

MAINE STATE LEGISLATURE

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December 15, 2017

Hon. Amy F. Volk, Senate Chair
Hon. Ryan M. Fecteau, House Chair
Members of the Joint Standing Committee on Labor,
Commerce, Research and Economic Development
Room 208 Cross Office Building
Augusta, ME 04333

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

This report is submitted pursuant to the requirement in Chapter 553, P.L. 2014, Sec. 2.

Introduction

The "Panel of Mediators" referred to in statute does not function as a panel at all, but rather consists of 5-10 mediators who are nominated by the Maine Labor Relations Board and are appointed by the Governor for three-year terms. State mediators work independently from each other and provide mediation services state-wide, assisting public employers and employee bargaining agents in negotiating collective bargaining agreements. When parties are unable to settle their differences through face-to-face negotiations, a mediator is assigned upon request of either party. The State mediators have been successful in resolving 67.9% of their cases over the last 3 fiscal years, even though they have no authority to force parties to make any concession or to agree to any proposal. Successful mediators resolve disputes by persuading the parties to alter their positions sufficiently to permit agreement. Effective labor mediators must be knowledgeable and experienced in labor-management negotiations. Negotiating experience is usually gained through work as a representative of management or labor over a period of several years. Not many people are available with such experience.

Chapter 553, Public Laws of 2013

Prior to enactment of Chapter 553 in 2014, the mediators' statutory *per diem* was \$100 for up to 4 hours of mediation services provided and \$100 for each consecutive period of up to 4 hours thereafter. By law, the mediators' *per diem* and necessary expenses plus the state cost allocation program charges must be shared equally by the parties to the mediation. The substantive change that resulted from the enactment of Chapter 553 was to increase the *per diem* to \$300 for each 4-hour segment of mediation services. At the time of enactment, it was hoped that the increase in the rate of compensation would achieve the following goals:

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- 1) reduce the number and length of mediation sessions;
- 2) cause parties to be better prepared, maximizing their time with the mediator; and
- 3) improve the retention of mediators and the recruitment of new ones.

The Labor Board was not able to predict what impact the increase in mediator compensation would have on the settlement rate achieved in mediation; however, they hoped for improvement.

The Impact of Chapter 553 on the Public Sector Collective Bargaining Process

By law, the term of most public sector collective bargaining agreements cannot exceed three years¹; therefore, by looking at statistics for three years both before and after enactment, the statistics reflect at least one bargaining cycle for each period and helps assure comparability of the two periods. The statistical appendix attached to this report summarizes the mediation experience over the last six-year period.

The statistics show that there was a marginal decline of 5% in the number of mediation requests received after enactment of Chapter 553; on average, the number of requests declined from 60 to 57 per year. The reductions in both the time spent in mediation, measured by the number of 4-hour segments per case, and the number of mediation sessions per case were considerably more significant. The number of mediation sessions per case declined from an average of 2.84 meetings before enactment to 2.29 meetings after, a decline of 19.4%. The length of mediation sessions also declined, from 4.29 4-hour segments per case before enactment to 3.5 segments afterwards, an 18.4% reduction.

Over and above the mediator's *per diem* and expenses, the parties incur significant additional costs from participating in mediation. These costs include productivity costs to the employer's chief executive officer, business manager, and one or more department heads, as well as the cost of representation by the party advocates. Fewer meetings and less time spent in mediation translate in substantial savings of time and money by the parties.

Chapter 553 appears to have contributed to an improved settlement rate. Historically, in calculating the settlement rate, only those matters where the mediator was actively involved in the settlement are considered as having been successful. Although parties who reach agreement after concluding formal mediation often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative to constitute settlements for reporting purposes. Prior to enactment of Chapter 553, the Labor Board was unable to predict what impact it might have on the rate of settlement in mediation. The statistical summary shows that the settlement rate in mediation improved, from a

¹ The sole exception to the 3-year maximum is that collective bargaining negotiated pursuant to the Judicial Employees Labor Relations Act "shall not exceed 2 years." 26 M.R.S. § 1285(1)(C).

