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Maine State Panel of Mediators Annual Report, Fiscal Year 2012

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ANNUAL REPORT

PANEL OF MEDIATORS

Fiscal Year 2012

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (Supp. 2011).

The primary function of the Panel of Mediators is to assist bargaining agents, who represent public employees at all levels of government and education in Maine, and public employers to successfully negotiate initial or successor collective bargaining agreements. Although referred to as the Panel of Mediators, the State mediators do not sit as a panel but work independently from each other on each assigned case. Each mediator provides mediation services, state-wide. Effective mediators resolve disputes by persuading the parties to alter their positions sufficiently to permit agreement, but there are different styles of mediation and different skill sets that come into play in various situations. The acceptability of the mediator to both sides in a given case is essential as mediators have no authority to force parties to make any concession or to agree to any proposal. State mediators also provide in interest mediation pursuant to the Agricultural Marketing and Bargaining Law, 13 M.R.S.A. § 1953, et seq. (2005 and Supp. 2009), and may participate in helping resolve private sector collective bargaining disputes. 26 M.R.S.A. § 891 (2007).

The number of new interest mediation requests received this fiscal year increased from the total for the preceding two years; there were 69 new requests compared with 54 in FY 2011 and 64 in FY 2010. During the last fifteen years, the number of new interest mediation filings per year ranged from the low of 39 in FY 2009 to a high of 73 filings in FY 2000. The numerical average number of mediation requests received per year over the last 15 years (including this year) is 59 new filings per year. In addition to the new mediation requests received during the fiscal year just ended, there were 37 matters carried over from FY 2011

that required mediation activity during the year. Last year, 36 matters were carried over from FY 2010. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 106, up from 90 during the previous fiscal year.

The higher level of new mediation requests this year resulted from more agreements expiring this year than in the previous year. As noted in last year's report, a common strategy early on in the economic downturn was the agreement to one-year contract extensions in the hope that conditions would be more favorable a year later. Two years ago, faced with continued uncertainty in the national economy and scarce resources, parties returned to the practice of negotiating multi-year agreements to provide predictability in the terms and conditions of employment, resulting in more agreements expiring this year. The reduction in the number of mediation days per case this year reflects the changed attitudes in negotiations; the parties were either able to settle their differences or recognize that settlement would not be possible and moved the matter on to fact-finding within a shorter period of time.

Mediation is recorded as a single request, even when it involves multiple bargaining units of a single employer. For example, one filing this year was for 4 units; 3 units were involved in each of four other filings. In total, 118 bargaining units were involved in mediation this year.

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

| Fiscal Year | Settlement Rate |
|-------------|-----------------|
| 1998 | 82.3% |
| 1999 | 73.91% |
| 2000 | 80.7% |
| 2001 | 85.94% |

| | |
|------|-------|
| 2002 | 76% |
| 2003 | 83.1% |
| 2004 | 86.8% |
| 2005 | 88.5% |
| 2006 | 77.8% |
| 2007 | 84.9% |
| 2008 | 87.5% |
| 2009 | 72.1% |
| 2010 | 82.0% |
| 2011 | 72.6% |
| 2012 | 63.8% |

In the municipal sector, austerity measures implemented in recent years coupled with some improvement in the economic outlook resulted in the negotiation of very modest general wage increases in agreements reached this year. In an effort to lessen employer health insurance premium costs, several municipal employers have proposed shifting employee health coverage to a plan with high deductibles, supplemented by health reimbursement accounts. This innovation has been incorporated into some agreements reached this year. In the K-12 sector, the thorniest issues involved negotiations aimed at harmonizing the pay scales and other terms and conditions of employment for the new regional school unit-wide bargaining units, starting from the disparate provisions of the collective bargaining agreements that applied to the constituent school administrative units. Job security provisions, including issues relating to sub-contracting and reductions in force, were at issue in several mediations in this sector.

