

ANNUAL REPORT
MAINE LABOR RELATIONS BOARD, PANEL OF MEDIATORS, and
STATE BOARD OF ARBITRATION AND CONCILIATION
Fiscal Year 2020

I. Introduction

The purpose of this report is to review for Governor Janet T. Mills the operations of the Maine Labor Relations Board (Board or MLRB) and its affiliated organizations, the Panel of Mediators (Panel) and the State Board of Arbitration and Conciliation (BAC) in Fiscal Year 2020.¹ To that end, this report contains:

- background information including the statutory foundation for public-sector collective bargaining in Maine, and a brief examination of the respective missions and composition of the Board, Panel, and BAC;
- a review of Board, Panel, and BAC operations for FY 2020;
- a summary of MLRB-related legislation pending with the 129th Legislature;
- a short discussion of operational achievements, goals and related plans.

II. Background

a. Statutory Framework for Public-Sector Collective Bargaining in Maine

Public-sector employees in Maine have the right to engage in collective bargaining, as provided by four separate laws that govern labor relations in the State. Those laws are:

- The Municipal Public Employees Labor Relations Law (covering municipal and county employees including clerical, schools, fire, police, and public works employees), 26 M.R.S.A. §961, *et seq.*;
- The State Employees Labor Relations Act (covering state employees, including the legislative and executive branches), 26 M.R.S.A. §979, *et seq.*;
- The University Employees Labor Relations Act (covering employees of the University of Maine and Maine Community College systems, as well as Maine Maritime Academy), 26 M.R.S.A. §1021, *et seq.*;
- The Judicial Employees Labor Relations Act (covering the State’s judicial branch employees), 26 M.R.S.A. §1281, *et seq.*

In all, approximately 61,000 individuals, employed by nearly 500 public-sector employers, fall within the jurisdiction of these laws.

¹ 26 M.R.S.A. §§931, 965(2)(C), 968(7) and 979-J(1) respectively require the submission of an annual report regarding Board, Panel, and BAC operations to the Governor.

The State's labor relations laws share a common foundation that establishes the framework for collective bargaining in Maine. The stated purpose of each law is to improve the relationship between public employers and their employees. Employees may choose to engage in collective bargaining by selecting a bargaining agent, i.e. union, to represent a group of the employees, called a bargaining unit, who share common working conditions.

Once a bargaining agent is certified, the employer and bargaining agent must bargain in good faith over wages, hours, and conditions of employment for the bargaining unit. If the parties are unable to reach agreement on their own, they may participate in mediation, fact-finding and arbitration to resolve the bargaining impasse. Should one party fail to meet its statutory obligations, the other party may seek enforcement of the law by filing a complaint with the Board for which the Board will conduct a hearing and render a decision and order. The Board's decisions are subject to appeal to the Maine courts.

b. Mission

The Board's primary mission is to enforce the rights and obligations provided in the State's labor relations laws. To do so, the Board and its affiliated organizations perform three central functions: (1) the certification of bargaining units, typically through an election where employees vote on whether to be represented by a union, (2) the resolution of collective bargaining impasses, and (3) the adjudication of complaints that allege violations of the labor relations laws.

The Board, Panel, and BAC have separate, but related, responsibilities and jurisdiction. The Board itself is responsible for resolving disputes over the composition of bargaining units, conducting and certifying elections for bargaining agents, conducting hearings for prohibited practice complaints, and, issuing decisions and orders for those complaints.

The Panel's central purpose is to facilitate resolutions to bargaining impasses involving public-sector employers and their counter-part bargaining agents. Specifically, if an employer and a union are unable to reach agreement in their negotiations, they can request that a mediator from the Panel be assigned to help them achieve a resolution to their bargaining dispute.

The BAC is available to resolve bargaining impasses if mediation and fact-finding are unsuccessful. Most frequently, the BAC provides arbitration services for contract grievances.

c. Composition

Board

The Board is composed of three members and six alternates appointed by the Governor to four-year terms, subject to legislative approval. Out of the three members, one is designated to represent the public (Public Representative), another to represent employees (Employee Representative), and the third to represent employers (Employer Representative). The Public Representative is also designated to serve as the Board's Chair. Each member has two alternates in the event the member is unavailable for a Board hearing.

