

MAINE STATE LEGISLATURE

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Maine Labor Relations Board

Program Evaluation Report

**Submitted to the
Joint Standing Committee on Labor
November 1, 2009**

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Carol B. Gilmore, Employee Representative
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October 30, 2009

Hon. Troy D. Jackson, Senate Chair
Hon. John L. Tuttle, Jr., House Chair
Members of the Joint Standing Committee on Labor
Room 220A Cross State Office Building
Augusta, ME 04330

Dear Senator Jackson, Representative Tuttle and Members of the Joint Standing Committee on Labor:

The following program evaluation report is submitted pursuant to the requirement contained in 3 M.R.S.A. § 956 and in response to the Committee's request dated April 28, 2009.

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

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

Very truly yours,

Marc P. Ayotte
Executive Director

MPA/rap
Enclosure

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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 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 1972¹, 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

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

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 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.A. §§ 961-974, establishes MLRB and provides collective bargaining system for employees of municipalities, public schools, counties, and 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.A. §§ 979-979-Q, establishes collective bargaining system for the State's Executive and Legislative Branch employees.

University of Maine System Labor Relations Act, 26 M.R.S.A. §§ 1021-1035, establishes 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.A. §§ 1281-1294, together with a companion Administrative Order by the Supreme Judicial Court, establishes collective bargaining system for the State's Judicial Branch employees.

Agricultural Employees Labor Relations Act, 26 M.R.S.A. §§ 1321-1334, establishes collective bargaining for agricultural employees employed by a person or organization that operates "an

egg processing facility that has over 500,000 laying birds and that employs more than 100 agricultural employees."

Panel of Mediators Statute, 26 M.R.S.A. §§ 891-893, establishes process through which 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 staff. The Executive Director is required by statute to review the prohibited practice complaints for sufficiency before being scheduled for hearing by the Board. Board staff bills the parties for the Board members' *per diem* fees. The process of receiving payment for the services of State mediators and BAC members and disbursing those funds is specified by statute.

Panel of Mediators Statute, 26 M.R.S.A. §§ 891-893, establishes user fees for mediation services collected and disbursed by 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.A. §§ 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.A. §§ 961-974, establishes position of Executive Director; authorizes 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.A. §§ 979-979-Q, substantive delegation of authority to the Executive Director mirrors the parallel provisions of the Municipal Law.

University of Maine System Labor Relations Act, 26 M.R.S.A. §§ 1021-1035 (1988 & Supp. 2000), the Act 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.A. §§ 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.

Agricultural Employees Labor Relations Act, 26 M.R.S.A. §§ 1321-1334, substantive delegation of authority to the Executive Director mirrors the parallel provisions of the Municipal Law.

20-A M.R.S.A. §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.

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. 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.A. §§ 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.A. § 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.A. §§ 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.A. §§ 1026(2), incorporates Municipal Act mediation provisions by reference for higher education employee disputes.

Judicial Employees Labor Relations Act, 26 M.R.S.A. §§ 1285(2) & (5), incorporates Municipal Act mediation provisions by reference for Judicial Branch employees 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 the Board of Arbitration and Conciliation.

Agricultural Employees Labor Relations Act, 26 M.R.S.A. §§ 1325(2), incorporates Municipal Act mediation provisions by reference for covered agricultural employee negotiations.

Maine Agricultural Marketing and Bargaining Act, 13 M.R.S.A. § 1958-B, when the producers and 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 conducted by 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 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.A. §§ 931-939, establishes 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 disputes².

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

² Although the BAC 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.

University of Maine System Labor Relations Act, 26 M.R.S.A. §§ 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.A. §§ 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 the Board of Arbitration and Conciliation.

Agricultural Employees Labor Relations Act, 26 M.R.S.A. §§ 1325(3), parties may agree to use BAC for interest arbitration services.

Leave of Absence as Legislator 26 M.R.S.A. § 824, upon appeal of an employer, 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 or decertify a bargaining agent 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 hearing appeals of unit or election matters
- Overseeing agency operations including administrative support necessary for contract negotiation dispute resolution steps of mediation, fact finding, and interest arbitration.

