

VERMONT LABOR RELATIONS BOARD
2015 ANNUAL REPORT

Introduction

An annual report historically has been completed by the Labor Relations Board stating in detail the work it has done hearing and deciding cases and in other areas. This provides a benchmark for viewing caseloads, activities and other developments from year to year. We hope labor relations practitioners find this useful in understanding the work of the Board.

The Board strives to promote and maintain harmonious and productive labor relations in Vermont. The major activities of the Board are: 1) determining appropriate bargaining units, 2) conducting union representation elections, 3) adjudicating unfair labor practice charges in cases involving relations between employers (State of Vermont, Vermont State Colleges, University of Vermont, municipal employers, school districts and small private employers) and their employees; 4) making final determinations on grievances of employees of the State of Vermont, the Vermont State Colleges and the University of Vermont; and 5) providing assistance in resolving negotiation impasses arising under the State Employees Labor Relations Act, the Independent Direct Support Providers Labor Relations Act, and the Early Care and Education Providers Labor Relations Act.

The major goal of the Board is to ensure that cases coming before it are resolved justly and expeditiously, either through informal settlements or Board decisions. Through its decisions, which are published and indexed, the Board has developed a substantial body of labor relations law to provide guidance to labor and management. This has served as a deterrent to labor disputes as it has substantially lessened the number of repetitious issues which come before the Board, and has played a role in increasing the sophistication of the parties in labor relations. In addition, as detailed herein, the Board includes within its mission an extensive educational role in labor relations.

This Annual Report is divided into two parts. The first part is a summary of general developments and activities of the Board during 2015. The second part is a more specific discussion of areas of Board jurisdiction. Attached to the Annual Report is an Appendix on Caseload Statistics covering the period 2006 through 2015. The Appendix provides the basis for the bulk of statistics cited in this Annual Report.

I. GENERAL DEVELOPMENTS AND ACTIVITIES

CASELOAD PROGRESS

The number of cases filed with the Board was 9 percent below average during 2015. 51 cases were filed, compared to the annual average of 54 cases over the past ten years. The Board closed fewer cases than were opened during the year. 46 cases were closed in 2015, 15 percent below the annual average. This left 21 cases open at the end of 2015, below the annual average of 24 open cases. Only five open cases are older than five months.

The following table indicates how the 46 cases were closed:

How Cases Were Closed	Number of Cases
Board decision	11
Settlement or withdrawal of case	23
Certification of union as representative	6
Non-certification of union as representative	1
Appointment of Mediator or Fact-finder	5

The number of hearing/meeting days for the Board was below average in 2015. The Board scheduled 20 cases to be heard on 24 days. The number of hearing/meeting days actually held was 10 days, compared to the annual average of 13 days. The Board heard 7 cases, compared to the annual average of 9 cases. The average length of hearing time per case was 1.1 days, below the annual average of 1.3 days.

The following table depicts the Board's historical experience over the past five years with respect to cases filed, cases closed, Board hearing days and cases heard:

	2011	2012	2013	2014	2015
Cases Filed	68	47	56	69	51
Cases Closed	70	60	44	79	46
Hearing/Meeting Days	16	7	11	10	10
Cases Heard	13	3	5	13	7

The average length of time between the filing of a case with the Board and scheduled hearing was 164 days, below the annual average of 172 days. The average time between filing and closing of a case was 156 days, well below the annual average of 174 days. The improvements in times between case opening and closing and the relatively low number of open cases over the last few years have been due primarily to the high number of case settlements and withdrawals. The percentage of cases closed by settlement or withdrawal during the past five years has been the highest in the history of the Board. The Board places emphasis on attempting to informally resolve cases and narrow issues in dispute through use of informal meetings and telephone conference calls. In many cases, this has paid substantial dividends in informal resolution of cases. Further, the parties are settling many cases without extensive involvement by the Board. 50 percent of cases were closed by settlement or withdrawal in 2015, and 48 percent were closed by these reasons in 2014. 66 percent, 63 percent and 59 percent were so closed in 2013, 2012 and 2011 respectively.

The percentage of cases closed by settlement or withdrawal during the past five years – i.e., 57 percent - is above the 55 percent average during the last ten years, and well above the 47 percent average during the years preceding the last ten years. The Board will continue efforts to encourage parties to informally resolve their disputes and explore methods to interact with parties in a time-efficient and economical way in handling cases.

