Bill McKnight, Minister of Labour for Canada.

The 112th Legislature which convened in January of 1985 enacted five pieces of legislation which will have an impact on the labor relations functions administered by or through the Maine Labor Relations Board. The first enactment, "An Act to Extend the Maximum Length of Agreements in the University of Maine Labor Relations Act from 2 Years to 3 Years," became Chapter 6 of the Public Laws of 1985. This legislation permits the maximum length of contracts negotiated under the University of Maine Labor Relations Act (26 M.R.S.A. § 1021, et seq.) to last up to three years, the same as the maximum limitation in the Municipal Public Employees Labor Relations Act (26 M.R.S.A. § 961, et seq.).

The second piece of legislation was entitled, "An Act Amending the Municipal Public Employees Labor Relations Act to Provide for Newly Recognized or Certified Bargaining Agent to Bargain Fiscal Matters within 120 Days of Conclusion of Current Fiscal Operating Budget." This legislation was enacted as Chapter 46 of the Public Laws of 1985 and amends § 965 of the Municipal Public Employees Labor Relations Act in order to permit an exception to the 120 day rule for newly-formed bargaining units which are recognized or certified not

more than 120 days nor less 30 days prior to the end of the fiscal year of the public employer. Thus, new units fall under a 30 day rule, rather than a 120 day rule, relative to making demands to bargain on fiscal matters. The anticipated impact of this legislation is minimal insofar as the level of organization of employees under the Municipal Public Employees Labor Relations Act reflects relative saturation at the present time.

The third piece of legislation affects the scope of bargaining in the State Employees Labor Relations Act (26 M.R.S.A. 979, et seq.). The legislation was entitled, "An Act Relating to Collective Bargaining over the Compensation System for State Employees" and became Chapter 289 of the Public Laws of 1985. It increases the scope of bargaining in § 979-D of the State Employees Labor Relations Act by including the obligation to bargain over certain portions of the compensation system, e.g., guide charts, job point pay grade conversion tables, the number of and spread between pay steps, and the temporary payment of recruitment and retention stipends. There is also a provision that mandatory bargaining over such topics may not be compelled by demand from one party on the other sooner than ten years after the parties' last agreement to revise the compensation system, said agreement having been made pursuant to a demand to bargain.

Chapter 292 of the Public Laws of 1985 started as, "An Act to Amend the Law Relating to Employment and Dismissal of County Employees." While not included in the labor relations laws of this state (i.e., not in Title 26 of the Maine Revised Statutes), this legislation amends 30 M.R.S.A. § 64-A, sub-§ 3. It provides that county employees may be dismissed by a county officer or department head only for cause and only with the prior approval of the county commissioners or personnel board. It further requires that suspensions or other disciplinary action shall, at the request of the employee involved, cause an investigation by the county commissioners or their personnel board in order to determine if the charges are unwarranted and if the personnel action was fair.

The last matter of legislation was entitled, "An Act to Amend the Procedures of the State Board of Arbitration and Conciliation." This was enacted as Chapter 294 of the Public Laws of 1985 and reflects a long overdue revision to the procedures of the Maine Board of Arbitration and Conciliation. This legislation caused amendments to 26 M.R.S.A. § 931 through § 939. Basically technical in nature, the legislation clarified procedures for convening

proceedings before the Maine Board of Arbitration and Conciliation, for the issuance of subpoenas, for the exercise of its conciliation function, and for its reporting requirements. It further eliminated ambiguity of the Board's authority to act in grievance matters when the parties requesting the Board's assistance have agreed that it shall be the forum before which the grievance is heard. No change in the composition or functions of the members of the Board is anticipated as the result of this legislation.