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 avoid conflicts of interest among the positions 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 Attorney Examiner. 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 MLRB staff. If such a petition is filed 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 MLRB staff for resolution. Once a petition and the response are received, the matter is scheduled for hearing. Meanwhile, the Executive Director contacts the parties and attempts to assist them to reach a settlement. Most unit disputes are resolved in this way. If the parties are unable to reach agreement, the Attorney Examiner 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 or the Attorney Examiner regarding representation matters are subject to 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.

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 Executive 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, most cases are settled by agreement of the parties, which is 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 Attorney Examiner. 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 Attorney Examiner 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 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. The new units created as the result of the school consolidation law may be an area in which this process could be attempted pursuant to the mandate in 20 M.R.S.A. § 1464(2)(H)(5) that the Board "expedite to the extent practicable" resolution of unit and representation matters concerning RSU-wide bargaining units.

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 select an employee organization to represent them for purposes of collective bargaining. As is the case with unit composition, an employee organization can become 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 primarily decided through a staff-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 a secret ballot election. Elections are usually 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, or to change bargaining agents or to decertify their present bargaining agent. For the last 18 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 nine years.

Mail ballot elections generally take 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 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 bargaining agent 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 conduct of elections. Nevertheless, Board staff have discussed 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. It is not clear, however, that all parties would agree that this period should be shortened. Finally, in rare cases where a unit determination is appealed to Superior Court following a Board appellate determination, Board staff will conduct the election following the Board determination.

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 or to refrain from engaging in collective bargaining activity free from employer interference, restraint, coercion or discrimination;
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 at the Board, and the matter is scheduled for prehearing conference with one of the neutral members of the Board. The pre-hearing 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's attorney.

Matters that remain unsettled are heard by the full Board assisted by a staff attorney. The Board receives evidence and argument in a formal quasi-judicial hearing. 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. A formal, written opinion is prepared by the staff attorney and circulated among the Board members, who either agree or suggest changes until the full Board (or a majority) is satisfied. The staff attorney 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 staff attorney 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 or the director's designee in representation disputes. Any party aggrieved by a staff decision

in a unit or election matter 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 usually bases its review on the record of the initial proceeding before the staff attorney and does not conduct a *de novo* hearing.

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 can not 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 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 reviews vary from the need to respond to proposed legislation or directives from the Legislature, budget constraints, appointment 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 instituted in anticipation of the retirement of a long-time board employee. The retiring employee had been responsible for managing the agency's accounts, purchasing, billing parties for user fees, and making *per diem* payments to mediators, BAC members and MLRB members. These responsibilities were transferred to another employee and that person's position has been reclassified to reflect performance of these additional duties.

During the second half of fiscal year 2006, a number of questions arose concerning fact-finding practices and procedures, particularly those involving private fact-finders appointed pursuant to 26 M.R.S.A. § 965(3)(B). The Executive Director convened a meeting of parties, practitioners, partisan fact-finders in the public sector labor-management community and members of the Board staff to discuss whether problems existed, the nature and scope of such issues, and possible solutions. The Executive Director reviewed the comments and suggestions from the client community with the Board and suggested that the matter might be addressed through informal guidelines that would be

circulated among practitioners and fact finders to create shared expectations regarding the process. The Board accepted the director's recommendation. The proposed guidelines were widely circulated among the client community for review and comment and proved effective in resolving the questions which had arisen.

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 is a new service offered by the Panel that was authorized in the First Regular Session of the 120th Legislature. As the name suggests, this process 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.

d. Agricultural Commodity Mediation

The Agricultural Marketing and Bargaining Law, 13 M.R.S.A. §1953, et seq., requires qualified associations of producers of agricultural products and processors who purchase their crop must 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, negotiate pursuant to the Law with McCain Foods. In 2002, 2003, 2006 and 2009, 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. The parties reached agreement in mediation in 2009. While settlement was not reached in mediation in 2003, considerable progress was made between the parties toward settlement and they reached final agreement after mediation, but prior to arbitration. Mediation did not result in a new contract in the 2002 and 2006 negotiations and the parties proceeded to binding arbitration to resolve their remaining issues.

