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# Annual Report Maine Labor Relations Board Fiscal year, 1994

Maine Labor Relations Board

# ANNUAL REPORT

# MAINE LABOR RELATIONS BOARD

## Fiscal Year 1994

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



## Introduction

During the past year, the Maine Labor Relations Board had requests for services from most segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, there were substantial fluctuations in the Board's activities compared to the previous year. While there was a continued increase in the number of prohibited practice complaints filed, there was also an increase in representation activity this year. Continuing a 4-year trend, again there was a decrease in the number of agreements on new bargaining units filed. In the dispute resolution area, the number of mediation requests received remained essentially unchanged from the high level witnessed last year; however there were moderate increases in both the number of fact-finding requests received and the number of fact-finding hearings conducted. Overall, the work load of the Board was heavier than that in FY 1993.

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 a primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that did not involve matters over which the Board has jurisdiction, the staff continued its policy of providing some orientation for the inquirer and suggesting other agencies or organizations that might be of help.

The Public Member and Chair, Peter T. Dawson of Hallowell, and Alternate Public Members Pamela D. Chute of Brewer and Kathy M. Hooke of Bethel continued to serve in their respective capacities. On January 7, 1994, Governor McKernan nominated George W. Lambertson of Readfield, Wayne W. Whitney of Brunswick, and Gwendolyn Gatcomb of Winthrop for reappointment as the Employee Representative, Alternate Employee Representative and Second Alternate Employee Representative, respectively. The confirmation hearing was held on February 8, 1994, and all three nominations were confirmed by the Senate on February 10, 1994. The other members of the Board continue

to be Employer Representative Howard Reiche, Jr., of Falmouth, Alternate Employer Representative Eben B. Marsh of Denmark, and Second Alternate Employer Representative Jim A. McGregor of Coopers Mills.

Legislative Matters

The Board did not submit any legislation during the Second Session of the 116th Legislature. No other bills affecting the collective bargaining statutes were introduced in this legislative session.

Two measures were enacted this session which may have an impact on the collective bargaining rights of particular groups of employees who are within the Board's jurisdiction. Private and Special Laws 1994, ch. 10 established a committee to develop retirement alternatives for state employees and teachers. At a minimum, the plan must offer alternatives to participation in the current Maine State Retirement System program for anyone who did not have 10 years of service on July 1, 1994. Public Laws 1994, ch. 744 requires law enforcement officers to complete a probationary period of at least one year after graduation from the police academy or receipt of waiver of the training requirement.

Bargaining Unit and Election Matters

During fiscal year 1994, the Board received 17 voluntary or joint filings for the establishment of or change in collective bargaining units under its jurisdiction. There were 22 filings in FY 93, 28 in FY 92, 41 in FY 91, 53 in FY 90, and 31 in FY 89. Of the 17 FY 94 filings, 8 were for units within educational institutions, 7 within municipal or county government, and 2 concerned State employees.

Sixteen (16) unit determination or clarification petitions (filed when there is no agreement on the composition of the bargaining unit) were filed in FY 94; 14 were for determinations, and 2 were for clarifications. Two of the new unit filings actually went to hearing and decision, agreements were reached in 5 cases, 2 were withdrawn, the unit was deemed appropriate in 1 case (the required answer was not filed), and 4 are pending. There were 12 unit filings in FY 93, 15 in FY 92, 59 in FY 91 (35 concerning State employees), 36 in FY 90, and 21 in FY 89.

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 94 there were 6 voluntary recognitions filed. Fourteen (14) election requests were filed in FY 94; 5 elections were actually held and 3 matters are pending. In FY 93, there were 6 voluntary recognitions filed, 12 election requests received, and 20 elections held.

In addition to representation election requests, the Board received 5 requests for decertification/certification, which involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. All five requests resulted in elections being held.

The Board received 2 straight decertification petitions in FY 94. No new union is involved in these petitions; rather the petitioner is simply attempting to remove the incumbent agent. One election was held and the second election will be held once school resumes in the fall.

There was 1 election matter carried over from FY 93. Consequently, there were 22 such matters requiring attention during the fiscal year; this compares with 20 in FY 93, 21 in FY 92, 44 in FY 91, 61 in FY 90, and 35 in FY 89.

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.

