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Maine Labor Relations Board Annual Report, Fiscal Year 1997

Maine Labor Relations Board

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ANNUAL REPORT
MAINE LABOR RELATIONS BOARD
Fiscal Year 1997

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

Introduction

During the past year, the Board had requests for services from all segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, there were some fluctuations in the Board's activities compared to the previous year. While there was a decrease in the number of prohibited practice complaints filed, there was an increase in representation activity this year. The number of voluntary agreements on new bargaining units remained steady. In the dispute resolution area, the number of mediation requests received increased, there was a significant decrease in the number of fact-finding requests received, and a marginal increase in the number of fact-finding hearings conducted.

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 the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be of help, and making appropriate referrals.

Public Chair Peter T. Dawson of Hallowell, Employee Representative Gwendolyn Gatcomb of Winthrop, and Employer Representative Howard Reiche, Jr., of Falmouth continued to serve in their respective capacities throughout the year, as did Alternate Chairs Kathy M. Hooke of Bethel and Pamela D. Chute of Brewer, Alternate Employee Representatives Wayne W. Whitney of Brunswick and Carol Gilmore of Charleston, and Alternate Employer Representative Karl Dornish, Jr., of Winslow. In July, the Legislature confirmed Edwin S. Hamm of Old Orchard Beach to serve as an Alternate Employer Representative, replacing Eben B. Marsh who resigned to devote his full energy to the position of Director of the State Bureau of Alcoholic Beverages and Lottery Operations.

The Board and staff were deeply saddened by the death of Board Counsel

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M. Wayne Jacobs, on January 31, 1997. Mr. Jacobs had been with the agency since March, 1985, and, at the first meeting subsequent to his death, the primary Board members expressed appreciation for his legal skills and for his charming and engaging personality. Wayne is greatly missed by Board and staff alike.

At the meeting of February 11, 1997, Executive Director Ayotte nominated Attorney Examiner Joyce Oreskovich to the position of Board Counsel and the nomination was unanimously adopted by the Board. A public recruitment effort was undertaken to fill the Attorney Examiner position, eight candidates were interviewed, and the successful candidate was Lisa Copenhaver, an Analyst with the Legislative Office of Policy and Legal Analysis who has worked with the Labor Committee for several years.

Legislative Matters

The Board submitted only one piece of legislation during the First Session of the 118th Legislature -- a bill to adjust the compensation of members of the Panel of Mediators. P.L. 1997, ch. 412, amends the compensation for State mediators in two ways: 1) rather than being allowed a *per diem* of \$100, regardless of the length of each mediation session or the number of sessions in a single day, mediators are now allowed to receive \$100 for up to 4 hours of mediation services and \$100 for each consecutive period of up to 4 hours thereafter and 2) the provision in Title 5 that restricted mediators to receiving one *per diem* per calendar day no longer applies. Mediators can now conduct two mediation sessions in the same part of the State in a single day, dividing the travel and other costs among 4, rather than 2, parties, thereby reducing mediator travel and the costs paid by each party.

In addition, the Board staff monitored 30 other bills, attending public hearings and work sessions, and assisting Legislative committees in their consideration of matters affecting the Board's jurisdiction or having impact on various matters with potential impact on collective bargaining. Five bills introduced this session would have had a direct impact on the current collective bargaining laws or on the Board's jurisdiction. Two of these bills were enacted and one became law. P.L. 1997, ch. 472, extends collective bargaining rights to employees of large industrial agricultural operations -- those with over 500,000 laying birds and who employ more than 100 agricultural employees. In addition to providing the framework for creation of appropriate bargaining units and a mechanism for

employee self-determination on whether to be represented by a bargaining agent, the law protects employees' exercise of collective bargaining rights and creates an enforceable duty of both employers and bargaining agents to negotiate in good faith. If negotiations, including mediation, do not result in a collective bargaining agreement, the law provides for interest arbitration that is binding on all issues. In addition, employer operations are protected through prohibition of employee strikes.

The other bill enacted by the Legislature -- L.D. 147 -- was vetoed. This measure was originally intended to delete the exemption for employees with less than 6-months' tenure from coverage of the Municipal and University of Maine System Labor Relations Acts. As enacted, only the higher education act would have been amended.