In 2005, a member of the Panel helped resolve a dispute that had potentially catastrophic consequences for the blueberry industry. Approximately 500 growers of wild blueberries had brought suit in the Superior Court, alleging that three major

processors had conspired to fix prices between 1996 and 1999. A civil jury found merit in the claim and awarded the growers damages in excess of \$18 million dollars and the possibility of additional punitive damages. In addition to appealing the verdict to the Supreme Judicial Court, the processors claimed that they did not have sufficient resources to pay the expected award and would be forced into bankruptcy. In an effort to save the industry, Commissioner of Agriculture Robert Spear requested the appointment of a member of the Panel to assist the parties in resolving the controversy. Working against a deadline created by the appeals process in the Law Court, State Mediator David Bustin took the unusual step of issuing a mediator's proposed settlement and was instrumental in facilitating an agreement between the growers and two of the three processors. The agreement was approved by the Superior Court and the third processor, who had not reached agreement with the growers, later did so, adopting the terms proposed by the mediator.

e. Private Sector

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. In rare situations involving the potential for major disruption in the state economy, the Governor's Office or the Commissioner of Labor have requested that a State mediator be assigned to monitor the situation. In such instances, the State mediator coordinates with a mediator from the Federal Mediation and Conciliation Service, with the latter always serving as the lead mediator in the case. While preserving the confidentiality of the mediation process, the State mediator keeps the Governor and the Commissioner informed of the general progress of the negotiations and emphasizes the interest of the State of Maine in the resolution of the controversy.

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, a State mediator is assigned 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 mediation has not succeeded. Parties who reach agreement 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 solely on the mediators' reports following the end of mediation, the mediation process has had an average success rate of 82.1% since our last report. During that time, the highest success rate was 88.5% in Fy 2005 and the low was 72.1% last year (down from 87.5% in FY 2008). Fiscal issues, particularly general wage adjustments and health insurance financing, were the most significant issues to resolve in Maine public sector negotiations last year. Anecdotal evidence from Panel members indicates that the significant downturn in the economy was the single most important factor affecting the settlement rate. In addition, bargaining in K-12 education continued to be affected by on-going uncertainty regarding the future of the initiative to reorganize K-12 school administrative organizations.

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 62 instances where this problem-solving "preventive mediation" approach has been used since 1996, 60 settlements resulted (96.8% settlement rate).

3. BOARD OF ARBITRATION AND CONCILIATION

If mediation does not produce a collective bargaining agreement, Maine's statutes require the parties to participate in fact finding and then 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 wages, 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. ORGANIZATION

1. 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 Peter T. Dawson of Hallowell

Employee Representative Carol B. Gilmore of Charleston

Employer Representative Karl Dornish, Jr., of Winslow.

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

The Alternate Chairs are:

David C. Elliott of Whitefield

Barbara L. Raimondi of Auburn.

The Alternate Employee Representatives are:

Wayne W. Whitney of Brunswick

Robert L. Piccone of Portland.

The Alternate Employer Representatives are:

Sandra S. Carraher of Cape Elizabeth

Richard L. Hornbeck of Bowdoinham.

b. **Staff Assistance.** The five 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, advises staff attorneys and reviews draft decisions, 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.

Attorney Examiner. The Attorney Examiner (Public Service Coordinator I) oversees representation and election matters for the Board, administering the processes for creating or changing bargaining units and for selecting, changing or removing bargaining agents for those units. If parties are unable to agree on the parameters of bargaining units or if issues arise during the election process, the Attorney Examiner convenes an administrative hearing or establishes an alternate process to hear and resolve the dispute. The Attorney Examiner is also responsible for responding to inquiries from the public in labor or employment matters over which the Board does not have jurisdiction by suggesting other agencies or organizations that might be of assistance and making appropriate referrals. Depending on work load in the agency, the Attorney Examiner may also be assigned to work with the Board on prohibited practice matters.

