Maine Labor Relations Board Annual Report, Fiscal Year 1982

Maine Labor Relations Board

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The following report is submitted herewith pursuant to Section 968, paragraph 7, and Section 979-J, of Title 26, Maine Revised Statutes.

While an overview of the labor relations activity in the State's public sector during the last year might suggest that little has changed from prior reporting periods, the intensity of the bargaining process at both the State and municipal levels has increased dramatically over prior years. While five of the seven contracts for State employee bargaining units remained unsettled as of July 1, 1981, negotiators for the State and the Maine State Employees Association were able to arrive at comprehensive collective bargaining agreements for those five bargaining units subsequent to fact finding in the spring of 1982. These settlements were accomplished with the assistance of mediation offered jointly through the Federal Mediation and Conciliation Service and the State's Panel of Mediators, the latter being administered through the Maine Labor Relations Board.

Since this annual report marks the tenth anniversary of the Maine Labor Relations Board, including its predecessor, the Public Employees Labor Relations Board, as an agency, several changes in functions and accomplishments warrant comment. Most conspicuous is the fact that the Maine Labor Relations Board administers labor relations laws which cover virtually all segments of the public sector in the State of Maine. This is a dramatic change in the agency's responsibilities from the time it was first charged with administering the Public Employees Labor Relations Act which covered only the municipal sector. Second, the additional responsibility of administering the State's Panel of Mediators has resulted in two significant contributions. First, the frequency with which the Panel of Mediators is used to settle disputes has increased dramatically since 1974. Second, the settlement rate for mediation cases has been above 65 percent in two of the last four years. This indicates not only
that the parties are becoming skilled in using the mediation process but also that the caliber and skills of the mediators has increased at a pace equal to or exceeding the sophistication of the skills of the parties. Finally, administration of the ministerial functions of the Maine Board of Arbitration and Conciliation through the offices of the Maine Labor Relations Board has contributed to a greater acceptance of the use of that board as a dispute resolution mechanism in the public sector.

Further, the success with mediation has produced two positive collateral results. Specifically, there have been no strikes, work stoppages or disruptions in the Maine public sector during the past year. Moreover, the success with mediation caused a dramatic decrease (by 38 percent) in the number of fact finding requests filed. Thus, while fewer fact finders were involved during the last year, the fact finding procedure, as a process, involved the most complicated and lengthy case to date relative to the findings and recommendations concerning the proposed contract settlement for the five bargaining units involving more than 10,000 State employees.

The current primary and alternate members of the Maine Labor Relations Board are as follows:

Chairman
Edward H. Keith

Alternate Chairman
Donald W. Webber
Gary F. Thorne

Employee Representative
Harold S. Noddin

Employer Representative
Don R. Ziegenbein

Alt. Employee Representatives
Russell A. Webb

Alt. Employer Representatives
Kenneth T. Winters
Thacher E. Turner

The past year was the first one in which the Maine Labor Relations Board was actively involved with the administration of a labor relations statute at the county level. Collective bargaining for county employees became a reality with the enactment of Chapter 137 of the Public Laws of 1981. As of the preparation of this report, none of the counties has concluded negotiations
for a collective bargaining agreement. Of the 16 counties, 11 of them have either elected or named certified bargaining agents.

As will be reported in further detail elsewhere in this report, both bargaining agent election requests and decertification election requests increased by 10 percent during the past year. The extent of collective bargaining rights to county employees is responsible for part of the increase in the certification election process. The increase in decertification election petitions may be attributed to a sufficiently long relationship with a given union or bargaining agent to result in dissatisfaction or for the "novelty" of that particular bargaining agent to have disappeared. Decertification election requests appear to be cyclical, increasing in three of the past five years and decreasing in two of the past five years. Fiscal years 81 and 82 along with fiscal years 76 and 77 marked the only two instances in the last seven years where there have been increases in decertification requests for two consecutive years.