The Panel did not receive a request for services this year pursuant to the Agricultural Marketing and Bargaining Law. These cases involve disputes between the Agricultural

Bargaining Council and McCain Foods U.S.A., involving approximately one-half of the Maine potato crop. The parties were able to reach agreement without mediation.

Several years ago, members of the Panel of Mediators received instruction by the U.S. Department of Labor in interest-based bargaining techniques. Starting in FY 1996, State mediators have offered non-confrontational bargaining services to the public sector labor-management community upon the joint request of the parties. In the 65 instances where this problem-solving "preventive mediation" approach has been used, 63 settlements resulted (96.9% settlement rate). This year, we received one request for preventive mediation services; the case settled with one day of mediation.

Since both new filings and cases carried over from prior years contributed to the actual workload 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. In calculating the settlement rate, only those matters where the mediator was actively involved in the settlement are considered as having been successful. 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 15 years, is as follows:

| Fiscal Year | New Cases Referred | Cases Referred Under State, University and | Cases Referred Under Municipal Act, inc. County and Turnpike Authority | Agricultural Marketing Act |
|-------------|--------------------|--|--|----------------------------|
|-------------|--------------------|--|--|----------------------------|

| | | Judicial Acts | Referrals | |
|------|----|---------------|-----------|---|
| 1998 | 68 | 2 | 66 | 0 |
| 1999 | 69 | 3 | 66 | 0 |
| 2000 | 73 | 6 | 67 | 0 |
| 2001 | 61 | 6 | 55 | 0 |
| 2002 | 54 | 3 | 50 | 1 |
| 2003 | 64 | 8 | 55 | 1 |
| 2004 | 65 | 2 | 63 | 0 |
| 2005 | 55 | 1 | 54 | 0 |
| 2006 | 58 | 4 | 53 | 1 |
| 2007 | 47 | 4 | 43 | 0 |
| 2008 | 40 | 2 | 38 | 0 |
| 2009 | 39 | 2 | 37 | 0 |
| 2010 | 64 | 3 | 60 | 1 |
| 2011 | 54 | 0 | 53 | 1 |
| 2012 | 69 | 7 | 62 | 0 |

The requests for services received in the last three years involved the following employee organizations:

| | | <u>2012</u> | <u>2011</u> | <u>2010</u> |
|--|----|-------------|-------------|-------------|
| Teamsters Union Local 340 | 25 | 11 | 18 | |
| Maine Education Association/NEA ¹ | 24 | 23 | 28 | |
| Maine State Employees Association | 12 | 3 | 11 | |
| Maine Association of Police | 7 | 2 | 2 | |
| AFSCME Council 93 | 6 | 8 | 9 | |
| | | <u>2012</u> | <u>2011</u> | <u>2010</u> |
| Fraternal Order of Police | | 2 | 0 | 0 |
| International Association of Fire Fighters | 2 | 8 | 9 | |
| American Federation of Teachers | | 1 | 0 | 0 |

¹While reference is made to the Maine Education Association, the Maine Association of Police or International Association of Fire Fighters for the sake of simplicity, the various activities described were undertaken by local associations which are affiliated with each of the larger state-wide or national employee organizations.

Overall, the demand for public sector mediation services increased by 27.8% this year. Requests in the municipal sector, including counties and utility districts increased by 30%; those arising from K-12 education increased by only 9.1%. Anecdotal evidence from the mediators indicates that several school employers and bargaining agents delayed beginning negotiations this year due to uncertainties regarding the amount each district would be receiving in State general purpose aid to education, resulting in fewer bargaining cases becoming ripe for mediation until late in the fiscal year. The reduction in the number of bargaining units, due to the K-12 reorganization initiatives, may also have contributed to the smaller increase of mediation requests in that sector.

The average number of mediation days per case declined from 3.38 in FY 2011 to 2.38 for the combined total of 64 matters, including carryovers, for which mediation was concluded. One case was concluded in 15 mediation days, another required 8 days, and a third required 7 days. Of the 64 cases in which mediation was concluded this year, 77.6% were resolved in 3 days or less (24 cases were resolved in one day, 12 were resolved in two days and 9 were resolved in three days).

