

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

The background of the page features a large, faded version of the Maine State Seal. At the top is a star with radiating lines, above a banner that reads "DIRIGO". Below this is a shield depicting a moose, flanked by a farmer on the left and a fisherman on the right. At the bottom of the seal is a banner with the word "MAINE".

# **Maine Labor Relations Board**

## **Program Evaluation Report**

**Submitted to the Joint Standing Committee on  
Labor, Commerce, Research and Economic  
Development  
November 1, 2017**

Katharine I. Rand, Esq., Chair  
Amie M. Parker, Employee Representative  
Robert W. Bower, Jr., Esq., Employer  
Representative

Marc P. Ayotte, Executive Director  
Maine Labor Relations Board  
90 State House Station  
Augusta, ME 04333  
(207) 287-2015





Paul R. LePage  
GOVERNOR

STATE OF MAINE  
LABOR RELATIONS BOARD  
90 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0090  
OFFICES LOCATED AT:  
19 ELKINS LANE

November 1, 2017

HAND DELIVERED

Hon. Amy Volk, Senate Chair  
Hon. Ryan Fecteau, House Chair  
Members of the Joint Standing Committee on Labor,  
Commerce, Research and Economic Development  
100 State House Station  
Augusta, ME 04333-0100

Dear Senator Volk, Representative Fecteau and Members of the Joint Standing  
Committee on Labor, Commerce, Research and Economic Development:

RE: Government Evaluation Act, 3 M.R.S. chapter 35

The following program evaluation report is submitted pursuant to the requirement contained in  
3 M.R.S. § 956 and is in response to the Committee's request dated April 10, 2017.

The Board is pleased to have this opportunity to work with the Committee in reviewing our  
operations and our vision for the future.

I look forward to meeting with you to discuss your concerns and to respond to any questions that  
you may have.

Sincerely,

Katharine I. Rand, Esq., Chair  
Maine Labor Relations Board

cc: Amie M. Parker, Employee Representative  
Robert W. Bower, Jr., Employer Representative



## TABLE OF CONTENTS

|   |    |
|---|----|
| TABLE OF CONTENTS .....   | 1  |
| INTRODUCTION .....  | 1  |
| A. ENABLING LEGISLATION .....   | 2  |
| 1. MAINE LABOR RELATIONS BOARD (MLRB) .....                           | 2  |
| 2. PANEL OF MEDIATORS (POM).....                                      | 3  |
| 3. STATE BOARD OF ARBITRATION AND CONCILIATION (BAC) .....            | 4  |
| B. PROGRAM DESCRIPTION & PERFORMANCE CRITERIA.....                    | 5  |
| 1. THE MAINE LABOR RELATIONS BOARD.....                               | 5  |
| a. Bargaining Unit Composition.....                                   | 6  |
| b. Bargaining Agent Secret Ballot Elections.....                      | 7  |
| c. Adjudication of Prohibited Practice Complaints & Unit Appeals..... | 9  |
| d. Policy Issues and Administrative Operations.....                   | 11 |
| 2. PANEL OF MEDIATORS .....   | 11 |
| a. Traditional Mediation .....  | 11 |
| b. Preventive Mediation.....  | 12 |
| c. Grievance Mediation .....  | 12 |
| d. Agricultural Commodity Mediation.....                              | 12 |
| e. Private Sector Mediation .....                                     | 13 |
| 3. BOARD OF ARBITRATION AND CONCILIATION.....                         | 14 |
| a. Grievance Arbitration .....  | 15 |
| b. Fact-Finding .....   | 15 |
| c. Interest Arbitration.....  | 15 |
| d. Conciliation .....   | 15 |
| C. ORGANIZATIONAL STRUCTURE.....                                      | 16 |
| 1. MAINE LABOR RELATIONS BOARD .....                                  | 16 |
| 2. PANEL OF MEDIATORS.....  | 18 |
| 3. BOARD OF ARBITRATION AND CONCILIATION.....                         | 18 |
| E. FINANCIAL SUMMARY.....   | 19 |
| G. INTERAGENCY COORDINATION.....                                      | 19 |
| H. CONSTITUENCIES SERVED .....  | 20 |
| I. ALTERNATIVE DELIVERY SYSTEMS .....                                 | 21 |
| J. EMERGING ISSUES.....   | 21 |
| 1. MAINE LABOR RELATIONS BOARD .....                                  | 21 |
| 2. PANEL OF MEDIATORS.....  | 22 |
| 3. BOARD OF ARBITRATION AND CONCILIATION.....                         | 22 |
| K. OTHER INFORMATION .....  | 22 |
| L. COMPARISON OF ANY RELATED FEDERAL LAWS.....                        | 22 |

M. USE AND PROTECTION OF PERSONAL INFORMATION ..... 23

N. PUBLIC FILINGS REQUIRED ..... 23

O. REPORTS REQUIRED BY THE LEGISLATURE TO BE SUBMITTED BY THE  
AGENCY ..... 23

Q. PROVISIONS OF LAW IN AGENCY’S ENABLING STATUTES THAT MAY REQUIRE  
LEGISLATIVE REVIEW TO ALIGN WITH OTHER LAW ..... 23

APPENDIX A . . . . . Organization Charts

APPENDIX B . . . . . Financial Summary

## INTRODUCTION

The mission of the Maine Labor Relations Board and its affiliated organizations -- the Panel of Mediators and the State Board of Arbitration and Conciliation -- is to foster and improve the relationship between public employees and their employers.

--The Maine Labor Relations Board ("MLRB") protects the rights and enforces the responsibilities established by the four separate labor relations statutes covering Maine's public sector employees. The Board, through its staff, does this by creating bargaining units, conducting secret ballot elections to certify, change or decertify bargaining agents, and processing complaints alleging a violation of the statute (a "prohibited practice complaint" or "PPC"). The Board Members, sitting as a tripartite panel, meet as necessary to adjudicate those complaints and to provide policy direction for the operations of the agency.

--The Panel of Mediators and the State Board of Arbitration and Conciliation provide impasse resolution procedures to assist parties in negotiating initial or successor collective bargaining agreements through mediation, fact-finding and interest arbitration and also provide contract grievance mediation and arbitration services.

The success of the Board in resolving disputes and improving the labor relations climate in the public sector is dependent upon exercising its authority in a manner that demonstrates to all parties that the agency is neutral. The primary concern of the Board is not passing judgment on the merits of agreements made, but ensuring that the collective bargaining process is maintained as contemplated by the statute, thereby allowing the parties the freedom to negotiate their own agreements.

When the MLRB was first established as the Public Employees Labor Relations Board in 1972,<sup>1</sup> it was designed with this need for neutrality in mind. First of all, it was established as a tripartite board with the interests of the employer, the employees, and the public all represented. Secondly, with an eye toward the extension of collective bargaining rights to State Executive Branch employees, the Board was established as a quasi-independent agency whose policy-making body was not comprised of State employees but, rather, consisted of private citizens appointed by the Governor and confirmed by the Legislature. Through this mechanism, the body charged with defining and enforcing statutory collective bargaining rights and responsibilities was separated from both the Executive Branch (the employer of State employees) and the employees themselves. While Board members are not State employees and are compensated on

---

<sup>1</sup> Prior to that time, the Municipal Public Employees Labor Relations Law of 1969 was administered by the Commissioner of Labor and Industry.

a per diem basis, the Board's Executive Director and staff are all State employees. The Board staff's neutrality is protected because they all serve at the pleasure of the Board and are classified as confidential employees excluded from coverage of the State Employees Labor Relations Act.

## **A. ENABLING LEGISLATION**

### **1. MAINE LABOR RELATIONS BOARD (MLRB)**

#### ***Summary of Enabling Legislation on Board Authority***

Four separate statutes grant Maine's public sector employees the right to organize and bargaining collectively, impose a duty to bargain in good faith on both parties, establish a mandatory dispute resolution procedure for contract negotiations, and grant the Maine Labor Relations Board the exclusive authority to enforce the statutes.

