

STATE BOARD OF ARBITRATION AND CONCILIATION

ANNUAL REPORT

FISCAL YEAR 2013

This report is made pursuant to 26 M.R.S.A. § 931 (2007 and Supp. 2012).

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 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 18 total cases filed this year compares with 23 total filings in the previous fiscal year. During the last twenty years, the year with the greatest

number of filings (57) was FY 1994, and the fewest cases (11) were filed in FY 2008. During that period an average of 25.3 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, 13 involved grievance arbitration matters. Of the 31 cases filed or carried over into this year, 10 decisions were issued, 5 cases were withdrawn by the parties prior to hearing, 1 case was conciliated at hearing, and 15 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	City of South Portland	Public Employee Status (Parks & Rec. Dept.)
AFSCME Council 93	City of South Portland	Public Employee Status (Public Works Dept.)
AFSCME Council 93	Town of Winslow	Holiday Pay

Androscoggin County Employees Association	Androscoggin County Sheriff's Department	Rate of Pay
IAMAW Local 89 District 4	Auburn School Dept.	Holiday Pay
IAMAW Local 1585 District 4	Town of Bath	Loss of Overtime
IAMAW District Lodge #4	Town of Topsham	Discharge
Maine Association of Police	City of Auburn	Vacation Disapproval
National Correctional Employees Union	Cumberland County. Sheriff's Department	Shift Differential
National Correctional Employees Union	Washington County Sheriff's Department	Termination
Teamsters Union Local 340	Greater Augusta Utility. District	Discipline Grievance
Teamsters Union Local 340	Town of Berwick	ICMA contribution
Teamsters Union Local 340	City of Westbrook Fire/ Rescue Department	Sub-contracting

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. One case was 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. The Board received two requests for fact finding services this year; both are scheduled for hearing. The following employee organization was involved in requests for fact-finding services this year:

AFSCME Council 93

(Bangor Airport Ramp Attendants and Shift Leads Unit)

(Bangor Airport Customer Service Representatives and Part-time Ramp Attendants 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 3 requests for interest arbitration this fiscal year. The significance of these filings is apparent when one considers that the Board has received only 5 requests for interest arbitration services in the last 20 years, with the most recent being in Fiscal Year 2001. Of those cases, 2 were settled prior to arbitration, one was conciliated by the Board, and 2 went to hearing and decisions were issued. The following parties were involved in the requests for interest arbitration services this year:

Teamsters Union Local 340 and Town of Jay
(Transfer Station and Recycling Employees Unit)
AFSCME Council 93 and Penobscot County Commissioners
(Sheriff's Department Line Unit)
Lake Region Non-Teaching Association & RSU 61 Board of Directors
(Teachers Unit)

Legislative Developments. No bills affecting the Board were introduced in the Legislature 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 1st day of July 2013.

Respectfully submitted,

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