In April of 1985, Employer Representative Harold Noddin died unexpectedly. This is the first instance where any primary member of the Maine Labor Relations Board has died in office. His vacancy continues as of the time of the preparation of this report. Currently, the members of the Maine Labor Relations Board are:

Chairman

Edward S. Godfrey

Alternate Chairmen

Donald W. Webber
William M. Houston

Employee Representative

Harold S. Noddin (deceased)

Alt. Employee Representatives

Russell A. Webb
Gwendolyn Gatcomb

Employer Representative

Thacher E. Turner

Alt. Employer Representatives

Linda D. McGill
Carroll R. McGary

During the past year, the Maine Labor Relations Board not only continued its policy of providing information to persons and organizations covered by the various acts it administers, but also of insuring that its professional staff is familiar and up-to-date with the recent developments in labor relations matters. All members of the Board's professional staff have participated, either as lecturers or conferees, in professional training programs during the past fiscal year. These programs have included offerings by the Labor and Employment Sections of the American Bar Association and the Maine Bar Association, as well as programs sponsored by the New England Consortium of State Labor Relations Agencies, the American Arbitration Association, the Society of Professionals in

Dispute Resolution and the Association of Labor Relations Agencies.

The remainder of this report is devoted to statistics generated through the public sector functions of the Maine Labor Relations Board. During Fiscal Year 1985 (the thirteenth year of its operations), the Maine Labor Relations Board received and accepted twenty-nine (29) voluntary agreements on the establishment of, or accretion to, collective bargaining units throughout the public sector jurisdiction of the Board. This represents a significant increase from the level of filings in the previous fiscal year (ten such filings) and is more in line with the levels of Fiscal Year 1982 (thirty-four filings), and Fiscal Year 1983 (twenty-five filings). The high level of activity in Fiscal Year 1985 is due, in part, to increased organizational activity among non-teaching personnel in the school systems of the state. In addition voluntary agreements were filed for three bargaining units under the Judicial Employees Labor Relations Act which was enacted in June, 1984 and became effective in September, 1984.

Voluntary agreements as to bargaining units involved the following public entities in Fiscal Year 1985:

Anson	Pembroke
Augusta	Richmond
Bath	Rockport
Benedicta	Sanford
Biddeford	South Berwick
Brewer	Winslow
Bucksport	Woodland
Calais	York County
Falmouth	
Fort Fairfield	Anson-Madison Sanitary District
Gardiner	Bangor Water District
Gouldsboro	Piscataquis County
Lisbon	State of Maine Judicial Dept.
Millinocket	University of Maine
Ogunquit	

Although voluntary agreements are sometimes filed initially, more often they are agreed upon after a petition has been filed with the Maine Labor Relations Board for unit determination or unit clarification proceedings. These petitions either ask the Board to construct a new bargaining unit or to redefine an existing one. Thirty-six (36) such petitions were filed in Fiscal Year 1985 as of the time statistics were compiled for this report in mid-June 1985. Included among these petitions were requests for two bargaining units - professional and non-professional - at the Penobscot Valley Hospital which is organized as a

Hospital Administrative District. These represent the first organizational petitions ever filed with this Board on behalf of public hospital personnel and further prompted the first "Globe" election ever conducted by the Board. In addition to the foregoing numbers, three (3) matters were carried over from Fiscal Year 1984.

The Board also continues to have before it thirty-four (34) separate petitions filed by the Governor's Office of Employee Relations to exclude some 550 positions from collective bargaining in various departments and agencies of state government. These petitions are largely predicated upon an amendment to the State Employees Labor Relations Act enacted by the 110th Legislature (Chapter 381, P. L. 1981). Hearings have been conducted involving proposed elimination of some 150 positions in the Department of Transportation from eligibility for collective bargaining. A hearing examiner's report is expected to issue sometime in the first part of Fiscal Year 1986 relative to the Department of Transportation positions.