The Board is currently composed as follows:

Public Representative/Chairs	(appointments expired 9/30/19)	
Katharine I. Rand, Esq., Scarborough		Board Chair
Jeffrey J. Knuckles, Esq., Phippsburg		Alternate Chair
Michael C. Ryan, Esq., Freeport		Alternate Chair
Employer Representatives	(appointments expired 9/30/18)	
Robert W. Bower, Jr., Esq., Cumberland		Employer Representative
Christine Riendeau, Durham		Alternate Employer Rep.
Richard L. Hornbeck, Esq., Bowdoinham		Alternate Employer Rep.
Employee Representatives	(appointments expire 9/30/21)	
Amie M. Parker, Lewiston		Employee Representative
Dennis E. Welch, Windham		Alternate Employee Rep.
Carl A. Guignard, Lewiston		Alternate Employee Rep.

Panel of Mediators

The Panel is composed of five to ten individuals appointed by the Governor to three-year terms. 26 M.R.S.A. §965(2)(C). The Panel is currently composed as follows:

	<u>Appointment Expired</u>
David W. Bustin, Hallowell	08/19/14
Maria Fox, Esq., Portland	11/10/14
Denis Jean, Lewiston	12/08/18
Arthur Kyricos, York Harbor	12/08/18
Robert Lyman, Freeport	11/10/14
Philip J. Moss, South Portland	12/08/18
Melissa P. Shattuck, Falmouth	02/02/15
Evan L. Weston, Harpswell	12/08/18
Kenneth T. Winters, Holden	07/18/17

In accordance with 26 M.R.S.A. §965(2)(C), the Board has submitted to the Governor several nominees for Panel appointment. Five nominees are current members of the Panel, including:

Maria Fox, Esq., Portland
Denis Jean, Lewiston
Arthur Kyricos, York Harbor
Robert Lyman, Freeport
Melissa Shattuck, Falmouth

Three nominees are not current Panel members and include:

Jane Gilbert, Augusta
Erik Peters, Esq., Freeport
Rebekah Smith, Esq., Union

As of the date of this report, the Panel nominations remain pending with the Governor’s Office Department of Boards and Commissions.

Board of Arbitration and Conciliation

The BAC is also composed of gubernatorial appointees, respectively designated as public chairs, employer representatives, and employee representatives. 26 M.R.S.A. §931. Their terms of appointment are three years. *Id.* The BAC is currently composed as follows:

Neutral Chairs		<u>Appointment</u>	<u>Expire(d)s</u>
Shari B. Broder, Esq., Freeport	Board Chair		08/25/14
Sheila Mayberry, Esq., Falmouth	Alternate Chair		12/26/20
John C. Sheldon, Esq., Westbrook	Alternate Chair		12/26/20
Employer Representatives			
Robert W. Bower, Jr., Esq. Cumberland	Employer Rep.		12/26/20
Donald H. Gerrish, Brunswick	Alt. Employer Rep.		02/07/15
Bryan M. Dench, Esq., Portland	Alt. Employer Rep.		12/26/20
Employee Representatives			
Chester G. Hillier, Monmouth	Employee Rep.		12/26/20
James H. Mackie, South Portland	Alt. Employee Rep.		12/26/20
Vacant	Alt. Employee Rep.		

Neutral Staff

Apart from the Governor-appointed positions, the day-to-day operations of the Board, Panel, and BAC are handled by a neutral, non-appointed legal and administrative staff composed of the Executive Director, Board Counsel, and Office Manager. The Board’s Executive Director also serves in that same capacity for the Panel, in addition to serving as Clerk to the BAC.

On a regular basis, the Board’s staff members respond to inquiries from public employers and employees or their representatives, and members of the public. The staff is the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. For inquiries that involve matters over which the Board has no jurisdiction, the staff suggests other agencies or organizations that may be of assistance.

The Board’s staff maintains a State of Maine website on behalf of the Board, Panel and BAC. See www.maine.gov/mlrb/ . The website provides a variety of Board-related information including links to MLRB-related statutes, administrative rules and forms. One of the site’s more important components is a search engine through which the public can research previous Board decisions as well as the Superior and Law Court opinions reviewing those decisions. Access to this case law permits public employers, employees and bargaining agents to know the parameters of required or permitted conduct and to use that information to comply with the law.