During the past year, the Board has continued its policy of providing information to persons and organizations covered by the various acts it administers, to persons or agencies which are charged with certain responsibilities under one or more of those acts, and to practitioners who practice within the framework of any of the acts. In accordance with this policy, the Executive Director, both Attorney/Examiners, and the Dispute Resolution Specialist have made appearances before various organizations or groups which have sought additional information about the operations of the various labor relations acts administered by the Board and about public sector labor relations in general. In particular, the Executive Director and both Attorney/Examiners participated at the Conference on Collective Bargaining Involving County Employees sponsored by the New England Consortium of State Labor Relations Agencies with the cooperation of the Maine Labor Relations Board at the Maine Maritime Academy in Castine. The Executive Director, both Attorney/Examiners and the Dispute Resolution Specialist all attended a conference involving collective bargaining in public sector education at the Massachusetts Institute of Technology on April 17, 1982. Two of those individuals delivered presentations at that conference.

In addition, one of the Attorney/Examiners taught an introductory course in labor relations for two semesters at Central Maine Vocational Technical
Institute and delivered an address to the annual convention of the Maine County Commissioners Association. The other Attorney/Examiner was a speaker at the winter meeting of the Maine Bar Association on Labor Law Developments in the Public and Private Sectors. He also participated, along with the Executive Director, as one of several seminar leaders at the annual conference of the Maine School Management Association in October of 1981. The Dispute Resolution Specialist and one Attorney/Examiner were extensively involved in programs of the New England Consortium of State Labor Relations Agencies. In particular, that Attorney/Examiner spoke on "Specialized Legal Issues" before a meeting sponsored by the New England Consortium and at its Dispute Resolution Workshop at the New England Center in Durham, New Hampshire in November of 1981. It should be noted that the Dispute Resolution Specialist was project manager for the Dispute Resolution Workshop conducted at the New England Center in Durham, New Hampshire in cooperation with and under the auspices of the New England Consortium of State Labor Relations Agencies. This program was considered extremely successful and attracted participants from all New England states as well as New York and New Jersey.

The Executive Director maintained an active affiliation with the Committee on Public Sector Collective Bargaining of the Labor Law Section of the American Bar Association. He continues as one of the few public members of that committee and attended their annual meeting in February. He also serves as co-chairman of the Maine Bar Association's Labor Law Section and, in conjunction with these responsibilities, assisted in planning for and making presentations at the Maine Bar Association's annual winter meeting held in Portland last January.

On the national scene, the Maine Labor Relations Board maintained contact with counterpart agencies both within and outside New England as well as with organizations which serve labor relations agencies. In particular, the agency continued its affiliation with the Association of Labor Relations Agencies which plays an important role with respect to member agencies such as the Maine Labor Relations Board. The Association of Labor Relations Agencies (ALRA) serves as a coordinator between a composite of labor relations and mediation agencies from the Federal sector, various states or subdivisions, and the national and provincial governments of the United States and Canada, respectively. During the past year, Public Employment Relations Services, funded through the Carnegie Foundation, merged with ALRA which then changed its national offices from Albany, New York, to Rutgers University in New Brunswick, New Jersey.
Both the Executive Director and the Board's Dispute Resolution Specialist attended the annual meeting of ALRA last year.

In addition to this activity, the Executive Director has maintained charter membership in the Society of Professionals in Dispute Resolution (SPIDR) and is a member of the Industrial Relations Research Association. He attended the regional meeting of that association in Boston last spring and also participated in the annual meeting of the American Arbitration Association's New England Advisory Council last December.

In furtherance of the foregoing objectives of keeping parties, practitioners, organizations, and students informed about public sector labor relations, the Executive Director, during the past fiscal year, delivered a number of addresses on different topics involving public sector labor relations. These included addresses delivered to the participants at the MIT Conference on Public Sector Collective Bargaining and to the fall meeting of the Maine Teachers Association negotiators at the University of Maine in Orono. In addition, the Executive Director spoke to undergraduate and graduate students in labor relations at the University of Maine in Orono, the Maine Criminal Justice Academy, and Nasson College in Springvale, Maine. He also assisted in departmental training for the Maine Department of Human Services. Lastly, he delivered an address to an American Arbitration Association seminar in Portland, Maine.