Municipal Public Employees Labor Relations Law, 26 M.R.S. §§ 961-974, establishes the MLRB and provides the collective bargaining system for employees of municipalities, public schools, counties, utility districts, Maine Turnpike Authority, Maine Public Employees Retirement System, and other public employees who are not covered by the other public sector labor relations laws.

State Employees Labor Relations Act, 26 M.R.S. §§ 979-979-P, 979-R and 979-S, establishes the collective bargaining system for the State Executive and Legislative Branch employees.

University of Maine System Labor Relations Act, 26 M.R.S. §§ 1021-1036, establishes the collective bargaining system for University of Maine System, Maine Community College System, and Maine Maritime Academy employees.

Judicial Employees Labor Relations Act, 26 M.R.S. §§ 1281-1294, together with a companion Administrative Order by the Supreme Judicial Court, establishes the collective bargaining system for the State's Judicial Branch employees.

A fifth law, the Panel of Mediators Statute, 26 M.R.S. §§ 891-893, establishes the process through which the MLRB nominates persons for appointment to the Panel and describes the Panel's relationship with the Executive Director.

#### ***Summary of Legislation Specifying Duties of Board Staff***

The initial responsibility for resolving disputes regarding unit composition and conducting elections falls with the Board's Executive Director, who is also required by statute to review the prohibited practice complaints for legal sufficiency before being scheduled for hearing before the Board. Board staff bills the parties for the Board members' per diem fees and expenses. The process of receiving payment for the services of State mediators and BAC members and disbursing those funds is also specified by statute.

Panel of Mediators Statute, 26 M.R.S. §§ 891-893, establishes user fees for mediation services, which are collected and disbursed by the Executive Director, and establishes the latter's administrative authority in connection with the Panel.

State Board of Arbitration and Conciliation Statute, 26 M.R.S. §§ 931-939, establishes user fee system and describes administrative relationship with Executive Director of MLRB.

Municipal Public Employees Labor Relations Law, 26 M.R.S. §§ 961-974, establishes the position of Executive Director; requires the director to review prohibited practice complaints for legal sufficiency as well as to be actively involved in attempting to resolve disagreements between the parties; mandates that the director or the director's designee oversee the representation process, including specifically the unit determination and election processes; describes the director's role in the interest dispute resolution process; and establishes the user fee system administered by the director.

State Employees Labor Relations Act, 26 M.R.S. §§ 979 - 979-S, contains the substantive delegation of authority to the Executive Director, mirroring the parallel provisions of the Municipal Law.

University of Maine System Labor Relations Act, 26 M.R.S. §§ 1021-1036, specifies several bargaining units and delegates to the Executive Director or the director's designee the authority to determine which classifications belong to which unit, to modify existing units, and to create additional bargaining units in appropriate circumstances; the balance of the substantive delegation of authority to the Executive Director mirrors the parallel provisions of the Municipal Law.

Judicial Employees Labor Relations Act, 26 M.R.S. §§ 1281-1294, together with a companion Administrative Order by the Supreme Judicial Court, provides substantive delegation of authority to the Executive Director that mirrors the parallel provisions of the Municipal Law.

20-A M.R.S. §1464, is the section of the School Reorganization Law controlling certain aspects of collective bargaining during the process of merging bargaining units of school employees in regional school units.

20-A M.R.S. §1464-A, controls collective bargaining during the process of merging school employee bargaining units in alternative organizational structures.

## **2. PANEL OF MEDIATORS (POM)**

### ***Summary of Enabling Legislation on State Mediation***

A State Mediator is available to parties negotiating initial or successor collective bargaining agreements at any time prior to interest arbitration upon the request of either party. State mediators are nominated by the Labor Board and appointed by the Governor. The Executive Director selects the mediator in each dispute, after consultation with the parties, choosing the person whose experience and skill set provides the best chance of achieving settlement. The parties are required to share the costs of mediation. The MLRB's Executive Director is also authorized to assign a mediator, if requested, to assist parties in resolving

grievances regarding contract interpretation, and to assist in resolving certain disputes regarding agriculture commodity pricing.

Panel of Mediators Statute, 26 M.R.S. §§ 891-893, establishes the Panel and provides jurisdiction for its members to assist in “the settlement of disputes between employers and employees or their representatives and other disputes subject to settlement through mediation.”

Municipal Public Employees Labor Relations Law, 26 M.R.S. § 965(2), establishes the process for mediation of interest and grievance disputes between public employers and the bargaining agents that represent their employees.

State Employees Labor Relations Act, 26 M.R.S. § 979-D(2) incorporates Municipal Act mediation provisions by reference for State employee negotiations and grievance matters.

University of Maine System Labor Relations Act, 26 M.R.S. § 1026(2), incorporates Municipal Act mediation provisions by reference for higher education employee disputes.

Judicial Employees Labor Relations Act, 26 M.R.S. §§ 1285(2) & (5), incorporates Municipal Act mediation provisions by reference for Judicial Branch employee disputes and provides for mediation-arbitration, a process through which the parties can agree to use a single individual as a mediator, who can decide to convene an interest arbitration proceeding and become the single arbitrator, after a reasonable mediation effort has failed to resolve all outstanding issues. In the absence of agreement of the parties on a mediator-arbitrator, the Act permits the Executive Director to appoint a mediator-arbitrator who is either a member of the Panel of Mediators or of the Board of Arbitration and Conciliation.

Maine Agricultural Marketing and Bargaining Act, 13 M.R.S. § 1958-B, provides that, when an association of producers and the processors of agricultural products are unable to agree on the price paid for commodities or the terms of sale, they may engage in voluntary mediation with a member of the Panel; if any issues remain unresolved 30 days prior to expiration of a contract, the parties must submit to mandatory mediation with a member of the Panel.

### **3. STATE BOARD OF ARBITRATION AND CONCILIATION (BAC)**

#### ***Summary of Enabling Legislation for BAC***

The State Board of Arbitration and Conciliation is a tripartite Board, with a neutral chair, an employee representative, and an employer representative, and two alternates for each of the primary members. The members and alternate members are appointed by the Governor as personal appointments; however, the partisan members must have experience on their respective side of the labor-management divide. The BAC is primarily authorized by statute to assist in the contract negotiation dispute resolution process by serving as fact finders or as an interest arbitration panel. The BAC is also authorized to function as a grievance arbitration panel. Regardless of whether it is doing fact-finding, grievance arbitration or interest arbitration, the parties must agree on using the BAC’s services; otherwise, the BAC has no authority to proceed.

State Board of Arbitration and Conciliation Statute, 26 M.R.S. §§ 931-939, establishes the BAC, provides for appointment and compensation of members through user fees, describes

administrative relationship with Executive Director of MLRB, and outlines Board’s jurisdiction and procedure in both public and private sectors to conciliate and arbitrate disputes.<sup>2</sup>

Municipal Public Employees Labor Relations Law, 26 M.R.S. § 965(3) & (6), upon agreement of the parties, the BAC is available for fact-finding and both grievance and interest arbitration services.

State Employees Labor Relations Act, 26 M.R.S. § 979-D (3), incorporates Municipal Act fact-finding provisions by reference for State employee negotiations.

University of Maine System Labor Relations Act, 26 M.R.S. § 1026 (3), upon agreement of the parties, the BAC is available for fact-finding and both grievance and interest arbitration services.

Judicial Employees Labor Relations Act, 26 M.R.S. § 1285 (2) & (5), in the absence of agreement of the parties on a mediator-arbitrator, the Act permits the Executive Director to appoint a mediator-arbitrator who is either a member of the Panel of Mediators or of the Board of Arbitration and Conciliation.

Leave of Absence as Legislator, 26 M.R.S. § 824, upon appeal of an employer, the BAC Chair or Chair’s designee decides whether an employee may take Legislative leave without causing the employer to suffer unreasonable hardship.