Three other bills directly impacting the laws administered by the Board were rejected by the Legislature. One measure would have restored funds to the Board's budget for the purpose of paying for mediation services. Such services were financed through the general fund, until January, 1992, when severe budget problems motivated the Legislature to adopt the current user fees system. The other two bills would have provided binding interest arbitration on all issues for Municipal Act employees (currently such arbitration awards are binding on all issues except wages, pensions and insurance) and required payment pursuant to wage escalator clauses included in expired collective bargaining agreements, until a successor agreement was negotiated. The latter bill would have reinstated the Board's holding in a prohibited practice case that was subsequently reversed by the Supreme Judicial Court, by a 4 to 3 vote.

Bargaining Unit and Election Matters

During fiscal year 1997, the Board received 23 voluntary or joint filings for the establishment of or change in collective bargaining units. There were 23 filings in FY 96, 28 filings in FY 95, 18 filings in FY 94, 23 in FY 93, and 27 in FY 92. Of the 23 FY 97 filings, 7 were for educational units, 11 within municipal or county government, 1 concerned State Executive Branch employees and 4 related to Judicial Branch employees.

The unit agreements were filed by the following employee organizations:

Maine Education Association/NEA ¹	6 agreements
Maine State Employees Association	6
Teamsters Union Local 340	4
AFSCME Council 93	3
International Association of Fire Fighters	2
American Federation of Teachers	1
Fayette Education Association	1

Nineteen (19) unit determination or clarification petitions (submitted when there is no agreement on the composition of the bargaining unit) were filed in FY 97: 15 were for determinations, and 4 were for clarifications. Three of the new unit filings actually went to hearing and decision; agreements were reached in 8 cases, 1 was withdrawn, the units were deemed appropriate in 2 cases, and 5 are pending. Board agents conducted 35 days of hearing in 9 cases, including 6 cases carried forward from previous years. Once a unit petition and response are filed, a member of the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement, successful in 42% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 9 unit filings in FY 96, 17 in FY 95, 16 in FY 94, 12 in FY 93, and 15 in FY 92. The unit determination/clarification requests were filed by the following employee organizations:

Maine Education Association/NEA	7
Teamsters Union Local 340	4
AFSCME Council 93	2
Maine State Employees Association	2
American Federation of Teachers	1
International Association of Fire Fighters	1
International Longshoremen's Association	1
United Paperworkers International Union	1

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 97 there were 5 voluntary recognitions filed. Two involved the International Association of Fire Fighters, 2 involved the Maine Education Association/NEA, and AFSCME Council 93 was involved in the other. Eighteen (18) bargaining agent election requests were filed in FY 97; 10 elections were actually held,

¹While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

1 resulted in a voluntary recognition, and 7 matters are pending. The bargaining agent election petitions filed this year involved the following employee organizations:

Maine Education Association/NEA	6
Teamsters Union Local 340	4
AFSCME Council 93	3
American Federation of Teachers	1
International Association of Fire Fighters	1
International Longshoremen's Association	1
Maine Association of Police	1
United Paperworkers International Union	1

In FY 96, there were 3 voluntary recognitions filed, 15 bargaining agent election requests received, and 10 elections held.

In addition to representation election requests, the Board received 1 request for decertification/certification. This type of petition involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. An election was held in response to the petition and the results were as follows:

<u>Petitioner</u>	<u>Incumbent Agent</u>	<u>Prevailed</u>
Maine Association of Police	Teamsters Union Local 340	Teamsters

The Board received 3 straight decertification petitions in FY 97. No new union is involved in these petitions; rather, the petitioner is simply attempting to remove the incumbent agent. One election was held in which the incumbent union, AFSCME Council 93, did not retain its status as the bargaining agent. Another petition concerning AFSCME Council 93 was withdrawn and one concerning Teamsters Union Local 340 is pending.

There were 3 election matters carried over from FY 96. Consequently, there were 25 such matters requiring attention during the fiscal year; this compares with 26 in FY 96, 22 in FY 95, 22 in FY 94, 20 in FY 93, and 21 in FY 92.

