

STATE BOARD OF ARBITRATION AND CONCILIATION  
ANNUAL REPORT  
FISCAL YEAR 2015

This report is made pursuant to 26 M.R.S.A. § 931 (2007 and Supp. 2014).

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 Chair Sheila Mayberry, Esq., of Cape Elizabeth, who practices as a private arbitrator, and Rebekah J. Smith, Esq., of Union, who practices as a neutral decision maker; Alternate Employee Representatives Chester G. ("Chuck") Hillier of Monmouth, Assistant Negotiator (retired) 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 served as Interim Town Manager in Auburn and Wiscasset; and Robert W. Bower, Jr., Esq., of Cumberland, an attorney with the firm of Norman, Hanson and DeTroy, who represents management.

The competence of the Board's membership remains high, consisting of able neutrals and partisan members known throughout the Maine labor relations community. Roger 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 28 total cases filed this year compares with 12 total filings in the previous fiscal year. During the last twenty years, the year with the greatest number of filings (34) was FY 1996, and the fewest cases (11) were filed in FY 2008. During that period an average of 23.5 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 28 requests for services received this year, 24 involved grievance arbitration matters. Two requests for fact finding and two requests for interest arbitration were also filed. Of the 32 cases filed or carried over into this year, 7 decisions were issued, 7 cases were withdrawn by the parties prior to hearing, and 14 cases are pending. Four cases were settled on the day of hearing without Board participation. The grievance arbitration cases filed this year were as follows:

<u>Bargaining Agent</u>	<u>Employer</u>	<u>Issue</u>
AFSCME Council 93	Penobscot County	Demotion & Related Matters/Cpl. Gardner
AFSCME Council 93	Penobscot County	Health Ins. Plan
AFSCME Council 93	Piscataquis County	Payment of Accrued Hours
Fraternal Order of Police	Lincoln County	Arbitrability
Fraternal Order of Police	Lincoln County	Ins. Plan Change

Fraternal Order of Police	Washington County	Promotion/Scheduling Grievances
IAFF Local 1611	City of Bath	Firefighter Safety & Uniforms
IAMAW District 4	City of Bath	Promotion Grievance
Maine Association of Police	City of Lewiston	Sick/Admin. Leave
Maine Association of Police	City of So. Portland	Written Reprimand
Teamsters Union Local 340	City of Augusta	Retiree Health Ins.
Teamsters Union Local 340	City of Biddeford	Suspension
Teamsters Union Local 340	Cumberland County	Unpaid Leave Pending Criminal Charge
Teamsters Union Local 340	Hancock County	Overtime/Seniority/ Filling of Vacancies
Teamsters Union Local 340	Town of Kittery	Unjust Termination
Teamsters Union Local 340	MSAD #27	Termination
Teamsters Union Local 340	Town of Ogunquit	Discipline
Teamsters Union Local 340	Oxford County	Suspension
Teamsters Union Local 340	City of Presque Isle	Pay-out of Accrued Sick Leave
Teamsters Union Local 340	RSU #67	Termination
Teamsters Union Local 340	Somerset County	Demotion
Teamsters Union Local 340	Somerset County	Termination
Teamsters Union Local 340	U/Maine System	Forced Resignation
Teamsters Union Local 340	U/Maine System	Termination

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. No cases were successfully 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 parties 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. There were 2 fact-finding requests filed in FY 2015. In one instance a hearing was held and a report is pending. In the other case, the parties decided to use a private arbitration panel. The following employee organization requested fact-finding services:

Teamsters Union Local 340  
(Mid-Coast Solid Waste Corp. Unit)

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 received 2 requests for interest arbitration this fiscal year and both are pending. The significance of these filings is apparent when one considers that the Board has received only 9 requests for interest arbitration services in the last 20 years. The following parties were involved in the requests for interest arbitration services this year:

Teamsters Union Local 340 and Oxford County  
(Deputies Unit)  
Fraternal Order of Police and Town of Madison  
(Police Department Unit)

**Legislative Developments.** One Bill, L.D. 1088, An Act To Implement Recommendations of the Right To Know Advisory Committee, one section of which affected the Board, was adopted by the Legislature this year. Section C-3 of the bill applied to a conciliation process through which the Board, upon request of the parties, attempts to resolve collective bargaining disputes. This process has been used once in the last 25 years (in 1997) and is distinct from the Board's statutory role under Maine's public sector collective bargaining laws. If settlement is not reached during the conciliation, the Board makes a confidential report to the Governor and the Executive Director of the Maine Labor Relations Board. Current law provides that if the parties have not resolved the dispute within 15 days after receipt of the report, either the Governor or the executive director may make the report public. The bill requires release of the report after the 15-day period. The Governor vetoed the over-all measure on broad policy grounds; but the veto was not sustained and the bill became law. See, ch. 250 P.L. 2015.

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 1st day of July 2015.

Respectfully submitted,

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