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# Maine State Board of Arbitration and Conciliation Annual Report, Fiscal Year 2010

Maine State Board of Arbitration and Conciliation

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# STATE BOARD OF ARBITRATION AND CONCILIATION

## ANNUAL REPORT

### FISCAL YEAR 2010

This report is made pursuant to 26 M.R.S.A. § 931 (2007 and Supp. 2009).

There were no changes in the complement of the Board this year. The primary members of the Board are Chair Shari B. Broder, an attorney from Freeport whose practice is concentrated in the area of alternative dispute resolution; Employee Representative Robert F. Bourgault, a Labor Consultant from Biddeford; and Employer Representative Harry R. Courtois of Biddeford, Labor Relations Officer (retired) for the City of Bangor and a former Chief of Police in Biddeford. The alternate members are Alternate Chairs Peter P. Michaud, Esq., of Cape Elizabeth, and Rebekah J. Smith, Esq., of Union, who both practice as neutral decision makers; Alternate Employee Representatives Chester G. ("Chuck") Hillier of Monmouth, Assistant Negotiator with the Maine State Employees Association, and Shawn C. Keenan, Esq. of Bath, General Counsel of the Maine Education Association; and Alternate Employer Representatives Donald H. Gerrish, of Brunswick, who retired after almost 20 years of service as Town Manager in Brunswick and will shortly complete a term as Interim Town Manager in Wiscasset, and Clare Hudson Payne, Esq., of Holden, Of Counsel with Eaton Peabody in Bangor, who represents public employers. The members and alternate members of the Board serve three year terms. The competence of the Board's membership remains high, consisting of able neutrals and partisan members known throughout the Maine labor relations community. Roger A. Putnam of the Maine Labor Relations Board (MLRB) staff coordinated the Board's activities and served as the primary liaison with the client community. MLRB Executive Director Marc P. Ayotte served as the Board's general administrator and legal advisor.

**Activities of the Board.** The 22 total cases filed this year compares with 21 total filings in the previous fiscal year. During the last twenty years, the year with the greatest

number of filings (57) was FY 1994 and the fewest cases (11) were filed in FY 2008. During that period an average of 29 cases were filed each year.

Grievance arbitration is almost universally accepted as a means for resolving disputes arising under a bargaining agreement. Despite the best of good faith and honesty of purpose, reasonable people can and often do disagree about the meaning and application of the terms of the collective bargaining agreements they have negotiated. A grievance procedure is the usual mechanism for resolving such disputes. Typically, the objecting party lodges its complaint at the lowest level possible in the employer's organizational structure. If the grievance is denied or the solution offered is unacceptable, the process becomes more formal and it works its way up the management chain of command to the highest level. If the grievance remains unresolved, the negotiated grievance procedure usually provides that the dispute will be resolved in final and binding arbitration by a neutral selected by the parties, often this Board.

In the past several years, the bulk of the Board's case load has involved hearing and resolving grievance disputes. Of the 22 requests for services received this year, 21 involved grievance arbitration matters. Of the 32 cases filed or carried over into this year, 14 decisions were issued, 4 cases were withdrawn by the parties prior to hearing, 2 cases were conciliated at hearing, 1 case was withdrawn after hearing, 1 case was dismissed by the executive director, and 10 cases are pending. The cases filed this year were as follows:

<u>Bargaining Agent</u>	<u>Employer</u>	<u>Issue</u>
AFSCME Council 93	Cumberland County S.D.	Longevity Stipend
AFSCME Council 93	Cumberland County S.D.	Make-whole dispute
IAFF Local 3107	Biddeford F.D.	Paramedic Program
IAMAW Local 189	Bath PWD	Lost Overtime

IUOE Local 877	ecomaine	Suspension
IUOE, Local 877	ecomaine	Unit Work
MSEA/SEIU Local 1989	MCCS	Fact Finding
Scarborough Ed. Assn.	Scarborough S.D.	Additional Work
Teamsters Local 340	Cumberland County S.D.	Promotion Griev.
Teamsters Local 340	Hancock County	Overtime Pay
Teamsters Local 340	Hancock County	Overtime Pay
Teamsters Local 340	Hancock County S.D.	Pay Period Change
Teamsters Local 340	Kittery PWD	Working out of Classification
Teamsters Local 340	Presque Isle	Subcontracting
Teamsters Local 340	MSAD #27	Overtime Grievance
Teamsters Local 340	U/Maine System	Discharge
Teamsters Local 340	Washington County S.D.	Optometry Benefit
Teamsters Local 340	Washington County S.D.	Health Ins. Benefits
Teamsters Local 340	Waterville	Termination
Teamsters Local 340	Westbrook F.D./Rescue	Disciplinary Action
Teamsters Local 340	Westbrook F.D./Rescue	Disciplinary Action

Conciliation is a process during which the partisan members of the assigned Board panel, the Employee and Employer Representatives, meet with "their" respective party, assess that party's real needs and concerns in the matter at issue, and help the party to determine the relative strengths and weaknesses of their position. The partisan members then caucus to ascertain whether an agreed to resolution is possible and, if so, work with

the parties in achieving settlement. The Board believes that having parties resolve their dispute through mutual understanding and accord is far preferable to having a solution be imposed by fiat of a third party; accordingly, we attempt to conciliate every case presented to us. Two cases were conciliated this year.

Fact finding is the second of the three statutory dispute resolution procedures in public sector collective bargaining. If the parties are unable to reach accord on their collective bargaining agreement through direct negotiations and mediation, either of them can request fact finding. In that process, the parties present evidence and arguments in support of their respective positions on the unresolved issues. The fact finding panel may consider a variety of factors such as wages, hours and working conditions for comparable positions in the labor market, the financial ability of the employer, changes in the consumer price index since the last round of negotiations, and the labor market conditions in general. After the close of the record, fact finders issue their recommendations for resolution of the controversy. The report is confidential for 30 days and it remains confidential if the parties are able to resolve the dispute within that time. If not, the report becomes a public document and may be used by either party to attempt to sway public opinion to mount political pressure for resolution. The Board received one request for fact finding services this year, which was subsequently withdrawn by the parties. No fact-finding requests were received last year.

Interest arbitration is procedurally similar to fact finding, except that the arbitrators' award is binding on all issues except for those concerning wages, pensions and insurance. There are few interest arbitration proceedings in Maine in any given year and in some years there are none at all. The Board did not receive any requests for interest arbitration this fiscal year.

**Legislative Developments.** One measure affecting the Board was enacted by the Legislature and signed by the Governor this year. Among other provisions, An Act To Protect Maine Workers, L.D. 1545, requires that employers who file for certification with

the U.S. Department of Labor to hire a bond worker in a logging occupation must be members and "active participants" in a recruitment clearinghouse that assists in evaluating and referring potential logging occupation workers. The Law provides that the Maine Department of Labor must maintain a list of logging contractors who are in compliance with these requirements and must, after notice and hearing, remove from the list any employer found to have violated the requirements of the Law or the applicable federal regulations. One may appeal the placement or removal of an employer on the approved list to the Board. A landowner who enters into or maintains a contract for logging operations with an employer of bond workers who is not on the DOL list is subject to a fine of up to \$50,000.

The Board of Arbitration and Conciliation is pleased with its achievements, particularly with its reputation for fairness in the labor relations community. The Board's mission is to improve the labor management climate in the public sector by providing high quality, professional services to our client community, helping in the resolution of their disputes.

Dated at Augusta, Maine, this 30th day of June 2010.

Respectfully submitted,

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Marc P. Ayotte, Executive Director  
Maine Labor Relations Board &  
State Board of Arbitration and Conciliation