New mediation requests received during the fiscal year remained steady at the high 1993 level. There were 114 new requests filed this year compared with 115 in 1993, 94 in FY 92, 89 in FY 91, and 115 in FY 90. In addition to the new mediation requests received during the fiscal year just ended, there were 37 matters carried over from FY 93 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 151, compared to

141 in the previous fiscal year. The activity in both years is continuing evidence of the sustained level of interest in the mediation process shown by the public sector labor relations community. As recorded in the annual reports for the past few years, it is also a continuing measure of that community's confidence not only in the process of mediation, but in the competence and expertise represented by the membership of the Panel as a whole.

The Panel's competence and expertise is reflected in the 75.2 percent settlement rate achieved for matters resolved through mediation efforts during this fiscal year, including carryovers from FY 93. 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 report settlement figures that represent all matters in which mediation activity has been completed during the reporting period.

Fact finding is the second step in the three-step statutory dispute resolution process. In fiscal year 1994 there were 26 fact-finding requests filed. The 26 requests represent an increase of 8 percent over the last year. Nine (9) petitions were withdrawn or otherwise settled, 14 requests went to hearing, 10 petitions are pending hearing, and the parties waived fact finding in one case and proceeded directly to interest arbitration. Last year 12 fact-finding hearings were held. The increase in the number of fact-finding hearings conducted may reflect the increased difficulty the parties have encountered in attempting to negotiate collective bargaining agreements when faced with escalating medical insurance premiums and uncertain levels of State funding.

The high volume of mediation and fact-finding activity during the last two years may be a consequence of the fact that most parties were opting for agreements of shorter duration during the downturn in the regional economy of the last three years. Such one-year agreements were often motivated by the hope that more favorable conditions would prevail the following year. As a result, many more agreements expired last year and this year than would normally be expected. The rebound in the economy this year has encouraged parties and several multi-year agreements have been concluded in the last 6 months.

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 only as to non-monetary issues. Issues involving salaries, pensions and insurance are subject to interest arbitration, but an award on these issues is advisory only. In recent years the Board has received few interest arbitration requests, and in FY 94 it received only 1. There were no interest arbitration requests received in the last three years. Although the public statutes require that such arbitration awards be filed with the Board, usually they are not so filed. This year, two interest arbitration reports were received. While it is assumed that these were the only interest arbitration awards issued in the public sector during the year, it may be that parties simply failed to provide proper notification to the Board.

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. Forty-five (45) complaints were filed in FY 94; this represents an 18 percent increase over FY 93, and it represents a significant increase over the number of filings in the past six years. During that time, complaints filed have fluctuated from a low of 19 to a high of 38, with the average being 29. This increase in the number of complaints filed, following dramatic increases in each of the last two years, indicates the difficulties that parties are encountering in reaching negotiated settlements. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 45 complaints filed in FY 94, there were 23 carryovers from FY 93, compared with 38 complaints and 19 carryovers last year. The Board conducted 15 hearings during the year, compared with 10 in FY 93, and Board members sitting as a single prehearing officer held prehearing conferences in 21 cases, compared with 22 in FY 93. The decrease in the number of prehearing conferences, within a context of overall increase in prohibited practice complaint activity, may be due to an initiative begun this year at the suggestion of Chair Dawson in which parties are requested to file prehearing conference submissions and, by agreement, may waive prehearing conference. In 12 matters, the Board issued formal Decisions and Orders. Three cases are in the process of finalizing stipulations or are in the middle of briefing schedules before Board deliberations can occur. The relatively high number of cases submitted on a stipulated record and through written argument is, in part, a result of the continuation of an initiative introduced

two years ago. In appropriate cases, the services of a member of the legal staff have been offered to assist the parties to reach factual stipulations and/or to mediate the dispute. One matter has been deferred pending the resolution of related grievance arbitration proceedings. Four cases have been continued indefinitely at the request of one or both parties and one case has seen no action by the parties for over a year and a half. Such continuances or inactivity usually indicate that the parties are attempting to resolve their differences; however, complaints were filed to preserve the complainants' rights, given the Board's relatively short statute of limitations. Four complaints await hearing and 2 cases await prehearing. Thirty-five (35) complaints were dismissed or withdrawn at the request of the parties; such requests generally occur when the complaint is related to contract bargaining and after the parties reach agreement on and ratify the contract. Three cases were dismissed by the executive director, including two which were dismissed pursuant to Rule 7.05 (stale proceedings). One dismissal was appealed to the Board; the case was returned to the Board's docket by the executive director, without opposition by the respondent party.