**B. PROGRAM DESCRIPTION & PERFORMANCE CRITERIA**

**1. THE MAINE LABOR RELATIONS BOARD**

The Maine Labor Relations Board, either directly or through the work of the Executive Director and staff, is responsible for the following functions:

- Resolving disputes regarding bargaining unit composition
- Conducting secret ballot elections to certify, decertify, or change bargaining agents when a valid petition for such an election has been received
- Enforcing the statutory rights granted by Maine’s collective bargaining statutes through adjudication of formal “prohibited practice complaints” before a tripartite quasi-judicial panel and through hearing appeals of unit or election matters
- Overseeing agency operations, including administrative support necessary for the contract dispute resolution steps of mediation, fact-finding, and interest arbitration

---

<sup>2</sup> Although the BAC, which was established in 1909, is authorized by statute to function in both the private and public sectors, much of its private sector jurisdiction has been preempted by the National Labor Relations Act.

### **a. Bargaining Unit Composition**

Bargaining units are groups of employee classifications that negotiate as a group for the terms and conditions of their employment. In fashioning an appropriate unit, the goal is to ensure a clear and identifiable community of interest among the positions to avoid conflicting interests that could frustrate the bargaining process.

Bargaining units may be created or changed in two ways -- by agreement of the parties or through an evidentiary hearing and adjudication conducted by the Board's Executive Director. Concurring parties file an agreement on appropriate unit with the agency and, as is the case throughout the representation process, the MLRB requires that notice of the proposed action be given to the employees whose positions are involved as a condition of approving the action.

If the parties are unable to agree on the composition of a new bargaining unit, one party will submit a petition for unit determination to the Executive Director. If the petition is filed by employees or by an employee organization, it must be accompanied by a showing of interest from at least 30% of the employees in the proposed unit. If the unit already exists but the parties cannot agree on modifications to that unit, a petition for unit clarification is submitted to the Executive Director for resolution. Once a petition and the response are received, the matter is scheduled for hearing. Meanwhile, the Executive Director attempts to get the parties to reach a settlement through telephone conferences. If the parties are unable to reach agreement, the Executive Director conducts an evidentiary hearing and issues a formal written unit report, including findings of fact, reasoning, and conclusions of law. Over the years, the MLRB staff has developed expertise in creating appropriate units by looking at specific indicators of the employees' community of interests. The resulting case law serves as a guide to staff and parties for resolving disputes concerning the composition of proposed bargaining units. All decisions by the Executive Director regarding representation matters are subject to appellate review by the MLRB.

### **MLRB Performance Criteria and Assessment, Bargaining Unit Composition**

**Goal:** To resolve disputes between employers and bargaining agents on the composition of bargaining units in a fair and timely manner that enables the parties to bargain effectively.

**Objective:** To facilitate agreement on composition of unit or issue a written decision that fairly resolves the dispute in a timely manner.

**Criteria and Assessment:** To resolve all unit composition disputes. The Executive Director takes an active role in determining whether the parties can reach an agreement on the dispute once the evidentiary hearing has been scheduled. With over 30 years of cases addressing various unit composition disputes, the director can often refer the parties to similar cases decided by the Courts, the Board, or Board staff that provide useful guidance. These decisions can be accessed on the Board's website. Consequently, many cases are settled by agreement of the parties, which is faster, less costly and less disruptive than litigation.

To the extent that such matters are not resolved by agreement, an evidentiary hearing is conducted and a decision is issued by the Executive Director. Often, these cases present a unique or complex factual issue or a novel legal issue, and one party or both parties feel that a written decision on the issue is necessary. Resolution of unit disputes in this manner may take longer, but is an integral part of the process contemplated by the statute and relied upon by the parties. The decision of the director is appealable to the MLRB. Unit decisions are rarely appealed, however, which may also reflect that the unit determination system and its timeliness are satisfactory to the parties it serves.

Board staff have discussed ways in which to speed up the unit determination process. The response time to the petition could be shortened, although this would require a change in Board Rules, and it is not clear that all parties would agree that this period should be shortened. Board staff could set the hearing date without consulting with parties or party representatives. This could result in an increase in requests for continuances, which happens rarely in the current system.

Finally, it is possible that when there is agreement regarding most of the positions in a new bargaining unit, an election could be conducted amongst the employees in the agreed-to unit. The determination regarding the placement of the few positions in dispute could be resolved in the hearing process while allowing the parties to begin bargaining over terms and conditions of employment for the bulk of the unit.

#### **b. Bargaining Agent Secret Ballot Elections**

Once an appropriate unit has been created, the employees whose classifications make up the unit have the right to decide whether to select an employee organization to represent them for purposes of collective bargaining. As is the case with unit composition, an employee organization can become the exclusive bargaining agent through voluntary recognition by the employer or through a Board election. Although a large number of voluntary recognitions occurred during the 1970's (particularly for teacher units), in recent years bargaining agent matters are generally decided through a Board-conducted secret ballot election. Through the election process, unit employees may opt to be represented by a bargaining agent, choose to change bargaining agents, or decide to decertify their bargaining agent. Legally sufficient petitions, supported by a showing of interest signed by at least 30 percent of the employees in a unit, are required for all secret ballot elections. Elections are conducted by mail and a majority of the valid ballots cast determines the outcome.

#### **MLRB Performance Criteria & Assessment, Election Matters**

**Goal:** To conduct secret ballot elections in a timely manner and manage elections so that all eligible employees are able to vote and ballots are fairly validated and counted.

**Objective:** To facilitate agreement on voter lists and conduct elections expeditiously and in a neutral manner.

## **Criteria & Assessment:**

Elections are conducted when employees wish to elect a bargaining agent for the first time, to change bargaining agents, or to decertify their present bargaining agent. For the last 25 years, the Board has conducted bargaining agent elections exclusively by mail, in a change from the prior practice of conducting elections on site. The mail balloting is a cost-saving measure for the Board and was instituted for that reason, but it also has eliminated the potential for unfair labor practices which can occur during on-site elections. The Board has found that mail balloting has had no impact on the level of employee participation in representation elections. On very rare occasions, a party has objected to the mail ballot process and requested that an on-site election be held. Such requests are handled on a case-by-case basis, but have not been granted in the past 17 years.

Mail ballot elections are generally completed in five weeks, due to various requirements of the Board Rules. For instance, an extensive Notice of Election (with sample ballot) is posted in the workplace, and must be in place at least 10 days before the mailing of the ballots. This posting is critical because it permits unit employees to petition (with a 10% showing of interest) to have an alternate employee organization appear on the ballot. This also notifies employees of what they should expect to receive in the mail. The employer is required to submit a voter list to the Board and to the employee organization(s) involved at least 15 days before the mailing of the ballots, so there is time to resolve disputes. The Board allows about two weeks for the ballots to be mailed and received by voters and to be returned by the voters to the Board before the official count of the ballots. If an eligible voter does not receive the ballot by the date indicated on the Notice of Election, there is time to get one mailed and returned before the official count.

Certain matters related to the election (such as the eligibility of a voter when the voter's ballot could be outcome determinative) may require the conduct of a post-election hearing. These hearing decisions, as well as matters related to the conduct of the election by Board personnel, may be appealed to the Board. Such appeals have been extremely rare, which may reflect that the election system, and its timeliness, are satisfactory to the parties it serves.

The Board has fielded very few complaints about the timeliness of the elections. Nevertheless, Board staff have considered possible ways in which to speed the election process. An inherent part of the length of the election process is the unit determination that usually precedes it. The ideas for shortening the unit determination process, described above, would therefore shorten the overall time period from the filing of a unit petition to the counting of the ballots. In addition, certain election time periods now required by the Board Rules (such as the 15-day period between the receipt of the voter list and the mailing of the ballots) could be shortened, although this would require a change in Board Rules. The main concern with shortening notice periods is that could result in disenfranchising eligible voters.

With the advent of nearly universal access to e-mail, school department elections may now be conducted during the summer, in many instances. This practice has helped expedite elections in that sector.

