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Maine Labor Relations Board Annual Report, Fiscal Year 1986

Maine Labor Relations Board

ANNUAL REPORT

MAINE LABOR RELATIONS BOARD

Fiscal Year 1986

Submitted by

Parker A. Denaco, Executive Director - July 1, 1986

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 has 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 there were marked increases in the Board functions involving decertification elections, mediation requests, fact-finding requests and prohibited practice complaints. The decrease in filings in unit determination matters and certification election requests may be attributed to relative saturation in organizational efforts and to the extremely high number of bargaining agent requests received and processed during the prior fiscal year.

Statistics appearing later in this report indicate that there has been a 15% increase in the number of mediation cases filed with the Board. This increase in cases and a slight drop in settlement rate, from the record setting 82% in FY 1985 to a very respectable 75% in FY 1986, is one of the primary causes for the increase in fact-finding requests during the past year. The cycle appears to have been such that more contracts were under negotiation, thus accounting for the fact that more than half of the fact-finding requests were filed in the last fiscal quarter. Notwithstanding the increased number of cases going to fact-finding and the seven percentage point drop in the mediation settlement rate, the extraordinary settlement rate of 75% marks the second highest settlement rate in the history of the Panel of Mediators . . . a most notable accomplishment.

Statewide negotiations will be underway during the 1987 fiscal year for all contracts involving state employees, including the State Police bargaining unit which settled a one year contract this past spring. Statewide bargaining will also continue for vocational-technical school employees as the result of newly constituted bargaining units which were modified following the passage of LD 2174, "An Act to Establish the Maine Vocational-Technical

Institute System," which became Chapter 695 of the Public Laws of 1986.

During the past fiscal year, the Board completed review, revision and publication of its Rules and Procedures. The new version of the Rules and Procedures became effective September 1, 1985, and added a chapter entitled "General Provisions" which applies across the board to functions common to more than one chapter of the Rules and Procedures. This new chapter reduced the need to reiterate certain provisions and consolidated several definitions.

In July of 1985, the Maine Labor Relations Board and the State of Maine hosted the 34th Annual Meeting of the Association of Labor Relations Agencies in Portland. This task represented a major undertaking for the Board and was the first time such a meeting had been held in the State of Maine. It also represented a great success and attracted a larger group of attendees than had previously participated in annual meetings of the Association of Labor Relations Agencies. This meeting presented 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. Canada's Minister of Labour, the Honorable Bill McKnight, was a special guest at the meeting and enjoyed our Maine hospitality.

At this point it is appropriate for the Board to express its thanks to the many individuals who wholeheartedly contributed their support and assistance in the planning and administration of the 34th Annual Meeting of the Association of Labor Agencies. The great success of that meeting could not have been accomplished without their combined effort. Further, a special thank you to is extended to those Maine producers, processors and manufacturers who participated as either contributors or exhibitors during the conference in order to familiarize guests from around the United States and Canada with Maine products and facilities.

In addition to passing "An Act to Establish the Maine Vocational-Technical Institute System," LD 2174, subsequently known as Chapter 695 of the Public Laws of 1986, the 112th Maine Legislature also enacted LD 2362, "An Act to Authorize the Payment of Retention and Recruitment Stipends in State Government," subsequently known as Chapter 720 of the Public Laws of 1986. This legislation made it permissible for the payment of recruiting and retention adjustments for certain occupations, providing that such payments were made consistent with the requirements of Title 26, Section 979-D, subsection 1 of the Maine Revised

Statutes, otherwise known as the State Employees Labor Relations Act.

In 1986, a new employee representative and an alternate employee representative were appointed to the Board, along with the reappointment of Alternate Employee Representative Gwendolyn Gatcomb. The current composition of the Maine Labor Relations Board is:

Chairman

Edward S. Godfrey

Alternate Chairmen

Donald W. Webber
William M. Houston

Employee Representative	Employer Representative
George W. Lambertson	Thacher E. Turner
Alt. Employee Representatives	**Alt. Employer Representatives**
Vendean V. Vafiades	Linda D. McGill
Gwendolyn Gatcomb	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 recent developments in labor relations matters. All members of the Board's professional staff participated, either as lecturers or conferees, in one more professional training programs during the past fiscal year. These programs have included offerings by the Labor and Employment Law Section of the American Bar Association, the Maine Bar Association, the New England Consortium of State Labor Relations Agencies, the Association of Labor Relations Agencies and the Society of Professionals in Dispute Resolution. Two state mediators spoke at the fall conference of the Maine School Management Association. The Executive Director spoke at the summer meeting of the American Bar Association in London and to selected classes at the University of Maine.

