

## 2012 - 2017

The number of cases filed with the Board during the years 2012 through 2017 increased from the levels of the preceding five years. The average annual average of cases filed was 59, compared to 53 cases during the preceding five years.<sup>1</sup>

Grievances represented 41 percent of case filings, compared to 42 percent during the preceding five years. Unfair labor practice charges significantly decreased, constituting 22 percent of filed cases, compared to 28 percent during the preceding five years. Unit determination / representation cases increased substantially, constituting 31 percent of case filings, compared to 24 percent during the preceding five years. Miscellaneous cases constituted the remaining six percent.<sup>2</sup>

The number of union representation elections increased from the historically low levels experienced during the preceding five years. The average annual number of elections was 7.3 during the 2012 through 2017 period, compared to the average of 6 annual elections from 2007 through 2011, 9 from 2002 through 2006, and 8.4 from 1997 through 2001.<sup>3</sup> The increase in elections largely resulted from substantial organizing by the New England Police Benevolent Association either to represent previously unrepresented municipal police department employees in the state or to represent police department employees currently represented by another union. The NEPBA prevailed in many of the elections.

The trend of a much higher number of case closings by settlement or withdrawal continued during the years 2012 through 2017. Case closings by settlement or withdrawal were more than double the closings by decisions during this period.<sup>4</sup>

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<sup>1</sup> 2007 – 2011 Annual Reports, Vermont Labor Relations Board.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

The percentage of Board decisions appealed to the Supreme Court slightly increased during these years. 18 percent of decisions were appealed, compared to 15 percent during the preceding five-year period. The Board was affirmed in 7 of 9 decisions issued by the Court during this period. The significantly decreased involvement by the Court in Board decisions is illustrated by the fact that the Court issued on average less than two decisions a year on appeals of Board decisions. Also, the number of appeals of Board decisions pending at the Court was low throughout the period.<sup>5</sup>

The 2012 through 2017 period was an unusually busy one for labor relations legislation. Four significant bills were enacted into law. One of the passed bills amended five existing Vermont labor relations statutes – the State Employees Labor Relations Act, the Municipal Employee Relations Act, the Labor Relations for Teachers Act, the Judiciary Employees Labor Relations Act, and the private sector State Labor Relations Act – to provide that employees in a bargaining unit represented by an employee organization as exclusive bargaining representative were required to pay agency fees to the representative. Prior to passage of this bill, the five labor relations statutes provided that agency fees constituted a mandatory subject of bargaining. However, in 2018, the agency fee provisions of the four statutes other than the State Labor Relations Act were affected by the U.S. Supreme Court ruling that public employers and public sector unions are prohibited from collecting agency fees or any other payment to a union from nonconsenting employees.<sup>6</sup>

Two bills created comprehensive labor relations statutes. An act relating to independent direct support providers, described in detail in the previous Section, was

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<sup>5</sup> Id.

<sup>6</sup> Janus v. AFSCME, et al., \_\_\_ U.S. \_\_\_ (June 27, 2018).

enacted in 2013. The Early Care and Education Providers Labor Relations Act, also discussed at length in the preceding Section, was enacted in 2014.

A bill enacted into law during the 2017 legislative session amended the State Employees Labor Relations Act to provide collective bargaining rights under the Act to deputy State's Attorneys and other employees of State's Attorneys' offices. The Board has similar unit determination, election, unfair labor practice, grievance and negotiation dispute responsibilities with respect to these employees and the Department of State's Attorneys and Sheriffs as it does with respect to other employer-employee relationships under the Act.

Governor Shumlin appointed two new members to the Board – Edward Clark of Guildhall and Robert Greemore of Barre – to replace Louis Lacroix and Linda McIntire, who both resigned from the Board prior to the completion of their six-year terms. He also reappointed five members of the Board during the 2012 through 2017 period – Richard Park, James Kiehle, Gary Karnedy, Alan Willard and Greemore. The Board elected Gary Karnedy to succeed Park as Board Chairperson for a two-year term from September 2014 to September 2016, and then re-elected him in September 2016 to another two-year term. Chairperson Karnedy resigned from the Board in November 2017. The Board elected Member Richard Park to serve as Board Chairperson until the expiration of Karnedy's term in September 2018. Chairperson Park previously served as Board Chairperson from 2002 to 2004, and 2010 to 2014.<sup>7</sup>

The Board issued the second and third editions of *The Evolving Vermont Labor Relations Law*, authored by the Board Executive Director, in 2012 and 2015. The revised editions of the treatise presented labor relations practitioners with an updated comprehensive treatment of statutory, case law and administrative

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<sup>7</sup> Id.

developments impacting labor relations in the state. The Board continued its publications of volumes of decisions during this period, and regularly updated its *Guide to Vermont Labor Relations Statutes*.

The Board also updated and expanded its website. By 2018, the website included: a) all Board decisions with opinions issued since 1977, b) summaries of recent Board decisions, c) Board Rules of Practice, d) a case law summary of labor relations decisions, e) a guide to Board practices and procedures, f) all orders issued by the Board certifying, not certifying and decertifying unions as bargaining representative, g) the Board Annual Report, h) general information on the Board, i) forms for filing cases with the Board, j) order forms for Board publications, k) the Board hearing schedule, l) links to labor relations statutes administered by the Board, and m) additional links to other web sites of interest to labor relations practitioners.<sup>8</sup>

The Board continued to be involved in offering labor relations practitioners regular labor relations conferences during the 2012 through 2017 period. The Board co-sponsored statewide labor relations conferences in 2012 and 2015 with the Federal Mediation and Conciliation Service. It also participated in the planning and conducting of summer labor relations conferences offered by the New England Consortium of State Labor Relations Agencies. The Board Executive Director served as President of the Association of Labor Relations Agencies during this period.<sup>9</sup>

The Board Executive Director continued to be the trainer for three training sessions offered annually, sessions which he has conducted on an annual basis since 1998. The training sessions for labor relations practitioners are on presenting unit determination/representation and unfair labor practice cases to the Board, and on dealing with difficult substantive and procedural issues that arise in discipline and

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<sup>8</sup> 2017 Annual Report, Vermont Labor Relations Board.

<sup>9</sup> 2012 through 2017 Annual Reports, Vermont Labor Relations Board.

other cases in administering collective bargaining contracts. The number of registrants for the sessions increased on an annual basis throughout the period.<sup>10</sup>

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<sup>10</sup> Id.