III. Board Operations for FY 2020

a. Bargaining Unit and Election Matters

As noted above, the Board is responsible for certifying a labor organization as the designated bargaining agent of a bargaining unit, i.e. a group of employees who share common working conditions. In order to obtain certification, a labor organization files a petition with the Board requesting a determination of an appropriate bargaining unit and an election, along with an accompanying showing of interest from at least 30% of the proposed bargaining unit. If the parties dispute what employees are included in the bargaining unit, the Board's Executive Director determines the scope of the bargaining unit, subject to appeal to the Board.

Once the bargaining unit is finalized, the Board conducts an election, typically by mail ballot. Through the election, each bargaining unit employee is permitted to vote by secret ballot as to whether they wish to be represented by a particular labor organization for the purposes of collective bargaining. On average, a mail ballot election is completed in about six weeks from the time that the petition is filed until the certification of results.

FY 20 marked the first year in which the Board processed majority sign-up petitions, a new process for recognizing a labor organization as the bargaining agent for a group of employees. This process was enacted by the 129th Legislature through Chapter 135 of P.L. 2019. To determine if a majority sign-up petition is viable, the Executive Director reviews the written authorizations submitted for a group of employees to see if a majority of the group designated a labor organization as their bargaining agent. If a majority of the employees have signed such an authorization, the MLRB certifies the labor organization as the employees' bargaining agent without the need for a traditional election.

During FY 20, the Board addressed numerous bargaining unit representation matters, including:

- **Elections:** A total of 17 election petitions were filed. Of those 17 petitions:
 - 5 involved a bargaining unit that was not represented by any labor organization at the time of filing.
 - 11 involved one labor organization seeking to represent a bargaining unit represented by a different labor organization.
 - One petition requested the merger of a unit of fire captains with a unit of firefighters.

To process the election petitions, the Board conducted 9 elections and facilitated voluntary recognitions of bargaining units for another 5 petitions. As to the three other petitions, one recently filed petition remains pending, another was withdrawn shortly after it was filed, and the petition requesting a merger of the fire department bargaining units was dismissed, following a hearing, pursuant to 26 M.R.S.A. § 966(4)(E).

- **Majority sign-up:** A total of 9 Majority sign-up petitions were filed. The Board issued a certification for 8 petitions and one petition was withdrawn prior to the Board's review of the authorization cards.

- **Voluntary Recognitions:** A total of 16 voluntary recognitions were filed through which an employer and labor organization reached agreement as to the composition of the bargaining unit of employees and/or a labor organization's status as the bargaining agent of a bargaining unit.
- **Unit Clarifications:** A total of 2 petitions seeking clarification of existing bargaining units were filed. One of the petitions was withdrawn shortly after filing. For the other, the Executive Director, after permitting the parties to the petition the opportunity to submit stipulated facts and written argument, issued a decision and order granting the petition. The Executive Director's decision was initially appealed, but the appeal was withdrawn before the Board adjudicated the matter.

b. Prohibited Practice Complaints

The Board is responsible for adjudicating prohibited practice complaints alleging a violation of the state's public sector labor relations laws. Once a complaint is filed, the Executive Director conducts an initial review of the complaint to determine if it alleges a violation of the law. If the original complaint fails to allege a violation of the law, the charging party is permitted the opportunity to amend the complaint once. Ultimately, if a complaint's alleged facts do not state an actionable claim, the complaint is dismissed subject to appeal to the Board.

If a complaint does allege a violation of the law, the Executive Director engages the parties in settlement discussions. Should the settlement discussions be unsuccessful, a hearing is conducted by the full, tri-partite Board. Thereafter the Board issues a written decision and order which is subject to appeal to the courts.

In FY 20, a total of 11 prohibited practice complaints were filed. Subject matter at issue included alleged failures to negotiate in good faith, alleged retaliation for engaging in protected activity, as well as an alleged violation of a labor organization's duty of fair representation. In addition to the 11 complaints filed in FY 20, a total of 3 prohibited practice complaints were held over from FY 2018 and 3 cases were held over from FY 2019. In sum, a total of 17 complaints were pending with the Board at some point during FY 20.