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 staff attorneys. 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.

Clerk IV. The Clerk IV (Office Specialist I) collects user fees from parties as required by statute for the MLRB, the Panel of Mediators and the BAC. She 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 Clerk IV monitors the Board's accounts, is the purchasing agent, and assists the Executive

Director in the preparation and management of the agency budget. The Clerk also serves as the agency's receptionist and assists in the compilation of information for the agency's annual reports. The Clerk works with the Board Counsel preparing and adding materials to the agency web site.

Two organization charts are attached as Appendix A.

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:

John Alfano of Biddeford,
David W. Bustin of Hallowell,
Maria Fox of Portland,
Robert Lyman of Freeport,
James Mackie of South Portland,
Sheila Mayberry of Cape Elizabeth,
Charles A. Morrison of Auburn,
John M. Norris of Carrabassett Valley,
Richard V. Taylor of Scarborough, and
Don R. Ziegenbein of Bangor.

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 Administrator 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 user fee system, in which the parties are required to share the costs of the mediator, is administered by the Clerk IV, 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:

Peter P. Michaud of Cape Elizabeth

Rebekah J. Smith of Union.

The Alternate Employee Representatives are:

Chuck Hillier of Monmouth

Shawn C. Keenan of Bath.

The Alternate Employer Representatives are:

Donald H. Gerrish of Brunswick

Clare Hudson Payne of Holden.

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 Clerk IV administers the user fee system, in which the parties are required to share the costs of the panel.

D. HEALTH AND SAFETY

The Maine Labor Relations Board follows guidelines mandated by the State of Maine and does not have separate guidelines or policies in the areas of workers' compensation or occupational safety and health. The Board staff has discussed health and safety issues at staff meetings. Representatives of the Bureau of Labor Standards have visited the Board office and have assessed each employee's work station and recommended modifications to make them as healthy as possible. Those recommendations, including the purchase of adaptive equipment, have been implemented by the agency.

The Board keeps abreast of the Americans with Disabilities Act and is prepared to accommodate special needs as they arise. All letters scheduling proceedings before the Board or the Executive Director include a request that persons with disabilities who require auxiliary aides or services in order to fully participate in the matter notify the Board in advance of the meeting to accord the agency a reasonable opportunity to accommodate such needs. In addition, the Board has in the past consulted with a representative of a state-wide organization that advocates on behalf of people with disabilities to raise awareness of access and other relevant issues.

E. FINANCIAL SUMMARY

Information on position counts, appropriations, allocations and expenditures for Fiscal Years 2000 through 2009 are included in Appendix B. The budget of the State Board of Arbitration and Conciliation and the Panel of Mediators is Other Special Revenue Fund included with that of the MLRB and is administered by the Executive Director.

F. REGULATORY AGENDA/SUMMARY OF RULES ADOPTED

1. MAINE LABOR RELATIONS BOARD

Regulatory Agenda. The MLRB has no plans for rulemaking.

Summary of Rules Adopted

Chapter 10. General Rules: This chapter defines certain terms used throughout the rules of the Maine Labor Relations Board and contains other rules of general application.

Chapter 11. Bargaining Unit Composition and Representation Matters: This chapter contains rules concerning petitions to create, modify, or merge bargaining units, petitions to hold bargaining agent elections, hearings on unit composition issues, procedures for bargaining agent certification and decertification, and appeals on representation matters.

Chapter 12. Prohibited Practice Complaints; Interpretive Rulings: This chapter contains rules on filing prohibited practice complaints, responding to a complaint, the prehearing conference, the adjudicatory hearing and the issuance of decisions and orders by the Board. This chapter also contains rules on requests for interpretive rulings from the Board.

Chapter 13. Resolution of Contract Negotiation Disputes: This chapter contains rules on requesting mediation, fact-finding, and arbitration and rules governing procedural aspects of those proceedings.