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.

The number of new mediation requests received during the fiscal year increased slightly. There were 74 new requests filed this year compared with 69 in FY 96, 77 in FY 95, 114 in FY 94, 115 in FY 93, and 94 in FY 92. In addition to the new mediation requests received during FY 97, there were 37 matters carried over from FY 96 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 111, the same as in FY 96. At least part of the reason for the increase in the number of mediation filings is a trend noted in last year's report. During the downturn in the regional economy of the last four years, most parties were opting for one-year agreements, hoping that more favorable conditions would prevail the following year. As a result, many more agreements expired in FY 93 and FY 94 than would normally be expected. Beginning in mid-FY 1994, more parties resumed negotiating multi-year agreements; therefore, more contracts expired this year than during the past two years. Given the statutory restriction that collective bargaining agreements not exceed three years' duration, the number of requests for mediation services should continue to climb again next year.

One encouraging development this year is that the settlement rate for cases where mediation was concluded this year, including carryovers from FY 96, continued the improvement begun last year from the record low of 50% in FY 95. This year's settlement rate was 82.1%. During the past 15 years, the settlement rate has ranged from 50% in FY 1995 to 82% in FY 1985, with a mean of 74%. Anecdotal evidence from the mediators and partisan representatives suggests that this increase may be due to a combination of the following factors: general improvement in the regional economy has resulted in the availability of some additional resources for settlement of agreements, increased utilization of non-confrontational bargaining techniques, and employment insecurity, resulting in employees not seeking pay and benefit adjustments commensurate with the improvement in the economy, despite a tightening labor market.

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 have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period.

The most significant development in mediation over the past year was the continued increase in the number of requests for preventative mediation services. We received 14 requests for preventative mediation services, 11 sets of negotiations were

completed using the technique, resulting in 11 collective bargaining agreements. The negotiations were continuing in the other 3 cases; therefore, the technique had a success rate of 100% again this year. Last year, we received 10 requests for such services; 6 cases were completed, resulting in 7 ratified successor collective bargaining agreements. This non-confrontational bargaining initiative is discussed in greater detail in the Annual Report of the Panel of Mediators.

Fact finding is the second step in the three-step statutory dispute resolution process. In fiscal year 1997 there were 14 fact-finding requests filed. Those requests represent a decrease from last year's level. One employee organization was involved in most of the fact-finding requests filed this year--the Maine Education Association/NEA (10 cases). The Maine State Employees Association had 2 cases, Teamsters Union Local 340 had 1, as did the Maine Federation of Teachers. Six (6) petitions were withdrawn or otherwise settled, 16 requests went to hearing, and 4 petitions are pending hearing. Last year 15 fact-finding hearings were held.

An innovation in collective bargaining was introduced this year. After months of bargaining and mediation in coalition with the 4 other bargaining units represented by the Maine State Employees Association (a process that had resulted in final tentative agreements for the other 4 units), numerous issues remained in dispute concerning the State employee Law Enforcement Services bargaining unit. MSEA filed for fact finding, listing 35 issues in controversy. Pursuant to the Board's decision in *Maine State Employees Association v. Bureau of Employee Relations*, No. 92-31, slip op. at 12 (Me.L.R.B. Aug. 27, 1992), the executive director investigated whether the matter was ripe for fact finding, prior to assigning a fact-finding panel. In light of the laborious and expensive nature of the fact-finding process and even assuming that the 35 issues listed by MSEA were the only outstanding issues, fact finding in this matter would in all likelihood have extended over a matter of months and cost the parties thousands of dollars. Determining that the dispute was not ripe for fact finding, the executive director required the parties to meet with the State Board of Arbitration and Conciliation ("BAC") to attempt to conciliate the dispute, as a prerequisite to scheduling the matter for fact finding. The primary members of the BAC met in a marathon conciliation session with the parties, from 10:00 a.m., Thursday, February 6, through 3:00 a.m., Saturday, February 8. Through this process, the parties were able to reach a final tentative agreement for this bargaining unit. The tentative agreement was subsequently ratified by the union

membership and was funded by the Legislature.