As noted above and in the annual report for fiscal year 1981, Public Employment Relations Services has merged into and become a part of the Association of Labor Relations Agencies. Both of those agencies provided great insight and assistance in the formation of the New England Consortium of State Labor Relations Agencies. As noted earlier, the New England Consortium sponsored a number of programs during the past year which have been instrumental in exploring the more complicated areas of public sector labor relations. The continued participation of this agency as a member of the New England Consortium is essential in order that such programs might continue and that the genesis of such programs shall continue to be from a neutral standpoint, rather than being denominated as tainted with the influence of either labor or management. It should be noted that two programs of the New England Consortium of State Labor Relations Agencies have been conducted in the State of Maine during the past year, namely the County Bargaining Conference at Maine Maritime Academy in September of 1981 and the Specialized Legal Issues seminar conducted at
the Breckinridge Public Affairs Center of Bowdoin College in York, Maine in October of 1981.

The Consortium conducted an extensive two-day conference on fact finding at the New England Center in Durham, New Hampshire in November of 1981. While all three of these New England Consortium sponsored conferences are to be considered successful, one cannot underestimate the importance of the fact finding conference which, because of its structure and subject matter, offered an excellent vehicle for the training of persons who are (or are to be) participants in the fact finding process. Such training is particularly beneficial for this agency in determining the levels of interest, skill, and participation both of advocates, as selected by the parties, and members of fact finding panels as designated by this agency.

The fourth program of the New England Consortium during the past fiscal year involved collective bargaining in public sector education. This was held at the Massachusetts Institute of Technology in April of 1982. All members of the professional staff of the Board participated in that program either as presenters or conferees. The subject matter of these four programs has been set forth in this report so that readers might be aware of the topics addressed and the very essential nature of the programs themselves. Since a large portion of the activities of the New England Consortium of State Labor Relations Agencies was, in its formulative years, underwritten through grants from the Intergovernmental Personnel Act, member agencies of that organization are now doubtful that continued funding will be available from that source. This fact notwithstanding, the member agencies, including the Maine Labor Relations Board, are optimistic that such training will be continued through the limited support of the member agencies in order that the skills of the professional staff members of those agencies may be maintained and increased. In addition, the interstate cooperation which exists among the members of the New England Consortium of State Labor Relations Agencies has been instrumental in permitting staff members from one agency to interact with staff members of other agencies and to exchange vital information on an expedited basis. The proverbial "bottom line" of the New England Consortium has been to facilitate and improve the functioning of the individual labor relations agencies which are its members.

The remainder of this report is devoted to statistics generated through the public sector functions of the Maine Labor Relations Board. During fiscal
year 1982 (the tenth year of its operations) the Maine Labor Relations Board received and accepted thirty-four (34) voluntary agreements on the establishment of, or accretion to, collective bargaining units throughout the public sector jurisdiction of the Board. This is the highest figure for voluntary unit agreements since the inception of the Board and is primarily due to the organizational activity generated in the county sector. Collective bargaining for county employees became effective pursuant to Chapter 137 P. L. 1981 on September 18, 1981. On the effective date of this statute, the Board received representation petitions with respect to employees in seven of the counties in the state. Voluntary agreements on the composition and scope of bargaining units were filed during the year covering employees in a total of eight counties.

Voluntary agreements as to bargaining units involved the communities and public entities (including counties) of:

- Alexander
- Bethel
- Calais
- Castine
- Cumberland Center
- Fairfield
- Greenville
- Kennebunk
- Limestone
- Lincoln
- Portland
- Scarborough
- Vanceboro
- Westbrook
- York
- State of Maine
- Hartland Water Pollution Cont. Fac.
- Androscoggin County
- Aroostook County
- Kennebec County
- Penobscot County
- Sagadahoc County
- Waldo County
- Washington County
- York County

Where parties could not agree on the scope or composition of the bargaining unit, they filed for unit determination or unit clarification proceedings. Forty-three (43) such petitions were filed as of the time statistics were compiled for this report in the first part of June 1982. This figure is down from the record number of filings in FY 1980, but is 50 percent greater than the twenty-eight (28) filings in FY 1981. The dramatic increase in representational filing, as indicated previously, is in substantial measure due to the organizational activity in the newly authorized county sector. In addition to the new filings, five (5) unit matters were carried over from the prior year for a total of forty-seven (47) unit matters which were pending before the Board during the past
fiscal year.

