

**VERMONT LABOR RELATIONS BOARD**  
**2023 ANNUAL REPORT**

**I. INTRODUCTION**

The Vermont Labor Relations Board provides this annual report to outline its work in adjudicating labor disputes and other matters involving labor-management relations. This report provides a benchmark for viewing caseloads, activities, and other developments from year to year.

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, the Judiciary Department, 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 Judiciary Department, the States Attorneys and Sheriff's Office, the Vermont State Colleges and the University of Vermont; and 5) selecting between last best offers in negotiation impasses arising under the State Employees Labor Relations Act, the Judiciary Employees Labor Relations Act, the Independent Direct Support Providers Labor Relations Act, and the Early Care and Education Providers Labor Relations Act.

This Annual Report is divided into two parts. The first part is a summary of general developments and activities of the Board over the past year. The second part is a more specific discussion of areas of Board jurisdiction.

**II. CHANGES TO THE BOARD**

The Board saw the retirement of its long-serving Chair, Richard Park at the end of February 2024. Mr. Park was first appointed to the Board by Governor Howard Dean in 1995, and had been reappointed by Governors Douglas, Shumlin, and Scott. His Board colleagues chose him to serve as their Chair from 2002-2004, 2010-2004, and finally 2017 until his retirement in 2024. During his tenure, he shepherded the Board through legislative and administrative changes and helped clarify and establish legal principles that guide labor and

management relations today. In the past several years, he led the Board through the challenges of COVID-19, the shift to remote hearings, the relocation of the Board offices, and retirement of its long serving Executive Director.

With the retirement of Richard Park, the Governor appointed Michelle Phelps of Georgia as the new management representative. The addition of Michelle Phelps has added the contributions and perspective of a manager still working in Vermont and expert on the challenges facing employers and employees in the post-COVID work environment.

Robert Greemore was elected by the members of the Board to serve as Board Chair.

### **III. GENERAL DEVELOPMENTS AND ACTIVITIES**

The Board began to modify its hearing process to reflect the post-COVID lifting of social distance restrictions in 2023. The Board returned to holding live, in-person hearings during 2023. To promote efficiency and to allow witnesses to testify at or near their work sites, the Board permits parties, witnesses, attorneys, and Board members to appear remotely. The Board preference or default, however, is for parties to appear in-person in the hearing room at 6 Baldwin Street, Suite 315.

#### **CASELOAD PROGRESS**

In 2023, 46 new cases were filed or opened with the Board. The ten-year average for new cases is 58. The Board closed 26 cases during the year. At the end of the year, there were 43 cases open.

The following table indicates how the 26 cases were closed in 2022:

<b>How Cases Were Closed</b>	<b>Number of Cases</b>
Board decision	6
Settlement or withdrawal of case	13
Certification of union as representative	5
Order appointing mediator	2

The Board held 19 hearings or meetings in 2023. The Board held hearings on 15 days in 2023, and four regularly scheduled Board meetings. The Board heard eleven (11) matters 2023. Above the ten-year average of 9 per year. Throughout the year, panel members met to deliberate the eleven cases heard by the respective panels. The average length of hearing days per case was 1.4, slightly higher than the ten-year average of 1.35. In one case heard by the Board, the Grievant's appeared pro se.

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

<b>Performance Measures</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<i>Cases Filed</i>	52	63	50	51	45
<i>Cases Closed</i>	64	62	44	48	26
<i>Percentage of Cases Closed by Settlement or Withdrawal</i>	52	54	43	43	50%
<i>Cases Open at End of Year</i>	19	20	23	23	42
<i>Board Hearing Days</i>	13	19	12	17	17
<i>Cases Heard</i>	10	9	8	10	11
<i>Average Days Between Case Filing and Case Closing</i>	194	181	148	171	177

Over the past five years, the average time between the filing of a case with the Board and its resolution is 174. The length of time between case filing and completion in 2023 was 177, slightly higher than this five-year average. The increase is due in part to the Board practice of encouraging settlement, the number of hearing days per case, and the trend in litigants seeking transcripts prior to filing post-hearing briefing.