### **c. Adjudication of Prohibited Practice Complaints & Unit Appeals**

The prohibited practice complaint process is a quasi-judicial process through which the 3-member Board:

1. Enforces statutory rights of employees to engage in or to refrain from engaging in collective bargaining activity free from employer interference, restraint, coercion or discrimination and from restraint or coercion by employees and employee organizations;
2. Protects the right of employees to decide whether to be represented for purposes of collective bargaining and, if so, the right to choose their own bargaining representative;
3. Enforces the statutory obligation of employers and bargaining agents to engage in collective bargaining in good faith;
4. Enforces the statutory prohibition against public sector strikes, slowdowns and work stoppages; and
5. Protects employee organizations from employer domination

#### Prohibited Practice Complaints

Prohibited practice cases are initiated by the filing of a complaint and serving a copy of the complaint on the other party. When the complaint is filed, the Executive Director reviews it to determine whether it alleges a violation of a law the Board has the authority to enforce. If so, a response must be filed with the Board, and the matter is scheduled for prehearing conference with one of the neutral members of the Board. The prehearing conference serves to clarify the issues, identify relevant witnesses and documents, and explore the possibility of settling the dispute. Either before the prehearing conference or between the conference and the scheduled Board hearing, the Executive Director explores the issues with the parties and assists them in resolving the dispute if at all possible. If settlement is unsuccessful, the Executive Director does not share any information or insights gleaned in this process with the Board or the Board Counsel.

Matters that remain unsettled are heard by the full Board assisted by Board Counsel. The Board receives evidence and argument in a formal quasi-judicial hearing. Although neither party is required to hire or use an attorney, each party is responsible for presenting its own case or defense. Board staff cannot provide legal or tactical advice to either party. Once the hearing is finished and oral or written arguments received, the Board deliberates over the merits of the case and makes a preliminary decision. The Board Counsel prepares a draft decision for review

by the Board. The Board Counsel also drafts any dissenting opinions. Once the Board decision is issued, a party has 15 days in which to appeal to the Superior Court. The Board Counsel represents the Board in court in appeals of the Board's decisions.

#### Appeal of Representation Issues

The Board also has the statutory authority to review the decisions of the Executive Director in bargaining unit and election disputes. A party aggrieved by the director's decision in these matters may appeal to the Board. The Board hears and resolves such appeals through the same process described above; however, sitting in its appellate capacity, the Board bases its review on the record of the initial proceeding before the Executive Director and does not conduct a new hearing or take additional evidence.

#### **MLRB-Performance Criteria & Assessment, PPC's and Unit Appeals.**

**Goal:** To provide a neutral forum for the resolution of formal complaints that a party has violated the laws governing collective bargaining in the public sector.

**Objective:** To adjudicate complaints filed by employers, bargaining agents or employees alleging a violation of one of the public sector collective bargaining laws if a satisfactory settlement cannot be reached.

#### **Criteria & Assessment:**

The time elapsed until the hearing or the issuance of a decision as well as the percent of cases settled are objective measures, but not necessarily the best measures of performance. In prohibited practice cases, the Board has the authority to resolve all disputes presented; however, the agency usually puts a higher priority on amicable settlement of disputes by the parties than on a quick adjudication of the matter. Parties engaged in collective bargaining may file a complaint charging the other party with failing to negotiate in good faith, but then explicitly or implicitly request that the matter be held in abeyance to allow the parties the opportunity to agree on a collective bargaining agreement. If agreement is reached, the complaint is withdrawn. In other cases, parties are in the process of working through problems but because of the relatively short six-month statute of limitations, the prohibited practice complaint must be filed to keep the adjudication option open. A notable exception to the Board's deference to the parties' interest in holding a case in abeyance is when the complaint involves a discriminatory discharge or unlawful work stoppage. In such cases, every effort is made to get the case scheduled for an evidentiary hearing quickly. If a settlement is reached in a discrimination case, the individual employee impacted must agree to the settlement, not just the employer and the bargaining agent.

For the foregoing reasons, there is no single quantifiable measure of success in the agency's handling of prohibited practice cases. Not all cases can or should be settled prior to hearing. Furthermore, the Board recognizes that establishing a target of a limited number of

days between filing and hearing or until the decision is issued could actually damage the parties' relationship.

**d. Policy Issues and Administrative Operations**

The Board is the appointing authority for the Executive Director and meets periodically with the director to review agency operations and to determine policy for the agency. The impetus for such review varies from the need to respond to proposed legislation or directives from the Legislature, budget constraints, nomination of mediators, or administrative issues that have arisen in the field. With respect to the operations of the agency, some policy decisions can be implemented immediately, while others require formal rule-making or Legislative approval. The Board last engaged in the formal rule-making process in 2000, adopting procedural rules that went into effect January 1, 2001.

In addition to being involved in efforts to resolve representation and prohibited practice disputes, the executive director manages the interest dispute resolution service, that is, mediation, fact-finding and interest arbitration. Once mediation services have been requested, the director maintains contact with the parties indirectly through the assigned mediator or directly throughout the process to monitor developments and determine which intervention technique might best assist the parties as the bargaining progresses.

One significant change in the agency's operations was the layoff of the former Attorney Examiner and the initiative to eliminate that position in the budget process for the current biennium. In November, 2015, the executive director advised the Board that the representation case load could be handled by the director, without the services of the Attorney Examiner. The Board adopted the director's suggestion and the incumbent employee was laid off. By law, the executive director is charged with conducting the representation and election process and may delegate those functions. The director's assumption of these duties was authorized by law and resulted in substantial General Fund savings. The director's decisions in this area are reviewable by the Board on appeal, with the Board Counsel providing legal advice to the Board, maintaining the separation between the initial decision-maker and the reviewing Board.

**2. PANEL OF MEDIATORS**

Mediation is the cornerstone of the dispute resolution process in Maine. Mediation is available to parties negotiating initial or successor collective bargaining agreements at any time prior to interest arbitration. Occasionally, parties bargaining together for the first time request mediation very early in the process to get the negotiations on-track; however, in the typical situation, the parties have accomplished everything they think they can in direct negotiations prior to calling for mediation.

**a. Traditional Mediation**

At the outset of the mediation process, the mediator usually meets with both parties to explain the process, review those issues that have been resolved, and list all of the outstanding

issues. The mediator then separates the parties into caucuses and meets with them separately to help each party set priorities among the items on its bargaining agenda and begin to learn what it will take for each party to reach an agreement. During the ensuing process of “shuttle diplomacy,” the mediator is not simply a conduit for exchanging information between the parties but, rather, manages the flow, determining the best time and sequence in which to transmit information to help the parties achieve final tentative agreement.

#### **b. Preventive Mediation**

In addition to traditional mediation services, some State mediators are available for preventive mediation, also known as interest-based bargaining. In this process, the mediator is on the scene before negotiations begin and trains the parties in interest-based bargaining. In place of the demands, positions and counter-proposals that characterize traditional negotiations, the parties in preventive mediation work together to identify their individual and mutual interests and engage in joint problem solving to find ways to best meet their interests. The major benefit of this open bargaining style is to foster a cooperative spirit between the public employer and the bargaining agent, resulting in a marked improvement in their relationship. Preventive mediation has been successful not only in helping parties reach successor collective bargaining agreements but also in addressing issues that are not well suited to resolution within the atmosphere of bargaining the basic agreement. While affording some advantages over traditional bargaining, preventive mediation is not appropriate in all situations. To be successful, the parties have to participate in preventive mediation with an open mind and a real commitment to identifying and solving problems without being constrained by a detailed agenda of bargaining outcomes.

#### **c. Grievance Mediation**

Grievance mediation entails both parties agreeing to try to resolve grievance disputes -- disagreements regarding the meaning of the terms of the collective bargaining agreement as applied in given circumstances -- using a State mediator. In practice, there have been very few requests for this service. In fact, there have only been 6 requests for this service since our last report in 2009.