The remainder of this report is devoted to statistics generated through the public sector functions of the Maine Labor Relations Board. During Fiscal Year 1986 (the fourteenth year of its operations), the Maine Labor Relations Board received and accepted nine (9) filings on the establishment of, or accretion to, collective bargaining units under the public sector jurisdiction of the Board.

This represents a sharp decline from the level of filings in the previous fiscal year (29 such filings) and is in line with the levels of Fiscal Year 1984 (ten filings). The level of activity in Fiscal Year 1986 is probably due, in part, to decreased organizational activity in the state and the fact that judicial employees were organized during FY 1985 after the Judicial Employees Labor Relations Act became effective in September, 1984.

Voluntary agreements as to bargaining units involved the following public entities in Fiscal Year 1986:

Augusta	North Anson
Belfast	Wells
Biddeford	Windham
Lisbon	
Mexico	Bath-Brunswick Child Care Services, Inc.

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. Twenty-four (24) such petitions were filed in Fiscal Year 1986 as of the time statistics were compiled for this report in mid-June 1986. Included among these petitions were requests for a bargaining unit at the Fox Island Electric Cooperative, Inc., which presents the interesting question whether a "cooperative" is a "public employer" as that term is defined by the Municipal Public Employees Labor Relations Act. A decision on this issue by a hearing examiner is expected early in FY 1987. A hearing examiner is also considering the request for the formation of a "part-time" faculty unit at the University of Maine filed under the University of Maine Labor Relations Act.

The Board 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). In February, 1986 a determination was issued by a hearing examiner on the request to eliminate some 150 positions in the Department of Transportation from eligibility for collective bargaining. The State and the bargaining agent have appealed the determination relative to several positions to the full board where the matter is now pending.

In addition to the foregoing matters there were three (3) matters which carried over from FY 1985. Unit determinations or clarifications filed during

Fiscal Year 1986 involved the following communities and entities:

Augusta	Searsport
Bar Harbor	Topsham
Beals	Waterboro
Cape Elizabeth	Wells
Eliot	
Kittery	Bath-Brunswick Child Care Services, Inc.
Lebanon	Fox Island Electric Cooperative, Inc.
Lincoln	Southern Aroostook Community School District
Old Town	University of Maine
Portland	

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 occurs. During Fiscal Year 1986, there were four (4) voluntary recognitions of a bargaining agent without the need 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. Twenty-four (24) such requests were received in Fiscal Year 1986 as of the date of compilation, as compared with thirty-eight (38) requests in Fiscal Year 1985. There were seven (7) holdovers from Fiscal Year 1985 for a total of thirty-one (31) election requests requiring attention during the fiscal year. Four (4) of these carry-over requests involved the Maine Maritime Academy professional employees bargaining unit for which elections were held in September, 1985. Once the unit composition question is settled regarding "part-time" faculty, the Board will conduct a bargaining agent election at the University of Maine.

In addition to the twenty-four (24) election requests received by the Board in Fiscal Year 1986, the Board received ten (10) 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.

The Board also processed nine (9) straight decertification petitions in Fiscal Year 1986 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. Among such petitions was an attempt to decertify the bargaining agent for the Penobscot Valley Hospital Technical and Professional bargaining unit. At an election held by a Board agent in June, 1986, the employees voted to retain the bargaining agent and not to decertify. Thus, the total election requests processed by the

Board during Fiscal Year 1986 was fifty (50): thirty-one (31) (including hold-overs) election requests; ten (10) certification/decertification petitions; and nine (9) straight decertification petitions. Communities and public entities involved with such representation matters during Fiscal Year 1986 were:

Acton
Anson
Auburn
Augusta
Bar Harbor
Bath
Biddeford
Brewer
Cape Elizabeth
Dover-Foxcroft
Eliot
Flanders Bay
Gorham
Kittery
Lebanon
Lincoln
Old Town
Phippsburg
Portland
Presque Isle
Searsport
South Portland
Southwest Harbor
Topsham
Waterboro
Waterville
Wells
Windham