In FY 1982 the Board received the first representational petition on behalf of employees of the Maine Maritime Academy, although the Academy has been included in the definition of employer under the University of Maine Labor Relations Act since that Act was first enacted in 1976. The results of that organizational effort are discussed later in this report.

Three of the petitions pending from prior fiscal years involved requests by the State to remove a number of positions from three of the State bargaining units as confidential positions. The State filed unit clarification petitions with respect to positions in the Administrative Services, Professional & Technical Services, and Supervisory Services bargaining units. Although the State petitions originally sought to exempt approximately 240 individual positions as confidential, prior to the hearings this number was whittled down to about 160 positions. Hearings began in June 1980 and consumed more than 25 hearing days. A hearing officer’s report was issued in December 1981 and many of the positions have been appealed to the full Board. As stated in the Annual Report for FY 1981, in the future we would encourage less comprehensive petitions (even if it requires more of them) in order that the decision on some job categories at least might be expedited.

Unit determinations or clarifications during FY 1982 involved the following communities and entities:

- Alexander
- Augusta
- Bangor
- Bath
- Calais
- Caribou
- Hallowell
- Kennebunk
- Portland
- Sabattus
- Saco Valley
- South Berwick
- Topsham
- Wells
- Westbrook
- Winthrop
- Yarmouth

Boothbay Harbor Water System
Greater Portland Transit District
Hartland Water Pollution Control Facility
Kennebec Water District
Maine Maritime Academy
State of Maine (3 units)
Rockland Waste Water Treatment Facility
University of Maine
Washington Academy
Androscoggin County  
Aroostook County  
Cumberland County  
Kennebec County  
Knox County  
Lincoln County  
Penobscot County  
Sagadahoc County  
Somerset County  
Waldo County  
Washington County  
York County

Once the bargaining unit is set, whether by agreement or after hearing, the process for determining whether the employees desire representation and who the representative will be takes place. During fiscal year 1982 there were seven instances in which the public employer voluntarily recognized a bargaining agent without the necessity for a representation election. In FY 1981, there were 16 voluntary recognitions. The decrease from 16 to seven is explained, in part, by the large number of county units which came in line as reflected on the figures in unit filings; it is apparent from the unit figures that county employer representatives were willing to come to agreement on unit questions (due in large part to the Board supported conference on county bargaining) but were intent on leaving the question of bargaining agent selection to the employees themselves through the election process.

Public employers who voluntarily recognized employee organizations as the bargaining representative for employees in the unit involved the communities of:

- Castine
- Cumberland Center
- Fairfield
- Greenville
- Scarboro
- Vanceboro
- Westbrook

Where the parties do not agree and there is no voluntary recognition by the public employer, the Executive Director conducts an election to determine the desires of employees in the unit concerning the question of representation. Forty-five (45) requests for elections were received in fiscal 1982, compared with forty (40) in fiscal 1981 and fifty-six (56) in fiscal 1980. These figures compare with twenty-two (22) requests received in fiscal 1977. The number of new requests received in fiscal 1982 was second only to the unusually high numbers received in FY 1980. There were four (4) holdover requests from the previous year which had to be processed in fiscal 1982 for a total of forty-nine (49) election matters requiring attention in the past fiscal year. Among elections conducted by Board personnel resulting from these petitions were nineteen (19)
separate elections for the units of county employees which had been established either by agreement or by hearing examiner decision. One county election involved a contest between two competing employee organizations; in all other cases the election involved a single petitioner.

