

## 2018 - 2020

The number of cases filed with the Board during the years 2018 through 2020 was below the levels of the preceding six years. The average annual average of cases filed was 56, compared to 59 cases during the preceding six years.<sup>1</sup>

Grievances represented 48 percent of case filings, compared to 41 percent during the preceding six years. Unfair labor practice charges constituted 24 percent of filed cases, compared to 22 percent during the preceding six years. Unit determination / representation cases decreased substantially, constituting 22 percent of case filings, compared to 31 percent during the preceding six years. Miscellaneous cases constituted the remaining five percent.<sup>2</sup>

The average number of union representation elections was 7 during the years 2018 through 2020. The compared to the average of 7.3 annual elections during the 2012 through 2017 period, 6 from from 2007 through 2011, 9 from 2002 through 2006, and 8.4 from 1997 through 2001.<sup>3</sup>

The trend of a much higher number of case closings by settlement or withdrawal continued during the years 2018 through 2020. Case closings by settlement or withdrawal were nearly triple the closings by decisions during this period.<sup>4</sup>

The percentage of Board decisions appealed to the Supreme Court substantially decreased during these years. 8 percent of decisions were appealed, compared to 18 percent during the preceding six years. The Board was affirmed in five decisions issued by the Court during this period, partially affirmed in one case, and reversed in one case. The significantly decreased involvement by the Court in

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<sup>1</sup> 2018 - 2020 Annual Reports, Vermont Labor Relations Board.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

Board decisions is illustrated by the fact that the number of appeals of Board decisions pending at the Court was low throughout the period.<sup>5</sup>

The 2018 through 2020 period remained active with respect to labor relations legislation. A bill enacted into law during the 2018 Special Session created a bargaining model for school health care bargaining that is separate from the traditional bargaining model under the Municipal and Teachers Acts, and it provides for different representation of the respective parties in collective bargaining negotiations.<sup>6</sup> It creates a Commission on Public School Employee Health Benefits to “determine . . . the amounts of the premiums and out-of-pocket expenses for school employee health benefits that shall be borne by school employers and by participating employees”; and “whether school employers shall establish a health reimbursement arrangement, a health savings account, both, or neither, for their participating employees.”<sup>7</sup>

Also, a bill enacted into law during the 2019 legislative session amended the dispute resolution procedures of the State Employees Labor Relations Act. The dispute resolution procedures under the Act are successively: mediation, factfinding, and selection of one of the parties' last best offers. Historically, last best offer selection has been done by the Board. The 2019 legislation provides that, in negotiations covering state employees or State's Attorneys' employees, selection of one of the parties' last best offers is done either by the Board or, alternatively, by an arbitrator if one of the parties so requests.<sup>8</sup>

Further, the Legislature amended the Municipal Employee Relations Act in 2019 to require a municipal employer and the exclusive bargaining agent for

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<sup>5</sup> Id.

<sup>6</sup> Act No. 11 (2018 Special Session).

<sup>7</sup> 16 V.S.A. § 2102 (a); 16 V.S.A. § 2103(b)(1).

<sup>8</sup> Act No. 61 (2019).

municipal public safety employees to submit their contract impasse to final and binding arbitration if an impasse continues for 20 days after a fact finder has made his or her report public. Municipal public safety employees are firefighters, law enforcement officers, ambulance services, emergency medical personnel, or first responder services. The requirement does not apply if the applicable bargaining unit includes both municipal public safety employees and other municipal employees.<sup>9</sup>

A bill enacted into law during the 2020 legislative session amends the unit determination and election provisions of the State Employees Labor Relations Act, the Municipal Employee Relations Act, and the Labor Relations for Teachers Act. Specific timeframes are established for employer responses to election petitions, Board hearings to resolve any unit determination issues, and scheduling of union representation elections. The statutes previously did not set specific timeframes.<sup>10</sup>

Governor Scott appointed three new members to the Board – David Boulanger of Hinesburg, Karen Saudek of East Montpelier, and Roger Donegan of Hinesburg – to replace Edward Clark, Gary Karnedy, and James Kiehle. He also reappointed two members of the Board during the 2018 through 2020 period – Richard Park and Alan Willard. The Board re-elected Park to serve as Board Chairperson twice during the period. Chairperson Park has been a member of the Board for more than 25 years. He is the longest serving Board member in its history.<sup>11</sup>

The Board issued the fourth edition of *The Evolving Vermont Labor Relations Law*, authored by the Board Executive Director, in 2018. The revised edition of the treatise presented labor relations practitioners with an updated comprehensive treatment of statutory, case law and administrative developments impacting labor relations in the state. The Board continued its publications of volumes of decisions

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<sup>9</sup> Id.

<sup>10</sup> Act No. 180 (2019 Adj Sess.)

<sup>11</sup> 2018 - 2020 Annual Reports, Vermont Labor Relations Board.

during this period, and regularly updated its *Guide to Vermont Labor Relations Statutes*.<sup>12</sup>

The Board also updated and expanded its website. By 2021, 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>13</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 other cases in administering collective bargaining contracts. The number of registrants for the sessions increased during the period.<sup>14</sup>

The Board partnered with the Federal Mediation and Conciliation Service (“FMCS”) in 2019 to offer for the first time a training session, “Contract Administration and the Steward/Supervisor Relationship”, in various locations throughout Vermont in October and November. Trainers for the sessions were three FMCS Mediators and the Board Executive Director. Locations for the training were Rutland, Berlin, South Burlington, White River Junction and St. Johnsbury.

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<sup>12</sup> Id.

<sup>13</sup> 2020 Annual Report, Vermont Labor Relations Board.

<sup>14</sup> 2018 - 2020 Annual Reports, Vermont Labor Relations Board.

Topics addressed in the training were the union steward/supervisor relationship, the duty to furnish information, grievances generally, Weingarten right to union representation at a meeting that may lead to discipline, grievances over discipline, grievance procedure, grievance processing/investigations, and union-management dynamics. Supervisors and union stewards from the public and private sectors were encouraged to attend the training. There were more than 100 registrants for the six training sessions.