#### **d. Agricultural Commodity Mediation**

The Agricultural Marketing and Bargaining Law, 13 M.R.S. §1953, et seq., requires qualified associations of producers of agricultural products and processors who purchase their crop to negotiate in good faith over the price and terms of sale for commodities produced or sold. If the parties are unable to reach agreement through direct negotiations, the Act requires the Panel to provide voluntary and/or compulsory services to the parties, within a strict time schedule designed to ensure that a contract for the sale of commodities will be in place prior to the beginning of the growing season for that commodity. The Agricultural Bargaining Council, representing the producers of approximately one-half of the Maine potato crop, negotiates pursuant to the Law with McCain Foods.

In 2010, 2011, 2013 and 2014, negotiations between the parties had not resulted in a successor agreement 30 days prior to expiration of the existing contract; therefore, the matter was ripe for mandatory mediation. Mediation did not result in a new contract in the 2010 and 2011 negotiations and the parties proceeded to binding arbitration to resolve their remaining issues. The parties settled their agreements before the 30-day deadline in 2012 and did not require mediation services. While settlement was not reached in mediation in 2013 or 2014, considerable progress was made between the parties toward settlement and they reached final agreement after mediation, but prior to arbitration. In 2015 -2017, the parties did not require mediation services.

#### **e. Private Sector Mediation**

The Panel of Mediators also has private-sector jurisdiction and is available to assist in the resolution of disputes between corporate employers and the unions that represent their employees. Mediators from the Federal Mediation and Conciliation Service have primary jurisdiction over these disputes; consequently, we have not received any requests for private sector mediation since our last report in 2009.

#### **POM-Performance Criteria and Assessment**

**Goal:** To improve labor-management relations by assisting public employers and bargaining agents to voluntarily resolve their differences.

**Objective:** To facilitate the negotiation of initial or successor collective bargaining agreements between public sector employers and bargaining agents through traditional mediation.

Upon request of either the employer or the bargaining agent, the Executive Director assigns a State mediator to assist the parties. The mediator has no authority to force either party to make any particular concession or reach any agreement and cannot impose an agreement upon anyone. Inherent in this lack of authority is that the agency has no real control over the success rate of the mediation process.

A successful mediation is one where all outstanding issues are resolved, resulting in a new collective bargaining agreement between the parties. Absent such agreement and regardless of the number and significance of the issues resolved, the Board does not consider the mediation as having been successful. Parties, who reach agreement at some point after concluding formal mediation, often credit the mediator's efforts as having been instrumental in resolving the dispute; but the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Based on the mediators' reports following the end of mediation, the mediation process has had an average success rate of 65.4% since FY 2009.

During that time, the highest success rate was 82% in FY 2010 and the low was 46.2% in FY 2014. Fiscal issues, particularly general wage adjustments and health insurance financing,

were the most significant issues to resolve in Maine public sector negotiations. Anecdotal evidence from Panel members indicates that the significant downturn in the economy and the slow recovery were the most important factors affecting the settlement rate.

In addition, bargaining issues in K-12 education continued to be more difficult to resolve. While due to several factors, one that stands out is that instructional and support personnel are facing significant changes in teaching, learning standards, enterprise performance evaluation and redefinition of teacher responsibilities, all of which place greater demands on staff time. Many of these issues are matters of educational policy and are not subject to collective bargaining; however, their impact on the employees' working conditions are negotiable and finding mutually agreeable solutions is difficult, especially given uncertain resources. In contrast, much of the work performed in the municipal sector has not changed dramatically. As labor market conditions gradually improved in the years after 2008 and additional resources became available, communities were more willing to adjust employee compensation to recruit and retain quality employees. Recurring questions in the last few years, regarding whether general revenue sharing would continue and, if so, at what level, have had a negative impact on municipal sector bargaining.

**Objective:** To promote improved labor-management relations through preventive mediation.

Upon joint request of the parties, State mediators offer non-confrontational, problem-solving bargaining services to the public sector labor-management community. In the 69 instances where this problem-solving "preventive mediation" approach has been used since 1996, 67 settlements resulted (97.1% settlement rate). Despite the phenomenal success of this process, the Panel has only received 6 requests for this service since 2009. On the other hand, some parties, who State mediators trained in the process over the years, continue to engage in non-confrontational bargaining, without neutral intervention, with successful outcomes.

### **3. BOARD OF ARBITRATION AND CONCILIATION**

Maine's statutes provide that, if mediation does not produce a collective bargaining agreement and upon the request of either party, the parties must participate in fact finding and then, if any issues remain, interest arbitration. The State Board of Arbitration and Conciliation is authorized to assist parties in the contract negotiation dispute resolution process by serving as a fact-finding panel or as an interest arbitration panel, although the parties are free to use other entities for these processes. The BAC is also authorized to function as a grievance arbitration panel to resolve issues regarding the interpretation of their collective bargaining agreement. In practice, the BAC functions almost exclusively as a grievance arbitration panel and as fact finders in public sector disputes, since interest arbitration is rarely necessary. Regardless of whether it is doing fact-finding, grievance arbitration or interest arbitration, the parties must agree on using the BAC's services; otherwise, the BAC has no authority to proceed.

### **a. Grievance Arbitration**

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. This kind of disagreement typically arises when the employer takes an action that a unit employee or the bargaining agent believes is contrary to the terms of the parties' collective bargaining agreement. A grievance procedure is the usual mechanism for resolving such disputes. Typically, the objecting party must present its complaint orally 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 the BAC.

### **b. Fact-Finding**

Fact-finding is the second of the three statutory dispute resolution procedures. If the parties are unable to reach accord on their collective bargaining agreement through direct negotiations and mediation, either party 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 factors such as wages and working conditions for comparable positions in the labor market, the employer's finances, changes in the consumer price index, and 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 remains confidential if the parties 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 in their favor.

### **c. Interest Arbitration**

Interest arbitration is procedurally similar to fact-finding, except that the arbitrators' award is binding on all issues except for those concerning salaries, pensions and insurance. There are few interest arbitration proceedings in Maine in any given year and in most years there are none at all because the parties have settled on a contract before reaching that stage.

### **d. Conciliation**

The tripartite nature of its panels makes conciliation efforts a natural technique in the BAC's dispute resolution tool box. Whether convening to hear a grievance arbitration or a fact-finding matter, the chair of the panel assigned to the case usually inquires whether the parties are willing to attempt to conciliate the dispute. Nearly all parties avail themselves of the opportunity. In conciliation, each party meets separately with the panel member representing their perspective and they discuss the relative strengths and weaknesses of their case and explore the possibility of settling the dispute. At this juncture, the "partisan" Board member may share with "their" respective party their opinion, based on experience in the field, of the likely outcome

of the matter, should it go to decision. The two “partisan” Board members then caucus to evaluate whether settlement is possible. If so, the two BAC members work with the parties to narrow their differences and push them toward settlement. The neutral chair does not participate in the conciliation process beyond an occasional need to keep the parties on task. If settlement appears unlikely, the full panel convenes a formal hearing to adjudicate the controversy. Parties that successfully resolve their disputes are invariably more satisfied with the outcome than when the result is imposed by the panel through an arbitration award.

### **BAC-Performance Criteria and Assessment**

**Goal:** To foster improved labor-management relations by providing high quality, low cost grievance arbitration and interest fact-finding and arbitration services.

**Objective:** Resolve all disputes presented.

If controversies are not settled by the parties themselves (in which case the request for services is withdrawn), the Board resolves all disputes presented to it either by conciliating a settlement agreement or by hearing and issuing a decision addressing the matter in controversy.

## **C. ORGANIZATIONAL STRUCTURE**

### **I. MAINE LABOR RELATIONS BOARD**

a. MLRB Members. The Maine Labor Relations Board is a tripartite board, consisting of members who are private citizens appointed by the Governor and confirmed by the Legislature. The Chair represents the interests of the public and traditionally has been an attorney who is not perceived as being aligned with either labor or management. One member represents the interests of employees, another represents the interests of employers. The Board members are compensated on a per diem basis, with the costs shared by the parties.

The current members of the Board are:

Neutral Chair Katharine I. Rand of Scarborough  
Employee Representative Amie M. Parker of Lewiston  
Employer Representative Robert W. Bower, Jr., of Cumberland

There are two alternate members for each of the primary positions on the Maine Labor Relations Board.