2. PANEL OF MEDIATORS

The Panel of Mediators does not have any statutory authority to adopt rules. Chapter 13, §§ 1-6, of the Rules and Procedures of the MLRB that went into effect January 1, 2001, describe who may request mediation services, when and how to do so, the user fee system, preventive mediation, and the evidentiary privilege of communications in mediation.

3. BOARD OF ARBITRATION AND CONCILIATION

The BAC has been empowered since 1985 to adopt rules pursuant to 26 MRSA § 931, but did not adopt rules of practice and procedure until 2005. Before the Board's adoption of rules, it relied on specific provisions of Title 26, Chapter 9, Subchapter II-A for its rules of practice and procedure. In addition, the MLRB adopted Chapter 13 of its rules in 2001, which contain rules on requesting mediation, fact-finding and arbitration which relate to the conduct of the BAC, as well as to the conduct of the Panel of Mediators and private fact-finders appointed by the Executive Director.

In 2004, a new state law established the Forestry Rate Proceeding Panel under the authority of the BAC (found at 26 MRSA § 931-B, §§ 1351 - 1360). The purpose of the Forestry Panel was to determine, upon the petition of interested parties, the rate of compensation for forest products harvesting or hauling

services, and also to review negotiated agreements on the compensation for those services. The BAC was empowered to adopt rules of procedure for matters before this new Forestry Panel. In 2005, the BAC adopted two rule chapters: Chapter 1, creating rules of general application for all matters before the BAC, and Chapter 2, creating rules of general application for matters before the Forestry Panel.

The Legislature suspended the forestry rating setting law from April 8, 2008, to June 1, 2009, in order to allow the Department of the Attorney General to conduct a statewide market power study of the state forest products industry, to examine competition in the industry, and to determine what, if any, changes were necessary to ensure fair competition. Following the release of the AG study, the Legislature enacted An Act to Improve Opportunity in the Maine Woods (PL 2009, Chap. 381) which, in part, repealed all provisions of the law establishing the Forestry Panel.

Summary of Rules Adopted

Chapter 1. (General Rules of the State Board of Arbitration and Conciliation) contains rules of procedure before the BAC, covering such matters as filing of submissions, serving parties, conducting hearings, issuing awards and reviewing of awards. While the rules were first adopted in 2005, they codified the existing practices of the BAC that had developed over many years. The purpose was to maintain the uniformity of BAC practice and procedure, and to give guidance to parties and representatives appearing before the Board.

Chapter 2. (Rules for Determining Rates of Compensation for Forest Products Harvesting and Hauling Services), contained rules of procedure before the Forestry Panel, covering such matters as filing of negotiated agreements, filing of petitions, acting on petitions, conducting hearings, treatment of confidential documents, issuing decisions, and reviewing of decisions.

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 occasions when a State Mediator is involved in private sector disputes, the assigned State mediator coordinates with the Federal Mediation and Conciliation Service and keeps the Governor's staff and/or the Commissioner of Labor informed of the status of negotiations (in very general terms) through the Executive Director.

The Executive Director is the agency liaison with the Legislature and works primarily with the Joint Standing Committee on Labor, assisting the Committee when it considers labor relations matters. At the invitation of the Commissioner of Labor and with the concurrence of the MLRB, the Executive Director attends the regular senior management staff meetings of the Department of Labor to gain information from the Administration concerning matters essential to the operation of the agency within the context of State government; however, the director is careful to avoid being present when collective bargaining or other matters that could be litigated before the Board are discussed. The Executive Director and the Clerk IV 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, 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 employees of certain large agricultural employers are also within the MLRB's jurisdiction; however, those employees are not currently organized and represented for purposes of collective bargaining.

The MDOL³ reports that the number of public employees in Maine has grown approximately 3.2% since our 2001 Report. There are now 492 cities and towns, compared with 491 in 2001, and 217 school administrative organizations today versus 283 in 2001 (both numbers include non-operating school units). The total number of other types of public employers is essentially unchanged since 2001. The number of employees within the Board's jurisdiction varies depending upon the availability of public sector resources. The number of school administrative organizations in the future is dependent upon the outcome of a pending Citizens' Initiative to repeal the school reorganization law.

