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Maine Labor Relations Board Annual Report, Fiscal Year 1993

Maine Labor Relations Board

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ANNUAL REPORT

MAINE LABOR RELATIONS BOARD

Fiscal Year 1993

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1).

Introduction

During the past year, the Maine Labor Relations Board had requests for services from most segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, there were substantial fluctuations in the Board's activities compared to the previous year. While there was a continued increase in the number of prohibited practice complaints filed, there was a decrease in representation activity. Continuing a trend noted last year, again there was a decrease in the number of decertification election petitions filed. In the dispute resolution area, there were significant increases in the number of mediation requests received, the number of fact-finding requests received, and the number of fact-finding hearings conducted. Overall, the work load of the Board was comparable to that of FY 1992.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff continues to be a primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that did not involve matters over which the Board has jurisdiction, the staff continued its policy of providing some orientation for the inquirer and suggesting other agencies or organizations that might be of help.

The Public Member and Chair, Peter T. Dawson of Hallowell, and Alternate Public Member Pamela D. Chute of Brewer continued to serve in their respective capacities. Alternate Public Member James D. Libby of Gorham was a successful legislative candidate and, upon being sworn in as a member of the House of Representatives, Mr. Libby resigned from his seat on the Board. Governor McKernan nominated Kathy MacLeod Hooke of Bethel to become an Alternate Public Member, serving the balance of Jim Libby's term, on May 20, 1993, and Ms. Hooke's nomination was confirmed by the Senate on June 2, 1993. The other members of the Board continue to be Employee Representative

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George W. Lambertson of Readfield, Employer Representative Howard Reiche, Jr., of Falmouth, Alternate Employee Representative Wayne W. Whitney of Brunswick, Second Alternate Employee Representative Gwendolyn Gatcomb of Winthrop, Alternate Employer Representative Eben B. Marsh of Denmark, and Second Alternate Employer Representative Jim A. McGregor of Coopers Mills.

Legislative Matters

The Board submitted only one piece of legislation during the First Session of the 116th Legislature -- a bill to further clarify appellate procedures under the four collective bargaining laws that the Board administers and enforces. P.L. 1993, ch. 90 accomplishes two things. First, it specifies service requirements for appeals of Board decisions to Superior Court. There has been considerable confusion about service in the past. Second, the new law requires appeals of interest arbitration awards to Superior Court to be filed under Rule 80B of the Maine Rules of Civil Procedure rather than Rule 80C. Rule 80B is the appropriate vehicle, since that rule places the burden for preparation and submission of the record on the appellant, and not the Board. As a general matter, records in connection with interest arbitration proceedings are not provided to and maintained by the Board.

Three other bills affecting the collective bargaining statutes were introduced and passed in this legislative session. Under P.L. 1993, c. 53, parties wishing to use the services of the Board of Arbitration and Conciliation (BAC) may now agree to use a single, neutral panel member instead of the full, three-member panel that is normally assigned. P.L. 1993, ch. 84 removes the requirement, under the University of Maine System Labor Relations Act, for the Maine Technical College System to get legislative approval of its collective bargaining agreements. P.L. 1993, ch. 38 removes the requirement, under the Municipal Public Employees Labor Relations Law, for the Board to make community-of-interest determinations before permitting bargaining units represented by the same bargaining agent to vote on whether to merge.

Other bills affecting the laws under the Board's jurisdiction were introduced, but either were not passed or are still pending. Rejected by the Legislature were bills to expand binding arbitration and to utilize the BAC for arbitration of bank foreclosures on single family homes. Still pending before the Appropriations Committee is a bill that would restore funds to the Board's budget for the purpose of paying for mediation services. As a

cost-cutting measure, a user fee system was established by the Legislature, effective January 1, 1992, to finance per diem expenses for the MLRB, the Panel of Mediators and the BAC. Given the economic climate and the serious budget problems that the State is facing, it is not expected that funds for mediation will be appropriated.

Bargaining Unit and Election Matters

During fiscal year 1993, the Board received 22 voluntary or joint filings for the establishment of or change in collective bargaining units under its jurisdiction. There were 28 filings in FY 92, 41 in FY 91, 53 in FY 90, 31 in FY 89, and 24 in FY 88. Of the 22 FY 93 filings, 8 were for units within educational institutions, 14 within municipal or county government, and none concerned State employees.

