

7-1-2009

Maine Labor Relations Board Annual Report, Fiscal Year 2009

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 2009" (2009). *Labor Relations Board Documents*. Paper 33.
http://digitalmaine.com/mlrb_docs/33

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.

ANNUAL REPORT
MAINE LABOR RELATIONS BOARD

Fiscal Year 2009

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1) (2008).

Introduction

The mission of the Maine Labor Relations Board and its affiliated organizations, the Panel of Mediators and the State Board of Arbitration and Conciliation, is to foster and improve the relationship between public employees and their employers. The Maine Labor Relations Board (“Board”) protects the rights and enforces the responsibilities established by the four separate labor relations statutes covering Maine’s public sector employees. The Board does this by creating bargaining units, conducting secret ballot elections to certify, change or decertify bargaining agents, and processing prohibited practice complaints. The Panel of Mediators and the State Board of Arbitration and Conciliation provide dispute resolution procedures to assist parties in negotiating initial or successor collective bargaining agreements and in resolving contract grievance issues. The focus of this report is the activity of the Labor Board during the fiscal year.

During the past year, the Board had requests for services from most segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted, demand for the Board’s services varied compared with the previous year. A pervasive concern in the reporting period was the severe economic downturn and its impact on public finance. In addition, the future structure of K-12 education was unclear through most of the year, with a Citizens Initiative and several proposals seeking to repeal or modify the K-12 reorganization law under consideration by the Legislature. These questions were of concern to both labor and management and, while negotiating in good faith, parties on both sides were very cautious about reaching agreement in such perilous times.

Members of the Board are appointed by the Governor, confirmed by the Legislature, and serve four-year terms, with the term of office of each primary member expiring on September 30 of successive years. The terms of the alternate members expire at the same time as that of their respective primary member. Public Chair Peter T. Dawson of Hallowell, Employee Representative Carol B. Gilmore of Charleston,

Employer Representative Karl Dornish, Jr., of Winslow, Alternate Employee Representatives Wayne W. Whitney of Brunswick, and Robert L. Piccone of Portland, and Alternate Employer Representative Richard L. Hornbeck of Bowdoinham continued to serve in their respective capacities throughout the year. In March of 2008, Alternate Chairs Jared S. des Rosiers of Falmouth and Pamela D. Chute of Brewer indicated that they would not seek re-appointment; however, they offered to continue to serve until their successors are qualified for service. In addition, an Alternate Employer Representative position on the Board was vacant at the end of last year. On September 4, 2008, Governor Baldacci appointed Barbara L. Raimondi, Esq., an attorney with the firm of Trafton and Matzen in Auburn and who had served as Alternate Chair of the State Board of Arbitration and Conciliation for 10 years, as Alternate Chair. The Governor also appointed Sandra S. Carraher, Esq., who retired in 2006 after 20 years of service as a Staff Attorney in the State Bureau of Employee Relations, as Alternate Employer Representative on the same date. The appointments were confirmed by the Legislature.

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 is the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In 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.

The Board's web site continued to be the prime source for research of Board precedent. The site is equipped with a search engine and contains an extensive database of the Board's prohibited practice and representation appeals decisions, as well as Superior and Supreme Judicial Court opinions reviewing the Board's decisions. Access to this case law helps public employers, employees and bargaining agents to know the parameters of required or permitted conduct and to use such information to avoid violating the law. The web site also includes links to the statutes administered by the Board, the complete text of the Board's Rules and Procedures, the Board's forms, a bulletin board of current activities, and links to other state and federal labor relations agency sites. Since its inception the web site has been maintained and updated by Board

staff. Over the years, the web site has been highly praised by the labor-management community. There is some question as to whether the current search function which has received such praise will be continued after the server upon which the website resides is retired.

Legislative Matters

Once again this year, the most significant substantive issue before the Legislature with an impact on the Board's jurisdiction was the on-going consideration of the reorganization of K-12 public school systems. While the Board had no position regarding the merits of such proposals, the post-reorganization employer organizational structures will have significant impact on collective bargaining by and for school employees. The State biennial budget enacted in 2007 required the merger of existing school administrative units ("SAU's") to result in regional school units ("RSU's"), each serving a student population of at least 2,500 students. A law enacted last Session, Chapter 668, P.L. 2007, provided for the election of the RSU board prior to the operational date of the RSU and authorized the new board to take certain actions immediately after the election of its members.