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 easily. 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 Board's very first website, created in 1996 by the Bureau of Information Services, enabled users to conduct a word

³Maine Department of Labor, Center for Workforce Research and Information, Quarterly Census of Employment and Wages, 2001-2007 (updated for 2009).

or phrase search on the collection of MLRB decisions that had been posted on the site. The search function built into the Microsoft web server being used provided, and still provides, very useful results because one could see at a glance whether a decision's use of a particular term was relevant. The process of adding older decisions was somewhat cumbersome, but now the site contains all MLRB decisions back 1977 and close to 20 years of administrative decisions on unit composition matters. The enhanced search capability is still operational, but when the antiquated server on which the MLRB site currently resides finally dies, the 600 decisions on the site will have to be moved to the server housing the rest of the maine.gov websites. At that point, budget constraints make it unlikely that MLRB practitioners and MLRB staff will be able to research Board cases with the ease to which we have become accustomed. It appears that the search function currently used to search within the maine.gov site based on the Google search appliance will be the only affordable option.

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 2001 is the on-going consideration of the reorganization of K-12 public school systems. Many School Administrative Units (SAU's) will combine to form Regional School Units (RSU's). Emerging issues resulting from this initiative include:

Merging bargaining units of employees of the constituent SAU's into RSU-wide units and resolving unit placement questions for classifications that are included in one or more SAU units but not all of the units to be merged,

Resolving questions concerning representation when the SAU units being merged are represented by different unrelated bargaining agents, and

Adjudicating disputes regarding alleged violations of the duty to negotiate in good faith to achieve consistent wages, hours and terms and conditions of employment for RSU-wide units, especially when the units being merged have very different collective bargaining agreements.

Similar bargaining issues are likely to arise from the unified corrections initiative as well as from other

reorganizations being contemplated; e.g., regional water districts or municipalities sharing services.

Other evolving issues the Board expects include:

Questions regarding whether parties have negotiated in good faith in situations involving cost-saving strategies or where sufficient resources are not available to continue funding traditional employment benefits.

Questions related to mandatory union service fees, including the sufficiency of the Hudson notice and the adequacy of the procedures for escrow and for resolving challenges to the fee amount, raised in the context of complaints charging interference with an employee's right not to join or participate in union activities.

Increased time needed by staff and parties to research case law due to reduced search functionality on agency's website.

2. PANEL OF MEDIATORS

State mediators anticipate increased difficulty facilitating 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.

In situations where K-12 employers are reorganized into RSU's, the mediators expect difficult negotiations attempting to harmonize provisions of collective bargaining agreements for bargaining units which have merged into RSU-wide bargaining units.

A substantive issue that is emerging with some frequency concerns the scope of the 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.

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.