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 on non-monetary issues. Salaries, pensions and insurance are subject to interest arbitration; but, an award on these issues is only advisory. In recent years the Board has received few interest arbitration requests, with 4 received in FY 96, only one each in FY 95 and FY 94 and none in the preceding three years. This year, no interest arbitration requests were received; however, 3 interest arbitration decisions were issued this year, in cases carried forward from last year. The services of the State Board of Arbitration and Conciliation were used in 2 matters and the Board learned of the other instance through discussions with partisan representatives. The parties in the 3 interest arbitration cases which have come to the Board's attention and in which decisions were issued this year are as follows:

Minot Education Ass'n/MEA/NEA and Minot School Committee
Jefferson Teachers Ass'n/AFT, AFL-CIO, and Jefferson School Committee
Teamsters Union Local 340 and Town of Berwick (Berwick Police)

Although the public statutes require that arbitration awards be filed with the Board, they usually are not. This year, only the above-mentioned interest arbitration reports were received. While we assume that these were the only interest arbitration cases in the public sector during the year, it may be that parties have simply failed to provide proper notification to the Board.

In the wake of the Law Court's decision in *Mountain Valley Education Association v. Maine School Administrative District No. 43*, 655 A.2d 348 (Me. 1995), discussed in the FY 95 report, there was growing concern among public sector employee organizations that employers might "go through the motions" of bargaining so that they could lawfully implement their "last, best offer" on the topics of wages, pensions and insurance, if the bargaining impasse continues for a reasonable time after the statutory dispute resolution procedures are exhausted. The Board is aware of only two instances where the employer has implemented its "last, best offer" -- situations involving M.S.A.D. No. 43 and the Minot School Committee. The employer's action in both instances was litigated before the Board, the *M.S.A.D. No. 43* case that subsequently went to the Law Court and *Minot Education Association v. Minot School Committee*, No. 96-27, that is currently pending

before the Board. This year's significant decline in the number of fact-finding and interest arbitration requests should allay the employee organizations' concerns; however, the Board will continue to monitor this area very closely.

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. Twenty-two (22) complaints were filed in FY 97. This represents a moderate decrease from the FY 96 level. During the last 5 years, the number of complaints filed each year has fluctuated from a low of 17, to a high of 45, with the mean being 32.4. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 22 complaints filed in FY 97, there were 15 carryovers from FY 96, compared with 27 complaints and 9 carryovers last year. Board panels conducted 12 evidentiary hearing days involving 8 cases during the year, compared with 2 in FY 96. Board members sitting singularly as prehearing officers held conferences in 10 cases, compared with 11 in FY 96. In 1 matter the Board issued a formal Decision and Order. Three (3) cases (1 being deferred to arbitration) have been continued indefinitely at the request of one or both parties and 3 are awaiting withdrawal. Such a continuance, or inactivity, usually indicates that the parties are attempting to resolve their differences, even though a complaint has been filed to preserve the complainants' rights, given the Board's six-month statute of limitations. Six (6) complaints await prehearing and hearing. The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences with the parties' representatives. Continuing a development introduced last year, the services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. This was attempted on one occasion and was apparently successful. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing. Twelve (12) complaints were dismissed or withdrawn at the request of the parties. Two (2) cases were dismissed by the executive director, both pursuant to the Board's stale proceedings rule. Prohibited practice complaints were filed by the following this year:

Maine State Employees Association	6 complaints
Maine Education Association/NEA	5
AFSCME Council 93	3
Individuals (charging duty of fair representation violations & discrimination)	2
Teamsters Union Local 340	2
Federation of Nurses & Health Professionals	1
International Association of Fire Fighters	1
Maine Association of Police	1
Maine Veterans' Homes	1

Appeals

No unit determination, unit clarification or election appeals were filed this year.