BOARD COMPOSITION

Governor Shumlin reappointed Gary Karnedy during the year for a six-year term. Karnedy currently is Board Chairperson, serving a two-year term from September 2014 to September 2016.

EDUCATIONAL AND RESEARCH SERVICES

A major goal of the Board is to offer extensive educational and research services to labor relations practitioners to more effectively promote productive labor relations. Toward that end, in 2015 the Board conducted a statewide labor relations conference and revised the publications it has produced to aid practitioners.

In May, the Board issued the 3rd edition of *The Evolving Vermont Labor Relations Law*, authored by Board Executive Director Timothy Noonan. The purpose of this treatise is to present

Vermont labor relations practitioners with a comprehensive treatment of statutory, case law and administrative developments impacting labor relations in the state. This third edition is updated through the end of April 2015. It expands the subjects covered and updates case precedents and other developments since the second edition was released in 2012. This text replaces and builds on two previous publications of the Vermont Labor Relations Board, the Case Law Summary in Major Areas contained in the *Guide to Vermont Labor Relations Statutes* and the Guide to Vermont Labor Relations Board Practices and Procedures contained in the Board *Practices and Procedures Manual*. This book combines the discussion on case law precedents in substantive areas of the law, and Board practices and procedures, in one integrated publication.

In addition, this 464-page book expands on the subjects covered in the Case Law Summary and Practices and Procedures Guide. The expansion relates not only to issues addressed by the Labor Relations Board but also to labor relations matters covered by statutes beyond those administered by the Board. Further, there is extensive discussion on the historical development of Vermont labor relations acts and the administration of the acts by the Labor Relations Board which have not been part of previous publications.

In June, the Board published the 21th revision to its *Guide to Vermont Labor Relations Statutes*. The *Guide* was first published in January 1991. It contains: 1) copies of Vermont labor relations statutes, 2) an updated subject index of all Board opinions covering the period 1977 through May 31, 2015; 3) an updated alphabetical index of all Board opinions covering the period 1977 through May 31, 2015; 5) an updated subject index of Vermont Supreme Court public sector labor relations decisions through May 31, 2015; 6) a digest of all Vermont Supreme Court decisions on appeals of Board decisions through May 31, 2015; and 7) the Board *Rules of Practice*.

124 persons registered for a labor relations conference on October 9 jointly sponsored by the Board and the Federal Mediation and Conciliation Service. The conference had two plenary sessions: one on “Affordable Care Act and Vermont Health Connect: Current and Future Impacts on Health Care Cost Containment Efforts in Public Sector Collective Bargaining”, and the other on “Using Employee Assistance Services to Address Drug, Alcohol, Mental Health and Other Issues in the Union-Represented Workplace”. Conference participants also had six workshops from which to choose: 1) Chittenden County Transportation Authority and Teamsters Local 597: Transformation of a Relationship; 2) Ethical Issues in Negotiations, Grievances and Unfair

Labor Practice Cases; 3) Emerging Issues in Public Sector Contract Negotiations; 4) Using Mediation to Resolve Grievances Before Decision by Arbitrator or Labor Relations Board; 5) Case Study of a School Merger and its Labor Relations Impacts: Chittenden East Supervisory Union; and 6) Preparing and Presenting Cases Before the Vermont Labor Relations Board. The conference was well-received by participants; 79 percent of attendees completing evaluation forms rated the overall program either excellent or very good.

The Board continues to update and expand its website. The website now includes: a) all Board decisions containing opinions issued since 1977; b) Board *Rules of Practice*; c) most of the contents of *The Evolving Vermont Labor Relations Law*; d) a guide to Board practices and procedures; e) all the orders issued by the Board certifying, not certifying and decertifying unions as bargaining representatives; f) the Board Annual Report; g) general information on the Board; h) forms for filing cases with the Board; i) order forms for Board publications; j) the Board hearing schedule; k) Board member backgrounds; and l) the current fiscal year's budget of the Board. There are links to labor relations statutes administered by the Board along with additional links to other web sites of interest to labor relations practitioners.