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weighted average of 57.1% for the three years before enactment to 67.9% thereafter. State mediators reported anecdotally that parties were better prepared for mediation subsequent to enactment of the higher cost for mediation. While not quantifiable, this observation is, logically, a factor contributing to the increase in the rate of settlement and the reductions in time spent in mediation.

While no one can claim a direct causal connection between the increase in the mediators' compensation and the positive changes discussed above, those changes are consistent with most of the outcomes hoped for at the time of enactment. It is important to note that most measureable aspects of mediation, including the number of requests filed each year, the difficulty securing settlements, the number and length of mediation sessions in each case, are the result of external factors beyond the control of the mediation agency. The factors with the greatest impact are: the number of agreements expiring in any given year; the condition of the Maine economy; the cost of employer-provided health insurance; public employee expectations based on the current job market; and the inherent time lag between the private sector economy and state and local revenues.

The Impact of Chapter 553 on the Recruitment and Retention of Mediators

Successful mediators are knowledgeable and experienced in labor relations, with the ability to listen to the parties, analyze their differences, develop alternative solutions, and persuade the parties to alter their respective positions sufficiently to reach agreement. There are few people in Maine with the skill set required to do this work.

Prior to enactment of Chapter 553, two very successful mediators resigned, in-part because of rate of compensation, and took employment as party advocates. In addition, Board staff heard from practitioners that others were not interested in serving for the same reason. One of the mediators expressed concern that a case could involve several hours travel time to and from the mediation with only the compensation for one 4-hour session guaranteed (\$100 at that time). Raising the minimum to \$300 addressed that person's concern and he has continued as a State mediator.

To a significant degree, public sector labor-management relations are a function of interpersonal relationships. Advocates for labor and management develop relationships and understanding of each-other's negotiating styles and approaches through numerous bargaining situations over a period of several years. Similarly, party advocates get to know and work with individual mediators and develop good working relationships over an extended period of time. This is the main reason that individual mediators require several years' tenure to establish their acceptability

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and effectiveness in the labor-management community. The retention of effective mediators is critical to the success of public sector collective bargaining.

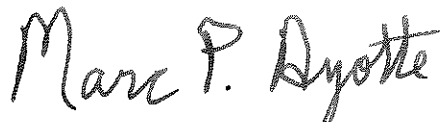
When Chapter 553 was enacted, it was hoped that the higher compensation would help with the retention and recruitment of good mediators, particularly retiring lawyers with labor relations experience. Since 2014, two of the most experienced and successful State mediators were lost due to retirement, declining health, or both. The rate of compensation was not at issue in either case. In Fiscal Year 2016, 2 very active mediators were re-appointed by the Governor and 3 vacancies were filled with able individuals, including a retired management attorney with many years of experience. One vacancy currently exists and there are not an adequate number of qualified candidates to fill it. The Labor Board has never had to advertise to recruit potential mediators. Candidates have been recommended by practitioners or other representatives of either labor or management. Despite the increase in compensation, the Labor Board may have to advertise or otherwise actively recruit candidates in the near future.

Conclusion

Overall, Chapter 553 has had a positive effect on both the public sector collective bargaining process and on the retention of good mediators. When compared to the results for the three years before enactment, in the three years since, the number of meetings per case has declined by 19.4%, the number of 4-hour segments per case has declined by 18.4%, and the settlement rate in mediation has increased by 18%. Taken together, these changes result in the parties spending less time and money in the mediation process with better results. In terms of mediator retention, the increased compensation has resulted in the retention of at least one experienced mediator and in the recruitment of 3 others. Unfortunately, the pool of qualified candidates is limited, regardless of the compensation.

Thank you for the opportunity to discuss the impacts of Chapter 553.

Respectfully submitted



Marc P. Ayotte, Executive Director
Maine Labor Relations Board and
Panel of Mediators