Unit determinations or clarifications filed during Fiscal Year 1985 involved the following communities and entities:

Acton	Topsham
Anson	South Berwick
Augusta	Van Buren
Baileyville	Waterboro
Bath	Westbrook
Biddeford	Winslow
Bucksport	Woodland
Eastport	
Fort Fairfield	Anson/Madison Sanitary District
Gouldsboro	Maine Maritime Academy
Lewiston	Passamaquoddy Water District
Lisbon	Penobscot Valley Hospital
Mexico	Piscataquis County
Old Orchard Beach	Somerset County
Rockport	Van Buren Light & Power District
Thomaston	Washington County

After the scope and composition of the bargaining unit is established - by agreement or after hearing - the process of determining the desire of the employees on the question of representation takes place. During Fiscal Year 1984, there were seven (7) voluntary recognitions of a bargaining agent without the necessity for an election. Where the parties do not agree and there is no voluntary recognition by the public employer, the Executive Director conducts an

election to determine the desires of the employees on the question of representation. Thirty-eight (38) such requests were received in Fiscal Year 1985 as of the date of compilation, as compared with twenty-one (21) requests in Fiscal Year 1983. There were three (3) holdovers from Fiscal Year 1984 for a total of forty-one (41) election requests requiring attention during the fiscal year. Four (4) of these requests involve the Maine Maritime Academy Professional Unit for which an election has been scheduled for next September. In addition Board representatives held elections for three units in the Judicial Department. Collective bargaining for Judicial employees was authorized by the Legislature by enactment of the Judicial Employees Labor Relations Act in June, 1984, which became effective in September, 1984.

In addition to the thirty-eight (38) election requests received by the Board in Fiscal Year 1985, the Board received nine (9) requests for decertification/certification which involved challenges by a petitioning organization to unseat the incumbent organization as bargaining agent for the employees in the unit. There were also two (2) such petitions carried over from Fiscal Year 1984. Among these was a petition challenging the status of the existing bargaining agent for one of the major University bargaining units. In this matter the Executive Director ordered on-site elections at University locations throughout the State, from the Fort Kent campus to the Gorham campus, and from Machias to Farmington. Board agents fanned the State and conducted elections over a two-day period in late May, 1985. The ballots were returned to the State Office Building in sealed containers and were counted on May 31, 1985. Over 87 percent of eligible voters participated in the process and the incumbent union was retained by an absolute majority of those voting. This was the first challenge to an established bargaining agent since the initiation of collective bargaining under the University Act of Maine Labor Relations Act.

The Board also processed four (4) straight decertification petitions in Fiscal Year 1985 where no "new" union sought bargaining agent status. These petitions do not involve one labor organization seeking to unseat another but are merely attempts by a group of employees to deprive an incumbent organization of its standing as bargaining agent for the employees in the unit. Thus, the total election requests processed by the Board during Fiscal Year 1985 was fifty-six (56): forty-one (41) (including holdovers) election requests; fourteen (14) certification/decertification petitions (including holdovers); and four (4) straight decertification petitions. Communities and public entities involved

with such representation matters during Fiscal Year 1985 were:

Acton	Waterboro
Anson	Westbrook
Augusta	Winslow
Baileyville	Winthrop
Bath	Woodland
Biddeford	
Bucksport	Anson/Madison Sanitary District
Calais	Hartland Waste Water Treatment Plant
Eastport	Maine Maritime Academy
Fort Fairfield	Oxford County
Gorham	Passamaquoddy Water District
Gouldsboro	Penobscot Valley Hospital
Hallowell	Piscataquis County
Lewiston	Rumford/Mexico Sewerage District
Lisbon	Somerset County
Quamphegan	State of Maine Judicial Dept.
Rockport	Thornton Academy
Saco	University of Maine
Scarborough	Van Buren Light & Power District
Thomaston	Washington County

The activities of the Panel of Mediators, more fully reviewed in the Annual Report of the Panel of Mediators submitted to the Governor pursuant to Section 965, paragraph 2, of Title 26, Maine Revised Statutes, is summarized for purposes of this report. The number of new requests received in Fiscal Year 1985 totaled eighty-five (85). This compares with seventy-two (72) in Fiscal Year 1984 and with the ninety-five (95) requests for mediation services received in Fiscal Year 1983. In addition, the Panel handled seventeen (17) carry-over mediations filed during the last months of Fiscal Year 1984, for a total of one hundred and two (102) requests requiring processing during the recently concluded fiscal year. The figures for the past few fiscal years emphasize what has been happening in the realm of mediation services: the public sector collective bargaining community has broadly accepted and recognized the high level of skills acquired over the years by the dedicated members of the Panel of Mediators. This broad acceptance is reflected in the level of requests for the services of the Panel over the years and particularly in the remarkable success rate of their efforts discussed below.