Further, the Board maintains a labor library in its offices, the Bill Kemsley, Sr. Library. The Kemsley library contains books, reference materials, and periodicals on labor law, labor relations, labor history and labor studies. It is open for the use of the public during the Board's office hours.

OTHER BOARD ACTIVITIES

The Board continued its participation in the Association of Labor Relations Agencies ("ALRA"), the association of impartial government agencies and private non-profit agencies in the United States and Canada responsible for administering labor relations laws or services. Noonan and Board Member Alan Willard attended ALRA's annual conference in July in Minneapolis, Minnesota. Noonan completed his one-year term as President of ALRA at the conference. The Board hosted the ALRA Conferences in 1991 and 2008 in Burlington.

The Board also continued its involvement in the New England Consortium of State Labor Relations Agencies. The Board has been an active participant in the Consortium since the 1970's. Noonan continues to serve as Fiscal Agent of the Consortium. The Consortium conducted a two-day training session in April at the Wachusett Village Inn and Conference

Center in Westminister, Massachusetts. Noonan was a lead coordinator for the training session. Board Chairperson Gary Karnedy, Board Members Edward Clark and Robert Greemore, and Noonan attended the training. The Consortium also sponsored a conference in July in Sturbridge, Massachusetts, which attracted 185 participants. Board Clerk Melinda Moz-Knight handled conference registration duties. Board Members Richard Park and Robert Greemore, along with Noonan and Moz-Knight, attended the conference.

II. AREAS OF BOARD JURISDICTION

The Board has specific jurisdiction to resolve grievances, unfair labor practice charges, unit determination/representation cases and miscellaneous cases. The following table depicts the Board’s historical experience over the past five years with respect to the number of cases filed in these various categories:

	2011	2012	2013	2014	2015
Grievances	20	15	25	14	33
Unfair Labor Practices	26	14	18	13	6
Unit Determination / Representation	18	16	11	39	7
Miscellaneous	4	2	3	3	5

The following sections discuss in detail the work of the Board in each of these categories during 2015.

UNIT DETERMINATIONS AND REPRESENTATION ELECTIONS

The number of unit determination/representation case filings in 2015 matched the lowest number of such annual filings over the last 35 years. Seven cases were filed, compared to the annual average over the last ten years of 14 cases. Six cases were filed under the Municipal Employee Relations Act, and one case was filed under the State Employees Labor Relations Act.

All seven cases filed in 2015 were closed by the end of the year. In addition, the Board closed the five unit determination/representation cases pending at the beginning of 2015. The following table indicates how the 12 cases were closed:

How Cases Were Closed	Number of Cases
Board order certifying union as representative subsequent to election	1
Board certification of voluntary recognition	5
Board order not certifying union as representative subsequent to election	1
Board decision granting unit clarification petition	1
Board order deferring case to grievance arbitration	1
Board decision dismissing election petition	1
Dismissal by Board order based on withdrawal or settlement of case	2

The Board issued two unit determination/representation decisions in 2015. The Board dismissed a petition filed by the New England Police Benevolent Association (“NEPBA”) to represent the sworn law enforcement officers of the Vermont Department of Fish and Wildlife, the Vermont Department of Liquor Control and the Vermont Department of Motor Vehicles. The Board concluded that the NEPBA had not presented evidence that facts had changed providing reasonable cause to warrant holding a hearing before the Board to reconsider the appropriateness of a proposed unit which had been found inappropriate by the Board in a 2012 decision. *New England Police Benevolent Association Petition for Election of Collective Bargaining Representative (Re: Sworn Law Enforcement Officers)*, 33 VLRB246.

The Board granted a unit clarification petition filed by a school staff association to add behavior interventionists to an existing bargaining unit of special education instructional assistants employed by a supervisory union. *Caledonia North Education Association and Caledonia North Supervisory Union School Board*, 33 VLRB 145.

There was a paucity of union representation elections in 2015, following a year in which there was an unusually high number of elections. The Board conducted 17 elections in 2014, but only one in 2015. This compared to the annual average over the last ten years of 6 elections. This was the lowest number of elections conducted in any year over the last 35 years. In the election, City of Winooski Police Department employees voted to replace one union as their representative with another union.