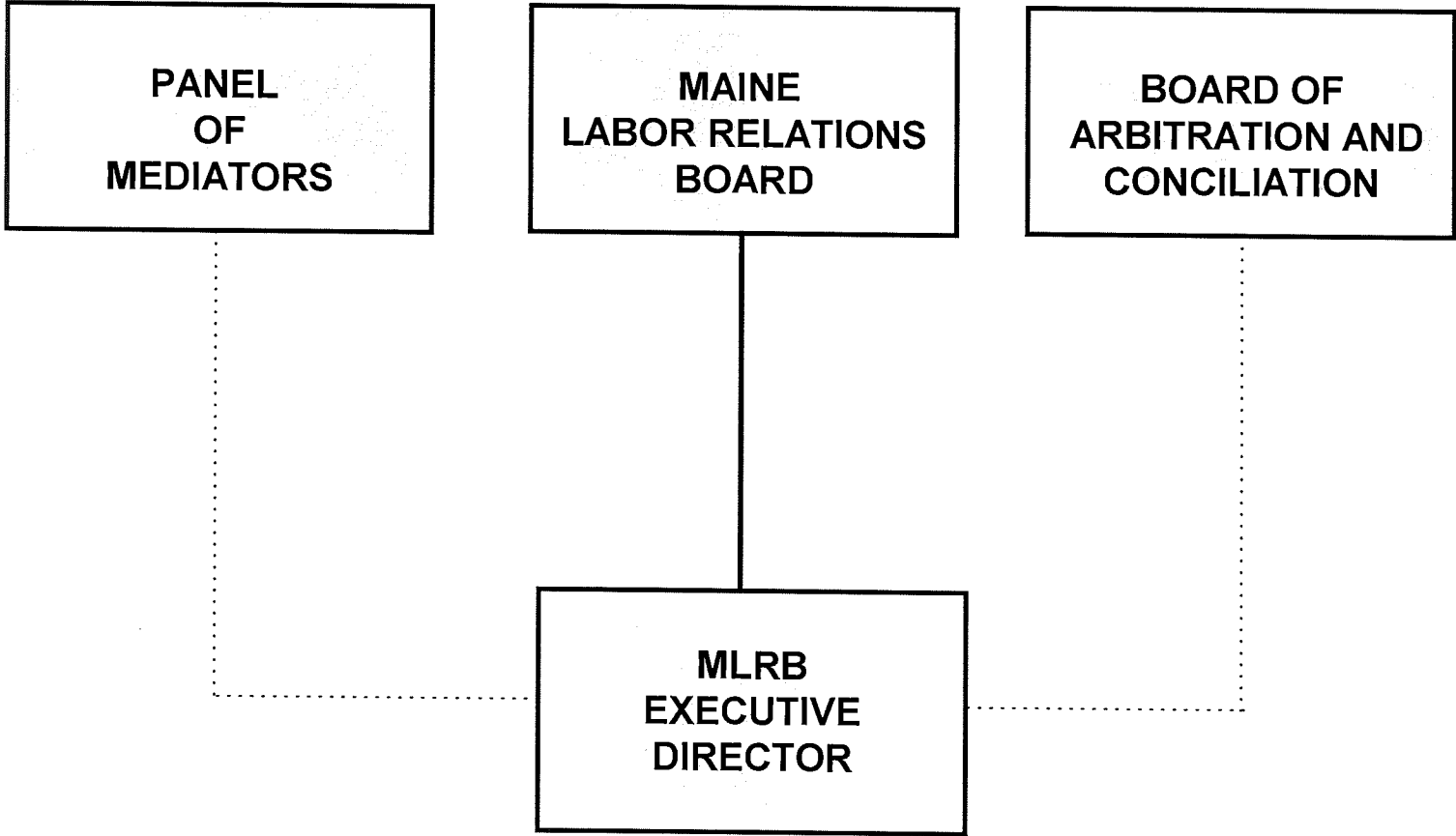
The agency's implementation of information technologies consists primarily of improvements to the MLRB's website. In September of 2006, the MLRB launched a new website which was designed using the templates developed by InforME. The primary benefit of using the templates is that many of the accessibility issues confronted in website design were addressed through the underlying structure of the templates. Thus, individuals accessing the web with assistive technologies such as screenreaders are able to navigate through the site easily and find content as readily as users of standard web-browsing technology. Another advantage is that a template-based website has the same "look and feel" as other portions of the maine.gov

website. This provides a consistent format for web users who visit more than one agency on the maine.gov site and consequently provides a more user-friendly web experience.