The Alternate Chairs are:

Jeffrey J. Knuckles of Phippsburg  
Michael C. Ryan of Freeport

The Alternate Employee Representatives are:

Dennis E. Welch of Windham

Carl Guignard of Lewiston

The Alternate Employer Representatives are:

Christine Riendeau of Durham

Richard L. Hornbeck of Bowdoinham

b. Staff Assistance. The four employees of the Board all provide administrative or legal support to the MLRB.

Executive Director. The Executive Director (Public Service Executive III) supervises the Board staff; creates or changes the composition of bargaining units through the representation process; conducts elections, through which employees choose, change, or decertify bargaining agents; reviews prohibited practice complaints for sufficiency; responds to inquiries from public sector employees and employers regarding the interpretation and application of the labor relations laws; and serves as the agency liaison to the Legislature. The Executive Director works with the parties in prohibited practice and representation cases, assisting them in resolving their differences as a means of avoiding the formal adjudicatory process.

Board Counsel. The Board Counsel (Public Service Coordinator II) is the main legal advisor to the Board on prohibited practice matters and representation appeals. The Counsel's duties include researching Board decisions, Maine case law, and relevant cases from other jurisdictions, briefing the Board on legal issues, drafting decisions and orders for the Board, and representing the Board when its decisions are appealed to the Superior and Supreme Judicial Courts. Counsel also drafts rules when necessary and assists in the preparation of testimony before the Legislature.

Hearings Reporter. The Hearings Reporter (Office Specialist I) is a professional court reporter who provides verbatim transcripts of the hearings conducted by the Board and the Executive Director. In addition, the Hearings Reporter schedules all Board hearings and prehearing conferences, serves as the primary administrative person for the BAC, which includes scheduling of BAC hearings, and provides administrative and clerical support for the Board's representation program. The Hearings Reporter also performs most of the administrative and clerical work involved with the processing of prohibited practice complaint and representation appeal matters. The Reporter helps in compiling statistics for the agency's annual reports.

Office Manager. The Office Manager (Office Specialist I) collects user fees from parties as required by statute for the MLRB, the Panel of Mediators and the BAC. The Office Manager disburses these funds to the per diem appointees to compensate them for their services and performs the necessary accounting functions required for the special revenue account. The Office Manager monitors the Board's accounts, is the purchasing agent, and assists the Executive Director in the preparation and management of the agency budget. The position also serves as

the agency's receptionist and assists in the compilation of information for the agency's annual reports. The position works with the Board Counsel preparing and adding materials to the agency web site.

## **2. PANEL OF MEDIATORS**

a. The Mediators. The Panel of Mediators consists of 5 to 10 individuals who are knowledgeable and experienced in the field of labor-management dispute resolution. The MLRB nominates candidates to become State mediators and the Governor appoints members of the Panel from the nominees supplied by the Board. The Mediators are compensated on a per diem basis, with the costs shared by the parties to the dispute.

Current members of the Panel of Mediators are:

David W. Bustin of Hallowell  
Maria Fox of Portland  
Denis Jean of Lewiston  
Arthur Kyricos of York Harbor  
Robert Lyman of Freeport  
Philip J. Moss of South Portland  
Melissa P. Shattuck of Falmouth  
Evan L. Weston of Harpswell  
Kenneth T. Winters of Holden

Each member of the Panel has unique strengths, abilities and expertise in resolving particular types of disputes. As a group, the Panel is a multi-dimensional resource for assisting in the analysis and resolution of the wide variety of disputes that arise in labor-management relations.

b. Staff Assistance. The Executive Director of the MLRB is designated by statute as the Executive Director of the Panel of Mediators. To the extent possible, the Executive Director works with the parties to understand their needs so that he can assign a mediator best suited to the dispute and circumstances. The Executive Director also provides legal advice to the mediators upon request. The user fee system, in which the parties are required to share the costs of the mediator, is administered by the Office Manager, with oversight by the Executive Director.

## **3. BOARD OF ARBITRATION AND CONCILIATION**

a. The BAC Members. Established in 1909, the State Board of Arbitration and Conciliation ("BAC") is the oldest of the labor relations dispute resolution bodies in Maine. Like the MLRB, the BAC has a tripartite structure, with a neutral Chair, an Employee Representative, an Employer Representative, and 2 alternates for each primary member. The members are personal appointments by the Governor; however, the candidates for appointment to the "partisan"

positions have been persons known and respected by their peers throughout the labor relations community. Due to the highly partisan nature of the business, the candidates for appointment to the Chair positions have not been established practitioners in the field of labor-management relations; however, they have been persons with reputations for fairness and impartiality with experience in alternative dispute resolution or in adjudication as trial attorneys.

The current members of the BAC are:

- Chair Shari B. Broder of Freeport
- Employee Representative Robert F. Bourgault of Biddeford
- Employer Representative Harry R. Courtois of Biddeford

The Alternate Chairs are:

- Sheila Mayberry of Cape Elizabeth
- Rebekah J. Smith of Union

The Alternate Employee Representatives are:

- Chuck Hillier of Monmouth
- (Vacant)

The Alternate Employer Representatives are:

- Donald H. Gerrish of Brunswick
- Robert W. Bower, Jr. of Cumberland

b. Staff Assistance. The Executive Director serves as the legal advisor to the BAC, occasionally offering advice and representing the Board in the Superior Court. The Hearings Reporter schedules hearings before the BAC and provides clerical support in finalizing and issuing Board decisions. The Office Manager administers the user fee system, in which the parties are required to share the costs of the panel, with oversight by the Executive Director.

**E. FINANCIAL SUMMARY**

Information on position counts, appropriations, allocations and expenditures for Fiscal Years 2008 through 2017 are included in Appendix B. The budget for the activities of members of the State Board of Arbitration and Conciliation and the Panel of Mediators is funded through the Other Special Revenue Fund included with that of the MLRB and is administered by the Executive Director. The correspondence costs for those groups is funded through the All Other portion of the General Fund appropriation for the MLRB.

**G. INTERAGENCY COORDINATION**

Due to the mission and statutory structure of the MLRB, the Board does not work collaboratively with other State agencies that come within its subject-matter jurisdiction. Such involvement could interfere with the appearance of impartiality of the Board, if not rise to the

level of creating actual conflicts of interest. There is no need to coordinate with any Federal agency, as no Federal agency has jurisdiction over matters in which the MLRB could be involved.

The activities of the Panel of Mediators are coordinated with those of the MLRB and the BAC in assisting parties to negotiate collective bargaining agreements in the public sector. On those rare occasions when a State Mediator is involved in private sector disputes, the assigned State mediator coordinates with the Federal Mediation and Conciliation Service.

The Executive Director is the agency liaison with the Legislature and works primarily with the Joint Standing Committee on Labor, Commerce, Research and Economic Development when it considers labor relations matters.

The Executive Director and the Office Manager coordinate with the Department of Administrative and Financial Services' Security and Employment Services Center in preparing the agency budget and supporting documents for submission to the Legislature.

## **H. CONSTITUENCIES SERVED**

The MLRB serves a client base consisting of the employees of municipalities, public schools, counties, the University of Maine System, the Maine Community College System, Maine Maritime Academy, utility and other special purpose districts, local intergovernmental organizations such as ecomaine and Mid-Maine Waste Action Corp., as well as all three branches of State Government. Approximately 500 public employers throughout the state have at least some of their employees represented for collective bargaining. Of Maine's 492 cities and towns, a little over 100 have one or more bargaining units. Most of the 217 school administrative organizations have at least one bargaining unit. There are 7 bargaining units in the State's Executive Branch, 3 in the Judicial Branch, and 2 units of Legislative non-partisan employees.