GRIEVANCES

The number of grievances filed in 2015, unlike the experience with unit determination / representation cases and unfair labor practice charges, was substantially above average. 33 grievances were filed during the year, compared to the annual average of 23 grievances during the last ten years.

27 grievances were filed on behalf of state employees, compared to the annual average of 18 such grievances. Three grievances were filed on behalf of University of Vermont employees, and three grievances were filed on behalf of state colleges employees. 22 of the state employee grievances were filed by the Vermont State Employees' Association ("VSEA"). Four grievances were filed by state employees without VSEA involvement. The remaining grievance was filed by the Vermont Troopers Association on behalf of a state trooper. Grievances contesting dismissals constituted 8 of the 27 state employee grievances. Two grievances were filed contesting the failure to provide information to VSEA in connection with providing grievance representation to employees. No other area was the subject of a grievance more than once.

Two of the state colleges grievances involved suspensions of faculty members. The remaining state colleges grievance concerned revision of a faculty member's workload plan. Two of the University of Vermont grievances involved non-faculty staff, one contesting a grievance and the other challenging changes in schedules and workdays. The remaining UVM grievance concerned denial of promotion and tenure to a faculty member.

The following table depicts the Board's historical experience over the past five years with respect to the number of grievances filed by types of employees under the Board's grievance jurisdiction:

	2011	2012	2013	2014	2015
State Employees	15	11	24	12	27
State Colleges Employees	3	1	0	0	3
UVM Employees	2	3	0	2	3

The Board issued six decisions on grievances arising from state employee bargaining units, compared to the annual average of five such decisions during the past ten years. In two cases, the Board determined whether just cause existed for disciplinary action imposed on

employees. The Board upheld the dismissal of a State Judicial Department Docket Clerk for misrepresenting a claim of sick leave and lying to her manager about it. *Grievance of Lee*, 33 VLRB 180. The Board rescinded a demotion and thirty day suspension of a Correctional Facility Shift Supervisor, and replaced it with a three-day suspension, where the employee's offenses in his interactions with a female lodged at the facility were substantially less serious than charges made against him and where other employees engaged in comparable conduct received no discipline. *Grievance of Patterson*, 33 VLRB 2015.

Entitlement of employees to overtime compensation was at issue in two other state employee grievance decisions. The Board determined that the State Department of Fish and Wildlife violated the State-VSEA collective bargaining contract by providing an employee with compensatory time, instead of pay, for overtime she worked on two days. *Grievance of Eynon*, 33 VLRB 234. The Board concluded that Department of Liquor Control investigators did not establish their contention that the Department inequitably distributed overtime among Liquor Control Investigators in violation of the State-VSEA contract. *Grievance of Davidson, et al*, 33 VLRB 153.

The Board granted motions filed by employers to dismiss grievances in the two remaining grievance decisions arising from state employee bargaining units. The Board held that the Vermont Department of Labor action to remove comments from a "satisfactory" performance evaluation of an employee after the employee filed a grievance over the evaluation resulted in there being no actual controversy remaining to conduct a hearing and rule on the merits of the grievance. *Grievance of Edson*, 33 VLRB 198. The Board dismissed a grievance filed by a State Department of Corrections employee contending that the employer violated various personnel policies and work rules forcing him to resign from his position where the employee did not seek to rescind his resignation, did not file a grievance with the employer concerning his resignation, and filed his grievance with the Board nearly three months after the effective date of his resignation. *Grievance of Mickel*, 33 VLRB 282.

The Board issued two grievance decisions involving grievances filed by University of Vermont employees. The Board held that an employee did not establish her claims that: 1) the University violated its stated policy concerning post-retirement medical benefit eligibility criteria and wrongfully denied her from retiring with full post-retirement benefits as of a certain date; and 2) the University engaged in age discrimination by its actions. *Grievance of Findlay*, 33

VLRB 166. In the second case, the Board denied an application filed by an employee to amend his grievance to the extent that he failed to raise an issue concerning violation of a University policy at earlier steps of the grievance procedure. *Grievance of Wilson*, 33 VLRB 285. The Board issued no grievance decisions involving State Colleges employees.

