

7-1-2002

Maine State Panel of Mediators Annual Report, Fiscal Year 2002

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Recommended Citation

Maine State Panel of Mediators, "Maine State Panel of Mediators Annual Report, Fiscal Year 2002" (2002). *Labor Relations Board Documents*. Paper 50.
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ANNUAL REPORT
PANEL OF MEDIATORS
Fiscal Year 2002

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (1988).

The number of new mediation requests received this fiscal year was somewhat lower than that for the preceding year; there were 54 new requests compared with 61 in FY 2001 and 73 in FY 2000. During the last fifteen years, the number of new filings per year ranged from last year's 61 to a high of 115 filings in FY 1993. In addition to the new mediation requests received during the fiscal year just ended, there were 23 matters carried over from FY 2001 that required some form of mediation activity during the year. Last year, 23 matters were carried over from FY 2000. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 77, down slightly from 84 during the previous fiscal year. Anecdotal evidence from members of the labor-management community, together with the demonstrated demand for the Panel's services, establishes that such demand is essentially unaffected by the introduction of user fees during FY 1992. In the uncertain economy of the early 90's, most parties negotiated only one-year agreements, hoping that the situation would stabilize or improve sufficiently the next year to permit more productive negotiations at that time. Beginning about the middle of calendar year 1994, parties began returning to the practice of negotiating multi-year agreements, thereby reducing the number of agreements which expired this year. The decline in demand this year reflects more significant factors affecting the bargaining process--continued public confidence in the regional economy for most of the reporting period, increased state aid to education, and the availability of additional resources from which to fund settlements. With the downturn in the regional economy and the state revenue shortfall that surfaced late this fiscal year, one would anticipate that resources available for the settlement of labor agreements may become tighter next year, resulting in increased demand for mediation services.

Mediation is recorded as a single request, even though it may involve multiple bargaining units of a single employer. For example, one filing this year was for 7 units, another was for 5, and 3 were for 2 units each. In such situations, the mediator undoubtedly expends substantial periods of time on issues particular to individual bargaining units, making the mediation process a long and complicated one. Thus, the number of mediation requests filed is not a completely accurate reflection of the Panel's actual work load.

The following table reflects the Panel's rate of success over the past several years:

Fiscal Year	Settlement Rate
1988	81%
1989	78%
1990	79%
1991	78%
1992	74%
1993	68.5%
1994	75.2%
1995	50%
1996	66.2%
1997	82.1%
1998	82.3%
1999	73.91%
2000	80.7%
2001	85.94%
2002	76%

The Panel's settlement rate declined somewhat this year. Anecdotal evidence from Panel members indicates that a major factor that had a negative impact on settlement rates was the continued dramatic increase in health insurance premiums. Prior to FY 2000, health insurance costs had remained relatively stable for the preceding few years due to efficiencies and economies realized through the introduction of managed care systems (HMO's, PPO's, etc.); however, premiums began rising dramatically in the last quarter of FY 2000 and have continued to increase at a double-digit annual percentage rate since then. Offsetting the impact of health insurance premium increases to some extent, the continued robust performance of the state and regional economies resulted in the availability of sufficient resources to fund wage and benefit increases in settlements this year.

Over the past several bargaining cycles, the most difficult issues in Maine public sector negotiations were those with fiscal impact, especially wages and health insurance financing. While true in most public sector negotiations again this year, bargaining involving teachers in K-12 education centered less on financial issues and more on language issues, especially those concerning the nature and scope of the educational policy exception from the duty to bargain and the impact of educational policy changes on working conditions. Wage settlements continued to be in the range of 3-4%, depending on the percentage of the health insurance premium picked up by the employees.