The MDOL<sup>3</sup> reports that the number of public employees within the Board's jurisdiction decreased by 4.1% from 2009 through 2016, from 88,800 employees to 85,200. The number of employees in State Government, an MDOL category which includes the University and Community College Systems, as well as the executive, legislative, and judicial branches, declined by 6.2%, from 27,600 employees in 2009 to 25,900 in 2016. Local government employment, including schools, public safety, road maintenance, administrative, and other functions for towns, counties, and quasi-governmental entities, declined by 3.1%, from 61,200 to 59,300 employees. The number of cities and towns, as well as that of school administrative units and all other types of public employers, has remained essentially unchanged since 2009. The

---

<sup>3</sup> Maine Department of Labor, Center for Workforce Research and Information, Nonfarm Payroll Estimates by Industry, interactive web site found at: <http://www.maine.gov/labor/cwri/ces1.html>

number of employees within the Board’s jurisdiction varies depending on the availability of public sector resources as well as re-organization initiatives, particularly in State government.

## **I. ALTERNATIVE DELIVERY SYSTEMS**

The MLRB is a partnership between private citizens and State employees. The MLRB is comprised of private citizens, who are appointees and not State employees, and serves as the policy and decision-making body for the agency. The Panel of Mediators and BAC consist exclusively of appointees. The Board’s small staff are State employees providing legal expertise to the Board and continuity in understanding of the labor relations process as well as administrative support to the boards and panel.

The Board is able to disseminate much of its information to the public through the use of the agency web site. The Board’s website contains information one would expect to see on an agency website such as agency rules, links to the statutes administered and enforced by the MLRB, names of MLRB members, BAC members, and mediators on the POM, contact information, as well as forms and descriptive information on the Board’s statutory mandate. In addition, the site includes copies of petitions for elections and unit modification requests that are pending before the Board.

The most important element of the Board’s website for many practitioners representing public employers and public sector employee organizations is the vast collection of Board decisions and related Court decisions on the website that can be searched by key words or by party. Access to these decisions helps public employers and bargaining agents understand the parameters of required or permitted conduct and to use such information to avoid violating the law. The search process has become more cumbersome as a consequence of a change in the search engine that is used on the State’s web site.

## **J. EMERGING ISSUES**

### **1. MAINE LABOR RELATIONS BOARD**

The most significant substantive issue that has impacted the Board's jurisdiction since our last report in 2009 has been the increase in prohibited practice complaints that require discernment between lawful hard bargaining and failure to negotiate in good faith. In the early years, such cases stemmed from employer responses to shrinking public resources. More recently, employers have found bargaining difficult because of uncertainty whether State general revenue sharing will continue and at what level.

Other emerging issues include:

The very significant turnover in personnel representing both labor and management, due to retirements and reassignments in the last few years, has contributed to an increase in

the number of failure to bargain complaints. Successful collective bargaining is based on the relationships between labor and management representatives across the table as well as relationships between representatives and their own principal party. Such relationships take years to develop. Representatives who negotiate with each other for years learn each other's negotiating styles and habits and the resulting relationships facilitate bargaining.

With all of its four-person staff at or beyond their normal retirement age, the Board will experience significant loss of institutional knowledge in the near future.

Increased time needed by staff and parties to research case law due to inadequacies of the State's search engine used on the agency's website.

## **2. PANEL OF MEDIATORS**

State mediators continue to face increased difficulty getting agreements due to substantial increases in the cost of health insurance and the fact that amounts contributed by unit employees may erase any wage increases, particularly among lower-paid employees.

A substantive issue that is emerging with some frequency concerns the scope of the mediator confidentiality provision found in 26 M.R.S.A. § 965 (2)(G) and the parallel provisions of the other labor relations statutes. The question arises in prohibited practice cases charging failure to negotiate in good faith during mediation when one of the parties seeks to compel testimony by the mediator over the objection of the other party. To date, the issue has been addressed by the Executive Director asserting the privilege before the board and parties withdrawing the request to call the mediator as a witness.

## **3. BOARD OF ARBITRATION AND CONCILIATION**

The State Board of Arbitration and Conciliation has not identified any emerging issues requiring the attention of the Legislature.

## **K. OTHER INFORMATION**

None requested.

## **L. COMPARISON OF ANY RELATED FEDERAL LAWS**

There are no federal laws that govern public sector collective bargaining. The National Labor Relations Act applies to private sector employment relations, and is similar in some respect to Maine's public sector collective bargaining statutes. The Board staff keeps abreast of legal developments under the federal statute only because there may be similar policy considerations at play, not because the federal law has any controlling effect.

#### **M. USE AND PROTECTION OF PERSONAL INFORMATION**

The MLRB does not collect personal information from citizens or public sector employees either through use of the internet or otherwise. Consequently, the fair information practices principles do not come into play in the agency's operations.

The secret ballot elections conducted by the Board are handled in such a manner as to separate the personal data, such as the employee's name and address, from the ballot before the ballot is even opened to be counted. Ballots and the accompanying envelopes are kept secured and are destroyed as soon as the 5-day appeal period following the ballot count has expired. Showing of interest forms, each of which indicates an employee's interest in certifying or decertifying a union, sometimes contain employee addresses. These forms are either returned to the petitioning union or destroyed within six months of the election.

The agency's implementation of information technologies consists primarily of improvements to the MLRB's website. The MLRB continues to update its website with new decisions as they are issued and by using the most recent web design templates developed by inforME.

#### **N. PUBLIC FILINGS REQUIRED**

The Maine Labor Relations Board does not require any person or entity to file any reports, applications, or other paperwork with the Board. The function of the Board is to respond to requests for services related to collective bargaining in the public sector. If there is a need for services, the Board responds to that need.

#### **O. REPORTS REQUIRED BY THE LEGISLATURE TO BE SUBMITTED BY THE AGENCY**

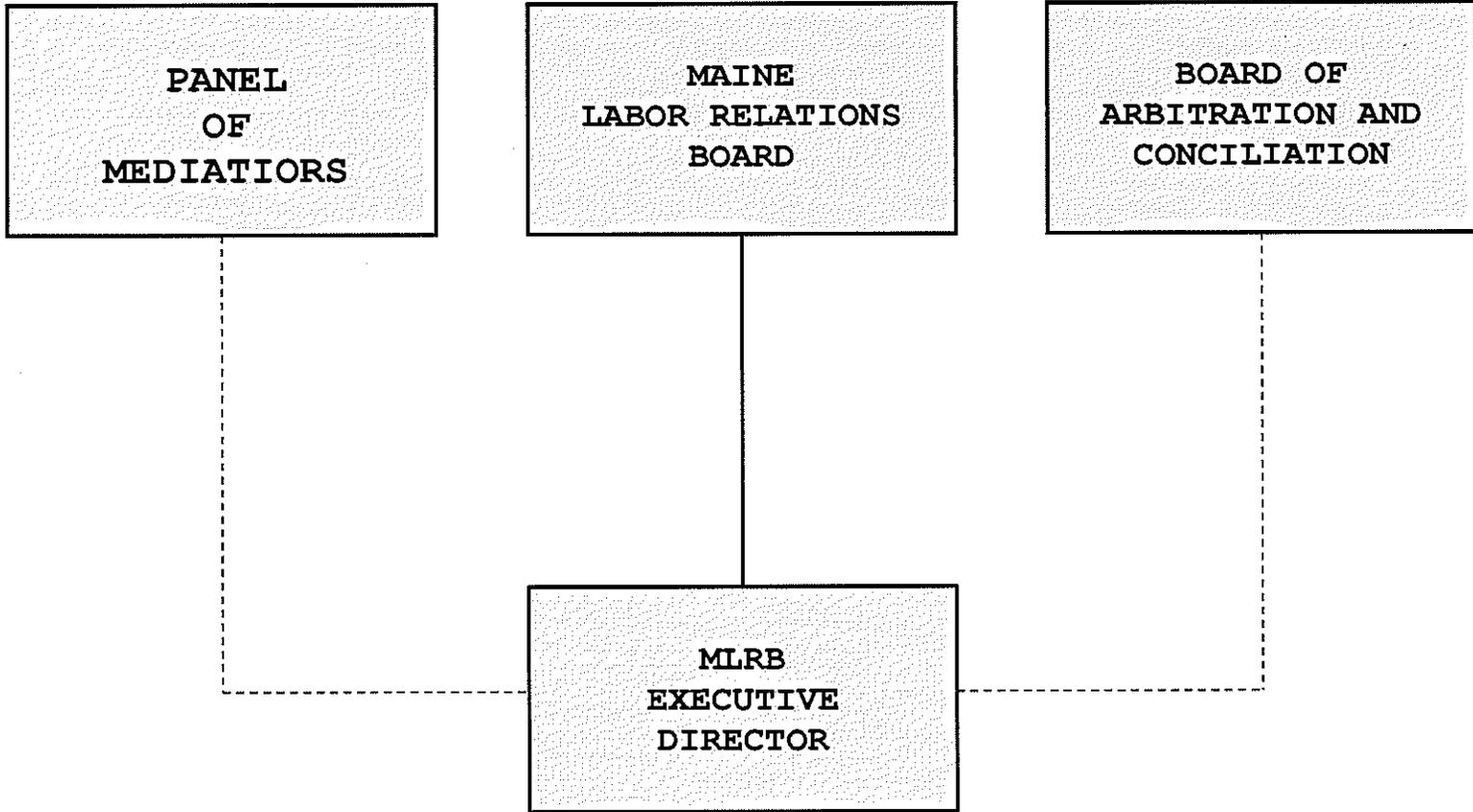
An Act Regarding Compensation for the Panel of Mediators, L.D. 1854, was enacted by the One Hundred Twenty-Sixth Legislature and signed into Law by the Governor as Chapter 553 of the Public Laws of 2013. Section 2 of the Law requires the MLRB to submit a report to the LCRED Committee by December 15, 2017, "on the effect of the changes made pursuant to section 1, specifically with regard to the impact on recruitment and retention of mediators and the effect on the public sector collective bargaining process as a whole." This is the sole report required to be submitted by the Board to the Legislature, other than the instant report.