Twelve (12) unit determination or clarification petitions (filed when there is no agreement on the composition of the bargaining unit) were filed in FY 93; 7 were for determinations, and 5 were for clarifications. None of the new unit filings actually went to hearing and decision, and 1 is pending. There were 15 unit filings in FY 92, 59 in FY 91 (35 concerning State employees), 36 in FY 90, 21 in FY 89, and 30 in FY 88.

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a bargaining agent election is conducted by the Board to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 93 there were 6 voluntary recognitions filed. Twelve (12) election requests were filed in FY 93; 20 elections were actually held or are scheduled, including election matters carried forward from last year. In FY 92, there were 10 voluntary recognitions filed, 16 election requests received, and 13 elections held.

In addition to representation election requests, the Board received 2 requests for decertification/certification, which involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. One request resulted in an election and a voluntary recognition was filed in response to the other.

The Board received no straight decertification petitions in FY 93. No new union is involved in these petitions; rather the petitioner is simply attempting to remove the incumbent agent.

There were 8 election matters carried over from FY 92. Consequently, there were 20 such matters requiring attention during the fiscal year; this compares with 21 in FY 92, 44 in FY 91, 61 in FY 90, 35 in FY 89, and 32 in FY 88.

Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

New mediation requests received during fiscal year 1993 rose to 115 from 94 requests received in FY 92, 89 in FY 91, 115 in FY 90, and 107 filings in FY 89. In addition to the new mediation requests received during the fiscal year just ended, there were 26 matters carried over from FY 92 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year was 141, compared to 120 in the previous fiscal year. The activity in both years is continuing evidence of the sustained level of interest in the mediation process shown by the public sector labor relations community. As recorded in the annual reports for the past few years, it is also a continuing measure of that community's confidence not only in the process of mediation, but in the competence and expertise represented by the membership of the Panel as a whole. The stability of the Panel's activity level this year is particularly significant because this was the first full year during which a user fee to fund the mediator's per diem and necessary expenses was in effect.

The Panel's competence and expertise is reflected in the 68.5 percent settlement rate achieved for matters resolved through mediation efforts during this fiscal year, including carryovers from FY 92. Since both new filings and cases carried over from prior years contributed to the actual work load of the Panel in the course of the twelve-month period, we report settlement figures that represent all matters in which mediation activity has been completed during the reporting period.

Fact finding is the second step in the three-step statutory dispute resolution process. In fiscal year 1993 there were 24 fact-finding requests filed. The 24 requests

represent an increase of 20 percent over the last year. Seven (7) petitions were withdrawn or otherwise settled, 12 requests went to hearing, 4 petitions are pending hearing, and a party in one case refused to participate in the fact finding requested by the other party. This last case is the subject of a prohibited practice complaint now on appeal before the Board. Last year 8 fact-finding hearings were held. The significant increase in the number of fact-finding hearings conducted may reflect the increased difficulty the parties have encountered in attempting to negotiate collective bargaining agreements when faced with escalating medical insurance premiums, a general downturn in the regional economy, and uncertain levels of State funding.

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties only as to non-monetary issues. Issues involving salaries, pensions and insurance are subject to interest arbitration, but an award on these issues is advisory only. In recent years the Board has received few interest arbitration requests, and in FY 93 it received none. Likewise, there were no interest arbitration requests received in FY 92 and FY 91. Although the public statutes require that such arbitration awards be filed with the Board, usually they are not so filed. This year, no interest arbitration reports were received. While it is assumed that there were no arbitration awards issued in the public sector during the year, it may be that parties simply failed to provide proper notification to the Board.