The Board was involved in one case in the Supreme Judicial Court this year. In *Biddeford Board of Education v. Biddeford Teachers Association*, 1997 ME 17, 688 A.2d 922 (Me. 1997), the Court reversed the Board's conclusion that the Mayor of Biddeford, in his capacity as an *ex officio* member of the Biddeford Board of Education, had acted beyond his legal authority in vetoing a final tentative agreement that had been ratified by the school committee. Consistent with its holding, the MLRB had ordered the employer to reduce its ratified collective bargaining agreement to writing, sign it, and implement its terms and conditions. In reversing the MLRB, the Court declared the successor collective bargaining agreement a nullity and the parties returned to the bargaining table. Ultimately, the parties' bargaining dispute was resolved with the help of a State mediator and a successor collective bargaining agreement was reached.

The Board was involved in two cases before the Superior Court this year. The first was an appeal by the Town of Lisbon from the Board's affirmance of a unit clarification decision by the executive director's designated hearing officer. In *Town of Lisbon v. Teamsters Union Local 340 and Maine Labor Relations Board*, No. CV-95-311 (Me. Super. Ct., And. Cty., Aug 1, 1996), the Court held that the hearing officer had misapplied the statutory community of interest standards by failing to consider all of the relevant community of interest factors for all of the employees in the unit proposed for alteration and by ignoring significant factors that militated for a result other than that reached initially. The bargaining agent filed a notice of appeal with the Law Court; but, later entered a stipulation of dismissal of the appeal.

The second case is *Teamsters Union Local 340, Gary Moen, Dana McInnis and Officer Jordan v. Town of Fairfield and Maine Labor Relations Board*. In the underlying

case, the Board held that the Town had violated the Act, by circumventing the bargaining agent and dealing directly with unit employees during collective bargaining. The Board also dismissed portions of the complaint charging unlawful discrimination and interference, restraint or coercion with protected activities through the Town's terminating the chief steward and disciplining other Union adherents. The Court denied the appeal on February 16, 1996; however, the Appellants filed a motion to specify the course of future proceedings and the Town filed a motion for summary judgment, which is now pending.

Summary

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

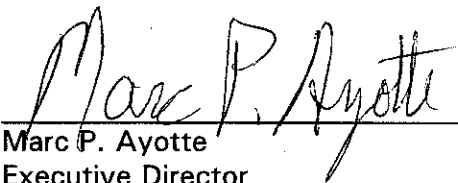
	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
Unit Determination/ Clarification Requests Number filed---	15	-20% 12	+33% 16	+6% 17	-47% 9	+111% 19
Agreements on Bargaining Unit (MLRB Form #1) Number filed---	27	-15% 23	-22% 18	+56% 28	-18% 23	-- 23
Voluntary Recognitions (MLRB Form #3) Number filed---	10	-40% 6	-- 6	-17% 5	-40% 3	+66.7% 5
Bargaining Agent Election Requests Number filed---	17	-29% 12	+17% 14	+7% 15	-- 15	+20% 18
Decertification Election Requests Number filed---	4	-50% 2	+250% 7	-86% 1	-- 1	+200% 3
Mediation Requests Number filed---	94	+22% 115	-.9% 114	-32% 77	-10% 69	+7.25% 74
Fact-Finding Requests Number filed---	20	+20% 24	+8% 26	-23% 20	+20% 21	-33.33% 14
Prohibited Practice Complaints Number filed---	35	+9% 38	+18% 45	-62% 17	+59% 27	-18.5% 22

As the above table indicates, the demand for the Board's different services varied during the fiscal year. Despite a larger number of decertification petitions, overall continued organizational activity may indicate that demand for all of the Board's services will continue to increase in the future. In recent years we have predicted that, as the number of organized employees approaches the complete pool of those eligible, the number of new units created each year will decline. Although the Board has been in existence since 1969 and organizational activity should be nearing the point of saturation, such activity has continued to grow over the last 4 years. More units means more requests for changes in unit composition, more elections to change or oust bargaining agents, a greater potential for prohibited practice complaints, and increased demand for dispute resolution services.

During FY 97, public sector labor-management relations in Maine continued to mature. Parties have increasingly relied on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of more mature labor relations is evidenced by the strong demand for mediation services, particularly non-confrontational preventative mediation, and the willingness of parties to settle prohibited practice cases. In sum, the Board's dispute resolution services fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 1st day of July, 1997.

Respectfully submitted,



Marc P. Ayotte
Executive Director
Maine Labor Relations Board