In Fiscal Year 1984, the number of mediation-man-days expended on matters which had completed the mediation process was 107.5 compared with 138 in Fiscal Year 1983. Comparison of the average mediation-man-days expended per case (of those matters which had completed the mediation process) was 2.1 for Fiscal Year

1985, 1.90 for Fiscal Year 1984, 1.74 for Fiscal Year 1983, 2.00 for Fiscal Year 1982 and 1.83 for Fiscal Year 1981. The slight differences are not considered to have statistical importance. The slight rise in average days expended per case is due in part to the skewing of the figures occasioned by the number of days devoted to mediation in certain isolated cases - 12 days in one matter and seven (7) days in two other instances. The success rate for matters which had completed the mediation process (matters still in mediation or settled prior to actual mediation are not counted in calculating the success ratio) reached a peak of 82%, in FY 1985, surpassing the settlement rate of 71% reached in Fiscal Year 1984 and the previous record success rate of 73% achieved in Fiscal Year 1983. In large measure the successes achieved by the Panel of Mediators over the past few years is indisputable evidence of the high degree of competence and levels of experience represented by the individual members of the Panel and the recognition of this expertise on the part of the Board's clientele. It cannot be expected, however, that a success rate in excess of eighty percent will always be an attainable goal of the Panel in succeeding years.

Fact-finding is the second step in the typical dispute resolution sequence as set forth in the various labor relations statutes. In Fiscal Years 1985 and 1984, the number of requests for fact-finding declined significantly from earlier years. However, in each of these years, the filings were significantly below the record number reached in Fiscal Year 1981. In Fiscal Year 1985, the number of requests received was 11, in Fiscal Year 1984 the figure was 16, down from the 28 filed in Fiscal Year 1983 and 30 filed in fiscal Year 1982. The extraordinary success rate of the mediation process in recent fiscal years undoubtedly accounts for the reduction in fact-finding requests, since matters not resolved in mediation often go on to the fact-finding process. Of the 11 requests filed for fact-finding, 2 were withdrawn and 1 postponed pending contract approval. One case was settled at hearing and a stipulated report was issued by the Panel. The entities involved in fact-finding requests during Fiscal Year 1985 were:

Bangor	Portland
Cornish	Pownal
Cumberland	Waterville
Lewiston	Yarmouth
Manchester	
Old Orchard Beach	Augusta Water District

The number of prohibited practice complaints filed with the Board during Fiscal Year 1985 was lower than the filings in recent years, i.e., there were twenty (20) new filings in Fiscal Year 1985 as compared with thirty-one (31) in Fiscal Year 1984 and thirty (30) in Fiscal Year 1983. Filings in each of these years show a substantial reduction from the near record level of sixty (60) complaints filed in Fiscal Year 1981. However, there were twelve (12) carry-overs from prior fiscal years which required the attention of Board personnel during Fiscal Year 1985, making a total of thirty-two (32) matters pending during the year. A total of thirteen (13) cases (including two (2) interim disputes) were decided by the Board by formal decision during the year. Twelve (12) matters were settled or withdrawn or were the subject of a consent degree or dismissal. Cases not disposed of either were in some phase of the pre-hearing or hearing process, or had completed the full hearing stage and were awaiting briefs, deliberation by the Board, or decision drafting and formal approval by the Board members.