The transition from two or more separate SAU's to an RSU occurs in three stages. At stage one, the reorganization plan submitted by a group of SAU's has been approved by the Commissioner of Education, but not yet by the voters. In stage two, the RSU has been approved by the voters, but the RSU board has yet to be elected. At stage three, the RSU board has been elected and is functioning as an initial RSU board prior to the operational date of the RSU. In November, 2008, the Labor Relations Board considered whether, in stage three, the SAU or the RSU has the statutory duty to negotiate a successor collective bargaining agreement to an agreement that would expire after the operational date of an RSU. In an advisory opinion limited to the circumstances presented, the MLRB expressed the view that, since the successor agreement would not be in effect until after the SAU had ceased to exist (and absent explicit statutory language) only the RSU board had the authority to negotiate the successor agreement. While encouraging the RSU to negotiate the successor agreement, the MLRB could find no statutory basis for requiring them to do so prior to the RSU's operational date. MLRB stated that only the Legislature could create that obligation.

L.D. 829, as amended, addressed the hiatus in the statutory duty to negotiate successor agreements to those agreements that will expire after the operational date of the RSU. The bill establishes that, until the RSU has been approved by the voters, the constituent SAU's are the public employers for all purposes, including having the statutory duty to negotiate a successor collective bargaining agreement to an agreement that would expire after the operational date of an RSU. After the RSU has been approved by the voters, the participating SAU's retain all statutory authority and obligations except for negotiating successor agreements that will take effect after the operational date of the RSU. As soon as the RSU board is elected, the RSU has the statutory duty to negotiate such successor agreements.

L.D. 829 also: 1) establishes which bargaining agent has the statutory duty to negotiate successor agreements, when all constituent SAU bargaining units have been merged into the RSU-wide unit prior to the operational date; 2) requires merger of units represented by local affiliates of the same state-wide organization prior to the operational date, even if additional units represented by a different bargaining agent will later be merged into the same RSU-wide unit; 3) suspends the duty to meet within 10 days of a written request to bargain with an RSU before its operational date, so long as the parties meet at reasonable times; and 4) waives the 120-day notice requirement of intent to bargain financial issues during an RSU's first year of operation. L.D. 829 was enacted as an emergency measure and signed by the Governor on May 8, 2009. Chapter 107, P.L. 2009.

In addition to the Citizens' Initiative, L.D. 977, 16 other bills were introduced seeking modification or repeal of the school reorganization law. Two L.D.'s, 285 and 467, were enacted and became law as Chapters 455, P.L. 2009 and 19, P & S Law 2009, respectively. L.D. 285 delayed for one year until July 1, 2011, the imposition of any financial penalties imposed on SAU's for failure to comply with the requirements of the school reorganization law. The impact of this law on the school reorganization process is unclear at this time. L.D. 467 deemed S.A.D. 12 and SAU's comprising School Unions 37 and 60 to be geographically isolated and, hence, exempted them from the provisions of the school reorganization law. The bargaining units and relationships of the public employees of these SAU's will remain unchanged.

Two other bills which became law this year each had a minor impact on the Board's jurisdiction. Under established labor relations laws covering State [26 MRSA § 979-A(6)(K)] and county [26 MRSA § 962(6)(H)] employees, prisoners are explicitly excluded from the grant of collective bargaining rights. The intent of the exclusion is to prevent prisoners from gaining bargaining rights by virtue of their working in correctional facilities as trustees or performing community service in satisfaction of the conditions of their sentences. There is an exception to the prisoner exclusion for persons who were public employees prior to being incarcerated and who continue their employment while in custody on work release or through an intensive supervision program. For these persons, prisoner status is a merely incidental and they have a reasonable expectation of continued employment after completing their period of incarceration, therefore, they retain their covered employee status. Sections 9 and 10 of L.D. 631, which became law as Chapter 142, P.L. 2009, added a third category of supervised employment to the two existing exceptions to the prisoner exclusion.

As enacted, L.D. 401 requires county corrections officers hired after October 1, 2009, to serve a one-year probationary period. Chapter 106, P.L. 2009. The length of probation for most public employees is a mandatory subject of bargaining. Employees who serve a probationary period is set by statute include law enforcement officers (one year after completion of Maine Criminal Justice Academy; 25 M.R.S.A. § 2804-C) and K-12 teachers (two years; 20-A M.R.S.A. § 13201). Such employees are covered by the labor relations laws after 6 months' employment; but, they are not covered by the discipline and discharge articles of the controlling collective bargaining agreement until after completion of their statutory probationary period.