#### **Q. PROVISIONS OF LAW IN AGENCY'S ENABLING STATUTES THAT MAY REQUIRE LEGISLATIVE REVIEW TO ALIGN WITH OTHER LAW**

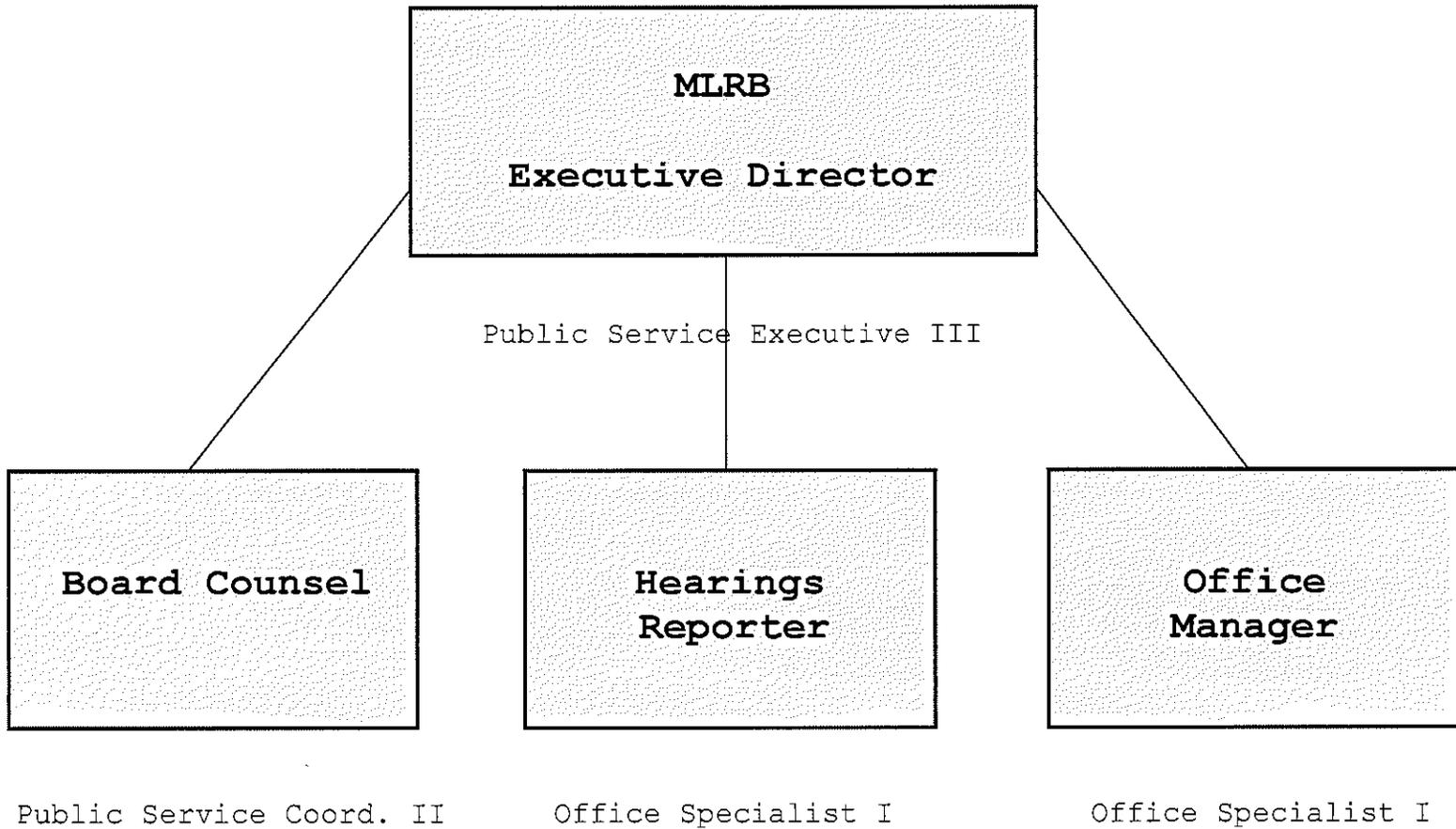
None.

**MAINE LABOR RELATIONS BOARD  
and Affiliated Organizations**

APPENDIX A



**MAINE LABOR RELATIONS BOARD  
STAFF**



Department of Administrative and Financial Services

Security and Employment Service Center

Maine Labor Relations Board

Financial Summary

|                              |               | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 |
|------------------------------|---------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| <b>General Fund</b>          |               |         |         |         |         |         |         |         |         |         |         |
|                              | Appropriation | 469,512 | 461,692 | 460,285 | 454,124 | 456,396 | 442,631 | 445,892 | 463,629 | 493,582 | 483,707 |
|                              | Expenditures  | 446,076 | 458,982 | 454,356 | 420,797 | 424,817 | 421,033 | 443,284 | 426,835 | 426,422 | 431,836 |
|                              |               |         |         |         |         |         |         |         |         |         |         |
| <b>Federal Funds</b>         |               |         |         |         |         |         |         |         |         |         |         |
|                              | Allocation    | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 0       |
|                              | Expenditures  | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 0       |
|                              |               |         |         |         |         |         |         |         |         |         |         |
| <b>Other Special Revenue</b> |               |         |         |         |         |         |         |         |         |         |         |
|                              | Allocation    | 99,906  | 99,906  | 81,546  | 81,546  | 88,719  | 88,719  | 88,719  | 120,777 | 120,777 | 120,777 |
|                              | Expenditures  | 39,292  | 50,091  | 78,368  | 63,954  | 63,154  | 57,791  | 46,814  | 85,653  | 111,763 | 61,112  |
|                              |               |         |         |         |         |         |         |         |         |         |         |
| <b>Total-All Funds</b>       |               |         |         |         |         |         |         |         |         |         |         |
|                              | Approp/Alloc  | 569,418 | 561,598 | 541,831 | 535,670 | 545,115 | 531,350 | 534,611 | 584,406 | 614,359 | 604,484 |
|                              | Expenditure   | 485,368 | 509,073 | 532,724 | 484,751 | 487,971 | 478,824 | 490,098 | 512,488 | 538,185 | 492,948 |