In 2023, 50% of cases were resolved by settlement or withdrawal. This is slightly above the five-year average of 48.4%. The Board encourages these settlements and through its staff attempts to informally resolve cases and narrow issues in dispute. The Board has facilitated settlement by allowing parties to continue discovery deadlines or hearings when the parties were engaged in meaningful settlement discussions. 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.

In 2023, litigants requested transcripts of Board hearings to assist them in preparing proposed post-hearing Findings of Fact. The dearth of court reporters available in Vermont and New England has resulted in a delay in receipt of transcripts and post-hearing filings. This has also contributed to the length of time between case filing and case closing.

### EDUCATIONAL AND RESEARCH SERVICES

A major goal of the Board is to offer extensive educational and research services to labor relations practitioners to promote productive labor relations. To provide greater public access to its work, the Board maintains a website that 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 on labor relations

The Board has also published physical volumes of its decisions. In recent years, however, the number of orders for these volumes has decreased. Because of the cost and time needed to publish its opinion into a physical bound volume, and that the availability of the decisions on the website, the Board voted to discontinue producing physical volumes of its published decisions. Volume 37, and subsequent volumes will be published on the website only. The volumes will comprise two years of decisions. The information contained in the former published reports can be found on the website. The information will be contained within the heading for that topic. For example, the list of unions certified and decertified by the Board during the past two years will be listed in the Union Certifications, found under the Bargaining Unit elections tab on the Vermont Labor Relations Board website.

The Board staff is responsive to over a dozen inquiries each month from Vermont workers seeking information or relief generally regarding employment law issues. Board staff

receives “cold calls” from Vermont workers recently fired, experiencing workplace harassment or other issues, or seeking guidance generally about employment issues. Board staff redirects inquiries that do not fall within the jurisdiction of the Board and provides these callers with the contact information for the Department of Labor, Attorney General’s Office, or the Vermont Bar Association’s Lawyer Referral program.

#### 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.

The 2023 ALRA Conference took place in person in Vancouver, British Columbia in July. The Executive Director, Board Chair Greemore, new Board Member Michelle Phelps, and Alan Willard attended. Board staff and members exchanged information and ideas with their labor relations colleagues from throughout the country and Canada. Both the Board Members and Executive Director gained valuable insights about mediation, arbitration, Artificial Intelligence, new hearing platforms, and trends in labor management relations

The Board also continued its involvement in the New England Consortium of State Labor Relations Agencies. Throughout the year, the Executive Director participated in virtual meetings, and discussions on evolving issues facing the various jurisdictions.

In September of 2023, Executive Director Dillon took over the role of President of the Vermont Bar Association. Her areas of focus as President are workforce development and succession planning for senior or retiring Vermont Attorneys.

**IV. 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 experience over the past five years with respect to the number of cases filed in these various categories:

	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>Grievances</b>	22	34	22	22	21
<b>Unfair Labor Practices</b>	12	12	12	14	11
<b>Unit Determination / Representation</b>	16	16	13	11	9
<b>Miscellaneous</b>	2	2	4	4	4

The following sections discuss in detail the work of the Board in each of these categories during 2023.

**GRIEVANCES**

Twenty-one Grievances were filed in 2023. This number is lower than the ten-year average of 26. Fifteen grievances were filed on behalf of State employees. This number is below the ten-year annual average of 22 grievances filed on behalf of state employees. Four grievances were filed on behalf of University of Vermont employees, and two were filed by a State Colleges (now University) employees.

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

	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>State Employees</b>	24	16	26	14	18	15
<b>State Colleges Employees</b>	2	3	3	1	1	2
<b>UVM Employees</b>	1	1	3	2	2	4
<b>Judiciary Employees</b>		2	2	1	1	0

The following summarizes grievances decided by the Board in 2023.