Three other bills considered this year would have impacted the Board's jurisdiction. As drafted, L.D. 693 would have changed the collective bargaining status of Child Development Services System employees from coverage by the Municipal Public Employees Labor Relations Law to the State Employees Labor Relations Act. This provision was omitted from the version of the bill that was enacted. Chapter 233, P.L. 2009. L.D. 1185 would have created just cause for termination protection for many private sector employees and established a system of arbitration, administered by the MLRB, to enforce that right. The Majority Ought No To Pass Report of the Committee on Labor on L.D. 1185 was accepted by the Legislature. L.D. 1319 sought to address

collective bargaining issues concerning public employees who become employees of an AOS itself, rather than remaining employed by its member SAU's. L.D. 1319 was deemed to be a competing measure to the Citizens' Initiative and was voted unanimously Ought Not To Pass by the Committee on Education and Cultural Affairs.

Bargaining Unit and Election Matters

The most significant representation matter this year was the first case presented pursuant to the provisions of the school reorganization law, 20-A M.R.S.A. § 1464. It involved the creation of the first regional school-unit-wide bargaining unit and the subsequent conduct of an election to determine whether the employees in the new unit wished to be represented for purposes of collective bargaining. While other RSU bargaining units have been created by operation of private and special law or by agreement of the parties, this was the first instance where such a unit was formed as a result of the filing of a petition with the Board. Section 1464(2) provides that, if there is a dispute regarding the classifications to be included in an RSU-wide bargaining unit, the dispute must be resolved through the unit determination process, as modified by the provisions of the school reorganization law. The Limestone Education Association/MEA/NEA and Regional School Unit No. 39, the parties in the case, configured the merged unit through an agreement facilitated by the executive director. Prior to the merger, the bargaining agent did not represent a majority of the employees who composed the merged unit, as the majority were not represented at all. Pursuant to § 1464(2)(F), the Board conducted a secret ballot election and the bargaining agent was elected to represent the merged unit. Since this was our first experience with the new law, we worked with the parties to develop a shared understanding of the relevant legal principles and a process that we expect to build upon in approaching this type of case going forward. The cooperative attitude and diligent effort of the parties were instrumental in the expeditious resolution of the matter.

During fiscal year 2009, the Board received 15 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 24 of these filings in FY 08, 16 in FY 07, 24 in FY 06 and 21 in FY 05. Of the 15 FY 09 filings, 7 were for municipal or county government units, 6 were for K-12 educational units and 2 were for State Executive Branch employees,. The unit agreements were filed

by the following employee organizations:

<u>Maine Education Association/NEA</u> (Auburn Food Service Unit) (Freeport Food Service Unit) (Limestone/Caribou School Support Staff Unit) (Old Town Food Service Unit) (Winthrop Support Staff Unit)	5 agreements
<u>AFSCME Council 93</u> (Ellsworth Custodial/Maintenance Unit) (Piscataquis County Administration Unit) (Piscataquis County Patrol Unit)	3
<u>Maine State Employees Association</u> (City of Bangor Airport Unit) (State of Maine Pro-Tech & Supervisory Units (2))	3
<u>Teamsters Union Local 340</u> (SAD #5 (Rockland) Custodial and Building Maintenance Unit) (Windham Public Works Unit) (York Public Works Unit)	3
Sanford Regional Communications Assn./MAP (Sanford Police Dispatchers and Communications Supervisor)	1

Of the 15 filings, 8 were for new units and 7 were for changes to existing units.

Thirteen (13) unit determination petitions (submitted when there is no agreement on the composition of the bargaining unit) were filed in FY 09. There were no unit clarification petitions filed. None of the new unit petitions went to hearing but one decision was issued (SAD #49 Ed Techs I). Agreements were reached in 7 cases, 1 unit was deemed appropriate, 1 was withdrawn, 1 was dismissed by the executive director, and 2 are pending. 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 42.85% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 7 unit petitions filed in FY 08, 32 in FY 07, 16 in FY 06 and 8 in FY 05. The unit determination/clarification requests were filed by the following employee organizations:

<u>Maine Education Association/NEA</u> (Dresden School Support Staff Unit) (Freeport School Food Service Unit)	5 petitions
--	-------------