As had been stated in past reports of the activities of this Board, the workload imposed on the Board's personnel and resources is not reflected in the base numbers. Each case which goes through the hearing and decision process requires, in addition to the complexities of processing, scheduling, and case management efforts, considerable effort on the part of the staff attorney/examiners in case and issue analysis, legal research, and decision writing. Additional demands have been placed on this personnel commitment as the result of an increase in appellate activity from prior reporting periods. This has resulted in requirements for staff attorneys to appear in either the Superior Court or Supreme Judicial Court to argue in support of Board decisions or policy. The communities and entities involved in prohibited practice complaints filed with the Board during Fiscal Year 1985 were:

Brunswick	Sanford
Buxton	Winthrop
Eastport	
Gray-New Gloucester	Anson/Madison Sanitary District
Lewiston	State of Maine
Portland	University of Maine

The report may be summarized by the following chart which makes comparisons rated in terms of percentile changes in each category from one succeeding year to the next:

	<u>FY</u> <u>1979</u>	<u>FY</u> <u>1980</u>	<u>FY</u> <u>1981</u>	<u>FY</u> <u>1982</u>	<u>FY</u> <u>1983</u>	<u>FY</u> <u>1984</u>	<u>FY</u> <u>1985</u>
Unit Determination/ Clarification Requests Filed	-33%	+64%	-48%	+54%	+72%	-20%	+12.4%
Bargaining Agent Election Requests	+9%	+19%	-28.5%	+10%	-31%	-32%	+81%
Decertification Election Requests	+14%	-21%	+4%	+10%	+71%	-21%	-28%
Mediation Requests	unchg.	+21%	-15%	unchg.	+14.5%	-24%	+18%
Fact Finding Requests	-25%	+12%	+29%	-38%	-6.6%	-43%	-31%
Prohibited Practice Complaints	+97%	-22%	+9%	-41%	-14%	+.03%	-33%

As suggested in the annual report for prior fiscal years, the above comparative review suggests the possibility that the Board has been in a period of either stabilization or manageable growth in terms of the overall demand for its services. The past few years have seen steady, and on occasion, remarkable, growth in the demand for services provided by the Board. Whether the trend toward the leveling off of the demand for services is the result of a relative "saturation" of the public sector community in organizational and representation terms or is cyclical and reflective of the economy is difficult to discern, particularly in light of the increased requests for unit definition and the number of elections docketed in FY 1985. The demand for services has reached cyclical levels in each segment of the Board's activity coupled with expanding responsibilities that have placed pressure on the Board's limited staff and resources which has not been expanded since the last position authorization in 1978. Part of the burden has been addressed, at least in the intermediate term, by the introduction of word processing equipment. This has enabled the Board to meet its new responsibilities to a growing clientele without adding a clerical position.

The high levels of activity continue and, with the recent introduction of county and judicial employees into the stream of public sector collective bargaining, as the statistical analysis indicates, it is certainly reasonable to expect that the level of activity, taken as a whole, will remain at the levels

established in the past three or four years, although records may not be set in any single area. As indicated in earlier reports, this also requires us to consider the long-term eventuality of adding a professional position(s) to the agency.

We are pleased to state that the Maine Labor Relations Board, through the processes established in the public sector labor relations statutes, is offering, and will continue to offer, effective and expeditious means for protecting employee rights, insuring compliance with statutory mandates, and settling disputes through the prohibited practice and/or the dispute resolution processes provided under the statutes. Contrary to trends elsewhere in the United States, public sector work stoppages or strikes have not occurred during the past year involving any employees covered by any of the labor relations acts administered by the Board. It is apparent that the statutory scheme which is designed to provide a methodology for the peaceful and orderly resolution of labor disputes is working. We trust that a substantial part of this success may be attributable to high levels of confidence generated by the Board's clientele which continues to place increasing reliance on the Board and the skills, competence, dedication, and professionalism of its staff.

Dated at Augusta, Maine, this 1st day of July, 1985.

MAINE LABOR RELATIONS BOARD

A handwritten signature in dark ink, appearing to read "Parker A. Denaco", is written over a horizontal line.

Parker A. Denaco
Executive Director