Androscoggin County
Hancock County
Lisbon Falls Water Treatment Plant
Maine Maritime Academy
Penobscot Valley Hospital
Piscataquis County
Southern Aroostook Community School District
University of Maine

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 ninety-eight (98) including two private sector referrals. This compares with eighty-five (85) in Fiscal Year 1985 and with the seventy-two (72) requests for mediation services received in Fiscal Year 1984. In addition, the Panel handled twenty-six (26) carry-over mediations filed during the last months of Fiscal Year 1985, for a total of one hundred and twenty-four (124) requests requiring processing during the recently concluded fiscal year, including two private sector cases. 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 1986, the number of mediation-man-days expended on matters which had completed the mediation process was 158 compared with 107.5 in FY 1985

and with 138 in FY 1984. Comparison of the average mediation-man-days expended per case (of those matters which had completed the mediation process) was 2.43 for Fiscal Year 1986, 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 differences are not considered to have significant 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 - 11 days in one matter, 9 in another and 6 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 near peak of 75%, in FY 1986, just below the record rate of 82% in FY 1985 and 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 attained by the Panel in future 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. In each of these earlier years, the filings were significantly below the record number reached in Fiscal Year 1981. However, in Fiscal Year 1986, the number of requests rose to nineteen (19). In Fiscal Year 1985 the filings numbered eleven (11) and in FY 1984 the figure was 16, down from the 28 filed in Fiscal Year 1983 and 30 filed in Fiscal Year 1982. The rise in requests for fact-finding in FY 1986 may be due in part to the impact on collective bargaining of "block grant" funding arising under the Education Reform Act enacted by the 112th Legislature. However, the extraordinary success rate of the mediation process in recent fiscal years undoubtedly accounts for the reduction in fact-finding requests from earlier years, since matters not resolved in mediation often go on to the fact-finding process. Of the 19 requests filed for fact-finding, 4 were withdrawn and 1 required refiling. Two others were settled prior to a scheduled hearing date. The entities involved in fact-finding requests during Fiscal Year 1986 were:

Augusta
Belfast
Bethel
Biddeford
Bridgton
Camden
Cornish
Hallowell
Hampden
Harrington
Lewiston
Limestone
Old Orchard Beach
Richmond
Rockland
Saco
Van Buren
Veazie
Wiscasset

Aroostook County
City of Portland MEDCU Unit
Southern Aroostook Vocational Region II
State of Maine

The number of prohibited practice complaints received in FY 1986 rose to twenty-five (25) from the twenty (20) filings in Fiscal Year 1985. These figures compare 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 seven (7) carry-overs from prior fiscal years which required the attention of Board personnel during Fiscal Year 1986, making a total of thirty-two (32) matters pending during the year, the same total number recorded for the prior fiscal year, FY 1985. During the year, seven (7) cases were decided by formal decision and nine (9) matters were settled or withdrawn or were the subject of formal dismissal action or voluntary dismissal by the Board. Cases not disposed of were either in some phase of the prehearing 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 fully 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 1986 were:

Auburn	Rockland
Bath	Sanford
Boothbay-Boothbay Harbor	Skowhegan
Eastport	South Portland
Fort Fairfield	Van Buren
Kittery	Winthrop
Lebanon	
Lewiston	Hancock County
Oxford Hills	Piscataquis County
Portland	Portland Water District
Presque Isle	State Board of Education

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

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986
Unit Determination/ Clarification Requests Filed	-33%	+64%	-48%	+54%	+72%	-20%	+12.4%	-50%
Bargaining Agent Election Requests	+9	+19%	-28.5%	+10%	-31%	-32%	+81%	-58%
Decertification Election Requests	+14%	-21%	+4%	+10%	+71%	-21%	-28%	+46%
Mediation Requests	unchg.	+21%	-15%	unchg.	+14.5%	-24%	+18%	+15.3%
Fact Finding Requests	-25%	+12%	+29%	-38%	-6.6%	-43%	-31%	+73%
Prohibited Practice Complaints	+97%	-22%	+9%	-41%	-14%	+.03%	-33%	+25%

As suggested in prior annual reports, 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. 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 inter-

mediate 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.

High levels of activity continue. 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) at 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, 1986.

MAINE LABOR RELATIONS BOARD

Parker A. Denaco
Executive Director