Prohibited Practices

One of the Board's main responsibilities is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board. Thirty-eight (38) complaints were filed in FY 93; this represents an 8.5 percent increase over FY 92, and it represents a significant increase over the number of filings in the past six years. During that time, complaints filed have fluctuated from a low of 17 to a high of 35, with the average being 24. This increase in the number of complaints filed, following last year's dramatic increase in filings, indicates the difficulties that parties are encountering in reaching negotiated settlements. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 38 complaints filed in FY 93, there were 19 carryovers from FY 92, compared with 35 complaints and 16 carryovers last year. The Board conducted 10 hearings during the year, compared with 7 in FY 92, and Board members sitting as a single prehearing officer held prehearing conferences in 22 cases, compared with 24 in FY 92. In 9 matters, the Board issued formal Decisions and Orders. Three cases are in the process of finalizing stipulations or are in the middle of briefing schedules before Board deliberations can occur. The relatively high number of cases submitted on a stipulated record and through written argument is, in part, a result of the continuation of an initiative introduced last year. Again this year and in appropriate cases, the services of a member of the legal staff have been offered to assist the parties to reach factual stipulations and/or to mediate the dispute. One matter has been deferred pending the resolution of related grievance arbitration proceedings. Four cases have been continued indefinitely at the request of one or both parties and one case has seen no action by the parties for over a year and a half. Such continuances or inactivity usually indicate that the parties are attempting to resolve their differences; however, complaints were filed to preserve the complainants' rights, given the Board's relatively short statute of limitations. Five complaints await hearing and six cases await prehearing. Twenty-two (22) complaints were dismissed or withdrawn at the request of the parties; such requests generally occur when the complaint is related to contract bargaining and after the parties reach agreement on and ratify the contract. Five cases were dismissed by the executive director. Two such dismissals were appealed to the Board; one dismissal was affirmed and the other case was returned to the Board's docket.

Appeals

One unit clarification by a Board hearing examiner was appealed to the Board; however, the appeal was withdrawn. Appeals from two Board decisions involving Council 93, AFSCME, AFL-CIO and the State of Maine, one a unit clarification appeal and the other a prohibited practice decision, were argued in the Law Court in June of 1992. The Law Court affirmed the Board's decision that the six-month requirement in the State Employees Labor Relations Act (SELRA) may include time spent as a temporary employee. It reversed the Board's finding that the State had violated SELRA by unilaterally modifying pay dates for State employees.

Two Board decisions issued this fiscal year were appealed in the Superior Court. In

one case, the Court affirmed the Board's conclusion that a bargaining agent did not violate the duty of fair representation by prohibiting non-member bargaining unit employees from voting on issues concerning collective bargaining agreements that will determine the employees' terms and conditions of employment. In the second case, the Court held that the Board could not change its status quo rule concerning the payment of wages after expiration of a collective bargaining agreement. The latter case is now on appeal before the Law Court, with oral argument scheduled for September.

Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

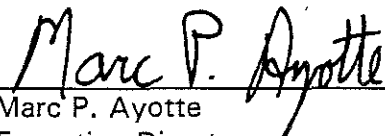
	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
Unit Determination/ Clarification Requests Number filed---	30	-30% 21	+42% 36	+72% 59	-75% 15	-20% 12
Agreements on Bargaining Unit (MLRB Form #1) Number filed---	24	+29% 31	+71% 53	-23% 41	-32% 28	-21% 22
Voluntary Recognitions (MLRB Form #3) Number filed---	9	+44% 13	-7.7% 12	-42% 7	+43% 10	-40% 6
Bargaining Agent Election Requests Number filed---	20	-10% 18	+156% 46	-43% 26	-38% 16	-25% 12
Decertification Election Requests Number filed---	9	+56% 14	-43% 8	-25% 6	-33% 4	-50% 2
Mediation Requests Number filed---	91	+19% 107	+7.5% 115	-23% 89	+5.6% 94	+22% 115
Fact-Finding Requests Number filed---	15	+93% 29	-45% 20	+70% 34	-41% 20	+20% 24
Prohibited Practice Complaints Number filed---	17	+41% 24	-21% 19	+47% 28	+25% 35	+9% 38

As the above table indicates, the demand for the Board's services remained stable over the last fiscal year. Continued organizational activity, coupled with a decline in the number of decertification petitions filed, may well indicate that demand for all of the Board's services will increase in the future. In summary, the Board's prohibited practices complaint activity appears to be counter-cyclical in relation to the vitality of the regional economy. As was the case during the economic downturn of the early 1980s, the number of complaints filed seems to increase with the worsening of the economic outlook.

During FY 93, public sector labor-management relations in Maine continued to exhibit the maturity that has been evident over the past few years. Parties have increasingly relied on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of labor relations is evidenced by the strong demand for mediation services and the willingness of parties to settle prohibited practice cases. In sum, the Board's regulatory and dispute resolution services successfully fostered public sector labor peace during the last fiscal year.

Dated at Augusta, Maine, this 29th day of June, 1993.

Respectfully submitted,



Marc P. Ayotte
Executive Director
Maine Labor Relations Board