

STATE BOARD OF ARBITRATION AND CONCILIATION  
ANNUAL REPORT  
FISCAL YEAR 2018

This report is made pursuant to 26 M.R.S. § 931 (2007 and Supp. 2017).

The Board consists of a neutral Chair, an Employee Representative, an Employer Representative, and two alternates for each of the primary members. The members and alternates are personal appointments by the Governor and serve 3-year terms. The minimum qualifications for the Members are that the Chairs must be neutral and represent the public interest; the Employee Representatives must be an employee or employee selected from a trade or labor union; and the Employer Representatives must be an employer of labor or be selected from an association representing employers of labor. The Board has been fortunate to have members who are widely known in the labor relations community as their individual reputations add to the credibility and effectiveness of the Board in carrying out its statutory mission. The persons appointed or re-appointed to the Board this year continue in that tradition.

The Governor made several changes in personnel or assignments on the Board this year. The Hon. John C. Sheldon of Westbrook, a retired District Court Judge, who practices as a neutral decision-maker, was appointed to replace Alternate Chair Rebekah J. Smith, Esq., of Union. Robert W. Bower, Jr., Esq., of Cumberland, an attorney with the firm of Norman, Hanson and DeTroy, who represents management and who was an Alternate Employer Representative, was appointed as the primary Employer Representative, replacing Harry R. Courtois of Biddeford. Chester G. Hillier of Monmouth, a retired Assistant Negotiator with the Maine State Employees Association and who was an Alternate Employee Representative, was appointed as the primary Employee Representative, replacing Robert F. Bourgault of Biddeford. New members appointed to the Board were: Bryan M. Dench, Esq., of Portland, a member of the firm of Skelton, Taintor and Abbott who is widely known for his representation of management, replaced Mr. Bower as an Alternate Employer Representative; and James H. Mackie of South Portland, Field Representative with the American Federation of

State, County and Municipal Employees who previously served as a very successful State Mediator. The Board misses the wisdom and experience of Bob Bourgault, who served as Employee Representative starting in 1987, and Harry Courtois, who served as an Alternate Employer Representative, when he was first appointed in 2002, and later as the Primary Employer Representative, starting in 2009, but appreciates the continuity afforded by moving Mr. Bower and Mr. Hillier from alternate to primary positions.

Alternate Chair Sheila G. Mayberry, Esq. of Falmouth, who practices as a private arbitrator and is a member of the National Academy of Arbitrators, was reappointed as an Alternate Chair. Primary Chair Shari B. Broder, Esq., of Freeport, whose practice is concentrated in alternative dispute resolution, and Alternate Employer Representative Donald H. Gerrish of Brunswick, who retired after almost 20 years as the Town Manager of Brunswick and who has served as interim manager for several municipalities since then, continued to serve in their respective capacities this year. An Alternate Employee Representative position remains vacant at this time.

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 18 total cases filed this year compares with 22 total filings in the previous fiscal year. During the last twenty years, the years with the greatest number of filings (31) were FY 2016 and FY 2001, and the fewest cases (11) were filed in FY 2008. During that period an average of 23.4 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 18 requests for services received this year, 16 involved grievance arbitration matters. Two (2) requests for fact finding were filed as well. Of the 28 cases filed or carried over into this year, 6 decisions were issued, 11 cases were withdrawn by the parties prior to hearing, and 11 cases are pending. The grievance arbitration cases filed this year were as follows:

<u>Bargaining Agent</u>	<u>Employer</u>	<u>Issue</u>
AFSCME Council 93	Sanford (Water Dist.)	Call Time Pay
AFSCME Council 93	Penobscot Cty. (S.D.)	Vacation & Sick Leave
AFSCME Council 93	Penobscot Cty. (S.D.)	Discipline for Sick Leave Usage
Fraternal Order of Police	York Cty. (S.D.)	Distribution of Overtime & Call Out
Fraternal Order of Police	Washington Cty. (S.D.)	Seniority/Rate of Pay
Nat. Corr. Ees Union	Cumberland Cty. (S.D.)	Forced Overtime
Teamsters Local 340	American Red Cross	Termination
Teamsters Local 340	Cumberland Cty. (S.D.)	Time Off for Union Business
Teamsters Local 340	Cumberland Cty. (S.D.)	Personnel Information
Teamsters Local 340	Kennebec Water Dist.	Health Insurance Enrollment

Teamsters Local 340	Kennebunk (P.W.)	Suspension
Teamsters Local 340	Oxford (P.D.)	Assignment of Overtime
Teamsters Local 340	Rockland	Job Posting & Award
Teamsters Local 340	Saco	Termination
Teamsters Local 340	Somerset Cty. (S.D.)	Overtime Pay
Teamsters Local 340	Van Buren	Stand-by Pay

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. Three (3) cases were successfully conciliated this year.

One case that was successfully conciliated this year involved the termination of an employee by the American Red Cross. Although the Board, established in 1909, can resolve disputes involving private sector employers, much of this jurisdiction was preempted by the National Labor Relations Act. In this matter, Teamsters Local Union No. 340 represents a unit of Red Cross employees that work in the collection, maintenance and distribution of blood supplies. The parties' collective bargaining agreement names the Board as the final step in their grievance arbitration procedure. The Red Cross had terminated an employee and the resulting grievance was presented to the Board for resolution. The partisan members of the Board panel were able to craft a settlement that was acceptable to both parties, resolving the dispute.

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 two (2) fact-finding request filed in FY 2018; both were subsequently withdrawn. The following employee organization requested fact-finding services:

Teamsters Local Union No. 340 (Calais Ambulance Unit)  
Teamsters Local Union No. 340 (Calais Fire 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 no joint requests for interest arbitration this fiscal year.

**Legislative Developments.** The Legislature did not consider any bills affecting the Board this year.

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 29th day of June 2018

Respectfully submitted,



---

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