The Board reversed the decision of the Vermont Department of Aging and Independent Living to terminate a Nurse Case Manager for failing to perform his duties during the workday and falsifying time records. The Board ordered the reinstatement of the Grievant and backpay. 37 VLRB 6 (2023)

The Board on remand from the Vermont Supreme Court ruled the State failed to demonstrate just cause for terminating a Family Services District Director for engaging in misconduct by sending inappropriate text messages to a subordinate and lying during the investigation. The Board concluded the State could not prove the text messages violated the sexual harassment policy. The Board also found the State did not prove that Grievant lied during the investigation. The Board found the State proved that Grievant's conduct violated Personnel Policy 5.6. After applying the reasonableness or Colleran factors, the Ordered Grievant's dismissal be reduced to 15 days suspension, and that he be reinstated with backpay. Neither the State nor the Grievant appealed the remand decision. 37 VLRB 34.

The Board found the State improperly placed Grievant on unauthorized leave after he inquired whether he could visit his ailing grandmother. Although Grievant never visited his grandmother nor took leave, the State changed his timesheet to reflect he was on unauthorized leave. The Board found the State impermissibly imposed a burden on Grievant to affirmatively state he was not going to take leave after he made his initial query. The Board Ordered the Employer to pay the Grievant for the days they incorrectly placed him on unauthorized leave. 37 VLRB 70.

The Board reversed the decision of the Department Corrections to terminate Grievant a probation and parole officer with nearly twenty-five years of service for misconduct involving failure to follow procedures while serving a hospital coverage post and being untruthful during the investigative process. The board found the State did not meet its burden of proving that Grievant was untruthful and all but one of the allegations against her. The Board Ordered the Grievant to receive a written reprimand and be reinstated with backpay. 37 VLRB 78.

### UNFAIR LABOR PRACTICE

Eleven unfair labor practice charges were filed in 2023, compared to the average of 12.9 over the past ten years. Four cases were filed by individual employees against VSEA and the

Department of Corrections. Four cases were filed by municipal unions against municipalities. One case was filed by an individual against a municipality. One charge was filed by United Academics against UVM, and another filed by VSEA against Vermont State Colleges.

In six of the cases, the charging party either withdrew their charge, or the parties reached an agreement to resolve the claims raised in the charge.

#### ELECTIONS/UNIT DETERMINATION/CLARIFICATION

Eight Petitions for Election of Collective Bargaining Representation were filed in 2023. All but one involved Petitions filed by unions seeking to represent municipal employees. That one involved a Petition filed by the United Auto Workers to form a Union of graduate assistants and fellows employed by the University of Vermont. The Board held two-unit determination hearings. In one, the Board found that the position of the Head Custodian is a supervisory position and should be excluded from the Unit. VT NEA and RNESCU, 37 VLRB 109. The second hearing in the United Auto Workers and UVM matter was heard in January 2023.

The Board held four mail-ballot elections, two in-person elections, and in two cases the Employer consented to voluntary recognition of the Union.

One Unit Clarification Petition was filed in 2023 by the Village of Essex Junction Employees' Association ("Association") to clarify the eligible employees of the City of Essex Junction to join the Association. The Board issued an Order clarifying the new employees eligible to join the unit and ordered the addition of Assistant Clerk, Town Planner, Assistant Technical Services and Program Librarian to the Unit.

#### MISCELLANEOUS CASES

Two requests for the appointment of a mediator were jointly filed by Unions and employers to help them resolve impasses in negotiations for successor collective bargaining agreements. The negotiation disputes involved the following parties and bargaining units: 1) the Vermont State Colleges and the AFT Part-Time Faculty unit; and 2) VSEA and the State of Vermont Non-Management, Supervisory, and Corrections Unit. In the VSEA and State matter,



the parties were not able to resolve the dispute through mediation and requested Fact Finding, which the Board ordered.

APPEALS OF BOARD DECISIONS

None of the Board’s decisions were appealed to the Vermont Supreme Court in 2023. During the year, the Supreme Court affirmed one decision of the Board, and another decision was still under deliberation with the Vermont Supreme Court at the end of 2023. The average number of cases appealed per year is less than two.

Dated this 27th day of June 2024, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Judith Dillon  
Judith L. Dillon, Executive Director

/s/ Robert Greemore  
Robert Greemore, Chairperson

/s/ Alan Willard

Alan Willard

/s/ David Boulanger

David R. Boulanger

/s/ Karen Saudek

Karen F. Saudek

/s/ Roger Donegan

Roger A. Donegan

/s/ Michelle Phelps

Michelle Phelps