In addition to the county unit elections, all of which were "on-site," the Board conducted an election among the employees of the Classified Bargaining Unit at the Maine Maritime Academy. This was the first petition for representation of Academy employees received by the Board since the enactment of the University statute in 1976. This, too, was an "on-site" election at which approximately 66 Academy employees cast ballots. No bargaining agent was elected.

In addition to the 49 election requests received by the Board in FY 1982, the Board received nine (9) requests for decertification/certification which involved challenges by a petitioning organization to unseat the incumbent organization as bargaining agent for the employees in the unit. One of these petitions was a second effort by a labor organization seeking to replace the certified representative for one of the major state employee units— the Operations and Maintenance Services unit. A similar attempt was made at the end of the prior fiscal year. In each case the petitioner failed to support the petition with a showing of interest of at least 30 percent of the employees in the bargaining unit, a statutory requirement.

The Board also processed five (5) straight decertification petitions in FY 1982. These petitions do not involve one labor organization seeking to unseat another, but an attempt by a group of employees simply to deprive an incumbent organization of its standing as bargaining agent for the employees in the unit. Thus, the total of election requests processed by the Board during FY 1982 was sixty-three (63): forty-nine (49) election requests, nine (9) certification/decertification petitions, and five (5) straight decertification petitions.

Communities and public entities involved with representation requests during fiscal year 1982 were:

Alexander  Ellsworth
Augusta    Fort Kent
Bethel     Hallowell
Calais      Hampden
Dixfield    Limestone
The activities of the Panel of Mediators, more fully reviewed in the Annual Report of the Panel of Mediators submitted to the Governor pursuant to Section 965, paragraph 2, of Title 26, Maine Revised Statutes, is summarized for purposes of this report. The number of new requests received in FY 1982 totaled 83, exactly the number received in FY 1981. This sustained level of activity for the Panel clearly reflects the continued acceptance of this mechanism by labor relations practitioners in the public sector in this state. The number of requests received over the past few years reflects this broad acceptance among practitioners--FY 1982, 83 requests; FY 1981, 83 requests; FY 1980, 98 requests; FY 1979, 81; FY 1978, 82. In addition to the 83 new requests there were seven (7) mediation requests carried over from the prior fiscal year. The total figure of 90 matters--new and previously existing requests--more closely reflects the high level of activity among members of the Panel.

The total number of mediation-man-days expended in FY 1982 decreased slightly from FY 1981 despite the fact that the same number of new requests were filed in each year. The discrepancy in man-days expended between the two years may be explained in part by the fact that in FY 1981 there were more carry-over requests from the prior year. In FY 1982 the number of mediation-man-days expended on matters which had completed the mediation process reached a total of 144 as...
compared with 174 in FY 1981. Comparison of the average mediation-man-days per case shows a FY 1982 figure of 2.00 compared with a figure of 1.83 in FY 1981, and 2.11 in FY 1980. This slight difference is not considered to have statistical importance. Of the mediation matters for which completed figures are available, the success rate for the Panel of Mediators reached a new high, surpassing the extraordinary success ratio of 67 percent reached in FY 1979. In FY 1982 the success ratio reached 69 percent.

Fact-Finding is the second step in the typical dispute resolution sequence as set forth in the various labor relations statutes. In FY 1982 the number of requests for fact-finding decreased significantly from the record figure reached in FY 1981. In FY 1982 the number of requests received declined to 30 from the record level of 49 in FY 1981. It is important to note that the extraordinary success rate of the mediation process in FY 1982 undoubtedly accounts for the reduction in fact-finding requests since matters not resolved in mediation very often go on to the fact-finding process.