UNFAIR LABOR PRACTICES

The number of unfair labor practice case filings in 2015 matched the lowest number of such annual filings over the last 35 years. Six charges were filed, compared to the annual average of 14 charges. Five charges were filed by unions against employers, and one was filed by an employee against a union. Three of the five charges filed against employers were filed against school employers, one was filed against a municipal employer, and one was filed against the State Judiciary Department.

Two of the six charges concerned alleged unilateral changes in conditions of employment and/or refusal to bargain in good faith. Two cases charged employers with interference of employees in exercising their rights and/or discrimination against employees for protected activities. Another charge alleged that an employer committed an unfair labor practice by unilateral contracting out of work. In the remaining charge, an employee alleged that a union had interfered with his rights.

The Board closed three of the six unfair labor practice cases filed during the year. In addition, the Board closed the one unfair labor practice case pending at the beginning of 2015. Two of the four closed cases were resolved pursuant to withdrawal of the charge or settlement by the parties. One case was closed by Board decisions declining to issue an unfair labor practice complaint. In the remaining closed unfair labor practice case, the Board concluded that an unfair labor practice had not been committed by an employer after an evidentiary hearing.

The Board issued two unfair labor practice decisions in 2015, compared to the annual average over the last ten years of three such decisions. In one of the cases, VSEA contended that the State Judiciary Department improperly refused to engage in collective bargaining for a successor agreement in a timely manner. The Board held that it could not conclude that the Judiciary violated its duty to bargain given VSEA's failure to appropriately request bargaining. *Vermont State Employees' Association v. Judiciary Department of the State of Vermont*, 33 VLRB 253. In the other case, the Board declined to issue an unfair labor practice complaint

because a State Colleges employee had not set forth sufficient factual allegations demonstrating that VSEA may have failed in its duty to fairly represent him during a meeting at which the college president asked him to retire early. *Duczeminski v. Vermont State Employees' Association*, 33 VLRB 274.

MISCELLANEOUS CASES

Unions and employers filed joint requests in five cases for the Board to appoint a mediator and/or fact-finder in negotiations impasses for successor collective bargaining contracts. The Board appointed mediators and fact-finders in three negotiations disputes between VSEA and the State concerning successor agreements covering the Non-Management Unit, the Supervisory Unit, and the Corrections Unit. The Board also appointed a mediator in an impasse between the State Colleges and the State Colleges Faculty Federation for a successor agreement covering full-time faculty. Further, the Board appointed a mediator in an impasse between United Academics and the University of Vermont for a part-time faculty successor agreement.

APPEALS OF BOARD DECISIONS

No decisions issued by the Board were appealed to the Vermont Supreme Court in 2015. This compares to an annual average of 16 percent of Board decisions appealed over the past ten years. This is only the second year in the last 35 years that no Board decision has been appealed.

The Court issued one decision involving an appeal of a Board decision in 2015. The Court upheld the Board's dismissal of a petition for election of a collective bargaining representative filed by a police association for failure of the association to provide justification for its untimely filing. *New England Police Benevolent Association Petition for Election of Collective Bargaining Representative (Re: Sworn Law Enforcement Officers)*, 2015 VT 51 [VLRB Cite: 33 VLRB 4 (2014)].

At the end of 2015, there were appeals of Board decisions in six cases pending at the Court. The six cases on appeal all involved election petitions filed by VSEA under the Municipal Employee Relations Act which the Board consolidated for hearing and decision. The Board dismissed the election petitions in these cases in 2014.

There has been increasing effectiveness of Board decisions over time. During the past ten years, the number of Court decisions on appeals of Board decisions has been substantially reduced. There have been only 16 Court decisions during this period, compared to 47 decisions during the preceding ten years. In most of these 16 decisions, the Board decision has been upheld. The Board has been fully affirmed in 13 cases, and reversed in 3 cases, an affirmance rate of 81 percent. During this period, the chance of a Board decision remaining in effect and not being reversed has been 98 percent.

Dated this ____ day of January, 2016, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Timothy J. Noonan, Executive Director

/s/ Gary F. Karnedy

Gary F. Karnedy, Chairperson

/s/ Richard W. Park

Richard W. Park

/s/ James C. Kiehle

James C. Kiehle

/s/ Alan Willard

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/s/ Edward W. Clark

Edward W. Clark, Jr

/s/ Robert Greemore

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