(Limestone/Caribou School Support Staff Unit)	
(Richmond School Support Staff Unit)	
(SAD #49 School Ed Techs I Unit)	
<u>AFSCME Council 93</u>	1
(Ellsworth School Custodial/Maintenance Unit)	
<u>AFT-Maine</u>	1
(Jefferson School Support Staff Unit)	
<u>IAFF</u>	1
(Town of Raymond Firefighter/EMS Unit)	
<u>John P. Legassey - Individual Unit Employee</u>	1
(Judicial Marshals Unit)	
<u>Maine Association of Police</u>	1
(Sanford Dispatchers Unit)	
<u>Maine State Employees Association</u>	1
(Bangor Airport Customer Service Representatives and Part-time Ramp Attendants Unit)	
<u>Piscataquis County Sheriff's Administrative Bargaining Unit</u>	1
(Sheriff's Administrative Employees Unit)	
<u>Teamsters Union Local 340</u>	1
(York Public Works Department Unit)	

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a secret ballot bargaining agent election is conducted by the Board. An election is held to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 09 there were 2 voluntary recognitions filed, involving the following employee organizations:

<u>Maine Association of Police</u>	1 voluntary recognition
(Sanford Dispatch Unit)	
<u>Piscataquis County Sheriff's Administrative Bargaining Unit</u>	1
(Sheriff's Administrative Employees Unit)	

Thirteen (13) bargaining agent election requests were filed in FY 09; 12 elections were held, including matters carried forward from FY 08, the bargaining agent was voluntarily recognized in 2 cases and 4 election matters are pending. The bargaining agent election petitions filed this year involved the following employee organizations:

<u>Maine Education Association/NEA</u>	7 petitions
(Auburn School Food Service Unit)	
(Dresden School Support Staff Unit)	
(Freeport School Food Service Unit)	
(Limestone/Caribou School Support Staff Unit)	
(Old Town School Food Service Unit)	
(Richmond School Support Staff Unit)	

(SAD #49 School Ed Tech I Unit)	
<u>AFSCME Council 93</u>	1
(Ellsworth School Custodial/Maintenance Unit)	
<u>IAFF</u>	1
(Raymond Firefighter/EMS Unit)	
<u>Maine Association of Police</u>	1
(Sanford Dispatch Unit)	
Maine State Employees Association	1
(Bangor Airport Customer Service Representatives and Part-time Ramp Attendants Unit)	

The employee organizations were certified as the bargaining agent in all cases.

In FY 08, there was 1 voluntary recognition filed, 11 bargaining agent election requests received, and 15 elections held.

In addition to representation election requests, the Board received 4 requests for decertification/certification. This type of petition involves a challenge by the petitioning organization to unseat and replace an incumbent as bargaining agent for bargaining unit members. Three elections were held and the incumbent union disclaimed interest in 2 cases. Disclaimers arise when a bargaining agent no longer wishes to represent a bargaining unit. The results of the decertification/certification petitions were as follows:

<u>Petitioner (Bargaining Unit)</u>	<u>Incumbent Agent</u>	<u>Outcome</u>
John P. Legassey & Maine State Law Enforcement Assn. (Judicial Marshals Unit)	MSEA	Withdrawn
Maine Association of Police (Rumford Police Unit)	AFSCME Council 93	M.A.P.
New England Police Ben. Assn. (Aroostook County Sheriff's Dept. Law Enforcement Unit)	Teamsters Local 340	NEPBA
Winthrop Education Association (School Cafeteria Workers Unit)	United Steelworkers Union	Winthrop EA

The Board received no straight decertification petition in FY 09. In this type of petition no new union is involved; rather, the petitioner is simply attempting to remove the incumbent agent. One (1) straight decertification petition was received in FY 08.

There were 5 election matters carried over from FY 08; consequently, there were 22 such matters requiring attention during the fiscal year. This compares with a total of 28 in FY 08, 39 in FY 07, 25 in FY 06 and 20 in FY 05.

Dispute Resolution

The Panel of Mediators is the 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 discussed in the Annual Report of the Panel of Mediators.

Interest mediation is the process through which State mediators assist parties in negotiating initial or successor collective bargaining agreements. The number of new interest mediation requests received during the fiscal year remained essentially unchanged. There were 39 new requests filed this year compared with 40 last year. In addition to the new mediation requests received during FY 09, there were 16 matters carried over from FY 08 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 55, down from 61 in FY 08.

The flat level of mediation activity this year was the result of the economic downturn. Faced with increasing costs, particularly soaring energy costs in the first half of the year, increases in the cost of health care, and declining revenues, many public employers sought to re-open current agreements or to negotiate no-change successor agreements, in efforts to avoid employee layoffs. In response, many bargaining agents agreed to re-openers or to contracts that continued current wages and benefits for their duration. Because the economic factors were so readily apparent to all, such instances did not involve any third-party intervention and reduced the number of situations in which mediation would normally have been expected.