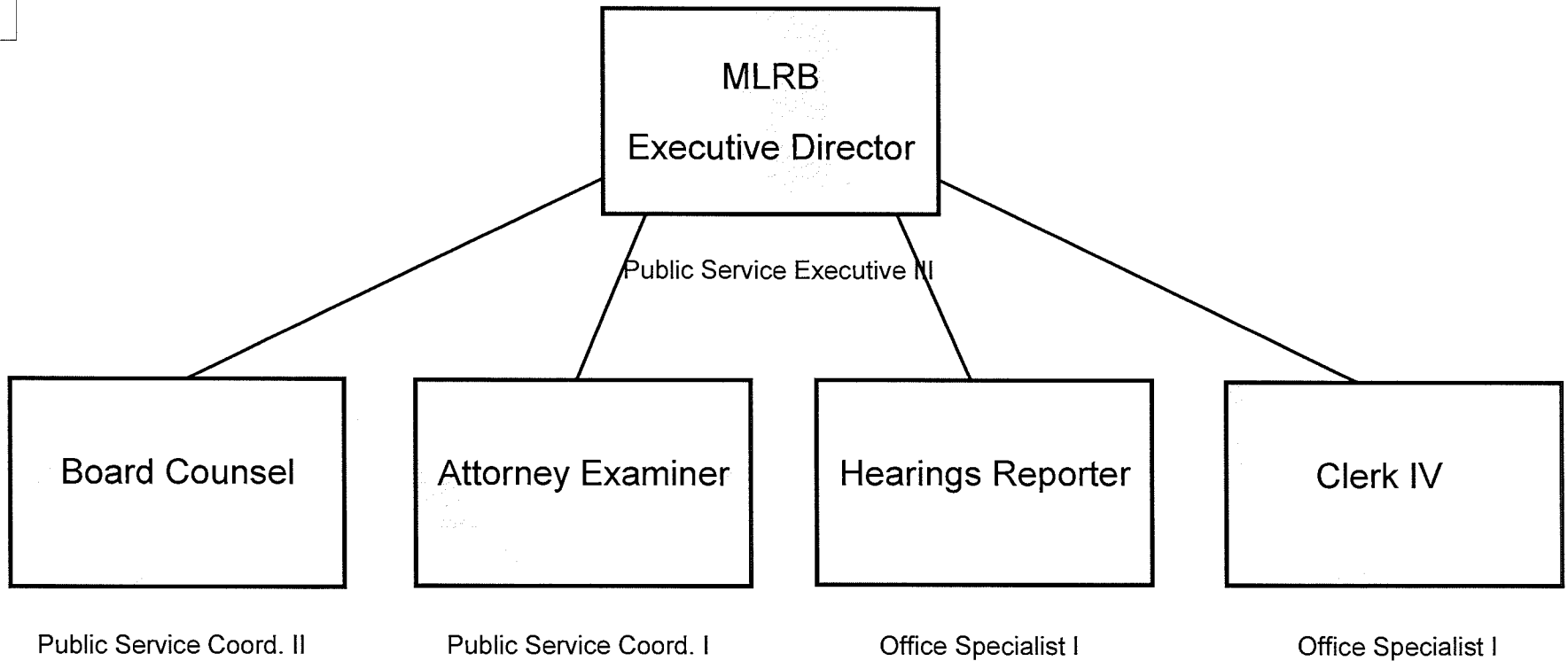
N. PUBLIC FILINGS REQUIRED

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.

MAINE LABOR RELATIONS BOARD and Affiliated Organizations



MAINE LABOR RELATIONS BOARD STAFF



Department of Administrative and Financial Services

Security and Employment Service Center

Maine Labor Relations Board

Financial Summary

General Fund		FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
	Appropriation	359,395	363,164	400,612	418,233	441,672	447,333	464,757	470,722	471,858	461,604
	Expenditures	349,293	360,161	396,374	412,782	441,255	447,173	458,356	467,074	446,076	458,982
Federal Funds											
	Allocation	0	0	0	0	0	0	0	0	0	0
	Expenditures	0	0	0	0	0	0	0	0	0	0
Other Special Revenue											
	Allocation	88,072	88,792	97,644	97,644	98,284	117,276	98,933	99,906	99,906	99,906
	Expenditures	63,922	67,086	57,210	72,397	73,694	52,956	74,350	62,808	39,217	49,791
Total-All Funds											
	Approp/Alloc	447,467	451,956	498,256	515,877	539,956	564,609	563,690	570,628	571,764	561,510
	Expenditure	413,215	427,247	453,584	485,179	514,949	500,129	532,706	529,882	485,293	508,773