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

| Fiscal Year | Mediation-Days Expenditure Per Case |
|-------------|--|
| 1998 | 2.84 |
| 1999 | 3.46 |
| 2000 | 4.19 |
| 2001 | 3.89 |
| 2002 | 3.86 |
| 2003 | 3.46 |
| 2004 | 4.16 |

| | |
|------|------|
| 2005 | 3.89 |
| 2006 | 3.01 |
| 2007 | 5.42 |
| 2008 | 2.65 |
| 2009 | 2.74 |
| 2010 | 4.07 |
| 2011 | 3.38 |
| 2012 | 2.38 |

Of the mediations, including carryovers, that were concluded in FY 2012, 17.2% 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 in the following chart:

| Fiscal Year | Percentage of Cases Proceeding to Fact Finding* |
|-------------|---|
| 1998 | 14.71% |
| 1999 | 30.43% |
| 2000 | 14.04% |
| 2001 | 9.375% |
| 2002 | 20% |
| 2003 | 13.8% (38.5%) |
| 2004 | 8.8% (19.11%) |
| 2005 | 5.8 (25%) |
| 2006 | 13.9% (20.8%) |
| 2007 | 12% (26%) |
| 2008 | 7.5% (17.5%) |
| 2009 | 7.7% (16.3%) |

| | |
|------|---------------|
| 2010 | 9.75% (21.9%) |
| 2011 | 12.9% (19.4%) |
| 2012 | 17.2% (35.9%) |

*Prior to FY 2003, all post-mediation fact-finding requests were included, whether later dismissed, withdrawn or settled prior to hearing. This was somewhat inaccurate because the mediator continues to work with the parties after the fact-finding request has been filed and, in many instances, settlement is achieved in mediation before the fact-finding proceeding is ever held. We have included the former calculation in parentheses in the chart for comparison purposes with prior years.

Assuming the average of 2.38 mediation days per case, the 49 matters still pending will consume an additional 117 mediation days, for a total expenditure of approximately 270 mediation days devoted to matters docketed in or carried over to FY 2012.

Despite their good faith, parties can, and often do, disagree over the meaning and intent of collective bargaining agreement provisions they have negotiated. The resulting disputes are resolved through the contractual grievance procedure, which usually culminates in final, binding arbitration. In 2001, the Legislature amended 26 M.R.S.A. § 965(2)(F) (2007 & Supp. 2011) to permit members of the Panel to assist parties in resolving grievance disputes, if the parties had so agreed. Parties are invariably more satisfied with results they have negotiated than with those imposed by a third party. One request for grievance mediation services was received this year. The mediator met with the parties and was unable to mediate a settlement. At the request of the parties, the mediator issued a report, resolving the dispute. The use of grievance mediation is a positive development in public sector collective bargaining, helping parties to resolve grievances expeditiously and avoiding the expense and delay inherent in arbitration.

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

| | |
|-----------------------------------|-----------|
| John Alfano ¹ | Biddeford |
| J. Donald Belleville ¹ | Lewiston |

| | |
|----------------------------------|---------------------|
| David Bustin ¹ | Hallowell |
| Maria Fox ² | Portland |
| Jane Gilbert | Augusta |
| Denis Jean ¹ | Lewiston |
| Robert L. Lyman ² | Freeport |
| James Mackie | South Portland |
| Sheila Mayberry | Cape Elizabeth |
| Charles A. Morrison ¹ | Auburn |
| John M. Norris | Carrabassett Valley |
| Melissa Shattuck ³ | Falmouth |
| Don Ziegenbein ² | Bangor |

¹Appointed/Reappointed August 18, 2011 (Jean replaced Mayberry and Belleville replaced Mackie).

²Reappointed November 10, 2011.

³Appointed February 2, 2012 (replacing Norris).

Mediation continues to be the cornerstone of public sector collective bargaining in Maine. Practitioners in the 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 29th day of June 2012.

Respectfully submitted,

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