The settlement rate for cases where mediation was concluded this year, including carryovers from FY 08, decreased significantly. This year's settlement rate was 72.1%. During the past 15 years, the settlement rate has ranged from 50% in FY 1995 to a high of 88.5% in FY 2005, with a mean of 78.5%. Fiscal issues, particularly general wage

adjustments and health insurance financing, were the most difficult to resolve in Maine public sector negotiations this year and were the issues that usually led the parties to engage in mediation. Anecdotal evidence from Panel members indicates that the downturn in the economy has been the single most important factor affecting bargaining this year. Given the magnitude of the economic downturn and its substantial impact on public revenues, it is not at all surprising that the settlement rate declined significantly this year.

One request for preventive mediation services was received this year and another case was on-going at the end of last year. Both cases were successfully resolved. Interest in non-confrontational, interest-based negotiations in the labor-management community has waned in the last four years, despite the effectiveness of the process in achieving settlements (60 settlements in 62 cases). In fact, prior to FY 02, all of the preventive mediation efforts had been successful. Preventive mediation is only undertaken upon the joint request of the parties; therefore, the fact that only one request for such services was received this year may be a negative development or it may just indicate parties' belief that their differences can be best addressed through traditional bargaining.

Fact finding is the second step in the three-step statutory dispute resolution process. In Fiscal Year 2009, 9 fact-finding requests were filed. There were 4 requests received in FY 08. Of the 9 cases, 3 requests went to hearing and decision, 4 cases were resolved in meetings with the fact finders, and 2 petitions were withdrawn or otherwise settled. In FY 08, 5 fact-finding hearings were held. The following employee organizations filed requests for fact-finding services this year:

<u>AFSCME Council 93</u>	3 requests
(Bangor Airport Ramp Attendants Unit)	
(Cumberland County Sheriff's Dept. Jail Unit)	
(South Portland Library Employee Unit)	
<u>Maine Education Association/MEA/NEA</u>	3
(Bangor Teachers Unit)	
(SAD #63 Holden Teachers Unit)	
(SAD #47 Oakland Support Staff Unit)	
<u>Teamsters Union Local 340</u>	3
(Jay Highway Department)	
(Jay Transfer Station Unit)	

(Jay Waste Water Unit)

Interest arbitration is the third and final step in the statutory dispute resolution process. Under 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. Unresolved questions concerning salaries, pensions and insurance are subject to interest arbitration, but an award on these matters is only advisory. The various labor relations statutes do not require parties to notify the Board when they are invoking mandatory interest arbitration. The statutes do require that arbitration awards be filed with the Board; however, they usually are not. This year, no interest arbitration decisions were received. While we assume that this means there were no interest arbitration awards in the public sector during the year, it may be that parties have simply failed to provide notification to the Board.

Prohibited Practice Complaints

One of the Board's main responsibilities in administering the public sector collective bargaining process is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board in such matters. Sixteen complaints were filed in FY 09. This represents a 200 percent increase over the FY 08 level. For the last six years, including the current year, the number of complaints filed each year has fluctuated from a low of 5 to a high of 24, with the mean being 15.2. Many of the complaints received during the past year charged interference, restraint and coercion regarding union activity.

In addition to the 16 complaints filed in FY 09, there were 6 carryovers from FY 08, compared with 5 complaints and 6 carryovers last year. Board panels conducted 1 evidentiary hearing during the year, compared with 5 in FY 05. The Board issued formal Orders in 3 cases and two Interpretive Rulings. Board chairs, sitting as prehearing officers, held conferences in 4 cases, compared with 5 in FY 08. One case is being held in abeyance. Eight complaints were dismissed or withdrawn at the request of the parties. Ten complaints await prehearing and/or hearing.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties'

representatives. The services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. 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.

Prohibited practice complaints, with the respondent noted in parenthesis, were filed by the following this year:

<u>MSEA</u>	
(Lewiston School Dept.) (2)	5 complaints
(State of Maine Dept. of Prof. & Financial Reg.)	
(State of Maine Department of Public Safety) (2)	
<u>Individuals</u>	4
(Bridgton Fed. of Public Employees)	
(Maine Education Association)	
(Maine Military Authority)	
(State of Maine Dept. of Public Safety)	
<u>AFSCME</u>	2
(Penobscot County Sheriff's Dept., et al.) (2)	
<u>IAFF</u>	2
(Town of Brunswick)	
(Town of Orono)	
<u>IAMAW</u>	1
(Town of Wiscasset)	
<u>MEA</u>	1
(SAD #59 Madison)	
<u>Sanford Police Association</u>	1
(Town of Sanford)	

Unit Appeals

The Board has the statutory authority to decide appeals of unit-related decisions issued by the Executive Director, such as unit determination, unit clarification, and election issues. There were no appeals to the Board this year.