Appeals

One unit clarification by a Board hearing examiner was appealed to the Board and is currently pending. The Board participated in only one case decided by the Supreme Judicial Court this year. On the grounds that the appeal in the Superior Court had been untimely filed, the Law Court vacated an order which had held that the Board could not change its status quo rule concerning the payment of wages after expiration of a collective bargaining agreement.

Six Board decisions were appealed in the Superior Court. In the first case, the Court affirmed the Board's holding that a public employer may lawfully implement its "last, best offer" on the remaining subjects in dispute after exhaustion of the statutory dispute resolution procedures and the passage of a reasonable time thereafter. The second case concerned the failure of the State to make any effort to fill "essential" classifications through seniority, during the 1992 shutdown of State government. The Court reversed the Board's conclusion that such failure had constituted unlawful interference, restraint or coercion with the employees' rights under the labor relations law.

In the third case, the Board held that a change in the amount of the unit employees' insurance premium co-payment, which resulted from an action which the employer could lawfully implement unilaterally, constituted mandatorily negotiable impact. The employer's failure to negotiate on the impact of the permitted action, therefore, violated the statutory duty to bargain in good faith. The Court reversed the Board's decision, reasoning that, if the unilateral action itself was not mandatorily negotiable, neither was any impact flowing therefrom. The Court remanded the case to the Board for further action consistent with the Court's decision. The Court opinion in the fourth case held, on policy grounds, that the Board could not change its status quo rule regarding post-contract expiration wage levels. Appeals to the Law Court are pending in all of the preceding cases.

In the fifth case, the Superior Court affirmed the Board's holding that a public employer's failure to honor the parties' negotiated grievance procedure constituted a violation of the statutory duty to bargain. The final case is now pending in Superior Court. The Board's conclusion that the University of Maine System violated the duty to bargain by unilaterally changing its well-established practices regarding payment to faculty for teaching summer courses is at issue.

Summary

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

| | FY 1989 | FY 1990 | FY 1991 | FY 1992 | FY 1993 | FY 1994 |
|---|---|---|---|---|---|---|
| Unit Determination/ Clarification Requests | | +42% | +72% | -75% | -20% | +33% |
| Number filed--- | 21 | 36 | 59 | 15 | 12 | 16 |
| Agreements on Bargaining Unit (MLRB Form #1) | | +71% | -23% | -32% | -21% | -23% |
| Number filed--- | 31 | 53 | 41 | 28 | 22 | 17 |
| Voluntary Recognitions (MLRB Form #3) | | -7.7% | -42% | +43% | -40% | ---- |
| Number filed--- | 13 | 12 | 7 | 10 | 6 | 6 |
| Bargaining Agent Election Requests | | +156% | -43% | -38% | -25% | +17% |
| Number filed--- | 18 | 46 | 26 | 16 | 12 | 14 |
| Decertification Election Requests | | -43% | -25% | -33% | -50% | ---- |
| Number filed--- | 14 | 8 | 6 | 4 | 2 | 2 |
| Mediation Requests | | +7.5% | -23% | +5.6% | +22% | -.9% |
| Number filed--- | 107 | 115 | 89 | 94 | 115 | 114 |
| Fact-Finding Requests | | -45% | +70% | -41% | +20% | +8% |
| Number filed--- | 29 | 20 | 34 | 20 | 24 | 26 |
| Prohibited Practice Complaints | | -21% | +47% | +25% | +9% | +18% |
| Number filed--- | 24 | 19 | 28 | 35 | 38 | 45 |

As the above table indicates, the demand for the Board's services increased during the fiscal year. Continued organizational activity and a low level in the number of decertification petitions filed may indicate that demand for all of the Board's services will continue to increase in the future. As the number of organized employees grows nearer to the total pool of those eligible, the number of new units created each year will decline. This development will not necessarily lead to a decrease in the Board's overall activity level because the larger number of units generate 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 94, public sector labor-management relations in Maine continued to exhibit the maturity that has been evident over the past few years. Parties have increasingly relied on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of labor relations is evidenced by the strong demand for mediation services and the willingness of parties to settle prohibited practice cases. In sum, the Board's dispute resolution services successfully fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 30th day of June, 1994.

Respectfully submitted,

Marc P. Ayotte
Executive Director
Maine Labor Relations Board