Through the course of FY 20, a total of 6 of the pending complaints were settled without the need for a hearing.² Additionally, the Executive Director dismissed one complaint that failed to state an actionable claim. Finally, the Board commenced a formal hearing in FY 20 for one complaint case, although that complaint will require a second day of hearing which will take place in early FY 2021. As a result, 8 of the 17 prohibited practice complaints pending during FY 20 were resolved or dismissed or went to hearing.

Absent the unprecedented difficulties brought on by COVID-19, it is likely the Board would have conducted additional adjudicatory complaint hearings in FY 20. Since the COVID-19 outbreak, the Board has conducted procedural meetings remotely, and the decision to conduct formal hearings remotely is currently made on a case by case basis. For those complaints that are most appropriately addressed through an in-person hearing, the Board has arranged to use a much larger hearing space than usual to ensure adequate social distancing is maintained.

² The 6 resolved complaints included all six holdovers combined from FY 2018 and 2019.

During FY 20, the Board issued one decision and order, for *Fraternal Order of Police*, Case Nos. 18-10 & 19-02 (July 24, 2019), two cases for which the Board conducted a consolidated hearing during FY 2019. These cases generally involved allegations that an employer retaliated against union representatives for their protected activity. The Board concluded that the record failed to establish that the employer's actions at issue were motivated by the protected union activity of any employee and therefore did not constitute illegal discrimination or retaliation. In turn, the Board also concluded that the employer's conduct would not reasonably tend to interfere with employees' rights under the law.

As previously indicated, Board decisions and orders are subject to appeal in the courts. In FY 20, there were no appeals of Board decisions before the Law Court. At the Superior Court level, the Court dismissed an appeal of the Board's decision in *Jeffrey L. Macomber v. Maine State Employees Ass'n, SEIU, Local 1989*, Case No. 18-20 (September 28, 2018). There was no further appeal of the Court's decision.

IV. Panel and Impasse Resolution Operations for FY 2020

A critical aspect of MLRB operations is to provide negotiation impasse resolution services to Maine's public-sector employers and labor organizations. Often, for a variety of reasons, parties are unable to reach agreement when negotiating either an initial or successor collective bargaining agreement. When such a bargaining impasse occurs, Maine's labor relations laws provide a three-step process to resolve the impasse.

First, parties may request the assignment of a neutral Panel mediator. The Board's Executive Director is responsible for assigning a Panel mediator. After assignment, the mediator meets with the parties and facilitates the discussion and resolution of subjects in dispute. Given the overall frequency of Panel mediation requests, this service represents an area where the MLRB and Panel have the regular opportunity to provide direct assistance to numerous public-sector parties, with the goal of improving those labor-management relationships at the local level as well as promoting stability in labor relations state-wide.

If the parties are unable to reach ultimate agreement through mediation, either party may request a fact-finding panel, composed of a neutral chair, employer representative, and employee representative. Parties can either request a private fact-finding panel or a BAC fact-finding panel. Upon receipt of a request, the Board's staff assigns the fact-finding panel and coordinates the logistics for the fact-finding hearing. At hearing, each party presents evidence in support of its respective proposals, after which the fact finders issue a decision which provides the panel's advisory determination for all subjects in dispute. Additionally, at times, the assigned fact-finding panel conciliates a resolution during the hearing process.

Finally, if the parties remain in dispute following fact-finding, they may submit the outstanding issues to interest arbitration. Parties may obtain interest arbitration from either private arbitrators or members of the BAC. By law, the resulting arbitration decision is binding on the parties except any decision that addresses wages, retirement or insurance, in which case the decision is advisory only. The Act does not require parties to notify the Board if they invoke interest arbitration.

a. Mediations in FY 2020

In FY 20, parties filed a total of 22 requests for Panel mediation. These requests typically involved parties at the municipal or county level. Additionally, 15 mediations were held over from previous fiscal years. Throughout the year, Panel mediators worked on a total of 25 of the separate, pending contract disputes that comprised each mediation request. Of the 37 matters pending in FY 20, a total of 25 were closed during the year. Of the 25 cases closed, the Panel's mediators facilitated a resolution in 14 either through the parties reaching agreement during mediation itself, or shortly thereafter.

b. Fact-Finding in FY 2020

In FY 20, parties filed a total of 6 requests for a private fact-finding panel. Of those 6 requests, the parties reached settlement in 4 cases without the need for a hearing. In one case, the parties reached settlement after a hearing but prior to the issuance of a written decision. In the sixth case, the fact-finding panel conducted a hearing and issued a written decision. No fact-finding cases remain pending now.