Interpretive Rulings

On November 14, 2008, the Board issued an Interpretive Ruling on Bargaining During Transition from School Administrative Unit to Regional School Unit which is described in more detail elsewhere in this report. On January 15, 2009, the Board issued another interpretive ruling in response to a joint petition by the Lewiston Education

Association and the Lewiston School Committee on whether certain language in the parties' collective bargaining agreement constitutes educational policy. In that Ruling, the Board declined to overturn long-standing precedent holding that the issues of preparation periods and instructional time are issues of educational policy.

Prohibited Practice Complaints

Although there were a significant number of prohibited practice complaints filed during FY 09, the Board issued decisions in two cases, issued one formal order, and only held one evidentiary hearing. One decision involving an alleged breach of the duty of fair representation was issued at the very beginning of the reporting period based on an evidentiary hearing concluded in February, 2008. In Sanford Police Association v. Town of Sanford, the Board issued an Interim Order after one day of hearing to address a request for subpoena and a renewed motion to dismiss. Although the Board did not grant the motion to dismiss, the Board's Interim Order provided enough direction to the parties concerning what would and would not be allowed during the second day of hearing that the parties were able to settle the case. In MSEA v. Lewiston School Department, following the suggestion of the Executive Director, the parties agreed to have the Board decide the case on the basis of a stipulated record and written argument. Consequently, no evidentiary hearing was held in that case.

Appeals

The Board decision in MSEA v. Lewiston School Department was appealed to Superior Court this year. The case involves how to define the status quo that must be maintained for health insurance premiums when the collective bargaining agreement has expired and the parties are negotiating a successor agreement. The employer's position was that it should continue paying the same dollar amount it was paying at the expiration of the agreement. Board held that, in light of the language in the agreement, the employer was required to continue to pay the same proportion of the health insurance premium that it had been paying. Written briefs were filed and the parties presented oral argument to the Court in June, but a decision has not yet been issued.

Summary

The following chart summarizes the filings for this fiscal year, along with the

previous five years and percent change from year to year:

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Unit Determination/ Clarification Requests Number filed--	10	-20% 8	+100% 16	+100% 32	-78% 7	+85.7% 13
Agreements on Bargaining Unit (MLRB Form #1) Number filed--	24	-12.5% 21	+14.3% 24	-33.3% 16	+50% 24	-40% 15
Voluntary Recognitions (MLRB Form #3) Number filed--	2	-50% 1	+200% 3	-33.3% 2	-50% 1	+100% 2
Bargaining Agent Election Requests Number filed--	10	-10% 9	+77% 16	+93.7% 31	+64.5% 11	+15.4% 13
Decertification Election Requests Number filed--	0	+300% 3	-66.7% 1	-100% 0	+100% 1	-100% 0
Decert./Certification Election Requests Number filed--	10	-80% 2	+150% 5	-20% 4	+25% 5	-20% 4
Mediation Requests Number filed--	65	-15.4% 55	+5.4% 58	-18.96% 47	-14.9% 40	-.25% 39
Fact-Finding Requests Number filed--	13	0% 13	-7.7% 12	0% 12	-66.6% 4	+111% 9
Prohibited Practice Complaints Number filed--	16	-25% 12	+100% 24	-25% 18	-72.3% 5	+220% 16

The above table indicates that the demand for the Board's different services varied during the fiscal year, reflecting the severe economic downturn and uncertainty regarding the future structure of K-12 education. For the past several years we have been predicting that public sector organizational activity may be nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and firefighter units, predated the establishment of the agency. As the number of organized employees approaches the universe of those eligible, the number of new units created each year will decline. As predicted last year, there was a decrease in organizational activity this year; however, there are more units now than ever before. A larger number of 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 in the future.

During FY 09, public sector labor-management relations in Maine continued to mature, with parties relying on the statutory dispute processes to settle their differences. The development of more mature labor relations is evidenced by the demand for mediation services and the continued willingness by the parties to settle prohibited practice complaint cases. In sum, the Board's dispute resolution services fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 30th day of June 2009.

Respectfully submitted,

Marc P. Ayotte
Executive Director
Maine Labor Relations Board