The entities involved in fact-finding requests during FY 1982 were:

- Asheville
- Auburn
- Augusta
- Bar Harbor
- Belfast
- Brunswick
- Calais
- Ellsworth
- Gorham
- Milo
- Presque Isle
- Rockland
- Rumford
- Saco
- Sanford
- Saco
- Winslow
- Winthrop
- Woolwich

University of Maine
State Bd. of Ed. (VTI)

The number of prohibited practice complaints filed with the Board during FY 1982 declined to thirty-five (35) from the near record level of sixty (60) new complaints filed in FY 1981. In addition there were twenty-four (24) carry-over matters from the prior fiscal year, making a total of fifty-nine (59) separate matters pending during the year. Accordingly, the staff activity required by this type of case remained at approximately the same level of intensity in both years. In FY 1981 the Board and staff fully heard and disposed of 30 cases by formal decision; in FY 1982, twenty-seven (27) decisions were issued by the Board and two other cases were dismissed. The Board also issued one Interim Order. In FY 1982 the Board devoted forty-two (42) hearing
days to cases before it, an average of three and a half hearing days per month. This is entirely separate from days devoted to case deliberation and other matters. Cases not disposed of were in some phase of the pre-hearing or hearing process and a number had completed the full hearing stage and were awaiting briefs, deliberation by the Board, or decision drafting and formal approval by the Board members.

As has been stated in past reports of the activities of this Board, the workload imposed on the Board's personnel and resources is not reflected in the base numbers. Each case which goes through the hearing and decision process requires, in addition to the complexities of processing, scheduling, and case management efforts, considerable effort on the part of the staff attorney/examiners in case and issue analysis, legal research, and decision writing. Additional demands have been placed on this personnel commitment as the result of an increase in appellate activity from prior reporting periods.

Staff attorneys often are required to appear in either the Superior or Law Court to argue in support of Board decisions or policy. In FY 1982 Board attorneys appeared before the Superior or Law Court in a number of important matters. As an example of the importance of appellate cases, the Board has been confronted with issues involving measure of damages, access of witnesses to attend and present testimony, the validity of a union security clause under the University of Maine Labor Relations Act and a challenge to its manner of deliberations. The Board's position on these matters has been sustained by the Superior Court and, in some instances, appeals are pending before the Law Court.

The communities and entities involved in prohibited practice complaints filed with the Board during fiscal year 1982 were:

- Bar Harbor
- Belfast
- Brunswick
- Ellsworth
- Fort Kent
- Hampden
- Limestone
- Oakland
- Old Orchard Beach
- Portland
- Thomaston
- Vinalhaven

Maine State Employees Association
State of Maine
University of Maine

The report may be summarized by the following chart which makes comparisons stated in terms of percentile changes in each category from one succeeding year.
As suggested in the Annual Report for the prior fiscal year, the above comparative review suggests the possibility that the Board may be in a period of either stabilization or manageable growth in terms of the overall demand for its services. The past few years have been years of steady, and on occasion, remarkable, growth in the demand for the variety of services provided by the Board. Whether the trend toward the leveling off of the demand for services is the result of a relative "saturation" of the public sector community in organizational and representation terms is difficulty to discern. The demand for services has reached cyclical levels in each segment of the Board's activity that placed severe pressure on the Board's limited staff and resources which has not been expanded since the last position authorization in 1978. This high level of activity continues and, with the introduction of county employees into the public sector collective bargaining scenario, certainly it is reasonable to expect that the level of activity, taken as a whole, will remain at the levels established in the past three or four years, although records may not be set in any single area. This also requires us to consider the long-term eventuality of adding professional position(s) to the staff.

As has been expressed in prior Annual Reports, we are pleased to state that the Maine Labor Relations Board, through the processes established in the public sector labor relations statutes, is offering, and will continue to offer, effective
and expeditious means for protecting employee rights, insuring compliance with the statutory mandates, and settling disputes through the prohibited practice and/or the dispute resolution processes provided under the statutes. We are pleased to observe once again that, contrary to trends elsewhere in the United States, public sector work stoppages or strikes have been insignificant during the past year, with none occurring involving any employees covered by any of the labor relations acts administered by the Board. It is apparent that the statutory scheme which is designed to provide a methodology for the peaceful and orderly resolution of labor disputes is working. We trust that a substantial part of this success may be attributable to high levels of confidence generated by the Board's clientele which continues to place increasing reliance on the Board and the skills, competence, dedication, and professionalism of its staff.

Dated at Augusta, Maine, this 1st day of July, 1982.

MAINE LABOR RELATIONS BOARD

Parker A. Denaco, Executive Director