V. BAC Operations for FY 2020

The BAC is available to provide the labor relations community with three services: (1) fact-finding for unresolved bargaining disputes, (2) interest arbitration if that mediation and fact-finding are unsuccessful to resolve a bargaining impasse, and (3) arbitration for grievances alleging a breach of a collective bargaining agreement. In practice, most of the BAC's activity is related to providing arbitration services for contract grievances. For parties to obtain BAC arbitration services, the parties must jointly request the service and/or the parties' collective bargaining agreement permits a contract grievance to be submitted to the BAC for arbitration.

In FY 20, the BAC received a total of 27 requests for BAC services. Of the 27 requests filed this year, 26 involved requests for contract grievance arbitration while 1 requested binding interest arbitration. In addition, 22 requests for BAC services were carried over from pre-FY 19. In sum, 49 cases were pending before the BAC this year.

Throughout this year, a total of 21 BAC cases were settled or withdrawn without the need for a hearing. For those cases that went to hearing, the BAC issued a total of 9 grievance arbitration decisions. The remainder of cases are pending, including the request for the BAC to provide binding interest arbitration.

VI. Legislative Matters

As referenced in last year's report, the 129th Legislature enacted six MLRB-related bills during its first session. Similarly, in its second session, the Legislature has considered several bills involving public-sector labor relations matters. At the time the second session adjourned *sine die* on March 17, 2020, a total of five MLRB-related bills remained pending; a brief summary of each is provided below:

- L.D. 900: “An Act to Improve Public Sector Labor Relations”

Currently, Maine’s public-sector labor relations laws prohibit employees from engaging in work stoppages, slowdowns, and strikes. 26 M.R.S.A. §§ 964(2), 979-C(2), 1027(2), and 1284(2). L.D. 900 would amend each of the State’s labor relations laws in order to provide public-sector employees the right to strike. The bill prohibits certain public safety employees from engaging in strikes. Additionally, it provides that strikes are subject to the following procedures: (1) a majority of the membership of the employee organization or bargaining unit at issue must vote on whether to strike, (2) upon an affirmative vote to strike, the employer must be notified of the intent to strike as well as the start and end dates of the strike, and (3) either the striking party or the employer may call for emergency bargaining within the three days prior to the intended start of the strike. The bill prohibits employers from firing striking employees but permits an employer to require certain employees to work during a strike in order to protect public health, safety, and welfare.

- L.D. 1879: “An Act Regarding Negotiations by Public Employers of Teachers”

The Municipal Public Employees Labor Relations Law requires school employers to meet and consult, but not bargain, with labor organizations in connection to educational policies. L.D. 1879 would permit, but not require, negotiation over two subjects currently considered educational policy: preparation and planning time and transfer of teachers. It would also define a specific procedure for the meet and consult process.

- L.D. 1959: “An Act To Include within the Definition of “Public Employee” Those Who Have Been Employed Less than 6 Months”

A stated purpose of both the Municipal Public Employees Labor Relations Law and the State Employees Labor Relations Act is to provide public or State employees the right to be represented by labor organizations for the purposes of collective bargaining. See 26 M.R.S.A. §§ 961, 979. Both laws explicitly define the term “employee” as any employee of a public or State employer, “except any person...who has been employed less than 6 months.” 26 M.R.S.A. §§ 962(6)(F), 979-A(6)(E). If enacted, L.D. 1959 would repeal the prohibition on the inclusion of new employees in bargaining units composed of municipal, county, or State employees.

- L.D. 2019: “An Act To Extend to Other Public Sector Employees the Same Protections Provided to State Employees upon the Expiration of Contracts”

This proposed legislation is comparable to a recently enacted law that requires State agencies to pay contractual merit salary increases for employees covered by collective bargaining agreements once those agreements have expired, but prior to the implementation of a new agreement. See L.D. 1546: “An Act To Protect State Employees When Their Contracts Have Expired,” signed by the Governor on June 19, 2019, enacted as Chapter 393 of P.L. 2019. Here, LD 2019 would amend the labor relations laws governing municipal (including schools), county, university, and Judicial branch employees much in the same way LD 1546 adjusted the State Employees Labor Relations Act. Specifically, the laws would require the payment of merit salary increases, in accordance with the terms of an expired contract, prior to the implementation of the successor contract.