A unique aspect of the Panel's statutory jurisdiction is its role under the Agricultural Marketing and Bargaining Law, 13 M.R.S.A. §1953, et seq. (1981 and Supp. 2001). That Act provides that qualified associations of producers of agricultural products and processors who purchase their crop must negotiate in good faith over the price and terms of sale for commodities produced or sold. If the parties are unable to reach agreement through direct negotiations, the Act specifies that the Panel will provide voluntary and/or compulsory services to the parties, within a strict time schedule designed to ensure that a contract for the sale of commodities will be in place prior to the beginning of the growing season for that commodity. This year, the negotiations between the Agricultural Bargaining Council, representing the producers of approximately one-half of the Maine potato crop, and McCain Foods had not resulted in a successor agreement 30 days prior to expiration of the existing contract; therefore, the matter was ripe for mandatory mediation. A member of the Panel, with a background in agricultural economics, met with the parties over a period of six days. While several questions were resolved and the positions of the parties were clarified, mediation did not result in a new contract and the parties proceeded to binding arbitration to resolve their remaining issues.

Up until last year, the settlement rate in our non-confrontational preventive mediation program had always been 100%. In FY 2001, however, the settlement rate for this type of case dropped off to 77.78% (9 cases completed, 7 settlements). This year the settlement rate returned to 100% (2 cases completed, 2 settlements); however, the number of requests for this service declined sharply. This drop in demand may simply mirror the general decreased need for third-party intervention in negotiations this year or it may foreshadow a return to a more confrontational approach to negotiations and harder bargaining in the future.

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 12-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. The settlement rate only includes matters where the mediator was actively involved in the settlement. Although parties who reach agreement after concluding formal mediation often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Likewise, cases in which a request for mediation was filed but in which the parties settled their differences prior to participating in mediation are not included in the settlement rate.

The distribution of the Panel's caseload, according to the statute pursuant to which referrals were made over the last several years, is as follows:

Fiscal Year	New Cases Referred	Cases Referred Under State, University and Judicial Acts	Cases Referred Under Municipal Act, inc. County and Tumpike Authority Referrals	Private Sector Referrals	Agricultural Marketing Act
1988	91	6	81	1	3
1989	107	5	100	0	2
1990	115	6	106	1	2
1991	89	1	86	2	0
1992	94	3	90	1	0
1993	115	4	109	0	2
1994	114	4	109	0	1
1995	77	9	67	0	1
1996	69	5	64	0	0
1997	74	12	60	2	0
1998	68	2	66	0	0
1999	69	3	66	0	0
2000	73	6	67	0	0
2001	61	6	55	0	0
2002	54	3	50	0	1

The 54 requests for services received this year involved the following employee organizations:

Maine Education Association/NEA ¹	40 requests
Teamsters Union Local 340	8
Maine State Employees Association	2
AFSCME Council 93	1
International Association of Firefighters	1
International Union of Operating Engineers	1

Agricultural Bargaining Council	1
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The number of requests involving the Maine Education Association increased this year from 37 to 40 requests (an 8.1% increase), while the total number of mediation requests declined 11.5% and requests involving the other employee organizations dropped 45.8% this year. Since MEA's experience runs contrary to the trend of other employee organizations, this increased

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.

level of demand may reflect the different focus in K-12 negotiations. As noted above, school sector negotiations are increasingly concerned with language issues--particularly whether existing or proposed agreement provisions are matters of educational policy. Non-school negotiations continue to focus primarily on economic issues and such issues have proven to be more readily resolved, with or without the involvement of mediation.

The average number of mediation-days per case decreased slightly from 3.89 in FY 2001 to 3.86 for the combined total of 51 matters, including carryovers, for which mediation was concluded. The maximum mediation days devoted to a single case this fiscal year was 11. Of the 50 cases in which mediation was concluded this year, 40% were resolved in 2 days or less (11 cases were resolved in one day and 9 were resolved in two days). The mediation-days per case for all mediations completed this year was 3.86 days, with traditional mediations averaging 3.60 days per case and preventive mediations averaging 6.5 days per case.

The figures for the past fifteen-year period are summarized below:

Fiscal Year	Mediation-Days Expenditure Per Case
1988	2.45
1989	2.23
1990	2.52
1991	2.67
1992	2.75
1993	2.40
1994	2.51
1995	3.33
1996	3.20 (3.20)
1997	3.76 (3.25)
1998	2.84 (2.27)
1999	3.46 (3.47)
2000	4.19 (4.02)
2001	3.89 (3.60)
2002	3.86 (3.60)

In order to assist in comparing the number of mediation-days per case over a multi-year period, we have included the number of mediation-days per case in traditional mediations within

parentheses in the above table for the last 7 years (years during which preventive mediation services were provided). Although such services were also provided in 1995, only 2 preventive cases were concluded that year and we were unable to break out separate meaningful statistics for traditional and preventive cases for that year.