- L.D. 2090: “An Act To Amend the Laws Governing Arbitration under Certain Public Employees Labor Relations Laws”

Currently, Maine’s four public-sector labor relations laws provide binding interest arbitration as the final step to resolve a bargaining impasse between an employer and labor organization. However, by law, the subjects of salaries, pensions, and insurance are not subject to any binding decision, and the arbitration panel’s can only make advisory findings for those three subject matters. Additionally, as noted above in connection to L.D. 900, the labor relations laws currently prohibit public sector employees in Maine from striking.

L.D. 2090 would create a panel of arbitrators appointed by the Governor for the purpose of providing binding interest arbitration services. The arbitrators’ decision would be binding on all subject matter, including salaries, pensions, and insurance.³ The arbitrators would have to consider certain statutory criteria for the basis of their decision. If an employer failed to implement the arbitrators’ decision, employees, except those whose duties include protecting public safety, would have the right to strike.

VII. Achievements, Goals and Plans

FY 20 marked a year of significant progress for MLRB operations. Foremost, on April 1, 2020, the Board implemented an electronic filing process (E-File). Previously, parties were limited to filing hard copies of MLRB-related documents either by mail or in person. Apart from a lack of efficiency, the traditional filing process also led to occasional disputes as to when a document was mailed versus received.

Through E-File, parties are now expected to engage with the Board, and each other, primarily through electronic correspondence. Where all the Board’s filing forms are available through the MLRB’s website, a party can now file a complaint or request for services in a matter of minutes. In addition to providing parties an easier and more efficient way to file documents with the Board, and to serve those documents on opposing parties, the E-File process will greatly reduce argument over when a document was filed, as date of filing is now based on when it was delivered via email.

While coincidental, the conversion to E-File also significantly increased the Board’s ability to continue operating as effectively as possible during COVID-19. Because submissions to the MLRB are now done through email, it was a relatively smooth transition for the MLRB to move to a system based on nearly all electronic correspondence while primarily working remotely during the State of Emergency.

In order to implement the E-File process, the Board updated and revised its procedural rules for the first time since 2001. As well as setting forth the E-File process, the rules update also provided the opportunity to codify a new procedure for dealing with majority sign-up petitions.

³ For State of Maine employees, the arbitrators’ decision would only be binding for salaries and not for pensions or insurance.

Looking forward, the Board intends to increase access to MLRB-related information through two means. First, Board staff are developing a case law outline which will organize the Board's decisions by subject matter and provide a brief explanation of both the applicable statutory law as well as the MLRB cases that have interpreted the statute. The goal of the case law outline is to provide parties with a single resource that can provide quick guidance for employers and labor organizations as to their respective rights and obligations under Maine's labor relations laws. Second, to the extent possible, the Board will create and maintain an online database of the existing public-sector collective bargaining agreements in Maine. The goal of this database is to provide parties in negotiations with ready access to contract terms employed in other labor-management relationships such that the negotiating parties can use this information to draft mutually agreeable contract proposals.

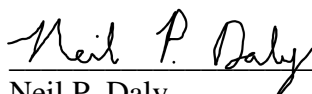
VIII. Conclusion

The Board, Panel, and BAC continue to play a critical role in facilitating stability in Maine's public-sector labor relations. In FY 2020, the MLRB's components successfully addressed numerous representation matters, bargaining impasses, grievance arbitrations and prohibited practice complaints. Many of the disputes submitted to the Board and its affiliates were resolved, thus helping all involved avoid the financial and administrative costs associated with further protracted argument and litigation. Additionally, the Board timely processed elections and majority sign-up petitions ensuring that questions of a labor organization's status as bargaining agent were quickly addressed. By doing so, employers and labor organizations could promptly move forward in meeting their respective obligations under the State's labor relations laws. The Board, Panel, and BAC look forward to continuing to provide the State's labor-management parties effective service in the coming year.

Please let me know if there is any additional information regarding Board, Panel, or BAC operations that I can provide.

Dated: June 30, 2020

Respectfully submitted,



Neil P. Daly
Executive Director
Maine Labor Relations Board