Of the mediations, including carryovers, that were concluded in FY 2002, 20% proceeded to fact finding. The percentage of cases proceeding to requests for fact finding after mediation in each of the past several years is indicated below:²

Fiscal Year	Percentage of Cases Proceeding to Fact Finding
1988	17%
1989	21.5%
1990	20.73%
1991	28.81%
1992	23.8%
1993	23%
1994	23.6%
1995	25.8%
1996	30.99%
1997	15.94%
1998	14.71%
1999	30.43%
2000	14.04%
2001	9.375%
2002	20%

Assuming the average of 3.86 mediation-days per case, the 23 matters still pending will consume an additional 89 mediation-days, for a total expenditure of approximately 286 mediation-days devoted to matters docketed in or carried over to FY 2002.

Members of the Panel of Mediators during the past fiscal year were:

John Alfano
Osip Bukharin
David Bustin

Biddeford
Gorham
Hallowell

²All post-mediation fact-finding requests are included, whether later dismissed, withdrawn or settled prior to hearing. Fact-finding hearings were convened in 10 cases, the parties settled prior to fact finding in 8 cases, and 1 case is pending.

James Carignan
Jack Hunt
John J. Mahon
Sheila Mayberry
Charles A. Morrison
Richard Taylor
Don Ziegenbein

Lewiston
Kennebunk
Camden
Cape Elizabeth
Auburn
Scarborough
Bangor

A significant administrative development that occurred this year was the review of the Panel's operations and administration by the Joint Standing Committee on Labor of the Legislature, pursuant to the provisions of the Government Evaluation Act ("GEA"). This program review was conducted in conjunction with that of the operations of the Maine Labor Relations Board ("MLRB"), whose Executive Director and staff also provide professional and administrative support to the Panel. As required by law, a detailed report discussing the Panel's programs was reviewed by the Labor Committee. The Executive Director further briefed the Committee and responded to questions at a public hearing on January 8. On March 13, the Labor Committee issued a unanimous report to the President of the Senate and the Speaker of the House, indicating that the Panel was successfully discharging its statutory responsibilities and thereby concluding the GEA process.

Continuing an initiative begun last year, the Panel conducted a seminar for our client community entitled "Issues and Roles in Mediation" which was held at the Bureau of Labor Standards training room in Hallowell, on November 9. Approximately 30 practitioners attended this event. In addition, the Panel, together with the MLRB and the State Board of Arbitration and Conciliation, sponsored a program presented by Tom Colosi, the former Vice President of Alternative Dispute Resolution Education of the American Arbitration Association and the author of several books on negotiations and dispute resolution, on the topic of dealing with difficult people in negotiating and administering collective bargaining agreements. This seminar attracted 50 practitioners and was held on April 5 at the Portland office of the Department of Human Services. The Board of Overseers of the Bar awarded Maine attorneys continuing legal education credit for attending and participating in these programs. These seminars have been particularly well received by labor relations practitioners because relevant continuing education opportunities are non-existent in Maine and the sessions foster informal interaction among practitioners and agency neutrals, away from the heat of a particular dispute or bargaining situation.

The mediation process continues to be the cornerstone of the dispute resolution process in Maine. Practitioners in the public sector labor relations community have come to accept and

value the process and the expertise and competence of members of the Panel. The members of the Panel have gained practical experience and insights that are invaluable in the effective use of this tool. The Panel's reputation and expertise, coupled with a growing awareness of alternative dispute resolution in our society, are likely to result in continued demand for the Panel's services in the future.

Dated at Augusta, Maine, this 28th day of June, 2002.

Respectfully submitted,

Marc P. Ayotte
Executive Director
Panel of Mediators and
Maine Labor Relations Board